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## Tribute to Robert F. Stephens

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## TRIBUTE TO ROBERT F. STEPHENS

### Robert Francis Stephens, Class of 1951

It was my good fortune to sit beside Robert F. Stephens on the Bench of the Supreme Court of Kentucky for twelve of his years as Chief Justice. I also worked frequently with him out of court and witnessed his dedication to the citizens of Kentucky and his pursuit of judicial excellence. As Chief Justice from 1982 until 1998, he was the principal architect of the modern Kentucky Court of Justice, building it with vision and determination. He was Kentucky's John Marshall.

Bob is more often recognized for his executive and administrative work as Chief Justice than for his judicial performance. While no one doubts his extraordinary ability as chief executive of the judicial branch of state government, it is important to note that he was also a major force in Kentucky law. He authored hundreds of majority opinions for the Supreme Court and rendered dissenting opinions in many other cases. A comprehensive listing and discussion of his more significant cases is beyond the scope of this comment, but it should be remembered that he wrote the Opinion of the Court in *Rose v. Council for Better Education, Inc.*,<sup>1</sup> in which the Supreme Court directed the General Assembly to recreate Kentucky's primary and secondary education system. He also wrote the Court's opinion

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<sup>1</sup> *Rose v. Council for Better Educ., Inc.*, 790 S.W.2d 186 (Ky. 1989).

in *Legislative Research Commission ex rel. Prather v. Brown*,<sup>2</sup> our definitive interpretation of the separation of powers provisions of the Constitution of Kentucky. Another of his major opinions was *Kentucky Milk Marketing & Antimonopoly Commission v. Kroger Co.*,<sup>3</sup> which set the standard for application of Section Two of the Constitution of Kentucky, the absolute and arbitrary power provision.

Bob Stephens was also my friend. I often sought his wise counsel and I enjoyed his easy laughter and his wit during the social events he so loved. I frequently visited his office and home, and our conversations usually lasted far beyond the discussion of business. Bob was my loyal friend and a friend to many others in Kentucky and across this nation. During his last illness I received many calls from the Chief Justices of other states inquiring as to Bob's health; when I told them of his decline, there was genuine sadness. With the death of Bob Stephens, I lost a friend, and the Kentucky judiciary lost its most significant leader. His legacy will live in the court system he built and in the minds and hearts of his many friends.

*Chief Justice Joseph E. Lambert\**  
*Supreme Court of Kentucky*

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When at the age of seventy-one Robert (Bob) Stephens retired from the Supreme Court of Kentucky in 1999, he had served on the Commonwealth's highest court for more than nineteen years. For sixteen of those years he served as Chief Justice, longer than any previous Chief Justice. Prior to his tenure on the Court, Bob compiled an impressive record of public service in other capacities. Most individuals in similar circumstances seize the opportunity of retirement for a change of lifestyle, one where the most serious or demanding challenge will be in the world of golf or doubles tennis. Indeed, his good friend Circuit Judge William Shadoan said that at a much earlier time, in a moment of "wishful thinking," he and Bob had an ambition "to retire and go to one of the United States posses-

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<sup>2</sup> *Legislative Research Comm'n ex rel. Prather v. Brown*, 664 S.W.2d 907 (Ky. 1984).

<sup>3</sup> *Kentucky Milk Marketing & Antimonopoly Comm'n v. Kroger Co.*, 691 S.W.2d 893 (Ky. 1985).

\* Justice Lambert has been a Justice of the Supreme Court of Kentucky since 1987. He was sworn in as Chief Justice on October 2, 1998.

sions in the Caribbean, and see if we could not represent the United States there in the legal field.” That reflected one side of Bob Stephens’ personality. But the dominant side, one that distinguished him from most other individuals, prevailed when he accepted Governor Paul Patton’s entreaty to become Secretary of the Justice Cabinet, which made him administratively responsible for such agencies as the State Police and Department of Corrections. He remained active in that capacity through his last—perhaps his first—serious illness, until his death on April 13, 2002, at the age of seventy-four.

It is most fitting that the *Journal*, for which Bob served as an editor when he was a law student, should publish a tribute to one of its most distinguished alumni—a charter member of the College of Law’s Alumni Hall of Fame. It should be acknowledged at the outset, however, that words of praise are not readily available to surpass those chosen in earlier tributes to him. One example is a Resolution by the House of Representatives of the Kentucky General Assembly. After describing the accomplishments and honors Robert Stephens achieved during his career, the House proclaimed: “Chief Justice Stephens is worthy of recognition as the ‘Kentucky statesman of the 20th Century’.”<sup>1</sup> Governor Paul Patton echoed the sentiment, saying, “In my opinion, he was Kentucky’s greatest statesman of the 20th century.”<sup>2</sup> Kentucky Senate President David Williams summarized the nature of Robert Stephens’ career contributions: “Justice Stephens was as close to a Renaissance man as we have in our society. We may not see someone like him again.”<sup>3</sup> Kentucky House Speaker Jody Richards said that Stephens’ “. . . influence will resonate . . . for decades to come.”<sup>4</sup>

The Resolution of the House of Representatives traced the principal positions Robert Stephens held during his career: Fayette County Judge, Attorney General of the Commonwealth, Chief Justice of the Supreme Court of Kentucky, and Secretary of the Justice Cabinet. It speaks well of an individual merely to note his service in such a combination of important positions. Notably, many Kentuckians before him have served out all or major periods of their careers in a variety of important public positions without receiving praise couched in such extraordinary superlatives as those honoring Stephens’ life. After all, only one individual in the entire

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<sup>1</sup> H.R. 304, 2002 Gen. Assem., Reg. Sess. (Ky. 2002).

<sup>2</sup> *Robert Stephens Mourned*, CINCINNATI ENQUIRER ONLINE, Apr. 17, 2002, at [http://enquirer.com/editions/2002/04/17/loc\\_robert\\_stephens.html](http://enquirer.com/editions/2002/04/17/loc_robert_stephens.html).

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

state over the span of 100 years can be described as the Kentucky statesman of the twentieth century. When one contemplates the events associated with Bob Stephens' public service, when one connects the dots, so to speak, as the House of Representatives did in its resolution, the description of his public service comes into focus. The House Resolution notes the several honors and awards bestowed on Robert Stephens during his life. Most of these, however, were reflections of one or the other of three major events for which he will always be remembered. In combination, they support the conclusion that when Robert Stephens occupied an important public office, significant, even historic, changes were sure to follow.

The House Resolution credits Stephens while serving as Fayette County Judge as being "in large part responsible for bringing about merged government in Lexington and Fayette County."<sup>5</sup> It notes that during his tenure as Attorney General and then as a Supreme Court Justice he was "a leader in the restructuring" of the state's judicial system. One can imagine the magnitude of these changes only if notice is taken of the political obstacles and other hurdles that naturally stand in the way of merging two major governmental entities, and of selling the public on the thorough constitutional revision necessary to modernize the entire judicial system of the Commonwealth. Yet, I believe the third major change, the enactment of The Kentucky Education Reform Act ("KERA") following the Supreme Court's ruling in *Rose v. Council for Better Education, Inc.*,<sup>6</sup> is the event for which most will remember him, in the words of House Speaker Jody Richards, "for decades to come."<sup>7</sup>

Section 183 of the Kentucky Constitution states that the General Assembly "shall, by appropriate legislation, provide for an efficient system of common schools throughout the State."<sup>8</sup> In *Rose*, a group of school districts and public school students contended that the statutory scheme for financing public schools created an inefficient system of schools because it failed to provide funding that was relatively equal among school districts or in adequate amounts necessary to provide acceptable levels of public education in all districts.<sup>9</sup> The Kentucky Supreme Court, speaking through Chief Justice Stephens, responded to these claims with a resounding—and it is fair to say unexpected—broadside. In his opinion for the Court, Stephens summarized the Court's ruling as follows:

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<sup>5</sup> Foster Pettit, as then Mayor of Lexington, is frequently mentioned as one who, in conjunction with Stephens, contributed to the historic merger.

<sup>6</sup> *Rose v. Council for Better Educ., Inc.*, 790 S.W.2d 186 (Ky. 1989).

<sup>7</sup> See *Robert Stephens Mourned*, *supra* note 2.

<sup>8</sup> KY. CONST. § 183.

<sup>9</sup> *Rose*, 790 S.W.2d at 186.

Lest there be any doubt, the result of our decision is that Kentucky's *entire system* of common schools is unconstitutional . . . . This decision applies to the entire sweep of the system—all its parts and parcels. This decision applies to the statutes creating, implementing and financing the system and to all regulations, etc., pertaining thereto. This decision covers the creation of local school districts, school boards, and the Kentucky Department of Education to the Minimum Foundation Program and Power Equalization Program. It covers school construction and maintenance, teacher certification—the whole gamut of the common school system in Kentucky.<sup>10</sup>

Stephens included in his opinion an abstract but wide-ranging outline of his and the Court's conception of a constitutionally acceptable educational system. Reacting to the Court's ruling, former Governor Bert Combs, then a partner in Wyatt, Tarrant & Combs, who had been actively involved in the planning and initiation of the lawsuit, remarked, "My clients asked for a thimble-full, and they got a bucket-full."<sup>11</sup> Be that as it may, a coalescence of favorable circumstances headed off potential legislative resistance to the Court's decision as an instance of intrusive judicial activism and allowed it to become a stimulus for thoroughgoing legislative reform of Kentucky's system of common schools. Favorable circumstances included Governor Wallace Wilkinson's support of the decision, favorable public and media reaction to the decision, and the undeniable realities of the plight of children in the poorest school districts.<sup>12</sup>

### *Some Personal Observations*

During much of the 1990s, I teamed with Bob Stephens to offer a seminar in Kentucky Constitutional Law at the University of Kentucky College of Law. That was a most pleasant, and I think successful teaching experience, due in large part to his participation. Bob was remarkably well

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<sup>10</sup> *Id.* at 215. As sweeping as this language is, there were previous hints (or more) of the approach in Circuit Judge Ray Corns' rulings at the trial court level.

<sup>11</sup> Mary Ann Roser & Jamie Lucke, *Sweeping School Changes Predicted Court Expected to Find State System Unconstitutional*, LEXINGTON HERALD-LEADER, June 7, 1989, at A1.

<sup>12</sup> See RONALD G. DOVE, JR., ACORNS IN A MOUNTAIN POOL: THE ROLE OF LITIGATION, LAW AND LAWYERS IN KENTUCKY EDUCATION REFORM (Prichard Comm. for Academic Excellence 1991) (This report is an excellent "case study" of *Rose* and is on reserve in the Education Library of the University of Kentucky.).

suit to being a teacher of young people. He was by nature a friendly and unassuming individual. As we studied case after case in which the Kentucky Supreme Court interpreted and applied the state constitution, I felt it was my job as a law teacher sometimes to voice support for, and sometimes to challenge, the reasoning of the Court as a means of encouraging students to engage in an independent analysis of the Court's opinions and results. In many cases I was playing the role of "devil's advocate;" in more than a few instances I was voicing my personal analysis. Often, opinions authored or joined by co-teacher Stephens, the Chief Justice, were among those I or some students challenged, yet I never witnessed any other reaction by him than a calm recitation of factors that he believed supported his position, or in some cases, a low-keyed, apparent acceptance of the offered criticism. In the real world, his position allowed him the luxury of having the last word, so he had no reason in the atmosphere of a classroom to mount an emotional defense of his positions. However, I always felt that his demeanor in the seminar was deliberately modeled to put the students at ease and to offset any potential for intimidation or stifling of student discussion that his position as Chief Justice might present.

Bob Stephens' easygoing, cheerful demeanor was a defining characteristic of his personal and social life. When he and I discussed attending an annual Bar Association meeting in Hawaii, he immediately suggested we rent a convertible for use in touring the island of Maui. Bob did not sing as we drove the convertible, but Judge Will Shadoan reports that he had a good singing voice, and that the two of them had "certain things [they] would sing at various places." One of Bob's favorite songs, taught to him by Shadoan, was "Pine Trees." Judge Shadoan said that Bob "became enamored with this song," whose title contained its only words, and that the two of them had sung it "everywhere from Kentucky Lake in the middle of the night" to the "stage of the Opera Theater in Louisville." Judge Shadoan said they were not aware of the presence of any audience during these singing episodes, but if others heard them then they would have supposed, erroneously, that he and Bob were "under the influence."

A stranger might guess that Bob Stephens' consistently cheerful and lighthearted style was the mark of a man who was unburdened by serious thoughts. The history of his life, of course, proves the opposite. He possessed a creative mind, an abundance of confidence in his abilities, and was ever on the alert for opportunities to initiate positive reforms in the realm of public service. He was never timid about seizing such opportunities.

By the time this is published, the Commonwealth's voters may have settled the constitutional status of yet another change in the structure of

government initiated by Robert Stephens. Through a temporary order he issued while Chief Justice, an experimental system of family courts was created. The judges of these courts exercise a unified family law jurisdiction that requires a combination of some of the powers of district judges with some of the powers of circuit judges. These courts are functioning in many Kentucky counties today, and needless to say, the order creating them, even if "temporary," was bold, for their powers contradict the allocation of judicial power provided in the state constitution. The people of the state have an opportunity, by ballot in the November 2002 election, to approve a constitutional amendment that will provide constitutional status for family courts. Whatever the outcome of the November vote, the opportunity for the people to consider the question can be traced directly to Robert Stephens.<sup>13</sup>

All agree that Robert Francis Stephens was a great man. It is necessary to add only that he was also a good man. Rest in peace.

*Thomas P. Lewis\**

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**B**ob Stephens was a charming person who loved life and loved people. Beneath his happy exterior was a smart man who worked hard and accomplished much.

I knew Bob in many ways over a long period of time. We were neighbors and social friends. We went to the same church. I worked with him when he was Attorney General and, later, when he was Chief Justice of the Kentucky Supreme Court. I also taught a class with him at the UK College of Law. As a member of the Justice Council, I met with Bob regularly in the final years of his life. After retirement from the Court, he had been appointed Secretary of Justice and chair of the Justice Council. Here are some scattered memories of Bob.

We were neighbors for about ten years and saw each other regularly at neighborhood parties. One night, at about eleven p.m., he called to say that his night-blooming cereus was in bloom and that he was having a come-as-

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<sup>13</sup> The Family Court Amendment passed with seventy-six percent of the vote. Al Cross, *Measures on Corporations, Family Law Courts Pass Easily*, COURIER-J. (Louisville, Ky.), Nov. 6, 2002, available at [www.courier-journal.com/cjextra/2002projects/vote/1106\\_stories/ex110602s308946.htm](http://www.courier-journal.com/cjextra/2002projects/vote/1106_stories/ex110602s308946.htm).

\* Emeritus Professor of Law, University of Kentucky.



you-are party. The neighbors came—some in bathrobes—to have a drink and see the cereus do its once-every-three years thing.

Bob Lawson and I met with the Kentucky Supreme Court in the late eighties to discuss evidence rules our committee had drafted for the Court's consideration. As Chief Justice, Bob Stephens chaired the meeting. The Justices had big egos and didn't appear to like each other very much—except for Bob. He seemed to like everyone and everyone seemed to like him. He kept the meeting civil, and the Court ultimately approved the evidence rules.

When I was Associate Dean, I persuaded Tom Lewis to teach a seminar in Kentucky Constitutional Law. Tom persuaded his friend Bob Stephens to co-teach the seminar. For a decade, they were the “Hans and Fritz” of the law school—Bob, warm and liberal, and Tom, reserved and a strict constructionist—debating homosexuality, jural rights, and school reform. For ten years our students were treated to an intellectual magic show.

When Tom Lewis retired, Bob asked me to co-teach the seminar. I knew very little about the subject, but that has never stopped me. To my regret, we taught the seminar only once because Bob couldn't continue after he was appointed Justice Secretary. Bob loved to teach. He enjoyed being around students and letting them in on the “secrets” of the Court—but he never said anything mean about his fellow Justices or about the lawyers who had argued the cases. He never criticized students either, no matter how badly they bungled the opinions he had written. On occasion, he admitted he was proud of an opinion. I remember him referring to the separation of powers case, *Legislative Research Commission ex rel. Prather v. Brown*,<sup>1</sup> as the “*Marbury v. Madison* of Kentucky.”

When we discussed the school reform case, *Rose v. Council for Better Education, Inc.*,<sup>2</sup> Bob told the class how he came to the conclusion that Kentucky's system of financing public education was unconstitutional. He told the students that he woke in the middle of the night, and unable to sleep for thinking about the case, he went downstairs for a vodka and tonic and—Eureka!—it came to him—“The whole system must be struck down as unconstitutional.” I regret never having been present to hear Tom Lewis's riposte to Bob's story of his vodka-inspired revelation.

One more memory: I visited Bob in his office in Frankfort about a month before his death. He knew he was going to die, but he was at his desk working on proposals to improve prison conditions—proposals he

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<sup>1</sup> *Legislative Research Comm'n ex rel. Prather v. Brown*, 664 S.W.2d 907 (Ky. 1984).

<sup>2</sup> *Rose v. Council for Better Educ., Inc.*, 790 S.W.2d 186 (Ky. 1989).

knew could not be implemented during his life. He was a happy warrior and he faced death as he had gone through life—with a smile, a joke, and a devotion to the public good.

*William H. Fortune\**

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Chief Justice Robert F. Stephens was an uncommonly generous man. Had he not been, I may never have had the opportunity to work with him or become his friend, both of which were opportunities that significantly affected my life and career.

In the fall of 1991, as a thirty-seven year old “non-traditional,” second year law student at the University of Kentucky, I enrolled in the Kentucky Constitutional Law seminar taught by Chief Justice Stephens and Professor Thomas Lewis, who along with Justice Charles M. Leibson, was Stephens’ intellectual scholar-hero. As we dissected Kentucky Supreme Court cases interpreting our state’s unique constitution, many of which are mentioned in Professor Lewis’ tribute to Chief Justice Stephens, I was immediately struck by how utterly accessible the “CJ” was, in every manner. The debates were lively. Each court “war story” was more fascinating than the last. His humility was as apparent as his practical intelligence—in his speech, his demeanor, and his complete openness to critical comment. He shared with us the scholarly, the political, and the personal, a thread of simple integrity tying it all together.

Somehow in the course of the semester, he learned about my personal circumstance as a single mom with three young daughters. He seemed stunned when I told him I worked two part-time jobs, in addition to being a full-time law student. When the seminar concluded, he took me aside and invited me to work at the Court as his 1992 summer clerk. That summer marked the beginning of a series of extraordinary acts of kindness and encouragement that lifted me beyond being a stretched-thin and bone-tired single-mom-student trying to cover all her bases.

For example, late one semester, he unexpectedly showed up on my doorstep on a Friday afternoon. Pointing to his car where a young woman sat waiting, he said, “Ok, kid, pack your bags, and come meet your girls’ babysitter for the next week!” The “next week” was finals week at the UK Law School, during which I house-sat for him at his quaint, comfortable

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\* Robert G. Lawson Professor of Law, University of Kentucky.

home at Hamburg Place. He had stocked his refrigerator with cheeses and fruit. He put Puccini on the stereo, and left two good bottles of wine on the counter. Then, he gave me a “thumbs up” and left town. His thoughtfulness provided me with the quite literal luxury of studying for final exams, *alone and without interruption*.

After graduating from law school, I spent an invaluable year at the Court, as the CJ’s law clerk. As all of his law clerks would agree, working for the CJ was more like working *with* the CJ. When wrestling with important issues before the Court, he invited us to disagree with him. He respected our work. Far from being a presumptuous individual, as he had every right to be, he was genuine in his insistence that (with a few exceptions!) he did not have a lock on the legal truth of any matter before the Court. He always gave credit where credit was due.

No person of his magnitude could have been less intimidating. His peals of laughter penetrated the walls of his office into mine on a several-times daily basis. No one was more enamored of a very good joke, or laughed harder at his own silliness. Civility was the watchword of his court conferences, however intense the debate. He was quick to divine subtle nuances, which might silently signal the potential that a majority ruling could unexpectedly explode. It was on those occasions that his brilliance at negotiating compromise, without sacrifice of legal principle, was put to the test.

After my year at the Court, we did not lose touch. He remained interested in my career, and checked with me periodically. After he became Secretary of the Justice Cabinet, I worked with him on a plan that allowed me to conduct sexual harassment training at all the Kentucky State Police Posts. He never lost his passion for creating public good. In late October 2002, when he was quite aware that he would die soon, he asked me to visit him at his home. He said he wanted to spend time with me before he became much more ill. He told me that he felt peaceful. It was an emotional few hours for which I will always be grateful. Unlike so many of us, when confronted with the prospect of the untimely death of a friend and mentor, I was given a chance to laugh with him again, to cry with him, to thank him, and to tell him what a profound difference he made in my life.

The difference Chief Justice Stephens made in my life is continuing. Just knowing and working with him has contributed to my sense of confidence, my passion for the law, and my appreciation for Kentucky’s legal system. Because of him, I am a better lawyer, and a better person.

*Susan C. Sears\**

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