



Joseph S. Lord, III

Born: May 21, 1912, in Philadelphia, Pennsylvania

Died: April 23, 1991, in Philadelphia, Pennsylvania

Federal Judicial Service:

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

Nominated by John F. Kennedy on August 31, 1961, to a new seat authorized by 75 Stat. 80.

Confirmed by the Senate on September 14, 1961, and received commission on September 15, 1961. Served as chief judge, 1971-1982. Assumed senior status on July 1, 1982.

Service terminated on April 23, 1991, due to death.

Education:

University of Pennsylvania, A.B., 1933

University of Pennsylvania Law School (now Carey Law School), LL.B., 1936

Professional Career:

Private Practice, Philadelphia, Pennsylvania: 1936-1961

U.S. Navy: 1942-1945

U.S. Attorney for the Eastern District of Pennsylvania: 1961

Member, U.S. Judicial Panel on Multidistrict Litigation: 1968-1978

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Judicial Biography

*President John F. Kennedy, in his initial year in office, named three new judges. The first was Joseph S. Lord III. Born in 1912 in Philadelphia, he received his undergraduate degree from the University of Pennsylvania where he captained the boxing team and later earned his law degree from the same institution. At the time, his uncle, Charles A. Waters, was a judge of the Court of Common Pleas of Philadelphia County. Years later, Lord's brother, Charles A. Lord, would also sit on the Common Pleas bench. After law school, Lord became the law clerk for the Philadelphia Court of Common Pleas No. 4. From 1936 to 1961, he was a highly successful trial lawyer, with time out for his service in the Navy along with his four brothers during World War II. He first was employed as an associate with Schnader and Lewis and later practiced with Richter, Lord and Farage, a firm that represented plaintiffs in personal injury and wrongful death cases. During his career, he was a member of the Board of Governors of the Philadelphia Bar Association and served on the Board of the Philadelphia Port Authority.

President Kennedy appointed him initially as the United States Attorney for the Eastern District in 1961. He held this office for only a few months before being chosen for the federal bench. These appointments in such rapid succession were due to the influence of Congressman William J. Green, Philadelphia's powerful Democratic party leader. Lord had the good fortune to have defended the Congressman successfully in the Middle District of Pennsylvania in connection with his federal indictment and trial for allegedly receiving kickbacks related to the construction of the Tobyhanna Signal Corps Depot near Scranton. As Lord candidly stated, "I was picked [to be a judge] because I was fortunate enough to be in the right place at the right time." He did not suffer fools gladly. His wit and humor were legendary. He quipped that he elevated the bench by becoming a judge and advised his colleagues to learn to sleep with their eyes open.

John Lord and Joseph Lord were not related and had quite different political views. The former was a Republican and the latter a Democrat. Nonetheless, they were often mistaken for one another in the public mind. Whenever they were asked if they were confused with the other Judge Lord, they had a standard retort. Each would note in jest that he was confused without the other Judge Lord. John Lord had an additional response when dealing with the identity issue: 'If someone praises me for an opinion of [Judge Joseph Lord], I just nod and smile . . . But if someone tells me I handed down a terrible decision . . . I say it must have been the other Judge Lord.'

A number of electrical equipment antitrust cases were filed in the courts. The plaintiffs ranged from large investor-owned utilities to small rural public-power operators and cooperatives. Ultimately, over 1,900 civil cases were filed in thirty-five federal districts. The Judicial Conference of the United States under the leadership of Chief Justice Earl Warren appointed a nine-member committee of federal judges to coordinate the discovery and processing

* 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.

of the cases. Judge Kirkpatrick, then a senior judge, had agreed to manage the consolidated discovery occurring in the Eastern District of Pennsylvania. This included presiding over depositions at the courthouse. Soon thereafter, he was hospitalized, and Chief Judge Clary assigned the discovery oversight and any trials to Judge Joseph Lord.

Ultimately, of nearly 2,000 cases nationwide, only one, *Philadelphia Electric Co. v. Westinghouse Electric Corp.*, involving a single electrical product, went to trial in the Eastern District. Most of the trial, which lasted over three months, consisted of the reading of depositions. The jury returned a verdict in June 1964 of more than \$9 million in favor of the plaintiffs, which the Court trebled to almost \$29 million as provided under the Sherman Act. Recognizing that their position was untenable due to the criminal convictions and admissions of conspiracy, the defendants soon undertook to settle the remaining cases. They ended up paying out many millions of dollars.

Because of these Electrical Equipment Antitrust cases, and with the strong support of Chief Justice Warren, Congress passed legislation allowing for the transfer to one district “for coordinated or consolidated pretrial proceedings” civil actions pending in different districts which involved “one or more common questions of fact” if it is determined to be “for the convenience of parties and witnesses and will promote the just and efficient conduct of such actions.” This multi-district litigation statute authorized the Chief Justice to designate a panel of judges to make pretrial transfers in appropriate circumstances. Judge Joseph Lord served for a number of years as one of the original panel members.

The mid-and-late 1960’s was also a time of political tumult as a result of the civil rights struggle. In 1963, the centennial year of President Lincoln’s Emancipation Proclamation, The Rev. Martin Luther King, Jr. gave his eloquent “I have a Dream” speech at the Lincoln Memorial in Washington. He would be assassinated in Memphis on April 4, 1968.

Congress was finally enacting significant civil rights legislation. The Civil Rights Act of 1964 outlawed discrimination in places of public accommodation as well as in employment. The Voting Rights Act of 1965 was also enacted.

The courts, primarily in the South, were dealing with the desegregation of schools and lunch counters and facing massive resistance in some localities. The Civil Rights movement, however, was also taking place in the North. In the Eastern District, Judge Joseph Lord presided over the most important and closely followed civil rights case in this region. It concerned Girard College, a well-known Philadelphia secondary school, which had been established under the will of Stephen Girard before the Civil War.

Girard was born in Bordeaux, France, in 1750. At the age of fourteen he went to sea, became a ship captain, and ultimately settled in Philadelphia where he prospered as a merchant, shipowner, and banker. He was also a generous philanthropist who, among other good works, provided funds to fight the several yellow fever epidemics in the City in the 1790’s. At the time of his death in 1831, he was said to be the richest man in America. Orphaned at twelve, he left a large portion of his fortune in trust to the City of Philadelphia to establish a school for “poor male white orphan children . . . to provide them a better education as well as a more comfortable

maintenance than they usually receive from the application of the public funds.” Girard College opened in 1848 in a then sparsely populated area on land designated by Girard in Penn Township, Philadelphia County just north of the city.

Over the years as the City expanded, Girard College eventually found itself in the midst of a densely populated row house neighborhood of North Philadelphia. By the 1950’s and 1960’s, the residents in the area were largely African-American. Girard College with its stately Founders Hall in the Greek revival style and its other marble buildings, a high stone wall around the circumference of the campus, and an all white student body stood out in sharp contrast to its surroundings. This incongruity did not go unnoticed. The Local NAACP, led by the flamboyant attorney and ex-Marine Cecil B. Moore, as well as other civil rights activists, began to turn their attention to Girard College with frequent marches outside its gates to protest the racial discrimination taking place within. Even Martin Luther King added his voice and presence on one occasion.

Not surprisingly, various parties also turned to the courts for relief. In the mid-1950’s two African-American children petitioned the Orphans’ Court of Philadelphia County for admission to Girard College. Defending Girard’s will was the Board of Directors of City Trusts which managed all charitable bequests to the City of Philadelphia and which had responsibility to oversee the operation of the school. The Court rejected the children’s constitutional claim and turned down their request for admission on the ground that to do otherwise would violate the clear language of Girard’s will. The Pennsylvania Supreme Court, in an opinion by Chief Justice Horace Stern, agreed with the Orphans’ Court, although he described the result as “unfortunate”. The lawsuit reached the United States Supreme Court, which in a short per curiam opinion, summarily reversed. It stated:

The Board which operates Girard College is an agency of the State of Pennsylvania. Therefore, even though the Board was acting as a trustee, its refusal to admit Foust and Felder to the college because they were Negroes was discrimination by the State. Such discrimination is forbidden by the Fourteenth Amendment. *Brown v. Board of Education*, . . . Accordingly, the judgment of the Supreme Court of Pennsylvania is reversed and the cause is remanded for further proceedings not inconsistent with this opinion.

When the matter returned to the Orphans’ Court, it promptly removed the Board of City Trusts as the trustee with oversight of Girard College. In place of the Board it appointed a group of “private” trustees, who were not associated with the City. The Court reasoned that its primary obligation was to uphold the terms of Girard’s will and that its selection of private trustees would insulate the trust and Girard College from claims of state sponsored discrimination.

The Commonwealth of Pennsylvania, with the support of Governor William Scranton, and the City of Philadelphia as well as a number of African-American children, filed a lawsuit in the Eastern District of Pennsylvania in which they alleged Girard College’s race-based admission policy not only was unconstitutional but also contravened Pennsylvania law. Judge Joseph Lord, after a hearing, ruled that the exclusion of African-American boys from the education offered at the school violated the Pennsylvania Public Accommodations Act. He did not decide the

constitutional issues raised. Reversing the District Court's order, the Court of Appeals held that Pennsylvania law had not been broken and remanded for Judge Lord to resolve the federal constitutional questions involved.

With the case back in District Court, Judge Lord ruled that the exclusion of non-white applicants to Girard College violated the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. While recognizing that private discrimination, however invidious, does not infringe the Constitution, he wrote that "the transfer of immediate supervisory control to private trustees by the Orphans' Court failed to effectively disassociate the State from the discriminatory policies and purposes which the State operation of the school had come to embody." He found, "the College has not purged itself of critical State involvement nor has the State erased the impression of public approval which long attached to the school's racial policies." Accordingly, "Since the strictures of the Fourteenth Amendment apply to the administration of the institution, it may no longer deny admission to applicants simply because they are not 'white.'"

This time, the Court of Appeals, sitting en banc, unanimously affirmed his decision, and the Supreme Court denied certiorari. Now, for the first time in its history, Girard College would be admitting not only poor male white orphan children but also poor male non-white orphan children.

As often occurs with court decisions, the matter at issue, in this case the integration of Girard College, caused widespread discussion and debate among Philadelphians. Many saw Judge Lord's ruling as advancing the promise of America. Others viewed it as undermining the sanctity of wills and wrongfully depriving persons of the right to dispose of their property as they see fit. Emotions ran high on both sides. However, as the years passed, the passions of the day abated, and Girard College quietly goes about its worthy educational mission unvexed, now with female as well as male students of all colors.

The civil rights actions were not the only cases which sought to bring about widespread social change through the courts. Organizations such as Community Legal Services and the Public Interest Law Center of Philadelphia were also busy instituting and winning lawsuits on behalf of the economically disadvantaged.

In the mid-1960's, one of the first successful poverty law cases decided by the Supreme Court arose out of the Eastern District. A class action challenged the constitutionality of the Pennsylvania law requiring welfare recipients to have resided in the Commonwealth for a year immediately preceding their application for benefits. A three-judge court consisting of District Judge Joseph Lord, District Judge Michael Sheridan of the Middle District of Pennsylvania, and Circuit Judge Harry Kalodner heard the matter.

The Court, over the dissent of Judge Kalodner, held that the one-year waiting period had no legitimate purpose and violated the Equal Protection Clause of the Constitution. Although noting that there is no constitutional right to receive public welfare, it decided that it was arbitrary to draw a distinction between those who had been residents in the state for at least a year and those who had lived in the state for a shorter time. The Court also concluded that the

statute had the prohibited effect of inhibiting the movement of indigent persons from other states into Pennsylvania. In the Court's opinion, Judge Lord declared, "The right to travel freely without deterrence is inherent in the notion of a unified nation, and no State may exclude citizens migrating from other States, whatever the reason for the migration."

The Supreme Court affirmed. It agreed that the Equal Protection Clause and the fundamental right to travel voided the Pennsylvania law as well as similar laws of Connecticut and the District of Columbia.

Years later, Judge Lord singled out this and the *Girard College* case as two of his decisions that made a real difference. As to the former, he remarked, "I felt that I had done a good thing in that and I felt gratified that I had the opportunity."

The lobby of the federal courthouse in Philadelphia is usually a place of calm where people enter and exit the courthouse in an orderly manner and where quiet conversation often transpires. From time to time, judges, lawyers, and guests gather there for receptions held after sessions in the nearby Ceremonial Courtroom to induct a new judge, to memorialize a deceased colleague, or to unveil a judicial portrait. In the early part of 1979, the tranquility normally experienced in the lobby was disturbed. It became the site of a controversy over the exhibition of art which eventually resulted in a lawsuit. Under a federal program to encourage the use of public buildings for cultural and educational purposes and to stimulate pedestrian traffic, the works of local artists were displayed in the lobby. Some of the paintings featured females whose countenance left nothing to the imagination. Other artwork contained purportedly offensive political content.

Chief Judge Joseph Lord, acting in his administrative capacity, directed that ten paintings of nudes be removed forthwith by the General Services Administration ("GSA") which administered the federal program. Leaving no doubt about his feelings on the matter, he declared emphatically that the subject matter was not fit for viewing by priests, nuns, or school children.

The publicity and stir over the removal of the nude paintings had barely subsided when artwork allegedly critical of the FBI appeared in the lobby. Chief Judge Lord promptly banished it from the courthouse. He was quoted as having said, 'I order it out and I don't care who takes it out as long as it's out.'

At that point, eminent Philadelphia lawyer Henry Sawyer filed a lawsuit in this Court for an injunction to overturn Judge Lord's directive and its execution by GSA. The matter was assigned to Judge Fullam. After Sawyer presented the case and made an impassioned argument in support of liberty and freedom of speech, Judge Fullam, ruling from the bench, ordered the politically offensive art to be restored to the lobby.

The practice of law was changing as a result of litigation. For as long as anyone could remember, lawyer advertising and soliciting of cases was strictly forbidden by the various professional Codes of Conduct in effect throughout the country. In 1977, the Supreme Court

held lawyer advertising to be a form of protected commercial speech and overturned the blanket ban on such activity.

Despite this ruling, many questions remained as to what limitations could still be imposed. A significant loosening in the restrictions in Pennsylvania was mandated by the decision of Judge Joseph Lord in *Spencer v. The Honorable Justices of the Supreme Court of Pennsylvania* in 1984. The plaintiff, a lawyer who wished to advertise by direct mail his credentials in the areas of computer and aviation law, challenged certain sections of the Pennsylvania Code of Professional Responsibility which in his view unconstitutionally curtailed the right of a lawyer to advertise. While recognizing that some limits on lawyer advertising were permissible to prevent deception and to protect a substantial state interest, Judge Lord declared the Pennsylvania Code prohibition against direct mail advertising to be unconstitutional. He also struck down the Code requirement that lawyers who state that their practice was limited to a particular field of law must also state affirmatively that they are not recognized or certified as a specialist in that field.

Judge Lord assumed senior status on July 1, 1982. He passed away on April 23, 1991 in Philadelphia, at the age of 78.