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# Chief Justice Ralph J. Cappy: An Epilogue

*Ken Gormley\**

Jason Kelley's case note on the preceding pages, discussing one of Chief Justice Cappy's final opinions before his retirement from Pennsylvania's highest court, is a fitting conclusion to this special issue of *Duquesne Law Review* dedicated to his memory.

Originally, Chief Justice Cappy had planned to review and critique Jason's article himself. The Chief's former clerks agree that he would have relished that assignment. He would have doubtless invited Jason to meet with him in his downtown office, surrounded by precious mementos and awards from his decades in public service. He would have kicked around this bright law student's analysis of the *Middletown Township*<sup>1</sup> case; praised his insight and keen legal acumen; learned about his family; tried to assist him in finding employment after he graduated from Law School; then gripped Jason's shoulder and drilled into the case note's five key points until he was certain that they accurately reflected *his* view of the *Middletown* case, which (like most of his opinions) he was certain that he had decided correctly.

Ralph Cappy, besides being an extraordinary judge and bigger-than-life public figure, was born to cajole, persuade, and produce results for the common good. He had the energy and enthusiasm of a teenager who tackled life as if he was invincible. He loved government, politics, policy, and complicated legal issues—the bigger, the more satisfying. As the pages of this special Law Review issue illustrate so beautifully, however, what he loved most was helping other people. His greatest joy, as he bulled his way through hundreds of assignments that would have exhausted a team of ordinary jurists, was to assist young lawyers and law students entering the profession, so that they could enjoy the same extraordinary opportunities that the legal profession had afforded him, a seemingly charmed kid from Brookline.

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\* Interim Dean, Duquesne University School of Law; former Special Clerk to Justice Ralph J. Cappy. The author expresses his thanks to all of those prominent contributors who made this issue of *Duquesne Law Review* possible. A special acknowledgement of Betty Minnotte's tireless efforts on behalf of this project is also in order.

1. *Middletown Twp. v. Lands of Stone*, 939 A.2d 331 (Pa. 2007).

I was lucky to work with then-Justice Cappy early in my career, during the first several years of his tenure on the state's Supreme Court. Within weeks of his moving into his glittering new office in Oxford Centre, he learned from one of his best friends, Bob Cindrich (my boss at the firm of Mansmann, Cindrich & Titus), that I was teaching a new course on State Constitutional Law at Pitt Law School. Ralph seized upon this as an opportunity; he was fascinated with the untapped history of the Pennsylvania Constitution; he was intrigued that so few lawyers (and even judges) knew much about our historic state charter, born a decade before the federal Constitution. He asked for a crash course on the subject.

Two hours later, he tried to hire me away from his friend, Bob Cindrich, to work full-time with him. In the end, we compromised: I accepted a part-time position as a Special Clerk (he made this title up, saying that it sounded important), working on drafts of constitutional and state constitutional decisions. It was one of the greatest professional experiences of my life.

Despite his modest Brookline roots and his penchant for referring to all male persons by what he perceived to be their ball-yard names ("Kenny," "Bobby," "Eddie"), even when addressing a federal judge or a Governor, Justice Ralph Cappy was a match for the brightest legal minds who appeared at the conference table across from him.

He was smart but disarming. He inhaled legal precedent and breathed it onto the pages of his written opinions. He had an uncanny ability to see ten miles down the road and to understand the hundred ways a particular decision would impact the law, the lower courts, and ordinary citizens to whom he was foremost devoted. No opinion left the chambers of the Honorable Ralph J. Cappy without his personal imprint. No law clerk or junior judge could slip a footnote past him without having to debate, discuss, negotiate, and modify a final time. Yet he did all of this with a wide smile, with effusive praise and thanks, and with a spirit of genuine collegiality that was contagious.

Had he lived to see this issue of *Duquesne Law Review*, Chief Justice Cappy would have been disappointed that he missed the opportunity to read and dig into Jason Kelley's artful piece analyzing one of his last opinions. Yet the *Middletown* case says it all about this incomparable jurist. Who else could have accepted the lower court's factual findings, respectfully acknowledging precedent holding that local government decisions in eminent domain cases are entitled to great deference—then overturned the trial

court as a matter of law, set aside the Township's findings as pretextual, and fired a shot across the bow warning that the United States Supreme Court's controversial decision in *Kelo* did not constitute a blank check allowing local governments to invent reasons to seize private property?<sup>2</sup>

Chief Justice Ralph J. Cappy was a judge's judge and the people's judge. His enormous capacity for work in the name of the public good will inure to the benefit of the citizens of Pennsylvania long after this special issue of *Duquesne Law Review* has been shelved in the archives of remote library collections. This remarkable jurist is destined to outlive the printed copies of his opinions, because he worked so hard and gave so much of himself that he pressed his essence into them.

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2. Chief Justice Cappy wrote:

It cannot be sufficient to merely wave the proper statutory language like a scepter under the nose of a property owner and demand that he forfeit his land for the sake of the public. Rather, there must be some substantial and rational proof by way of an intelligent plan that demonstrates informed judgment to prove that an authorized public purpose is the true goal of the taking.

*Middletown*, 939 A.2d at 340.

