

## Chief Justice Ralph Cappy

*Hon. Maureen Lally-Green\**

A “successful” person has been poetically described as follows:<sup>1</sup>

To laugh often and much;  
To win the respect of intelligent people and the affection of  
children;  
To earn the appreciation of honest critics and endure the  
betrayal of false friends;  
To appreciate beauty, to find the best in others;  
To leave the world a bit better, whether by a healthy child,  
a garden patch or a redeemed social condition;  
To know even one life has breathed easier because you  
have lived.  
This is to have succeeded.

Ralph Cappy is this successful man.

Few chief justices leave the indelible imprint upon the judicial system they served as did former Chief Justice Ralph Cappy. While Justice Cappy’s legacy included much more, I will limit my walk down memory lane to what, I believe, was his greatest contribution to our system of justice in Pennsylvania—his commitment to ensuring fairness for all people who become involved with the judicial branch of government.

Chief Justice Cappy’s vision was that each and every person who interacts with the judicial system should have an experience with the system that reflects fair, honest, and respectful treatment. This person could be an employee of a magisterial district judge, a judge, or a court system, a defendant or witness with limited English proficiency, an indigent criminal defendant, a victim of domestic violence, a lawyer, or someone who otherwise uses the third branch of government. Justice Cappy believed that policies and procedures for fair treatment, which provide transparency,

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\* Judge, Superior Court of the Commonwealth of Pennsylvania. Judge Lally-Green retired on July 31, 2009, having served as a member of the statewide appellate court since June 1998.

1. This poem is often attributed to Ralph Waldo Emerson; however, critics suggest that this attribution is inaccurate and the true author remains unknown.

accountability, and continual education, serve that vision. Thus, I tell the story of Chief Justice Cappy's permanent influence in the realm of race, gender, and ethnic fairness in the judicial branch of government.

As with most stories about a person's accomplishments, this story has a "then" and a "now." The "then" allows us to look back and observe the steps that were taken to get to the "now." So, I look back to 1999, when it all began under the superb leadership of then-Chief Justice John P. Flaherty, another chief justice who left countless indelible marks that continue today to distinguish the Commonwealth's legal system.

Chief Justice Flaherty appointed a nine-member Supreme Court Committee in the fall of 1999 to conduct a study to determine if women and minorities were receiving equal justice in courtrooms around the Commonwealth. The study spanned 3.5 years and culminated with a report of the Committee's findings. The Committee's 2003 *Final Report on Racial, Ethnic, and Gender Bias in the Justice System* ("Report") contained fourteen chapters, each addressing a defined topic, and presented 173 recommendations designed to address inequities within the system. This 2003 Report was the platform, therefore, upon which critical remedies for the legal system were to be constructed.

Following the submission of the Committee's Report, then-Chief Justice Cappy, on behalf of the Court, appointed two Implementation Committees: a Race Implementation Committee and a Gender Implementation Committee. The mission of each committee was to advise the Supreme Court on the feasibility of each of the relevant race or gender recommendations found in the 2003 Report.

Justice Cappy asked me to chair the Gender Implementation Committee and, as Chair, to report our progress to him in one year. The Gender Implementation Committee was composed of judges and lawyers from across the Commonwealth. These highly experienced and skilled Committee members addressed each of the relevant recommendations and engaged in outreach to many of the counties in the Commonwealth for further input and suggestions on "best practices." The Committee concluded, in a report, that some recommendations of the 2003 Report had been achieved, some were being addressed, some were not feasible, and some could be achieved only with legislative efforts and funding. The Gender Implementation Committee, thus, advised the Court about what was and was not capable of implementation.

Following receipt of the Implementation Committees' reports, Chief Justice Cappy concluded that all three branches of government had to "be at the table" in order to address the problems identified in the 2003 Report. He then approached the leadership of the Executive and Legislative branches with his plan and ultimately succeeded in convincing them to join the Court in establishing a new commission to implement the recommendations of the 2003 Report. Thus, in 2005, the Interbranch Commission for Gender, Racial and Ethnic Fairness<sup>2</sup> was created. The Commission is unique in the nation, as its membership reflects appointments from all three branches of government<sup>3</sup> in a joint mission to address issues of gender, racial, and ethnic fairness.<sup>4</sup>

Chief Justice Cappy served as the first Chair of the Commission.<sup>5</sup> Under his leadership, the Commission developed a mission statement, ratified bylaws, established procedures, and organized and began the work of the subject-focused committees.<sup>6</sup> The "Chief" clearly articulated the Commission's goals as follows: to

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2. Chief Justice Cappy determined that the word "fairness" as opposed to "discrimination" better connoted the mission of the Interbranch Commission on Gender, Racial and Ethnic Fairness. I was part of that discussion.

3. The Commission consists of 24 members whose appointments were divided equally among the three branches of government. Drawn from around the Commonwealth, the members are racially and ethnically diverse and include judges, attorneys, legislators, and community advocates. The bylaws of the Interbranch Commission provide each of the three branches of government with an opportunity to direct the work of the Commission through the power of appointing Commission officers on a rotating basis.

4. Lisette McCormick, Esq., J.D., Duquesne University School of Law, was appointed the Executive Director of the 1999 Committee and, later, Executive Director of the 2005 Interbranch Commission on Gender, Racial and Ethnic Fairness. She is a highly talented person and has been an enormously positive influence on the effective and efficient achievement of the missions of both the Committee and the Commission.

On a personal level, I have deep gratitude to her for all of her assistance in the preparation of this article and, in particular, for her assistance in the accurate presentation of the history reflected above. I also thank her for her incredible support of my work as first Chair of the Grievance Committee of the Interbranch Commission and my other duties with the Commission, which work and duties are discussed *infra*. Ms. McCormick demonstrates the very best of our legal profession.

5. The chairmanship rotates from an appointee of the judicial branch to an appointee of the executive branch and then to an appointee of the legislative branch. That cycle thereafter repeats.

6. The Commission was unique in its committee structure as well. Two types of committees facilitate its work: implementation committees and standing committees. The function of the implementation committees is to prioritize and select for implementation recommendations relevant to their topic of study from the 2003 Report. The six implementation committees include committees on Domestic Violence and Sexual Assault Victims, Employment and Appointments/Grievance Process, Jury Service, Criminal Justice, Interpreter Services, and G.L.B.T. Rights. The standing committees operate as internal committees to set rules and policy for the Commission. The two standing committees are the Communications and Government Relations Committee and the Bylaws Committee.

raise awareness of the impact of gender, race, and ethnicity on the fair delivery of justice in Pennsylvania; to increase public confidence in the fairness of state government; and to investigate and implement new initiatives not addressed by the study.

So, now, four years later, what is the legacy of the "Chief" in this area? I would say it is both broad and bold. The breadth of the impact of his leadership spans all three branches of government. During his tenure as Chair, the subject-focused committees began work that has accomplished much, in terms of education, collaboration, policies, and procedures. Substantial educational work occurred in the areas of domestic violence,<sup>7</sup> employment and appointment opportunities,<sup>8</sup> and jury services.<sup>9</sup> In the criminal justice arena, critical focus was on: the initiation of a loan forgiveness program for public interest lawyers;<sup>10</sup> the establishment of juvenile record expungement procedures in all judicial districts;<sup>11</sup>

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7. The Domestic Violence and Sexual Assault Victims Committee focused on increasing understanding among judges, law enforcement, physicians, and the public about the nature of domestic violence. The Committee prepared and printed (in English and in Spanish) a pamphlet, *Domestic Violence - Safety Tips for You and Your Family*, as part of its education program for victims throughout the state. The Committee recently added physicians' offices and schools to its list of pamphlet recipients.

The Committee also conducts regular sessions on increasing judicial understanding of cultural issues in domestic violence and sexual assault cases for the Conference of State Trial Judges. The Committee plans to provide similar training for magisterial district justices, court administrators, and lawyers.

The Committee's most recent initiative was a survey of judicial districts throughout the state on court-related safety procedures for victims of domestic violence and sexual assault. The survey results, along with information from other state courts, have been incorporated into a report on model components of the surveyed systems. See *Court-Related Safety Procedures for Domestic Violence and Sexual Assault Cases*.

8. The Employment and Appointments Committee has published and is now updating its *Diversity Recruitment Resource Manual*, which provides guidance on how to establish and maintain a diversity program in court offices. The Committee also has surveyed judicial districts and suggested "best practices" used by judges and administrators in appointing attorneys and others to positions within the court system.

9. The Jury Services Committee addressed and made recommendations on 13 aspects of jury selection in its report, *Suggested Standardized Procedures for Jury Selection in Pennsylvania*. In addition, the Committee drafted an "Action Plan" for the Court, summarizing actions the Court can take to implement the report's recommendations. Further, this Committee has held a series of jury diversity seminars across four regions of Pennsylvania.

10. The Criminal Justice Committee has been working with the PBA on securing funding for and passage of proposed Senate Bill 860 (from the 2007-2008 Regular Session, current printer's number 1072), which provides for loan forgiveness for Pennsylvania public defenders, district attorneys, and legal aid lawyers. The Committee also has launched a collaborative effort with the National Legal Aid and Criminal Defense Association and the Pennsylvania Joint Government Task Force on Indigent Defense to bring about critical reforms to the indigent defense system in Pennsylvania.

11. The Criminal Justice Committee has drafted a model program, with the assistance of its special study group of experts and practitioners in juvenile law, for expungement of juvenile records. The goal of this program is to eliminate barriers that exist for juveniles

and the reduction of racial, ethnic, and socio-economic disparities in the capital justice system in Pennsylvania.<sup>12</sup> The Commission's work with interpreter services resulted in cooperation among the branches of government in providing the public with access to interpreter services.<sup>13</sup>

Justice Cappy's leadership was greatest, in my view, in establishing non-discrimination policies and procedures for the judicial branch. When the Chief was Chair of the Interbranch Commission, he appointed me the first Chair of the newly created Grievance Committee, a role in which I served until December 2007. During my tenure, the main work of the Grievance Committee was to draft, and propose to the Supreme Court, a policy and procedures for non-discrimination in the third branch of government.

While policies and procedures existed for judicial employees and in some judicial districts, these policies and procedures were not uniform and, where they existed, they were not as effective as

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with court records as these juveniles seek employment and education opportunities. The model program is offered for those judicial districts that do not yet have such a system. The program is designed so that each judicial district can uniquely tailor procedures to its own system.

12. The RAND Corporation has agreed to conduct the first statewide study of the capital justice system in Pennsylvania. The study is intended to determine whether racial, ethnic, or socioeconomic status influences the administration of the death penalty system in Pennsylvania and, if so, how those disparities can be addressed. The Supreme Court approved the study in September 2008 and the RAND Corporation is currently seeking funding for the study and identifying existing sources of data within Pennsylvania.

13. The Interpreter Services Committee issued a report on the availability of interpreter services in administrative agency proceedings, *Interpretation and Translation Services in Commonwealth Administrative Agencies*, and collaborates with the Administrative Office of Pennsylvania Court's (AOPC's) Interpreter Services Program and the Pennsylvania Department of Labor and Industry on improving client access to interpreter services within those agencies.

The Committee is also working with the Court of Common Pleas of Philadelphia County, the First Judicial District, and the AOPC on three initiatives. The first initiative is the design of an advance notification system for immigrant communities throughout the state. Pursuant to the new statewide interpreter and translation system, those with limited English proficiency are to advise the court, in advance, of their need for court interpretation services. The Committee intends to help the courts distribute a special notice about this requirement to community groups across the state. The second initiative is a "cue card" for court staff designed to enhance the delivery of interpreter services in the courts, and a standardized translation of commonly-used legal terms in several languages, through its Circles of Excellence project, for the use of court interpreters. The third initiative is the translation of certain key legal documents into a variety of languages for statewide usage, including Criminal Protection Orders and Emergency Petitions, Temporary, and Final Orders in Civil Protection From Abuse cases.

Finally, this Committee played a key role in the establishment, by Widener University School of Law's Legal Education Institute, of a training program for individuals interested in becoming certified interpreters in Pennsylvania. Widener welcomed its first class of students to this program in September 2008. The Committee is now exploring with the Institute the possibility of expanding the training program to include sign interpreters.

they could be. The 2003 Report reflected a need for a system-wide, Supreme Court-approved, vehicle to assure fairness in the work of the third branch of government.

Many in the legal system did not agree that anything more was necessary, let alone advisable, to address harassment or discrimination. The dissenters, strong in voice and seemingly intractable in position, included many highly respected judges and lawyers in the system. Some believed that there was no problem (despite the findings of the 2003 Report). Other judges or lawyers simply did not want more oversight of their behavior. Still others suggested it was best to “leave well enough alone” and let any alleged problems of discrimination or harassment “work themselves out in the courts.”

Chief Justice Cappy and all of the then-members of our Supreme Court plainly did not agree with this dissent. During 2006 and 2007, the Chief was instrumental in assuring that all interested and relevant voices were heard and positions addressed during the development of the Supreme Court’s policy and procedures.

Our Supreme Court also understood that, where policies and procedures are visible, available, and effective, the public and those who use the system have much greater confidence about, and trust in, the legal system. In addition, many of the alleged acts of “discrimination” were unintentional but nevertheless needed to be addressed. The Supreme Court was most aware that, when the public has confidence and trust that the system is regularly functioning in a fair manner, that confidence and trust becomes the foundation of a strong third branch of government.

Shortly before Chief Justice Cappy stepped down from the Court, the Supreme Court adopted the Grievance Committee’s recommended *Unified Judicial System Policy on Non-Discrimination and Equal Employment Opportunity*. This policy prohibits discrimination and harassment in a court facility by judicial system personnel, related staff, or attorneys on the basis of race, color, sex, sexual orientation, national origin, age, disability, or religion. Procedures for filing complaints accompanied the policy. When the policy became effective on January 1, 2008,<sup>14</sup> Justice Cappy’s vision was realized.

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14. The policy is accompanied by a set of complaint procedures both for court employees and non-employees within a court facility involving the following: the Supreme Court, the Superior Court, the Commonwealth Court, Judicial Districts (Common Pleas Court judges, magisterial district judges, personnel of the system, and related staff in a court facility in a

The Chief's bold foresight is reflected in the attention the Inter-branch Commission has attracted, as his efforts have yielded what is admired nationwide as a creative and effective means to address gender, race, and ethnic fairness issues. Chief Justice Ralph Cappy had both the integrity and the will to make this vision real. He did this by creating the opportunity to put into place processes and procedures that are designed to ensure fairness.

I now take a moment to reflect on the personal side of Ralph. His was a robust personality with a quick wit and a hearty laugh. His friendships spanned wonderful men and women from all segments of society, from the Governor, senators, and judges to life-long buddies from 1950s-60s Pittsburgh, to young, insecure lawyers who never dreamed he would take the time to talk with them.

Ralph was a highly intelligent man. He addressed my class on Appellate Practice and Procedure on a few occasions at Duquesne University School of Law and easily moved from practical tips to scholarly appellate concepts, always clearly articulating his point. He had a mastery of the Court's jurisprudence, and carefully and completely could explain the evolution of the case law on a subject. Each student believed he cared immensely about the system and that he respected him or her, for every question was important and carefully addressed. His humor and goodwill allowed the very best in others to shine. He did not seek honors and awards, glory or accolades, although he received many. Rather, Ralph loved to create opportunities for others, particularly the younger members of the bar. He was at peace with the respect and the friendship he enjoyed from good men and women statewide.

That is not to say that Ralph had a comfortable experience as Chief Justice. Quite the contrary, his was one of the harshest trails any chief justice has walked. Ralph Cappy had powerful detractors in the Fourth Estate<sup>15</sup> and in political circles. The im-

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judicial district) and Administrative Offices of Pennsylvania. In addition, a computerized complaint form can be downloaded from the AOPC website. See Pennsylvania Unified Judicial System, <http://www.courts.state.pa.us/T/AOPC/NonDiscrimEEO> (last visited July 14, 2009).

The Grievance Committee also prepared a manual, entitled *Achieving Fairness through Bias-Free Behavior: A Pocket Guide for the Pennsylvania Courts*, which was distributed to all judicial districts and AOPC employees in March of 2009. It provides guidance to officers of the court and attorneys on how to avoid offensive conduct in the legal process.

15. *Editor's Note: The press. Attributed to Edmund Burke, it plays off of the Three Estates of French Parliament in the late 1700s. Members of the clergy were the First Estate, nobles were the Second Estate, and peasants were the Third Estate. Burke was believed to have looked at the Press Gallery of the House of Commons and said, "Yonder sits the Fourth Estate, and they are more important than them all."*

mense stress, I believe, took a toll on his health. In a sense, he was the lightning rod for all those who serve as judges in Pennsylvania. Yet, he continued to do his job as a superb judicial decision-maker and administrator of the state courts.

No one, neither the press nor his political detractors, can deny that he left this world a much better place because of his vision in so many facets of life.

Most definitely, Ralph Cappy—that wonderfully intelligent, generous, and caring man with a vision—succeeded, and all of us will reap the benefits of his success for years to come.