

State of the Judiciary  
Chief Justice Thomas J. Moyer, Ohio Supreme Court  
Message to Ohio Judicial Conference  
September 5, 1991

Thank you for giving me the privilege of making my fifth report to the Ohio Judicial Conference on the state of the judiciary. The year 1991 has been a year of momentous and historic events, from the tumultuous changes in Eastern Europe and the Soviet Union to our quiet and reflective observation of the bicentennial of our Bill of Rights.

Alexander Hamilton observed, upon the adoption of the first ten amendments to the United States Constitution in 1791, "The sacred rights of mankind are written as with a sunbeam and the whole volume of human nature by the hand of the divinity itself and can never be erased or obscured by mortal power."

As people in other parts of the world struggle to enjoy the sacred rights of mankind, we, on December 15, will observe the bicentennial of the 464 words that make up the Bill of Rights. We know from our own history and have been reminded by the dramatic evolution occurring in the Soviet Union today, that those rights can be obscured by mortal power but can never be erased from the human spirit.

When Thomas Jefferson attempted to persuade James Madison of the need for a bill of rights, he said that its real value was "the legal check which it puts into the hands of the judiciary," and that the judiciary, as an independent branch of government, would consider itself to be "the guardians of those rights" and a "bulwark against every assumption of power over them in the legislative or executive branches." Indeed, it has.

This year, as many of the world's citizens in other countries seek for themselves what we too often take for granted, a review of the state of Ohio's judiciary, the "guardians of those rights," carries particular significance.

I am pleased again this year to report that the state of the judicial system in Ohio is stronger than ever. This strength, born of successful responses to the challenges we face, bodes well for the future. This report, in large measure, is about your work -- the efforts of the 685 sitting judges, 132 active retired judges, and thousands of court personnel throughout the state who continue the legacy passed to us by the founders of our nation. I also commend the Ohio Judicial Conference and current president Judge Alba Whiteside for their continuing efforts to improve the administration of justice in our state. The new structure of the Conference, which has included nearly half of the judges in Ohio in active committee work, will provide invaluable assistance as we meet the challenges that lie ahead.

MEETING TODAY'S CHALLENGES

As we look to the future, we must recognize the difficult problems with which we are confronted today. Most significant are burgeoning caseloads and the tightest state budget in the last decade. As I indicated last year, these conditions make it critical for us to manage our caseloads more efficiently and continue to improve court operations.

### BUDGETARY CHALLENGES

Arnold Toynbee observed that we "begin to grow by successfully responding to successive challenges." The current biennial budget presents a challenge as great as any we have faced for at least a decade.

As we worked with the Governor's office and leaders of the General Assembly in their difficult job of allocating scarce resources, we were mindful of a fundamental fact -- that one of the basic reasons we have government is to provide justice. Since the beginning of recorded time, men and women have come together to define acceptable conduct, protect the rights of the weak, and allow each person to predict the consequences of their actions -- in other words, to create a system of justice. Justice and its availability to every citizen is integral to our society but, remarkably, although the judicial branch provides one-third of our government's function, the operations of the judicial branch receive only about three percent of total state and local government budgets. I would submit that Ohio's court system is one of the taxpayers' best bargains. We operate on a thin margin. We cannot reduce our expenditures by refusing to accept new case filings or telling litigants to try filing again next year when we may have more time for them. We cannot declare that no more family law matters will be heard for the rest of the fiscal year or that only persons who are able to pay ay appear in court.

In March of this year, I attempted to forestall the most serious implications by instituting a budget reduction goal of 2.3 percent for the duration of Fiscal Year 1991. Our action included some strong medicine: reductions in the use of assigned judges, freezes on out-of-state travel and hiring, and reductions in library and computer purchases at the Supreme court. We also pared our Fiscal Year 1992 budget requests to the General Assembly by 6.1 percent for the Supreme court and 3.5 percent for the Judiciary. We have the leanest state budget in years. I appreciate the cooperation all of you have given us in this task.

Fortunately, the Governor and General Assembly recognized our efforts and approved our proposed budget. They also understand that we are not "another state agency," but a separate branch of government charged with constitutional duties for all our citizens. Having said that, we must also recognize that judicial independence can, and indeed must, coexist with judicial accountability. You, too, are managing your courts under fiscal constraints. The real threat of courts closing will require all of us to work together.

Deserving special mention is our effort to scrutinize the use of assigned judges. Last year, the Court spent \$1.3 million in payments to or for assigned judges. This year, the sum will be even higher. While retired judges provide vital assistance to the management of cases, we must balance competing interests. Therefore, we are continuing the policy of asking each court to use sitting judges for at least 50 percent of judge assignments.

There is an irony here. As people in the Soviet Union and Eastern and Central Europe risk their lives to realize the infinite value of the fundamental rights of mankind, we struggle to preserve them in the finite terms of revenues and expenditures. Much of this report, then, is a reflection of that difficult reality.

### CASE MANAGEMENT PLANS

Ohio has enjoyed an impressive legacy. Twenty years ago, under the leadership of Chief Justice C. William O'Neill, Ohio was the first state in the nation to undertake a comprehensive program to manage caseloads and reduce delay. We have made great strides in sustaining that legacy.

Based on the recommendation from the Supreme Court Committee to Study the Impact of Substance Abuse on the courts, we adopted a requirement that each court in Ohio develop its own case management plan by July 1, 1991. We recognize that the process may be as important as the product because it requires each court to examine and, we hope, improve the process by which it manages its caseload. I recognize that the judges in some rural courts believe the rule does not account for their unique circumstances, and we will work with you on your suggestions. As we examine the more than 400 plans submitted to date, we will be able to develop model case management rules.

Also, the growth and increasing complexity of the administrative aspects of court management are requiring more courts to employ court administrators.

### GRANTS AND COURT DELAY REDUCTION INITIATIVES

Because we believe education is one of the best ways to effect change, we are seeking more than \$300,000 in grants from the Governor's Office of Criminal Justice Services distributed under the President's National Drug Control Strategy. More than half the money is earmarked for a series of five courses to assist courts in improving docket management and reducing delay. The other half would be used to provide direct technical assistance to courts who need help in managing their caseloads.

We have increased our efforts to obtain grant monies from various sources. In addition to the funds I have mentioned, we received \$127,000 from the Commission on Dispute Resolution and Conflict Management, three grants from the State Justice Institute, and recommended the awarding of grants for numerous other projects throughout the state. By the end of this year, we will have received or expect to receive more than half a million dollars in grant money.

### DISPUTE RESOLUTION

In August, the central topic for the nearly 12,000 lawyers attending the American Bar Association's annual meeting was the cost of litigation. A number of seminars were presented to demonstrate how to reduce the expense of litigation and to be more efficient in the use of clients'

money. It is not surprising that dispute resolution was one of the topics.

Ohio has become a leader in the search for methods to resolve disputes more efficiently at less cost and with greater satisfaction to the parties. The General Assembly funded the Ohio Commission on Dispute Resolution and Conflict Management to 1993. In November, we will assist the Commission in hosting a conference sponsored by the National Institute of Dispute Resolution for states desiring to establish a statewide commission. The Supreme Court Committee on Dispute Resolution has been working for nearly two years to develop recommendations to be submitted soon for the institutionalization of dispute resolution in our court system. Finally, our budget request included a position at the Supreme Court for a dispute resolution program coordinator. The coordinator will assist the courts in Ohio in establishing dispute resolution programs.

Many of you have instituted dispute resolution programs in your own courts. This year, Zanesville, Cambridge, and Marietta used Commission grant funds to demonstrate that small- and medium-sized municipal courts can use mediation programs to dispose of a significant number of civil cases. In Zanesville, 91 percent of the cases submitted to volunteer mediators have been settled.

We are also following with interest: (1) a child support, custody, and visitation mediation model in Summit County; (2) a model program for mediation of juvenile assaults in Montgomery County; (3) a program training attorney in settlement week and early neutral evaluation concepts; and (4) an evaluation of the Cuyahoga County Court of Common Pleas mediation program.

I am pleased to announce that the Supreme court, the Ohio Judicial Conference and its Local Liaison Committee, the County Commissioners Association, and the Ohio Municipal League are reviving a program to mediate disputes between courts and local funding authorities, particularly with respect to budgets. Judges and county commissioners or city councils do not always agree on the nature and level of funding for the courts. Too often, litigation results from the disagreement. Under the program, the participants will develop teams of judges and commissioners or council members trained in mediation principles to work with their peers to resolve those disputes. If mediation can produce agreements between parties contesting the custody and visitation of children, complex contract disputes between major corporations, school boards, and teacher associations, it would follow that the same principles could be applied successfully to disputes between county commissioners or council members and judges.

### STATISTICAL REPORTING

We are all aware that the Ohio Constitution grants the Supreme Court, through the Chief Justice, responsibility for the general superintendence of all the courts in the state. The Court, and particularly the Chief Justice, bears some constitutional accountability for the management of cases in every court. The new statistical reporting forms are one of the tools used to fulfill our responsibility. They enable us to determine the status of the more than three million cases filed in Ohio courts each year, and it is extremely important that the reports give us an accurate record.

Often the information is used to benefit the local court on such matters as requests for new judgeships and assignment of judges. You should expect to receive more contact from members of our staff as we review the reports. You will be receiving a letter from me next week that will provide more specific information on this matter.

Closely associated with statistical reporting is the requirement that every court perform an annual physical case inventory. We appreciate the support and cooperation from judges and court personnel throughout the state in this effort. I recognize that the inventory is not easy and may appear to be burdensome, but the benefits of such a comprehensive, detailed review of pending cases are already apparent. New judges are finding the inventory helpful in prioritizing their work, while incumbent judges are using the inventory to post more accurate case statistics.

Judge James Ray of Lucas County combined the review of files with the implementation of a case management computer system; Judge Leo Morley of the Mahoning County Probate Court reviewed files back to 1945 as part of this effort; and Judge Frank Gorman of Cuyahoga County Common Pleas Court arranged for on-site training sessions for the staff and many of the 34 judges to ensure accurate, consistent inventories. These few examples along with the many additional hours you expended conducting physical inventories demonstrate the commitment of Ohio's judges to maintaining an accurate case reporting system.

### COURT TECHNOLOGY

Another way to better manage our resources is to effectively use technology. Access to new technology is not a frill; it is a necessity for courts to continue to cope. Our progress has sometimes seemed agonizingly slow, but in every case it appears that the results are worth the wait.

The new Ohio Supreme Court Administrative Network (OSCAN) permits electronic communication with the supreme Court and among participating courts, including electronic mail and group conferencing. Already available on OSCAN on the same day they are released are the Supreme Court announcement lists, calendar, case summaries, press releases, and the status of rule proposals. In the near future, judicial education opportunities will be listed. Eventually, OSCAN may be the vehicle you use to submit your statistical reports to the Supreme Court.

In response to the success of the first statewide Court Technology Conference, the second is scheduled for October of next year.

The Ohio supreme Court Computer-Assisted Record keeping (OSCAR) is the second generation of our prototype personal computer case management software. It is being distributed on request and will be tested in more than 40 courts. This fall, training will be available to use the program as part of each court's case management plan.

We are working to assist courts in computerization. I am aware that many budgets do not provide

funds for computerization. Each court that wants to computerize should be able to do so. There are tools with which we can help you. Both the Supreme Court and the Ohio Clerks of Court Association have bills pending to adjust the use of court costs to permit courts to purchase computer hardware. Our bill would amend Section 2303.201 of the Revised Code to permit the \$1.50 court costs assessed under that Section to be used for purchases other than research. In addition, our Office of Court Technology and Services is encouraging local courts to purchase computer products through the state's cooperative purchasing program, which allows local governments to buy various goods through the state's large purchasing contracts, thereby realizing the lowest available price. I understand that the Stark County Common Pleas Court has used the cooperative purchasing program very successfully.

For the first time, our biennial budget includes a specific appropriation for computerization. When the General Assembly adopted our budget, it appropriated funds for Project Benchmark to enable us to begin development of a comprehensive computer system that will link the courts, clerks, and other components of the judicial system into an information network. The Juvenile Data Network is a first step in this direction.

As we look to the future of technology, it is comforting to realize that some of you are ahead of us. The Mansfield and Wayne County Municipal Courts are demonstrating the use of electronic monitoring to "incarcerate," in their homes, persons convicted of nonviolent offenses.

The Ohio Judicial Conference, in conjunction with the Lucas County Domestic Relations Court, has received a \$65,000 grant from the State Justice Institute to develop a series of four videotapes entitled "Family Matters" to inform litigants and community groups about important issues in domestic relations and family court procedures.

Judge Schaefer of the Shelby Municipal Court is preparing videotapes explaining defendants' rights in both Spanish and sign language, thereby saving up to \$60 per hour for an interpreter and \$23 per hour for a signer for the deaf.

Finally, the Judicial College, in addition to broadening other education programs, creatively uses teleconferencing, and has, at the Court's request, produced a videotape that will permit you to conveniently fulfill your ethics and substance abuse requirement.

## RESPONSE TO THE DRUG CRISIS

The war on drugs continues. There is no question that the specter of the drug crisis is still with us. Many of you see it every day. The most recent national statistics indicate a 50 percent increase in convictions for felony drug trafficking and that more than 40 percent of the increase in jail population is attributable to drug offenses. Ohio is no exception. You are telling us that there appears to be an increase in domestic violence cases that is, at least in part, related to this problem.

Our efforts to secure more support for the judicial branch have been successful. The grant monies for which some of you have applied to the Governor's Office of Criminal Justice Services will help. We must do more to ensure that the millions of dollars in federal drug funds that come to Ohio are distributed equitably all along the continuum of the criminal justice system, not just to law enforcement, but to the courts as well. We will continue to make every effort to see that the judicial system gets its share.

Our efforts have received national attention. I am chairing the National Conference on Substance Abuse and the Courts, sponsored by the Conference of Chief Justices, the Conference of State Court Administrators, the State Justice Institute, and the Bureau of Justice Assistance to bring together representatives of the disciplines with which courts must interact on drug-related cases. The goal of the Conference is to develop models for state court systems to create better communication and more effective coordination of our efforts. I will be leading a team from Ohio that will include Luceille Fleming, Director of the Department of Alcohol and Drug Addiction Services, and Geno Natalucci-Persichetti, Director of the Department of Youth Services.

#### COMPETITIVE BIDDING – PUBLISHING & JUDGES' LIABILITY INSURANCE

We have a strong commitment to competitively bid all contracts of significance. In May, the Court awarded the contract to publish the Ohio Official Reports to the West Publishing Company. We opened the bidding to companies outside Ohio, which required a change in state statute. Our goal was to encourage greater competition in order to provide the highest quality publication at the lowest cost to subscribers. The contract will nearly double the number of pages and cases published, including the Advance Sheets, and reduce the cost of bound volumes and Advance Sheets. The number of published court of appeals' opinions will double and the number of published trial court opinions will quintuple.

On August 15, we announced the results of the competitive bidding for your state judge's liability insurance coverage. The contract was awarded to an Ohio company at a savings of nearly 22 percent or \$113,000. The company promises quicker and better service.

#### FUTURE PROJECTS

Having reviewed the present, what can you expect in the near future? There are several matters that will demand our attention in the months ahead. The Criminal Sentencing Commission upon which Judges Patton, Williamson, Lanzinger, Griffin, and Guy Reece serve, is hard at work reviewing Ohio's existing sentencing structure with a charge to recommend to the General Assembly revisions by July 1, 1992.

The Gender Fairness Task Force, co-chaired by Justice Resnick, will present its findings and recommendations on this important issue.

The delivery of legal services is a major issue facing the bar of Ohio. A report being prepared for

publication, commissioned by the Ohio State and Metropolitan Bar Associations, will provide dramatic statistics regarding deficiencies in the delivery of legal services in Ohio. I will soon be appointing a committee that will review the status of legal representation in Ohio and make recommendations to the Court and perhaps the General Assembly. I will be requesting the assistance of the Judicial Conference in this effort.

I hope that in 1992, with the assistance of the Cleveland International Program, we will be able to implement a program announced here last year of offering judges in Hungary and other emerging democracies an opportunity to visit you for a comprehensive, firsthand understanding of the structure and operation of an independent judiciary. The rapid changes in the political structure of the Soviet Union and Eastern Europe offer us a rare, historic opportunity to serve as a laboratory for new nations beginning their experiment with democracy.

As part of our celebration of the bicentennial of the Bill of Rights, the Ohio State Bar Association Media Law Committee and the Court will televise the first statewide live broadcast of a Supreme Court oral argument on December 4. This is a unique educational opportunity with the focus on the entire judicial system. The Ohio Center for Law-Related Education will offer training and curriculum materials for educators, who will work with a member of the bench or bar in your community. I hope you will become involved with your schools in making this program available to as many students as possible.

### THE FUTURE BEYOND 2000

And what of the future beyond the next few years? Should we not be planning at the end of the 20th century for a court system that must serve its citizens in the 21st century? Thomas Jefferson had a strong and resonant belief in the importance of a constitution. But he also said that laws and institutions must go hand in hand with the progress of the human mind, that as the mind becomes more developed, more enlightened, as new discoveries are made, new truths disclosed, and manners and opinions changed with the change of circumstances, institutions must advance also and keep pace with the times.

Several states have established futures commissions on the courts. It is time for Ohio to join them. A futures commission recognizes the need for long-range planning for the court system, looking to the year 2000 and beyond. It should determine what the justice system should be in the next century. It should seek to predict the role of courts in the future and to seek solutions for existing issues, with the recognition of what the justice system is expected to be in the years ahead.

In the near future, I will appoint a Commission on the Future of the Ohio Court System, composed of representatives of all who are interested in Ohio's court system. The Commission will study and make recommendations on at least the following issues: (1) the quality of justice, including public perception, access to the judicial system, and the effects of delay and cost on the judicial system and its participants; (2) criminal justice issues and substantive law changes; (3) the organization and administration of the court system; (4) alternative paths to justice; and (5) technology, including methods of increasing access to justice through the use of technology, new

forms of crime being spawned by technological advances, and issues relating to privacy and public access to information.

This will be an exciting, dramatic venture that will require the best efforts of us all.

As I think of our own future in the context of a rapidly changing world, the words of the former Minister of Justice of the Soviet Union are still ringing in my ears. Sent here last year by President Gorbachev to study our independent judiciary, he said to me that "You Americans have had 200 years of experience with democracy; and that is 200 years more than we have had." The message from him and from the Russian citizens who barricaded their Parliament Building is that we should preserve what we have because it is an ideal for which people will die. Should we not then, each of us, as we sentence a defendant, impanel a jury, award custody, administer an estate, place a juvenile, or dispose of an appeal, do so with the realization that our performance of those acts pre- serves our heritage and gives light to those who emerge from their darkness to seek new beginnings.

I thank you for the honor and the pleasure of serving as your Chief Justice.