

State of the Judiciary
Chief Justice Thomas J. Moyer, Ohio Supreme Court
Message to Ohio Judicial Conference
September 6, 1990

"The judicial department comes home in its effects to every man's fireside; it passes on his property, his reputation, his life, his all. Is it not to the last degree important, that he should be rendered perfectly and completely independent, with nothing to influence or control him but God and his conscience?"

That observation of Chief Justice John Marshall in 1829 articulates the fundamental principle upon which the state and federal court systems are founded in this country.

Two hundred years ago, in February 1790, the United States Supreme Court met for the first time on the second floor of the Royal Exchange Building, across from the Fulton Fish Market in New York City. That date marks the beginning of judicial federalism in the United States. A federal court system had been created in the Constitution to resolve issues that would arise by the very fact that the individual states were leaving their loose confederacy to form "a more perfect Union."

During this same time in our history, citizens of the states also were debating and beginning the process of ratifying the first amendments to the United States Constitution, the Bill of Rights. Indeed, 1790 was a momentous year in the history of the judiciary of our nation.

In 1990, we continue to wrestle with the shifting balances inherent in a system of two sovereignties as other countries struggle to adopt constitutional democracies.

The issue of jurisdiction has produced countless opinions and articles. If only it could be as simple as Oliver Wendell Holmes saw it in his story about the portly Ohio justice of the peace who owned a farm, with a fence running along the Ohio-Indiana boundary. Like many others who held that office, this fellow had an inflated appreciation of his responsibility, and he never lost an opportunity to exercise his authority to demand that the peace be preserved.

One day he observed his son and a hired hand fighting on a stretch of the farm near the boundary fence. The justice of the peace rushed out and leaped onto the fence. From this commanding position, with his head held high, he imperiously shouted, "In the name of the state of Ohio, I demand the preservation of the peace." Just then the fence gave way under his weight, and as he toppled over the boundary line into Indiana, he shouted, "Give him the devil, son, I've lost my jurisdiction."

To give us a more erudite and useful analysis of judicial federalism, I have asked the Honorable Alan E. Norris to share a part of my time on your program to give his views on the occasion of the bicentennial of our dual judicial system. Judge Norris is uniquely qualified to offer a balanced, objective view. He served fourteen years in the Ohio General Assembly, where he sponsored the Divorce Reform Act and legislation creating Ohio's Criminal Code and small claims courts. He served nearly six years as a judge of the Tenth District Court of Appeals

before his appointment to the Sixth Circuit Court of Appeals. He is a student of the law, and it is my privilege and personal pleasure to introduce to you Judge Alan E. Norris.

Justice Louis Brandeis, analyzing federalism, observed that the states serve as laboratories of democracy where "a single courageous state may try novel social and economic experiments."

In 1832, the Supreme Court of Ohio expressed its view of the essence of the relationship between the federal and state courts when it stated, in Sellers v. Corwin:

"It is unquestionably the province of the tribunals of the Union to expound the constitution and laws of the Union as applicable to themselves; and with this it is neither our wish nor purpose to interfere. We shall always feel gratified to find the decisions of those respectable tribunals, upon the grave and important questions before them, in perfect harmony with each other. We have no desire either to arrogate to ourselves power that does not belong to us, to surrender any that does, or to detract from that of other tribunals." Sellers v. Corwin (1832), 5 Ohio Reports 399, 407-408.

In 1990, the Supreme Court of Ohio accepts state issues certified to it from federal courts -- a recognition of each court's jurisdiction. The list of attorneys certified under our Superintendence Rule 65, requiring court-appointed attorneys in capital cases to satisfy training and experience requirements, is being used in the assignment of counsel in federal courts. These are examples of ways in which federal and state court systems can work together to reduce the inherent contention between them and to improve our legal system.

THE STATE OF THE JUDICIARY

I am pleased to report to you again this year that the judicial system in Ohio is stronger, busier, and more productive than at any time in history. We continue to make solid progress as we improve our judicial system and move toward our goal to make Ohio's court system the best in the nation. A number of the programs that are now in place have begun to produce results. The state of the judiciary is in large measure a report on your work -- the accomplishments of more than 700 active and retired judges and outstanding court personnel.

JUDICIAL CASELOAD STATISTICS

A brief review of the statistics for our state court system is revealing. The most recent Ohio Courts Summary indicates that a record 3,163,099 new cases were filed in Ohio's courts in 1989, not including 1,415 cases in the court of Claims. This is an average of 4,735 new filings for each of the 668 judges in Ohio, nearly 400 more cases per judge than were filed at the beginning of the decade in 1980. In fact, substantially more cases are filed in Ohio's courts each year than are filed in all of the federal courts. Overall, including pending cases from 1988 and reactivated cases, more than four million cases were before our courts during 1989, nearly 85 percent of which were terminated before the end of the year.

A record number of new cases were filed at every level except the probate division and the Supreme court, which achieved an all-time record in 1988. The general division of courts of common pleas saw the largest increase in new filings of any of the courts -- eight percent.

These statistics are even more impressive considering that the total judicial budgets (Supreme Court, Judiciary, Court of Claims, and Judicial Conference) make up only one-half of one percent of the total state budget. At the county level, the court budgets constitute only 2.4 percent of the budget. To the extent that these statistics measure judicial performance, it is clear that most of Ohio's judges continue to perform their responsibilities diligently in an underfunded system.

But the accomplishments of the past do not ensure success in the future. We must continue to improve – search for new ways to meet the challenges

Many of you are doing that. I would like to mention a few of the efforts that demonstrate this point: (1) the highly successful night prosecutor programs in Hamilton, Cuyahoga, and Franklin Counties; (2) the night court sessions in six cities; (3) the Huron county common Pleas judge who took office facing a substantial backlog of cases and who has reduced the cases over the Supreme Court guidelines from 450 to 79 in one year by assuming control over his docket with docket calls and firm discovery and trial dates that require lawyers to move cases; and (4) the judges who share assignments so that hearing dates and trial dates are not continued.

THE IMPACT OF SUBSTANCE ABUSE ON THE COURTS

The most difficult challenge facing many of our courts, particularly those in metropolitan areas, continues to be the management of caseloads created by the drug culture. The 25-member Committee to study the Impact of Substance Abuse on the Courts, chaired by Justice Craig Wright, produced a comprehensive report in only four months. Of the 27 recommendations, 12 have been fully implemented; seven others have been partially implemented; and most of the others remain under consideration, but will require additional local, state, or federal funding.

Most significant are the amendments to the Rules of criminal Procedure and the Rules of Evidence that permit the use of magistrates to dispose of many routine criminal matters. I am pleased to have received reports that the use of magistrates is serving the desired purpose. In July, the court approved for publication amendments that would permit trial courts to modify the individual assignment system to assign judges to separate criminal and civil dockets. Other proposed amendments mandate the establishment of case management programs in each court, require specialized education for juvenile court judges in the area of substance abuse, and revise the statistical reporting forms to require separate reporting of drug cases, similar to the manner in which OMVI cases currently are reported.

Last spring, the Judicial College interrupted its regularly scheduled program of education to provide a special course on case management. The General Assembly created a sentencing commission; supported the establishment of community task forces to combat the drug crisis on a local basis; required compilation of a directory of treatment alternatives for the courts; and responded to our recommendation to make several changes to assist courts in disposing of juvenile substance abuse cases.

Once again, I thank those of you who served on the Committee. Your report is being used as a source of information by the National Center for State courts and by a number of my

counterparts in other states.

DISPUTE RESOLUTION

Our efforts in the area of dispute resolution have evolved more slowly but have been equally successful. In August of last year, the Supreme Court Committee on Dispute Resolution held its first meeting. In the fall, the new Ohio commission on Dispute Resolution and Conflict Management was organized. One of the four appointees representing the judicial system chairs the Commission.

The efforts of the Committee are also producing tangible results. The Committee has secured grants from the state commission of more than \$107,000 to fund five important programs: (1) a child custody and visitation mediation model in summit county; (2) a mediation program modeled on night prosecutor programs for small and medium sized municipal courts; (3) a model program for mediation of juvenile assaults in Montgomery County; (4) a grant for training attorneys in settlement week and early neutral evaluation concepts; and (5) an evaluation of the Cuyahoga County court of Common Pleas mediation program.

In addition, there are a variety of other programs initiated by courts and others interested in dispute resolution. For example, a program in the Tenth District Court of Appeals that has produced a settlement rate of 56 percent of targeted cases; a domestic relations program that successfully mediates 38 percent of referred child custody and visitation cases; numerous small claims mediation projects in several municipal courts; well-established arbitration programs in many counties; and the growth of settlement week programs, all attest to the strong and growing interest in dispute resolution in Ohio's courts.

I anticipate that within the next year the Committee on Dispute Resolution will propose rule amendments that will begin to weave dispute resolution into the fabric of our judicial system. Ohio is a national leader in the search for methods to resolve disputes more efficiently, at less cost, and with greater satisfaction to the parties involved.

COURT TECHNOLOGY

Court technology is an area in which, a few years ago, we talked about plans for the future. Today, we report results.

The size and complexity of your caseloads make access to the right information to the right person at the right time a growing challenge. The ability to create, store, and retrieve information is critical to the success of any organization, and the courts are no exception. The administration of justice necessarily includes custody over records of great importance to the general community.

At the recommendation of our technology advisory committee, the Office of Court Technology and Services was established in January. The Office has made substantial progress.

Personal Computer Software

I am pleased to announce that today we have a demonstration of software developed by the

Office of Court Technology that will allow you to use a personal computer to assist in the management of your pending cases and preparation of statistical reports. This software incorporates the key elements of successful case management.

The software tracks case-related data for the statistical reports, and also helps to schedule cases, track outstanding motions, and maintain attorney information. It is an important first step toward the development of comprehensive case management software for the trial and appellate courts in Ohio.

Supreme Court Data Network

I am also pleased to announce the Supreme Court NETWORK, which is a major step forward in providing judges and court personnel with a mechanism to receive and send information electronically. The Supreme Court distributes a number of documents through the mail or through publications that will now be accessible electronically to judges and court personnel with a personal computer, a modem, and a telephone line. This network will allow instant access to supreme Court decisions, announcement lists, rule proposals, and other items of interest. Eventually, the network will allow courts to communicate among themselves electronically.

Issues Tracking

Last week, the Court directed our staff to put on-line our new issues tracking system, a computerized index of key words and phrases that permits the researcher to search for legal issues and cases pending before the Supreme Court. In our pilot project, the appellate courts will be able to access this system using the telecommunications connection they already have with the Supreme Court. We expect that the system will greatly assist appellate judges in determining what issues are before the Supreme Court.

Court Technology Conference

The nation's first statewide court technology conference will be held on November 14 and 15 in Columbus. This conference promises to be informative and helpful to judges and court personnel interested in various aspects of court automation. The conference will feature exhibits that will allow you to explore various aspects of court automation. Today's demonstration is just a sample of the type of exhibits that will be part of the conference.

Juvenile Data Network

Presently there is virtually no electronic exchange of juvenile case information between juvenile courts and the other components of the juvenile justice system. The Supreme Court expects to receive a juvenile justice grant of \$44,000 to begin work on the Juvenile Data Network. The first phase of this project is to identify the basic internal information needs and the external reporting requirements. This will lead to the development of computer software for the juvenile courts. The initial part of the project will take one year, and I am looking forward to a successful collaborative effort among the juvenile courts, the Office of Court Technology, and the Ohio Department of Youth Services.

Financing Court Technology

It is no longer a question of whether courts should automate; the question is how we finance the application of modern technology to a court system. Financing has been and continues to be a major issue. Some courts have successfully secured local - funding, but most have not. Some courts have levied court costs to acquire systems that go beyond the notion of “computerized legal research” mentioned in Section 2303.201 of the Revised Code.

The Judiciary budget that we will submit to the General Assembly for the next biennium will include a request for substantial funding to speed the development of comprehensive court automation systems, with a goal of making every court as electronically efficient as it can be.

LAW LIBRARY

In a related area, SCROLL, the acronym for the Supreme Court Research On-Line Law Library, is now in place. The foresight of my predecessors and the efforts of our Law Librarian and his staff have produced the largest state supreme court law library in the nation, with more than 300,000 equivalent volumes. Now, with the application of modern technology, any judge, lawyer, or researcher can access the library's card catalog from anywhere in the state. our library is the first state supreme court library in the country to be fully automated. I urge you to take advantage of this exciting new development.

ADDRESS TO THE OHIO GENERAL ASSEMBLY

On February 14, I was privileged to represent the judicial branch of government in a historic event -- the first address to the Ohio General Assembly by a Chief Justice on the state of our court system. You should be pleased to know that many legislators commented on the impressive statistics and the amount of work performed by Ohio's judges. And yesterday Senator Aronoff urged me to tell you that the information regarding the drug crisis in the courts greatly assisted the General Assembly in drafting drug abuse legislation.

BENCH-BAR

Many of the challenges facing Ohio's judicial system require diligent and creative efforts of judges and lawyers working toward common goals. Yesterday, we held the first-ever statewide bench-bar conference sponsored by the organized bar and the judiciary. The initial reaction to the conference is positive.

As we work daily to meet our constitutional responsibilities and preserve our independence, we should be mindful of events outside Ohio that have a direct impact upon us.

PULLIAM v. ALLEN; S. 590

To protect judges against payment of damages, court costs, and attorney fees arising from suits brought against them under 42 U.S.C. 1983, we currently provide judicial liability insurance at an annual premium of \$540,000 from the Judiciary budget. Since the announcement of the decision in Pulliam v. Allen in 1984, national judicial and legal organizations have been working with, and been frustrated by, the U.S. Senate Judiciary Committee in recommending legislation that will provide immunity to judges from such liability. For the first time, the Senate Judiciary Committee recently recommended passage of Senate Bill 590, which will provide relief from

liability and will also restrict the conditions under which a federal court may enjoin a state court from acting. The bill is important to preserve the independence of judicial decisions, and I urge the Judicial Conference to formally express its support for the legislation, as you have in the past.

LIFE-SUSTAINING MEDICAL TREATMENT DECISIONS

Some of you have faced, and many more of you will face, decisions regarding the withholding of life-sustaining medical treatment. The National Center for State Courts and the Conference of Chief Justices are participating in a multi-disciplinary council that is preparing guidelines for state court decision-making in authorizing the withholding of life-sustaining medical treatment. The sixth draft produced by the committee, which will be followed in the near future with a final draft, is an extremely helpful document that will provide guidance on all of the issues to be considered. When the final draft is approved, we will provide copies to you.

OTHER FEDERAL ISSUES

Of course, another bill whose future is unpredictable at this time is H.R. 3406, which would significantly change diversity jurisdiction in federal courts, thereby making state courts the forum for many more disputes.

Judges in Ohio and in other states continue to look to the National Drug Control Strategy for help in responding to the drug abuse crisis. At a time when the federal government is deferring to the states to solve problems, we must recognize, as does the Anti-Drug Abuse Act of 1988, that the war on drugs is a national battle. Coca leaves do not grow in Ohio cities; it is not Ohio's Navy and Coast Guard that attempt to interdict the flow of drugs to this country; the Crips, Bloods, and other gangs were not born in Cleveland, Toledo, or Dayton. With five to six percent of the world's population, the United States consumes 60 to 70 percent of all illegal drugs. The Office of National Drug Control Policy reports that more than 50 percent of the people in drug treatment are there because a court has ordered them to undergo treatment.

The war is being fought in virtually every courthouse in the country, where judges make decisions, one by one, affecting the lives of victims, users, and traffickers. Yet, in the last two years, only 2.4 percent and three percent of formula funds allotted to the states under the President's National Drug Control Strategy have found their way to the courts. All such funds now flow directly to the Executive branch, with no guarantee that the court system will receive any amount. For this reason, a task force, on which I serve, has been urging William Bennett, Attorney General Thornburgh, and Congress to recognize that the war against drugs will not be won if the courts are overrun with drug cases. We are making progress that we hope will produce tangible results in Ohio. At a meeting with Attorney General Thornburgh in July, we were assured that he recognizes the vital role of state courts, and he agreed to consider our suggestions. Last month at our Chief Justices' annual meeting, a resolution was adopted to press Congress and the Attorney General to require that each state's chief justice approve the allocation of any funds flowing to the state from the National Drug Control Strategy.

The countless babies and children presently addicted or living in homes where parents are addicted to drugs are ominous clouds on our horizon that will surely rain down massive legal

and social problems five, ten, and twenty years from now. Chief justices and state court administrators have formed a committee, which I have agreed to chair, to organize a series of regional conferences, followed by a national meeting of members of the justice community and educational, treatment, and social service agencies, to begin long-range planning for the problems we in the justice system must anticipate as a result of the drug epidemic.

EASTERN EUROPEAN INITIATIVE

Finally, I would like to share with you an idea for a bold, new venture on the part of the bench and bar of Ohio. Two hundred years ago, James Madison, Alexander Hamilton, Benjamin Franklin, and other wise men persuaded our forefathers to adopt an independent judicial system to guarantee individual rights and the peaceful resolution of disputes.

Two hundred years later, we have an opportunity to share this remarkable legacy with millions of people of Eastern Europe and the Soviet Union, who now desire to live under a constitutional democracy with an independent judicial system founded upon the fundamental principles we have all sworn to uphold.

Later this month, I will be meeting with a group of judges and lawyers to discuss an exciting new project for the Ohio judicial system. While the plans are still conceptual, I wanted to share them with you at this stage to generate your reaction, and, I hope, your active interest.

Most of the countries of Eastern Europe, and indeed now the Soviet Union, are keenly aware, as were Hamilton and Madison, that if they are to create a democratic society in which people live out their lives in relative freedom, they must establish a judicial system that is fair and independent -- a judicial system that generates the belief in the minds of Hungarians, Czechoslovakians, Lithuanians, and Russians that justice is not just an aspiration but the responsibility of a government institution.

The idea is not mine. Judge James Kimbler and others suggested to me some time ago that Ohio, with its established ethnic communities, nine law schools, and a strong judicial system, is an ideal state to invite to Ohio those persons in Eastern European countries who will be responsible for establishing their judicial system. They will study our system -- have hands-on experience in our courtrooms, in our clerks' offices, and in our law school classrooms -- that they may secure the knowledge and experience that will enable them to realize their dreams for an independent judicial system as we have realized ours. The State Department and others have indicated such a project will be well received in Eastern Europe.

Quite by coincidence, the Chief Justices of the 50 states enjoyed an opportunity three weeks ago to participate in a historic occasion at the annual meeting of the National Conference of Chief Justices. At the podium during one of our sessions stood the Attorney General of the United States and the Minister of Justice of the Soviet Union, Veniamin Yakovlev.

The Minister had been sent here by President Gorbachev to learn firsthand about our justice system as the Soviet Union attempts to establish an independent judiciary. The Minister had three general questions to which he wanted our response -- federalism, stare decisis, and

maintenance of our independent judicial system.

The Soviets are intrigued by our independent judiciary. They understand its fundamental importance to the establishment of a constitutional democracy. I was fortunate to be able to talk with Minister Yakovlev at length. He is looking forward to receiving from us a proposal that would give us the opportunity to host those in the Soviet Union who are responsible for the planning and establishment of a new judicial system. Nowhere in the country is our complicated experiment in democracy better managed than in Ohio's courts.

Another need of the Soviet Union is for a library of great legal works translated into Russian. Minister Yakovlev knows of the Federalists Papers, but I was told there is not one copy of the Federalists Papers in Russian in the Soviet Union. As he observed, "You [the United States] have had 200 years of experience with democratic institutions, and that is 200 years more than we have had."

You may ask why we should be concerned about the judicial systems of other countries. If you believe as I do that, we are all more secure in a world that believes in the rule of law, then the answer is apparent. I can think of no country with a judicial system founded upon the basic principles upon which our system is founded that is our adversary. May we have the foresight to step outside our world and give to the people of other civilized nations the gift of a democratic, independent, and impartial judicial system.

We realize the significance of our experiment in democracy is so vast and so profound that it sometimes challenges understanding. It was placed in very simple words in a story related by the Governor of New York from the celebration of the 100th anniversary of the Statue of Liberty. An 88-year-old man stood on the deck of a ship in the middle of New York harbor next to the President of the United States. As a young immigrant in 1921, he had passed through Ellis Island with his wife and nothing but hope and good health. As he stood on the deck of the aircraft carrier surrounded by thousands of boats, with flags and bunting and blaring horns, he watched the spectacle of the nation's 210th anniversary of the Fourth of July. The immigrant was asked what he thought of it all. He said, "Too big for words, you have to feel it in your heart. God, it's a miracle."

I thank each of you for the part you play every day in making real the miracle.