



Hon. Walter K. Stapleton

U.S. Court of Appeals for the Third Circuit

by Anthony Pellegrino



Anthony Pellegrino is a former law clerk of Judge Stapleton's (2009-11) and currently serves as an attorney-adviser in the Office of the General Counsel of the United States Occupational Safety and Health Review Commission. © 2017 Anthony Pellegrino. All rights reserved.

He just has the perfect judicial temperament ... I find it hard to imagine him as anything other than a judge.

—Associate Justice Samuel A. Alito Jr.,
U.S. Supreme Court¹

Appointed to the U.S. District Court for the District of Delaware in 1970, at the age of 36, Walter K. Stapleton has been a judge for well over half his life. In that time, he has been described as “truly wise,” “a brilliant jurist,” and “a judge to be emulated and imitated.”² Indeed, Judge Anthony J. Scirica of the U.S. Court of Appeals for the Third Circuit once said of Judge Stapleton, “I think, with earnest consideration, that there has been no finer judge in the history of the republic.”³ The remarkable thing about Judge Stapleton, though, is that his laudable judicial career is only part of a life dedicated to public service, a life he has always conducted with an unshakeable sense of humor, an uncommonly kind heart, and extraordinary graciousness.

Born in Cuthbert, Ga., Judge Stapleton moved with his family when he was 4 years old to Delaware, where he attended Wilmington Friends School, and where his father was one of the first employees of the Federal Bureau of Investigation. Judge Stapleton then earned an undergraduate degree in English from Princeton University, an L.L.B. from Harvard Law School, and a Master of Laws degree from the University of Virginia, though he almost eschewed a legal career altogether. “I had intended to go to seminary and become a minister, but I was left with too many questions I couldn’t answer,” he said. “I would have been a mediocre minister, and I didn’t want to be mediocre at anything.”⁴

Following law school, Judge Stapleton considered a position with a law firm in Los Angeles, but decided to join Morris, Nichols, Arsht & Tunnell in Wilmington, Del., where he practiced from 1959 until, as his former Morris Nichols colleague, William O. LaMotte III, jokingly put it, “he had the effrontery ... to be called to the federal bench.”⁵ While at the firm, Judge Stapleton took leave to serve as assistant attorney general for Delaware (1963-64) and was chosen to assist the



Commission on Revision of the General Corporation Law of Delaware with its work (1965-67). Regarding this latter project, Judge Stapleton recalled that for “a lawyer at that stage in the game, professionally, it was really something very special” to be chosen, though “if I had known how hard we were going to have to work the next two years, maybe I wouldn’t have been quite as thrilled.”⁶ Nevertheless, as Judge Stapleton’s Third Circuit colleague Judge Thomas L. Ambro said, “What we have today is largely a measure of what Walt and others put together on a lot of Saturday mornings back in the mid-’60s.”⁷ Judge Stapleton also served, during this period, as special counsel to Delaware Gov. Russell W. Peterson and as a member of the Governor’s Commission on the Code of Ethics for State Employees (1969-70), as well as chairman of the Delaware State Bar Association’s Committee on Continuing Legal Education and founding member, director, and officer of the Big Brothers Association of Northern Delaware.

Judge Stapleton, appointed by President Richard M. Nixon, joined the U.S. District Court for the District of Delaware in 1970 at age 36, becoming the then-youngest judge ever to serve on that court. He was then appointed by President Ronald Reagan to

the U.S. Court of Appeals for the Third Circuit, which he joined in 1985. His work on both courts is universally admired by his colleagues. Judge Marjorie O. Rendell of the Third Circuit called Judge Stapleton “a model of a judge who is what you’d call a judges’ judge” because he “doesn’t let himself get in the way of the law” and “is interested in getting it right; no detail or case is too small or insignificant.”⁸ Judge Sue L. Robinson of the U.S. District Court for the District of Delaware described Judge Stapleton as “gracious always, fair-minded, and intellectually honest.”⁹ Judge Jane R. Roth of the Third Circuit said, “I think, as a judge, he’s incomparable, he’s intelligent, he’s impartial, he’s hardworking.”¹⁰ And Judge Dolores K. Sloviter, also of the Third Circuit, noted that Judge Stapleton is “an excellent opinion writer,” so much so that Justice Alito, a former Third Circuit colleague of Judge Stapleton’s, once described a particular instance thusly—“I read the majority opinion, which I had joined, and then I read Walt’s dissent, and I said, ‘Why in the world did I ever join the majority?’”¹¹ Judge Stapleton’s overriding concern in opinion-writing is to “get the law right.” As Justice Alito commented, “You would disagree with him at your peril, because there was a fair chance you would be wrong if you did.”¹²

Even after joining the judiciary, devoting himself to a career in government, Judge Stapleton continued to make time for other service endeavors. For almost his whole tenure on the U.S. district court, he was a founding member of the Federal-State Judicial Council of Delaware, and served as chairman for four years. He was also a member of the Advisory Committee of the Delaware Supreme Court on the Rules of Evidence, and later chaired the Third Circuit task force convened to study and recommend whether media cameras should be permitted in courtrooms. Additionally, he was an active member of the Judicial Conference of the United States, perhaps most notably chairing the Committee on Codes of Conduct, a position for which Judge Scirica described him as “perfectly suited” due to “his integrity, his balance, [and] his incredible judgment.”¹³ Judge Stapleton was a member of the board of advisers of Habitat for Humanity of Northern Delaware for eight years, and a member of the board of directors of the Buck & Doe Trust, a natural resource conservation organization in the Brandywine Valley region of Delaware and Pennsylvania, where he made his home for 16 years. He also taught middle schoolers Sunday school for 10 years, and served both as chairman of the governing board of his local church and as a member of the board of its national affiliate. The judge also brought his legal acumen to bear as a lecturer and moot court judge at numerous law schools, including Harvard University, the University of North Carolina, the University of Virginia, Duke University, the University of Pennsylvania, Seton Hall University, Temple University, Villanova University, Widener University, and Yale University, in addition to the United States Department of Justice. In light of all of these efforts, in addition to his judicial contributions to the law,

Judge Stapleton, in 2014, received the American Inns of Court Professionalism Award for the Third Circuit, which is awarded to “a person who demonstrates integrity, professionalism, and dedication to the highest standards of the legal profession.” There is only one recipient of the award annually from each of the 13 federal judicial circuits, and the honorees are invited to a celebration dinner with the justices of the United States Supreme Court in Washington, D.C.

Judge Stapleton’s diligence and professionalism have never, however, detracted from his sense of humor and amiable nature, especially toward the 92 law clerks who served in his chambers over the years.¹⁴ The judge lunched with his clerks at least three days per week, and the walks to and from the courthouse were always full of greetings and salutations between Judge Stapleton and passers-by from the Wilmington community. The conversations at lunch were no less congenial, jovial, and heartfelt, with topics ranging from family, to current events, to sports, to upcoming weekend plans. And never did these conversations, perhaps ironically, include a hint of judgment—as Judge Stapleton’s wife, Georgianna, put it, “He is the most non-judgmental person I know.”¹⁵ In the end, Georgianna perhaps best sums up her husband’s professional and personal legacy—“I often say to Walter that the jury’s in on him. You have given of yourself beautifully, nobly, legally, personally, in every way, but he still keeps on going, as if he just wants to make sure that he has done right by everybody.”¹⁶ ☉

Even after joining the judiciary, devoting himself to a career in government, Judge Stapleton continued to make time for other service endeavors. For almost his whole tenure on the U.S. District Court, he was a founding member of the Federal-State Judicial Council of Delaware, and served as chairman for four years.

Endnotes

¹DVD: *The Jury Is In: A Tribute to the Hon. Walter K. Stapleton* (directed & edited by Matthew C. Stan, interviews by Hon. Leonard P. Stark) (on file with author).

²These comments are from Judge Stapleton’s colleagues on the U.S. Court of Appeals for the Third Circuit—Judge Theodore A. McKee, Judge Kent A. Jordan, and Judge Marjorie O. Rendell, respectively. *Judge Stapleton Receives Professionalism Award from American Inns of Court*, J. DEL. STATE B. ASS’N, Sept. 2014, at 27; DVD: *The Jury Is In*.

³DVD: *The Jury Is In*.

⁴Jennifer J. Salopek, *Profile in Professionalism: Judge Walter K. Stapleton, 2014 American Inns of Court Professionalism Award for the Third Circuit*, BENCHER: MAG. AM. INNS CT., Sept./Oct. 2014, at 29.

⁵DVD: *The Jury Is In*.

⁶*Dogsbodies of the DGCL: Revisiting Roles in the*

Landmark Achievement, DEL. LAW., Spring 2008, at 11.

⁷DVD: *The Jury Is In*.

⁸John C. Gregory Jr., *10 Questions for Judge Marjorie O. Rendell*, PHILA. LAW., Winter 2006, at 38.

⁹DVD: *The Jury Is In*.

¹⁰*Id.*

¹¹*Id.*

¹²*Id.*

¹³*Id.*

¹⁴Remarkably, four of Judge Stapleton's former clerks have become judges themselves, and prominent ones at that. Leo E. Strine Jr., who served as a law clerk for Judge Stapleton in 1989-90, was a vice-chancellor of the Delaware Court of Chancery from 1998 to 2011, chancellor of that court from 2011 to 2014, and has

served as chief justice of the Delaware Supreme Court since 2014. Brett M. Kavanaugh, a Stapleton law clerk in 1990-91, has served on the U.S. Court of Appeals for the D.C. Circuit since 2006. Leonard P. Stark, who served as a law clerk for Judge Stapleton in 1996-97, has been a judge on the U.S. District Court for the District of Delaware since 2010, and is currently chief judge of that court. And William T. Allen, whose opinions continue to shape Delaware corporate law to this day, was a Stapleton clerk from 1972 to 1974 and served as chancellor of the Delaware Court of Chancery from 1985 to 1997.

¹⁵DVD: *The Jury Is In*.

¹⁶*Id.*



AGOSTINO & ASSOCIATES SUMMER BBQ - 2017

WHEN:	WHERE:
JUNE 14, 2017 12:30 PM to 4:30 PM	AGOSTINO & ASSOCIATES 14 WASHINGTON PLACE HACKENSACK, NJ 07601

On June 14, 2017, please join Agostino & Associates & Taxpayer Assistance Corporation at the Annual Summer Barbecue.

The annual "THANK YOU" event is our opportunity to thank our family, friends, colleagues and our pro bono volunteers for the part they play in our success.

Bring your friends and families - there will be plenty of food and great entertainment

RSVP for the A&A BBQ
@
<http://conta.cc/2p7p1gM>

If you need to catch up on your professional education credits, please join us at the CIVIL & CRIMINAL TAX ENFORCEMENT UPDATE before the A&A BBQ (THREE (3) FREE NY & NJ CLE, CPE, and EA CE CREDITS). The update is an annual event where private and government tax professionals to discuss current events and best practices relating to Domestic and International Tax Enforcement and Voluntary Disclosures. For more information about the CIVIL & CRIMINAL TAX ENFORCEMENT UPDATE before the A&A BBQ go to: <http://conta.cc/2p7uQuR>