

## APPENDIX

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### APPENDIX JUSTICE DAVID M. SHEA 1922–2003

Justice David M. Shea died on July 22, 2003, at the age of eighty-one. His judicial service in this state spanned more than thirty seven-years. Each day of that service, David Shea exemplified Socrates' definition of the attributes of a good judge: to hear courteously, to answer wisely, to consider soberly and to decide impartially. To this mix of admirable judicial attributes, David Shea added one more: boundless enthusiasm for exploring both the precise contours of a particular case and its implications for cases yet to come.

David Michael Shea spent almost all of his life in Hartford, Connecticut. He was born in Hartford on July 1, 1922, the second child of Michael and Margaret O'Leary Shea. He was educated at Our Lady of Sorrows School and then at Hartford High School, from which he graduated in 1940. After military service in the United States Army during World War II, he returned to Connecticut to complete his education at Wesleyan University and the Yale Law School. For the next eighteen years, he was happily engaged in the private practice of law, mostly with the Hartford firm of Bailey, Wechsler and Shea. Throughout his subsequent career as a judge, he continued to live in Hartford with his beloved wife Rosemary and their eight children. Except for family summers in Vermont, he was regularly to be seen on Hartford streets, briskly walking his two large collies.

Justice Shea's judicial work began with his appointment as a judge of the Superior Court on January 1, 1966. Serving in that capacity for fifteen years, Justice Shea not only heard cases on the regular docket of the court but also served on its sentence review division

and on its appellate session. On November 9, 1981, Justice Shea joined the Connecticut Supreme Court and remained an associate justice for the next eleven years until his constitutionally mandated retirement at the age of seventy in 1992. For another eleven years, he was a judge trial referee, undertaking responsibilities for trials, settlements and Appellate Court decision making. He brought his formidable judicial talents to bear wherever he was assigned.

The statistics of his work tell part of the story of Justice Shea's legacy to the law of this state. On the Supreme Court, he wrote 322 majority opinions as well as 60 concurrences. Always independent of mind, he also wrote 86 dissents.

Numbers do not, however, convey the intellectual commitment and the consummate good sense with which Justice Shea undertook the crafting of scholarly opinions on the wide range of subjects that came to the Supreme Court during his eleven year tenure. For his colleagues and for his law clerks, he was always available for searching discussions about the cases on the court's agenda and their likely consequences for future litigation. For one and all, he was a joy to work with because, unabashedly, he loved being a judge.

In addition to his judicial work, Justice Shea served for many years as the chairperson of the Rules Committee of the Superior Court. His prodigious institutional memory of the origins of various rules was an important resource on which his judicial colleagues were happy to rely. Indeed, procedural law was an area in which Justice Shea was especially knowledgeable. He frequently reminded the court that the purpose of rules of procedure was to facilitate rather than to obstruct litigation and he spearheaded the reform of administrative appeals in land use cases.<sup>1</sup>

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<sup>1</sup> See, e.g., *Andrew Ansaldi Co. v. Planning & Zoning Commission*, 207 Conn. 67, 70-76, 540 A.2d 59 (1988) (Shea, J., concurring).

It is impossible to capture the width and breadth of Justice Shea's judicial career in a few short pages. Justice Shea's contributions to state constitutional law may, however, serve as a surrogate. Although Justice Shea's views of the provisions of the Connecticut constitution were sometimes controversial, each of his opinions reflected a keen understanding of the importance of these constitutional provisions and a keen concern for the role of a judiciary in applying open-ended constitutional language. It is in the area of state constitutional law that Justice Shea's opinions have cast the longest shadow.

Three cases illustrate the manner in which Justice Shea, writing for the court, addressed state constitutional issues. In *Cologne v. Westfarms Associates*, 192 Conn. 48, 57, 469 A.2d 1201 (1984), he recognized the independent role of the free speech provision of our constitution, holding that "[f]ederal law, whether based upon statute or constitution, establishes a minimum national standard for the exercise of individual rights and does not inhibit state governments from affording higher levels of protection for such rights." In *Pellegrino v. O'Neill*, 193 Conn. 670, 676, 480 A.2d 476 (1984), he articulated the principle that, as a matter of state law, "the constitutional obligations to provide justice without undue delay and to afford due process of law must be taken to empower the courts charged with that responsibility to have access to the state treasury in an emergency for any funds reasonably necessary for that purpose." In each of these cases, he nonetheless concluded that the plaintiffs could not prevail. By contrast, in *Tamm v. Burns*, 222 Conn. 280, 610 A.2d 590 (1992), he reiterated, as a prior case had held, that the state could not rely on sovereign immunity to defeat a plaintiff's claim for just compensation for property taken by the state, reasoning that "the doctrine of sovereign immunity is not available

to the state as a defense to claims for just compensation arising under article first, § 11, of the Connecticut constitution.” (Internal quotation marks omitted.) *Id.*, 283.

Despite his principled recognition of state constitutional law, Justice Shea was reluctant to construe state constitutional language that mirrored that of the federal constitution to achieve an outcome that departed from established federal constitutional case law. He thus dissented from cases holding that, under the state constitution’s due process clause, a custodial suspect must be informed that an attorney is ready to provide legal guidance<sup>2</sup> and that under the state constitution’s confrontation clause, a child victim may testify on videotape.<sup>3</sup> In his view, in the absence of persuasive historical evidence to the contrary, Connecticut constitutional law ordinarily should follow federal constitutional law.

In one of his most important opinions, however, Justice Shea went further. The case is *State v. Marsala*, 216 Conn. 150, 579 A.2d 58 (1990). The opening sentence of his opinion set the stage. “The dispositive issue in this appeal is whether evidence seized by police officers in violation of our state constitution may be admitted during a criminal trial, as part of the state’s case-in-chief, under a ‘good faith’ exception to the exclusionary rule.” *Id.*, 151. Justice Shea recognized that, in *United States v. Leon*, 468 U.S. 897, 911–12, 104 S. Ct. 3405, 82 L. Ed. 2d 677 (1987), the United States Supreme Court, construing the federal constitution, had held such evidence to be admissible. Many state courts had followed suit. Nonetheless, for a unanimous

<sup>2</sup> Compare *State v. Stoddard*, 206 Conn. 157, 537 A.2d 446 (1988), with *Moran v. Burbine*, 475 U.S. 412, 422, 106 S. Ct. 1135, 89 L. Ed. 2d 410 (1986).

<sup>3</sup> Compare *State v. Jarzbek*, 204 Conn. 683, 529 A.2d 1245 (1987), with *Globe Newspaper Co. v. Superior Court*, 457 U.S. 596, 102 S. Ct. 2613, 73 L. Ed. 2d 248 (1982).

Connecticut Supreme Court, he made it clear that the right answer to this question was a resounding “No.”

Justice Shea’s reasoning was compelling. He focused on *Leon’s* premise that exclusion of evidence seized pursuant to a defective warrant would not have a significant deterrent effect either on the issuing judge or magistrate or on police officers preparing warrant applications. He disagreed with this premise. Drawing on his own experience as a trial court judge confronted with requests for warrant authorizations at all hours of the day and night, he held that the law should not create disincentives for police officers to search for a proper factual basis for an enforceable warrant or for judges to scrutinize warrant applications with care. The *Marsala* opinion commands respect because of Justice Shea’s effective blending of searching legal analysis with every day experience on the ground.

Finally, Justice Shea’s opinions, in state constitutional law and elsewhere, reflect his deep understanding of the relationship between legal principles and democratic principles. His opinion in *Pellegrino* speaks eloquently to these values. For the majority, he concluded that our state constitution did not confer on judges the authority to compel the legislature to appoint additional judges, even if their absence substantially impaired the ability of the judiciary to perform the mission that has constitutionally been assigned to it. He recognized that this was a difficult call. His opinion ended: “What then will become of the promise extracted from King John at Runnymede and enshrined in the Magna Charta to delay justice to none, which has been incorporated in article first, § 10 of our state constitution? We have declared ourselves unable to respond to its demand in the present context without exceeding our own constitutional authority. The answer must lie in the

hearts and minds of the legislators, who are sworn to support the state as well as the federal constitution and to discharge their duties to the best of their abilities. General Statutes § 25. More fundamentally, it must rest with the people who elect them.” *Pellegrino v. O’Neill*, supra, 193 Conn. 685.

That was Justice David M. Shea. Although he was not a tall man, he was a giant of a judge.

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Justice Arthur H. Healey  
1920–2003

Justice Arthur H. Healey, a lifelong New Haven resident who spent most of his adult life serving the people of the state of Connecticut, died on July 25, 2003, at the age of eighty-three. Justice Healey was born in New Haven on May 5, 1920, and graduated from New Haven High School in 1937. He received his B.A. from Trinity College in 1944, and earned his L.L.B. from Harvard Law School in 1947. After having served with distinction in the United States Army during World War II, he was admitted to the Connecticut bar in 1948, and the United States District Court for Connecticut in 1953.

Justice Healey began his public service career in the state legislature as a three term Democratic state senator for the tenth district from 1955 to 1961. During that period of time, he held the position of both Senate minority leader and Senate majority leader. Additionally, he served as chairman of the State Legislative Council from 1959 to 1961.

Thereafter, Justice Healey served for more than forty years as a judge on virtually all of the state courts. He was first appointed to the Court of Common Pleas in 1961. In 1965, he became a judge of the Superior Court, which he came to lead as Chief Judge in 1977. Subsequently, he served as the Presiding Judge of the

Appellate Session of the Superior Court from 1977 to 1979. On September 24, 1979, Justice Healey was elevated to the Connecticut Supreme Court and served as an associate justice on that court for ten and one-half years until his retirement in 1990.

Upon leaving the Connecticut Supreme Court after having reached the mandatory retirement age of seventy, Justice Healey continued his service to the judicial branch. He served on both the trial court and the Appellate Court as a judge trial referee from 1990 until his death in 2003.

During his tenure as a justice on the Supreme Court, Justice Healey authored 290 majority opinions, 20 concurring opinions, and 35 dissenting opinions. Justice Healey authored an additional 61 majority opinions while serving as a judge trial referee on the Appellate Court. Many of his opinions reshaped the law in a manner that enriched the lives of the citizens of this state.

Two of Justice Healey's opinions illustrate the significant contributions that he made to the jurisprudence of Connecticut. In the 1985 decision of *State v. Kimbro*, 197 Conn. 219, writing for the majority, he concluded that article first, § 7, of the Connecticut constitution affords more substantive protection to the citizens of this state than does the fourth amendment to the United States constitution in the determination of probable cause with respect to the law of search and seizure.

In 1988, Justice Healey authored the majority opinion in *Builders Service Corporation v. Planning and Zoning Commission*, 208 Conn. 267, which promoted the construction of smaller affordable housing units by striking down certain restrictive municipal zoning regulations that were not rationally related to any

legitimate purpose of zoning, including the promotion of health, safety and general welfare, as required by state statute.

In addition to his judicial duties, Justice Healey served from 1980 to 1990 as chairman of the Rules Committee of the Superior Court seeking to improve the Connecticut Rules of Practice. His patience and conscientious stewardship led the committee to develop procedural changes for the improvement of the administration of justice in this state. As chairman, Justice Healey exhibited a willingness to consider suggestions for change from attorneys as well as from members of the legislature and individual citizens. Amendments to the rules that have reformed grievance procedures and have strengthened ethical oversight for the performance of members of the legal profession were enacted during his tenure as chairman.

At the ceremony marking Justice Healey's retirement from the Connecticut Supreme Court, Chief Justice Ellen A. Peters summed up his contributions quite well when she stated the following: "Justice Healey, I salute you for your salient achievements and for being a model of high aspirations that all judges should seek to emulate. As your fellow judges, we have profited from your wise counsel, your compassionate concern for others, and your devoted dedication to making ours a just and caring legal system. We will miss your probing questions at oral argument, your thoughtful comments in the conference room, your farsighted guidance as chairman of the Rules Committee, and your warm personal friendship."

Justice Healey was also greatly respected and admired by the members of the bar as well as the entire legal profession. In June, 1978, he was named the first recipient of the Judiciary Award—the state bar association's highest form of praise for a member of



the judiciary. On the occasion of his retirement from the Connecticut Supreme Court, Marilyn P. Seichter, president of the Connecticut Bar Association, praised Justice Healey for “his dedication to the law and the legal system, his selfless commitment to his duties as a judge, his compassion and concern for each litigant, and his tireless efforts to render justice promptly, effectively and fairly.”

Justice Healey, a devoted family man, was survived by his wife of many years, Frances Murphy Healey, and their nine children, Theresa Healey, Monica Waldron, Moira Healey, Arthur Healey, Alicia Sledzik, Francis Healey, Michael Healey, Matthew Healey and Anne DeBiaso, as well as eighteen grandchildren.

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