



E. Mac Troutman

Born: January 7, 1915, in Greenwood Township, Pennsylvania

Died: October 8, 2004, in Orwigsburg, Pennsylvania

Federal Judicial Service:

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

Nominated by Lyndon B. Johnson on May 24, 1967, to a new seat authorized by 80 Stat. 75.

Confirmed by the Senate on June 12, 1967, and received commission on June 16, 1967.

Assumed senior status on September 1, 1982.

Service terminated on October 8, 2004, due to death.

Education:

Dickinson College, A.B., 1934

Dickinson School of Law (now Penn State Dickinson Law), LL.B., 1936

Professional Career:

Philadelphia and Reading Coal and Iron Company: 1937-1962; Assistant to the General

Counsel: 1937-1958; General Counsel: 1958-1962

U.S. Army, Adjutant General's Office

Private Practice, Pottsville, Pennsylvania: 1946-1967

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Judicial Biography

*In 1967, President Lyndon B. Johnson appointed E. (Emanuel) Mac Troutman to the Court.

E. Mac Troutman was the third person to be appointed to the federal bench to serve at Reading. Troutman was from Schuylkill County.

He was born in Greenwood Township, Perry County on January 7, 1915. He was the son of the late Emmett T. and Kathryn Holman Troutman.

Troutman was a resident of Orwigsburg, Schuylkill County and practiced law in Pottsville after serving in the Army in World War II.

He was recommended by Senator Joseph S. Clark, Jr., a Democrat and Senator Hugh Scott, a Republican, for appointment by President Lyndon B. Johnson. He was nominated on May 24, 1967, confirmed on June 12, 1967 and received his commission on June 16, 1967.

He attended Millerstown elementary and high schools, graduating from the latter in 1930. He attended Dickinson College from 1930 to 1934 receiving an A.B. degree in June 1934, and his law degree from Dickinson School of Law in June of 1936.

Troutman was an inveterate cigar smoker and avid outdoorsman and hunter. His storytelling skill was a potent catalyst in helping him to settle countless cases. It was largely through his efforts, and those of Senator Scott, that court stations were established in Reading and Allentown, which were much nearer his home than was Philadelphia.

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 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.

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.

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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.

Cases attacking long-accepted legal procedures and practices joined the many other constitutional cases in the Eastern District. For centuries, something known as a writ of replevin existed in the English common law. It had undergone changes over time, but in some form it was deeply entrenched in the law of Pennsylvania and other states. In the Commonwealth, a party without any prior notice or hearing could summarily obtain from the prothonotary (clerk) of the Court of Common Pleas a writ of replevin authorizing the seizure of certain goods or chattels in another person's possession simply by filing an affidavit swearing to the value of the goods or chattels and by filing a bond in double that amount. The Sheriff upon the issuance of the writ, would then seize the described property, again, without any prior notice to the opposing party and without a hearing to determine who actually was entitled to possession or ownership.

Under Pennsylvania procedure, the party from whom the property was seized was then permitted to file a bond within three days in the same amount as the bond of the party seeking

seizure of the property and in this way trump the seizure. If no bond was filed, the Sheriff would turn over the property to the person who had obtained the writ of replevin.

This legal procedure was most commonly used to take back consumer goods when the buyer allegedly fell behind in payments under an installment contract. Usually, the consumer did not have the sophistication or money to challenge any taking.

A three-judge Court was convened in the Eastern District to decide a case brought by consumers who alleged that a Pennsylvania statute and the procedure authorizing replevin were in conflict with the Due Process Clause of the Fourteenth Amendment to the Constitution. The panel, made up of District Judges Mac Troutman and John Hannum as well as Circuit Judge Cullen Ganey, denied relief on the ground the procedure on its face was not “fundamentally unfair.”

On appeal, the Supreme Court reversed. It held that due process under the circumstances presented required prior notice and an opportunity to be heard, before a creditor, with the help of the state, could seize the consumer goods in issue. The Court concluded that the Pennsylvania law served no important governmental or general public interest and improperly involved the state in a summary action where only private gain was at stake.

Judge Troutman elected senior status on September 1, 1982, and passed away on October 8, 2004, at the age of 89.