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REFLECTIONS ON JUSTICE
FRANCIS J. QUIRICO'S CONTRIBUTIONS
TO THE COMMONWEALTH
OF MASSACHUSETTS

DEIRDRE H. HARRIS*

Francis J. Quirico retired from the Massachusetts Supreme Ju-
dicial Court on February 18, 1981 after nearly twenty-five years
on the bench. Justice Quirico served as a judge of the superior
court for thirteen of those years and as a justice of the high court
for the remainder. A native of Pittsfield, Justice Quirico has a deep
and abiding love for western Massachusetts and its people. His
thorough, methodical, and incisive style, together with his personal
demeanor of quiet patience and courteousness, have earned him
the respect and admiration of the Commonwealth’s legal community
and of all those who worked with him. Many consider him to have
been the most able jurist on the court during his time there. It is
possible that with the passage of time he will be assessed as one of
the Commonwealth’s greatest judges. It is certain that he is one of
the finest human beings ever to sit on the Massachusetts bench.

EARLY CAREER

Justice Quirico has devoted his life to the law. He was born on
February 18, 1911, one of eight children of Luigi and Lucia
Quirico, who had emigrated from Italy in 1905 and had settled in
Pittsfield. He attended public schools in Pittsfield, graduated from

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Francis J. Quirico, 1979-80; associate in the law firm of Parker, Coulter, Daley &
White, Boston, Mass. The author acknowledges with gratitude the assistance of
Stephanie Cleverdon, Anthony Musimianno, Michael Keating, Gael Mahoney, and
Margot Botsford.

The section concerning the Small Loans Trials was written by Michael B.
Keating, a partner in the law firm of Foley, Hoag & Eliot in Boston, and law clerk in
the superior court from 1965 to 1966. Mr. Keating served as clerk to Justice Quirico
in one of the trials.

Material for the section concerning the Boston Common Garage Trials was con-
tributed by Gael Mahoney, a partner in the Boston law firm of Hill & Barlow. Mr.
Mahoney served as special assistant attorney general for the purpose of trying the
Boston Common Garage Cases. He handled both trials and both appeals.
Pittsfield High School, and then attended Northeastern University School of Law, graduating cum laude in 1932. While at Northeastern, he supported himself by working in a Boston cabinet-making shop, and to this day he is an accomplished furnituremaker.

He was admitted to the Massachusetts bar the same year he graduated from law school and thereafter was admitted to the United States District Court for Massachusetts, the United States Court of Appeals for the First Circuit, and, in 1939, to the United States Supreme Court. From 1932 to 1942, Francis Quirico engaged in private legal practice in Pittsfield. His practice was interrupted by World War II when he served in the United States Army Air Corps. He rose to the rank of captain during the war years and returned to Pittsfield to resume his practice following the war.

From 1948 to 1952 he served as city solicitor for the City of Pittsfield. During his tenure in that office, he became a recognized authority in the field of municipal law. He helped to revise the city charter and wrote legal opinions which his successors still consult from time to time. He served as vice president of the Massachusetts Bar Association and president of the Berkshire County Bar Association. He was active in Pittsfield civic organizations, including the Berkshire Athenaeum and Hillcrest Hospital. At various times he was chairman of the city's rent control board and of the school building commission.

**SUPERIOR COURT YEARS**

In 1956, Governor Christian A. Herter, a Republican, nominated Francis Quirico, a Democrat, for a vacancy on the superior court. Governor Herter did not know Mr. Quirico, but he was at the top of a list of candidates prepared by a screening committee the Governor had established to advise him on judicial appointments. Early news reports indicated that there was opposition within the Republican ranks, but Governor Herter said that he had received only one "mild" letter of opposition and a "good many letters" in support of his choice.¹ Francis Quirico was sworn in as an associate justice of the superior court on September 4, 1956.

He quickly established himself as an outstanding legal scholar with a broad and profound knowledge of the law and an extraordinary capability in the trial of complex and extended lawsuits. He

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earned the reputation of being an effective administrator, and he is emulated by judges today in their efforts both to reduce congested dockets and to provide for the fair and efficient administration of the court system.

THE SMALL LOANS TRIALS

In 1964, a Suffolk County special grand jury returned 144 indictments which charged several small loan companies, certain of their employees, and several public officials with offering or paying bribes, soliciting or receiving bribes, or conspiring to commit any of these crimes. The indictments concerned the efforts of defendant companies to purchase favorable state regulation for the small loan industry.

The so-called Small Loans Trials, as the indictments came to be called, had great importance for several reasons. First, the stakes were enormously high, not only for the individual defendants but also for the corporate defendants, national companies whose right to conduct business in the Commonwealth of Massachusetts and elsewhere depended upon licenses. Second, the indictments were the result of an investigation of corrupt practices in government conducted by the Massachusetts Crime Commission. The Commission's investigations were perceived by some as politically motivated, and the resulting indictments were controversial for that reason. Third, the sheer number of defendants and charges posed significant case management difficulties for the superior court.

Recognizing the tasks confronting the trial court, Chief Justice G. Joseph Tauro selected a steady and reliable judge, superior court Justice Quirico, to preside over the entire proceedings. Beginning in 1964 and continuing for more than three years, Justice Quirico presided over all facets of the Small Loans Trials, from pretrial motions through two jury trials. The task was indeed enormous. Recognizing the stakes, defendants hired the elite of the Massachusetts criminal bar, over twenty-five attorneys, who launched the best financed and most exhaustive defense to the indictments ever witnessed. Hundreds of pretrial motions were filed, and evidence was heard for sixty-five court days. The transcript of those proceedings covered 4,730 pages. The first trial, which in-

3. Id. at 200-01, 275 N.E.2d at 42.
4. Id. at 201, 275 N.E.2d at 42.
cluded forty-nine of the 144 indictments, lasted five months. The second trial, involving twenty-one indictments, was the longest criminal trial in the history of the Commonwealth: it lasted 222 days and extended over a twelve-month period.

From the outset, the strategy adopted by defense counsel was to ensure that, in the event that guilty verdicts were reached, somewhere in the course of the protracted proceedings Justice Quirico would commit at least a single reversible error. To that end defendants filed every motion known, and in some instances unknown, to have the indictments dismissed. Defendants took more than 5,400 exceptions to Justice Quirico's rulings. In their appeal to the supreme judicial court, the four corporate defendants and eight individual defendants who had been convicted designated 700 numbered multiple assignments of error. These efforts were to no avail, however, for on November 4, 1971 the supreme judicial court handed down a 188-page decision, Commonwealth v. Beneficial Finance Co., which affirmed all judgments from both trials.

Throughout that decision, the supreme judicial court drew attention to the care and thoroughness with which the trial court had considered each of the matters raised by counsel below, both at the pretrial stages and during the trials. The fullness of the trial record was of great assistance to the appellate court. The pretrial motions advanced many objections of considerable complexity which required full evidentiary hearings. For instance, the use of a legislative investigation to develop a case for the grand jury was asserted to violate article 30 of the Declaration of Rights of the Massachusetts Constitution. On this issue alone, Justice Quirico conducted a factual hearing which included the testimony of seventeen witnesses. He made extensive findings of fact and rulings of law. When this issue reached the supreme judicial court, there was a full record upon which the court could rely in reaching its decision.

Justice Quirico had ensured that defendants were given every opportunity, at all stages, to make a complete factual record on any motion or objection presented. Moreover, despite the difficulties of

5. Id.
6. Id.
7. Id.
8. Id. at 201, 275 N.E.2d at 43.
9. Id. at 188, 275 N.E.2d at 33.
10. Id. at 203-04, 275 N.E.2d at 44.
11. Id. at 204, 275 N.E.2d at 44.
keeping track of the motions and the evidence thereon, Justice Quirico had taken the time to make extensive findings and rulings. He believed that it was incumbent upon him to set forth in writing the rationale upon which he based each of his decisions. His findings and rulings contained 1,400 printed pages. In many instances, as a testament to his considerable abilities, the supreme judicial court’s opinion simply adopted as the basis of its decision the rationale set forth in Justice Quirico’s rulings below.

To have presided over cases as complex as these without permitting reversible error to occur and to have overseen the development of a complete factual record to facilitate the task of the supreme judicial court are accomplishments which alone deserve tremendous credit. Justice Quirico’s performance as a trial judge, however, far surpassed even those objectives. In the course of the most protracted proceedings, involving at least twenty-five aggressive trial counsel, Justice Quirico was unfailingly courteous and polite to those who were before him. On no occasion, despite occasional provocation, did he ever appear to be angry or upset. His patience was extraordinary. His good humor always was available to lighten the load for everyone. He had a firmer grasp of the record in the case than anyone in the courtroom. His prodigious recall preserved order in what otherwise might have been chaos. He worked harder than anyone. He appeared to epitomize the ideal trial judge: Intelligent; patient; diligent; courteous; and always in control. Although the bar may remember Justice Quirico most for the scholarship of his legal opinions, those lawyers who were privileged to be before him in the courtroom will remember that as their finest hour.

THE BOSTON COMMON GARAGE TRIALS

Justice Paul C. Reardon, in his tribute to Justice Quirico, indicates that as a superior court judge Justice Quirico was often assigned complex and politically sensitive trials. In 1963, Justice Quirico presided over two trials of persons charged with larceny and conspiracy in connection with the construction of a parking garage under the Boston Common.

Indictments were handed down in 1962 against six defendants, including two attorneys, one of whom also sat as a district court judge, and four officials of the Massachusetts Parking Authority. Justice Quirico presided over the two trials in their entirety.

The first trial, of three of the defendants, began on March 2, 1963 and lasted two weeks. The Commonwealth introduced evi-
idence of complex schemes by defendants to obtain payments from the state-funded Massachusetts Parking Authority. Justice Quirico directed verdicts of not guilty on indictments charging extortion and conspiracy to extort, and the jury convicted all three defendants of larceny and conspiracy to commit larceny.

The second trial of three defendants began in early June 1963 and lasted about six weeks. Again the evidence was complex. The jury convicted two defendants of larceny by false pretenses and conspiracy and acquitted the third.

According to the prosecutor, Justice Quirico "conducted those trials in an absolutely masterful way." He always remained in total control of the courtroom despite efforts by an impressive array of criminal defense lawyers to unbalance the trial and introduce error. He was "never ruffled for a minute [and was] . . . the most unflappable judge I have ever seen." His charge to the jury was lucid, delivered in readily understandable lay language, and delivered without notes while "looking each juror straight in the eye." When humorous moments arose, Justice Quirico readily appreciated them and handled them adroitly.

Both trials were followed by appeals to the supreme judicial court. According to the prosecutor, the appeals were as hard fought as the trials. In another tribute to the fine judicial craftsmanship and sensitivity of Francis Quirico, the court found no error in either trial. The opinions reflect his careful building of the record, his concern for defendants' rights, and the overall expertise with which he conducted the trials.

13. The appeals from these verdicts are found in Commonwealth v. Kiernan, 348 Mass. 29, 201 N.E.2d 504 (1964).
14. The appeals from these verdicts are found in Commonwealth v. Monahan, 349 Mass. 139, 207 N.E.2d 29 (1965).
15. Interview with Mr. Gael Mahoney, in Boston, Mass. (Oct. 28, 1980). See note * supra.
16. Id.
17. Id.
20. The Boston Globe once reported that "[Justice] Quirico's methodical approach to any job he undertook has earned him the respect of even those whom he overruled or found guilty." Boston Globe, June 5, 1978, at 8, col. 1.
THE SUPREME JUDICIAL COURT YEARS

In October of 1969, Governor Francis W. Sargent, a Republican, repeated a pattern set thirteen years earlier by Governor Herter by reaching into western Massachusetts to name Democrat Francis Quirico to the state's highest court. Like Governor Herter, Governor Sargent did not know Francis Quirico. Francis Quirico had solicited neither position and had never contributed anything to the political campaigns of either governor.21 When he introduced Justice Quirico at a press conference, Governor Sargent described him as a "self-made man, a man of experience and wisdom second to none in this Commonwealth."22 With his characteristic humility, Justice Quirico replied, "I hope that I can live up to all that is expected of me."23

Justice Quirico succeeded Justice Arthur E. Whittemore of Hingham, who had died unexpectedly. Justice Quirico was the first American of Italian descent named to the state's highest tribunal. He first sat for oral argument on December 1, 1969. His first published opinion was MacGibbon v. Board of Appeals of Duxbury,24 a zoning case. Thereafter, the former city solicitor wrote many opinions dealing with various facets of municipal law.

It is beyond the scope of this biographical article to assess the supreme judicial court opinions of Justice Quirico in any manner that would begin to do justice to his wide-ranging and brilliant career as an appellate jurist. Here, the author offers only some general observations about Justice Quirico's opinions.

Justice Quirico's appellate opinions are perhaps best known for the remarkable sense of historical and legal balance they both illustrate and espouse. He is deeply committed to the principle of separation of powers, and particularly to the clear delineation of the separate roles played by the legislature and the courts. In what may well have been his last major dissent, Justice Quirico responded to the court's attempt to quell with finality legislative efforts to enact a death penalty law for Massachusetts. He wrote:

I believe that the court, by its decision in this case, has completely stripped the Legislature of the constitutional power which it has heretofore possessed and exercised for two hundred

21. Id.
23. Id.
years to determine, in its wisdom and discretion, when and in what circumstances the public good requires the imposition of the death penalty for murder in the first degree.

... I conclude that the Legislature has the power to make that decision under the provisions of the Constitution of this Commonwealth, and I reach that conclusion without regard to any personal views which I may have on the "expediency, wisdom, or necessity" of capital punishment.25

As one who knows Justice Quirico, the author speaks with some confidence in saying that his dissent in this case, as in so many others, bespeaks his commitment to judicial adherence to matters constitutionally within the purview of the judiciary. It does not offer approbation of this or any other law enacting a death penalty. The theme of deference to the constitutional powers of the legislature is present throughout his appellate opinions, particularly in his well-known dissents.26

That restraint is confined, however, to his sense of the judicial role, to established rules of appellate procedure, and to principles of judicial reasoning. In a case where he feels the court is venturing into an area reserved by the state constitution for the legislature, or where the parties have not properly brought their case before the court, he says so unequivocally without denigrating the salutariness of the result or the worthiness of the merits. In a case he sees as properly presented to the court and properly presenting novel issues within the purview of the judiciary, he will not hesitate to write a far-reaching opinion.27

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His opinions abound with common sense, eloquently expressed. He is not swayed by intelligently conceived obfuscation. In oral argument and in single justice sessions, he quickly cuts through verbiage and asks questions reaching the core of the case. This same quality is reflected in his opinions. He writes forcefully, persuasively, and clearly, often setting forth a treatise which pulls together important cases in a particular area.

Justice Quirico is also well known for his willingness to reach far back into history if he believes the answer to the issue before the court lies there. For example, in the landmark case of *Boston Waterfront Corp. v. Commonwealth*, he applied the “public trust” doctrine to a disputed piece of land in Boston Harbor. He reached back to early Roman and English law and traced the doctrine through Massachusetts history from colonial times to the present. His opinions, which were often separate opinions, frequently utilized this approach of offering historical perspective to a legal question before the court. Much more could be said about

28. Under Mass. Gen. Laws Ann. ch. 211, §§ 14-19 (West 1958), a single justice of the supreme judicial court has original jurisdiction to hear certain matters and may issue orders or reserve and report cases to the full court.


31. Id. at 358.

Justice Quirico's appellate opinions, but a thorough evaluation lies beyond the scope of this article. The author wishes to close this article with some personal observations about Francis Quirico.

A newspaper article once said that Justice Quirico “is respected by colleagues for his legal knowledge, devotion to work and judicial temperament.” That is true as far as it goes. The judge is a quiet, thoughtful man; when he speaks, he commands attention. He is not concerned with showmanship or impressions. He is concerned with truth and will seek it until he is satisfied that he has come as close as humanly possible to it in a given case, even if it means a delay in issuing an opinion. He is gentle and kind and has been loved as well as respected by those who have been privileged to work closely with him—his colleagues, and particularly his law clerks. Those of us who have been honored to serve in that position have been immeasurably enriched as attorneys and as people.

function of jury in criminal cases to determine questions of law, such as degrees of murder); Opinion of the Justices, 360 Mass. 877, 886-87, 271 N.E.2d 335, 341 (1971) (Quirico, J., dissenting) (fact that jury has consisted of 12 persons for centuries indicates criminal defendant has fundamental right to jury of 12); Commonwealth v. Brasher, 359 Mass. 550, 552-55, 270 N.E.2d 389, 392-93 (1971) (historical roots of statute for punishment of delinquent or “stubborn” children).

The dissenting opinion in Opinion of the Justices, 360 Mass. at 877, 271 N.E.2d at 335, was Justice Quirico's first dissent.