

# Regional Responsibilities

*Former Chief Judge Recounts Significant Historic Cases in the Eastern District of Pennsylvania*

## **Mortals With Tremendous Responsibilities – A History of the United States District Court for the Eastern District of Pennsylvania**

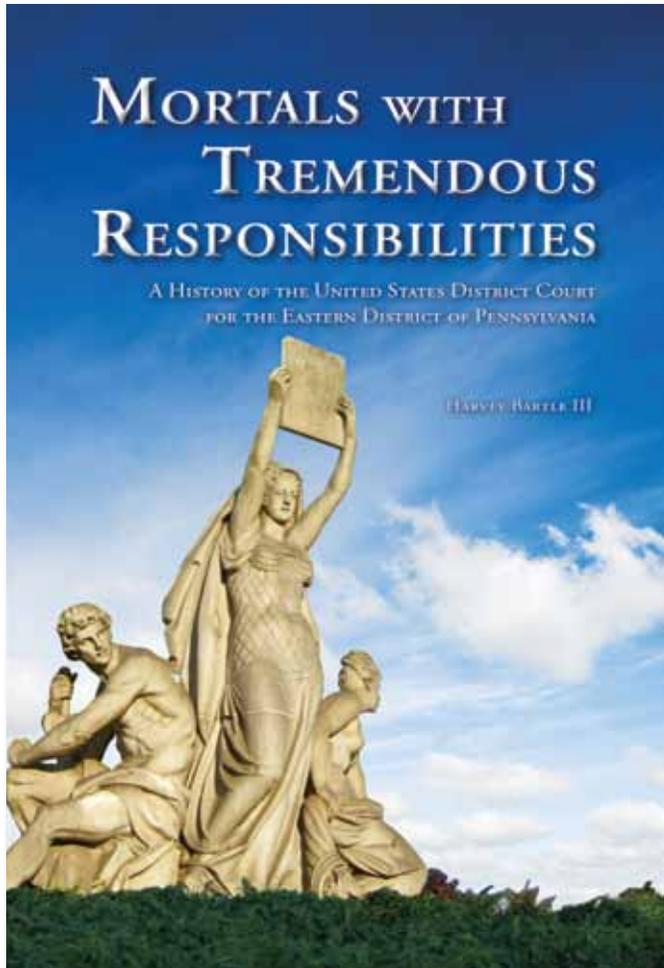
*Written By Judge Harvey Bartle III*

*290 pages*

*\$35, Saint Joseph's University Press*

**T**he Hon. Harvey Bartle III has produced a well written, thoroughly researched and unexpectedly interesting history of the U.S. District Court for the Eastern District of Pennsylvania. That the research and the writing are of high quality should come as no surprise. Judge Bartle served as a judge on that court for more than 20 years and as its chief judge for five. Before that, he was a partner at Dechert Price & Rhoads (now known simply as Dechert, having uncharacteristically dropped its Price). He is also the product of a very Ivy League education at Princeton and the University of Pennsylvania Law School. So one might have anticipated a scholarly and comprehensive history.

Making the subject matter interesting, however, was surely a far more challenging task. The book's own description amply illustrates the difficulty: "Highlighted," it says, "are the court's judges, its important cases, and the growth and changes in its jurisdiction, workload, and administration over more than 220 years." Which means, as you may have guessed, that there's not all that much in terms of gratuitous sex or violence. Able writer though he may be, the fact is that Judge Bartle's chosen topic essentially foreclosed the kind of movie deal or miniseries that most authors want. He probably knew that going in, but there it is. That said, Judge Bartle has succeeded in breathing life into both the



lives and the works of his predecessors – not to mention the court itself. The court began as a one-judge court and it stayed that way for its first 115 years (1789-1904). As a result, for the first half of its history, the court and whichever judge sat on it were one and the same. Thus Judge Richard Peters, appointed by George Washington, was the court from 1792 until 1828. Peters had the good sense to die timely so that John Quincy Adams could appoint Joseph Hopkinson in time for the Senate to confirm him in February of 1829 – just days before Andrew Jackson seized power. And

Judge Hopkinson was the court until 1842 (by which time Jackson was gone and the republic by and large restored, at least for a time).

Much of the history that Judge Bartle recounts in considering the single-judge era is both unfamiliar and entertaining. I liked, in particular, President Tyler's appointment of Horace Binney, to which appointment the president somehow obtained the advice and consent of the Senate without first obtaining Binney's own consent. Once the Senate had voted, someone thought to ask Binney whether he had any interest in the job. He didn't. The man who ultimately agreed to take it, Archibald Randall, was the court's first Roman Catholic judge and Bartle describes his

role in the civil unrest (meaning riots) over which Bible should be used in the public schools (this being long before anyone thought of using no Bible at all). I also think Judge Bartle – while discussing the long career of Judge John Cadwalader (1858-1879) – makes a good case that whatever we may think about the resolution of constitutional questions raised in federal litigation, Civil War is actually a far more effective means of addressing oppressive litigation. That, at least, was the case with the Fugitive Slave Act. He doesn't address the Affordable Care Act.

## One forgets how many of the groundbreaking cases in a variety of legal disciplines arose in the Eastern District of Pennsylvania.

In any event, once there started to be multiple judges at the dawn of the 20th century, they began to breed, as judges do. To get a sense of this, one need only look at the appendices Judge Bartle so helpfully provides at the end of his text. From the founding of the republic until the death of Franklin Roosevelt, a total of 19 judges had been sworn in as judges of the Eastern District. But since that time, some 74 more have taken the oath, and, as of today, there are 22 seats on the bench.

It might be reasoned, perhaps, that so many hands would have made for

lighter work. But this seems not to have been the case and Bartle is at his best describing the explosion of federal litigation in recent decades. One forgets how many of the groundbreaking cases in a variety of legal disciplines arose in the Eastern District of Pennsylvania. These include not only leading constitutional cases on state secrets (*United States v. Reynolds*), the separation of church and state (*Lemon v. Kurtzman*), abortion (*Planned Parenthood v. Casey*) and the like, but also important antitrust cases from the electrical equipment case in the mid-

1960s to the Japanese electronics case in the mid-1980s.

In covering all of these cases, along with many others, Judge Bartle renders not only a comprehensive history of a single court but also a chronicle of changing times in a changing country. His volume is well worth the price and the time. Even if it can't manage an R rating. ■

*Alfred W. Putnam Jr. (Alfred. Putnam@dbr.com) is chairman of Drinker Biddle & Reath LLP.*

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