



Alfred L. Luongo

Born: August 17, 1920, in Philadelphia, Pennsylvania

Died: July 19, 1986, in Philadelphia, Pennsylvania

Federal Judicial Service:

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

Nominated by John F. Kennedy on September 14, 1961, to a new seat authorized by 75 Stat. 80.

Confirmed by the Senate on September 21, 1961, and received commission on September 22, 1961. Served as chief judge, 1982-1986.

Service terminated on July 19, 1986, due to death.

Education:

University of Pennsylvania, B.S., 1941

University of Pennsylvania Law School (now Carey Law School), LL.B., 1947

Professional Career:

U.S. Army Technical Sergeant: 1942-1946

Law Clerk, Court of Common Pleas of Philadelphia County (Pennsylvania): 1948-1949

Law Clerk, Honorable Thomas J. Clary, U.S. District Court, Eastern District of Pennsylvania: 1949-1952

Assistant U.S. Attorney, Eastern District of Pennsylvania: 1952-1953

Private Practice, Philadelphia, Pennsylvania: 1953-1961

City Councilman, Philadelphia, Pennsylvania: 1960-1961

Member, Judicial Conference of the United States: 1978-1981

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Judicial Biography

*President John F. Kennedy in 1961 appointed Alfred L. Luongo to the Court. His commission and that of Judge Freedman were dated the same day. Younger than both Joseph Lord and Abraham Freedman, he was born in 1920 in an Italian neighborhood in South Philadelphia before his family moved to Germantown. He held both his undergraduate and law degrees from the University of Pennsylvania. His law school days were interrupted by service in World War II. Following his completion of law school, he obtained the coveted position as the sole law clerk in the highly respected Philadelphia Court of Common Pleas No. 6 which was then comprised of Judges Curtis Bok, Gerald F. Flood, and Louis E. Levinthal. In 1949, Judge Clary hired him as his law clerk. Luongo remained with Judge Clary until 1952 and then spent several years as an Assistant United States Attorney. Thereafter, he practiced law at the Blank, Rome law firm. In 1959, the voters elected him as a Philadelphia District Councilman, and he was holding that office when appointed to the bench. Because of his independence on City Council, he noted that “the Mayor [Dilworth] insisted that . . . I be made a Federal Judge in order to get me out of his hair permanently.”

A marked increase in the number of judges in the Eastern District in the 1970’s and 1980’s reflected the Court’s increasing caseload. In the early 1970’s as the Vietnam War persisted, that caseload included criminal draft evasion cases. Judges grappled with them in different ways. In a case before Judge Luongo, a person who made a belated claim for conscientious objector status was convicted for failure to submit to induction. Judge Luongo had announced to counsel before trial his standing policy to sentence to thirty-months imprisonment all selective service violators “if they are good people” whether or not they pleaded guilty or were found guilty after trial. His goal was uniformity in sentencing, a principle that was to become one of the cornerstones of the Sentencing Guidelines which went into effect years later. The Court of Appeals, however, reversed the conviction due to Judge Luongo’s failure to recuse himself. It held that his stated policy of imposing uniform thirty-month sentences as indicating a bent of mind that may prevent or impede impartiality of judgment.

Several months later, the Court of Appeals again reversed him for his policy of imposing a thirty-month sentence on a person convicted of violations of the Selective Service Act. It concluded that he had exhibited personal bias against this class of defendants. In the Court’s opinion, Chief Judge Collin Seitz explained that a defendant has the right to make his own statement before sentencing and to present other evidence in mitigation. A fixed sentence determined in advance is “inconsistent” with the “mandate to tailor the sentence imposed to the circumstances surrounding each individual defendant” and “frustrates” those rules designed for that purpose.

Judge Luongo took the unusual step of engaging his old law firm to file on his behalf in the Supreme Court a motion for leave to file a petition for writ of prohibition

* 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.

and/or mandamus directed against the United States Court of Appeals for the Third Circuit. When the Supreme Court denied his motion, he ceased presiding over Selective Service cases.

In an interview over a decade later and only a few days before his death, he spoke of those Court of Appeals' rulings. They still rankled him. While recognizing that reasonable minds could differ on whether he had abused his discretion in imposing a uniform sentencing policy, he vehemently rejected any notion of personal bias. Many of his colleagues agreed that the Court of Appeals had treated him, a well-respected judge, unfairly.

A number of cases involving the issue of separation of church and state were filed in the District Court. In 1969, an African-American parent of a student attending a public school in Pennsylvania as well as the National Association for the Advancement of Colored People and several Jewish and Protestant groups among others brought suit in *Lemon v. Kurtzman* in which they challenged the constitutionality of the Pennsylvania Nonpublic Elementary and Secondary Education Act. That law provided public funds to sectarian and private schools for "secular educational services," that is, for actual expenditures for teachers' salaries, textbooks, and instructional materials. It prohibited reimbursement for any course or materials relating to religion.

A three-judge panel consisting of District Judges Alfred Luongo and Mac Troutman and Circuit Judge William H. Hastie was convened to hear the case since the constitutionality of a state statute was at issue. The Court, in an opinion by Judge Troutman, dismissed the complaint over the dissent of Judge Hastie. Judge Troutman wrote for himself and Judge Luongo:

The mandate of the First Amendment is neutrality with respect to religious teachings, beliefs and practices. The Education Act does not employ religion as its standard.

...

Admittedly, the line is not an easy one to draw. However, we believe the Education Act is consistent with neutrality towards religion and comes within the permissible limits and spirit of the non-establishment principle. Consequently, we will dismiss the plaintiffs' complaint under the establishment clause.

The plaintiffs appealed the dismissal to the Supreme Court which unanimously reversed. Chief Justice Warren Burger, speaking for the high Court, enunciated what has come to be known as the *Lemon* test. To pass constitutional muster, "... the statute must have a secular legislative purpose; ... its principal or primary effect must be one that neither advances nor inhibits religion; ... [and] the statute must not foster 'an excessive government entanglement with religion.'" Finding that the Pennsylvania law created "excessive entanglement between government and religion," the Court struck it down as a violation of the Establishment of Religion Clause of the First Amendment. It explained that "political fragmentation and divisiveness on religious lines" are likely to be intensified as a result of regular legislative appropriations that benefit only a small number of religious groups. Among the Court's other

concerns was the fact that the state governments and religious schools would necessarily become entangled by government oversight and auditing of these payments. The Chief Justice concluded:

The sole question is whether state aid to these schools can be squared with the dictates of the Religion Clauses. Under our system the choice has been made that government is to be entirely excluded from the area of religious instruction and churches excluded from the affairs of government. The Constitution decrees that religion must be a private matter for the individual, the family, and the institutions of private choice, and that while some involvement and entanglement are inevitable, lines must be drawn.

In 1958, Congress had changed the law so that no judge may serve as Chief Judge after attaining the age of seventy. In 1982, it again amended the statute to impose additional time and age limitations. While retaining the existing age restriction, Congress for the first time prohibited a judge from assuming that position unless he or she is under the age of sixty-five. It also now limited the term of a Chief Judge to a maximum of seven years. Before this latter provision took effect, Chief Judge Joseph Lord reached the age of seventy and relinquished his post. He was followed by Alfred L. Luongo, his colleague with the greatest seniority under age sixty-five.

It was under Chief Judge Luongo's leadership that the Historical Society of the United States District Court for the Eastern District of Pennsylvania was established in 1984. Others who were instrumental in its formation were Judge Ditter, Patrick T. Ryan, Esquire, and the Court Clerk Michael E. Kunz.

The Society is a non-profit organization whose purpose is to heighten the public's awareness of the Court's many contributions to American history. Included among its various activities are legal symposia and lectures as well as an annual black-tie dinner. Judge Ditter is largely responsible for the Society's nationally heralded calendar, complete with historical themes and accompanying sketches, which has been published each year since 1985. The Society also commissions portraits of judges to hang in the Courthouse.

It was also during Chief Judge Luongo's tenure that Congress enacted in 1984 what is known as the Rule of 80. It allows a judge to take senior status when his or her age and years of service total eighty, provided that the judge has reached the age of sixty-five and has completed ten years of judicial service.

Chief Judge Luongo died on July 19, 1986 at the age of 65 at his home in Philadelphia.