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## Remarks on the Continuing Legacy of Chief Justice Ralph J. Cappy

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## Remarks on the Continuing Legacy of Chief Justice Ralph J. Cappy

Chief Justice Ralph J. Cappy passed away May 1, 2009. At 65 years young, he had intersected with the lives and careers of a multitude of people. Because he touched so many lives, it became necessary to combine and condense some of the contributions received for this volume. With deep gratitude to the various authors, an attempt was made to retain the spirit of their writings while respecting the need to conserve space.<sup>1</sup>

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Justice Cynthia A. Baldwin was sworn as an appointed member of the Supreme Court of Pennsylvania on February 15, 2006. Serving almost two years on the Court under the tenure of Chief Justice Cappy, she shares with us her unique vantage point for observing the nature of the role of Chief Justice.

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My time on the Supreme Court gave me an understanding of the business of being a judge from a completely different perspective than my years on the trial court. It also gave me an appreciation of the demanding nature of the role of chief justice and, in particular, the way that job was filled by Chief Justice Cappy.

The role of chief justice is complex—one of administration and public relations. As chief justice, you are expected to interface with the other branches of government, the media, and the public at large. You are also expected to keep up with legal trends and initiate technological and procedural advances. Chief Justice Cappy did all of those things and more. It is the “more” that I want to focus on now, the proverbial herding of cats—not tame tabbies, mind you—but tigers. While all judges are not justices, all justices are judges, and judges are, by definition, fairly autonomous. As “the judge,” we are accustomed to entering singular decisions. To accomplish anything on the Supreme Court, the

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1. Elizabeth S. Minnotte, Esquire, reviewed and combined the various pieces included in this section. Mrs. Minnotte served as law clerk to Judge Cappy on the Court of Common Pleas of Allegheny County and then as his Chief Administrative Law Clerk on the Pennsylvania Supreme Court from 1990 until his retirement from the bench.

justices must work together; singularity must give way to creation of decision by consensus, compromise without compromising ideals. A chief justice must coordinate that delicate balance.

During my tenure on the Court, I observed Chief Justice Cappy herd the cats and achieve that delicate balance while the court struggled with a difficult legal question that created considerable tension among the Justices. The case most notable in my eyes was *Sackett v. Nationwide Mutual Insurance Co.*,<sup>2</sup> argued September 13, 2006, and decided April 17, 2007. The Court was divided, and the majority opinion I prepared for the Court garnered four of the six votes available, while two justices offered vigorous dissenting opinions. In an unusual step, the Court granted reargument.<sup>3</sup> Following reargument, the Court reversed its original position.<sup>4</sup>

During the argument and decision of this case, Ralph Cappy exhibited the characteristics that made him both a competent and a courageous chief justice: intelligence, humor, ego-control, commitment to principle and law, commitment to process, a good work ethic, and respect for each justice's ideas and concerns. It would have been easy for the Court to get bogged down as members continued to relive their singular positions. The Chief did not allow the Court to play "Memories." Speaking in generalizations so as to put no one on the spot, he encouraged us to keep moving, preparing, thinking, and showing respect for all sides of the various arguments. He used himself as an example and laughed at himself. In many courts, strong positions can become strong feelings leading to polarized courts. Due in large part to the Chief, strong positions stayed just that, and the members of the Court enjoyed the debate and then went to dinner.

This case exemplifies the role that Ralph Cappy played as Chief Justice. I will fondly remember my friend, Ralph, and my Chief, as the best cat herder, with whom I had the pleasure to share the bench.

*Hon. Cynthia A. Baldwin\**

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2. 919 A.2d 194 (Pa. 2007), *reargument granted*, 934 A.2d 1155 (Pa. 2007), *modified upon reargument*, 940 A.2d 329 (Pa. 2007).

3. *Sackett*, 934 A.2d 1155 (Pa. 2007). The only other case of recent vintage where the court granted reargument and reversed the original decision was *Commonwealth v. Young*, 748 A.2d 166 (Pa. 1999).

4. *Sackett*, 940 A.2d 329 (Pa. 2007).

\* Former Justice, Pennsylvania Supreme Court.

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Senator Stewart J. Greenleaf has served as the State Senator from Montgomery County, Pennsylvania, since 1978. Senator Greenleaf is Chairman of the Senate Judiciary Committee, and it is from that vantage point he offers his personal reflections on Chief Justice Ralph J. Cappy.

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During my years in the General Assembly and as Chairman of the Senate Judiciary Committee, I have had the great privilege of working with some of the most talented and widely renowned legal minds of the day. I have been inspired and impressed by many of these men and women who have committed their lives to upholding justice and working towards a more fair and balanced legal system—but few who can match the character, integrity, and ingenuity of former Pennsylvania Supreme Court Chief Justice Ralph Cappy. Chief Justice Cappy was well-known among Pennsylvania's legal community as a reformer who worked hard to enact policies that would enhance Pennsylvania's courts and bring them into the 21st Century. I recall several initiatives that he and I collaborated on over the years.

Chief Justice Cappy cooperated with the General Assembly to implement initiatives such as treatment (drug, mental health, DUI) courts, the expansion of the list of people available for juries so that our juries are more reflective of the diversity in our population, the certification of court interpreters for non-English-speaking people who may become involved in our court system, and increased funding for legal services so that many of our poorer citizens have better access to justice. He continued the computerization of Pennsylvania's courts so that, today, interested parties throughout the state can instantly access the information gathered in the system. As Chief, he understood that judges, as well as lawyers, must work to keep abreast of current laws; to that end, there is now a Department of Judicial Education within the Pennsylvania Court system led by a professional Ph.D. educator.

Finally, in what I found as one of his most important advances, Chief Justice Cappy worked with the leaders of the other branches of government to address the medical malpractice insurance crisis. Steps taken by all three branches of government helped reduce the number of medical malpractice insurance claims that have been the bane of the state's medical community for many

years. The Supreme Court adopted important rule changes, such as requiring an expert certification of merit before a malpractice case may be filed, and restricting malpractice cases to the venue where the injury occurred. These rules have been enormously effective in reducing the number of frivolous lawsuits in the state.

Also, Chief Justice Cappy fought endlessly towards preserving the independence of the judicial branch of government. In 2005, the Supreme Court created the Judicial Independence Commission of Pennsylvania to serve as a think tank and pro-active voice on behalf of the third branch of state government. The commission's mission is to ensure that the Judiciary of Pennsylvania remains an effective, co-equal, and fully accountable branch of state government.

Chief Justice Cappy was one of Pennsylvania's most dedicated public servants. I—and many others throughout the state—will sorely miss his wisdom and judicial knowledge, but, most of all, his friendship. Chief Justice Cappy leaves behind a great legacy for others to follow—and an eternally grateful Commonwealth.

*Sen. Stewart J. Greenleaf\*\**

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Andrew F. Susko, a respected litigator and partner of the esteemed Philadelphia firm, White and Williams LLP, was President of the Pennsylvania Bar Association and one of the engineers responsible for awarding the prestigious honor of the Pennsylvania Bar Medal to Chief Justice Cappy. We are fortunate to publish in this tribute an abbreviated version of the remarks Mr. Susko delivered on the day of the presentation of the Medal, November 27, 2007.

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We assemble here today for a very special presentation to pay public tribute to our retiring Pennsylvania Supreme Court Chief Justice Ralph Cappy. I certainly know that one of the moments that I will always recall as your Bar President is the day I received a copy of the Chief Justice's letter to Governor Ed Rendell announcing that he was resigning his commission as justice of the Supreme Court effective midnight, December 31, 2007.

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\*\* State Senator for the Commonwealth of Pennsylvania's 12th Senatorial District, which includes parts of Montgomery County and Bucks County.

As of that point in time, the Chief will have served as a judge in the Pennsylvania Court system for just less than 30 years, 18 of which were spent as a sitting justice of the Supreme Court. And while I know that Justice Castille will continue the wonderful tradition of outstanding chief justices of the Supreme Court, we know that, as the passing of the torch occurs, it is entirely appropriate and fitting that we pause to reflect on what has truly been a watershed time for betterment of the Pennsylvania Supreme Court and the justice system under Chief Justice Cappy's leadership, especially during the past five years as the Chief.

That tenure, as with his entire service on the bench, reflects certain central defining attributes that we should consider and celebrate.

Chief Justice Cappy's entire judicial career reflects his deep personal commitment to and passion for an improving, effective, and fair justice system—a system that he has constantly challenged to be better and a system that he has nurtured and changed for the better, just as he challenges himself in everything he does. This deep, overarching commitment, history will record, has significantly advanced the justice system, the legal profession, and the interests of the public at large.

This personal commitment has willed the modernization of our courts and our court system. Although work remains to be done, the Supreme Court and the lower courts have flourished through his innovation and achievement bringing us “problem-solving courts,” such as specialized drug treatment courts; the office of The Judicial Council of Pennsylvania; the Statewide Unification Committee; the soon-to-be-completed judicial center at the capitol; the development of the Office of Children and Families in the Courts; the Interbranch Commission on Gender, Racial and Ethnic Fairness; the computerization of the courts, including making criminal dockets and basic information available to be tracked online by the public and legal profession; to name but a few—a legacy of significant advancement of our justice system and the administration of justice in Pennsylvania.

Chief Justice's Cappy's tenure on the Supreme Court has been filled with clarity of vision, decisiveness of purpose, and innovation for the betterment of our justice system.

Now I know Chief Justice Cappy well enough, although not as well as many, to know that he is probably thinking I am engaged in too much praise here, but that is also a measure of the man—someone who all too often avoids the pat on the back and praise

for what has been a lifetime of selfless dedication, professional excellence, and substantial accomplishment.

Perhaps his most endearing and enduring characteristic is the courage of his conviction. Two examples come to mind—the first one relating to the medical malpractice crisis. Justice Cappy's leadership in restoring reason to the venue rule in medical malpractice cases and also in requiring a commonsense certificate of merit before the filing of a lawsuit brought a much-needed solution to this crisis.

Similarly, Justice Cappy exhibited steely resolve and courage in the initiative that resulted in the 2005 pay raise. While upheaval followed for a time, the concept of separating judicial pay from the politics of everyday business in Harrisburg was a noble one and the increase in compensation for judges was, in fact, highly appropriate and deserved. Justice Cappy's leadership in this area cannot be overestimated and, now that we have returned to historic norms after the retention elections, the pay raise will be placed in its proper context: the Chief put himself directly on the firing line for needed adequate compensation for the bench and—although many questioned the personal hit that he took for participating in and then going public about his role in the process—Chief Justice Cappy did not flinch or hesitate in doing what he believed was right.

There is a quote that many at the bar association know I am extremely fond of that applies to lawyers generally that has direct applicability to Justice Cappy. Marvin Comisky, a Former Bar President, stated—and I am paraphrasing—on the diamond anniversary of the PBA in 1971:

Seventy-five years ago, the typical lawyer was much more his own person than most of us are today. We were not nearly so much the prisoner of our clients. No client and no client's interests stifled our independence. We said what we thought on every issue. We were looked up to in our community because we had courage and character and because we valued our independence more than our income. Put to the choice, we chose quickly and we chose the right, no matter what the cost to ourselves.

Justice Cappy has consistently chosen what he believed in his heart was right, what was right for the justice system, what was right for the legal profession, and what was right for Pennsylvanians. It is this courage of conviction and willingness to do what he

thinks is right, no matter what the personal cost or sacrifice, that I believe I admire the most about our Chief.

And so, it is my privilege and high honor to present the Chief with the Pennsylvania Bar Association's highest honor, the Pennsylvania Bar Medal. This presentation to our Chief required a two-thirds vote of your Board of Governors—in this case, it was unanimous. It is awarded “to a PBA member whose efforts have advanced the administration of justice or the legal profession or who have performed outstanding service to the Association, the profession or the community in general.”<sup>5</sup>

We give Chief Justice Ralph Cappy the highest honor that the PBA can bestow—our Pennsylvania Bar Medal.

*Andrew F. Susko\*\*\**

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5. In fact, only eight other individuals have received the Medal in our 113-year history. Those individuals are Gilbert Nurick, Hon. James S. Bowman (posthumous), Stanley H. Siegal, Joseph H. Jones, Thomas L. Cooper, William Hoffmeyer, Ralph Snyder, and Reg Belden.

\*\*\* Immediate Past President of the Pennsylvania Bar Association; Partner, White and Williams LLP.



