State of the Commonwealth's Courts
Chief Justice Ralph J. Cappy, Pennsylvania Supreme Court
Written Message
May 1, 2006

Our Founding Fathers' vision for America was unique in all the world. Nearly every word of the Declaration of Independence rings with the new majesty of freedom. Nearly every concept of the Constitution and the Bill of Rights speaks to ideas that, if not entirely novel, had never truly been tested to any significant degree.

Unique to Pennsylvania, our Commonwealth's Founder, William Penn, offered his own fresh and idealistic vision for a "holy experiment," offering safe harbor for the body and the soul.

Among the truly original concepts of American democracy is that of an independent judiciary; that is, for all citizens, the guarantee of open and equal access to courts and of judges' decisions free from personal bias, interest and outside influence, political or otherwise.

Nothing better, neither simpler nor more eloquent, can be said of our vision for Pennsylvania's judicial system. With this State of the Commonwealth's Courts (along with our annual statistical filings and reports), I hope to expand upon that eloquent simplicity by clearly defining our current challenges and the solutions we are pursuing in service to the commonweal of all Pennsylvanians.

Pennsylvania's courts today are strong and prepared to meet future challenges. Our strength stems from those fundamental principles of the Founders and Penn, but also from the vitality that we in the judiciary bring each day in pursuit of those principles.

That vitality is personified by more than a thousand judges hearing cases, crafting opinions, mediating disputes. Also by thousands of staff researching the law, translating foreign tongues, supporting integrated automation, securing against threat, educating, planning, managing; and by nearly 250 volunteers, who offer countless hours of service at their own expense, as well as knowledge, experience, and guidance in areas ranging from complex legal matters to financial investment.

We are strong because of their dedication and because they have been preparing, quietly and without fanfare in most instances, to meet the challenges of changing times and the changing face of America.

Courts today routinely face litigation involving high science, corporate complexity, disrupted families and international threats. Indeed, issues arise today involving nearly every fundamental right we hold sacred and in ways the Founders could never have foretold. By one count, those issues can arise in as many as 135 languages spoken within the Commonwealth on a daily basis.

Thus, the work in courts today is both very much the same as it was 322 years ago and very, very different. With that in mind, when I became Chief Justice three years ago, 13 initiatives struck

me as immediately central to our successful progress as a judicial system. I articulated them then; we have pursued them with vigor; and I am pleased to report success in advancing each, and several others as well. Those initiatives are:

- consolidating court administration in a Harrisburg-based state judicial center;
- unifying court procedural rules;
- creating a certification program for lawyers who represent death penalty defendants;
- creating a continuing education program for judges who preside over death penalty cases;
- restructuring of continuing legal education for judges;
- creating a strategic plan for the state judiciary;
- reviewing malpractice insurance issues for lawyers;
- developing a means to ensure gender fairness in courts;
- developing a means to ensure race and ethnic fairness in courts;
- establishing the Judicial Council as an effective advisory body to the Supreme Court;
- improving security for court personnel, lawyers, judges and the public;
- advancing court computerization;
- assuring the security of court computer systems from natural disaster or attack.

Beyond advancing each of these original 13 aspirations, in the past three years we have also collaboratively addressed the imperative to help resolve Pennsylvania's medical-malpractice crisis, created a framework to support the growth of problem-solving courts and attempted to help ensure the availability of qualified interpreters across the state. Most recently, as a Court, we have committed to explore systemic improvements within our family courts recognizing, in the words of columnist Anna Quindlen, that "families…are a metaphor for every other part of society."

Put directly, Pennsylvania's courts are about positive reform in so many meaningful ways.

Access to Justice

The public's ability to actively participate in the process of justice is fundamental to the success of American democracy. Today, though, access is defined in as many different ways as there are different means of facilitating accessibility.

Ensuring Availability of Counsel

Indigent defendants in criminal courts have long been provided publicly funded defense counsel as a fundamental right, but those whose financial circumstances do not afford ready access to our civil courts depend upon either pro bono legal representation or representation from community-based legal services, funding for which has historically been slim and not always guaranteed.

To help remedy those dilemmas, Justices Castille and Newman spearhead the court's continued advocacy to the private bar of its obligation to provide legal assistance for those in need. Part of that obligation is fulfilled through the Supreme Court's Interest on Lawyers' Trust Account program, whose grants for legal assistance are anticipated to increase to $18 million in 2007, or

over 900 percent in just ten years. IOLTA's success is a strong testament to successful legislative/judicial collaboration and our work with the leadership of a committed bar. Together, we must sustain this success and, where possible, expand upon it.

Inaccessibility

Beyond financial accessibility issues, just the perception of inaccessibility can seriously inhibit Pennsylvanians' trust and confidence in the justice system. After extensive study by the Supreme Court's Committee on Racial and Gender Bias in the Justice System, at the suggestion of the judiciary, a separate inter-branch commission has been established to identify means to implement the earlier group's findings.

The Inter-branch Commission for Gender, Racial and Ethnic Fairness is a landmark collaborative effort between the three branches of state government. Its seven committees have already made significant strides to prioritize and implement the earlier committee's recommendations. One of those committees, in tandem with the Administrative Office of Pennsylvania Courts, is working to ensure that qualified interpreter services are available for non-English-speaking litigants. Others have begun work to increase the number of public defenders and public interest lawyers, to consider the diversity of court employees and juries, and to heighten judicial and public understanding of domestic violence issues.

Access in the Internet Age

A third noteworthy access issue is our effort to use electronic resources to make court information increasingly and responsibly available both within government and to the public. Pennsylvania continues to be a national leader in automating court records and processes after 20 years of dedication to that enormous task. With our minor courts and appellate courts fully automated and completion of an integrated statewide automation system for our criminal trial courts nearing its end, the related accessibility issue is, to some, one of how much information can be readily available via the Internet; to others, it is how much information should be available.

National debate on this subject has been extensive, with little agreement among interests that hold widely disparate views running the gamut from advocacy of full, nearly unfettered Internet accessibility to equally vehement advocacy that little to no electronic records' accessibility should be available.

Over the past two years, Pennsylvania's judiciary, through its Administrative Office of Pennsylvania Courts, has undertaken a thorough and responsible assessment of nearly every major report and policy on this subject from other states and the federal government. A draft report from the AOPC has been published for public review and comment and the extensive comments received are now under review. A public hearing has just been held to receive additional comment before a final draft report is submitted to the Supreme Court for our consideration.

Issues with respect to electronic public records are illustrative of the promise and problems

provided in this Internet Age, where the various public interests are numerous, conflicting, and very likely irreconcilable. Notwithstanding that difficulty, the Pennsylvania judiciary's approach to crafting a workable access policy for electronic records represents a strong, good-faith effort to identify best practices in a complex environment and offer the results of that effort for further assessment by interested parties in the public interest. Ultimately, decisions for the public good will be necessary, but those decisions will be made with the benefit of received insights, carefully weighed.

Quality of Justice

If access to justice is essential to America's democratic success, no less essential is the quality of justice rendered by those selected for judicial service.

"Quality" is admittedly intangible, impressionistic, and informed by the diversity of opinion that our Constitutions so zealously protect. There are, of course, meaningful qualitative measures within the justice system. Accountability by the judiciary is essential to earning and sustaining the public's trust and confidence. Case counts, decisional speed, or sentence lengths, however, cannot alone justify public trust absent the precepts of tolerance, fairness, equality, dignity and humanity that William Penn and our Founders identified as factors to distinguish the American culture from those of earlier times.

There are several means to foster quality even if the concept is subject to individual interpretation. Over the past three years, building again upon earlier achievements, we have worked hard to ensure that jurists are as skilled as they can be in our fast-changing world and that courts are as responsive as they can be to societal changes, all the while respecting the fundamental tenets of an impartial, independent judiciary.

Expanding Judicial Education

Foremost among our efforts to foster quality, and one that I have personally advocated, is the expansion of continuing education for all of Pennsylvania's judges and justices. This can only be accomplished through a concerted effort to further professionalize the delivery of that education. With Justice Saylor overseeing these efforts, they have become part of a continuum of expanded educational offerings that began in 1992 with the highly successful creation of mandated continuing legal education for Pennsylvania's attorneys.

Naturally, in a judicial system spanning counties with but one trial judge and Philadelphia, with more than 100 judges, no single approach to judicial education can fit every need. Yet the need for quality education is acute given the variety of subjects that a judge in any county may confront. Among those subjects: scientific advances that spawn technically complex litigation, societal changes that raise questions of effective deterrence and treatment, questions of business law in a global economy, and the fundamental issue of how best to support families challenged by difficult social, economic, and cultural issues.

To address these educational needs, we have expanded an existing, solid program of continuing education developed by jurist volunteers, to one that blends the best of their efforts with

professional learning techniques that promise the highest quality and greater variety in course content and delivery of that content.

For instance, in addition to semi-annual, large-group educational conferences for trial judges, "mini-conferences" on specific topics are now offered around the state, and CD-ROMs of content from continuing education conferences are available for judges unable to attend presentations. Distance learning using modern technology to increase accessibility and maximize efficient content delivery is on the immediate horizon as well.

Several specific topics—capital cases and medical malpractice litigation to name two— have received concentrated attention in our educational process because of their critical importance as issues of social policy.

Justice Eakin and former Justice Russell M. Nigro have led a successful effort to develop educational sessions for judges and lawyers who need unique and important skills to effectively adjudicate capital criminal cases—those where the ultimate penalty is death. The gravity of capital cases for those accused, for victims and their families, and to society, demands the highest level of competence to ensure both fairness and expedition as these cases are resolved. This education program will help to attain that goal.

Similar educational programs have outlined for judges the many steps taken by the Supreme Court over the last three years to help resolve Pennsylvania's medical malpractice insurance crisis. Like the work of the Inter-branch Commission for Gender, Racial and Ethnic Fairness, med-mal issues overarch all three branches of state government and have required contributing solutions from each. Through procedural changes in how these cases are processed, Pennsylvania's judiciary has, to the maximum possible extent, been a responsible participant in helping to solve some of the issues, recognizing at the same time that changes in public policy are inherently the province of the legislative and executive branches.

Changes in delivery of continuing education for Pennsylvania's magisterial district judges are also in progress, in collaboration with the Minor Judiciary Education Board. These education programs are now located near Harrisburg and, most importantly, reevaluation of their curriculum is beginning for the first time in years.

Finally with regard to judicial education, during the past three years, appellate court jurists—justices and judges alike—have participated in continuing education programs from the singular perspective of the appellate process. This once-a-year, multi-day session has become a significant means of advancing our appellate jurists' knowledge by inviting some of America's "best and brightest" to share their insights with us. Taken together, whether for appellate jurists, trial or magisterial judges, these educational programs mean that all Pennsylvania jurists have the opportunity to receive quality, continuing legal education at least once each year.

Commission on Justice Initiatives

A decided strength of Pennsylvania's judicial system is the dedication of not only our jurists and staff, but also of many men and women who volunteer their time each year toward the system's

betterment. More than 250 Pennsylvanians do so as members of various court committees, boards and commission, and their expertise and viewpoints help the Supreme Court manage the system in areas of substantive law, procedure, administration, and innovation.

The Commission for Justice Initiatives in Pennsylvania, a 22-member group established in 2004 and tangibly supported by the Pennsylvania Bar Association at the Supreme Court's request, is one such entity. It is guided by the basic tenet that the justice system should be responsive to the needs and expectations of the communities it serves; its mission is to identify, develop and recommend implementation of programs and best practices that advance that tenet.

During its first year or so in operation, with the oversight of former Justice Nigro and Justice Baer, the commission has highlighted and advanced understanding of the important programmatic concept of problem-solving courts. Variously known as "drug courts," "DUI courts," "mental health courts," "community courts," "gun courts," and other similar names, the common conceptual thread of such courts is establishing specialized judicial dockets in discrete areas where intensive focus on offenders can result in treatment and rehabilitation as an alternative to incarceration and high rates of recidivism.

After thoughtful but expeditious study, the commission recommended and the Supreme Court approved formal recognition and expansion of court-supervised drug treatment courts, subject to three guidelines. First, that such courts' operation are consistent with proven, national models and that standards for their operation are consistent statewide; second, that their establishment be accomplished without drawing resources from existing courts; and third, that evaluation of their efficacy is undertaken.

The Administrative Office of Pennsylvania Courts will provide operational leadership in expanding the specialized court concept across the state, working with other interested agencies, including the Pennsylvania Commission on Crime & Delinquency, a strong proponent of the concept, and the Pennsylvania Sentencing Commission.

Other work of the Commission for Justice Initiatives includes, at the request of Justice Baer, development of a "best practices" model for modifying custody litigation with emphases on mediation, support services, and preservation of due process rights. Additionally, the commission is beginning development of public education and community outreach programs that will help citizens better understand how our courts operate and why they operate as they do.

Effective Administration of Justice

No large organization functions effectively without a dedication to sound administrative principles and practices. Fortunately, Pennsylvania's judiciary has a skilled and experienced cadre of jurists with administrative assignments and administrators who ensure that cases flow, computers function, payrolls are met, and all of the other tasks that are essential for our daily success take place.

Day-to-day success, though, periodically requires a step back to help chart a coordinated approach for the future. One of my goals over the past three years has been to increase the

dialogue about our future and to begin charting that future more methodically. I am aided by all of my colleagues in this endeavor, but especially by Justice Castille, after myself, the senior most member of the court.

Judicial Council of Pennsylvania

One key to increasing dialogue is the Judicial Council of Pennsylvania, an advisory body to the Supreme Court comprised of citizens, representatives of the three branches of state government, and legal practitioners. While the Judicial Council has existed more in form than function over the years, I am encouraged by the increased activity of its subcommittees and of the quality of discussion during our periodic meetings over the past two years.

With the collegial assistance of fellow council members Justices Castille and Newman, we have encouraged the council to become a resource of expertise and thoughtful ideas —a think tank of sorts—which enables the court to make reasoned decisions with regard to the future of the Pennsylvania courts.

For example, a subcommittee of the Judicial Council, led by Justice Newman, has dramatically improved access to local court rules by leading an effort to place all of those rules on the judiciary's Web site. Doing so allows lawyers to more easily and knowledgably represent their clients regardless of where they may live.

Another subcommittee, also led by Justice Newman, has done a remarkable job in tandem with Administrative Office of Pennsylvania Courts staff to better secure our courts. First-ever steps have been taken to provide systematic security in our more than 548 magisterial district judge offices, and statewide protocols and training have been developed to guide local court officials in the event of emergencies of various types.

Perhaps as important as any Judicial Council initiative is a first-ever attempt at developing a strategic plan for the entire judiciary. Candidly, given the still largely federated nature of Pennsylvania's Unified Judicial System (UJS), this enterprise is a significant challenge and very much a work in progress.

Regardless of our level of initial success in crafting a plan, the learning process in trying to do so is itself of significant value, and I am indebted to those who are working on it, including Justice Castille and council member, Dr. Constantine Papadakis, the president of Drexel University and the chair of the strategic planning committee.

Judicial Automation of Pennsylvania's Courts

No discussion of Pennsylvania's judicial administration would be complete without a clear nod to our achievements in automating the Unified Judicial System.

Earlier, I alluded to the scope of our automation efforts over the past 20 years. They include a highly successful statewide case management and financial accounting system linking all of our magisterial district courts; an integrated case management system that serves the three appellate

courts at once; a new administrative computer system that processes payrolls, human resources, finance, and procurement functions; and most recently, a statewide criminal trial court case management system.

Those automated systems represent the hard work of hundreds of judicial staff, jurists and consultants and the strong support of successive legislatures and governors. Today, our judicial automation efforts are recognized as among the most successful nationwide. Statewide, our systems and staff are integral parts of the Commonwealth's multi-year design, known as the Justice Network, or JNET, to marshal criminal justice system information in various locations for common use.

As those with information technology experience know, the development and maintenance of computer systems is ongoing. Consequently, Pennsylvania's judicial computerization plans include further expansion of our trial court system beyond criminal courts to other trial divisions, redesigning the now aged Magisterial District Judge System, and rewriting the appellate court system to ensure our ability to effectively maintain it. Throughout these tasks, a strong emphasis by our information technology staff will be to standardize as much as is possible the languages and platforms used in and for all systems.

Beyond criminal justice agencies, our computer systems interact with or assist in the work of the state departments of Transportation and Revenue and the state Auditor General's office, among others. We are proud of these collaborations, yet it is worth noting that our successes have often been hard fought to victory, whether for lack of stable funding at times or when confronted with the reality that Pennsylvania's Unified Judicial System very much remains a federated judicial system.

Unifying Pennsylvania's Courts

As it is with many large organizations, governmental or private sector, the success of Pennsylvania's judiciary in the future depends on factors both within and external to the judiciary's and the Supreme Court of Pennsylvania's control.

Of interest, even as statewide automation has demonstrated considerable success as a unifying agent for our courts, the task of automating county-level courts has simultaneously demonstrated automation's limitations as a unifier.

In a nutshell, with a governance model that comprises more than 1,000 state-paid, county-based jurists and staff; thousands more county-paid local court staff; and several hundred independently elected and county-funded ministerial court officers, all of whose functions reside in county-provided and -funded facilities, true administrative unification of Pennsylvania's courts will remain elusive. Yet our automation successes have provided a significant measure of systemic unification for Pennsylvania's judiciary and examples abound of successful collaboration between state and local and judicial and non-judicial officials in various areas of common interest and need.

The work of the Judicial Council's Subcommittee on Judicial Safety and Preparedness is one

such example of state/local cooperation, as are previously noted state/state examples in creating the Inter-branch Commission for Gender, Racial and Ethnic Fairness and in helping to illuminate and resolve some of the medical-malpractice insurance issues within Pennsylvania.

Finally, all Pennsylvanians can be pleased that collaboration with the legislature and two successive governors will, for the first time in more than 100 years, yield a new, significant and tangible representation of Pennsylvania Unified Judicial System within our historic state capitol complex, the Pennsylvania Judicial Center.

After 300 years of "homelessness," Pennsylvania's courts, through the Judicial Center, will have both a strong, symbolic and functional presence in Harrisburg. Most judicial administrative agencies will be located there, and Commonwealth Court, whose mission in government law is solidly rooted in Harrisburg, will finally have a permanent home designed to meet its needs.

Completion of the Judicial Center is, like statewide automation, a decided step to achieving greater administrative effectiveness that the 21st century and the citizenry at large demand of all levels of government.

Looking to the Future

Woodrow Wilson said, "…justice has nothing to do with expediency…," and in those words he properly characterized the ambition of an independent judiciary:

Our courts must be open and accountable—and they are.

Pennsylvanians must know that we will hear their cases dispassionately —and we do, with as much clarity of thought and expedition as is humanly possible and always with principle, according to the rule of law.

And all must understand that while "judicial independence" means much to the lone jurist, it means everything to Pennsylvanians who value decisions rendered for the sake of democracy and never for the sake of self-interest or that which is merely opportune.

Just recently, my colleagues and I welcomed Justice Cynthia Baldwin to the Supreme Court. As a veteran trial judge, she has long exemplified the traits which sustain Pennsylvanians' confidence that our jurists have the mettle to meet these fundamental challenges. We are happy to have Justice Baldwin among us and to share in our resolve that, as Alexander Hamilton put it, "…the first duty of society is justice."

Pennsylvania's courts are ready now, and for the future, to perfect that duty for all.