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## In Memory of Ralph J. Cappy, Retired Chief Justice of Pennsylvania

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## In Memory of Ralph J. Cappy, Retired Chief Justice of Pennsylvania

*Chief Justice Ronald D. Castille\**

When our great and good friend and colleague, retired Chief Justice Ralph J. Cappy, died so suddenly on May 1, 2009, I was asked to speak at his funeral service on behalf of the Unified Judicial System, at the beautiful Heinz Chapel at Ralph's beloved University of Pittsburgh. I was honored to accept. The remarks I made at the funeral service, while the shock of Ralph's passing was still so raw, lightly touched upon the singularity and the accomplishments of the man I knew as my friend, colleague, and great leader on the Court. Nevertheless, the Interim Dean of the Duquesne University School of Law, Professor Ken Gormley, a former law clerk to Chief Justice Cappy, asked that I reproduce those remarks for this issue, and I am privileged to do so. To make certain that I offer a more comprehensive and fitter measure of the man, in this forum more suited for a lasting tribute, I have taken the liberty to expand upon my eulogy before reproducing it, and *Duquesne Law Review* has graciously indulged me.

First, however, I would like to offer an introduction to this memorial issue dedicated to Chief Justice Cappy. At the time of Ralph's passing, *Duquesne Law Review* was nearing completion of this special edition, which was conceived as a life tribute to Ralph. The tragedy of Ralph's sudden passing has made this labor of love by the contributors into the memorial before you.

The fact of the original intention is impressive enough. But then consider the contributors. The Governor of Pennsylvania, Edward G. Rendell. Distinguished jurists, including two federal circuit court judges, Ralph's law school mentor, the Honorable Ruggero J. Aldisert of the United States Court of Appeals for the Third Circuit, and the Honorable Thomas M. Hardiman of that same Court; four of Ralph's learned colleagues from the Supreme Court of Pennsylvania with whom he served, Thomas G. Saylor, J. Michael Eakin, Max Baer, and Cynthia A. Baldwin; Joseph A. Del Sole, retired President Judge of the Superior Court of Pennsylvania; recently retired Superior Court Judge Maureen E. Lally-

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\* Chief Justice, Pennsylvania Supreme Court.

Green; and the Honorable R. Stanton Wettick, Jr., and the Honorable Christine A. Ward, two Judges of the Court of Common Pleas of Allegheny County, where Ralph began his judicial career and made positive contributions that are still felt in that court system to this day. State Senator Stewart J. Greenleaf, representing the legislature with which Ralph also worked. Mark A. Nordenberg, Chancellor of Ralph's beloved alma mater, the University of Pittsburgh. Distinguished members of the bar, such as Andrew Susko, the former Pennsylvania Bar Association President, and Bruce P. Merenstein and Paul H. Titus, both of Schnader Harrison Segal & Lewis LLP. Accomplished former law clerks, who will keep the Cappy tradition of excellence and dedication alive, including Elizabeth Surgent Minnotte, Ralph's long-time Chief Law Clerk; Dean Lu-in Wang, now an Associate Dean for Academic Affairs and Professor of Law at the University of Pittsburgh; Jeffrey P. Bauman, Leslie Kozler, and Joy G. McNally, who have collaborated on an article; William Stickman IV, who assisted Judge Del Sole with his article; and Sarah Andrews. Finally, Dr. Joel Fishman, Assistant Director for Lawyer Services, Duquesne University Center for Legal Information/Allegheny County Law Library, and Jason J. Kelley, a student at Duquesne Law, have helped to present a fuller measure of Chief Justice Cappy's impact.

Equally as impressive, in this tribute, is the breadth and depth of the subject matter. For example, Judge Aldisert's article, *The Honorable Ralph Cappy: Distinguished Keeper of the King's Bench Tradition*, is a combination of personal reminiscences beginning with the young Ralph who was his law student in 1968; a brief outline of Ralph's varied achievements and contributions; important lessons and reminders concerning the importance of the common-law tradition to the incremental development of the law; and an explanation of the Pennsylvania Supreme Court's King's Bench powers. Judge Hardiman's article, *New Judicial Federalism and the Pennsylvania Experience: Reflections on the Edmunds Decision*, begins by noting that Chief Justice Cappy's "legacy will endure not only in law books but also in the hearts and minds of the people he has helped and inspired." Judge Hardiman then examines the background, contours, and influence of one of Ralph's more important decisions, *Commonwealth v. Edmunds*,<sup>1</sup> written soon after Ralph joined the Court. *Edmunds* set forth a

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1. 586 A.2d 887 (Pa. 1991).

neutral and comprehensive four-part methodology for assessing state constitutional claims and, in particular, claims which seek recognition of broader rights under the Pennsylvania Constitution than have been recognized under the U.S. Constitution.

Justice Saylor's article, *Right for Any Reason: An Unsettled Doctrine at the Supreme Court Level and an Anecdotal Experience with Former Chief Justice Cappy*, details an ongoing but respectful disagreement with Chief Justice Cappy concerning the right-for-any-reason doctrine, which Justice Saylor employs as a vehicle both to explore the "role, power, and authority" of our Court and illustrate Ralph's unique talents. Justice Saylor notes, among other things, Ralph's interest in a clear framework for appellate review; Ralph's accessible manners of expression; and, as leader of the Court, Ralph's emphasis on openness and collegiality. Justice Saylor rightly notes that Ralph's "period of leadership was marked by free dialogue and a respect for differences, in furtherance of the institutional interests of the Court, as well as the interests of the public at large." Justice Eakin, in his inimitable style, has contributed a poem (with apologies to Edgar Allan Poe) continuing his defense of a practice of decision by rhyme. But, as always, within Justice Eakin's humor is pith as he touches upon Chief Justice Cappy's legacy, noting that Ralph's initiatives as Chief were achieved through "personality, by tour de force, and collegial sharing and discourse." Justice Baer recounts the personal welcome and the assistance he received from Chief Justice Cappy upon his joining our Court, then details Ralph's commitment to collegiality, civility, and the reduction of plurality decisions and unnecessary concurrences.

Other articles illustrate Chief Justice Cappy's enduring legacy in discrete areas. Thus, in *An Independent Judiciary: The Role of Chief Justice Cappy*, Judge Joe Del Sole, a longtime friend with a shared enthusiasm for motorcycling, notes Ralph's contribution to the advancement of judicial independence. Those efforts included establishing the Pennsylvania Commission on Judicial Independence and advocating for adequate compensation for Pennsylvania judges via a system that preserved judicial independence, so that the judiciary would not have to go hat-in-hand to the General Assembly. Judge Lally-Green details Chief Justice Cappy's important role in reducing racial, gender, and ethnic prejudices within the court system, via his work with multiple commissions and committees implementing concrete solutions to reported problems. In *Chief Justice Cappy—It's All About Case Management*, Judge Wettick recounts Ralph's tremendous administrative abilities,

which he brought to bear upon the challenges of civil case backlogs, particularly in Allegheny County and Philadelphia County, but also throughout the Commonwealth, with intelligent, targeted responses to particularly problematic areas in civil litigation. Ralph's efforts expedited trials and efficiently distributed judicial resources. Judge Ward, in *The Commerce Court: A Small Part of the Chief's Legacy*, details Ralph's vision in the area of business litigation, noting that he was the driving impetus behind the creation of Allegheny County's Commerce and Complex Litigation Center, and how honored she was to have his support in helping to create the business court. Bruce Merenstein and Paul Titus, in their article, *Chief Justice Ralph J. Cappy's Death Penalty Dissents: The Importance of Statutory Authority and Procedural Protections*, outline Ralph's jurisprudence in this complex area, focusing on eight particular cases which reflect "a careful fidelity to statutory authority for imposition of a death sentence or strict adherence to procedural regularity in imposition of society's most serious punishment." Governor Rendell, Senator Greenleaf, the Honorable Cynthia A. Baldwin, and Mr. Susko each offer a testimonial to Chief Justice Cappy's leadership and vision, as reflected in his interactions with the executive branch, the Legislature, his judicial colleagues, and the organized bar. Chancellor Nordenberg offers reflections on his personal friendship with Ralph and details Ralph's lifelong devotion to the University of Pittsburgh, where he served on the Board of Trustees and where his selfless service was honored with recognition as a Distinguished Alumnus of the School of Law, as a University Distinguished Alumni Fellow, and as a Pitt Legacy Laureate.

Chief Justice Cappy's former clerks are well-represented, providing four articles revealing glimpses both of Ralph as a "boss" and other important areas of his jurisprudence. In *A Tribute to Ralph J. Cappy, Pennsylvania Supreme Court, Chief Justice*, Elizabeth Surgent Minnotte, who served as Ralph's Chief Law Clerk for the entirety of his tenure on our Court, writes about the unshakeable belief that Ralph held to and acted upon every day—that every person, no matter what his or her circumstances might be, deserves respect and an equal share in the opportunities that life has to offer. Dean Lu-in Wang, in her article, *Morrison v. Department of Public Welfare and the Pennsylvania Revolution in Scope and Standard of Review*, notes that Chief Justice Cappy maintained clear goals as a jurist, including the imperative that the Court provide concrete and accessible guidance to the bench and bar via opinions that were "well-considered, well-organized,

and expressed in plain language.” One such opinion was *Morrison*,<sup>2</sup> an enduring contribution to appellate jurisprudence in its emphasis on the importance of recognizing and applying the proper scope and standard of review in a given case. Jeffrey P. Bauman, Leslie Kozler, and Joy G. McNally have contributed a joint article, *The Foundations of the Jurisprudence of Chief Justice Ralph J. Cappy: Reflections of Three Law Clerks*, which provides valuable insight into Ralph’s decision-making process. The authors describe the driving forces behind Ralph’s judicial philosophy, as understood from their close personal association with Ralph and as reflected in several of his most notable opinions. Finally, Sarah Andrews provides a glimpse of Chief Justice Cappy’s openness and his lighter side, sharing a never-before-published, proposed dissenting opinion in the form of a play concerning a domesticated pet, a squirrel named Nutkin (who had been the subject of a prior opinion on the Superior Court), and the story behind the dissent. This episode showed Ralph’s readiness to take on Justice Eakin in the creative-writing department.

Dr. Joel Fishman in his article, *The Judicial Opinions of Chief Justice Ralph J. Cappy of the Supreme Court of Pennsylvania (1990-2007)*, provides a bibliography and index of the Supreme Court opinions that Ralph authored, evidencing his prodigious contribution to the jurisprudence of Pennsylvania and proving that his administrative duties never swayed him from the core decisional task of a Justice. Finally, Jason J. Kelley’s Recent Decision analyzes one of Ralph’s last majority opinions, *Middletown Township v. Lands of Stone*,<sup>3</sup> a case raising significant issues regarding the government’s power to take private property by eminent domain.

This commemorative issue, conceived in living celebration, but now brought to term in tears and tribute, scratches but the surface of the many facets that comprised the person of Chief Justice Cappy. As detailed in these articles, Ralph was a man of boundless energy and varied talents, so much so that I am reminded of Carl Van Doren’s famous description of another Pennsylvania public servant, Benjamin Franklin, as a “harmonious human multitude.” Ralph was all that.

That so many of those who worked with Ralph, were friends of Ralph, admirers of Ralph, or personally touched by Ralph or his

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2. *Morrison v. Dep’t. of Public Welfare*, 646 A.2d 565 (Pa. 1994).

3. 939 A.2d 331 (Pa. 2007).

accomplishments or his good deeds would volunteer their time and effort alone proves how remarkable the man was. Marc Antony's tribute to Caesar, as rendered by William Shakespeare, noted the too-often-true disappointment that: "the evil that men do lives after them/ The good is oft interred with their bones/ So let it be with Caesar."<sup>4</sup> Of course, the balance of Antony's speech ensures that the good in Caesar would not be forgotten. Our Ralph did no evil and needs no apologist. This remarkable tribute helps bear witness to the second half of the Bard's wisdom. Ralph Cappy will not be forgotten by those who knew him, and his influence will be felt by generations who have not had the privilege of knowing the man through the institutions and the jurisprudence that he has so profoundly affected.

The articles in this volume, and my revised funeral remarks below, begin to touch upon Ralph's achievements and his accomplished legacy.

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**REMARKS MADE IN MEMORY OF RALPH J. CAPPY**  
**(Retired Chief Justice of Pennsylvania)**  
**Heinz Chapel of the University of Pittsburgh**  
**May 5, 2009**  
**By Ronald D. Castille**  
**Chief Justice of Pennsylvania**

It was only a short time ago that the Supreme Court, along with many other organizations, honored Chief Justice Ralph J. Cappy, on the occasion of his retirement from the Bench, for his long and valued service to the Supreme Court of Pennsylvania and, to a more important extent, to the citizens of Pennsylvania. Our Court, on January 7, 2008, lauded Chief Justice Cappy for his 18 years of service on our Court and his service as Chief Justice from 2003 to his retirement in 2008.

As Ralph handed the mantle of leadership of the Supreme Court to me that day as the Justice longest in service, I spoke on behalf of our Court in honoring Chief Justice Cappy for his long and distinguished career as a public servant: first in the Allegheny County Public Defender's Office, where he rose to become the Chief Public Defender; then in serving on the Court of Common

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4. WILLIAM SHAKESPEARE, JULIUS CAESAR act 2, sc. 2.

Pleas of Allegheny County, where he became Administrative Judge and helped to modernize the caseload in the second-largest judicial district in Pennsylvania; and capped by his election to the Supreme Court (a court founded in 1684 by William Penn's Frame of Government) and his eventual ascension to Chief Justice.

I asked Chief Justice Cappy, who was then retired, to swear me in as the 55th Chief Justice of the Pennsylvania Supreme Court. I did so because I wanted the Supreme Court to formally recognize Ralph's service to our Court as our Chief. I said that Ralph's record on our Court was a record of which he could justifiably be proud and that his tenure as Chief will be noted for his many creative initiatives that effectively addressed difficulties in the court system, as well as initiatives that addressed difficulties in the Commonwealth itself. You may recall that Chief Justice Cappy ascended to our Court at the most difficult time in its history with the pending investigation and eventual impeachment of a sitting Justice. But Ralph persevered, and despite those troubled times, by the end of his tenure, our Court had once again regained the respect of the legal profession and that of the citizens of Pennsylvania.

At that time, I spoke on behalf of all of the Justices of the Supreme Court, saying that it was an honor to work with Ralph as a colleague, but it was an even greater honor to have him as a friend. I noted that Ralph's service to the Judicial Branch will long be remembered for its excellence, and his service will be duly appreciated by all three branches of government and, indeed, by all the citizens of Pennsylvania.

And, at that time, we collectively wished Ralph and his wife, Janet, nothing but success in their future. We did not know at that time (indeed, none of us know) that the future would be so short-lived. We all know the physical difficulties that befell Ralph so soon after his retirement, but we all saw how Ralph, with his indomitable spirit, overcame those difficulties. None of us could foresee this sad day (of his death).

Ralph and I came to the Court from different political parties and from different ends of the state, and perhaps even from different philosophical starting points—Ralph being a former Chief Public Defender and myself a former District Attorney. But we became friends quickly. Ralph's personality was such that you couldn't help but like him. We found we had much in common. We were almost exact contemporaries, separated by a year in age. We shared many interests, including golf. On the Court, even where we found ourselves on different sides of a particular issue, I

think each of us made the other better, through the give-and-take of the decision-making process. And no difference between us, on any issue, ever dissuaded us from the shared sense of responsibility to the Court as an institution. As both Justice and as Chief, Ralph always promoted the importance of the shared mission, of the bigger view, of collegiality in the process of dispensing justice.

Notwithstanding his stellar work ethic, Ralph somehow found the time to indulge in other pursuits which reflected his engaging spirit. I was always amazed by Ralph's need to get away from it all on those long rides on his beloved BMW motorcycle, either alone or with his riding buddies, just to clear his mind and to be with the common people in some little backwater town, off a two-lane highway, somewhere.

I must comment also on Ralph's golfing ability (or lack thereof). He could launch prodigious drives of 275 or more yards. But they might be a fairway over, or perhaps two fairways over. He golfed with the likes of Charles Barkley and Michael Jordan. He loved the game. But he rarely beat me, or Mike Eakin, or Russell Nigro.

And Ralph loved this University of Pittsburgh and the University of Pittsburgh Medical Center. I was always amazed that Ralph could handle the prodigious administrative duties involved in being Chief Justice, the personal judicial caseload, *and* devote countless hours to making Pitt and the UPMC the great learning and teaching centers that they are today. But that was the kind of person Ralph Cappy was.

Chief Justice Cappy's good works will survive his passing. Generations of Pennsylvania jurists and lawyers will feel his substantive influence in all areas of Pennsylvania law. Ours is not a specialty Court and Ralph wrote incisive decisions in all areas of the law. But I would like to highlight some of the administrative innovations he was father to, in the five years he served as Chief Justice.

I can never forget the 13 different initiatives that newly-installed Chief Justice Cappy said that our Court would address during his tenure as Chief. And that was just a start. It seemed to us, his colleagues, that each new month brought a new initiative by the Chief.

Ralph Cappy reinvigorated the moribund Judicial Council, making it a productive working body. In 2005, he established the Corporate General Counsel Roundtable, an advisory body of general counsel representing leading corporations of Pennsylvania, to address business issues in the Courts. That initiative worked hand-in-hand with the existing Business/Complex Litigation Court,

which had been established in Philadelphia in the late 1990s, and the establishment, during Ralph's tenure, of a Business/Complex Litigation Court in Allegheny County in 2007.

Ralph Cappy also led the efforts to revise the Pennsylvania Rules of Civil Procedure to address the so-called "medical malpractice insurance crisis" in the Commonwealth (a "crisis" that only recently was declared effectively over by Governor Rendell). Ralph's tenure also saw significant standardization, improvements, and efficiencies in other areas involving procedural rules: Civil Procedural Rules Motions Practice throughout Pennsylvania has been standardized; the Juvenile Court Procedural Rules Committee was established and procedural rules involving delinquency and dependency have been promulgated and implemented, to promote the uniform practice of juvenile law in Pennsylvania; Orphans' Court procedural practice forms have been standardized and implemented in all judicial districts; family court rules regarding support have been redrawn to facilitate the collection of child support and promote the uniform practice of law in Pennsylvania; and the Minor Judiciary Procedural Rules Committee was linked to both the Civil and Criminal Procedural Rules Committees to further ensure the smooth and uniform practice of law at all levels of the court system in Pennsylvania.

Further initiatives implemented by Ralph Cappy addressed ways to improve education for the bench and the bar. Ralph presided over a giant leap forward in the area of judicial education, as we now have a Department of Judicial Education within the Administrative Office of Pennsylvania Courts. Every judicial official, including Justices of the Supreme Court, participates in continuing legal education. In addition, a certification and mandatory education process was adopted for judges presiding over capital cases, and a separate process was implemented to govern counsel who are court-appointed to represent defendants in capital murder cases. Ralph also instituted a program to provide up-to-date judicial education to trial judges who handle medical malpractice cases.

Ralph Cappy's hand was felt in many other important areas as well. He began an effort to address the elimination of racial, gender, and ethnic bias in the Unified Judicial System. Under his leadership, our Court created a statewide, standardized system for the expeditious and fair placement of foster children in Pennsylvania; we initiated state-certification for language interpreters in the judicial system; we continued the effort, initiated by Ralph's distinguished predecessors as Chief Justice, to computerize the

entire judicial system and to create Information Technology links to our partners in the Executive Branch; and we created an electronic public information access policy for the judiciary of Pennsylvania.

A concrete (and steel) initiative that began with Ralph Cappy was unveiled only recently, when the Governor cut the ribbon ceremonially to open the newly-constructed \$120 million Pennsylvania Judicial Center in the state capital. Ralph's voice was the leading advocate, with the Executive Branch and with the Legislative Branch, to create the Center, which, for the first time, gives the judicial system a permanent presence in our Commonwealth's seat of government, Harrisburg, thereby truly unifying the judicial system in one building in Harrisburg.

Ralph Cappy was dedicated to finding other ways to preserve and insure the independence of the judicial branch of government. In 2005, the Court created the Judicial Independence Commission of Pennsylvania to serve as a think tank and proactive voice on behalf of the third branch of state government. And, yes, Chief Justice Cappy led the efforts to secure adequate compensation for the state's judges.

This recitation alone is overwhelming evidence of Ralph Cappy's prodigious organizational skills and his personal ability to build consensus among his colleagues and with the members of our sister branches of government to address the important issues of the judiciary and of state government. A person can always be deemed a success where the person leaves a place a better place than when that person began. Ralph Cappy left our Court a much better place than it was when he first began his service to the Court.

Finally, Ralph Cappy's colleagues and fellow Pennsylvanians are not alone in appreciating Ralph's stellar service. Ralph's hard work and his many accomplishments were recognized nationally in 2007, when he was named the recipient of the prestigious Chief Justice Harry L. Carrico Award for Judicial Innovation, presented by the National Center for State Courts (NCSC), which was founded in 1971 by the Conference of Chief Justices and Chief Justice of the United States Warren E. Burger. Ralph was only the third Chief Justice to receive that award, an award with the imprimatur of his peers in the United States. In announcing the award, the NCSC noted that Ralph Cappy was selected because "he has earned a reputation for being fair, thoughtful, and forward thinking," and his "work in the area of improving judicial education has served as a national model. He is a leader in the court

community for his contributions to making the justice system more efficient and transparent.”

I often quote the 19th century essayist Harry Ward Beecher (the brother of Harriet Beecher Stowe) that: “If you take all of the robes of all of the good judges whoever lived on the face of the earth, they would not be enough to cover the iniquity of one corrupt judge.” In Ralph Cappy’s case, his robes would be big enough. He has brought honor to our profession far and above the iniquity of one corrupt judge.

The Supreme Court of Pennsylvania salutes and thanks Chief Justice Ralph J. Cappy for his service to our Court. We, too, are heartbroken at his passing. And we offer our deepest and heartfelt condolences and prayers to Janet, Erik, and family.

