

State of the Judiciary
Chief Justice Thomas J. Moyer, Ohio Supreme Court
Message to Ohio Judicial Conference
September 7, 1989

Impressed with a conviction that the due administration of justice is the firmest pillar of good government, I have considered the first arrangement of the judicial department essential to the happiness of our country; and to the stability of its political system. Hence the selection of the fit test characters to expound the laws and dispense justice has been an invariable object of my anxious concern.

With these words, President George Washington expressed to Edmund Randolph the awesome responsibility he felt when, on September 24, 1789, he signed the Judiciary Act; giving him the responsibility to appoint the first justices and judges to the federal judiciary. The legislation implemented the United States Constitution and created a unique system of judicial federalism.

For 200 years, the state and federal systems have performed their responsibilities separately, but interdependently. In the beginning, there were only state constitutions, state statutes, and state courts, and it was in the state courts of our country that people developed confidence that the judicial system would protect them from the tyranny of government. Indeed, it was not until 1875 that lower federal courts were given authority to hear all federal questions, and not until 1891 that the Supreme Court of the United States had authority to review federal criminal cases.

Without question, the state courts have always played an important part in the development of the law in this country. In fact, approximately 95 million cases, or 90 percent of all the legal disputes in the country, are filed in state courts each year.

Two other interesting phenomena are occurring as we observe the bicentennial of judicial federalism. Increasingly, state courts are deciding important issues regarding individual rights on the independent and adequate state grounds found in state constitutions. Since 1970, state courts have issued more than 400 decisions in which they granted broader constitutional protection of rights than those granted by the United States Supreme Court under the federal constitution. And the United States Supreme Court itself is increasingly leaving more issues to state courts for resolution.

Indeed, the complex issues facing all of us as state court judges today seem far removed from the early, dusty days of those hardy judges riding circuit for endless months. In that historical context, I will now review some of the challenges, both old and new, facing our own state judicial system.

THE STATE OF THE JUDICIARY

It is my privilege to report to you on the state of the judiciary in Ohio. I am pleased to report that again, this year, whether we compare Ohio's judiciary to our own past performance, or to national statistics, we continue to make solid improvement. Regrettably, we must also

acknowledge the ominous storm clouds on our horizon that threaten to submerge us if we do not adequately prepare.

Judicial Caseload Statistics

A review of the most recent court statistics reveals several significant facts and trends.

In the county courts total filings and cases filed per judge have increased 25 percent over the past five years, while case terminations have increased 23 percent. After peaking in 1982, OMVI cases have decreased by 11 percent since 1984.

In 1988, the municipal courts experienced a four percent increase in filings and a five percent increase in terminations. However, the number of terminations over filings increased to a remarkable 219,416, or nearly 10 percent, up from eight percent the previous year. During the past five years, case filings have increased 20 percent and terminations have increased 24 percent.

After decreasing substantially between 1981 and 1984, felony case filings in municipal courts have increased 26 percent in the last five years. I will discuss the significance of that statistic later.

The 543,000 cases filed in all divisions of common pleas court last year represent a three percent increase. Fortunately, our common pleas courts have been able to increase the percentage of terminations over filings to nearly seven percent.

There are some interesting trends within the overall statistics for common pleas courts. From 1983 to 1987, personal injury case filings increased by 32 percent. However, in 1988, personal injury case filings dropped three percent, and, for the first time since 1983, terminations exceeded filings by six percent.

To no one's surprise, there has been an 18 percent increase in criminal case filings during the past five years. And, most significantly, last year alone, there was an 11 percent increase in criminal case filings in common pleas courts.

In the probate division of the common pleas' courts, case filings have declined over the last five years by about five percent. Or the first time since 1979, terminations of probate court cases in 1988 exceeded filings. We will be working with the Probate Judges Association during the next year to approve new adoption and guardianship forms.

Filings in domestic relations divisions have decreased by 17 percent over the last five years.

One of the storm clouds on our horizon is the statistic for juvenile case filings, which reveals an increase of 35 percent since 1984 and a five percent increase in the past year. In a few minutes I will place that statistic in context.

In the courts of appeals, filings for 1988 increased by a total of only 22 cases over 1987,

exceeding 10,000 for the first time. Those statistics indicate a significant variance in the filings by district. However, courts of appeals terminated three per cent more cases in 1988 than they did in 1987.

In the Court of Claims, strict enforcement in scheduling of cases has led to the disposition of a record number of civil actions filed against the state. The judges of the Court of Claims have been deciding cases at the rate of nearly two dispositions for every new filing. As a result, the number of pending cases is approaching minimum attainable levels.

In the first eight months of this year, nearly 2,600 victims of violent crime have filed claims with the Victims of Crime Division of the Court of Claims -- a 13 per cent increase over the same period during 1988. Pending cases for the same period were down 24 percent, producing an average time for determination of slightly more than six months. Almost six million dollars has been awarded to victims of crime in the first eight months of 1989, a result of more aggressive case management and public awareness activities regarding the availability of the reparations fund.

The work of the Supreme Court reflects the increased caseload which most of you have experienced. The seven justices of the Court disposed of a record 3,528 matters in 1988 which resulted in a 28 percent decrease in the number of cases pending in the last two years. The number of motions to certify continues to increase; there were 1,621 in 1988, an increase of 5.4 percent in two years. And, we have continued the trend of allowing more cases each year.

These statistics impressive as they are, do not, of course, reflect the severe pressures under which many of you perform your work - the agonizing process of imposing a sentence, or counseling a juvenile, or choosing between two compelling arguments. But they do indicate that when measured by the traditional standard used to determine judicial performance, you, the judges of Ohio, continue to carry your burden with remarkable commitment.

I would like to briefly review the status of several programs and initiatives that have been adopted, in large measure with your help, before I move to a discussion of a major challenge facing our court system.

Rules of Superintendence

As you know, earlier this year the Court adopted amendments to the Rules of Superintendence that will provide more accurate reporting of court dockets, give administrative judges more authority to supervise dockets, and provide for a classification of cases designated "Complex Litigation." The Rules, recommended by a Judicial conference Committee chaired by Justice Alice Robie Resnick, will be implemented January 1, 1990. We would appreciate your comments regarding the proposed reporting forms, and we urge your participation and the participation of your staff in the meetings that will be held to explain the Rules and form.

Child Support Guidelines

Of particular interest to judges with jurisdiction of child support cases is the unanimous adoption

by the Supreme Court of a termination date for the Child Support Guidelines. We acted on the unanimous recommendation of the Supreme court Advisory Committee on Child Support Enforcement, which concluded, in part as a result of certain activities of agencies of the federal government, that future revisions to the Child Support Guidelines involve policy considerations that should be determined by the General Assembly. The termination date of the Guidelines is October 13, 1989, but the Court has determined that it will consider appropriate action, if necessary, to prevent a lapse between the expiration date of the Court Guidelines and the effective date of legislation. Therefore, you should continue to apply the Supreme Court Guidelines until the legislation becomes effective.

Discipline of Judges and Lawyers -- Probationary Procedures

During the past year the Court amended Rule V of the Rules for the Government of the Bar to provide a formal mechanism for placing on probation lawyers and judges who are subject to disciplinary action. We see an increasing number of cases in which an attorney's misconduct is aggravated by his or her alcohol or substance abuse. Justice Craig Wright deserves much of the credit for urging the adoption of the Rule, which has become a model for other states. The purpose of supervised probation is to assist those who have been identified as needing help and who want to help themselves. I urge you to refer your colleagues and attorneys who have a problem with substance and alcohol abuse to the Lawyers Assistance Committee or, where the situation is aggravated, to a certified grievance committee.

Professionalism

For the past two and one-half years, I have emphasized the importance of professionalism among all participants in the judicial system: judges, lawyers, and court personnel. To this end, the Court has made major changes in the judicial and lawyer discipline system; adopted continuing legal education for lawyers, including an ethics and substance abuse component; clarified and strengthened the requirements for admission to the bar; and amended the continuing judicial education requirement. In January, the Supreme Court adopted a Code of Conduct for all Supreme Court employees; some of you have adopted a similar code for your employees.

This emphasis has also been reflected by the appointment of several committees to focus on various aspects of professionalism. In April, I appointed the Bar Examination Review Committee, chaired by Justice Herbert R. Brown. The Committee will examine every aspect of the bar examination to assure that the examination is fair and that it serves its intended purpose.

On August 25, the new Committee on Creeds of Professionalism met at the Supreme Court. The Committee will study various creeds of professionalism that are developing across the country. The creeds are intended to foster honorable conduct by lawyers in their transactions with one another and the bench, and to reduce instances of uncivil and unprofessional behavior. I look forward to the Committee's recommendation regarding the appropriate role of the Supreme Court with respect to the adoption of creeds of professionalism.

Bench-Bar Conference

Next year, this conference will have a new format. The 1990 Judicial Conference Annual Meeting will include a statewide bench/bar conference. After attending these meetings for a number of years, I believe that much of what we do here is of interest to; and can be enhanced by, the participation of leaders of the legal profession. The Bench-Bar Committee has started planning the program, and we expect to attract a keynote speaker of national prominence.

Education and Training

Many of you are aware of, and have encouraged, my interest in enhancing the court's role in the education and training of all members of the court family.

The Supreme court initiated an educational program for judges in 1973; the Judicial College began its work in 1976 and expanded its efforts to include referees in 1988. At the recommendation of the Board of Trustees of the Judicial College, the College is now part of the Supreme Court. The move will increase the resources available to the Judicial College. I have discussed with the Board and College staff my interest in increasing the number of course offerings and initiating new educational programs to the extent that the Judiciary budget permits. We will also continue to increase the number of course offerings for which no tuition is required.

Through a grant from the State Justice Institute, the College is continuing its teleconferencing program for court referees, under which referees from all over the state gather in nine locations and engage in interactive communications with a speaker at another location.

It is appropriate at this point to acknowledge the invaluable services rendered the College by the late Jim Young, and to express again our sorrow at his untimely death.

Our staff has participated in the creation of the Court Personnel Education and Training Committee, which includes representatives of the seven court-related personnel associations. The Committee has planned an extensive curriculum of courses to be offered in 1990. This is an important step toward enhanced education and training for people who play a vital part in the operation of our courts.

Eventually, all of the Court's education efforts should come under the aegis of the Judicial College.

People are the most important resource of our system, and we believe very strongly in the importance of education and training for all court personnel.

We are also interested in the education of our youth. Our off-site court program has provided an opportunity for 3,640 students to view the Court at work. We have also invited students from each Ohio law school to visit the Supreme Court and initiated a legal intern program at the Court.

This fall, the Court will hear oral arguments in Ashland County and Montgomery County, and in April 1990, we will visit Gallia County. To those of you who have made the experience even more than we had hoped it would be, I again express our gratitude.

We are also a major sponsor of mock trial and law-related education programs and have participated in Government programs of the YMCA.

Committee on Court Technology

Last week, I reviewed the interim report of the Supreme Court Committee on Court Technology, chaired by Judge Thomas Swift. The Committee recommends that the Supreme Court follow the practice of many other states and establish an Office of Court Technology with responsibility to:

1. provide staff support for planning;
2. identify emerging technologies;
3. serve as a clearinghouse of information;
4. conduct pilot projects;
5. provide training for court personnel;
6. provide technical consulting service to courts; and
7. develop computer software.

I have discussed with my counterparts in other states the functioning of their offices of court technology and am convinced that the recommendation of the Committee should be adopted. We are already working to obtain the funds required to create an effective Office of Court Technology by January 1, 1990.

The Committee recommends the creation of a permanent advisory committee to assist in making strategic policy and planning recommendations to the Supreme Court.

The Committee further recommends the adoption of a standard statewide case numbering system and the use of the Supreme Court attorney registration number as a universal identification number in every court.

Many of you responded to the Committee's survey of judges, clerks of courts, and court administrators to determine the status of technology in our courts. The response is clear there is a high level of interest in technology and a high expectation that the Supreme Court should exercise leadership in this area.

Technical Assistance Program

On a related issue, I wanted to mention the observation made by David Steelman, the Regional Director of the National Center for State Courts, about our Technical Assistance Program, which is in its second year. Mr. Steelman said that "no other state system has such a program" that coordinates research and consulting services and involves the state and the National Center in a cooperative effort. "This program has been praised by national leadership in court administration and is a model for other states to follow.

Dispute Resolution Committee

Last week, the Supreme Court Committee on Dispute Resolution held its first meeting. During

the past year, I have participated in seminars and panels, held informal discussions with other chief justices, and reviewed many of the materials regarding dispute resolution. I am convinced that our efforts will be fruitful.

Recently, Governor Celeste signed legislation creating a Commission on Dispute Resolution and Conflict Management. The Commission, composed of appointees from all three branches of government, will be a source of program funding and initiatives. The Supreme Court Committee on Dispute Resolution will have funds available to initiate pilot programs, evaluate successful programs, and create a comprehensive dispute resolution system that serves both courts and citizens. We want Ohio to be a leader in the search for methods to resolve disputes more efficiently, at less cost, and with greater satisfaction to the parties involved.

The Drug Crisis

Most of what I have reported to you thus far should give us all reason to be optimistic about the ability of Ohio's judicial system to meet the demands placed upon it by our citizens. However, our role as judges continues to evolve.

In the latter part of the 18th century, it was state court judges who met the people's demands for a fair system of justice. Those judges interpreted new constitutions and resolved important local disputes, such as the location of rail fences or the ownership of farm animals. Those judges often worked in inadequate facilities and with limited resources.

In the latter part of the 20th century, it is state court judges who continue to meet the demands of our citizens for resolution of their disputes in our justice system. But the judges in this century work on a frontier whose horizon is clouded with the phenomenon we all know as substance abuse. A torrent of drugs scrambles the brain cells of some of our most gifted and some of our most disadvantaged; deposits helpless, innocent, and unwanted babies of addicted mothers in maternity wards as a receding surf leaves behind pieces of driftwood; mows down 200 judges and seven Supreme Court justices in one tiny South American country; and, from human bodies and minds, rips away self-control, sound judgment, and the ability to function as a gale tears away a shoreline or sails from a ship.

The state courts in the latter part of the 20th century are left with the cleanup. They must deal with the problem described as "a plague upon the land"; "the worst domestic crisis in the history of our country"; and "the greatest war since the Civil War." As in most instances, we have had nothing to do with creating the problem, but we play a pivotal role in imposing the solution. Just as we prepare to meet a storm created by nature, we must prepare to weather a wave of human tragedy if we are to keep from being awash with the legal residue.

What is the nature of the problem facing us? Let us look at its national perspective first.

1. Two nights ago, the President of the United States began his message to the people regarding his drug policy with a reference to the strain being placed upon our legal system by the illegal use and sale of drugs.

2. A research survey published by the National Institute of Justice reports that in 14 major cities, between 54 and 82 per cent of men arrested for serious offenses tested positive for use of illicit drugs.

3. At least 45 per cent of those arrested and charged with violent crimes or income-generating crimes tested positive for use of one or more drugs.

4. Cocaine used by persons arrested in Washington, D.C., more than tripled from 18 percent in 1984 to 62 percent at the end of 1988.

5. Perhaps a more ominous statistic is that 70 to 80 percent of all juveniles involved in criminal acts do so while using alcohol or drugs.

In April of this year, representatives of court systems of the nine most populous states met in Philadelphia to prepare a proposed judiciary response to the drug crisis. Ohio was represented by Judge Leo Spellacy, Judge Charles Petree, Hamilton County Court Administrator Mark Schweikart, and my administrative assistant.

The symposium has issued a final report with important observations and recommendations. I will summarize the most important before moving to an assessment of the problem in Ohio.

1. Across the country, campaigns to reduce drug supply and demand through vigorous enforcement of tougher drug laws have been mounted without considering the impact of such actions on the courts.
2. The basic responsibility of the judiciary with respect to drug cases is no different than that performed in any other category of criminal offense -- to determine guilt or innocence of the accused through timely and fair procedures and to sentence in accordance with the law. Most trial courts are being overwhelmed by drug cases or cases involving drug-related crimes.
3. There is a need for comprehensive drug data to provide information on a regular and standard basis.
4. Juvenile and family court judges reported: (a) an increase in drug-related crimes, resulting in more young people being involved in violent crimes; (b) an increase in dysfunctional families due to parental addiction; (c) an increase in child abuse and neglect cases; and (d) the most depressing phenomenon children on their own or with parental encouragement becoming involved in the drug business either individually or as part of juvenile gangs.
5. The flow of drug cases into the court system is like enlarging the receiving end of a funnel while the neck of the funnel remains the same size. Law enforcement personnel can sweep drug cases into the courts, but each defendant requires the same individual attention and careful processing through a complicated panoply of legal procedures.
6. In some states, court officials are predicting a breakdown of the system if solutions are not found soon. Some courts are diverting judges from civil to criminal calendars and have made

other administrative changes, but they still appear to be overwhelmed.

7. The participants recommended more judges, more court staff, more probation officers, more prosecutors and public defenders and respective support staff, a broader range of sentencing alternatives, much more coordination between government agencies within the states and between the states and the appropriate federal agencies, and a greater role for judges in educating their own communities about the problem from the judicial perspective.

Responding to the recommendations of the nine state symposium and the reports of chief justices, the National Conference of Chief Justices, at its summer meeting, adopted a resolution providing for the creation of a task force to establish liaisons at the national level to assure coordination of federal funds with the states; to expand priority funding efforts in the production of case management systems; to develop effective sentencing and sanction programs and alternatives to incarceration; to provide a formal system of sharing effective strategies; and to convene a national conference that will bring into focus the impact upon state judicial systems of the drug abuse problem.

That is an overview of some of what is occurring nationally. The irony of all of this activity surrounding a national crisis occurring during the 200th anniversary of judicial federalism is that it is the state courts that will bear the full impact of the storm.

At this point, I would be presumptuous to suggest a solution for Ohio. But what I do know is that we must not be overwhelmed by the problem. Every storm ends with a small band of light on the horizon and, as the light increases, the fear of the storm diminishes. You and I must watch for the small band of light that will appear. We do not know whether our watch will last for five years or a generation. We are met daily with feature stories about the ravages of crack, interstate highways as passages for drug traffickers, a judge's frustration as he tells the community that crack is totally controlling the court system, and juvenile judges who have no rehabilitation centers to which they can send youthful offenders. The Ohio Department of Youth Services reports that 70 to 80 per cent of all juvenile criminal offenses are alcohol or drug related. In 1987, Lucas County committed four crack/cocaine youth to the Department of Youth Services; at the present rate, 144 will be committed in 1989.

Ohio reportedly is incarcerating more young people than any state, except for California and Florida, with almost 2,000 in state facilities that have a capacity of 1,300. Between 1986 and 1988, there was a 635 per cent increase in drug offenses among youth. It is estimated that it costs \$30,000 per year for each child in secure care.

Judge Spellacy predicts that, in Cuyahoga County, felony cases will increase by 1,800 this year. In Franklin County and other counties, the time spent by a common pleas judge on criminal matters has increased from 15 per cent several years ago to 60 to 65 per cent. That statistic reflects the fact that in Ohio because of our speedy trial statutes, drug-related cases are being disposed of expeditiously they are not falling between the cracks. Rather, it is the civil cases that are being delayed. The substantial increase in felony prearrangement filings in municipal courts is due in large measure to the filing of drug possession charges.

To be sure, the Ohio court system is inundated with drug and drug-related cases, but we are not yet under water. What shall we do? How do we weather the storm?

1. The President has offered some hope in his recognition that the real fight is waged in the states, and that it is the states that will receive a substantial portion of the federal funds being made available.

2. Last week, Governor Celeste, the Lieutenant Governor, the Attorney General, and I discussed plans for a statewide meeting to be hosted by us and the House Speaker and Senate President for leaders throughout Ohio who must deal with the drug abuse crisis. Ohio must develop a nonpartisan, forceful, effective program of education, treatment, law enforcement and judicial action. The meeting, to be held late in October, will be an important first step toward that goal.

3. While every judge in Ohio has a sense of what is needed in his or her court, we do not yet have good information regarding the depth or nature of the impact on our judicial system. I am therefore appointing Justice Craig Wright to chair a committee composed of representatives of our judicial system. The committee will prepare a report for the Court, the Governor, and legislative leaders identifying the precise nature of the impact upon our courts of the drug abuse crisis. It will also recommend a plan of action. As a former city solicitor, common pleas judge, member of the American Bar Association Commission on Impaired Lawyers, and as someone with a personal commitment to helping people with substance abuse problems, Justice Wright is the most qualified person to chair such a committee. The committee will be formed in the next several days, will meet expeditiously, and should produce a report by early next year.

4. We should not forget that there are programs and other successful efforts that can be duplicated throughout the judicial system. The SAC (Special Achievements Council) program in the Franklin County Probation Department, and a similar program in Hamilton County, which provide close supervision of offenders with drug and alcohol problems, has produced success ratios far in excess of standard probation programs. Therapeutic incarceration has been used effectively for the so-called casual user, and funding for juvenile rehabilitation programs that have proven successful appears to be available in amounts not previously even discussed. No one can estimate the value of public awareness and attention to the problem.

Finally, there is no way to measure the resolve each of us has to see the first ray of light as the storm moves on. There is help. You should have hope. The Ohio judicial system will weather the storm.