

State of the Judiciary
Chief Justice Thomas J. Moyer, Ohio Supreme Court
Message to Ohio Judicial Conference
September 10, 1987, in Columbus, Ohio

"Justice is the end of government. It is the end of civil society. It ever has been and ever will be pursued until it be obtained, or until liberty be lost in the pursuit."

With those words, James Madison, in Federalist Paper No. 51, urged his fellow citizens to ratify a piece of paper that had been signed by thirty-nine citizens on September 17, 1787. Two months earlier, on July 13, the Continental Congress, meeting in New York, adopted six articles of compact entitled "An Ordinance for the Government of territory of the United States, Northwest of the River Ohio." That document guaranteed to those who would leave their homes in the settled east and cross the mountains into frontier wilderness, religious freedom, trial by jury, judicial procedure, a writ of habeas corpus, a ban on slavery and the establishment of schools and encouragement of education. When delegates to the Continental Congress voted to adopt the Northwest Ordinance, they voted against the colonization of the west and voted for the orderly settlement of *our* nation's frontier.

As Franklin Roosevelt said of the Northwest Ordinance, it is "that third great charter *** the highway over which poured the westward march of our civilization *** the plan on which the United States was built." Indeed, thirty-one of our fifty states were settled and civilized under the provisions of the original Northwest ordinance and its amendments

The members of our earliest Congress knew, the delegates to the Constitutional Convention knew, that no society of people can be established and maintained in a peaceful and civilized manner without the recognition of fundamental rights in a government that reflects the general will of the people.

You and I are the beneficiaries of a two-hundred-year legacy that is shared by very few people in the history of the world. Henry Clay observed, "The Constitution of the United States was made not merely for the generation that then existed, but for posterity -- unlimited, undefined, endless, perpetual posterity."

As judges, we are not merely observers of these historical events. Charles Evans Hughes perceived, "We are under a constitution, but the Constitution is what the judges say it is, and the judiciary is the safeguard of our liberty and of our property under the Constitution."

The delegates to the Convention, having completed their work on all of the articles, then adopted a preamble which captured the sense of what they had done during the long, hot 1787. "We the people of the United States, in order to form a more perfect union, establish justice ***." We the people in order to establish justice.

Several of the longest and most precise Federalist Papers written by Alexander Hamilton and James Madison discussed the importance of an independent judiciary to the survival of the government and to the realization of the theory upon which the new government was to be

founded--that all political power comes from the people and that the people establish a government for the common good by adopting a Constitution giving to the government only that power that is necessary to achieve that end. For two hundred years, the people have permitted judges to interpret and apply the law to resolve their personal legal disputes and to, as James Madison said, "guard the society against the oppression of its rulers."

It is important for us to remember as citizens who hold positions of very sacred trust that we are, after all, only tenants in office. None of us has a hereditary right to the office we hold. The people can remove us from our office; the people can abolish our office; and, indeed, the people can discard the very documents that create the offices in which we serve.

There was a spirit in Independence Hall in Philadelphia in 1787. It is a spirit that shines today as a bright light across this great nation against which all of us in public office should measure our conduct.

Birthdays are celebrations of the past. They are also opportunities for introspection and planning for the future. What is the state of Ohio's judicial system? Are we doing our part to preserve for posterity the principles of the Constitution? Can we do better?

The state of the judicial system in Ohio is strong. If we were to rely only on statistics, any objective observer would conclude that most of you efficiently dispose of an increasing number of disputes that people cannot or will not resolve outside the court system. *I will not read numerous statistics from the 1986 Ohio Courts Summary because we find that the procedures for obtaining the statistics are in some instances incomplete or inconsistent, thereby making comparisons of limited value. Another reason is that you can read the report at least as well as I can. I would, however, like to highlight some aspects of the status of case filings and dispositions. Such information helps place in perspective the work that is being performed by most courts in our state.*

In the courts of appeals, the case filings have increased six hundred percent in the past ten years.

In all divisions of common pleas court, 30,000 more cases were filed in 1986 than were filed in 1985.

And in municipal court, nearly 14,000 more cases were filed during the same period.

However, the statistics that are of most interest are the comparisons of 1985 and 1986 in the number of cases pending beyond the Supreme Court guidelines. In most of the courts and in most of the categories of cases, there were fewer cases pending at the end of 1986 than there were at the end of 1985. While those statistics are impressive, our goal should be to reduce the numbers even further at the end of 1987.

In response to criticism of the Superintendence Report Forms from many quarters, I requested the Judicial Conference to review the forms and the manner in which they were being used and to recommend changes to the court. I also requested that the Judicial Conference review the standards for presenting judicial awards. I believe very strongly that we should not be giving

awards to judges who do not deserve them and that we should be recognizing judges whose performance justifies recognition.

I am pleased that Judge Alice Resnick is chairing the Judicial Conference Committee to review both of these matters and I look forward to receiving the report of her committee.

Some of you have particular burdens that we must address. Juvenile court judges are increasingly subjected to changing expectations of their responsibilities and authority. More children become victims of substance and alcohol abuse and of adults whose neglect and abuse are creating a new generation of lost youth.

Murder cases in which the death penalty is permitted place unusual burdens on some common pleas courts.

The Supreme Court itself is not without its case load burdens. At the current rate, filings of motions to certify and motions for leave to appeal will reach an all-time high during 1987 and our allowance of one hundred twenty-six new cases to date indicates that we will assume jurisdiction in a record number of cases for the court during this year. We will write something in excess of two hundred opinions this year, with a substantial increase projected in 1988.

I want to take this opportunity to publicly thank all of my colleagues on the Court. They have cooperated in establishing a working relationship that has enabled us to produce a substantial amount of work with appropriate attention to the professional standards that all of our citizens deserve.

This has been a year for the initiation of new ideas and the adoption of needed rules.

1. Docket Access

Last month we brought online "docket access" -- a marvel of the computer age that enables the justices and staff to press a button and have displayed on a computer screen the complete history of any case pending in the court. But that is just the beginning. We intend to eventually make that information available by computer to all of the courts of Ohio and to persons outside the court system who may have access to our information at a very low cost. Judge Badger in Knox County, Judge McMahan in Seneca County, the Akron Municipal Court and at least eight probate courts have a commitment to the use of computers that is an example for all of us to follow. Computers are no longer expensive toys that only our children and grandchildren understand they are a resource that can substantially increase efficiency and the dispersal of information in our court system.

I am convinced that the prudent use of modern technology can have an important impact upon the quality of justice in our state.

2. Disciplinary Rules

We recently completed the work begun by the Supreme Court in 1986 to strengthen our lawyer

and judge disciplinary system by further amending the Rules for the Government of the Bar and the Judiciary. Important changes include (a) streamlining the initial complaint review process; (b) the total removal of the Supreme Court from consideration of a complaint filed against a member of the Court; (c) a more independent disciplinary counsel; and (d) granting to the Board of Commissioners the authority to issue informal advisory opinions. That action demonstrates the court's belief that a peer review discipline system should provide the advice necessary to prevent violations of rules of conduct as well as impose sanctions when the rules have not been followed.

3. Child Support Enforcement Guidelines

We recently adopted guidelines for the awarding of child support. The guidelines were adopted in the face of a strong incentive provided by the federal government--the loss of \$20 million to the state of Ohio—if we did nothing. They reflect the hard work of a committee chaired by Judge John Leskovyansky that was appointed by my predecessor and continued by me. The guidelines are just that -- guidelines. They permit deviations where circumstances in a particular case warrant a deviation. I should also observe that the guidelines maybe amended by the court if that is deemed advisable.

4. Minimum Standards- Attorneys Representing Indigent Defendants in Capital Cases

Last month we published for public comment proposed rules that are intended to provide that attorneys representing indigent defendants in capital murder cases possess experiences and skills that are commensurate with the nature of the case. We have received many comments regarding these proposed rules and our staff is currently analyzing them in preparation for final action by the court.

5. Visiting Judges

Early this year I recognized that the assignment of visiting judges needed careful scrutiny. Most of you are aware by now that Judge Richard Markus is chairing a committee to review our procedures used in the assignment of visiting judges. Before the end of the year, the committee will recommend comprehensive guidelines to assure that our procedures for the assignment of visiting judges will withstand close scrutiny of those who are affected by such assignments.

6. Rent-A-Judge

In 1984, the General Assembly adopted R.C. 2701. 10, the so called II Rent-A-Judge Statute." It is time that we move ahead to implement the provisions of that statute. Yesterday, I appointed Judge James McMonagle of the Cuyahoga County Common Pleas Court to chair a committee that will propose guidelines to the Supreme Court to implement the statute. The General Assembly has given us a tool to be used to help relieve crowded court dockets where the parties agree to remove their case from a docket and to submit it to a retired judge selected by the parties. Retired judges will be able to perform services under the statute without losing their status as visiting judges.

7. Court Outside Columbus

If people are to maintain their confidence in the judicial branch of government, they must be given the opportunity to understand at least the fundamental workings of our courts. While much of the work we do as judges necessarily cannot be performed in full view of the public, we should, in this year particularly, be searching for ways to open to the public those parts of our proceedings that can be appropriately opened to them. You are aware of some of the steps the Supreme Court has taken toward that goal.

It is a pleasure today to announce that the Court has approved an ambitious program under which we will hold court in at least seven counties during the next eighteen months for the purpose of enhancing our citizens' understanding of the workings of the Supreme Court.

On September 2, 1788, the first court in the Northwest Territory opened in Marietta. Our first visit will be to Washington County on October 21 of this year. For the first time in recent history, the Court will sit not just in large cities. Our schedule will include Lima, Youngstown, Warren, Toledo, Cleveland and Cincinnati. It is the hope of the court that, during this two year celebration of two of the most important documents in our history, school children, lawyers and interested citizens will take advantage of the opportunity to remove some of the mystique from the workings of a very important institution.

8. Judicial Compensation

The Joint Select Committee to Study Judicial Compensation performed comprehensive and valuable work on behalf of Ohio's judges. As you know, the General Assembly was able to provide some of the increases recommended by the committee. During the course of their deliberations, I had several discussions with legislative leaders, and become convinced that they generally appreciate the importance of providing compensation to the judges of this state that will encourage good judges, who could enhance their compensation by leaving the judiciary, to continue being judges. I believe they also understand that adequate judicial compensation is necessary to attract the most highly skilled and experienced lawyers to the judiciary.

The Committee should be continued by the General Assembly in order that it may consider and make recommendations regarding the unique retirement conditions affecting many judges. Unlike other retirees in state service, many judges do not become members of a state retirement system until mid-life or later. The result is that they have not had an opportunity to accumulate the credits in the retirement system that most state employees accumulate. That condition should be changed.

9. Lawyer Continuing Legal Education

I am strongly committed to continuing education for judges and lawyers. Ohio is apparently the only state that requires judges or county governments to pay for such education for judges. There are better ways to be number one. Until we are able to provide a specific amount in the judiciary budget, we will demonstrate our commitment to judicial education by underwriting from our own budget some programs of the Judicial College. At the end of the last fiscal year, we

provided for the training of the Judicial College faculty at a cost of \$6,000. In the current fiscal year, we will be underwriting one of the Judicial College courses so that all judges may participate without seeking reimbursement from County commissioners or incurring the expense personally.

10. Merit Selection

Finally, a proposed Constitutional Amendment that would change the manner in which Supreme Court and Appellate Judges are selected in Ohio may be on the ballot in November. All of us can and should be well informed regarding the issue in order that we may be a source of information for those who seek our advice on matters affecting the administration of justice. I would hope that in giving such advice we would take seriously the observation of Learned Hand almost eighty years ago when he said, "Putting courts into politics and compelling judges to become politicians in many jurisdictions has almost destroyed the traditional respect for the bench."

There are many challenges that lie before us in the years ahead. I appreciate the understanding, cooperation and assistance many of you have given us these past eight months. I am determined, as I know most of you are determined, to place Ohio's judicial system among the most respected in the country.

Our oath of office requires each of us to make difficult, unpopular decisions. But it is precisely in the process of making those decisions that we continue to "establish justice" and thereby keep alive the one universal element in every free, civilized society -- the belief of the people that there is an institution that will protect them from the tyranny of government guard their liberties, enforce their duties to each other and apply the criminal laws. When you sentence a criminal, you establish justice; when you order child support and visitation rights, you establish justice; when you carefully instruct a jury, facilitate the settlement of a case, approve a contested account, or publish an opinion defining the meaning of the word "shall," you establish justice. You see, it is not just the landmark opinions interpreting the United States Constitution that give courts their standing in the minds of the people. It is the day-to-day resolution by courts of thousands of disputes affecting the lives of individuals that reaffirms the people's faith in our system justice.

Disraeli was correct; our young people are trustees of posterity. In every state, young people are engaged in writing contests that give them an opportunity to analyze and reflect upon the meaning of the United States Constitution. The most ambitious of those programs is the National Bicentennial Writing Competition in which 13,000 young people from our fifty states submitted essays on the importance of the separation of powers to our democracy. Ohio had the second highest number of entrants. One of our three winners came to this country in 1981 able to speak no English. Another of the winners said this in her essay, "*** History also shows that the Constitution's system of separation of governmental powers has successfully thwarted efforts [by a single branch of government to gather more and greater power unto itself] and that the United States Constitution at 200 years of age is lively, effective and viable in its capacity to protect its citizens from any internal governmental threats to their freedoms; just as its framers intended."

To represent the three winners and the other trustees of posterity in our state, I have invited one

of the winners, Cheryl Lea Clendenin of New Richmond, to be with us this morning.

I would ask that we all rise as Cheryl leads us in the Pledge of Allegiance to the Flag. I would like to do something that you perhaps have not done in the past when you have given your pledge of allegiance. As we utter those very familiar words, may each of us recommit ourselves to perform our duties in a manner that we may know that our conduct truly does establish justice for our generation and for posterity.