



Thomas J. Clary

Born: August 31, 1899, in Seneca Falls, New York
Died: August 1, 1977, in Philadelphia, Pennsylvania

Federal Judicial Service:

Judge, U.S. District Court for the Eastern District of Pennsylvania

Received a recess appointment from Harry S. Truman on October 21, 1949, to a new seat authorized by 63 Stat. 493; nominated to the same position by Harry S. Truman on January 5, 1950.

Confirmed by the Senate on March 8, 1950, and received commission on March 9, 1950. Served as chief judge, 1961-1969. Assumed senior status on March 1, 1969.

Service terminated on August 1, 1977, due to death.

Education:

Cornell University, A.B., 1920

Georgetown College Law School (now Georgetown University Law Center), LL.B., 1924

Professional Career:

Private Practice, Philadelphia, Pennsylvania: 1924-1949

Member, Judicial Conference of the United States: 1966-1968

Other Nominations/Recess Appointments:

Nominated to U.S. District Court for the Eastern District of Pennsylvania, October 15, 1949; no Senate vote.

*

*

*

Judicial Biography

*In 1949, President Harry S. Truman nominated Thomas J. Clary, who had been active for years in Democratic politics in the 22nd Ward in Philadelphia, to fill a new seat on the Court. born in Seneca Falls, New York in 1899, he earned his undergraduate degree from Cornell University and his law degree from Georgetown University. Following his defeat in 1941 for a judgeship on the Court of Common Pleas in then Republican-dominated Philadelphia, he worked as an Assistant United States Attorney from 1944 until he resigned in 1947 to run unsuccessfully for Philadelphia District Attorney. Richardson Dilworth, who headed the Democratic ticket that year as his party's candidate for Mayor, was also beaten. Clary was a founder of the Lawyers' Reference Service of the Philadelphia Bar Association. While he was "a very dour looking man with a perpetual frown," he was actually "a very soft guy at heart" who was "a very lenient sentencer." He was "firm, at times rough, but always fair."

His portrait is among those hanging in the Ceremonial Courtroom of the present courthouse. It is distinct from all the others. As he wished, it starkly portrays the loneliness of one who has responsibility for sitting in judgment in a court of law.

Cases involving the draft and the Selective Service Act continued to appear on the Court's docket after the close of World War II. One such action evidenced the early stirring of the civil rights movement in Philadelphia. In 1948, DeVreaux Tomlinson, an African-American, refused to present himself for a physical examination after being directed to do so by his draft board. Thereafter, he was ordered to appear for induction and again refused to comply. He was part of a group of 692 African-Americans and White Americans who had collectively advised the Secretary of Defense and all the Philadelphia Draft Boards that they would not report for induction if they were assigned to segregated military installations. Tomlinson's draft board advised him that it had no jurisdiction over his duty station after he was inducted.

Tomlinson was indicted and found guilty by a jury for failing to appear for induction. In his post-trial motions, he contended that the notice of induction violated his constitutional rights to due process and equal protection. Judge Clary denied the motions. He explained that the draft board had no control over where and under what conditions an inductee serves in the military and that it would be mere speculation for the Court to make any such determination. At this juncture, the issue of discrimination was hypothetical. Judge Clary cited the well-established principle that courts will determine constitutional questions "only on specific and concrete problems presented in the facts of a particular case."

In the background was President Truman's Executive Order to desegregate the military which was still in the process of implementation when the Tomlinson trial took place in January 1950. Although Judge Clary did not mention the Order, Truman had issued it shortly before the November 1948 election. It provided: "There will be equality of treatment and opportunity for

* The following material is excerpted from JUDGE HARVEY BARTLE, III, MORTALS WITH TREMENDOUS RESPONSIBILITIES, A HISTORY OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA, 3-12 (Saint Joseph's University Press, 2011). Reproduced with the permission of the author, Judge Harvey Bartle, III, and the publisher, Saint Joseph's University Press.

all persons in the armed forces.” The President directed it to be “put into effect as rapidly as possible, having due regard to the time required to effectuate any necessary changes without impairing efficiency or morale.” By 1951, segregation in this sphere of American life had virtually disappeared.

It was at this point that Tomlinson appeared before Judge Clary for sentencing. On January 18, 1951, shortly after filing his opinion denying Tomlinson’s post-trial motions, Judge Clary suspended imposition of sentence and placed him on probation “to terminate upon [his] induction into the Armed Forces of the United States.” Tomlinson apparently was now prepared to serve as separation of the races in the military had become a thing of the past.

In late 1968, in a case originally before Judge Clary, the Court of Appeals sitting en banc, overturned prior precedent with its ruling that the practice of manufacturing diversity with non-resident plaintiffs was forbidden under a federal statute which states that “a district court shall not have jurisdiction in which a party has been improperly or collusively . . . joined to invoke the jurisdiction of such court.” Thus, the citizenship of the child or incompetent who was injured or the person who had died would now be determinative. Henceforth, the name of the omnipresent Stella McSparran was seen no more on the caption of newly filed complaints.

The Court was still using the time-honored master calendar system in the 1960’s. Under it, each judge was scheduled for certain weeks of the year for criminal trials, civil trials, discovery and other pretrial motions, settlement conferences, and time in chambers. The trial periods for each judge did not usually extend more than two or three weeks at a time. The same judge would not be responsible for a case from beginning to end. Instead, one judge might decide a discovery dispute or a motion to suppress evidence, another the motion to dismiss or for summary judgment, still another would preside over any settlement conference, and finally a different judge would try the case, depending on when a particular event in the life of a case occurred and what judge happened to be assigned to deal with such matters. There was no overarching scheduling order setting deadlines for the various phases of a case, and cases sometimes languished for want of judicial oversight.

In the late 1960’s, the Federal Judicial Center persuaded Chief Judge Clary to experiment with an individual calendar system for both criminal and civil cases. In contrast to the then current practice, the proposed system called for a case to be assigned to a judge at random when it was first filed with that same judge presiding over the matter for all purposes until its conclusion. The judge would set deadlines, resolve all motions, have responsibility for case management, and try the case if necessary. Those advocating this change argued that cases would move toward trial and be resolved much more expeditiously than under the master calendar system. Two of the newer judges, John Fullam and Charles Weiner, agreed to participate in a pilot program. In due course, it was apparent that efficiency and backlog reduction were the clear result.

Making the conversion applicable to all judges, however, was hotly contested. By the time the matter was ripe for decision, John Lord had succeeded Thomas Clary as Chief Judge. Following a vigorous discussion at a judges’ meeting on June 25, 1969, in Courtroom #11 in the Courthouse at Ninth and Market Streets, Chief Judge John Lord cast the tie-breaking vote in

favor of a court-wide individual calendar system. It took effect on January 1, 1970. As a result, the Eastern District of Pennsylvania became one of the first of the District Courts throughout the country to make this monumental shift. It remains in effect today and constitutes one of the most important administrative reforms in the history of the Court.

In the 1960's, Chief Judge Clary initiated the custom of a weekly judges' luncheon at the dining room of Gimbel's or Strawbridge & Clothier, two nearby department stores. Court business was often transacted. A judges' dining room was designated in the present courthouse in Philadelphia when it was constructed in the mid-1970's so that what was a weekly occasion off-site became a more convenient everyday event for those who wished to participate. The room contains a long table where judges eat their lunches purchased from the courthouse cafeteria or bought elsewhere.

The conversation which takes place is always lively and spontaneous. It varies from day to day and even minute to minute. The dialogue ranges from current or historical events to sports to light banter to fond remembrances of departed colleagues to repetition of often-told stories. Sometimes the talk turns to legal subjects such as recent Supreme Court or Court of Appeals decisions or to a knotty issue that a judge faces or some noteworthy encounter that may have occurred that morning in the courtroom. At other times, of course, the main happening is the celebration of a judge's birthday. One thing that is not done at lunch is the transaction of Court business. Above all, the noontime repast in the judges' dining room for those in attendance is a welcomed interlude for fellowship and relaxation during the busy day. Indeed, it is the catalyst for a collegial Court.

Judge Clary passed away on August 1, 1977 in Philadelphia, at the age of 78.

* * *

Biographical Materials

1. Biographical information.

THE HONORABLE THOMAS J. CLARY (1899-1977)

Thomas J. Clary was born in 1899 in Seneca Falls, New York, the son of Thomas and Ellen Clary; he was raised as a boy in the house now rededicated as "The Clary House." From the age of five to the age of twelve, Judge Clary attended Saint Patrick's parochial school in Seneca Falls; he then attended secondary school at the Mynderse Academy, also in Seneca Falls.

Judge Clary then enrolled in Cornell University; however, world events would soon mandate a change in his plans. Judge Clary was eighteen years old when the United States entered the First World War, and he volunteered his service to the United States Army. After the war's conclusion, Judge Clary returned to his educational pursuits, while also serving in the Army Reserve from 1919 to 1929. (Too old for combat in the Second World War, and by this time a lawyer, Judge Clary once again served his country with distinction, this time as an attorney for the Army Ordnance Department).

After leaving active duty, Judge Clary graduated from Cornell University in 1920 and from Georgetown University Law School in 1924. He soon settled in Philadelphia. As a practitioner, he was a founder of the Lawyers' Reference Service of the Philadelphia Bar Association, a step that helped open the courthouse doors to disadvantaged litigants pursuing arguments of great societal importance.

After an unsuccessful run for public office, Judge Clary was an Assistant United States Attorney in the Eastern District of Pennsylvania from 1944 to 1947. In 1947, Judge Clary once again unsuccessfully sought elected office, this time as a candidate for District Attorney in Philadelphia. As a practitioner, Judge Clary was a founder of the Lawyers' Reference Service of the Philadelphia Bar Association, a step that helped open the courthouse doors to disadvantaged litigants pursuing arguments of great societal importance.

Judge Clary was appointed to the bench of the United States District Court for the Eastern District of Pennsylvania by President Harry S. Truman in 1949, becoming its Chief Judge in 1961.

Judge Clary presided over many matters of historic importance. One involved the criminal prosecution of an African-American man named DeVreux Tomlinson. Tomlinson had received his draft notice from the United States Army, but he refused to report for an Army physical examination because of the existence of segregation at that time in the armed forces. The jury convicted Tomlinson, but by that time, President Truman had ordered the desegregation of the armed forces, and Tomlinson no longer objected to military service. Despite the jury's criminal conviction, Judge Clary went out of his way to create a just resolution by giving Tomlinson probation instead of incarceration; Judge Clary simultaneously ordered that this period of probation would be terminated upon Tomlinson's reporting for an Army physical examination (and Tomlinson promptly complied with the Order).

As Chief Judge, he managed the massive multi-district civil antitrust litigation that followed the criminal conspiracy convictions of 45 white-collar executives, which grew out of scandalous mismanagement of the Tennessee Valley Authority. As a result of this experience, the Federal Judicial Center named Chief Judge Clary to be editor-in-chief of its Handbook for Protracted and Multi-District Litigation. Chief Judge Clary was also appointed by the Judicial Conference of the United States as the first Chairman of its Ad Hoc Committee on Complex Litigation, which later became the Judicial Panel on Multi-District Litigation.

In the late 1960's, Chief Judge Clary was the catalyst for the establishment of the individual calendar system in the Eastern District of Pennsylvania for both criminal and civil cases. This system assigned one judge, chosen at random, to preside over each such case, from when it was filed until when it was concluded; it was soon apparent that efficiency and backlog reduction were its clear results.

Chief Judge Clary was also the guiding light of the program that ultimately led to the construction of the new United States Courthouse in Philadelphia.

A devout Roman Catholic, Judge Clary was interested in the early 1950's in seeing one of Philadelphia's Catholic colleges establish a law school. He first approached Saint Joseph's College, which declined his suggestion; he then approached Villanova College, which reciprocated his interest. Judge Clary later became a member of Villanova Law School's Board of Consultants. Judge Clary's sense of loyalty to Villanova Law School was almost overpowering; he was proud of his part in its birth, and he was a much loved member of the Villanova family. On the 25th anniversary of its founding, Villanova Law School dedicated a volume of its Law Review to his memory.

His colleague A. Leon Higginbotham, Jr., recalled years later that despite a facade of dour seriousness, Judge Clary had perhaps the best sense of humor in the court's history. Judge Clary passed away in 1977, leaving a legacy of sound judicial opinions that not only dealt with many of the century's biggest social issues, but resolved them in ways that were fundamentally fair and just.

Judge Clary was married to the late Catherine M. Carey Clary; they had a daughter, the late Mary Jane Clary Hoffman, and a son, the late John T. Clary. John T. Clary carried on the family tradition of following the legal profession, as did Judge Clary's grandson (also named John Clary) and Judge Clary's great-grandson, Patrick Clary, now a Captain and a Judge Advocate in the United States Air Force.

Shortly after joining the federal bench, Judge Clary received a letter from President Truman, who had nominated him for that position. Judge Clary had this letter framed, and displayed it in a place of honor on one of the walls in his chambers. In his characteristically direct style of writing, President Truman stated, "I know you will be a good judge." Judge Clary fulfilled this prophecy with grace and distinction.