

State of the Judiciary  
Chief Justice Thomas J. Moyer, Ohio Supreme Court  
Message to Ohio Judicial Conference  
September 9, 1993

Thank you, Judge Donnelly, for the invitation to deliver my seventh report on the state of Ohio's judiciary to the Judicial Conference Annual Meeting. I thank you, members of the Executive Committee, the working committees of the Judicial conference, and Anne McNealey and the diligent Judicial Conference staff for enhancing the constructive working relationship between the Ohio Supreme Court and Ohio's judges.

It has been my privilege to provide the traditional state of the judiciary speech the past six years. I thought this year we might all benefit from a change in the format: briefly reviewing some of the high points of the last year, outlining some goals for the future, and then inviting your questions and comments.

The one tradition I cannot give up is to begin with a historical perspective. Men and women whose profession and work are by nature stressful and exposed to intense public scrutiny need frequent reminders of the importance of their role in a civilized society.

In June of this year, a small delegation representing Ohio judges, the Ohio State Bar Association, the Ohio State Bar Foundation, and Ohio law schools accepted an invitation to visit Ukraine as part of our continuing effort to assist the people of that new nation to establish an independent judicial system. The high point of our visit occurred in a meeting with those charged with drafting a new constitution and laws for Parliament. We were told that the third draft of the constitution for the 55 million newly independent people of Ukraine included ideas they had obtained when their delegation visited Ohio's courts last year.

We heard consistently from Ukrainian judges and lawyers that their goal was to establish an independent judiciary where judges are as respected as they are in the United States. They are moving slowly to adapt to their culture and heritage what they perceive to be the most desirable aspects of several legal systems from around the world.

The spirit and determination of many Ukrainians with whom we had contact reminded us that, although not perfect, respect for our judicial system is well deserved.

### Caseloads

Ohio's judges and court personnel continue the challenge of disposing of legal disputes that are filed at the rate of more than three million per year. A slight decrease in civil filings has been more than offset by a substantial increase in felony filings -- a record 59,000 last year.

Last year, an average of 4,414 new cases per judge were filed in Ohio. The common pleas courts disposed of 22 percent more new cases than five years ago, while the number of judges has increased only five percent. By the end of 1992, only 10 percent of the pending cases were beyond the recommended time guidelines established by the Rules of Superintendence, down nearly one-third in the last five years.

Many courts were able to dispose of more cases last year than were filed -- working away at their backlogs.

You are to be commended for your efforts in improving case management and facilitating alternative means for our citizens to resolve their legal disputes.

Our case management coordinator is presently providing technical assistance to courts across the state and has completed work in 10 courts. Lucas County Juvenile Court, seeking to be a model in case processing, is implementing recommendations that will take them to their goal. The Cuyahoga County Common Pleas Court, in cooperation with the prosecutor's office, has begun a program to divert nonviolent felons from the criminal courts.

In another project, the first of its kind, prosecutors, public defenders, local law enforcement, and county data processing representatives will participate in three workshops to further automation of local courts through the sharing of data between the courts and criminal justice agencies.

### Dispute Resolution

A dentist sued a noncustodial parent for the cost of dental work for a child, causing the parent who had not authorized the care to appear in Small Claims Court. In mediation, the parties agreed to a settlement that was satisfactory to both parties because it enabled the child to continue receiving care and included a plan to compensate the dentist.

That is one example of the hundreds of legal disputes mediated in courts throughout Ohio. The Cleveland Municipal Court established a small claims mediation program in April, producing a steady flow of referrals, about 15 a week, to small claims mediation. About 75 percent are settled on the day of trial. This reduces trial and referee time, and the resources have now been allocated to comply with the new OMVI procedures.

Between May and August, the Sidney Municipal Court scheduled more than 70 small claims cases for mediation before the complaint was filed -- 47 percent were resolved before or during the mediation. One satisfied user of the program is the wife of the owner of a local dairy equipment leasing business. She keeps the books for her husband, and he was often reluctant to attempt collection because many of his customers are farmers and because of the time it took to file the claims and go to court. The woman told the program coordinator, "My husband thinks we should wait and go to court but I told him it was none of his affair mediation works for me and I am very happy with the results."

Mediation programs in juvenile and domestic relations courts are particularly beneficial.

After demonstrated success in Montgomery, Lucas, Butler and Fayette Counties, programs offering mediation in status offender and delinquency cases are being expanded. Court staff and volunteers from Van Wert, Delaware, Richland and Franklin Counties will participate in training this weekend.

In the Lucas County Juvenile Court, two mediation programs have provided significant relief for judges and referees. The first program requires mediation of visitation motions in parentage cases and has produced a reduction in the number of motions and hearings, which leaves more time for the substantive legal issues that require the judge's attention. The second program referred more than 400 status offenses to mediation in 1992.

New settlement week and arbitration programs are expected as the result of a cooperative effort with the Ohio State Bar Association Alternative Dispute Resolution Committee's Adopt-A-Court Program, and the Supreme court Committee on Dispute Resolution. The program will match bar leaders, judges, and alternative dispute resolution experts from around the state to explore and implement programs in small rural counties.

### Jury Management

It has been said that "the jury trial represents courthouse democracy, the preservation of our funded experience in direct citizen participation in government." Thomas Jefferson said, "consider trial by jury as the only anchor ever yet imagined by man, by which a government can be held to the principles of its Constitution." If jury trials are to be a bulwark against the tyranny of government, citizens who serve on juries must perceive the experience, if even dimly, through the eyes of those who have seen the jury trial as essential to the liberty of our citizens.

We all know that one of the most difficult aspects of the judicial system for our citizens to understand is the use of juries to render verdicts. Judges, court administrators, and lawyers should be searching for ways to better educate citizens on their role as jurors and also to make the most effective use of citizens' time in performing one of the most important responsibilities of citizenship.

Last year, we assembled a team of trial judges, court administrators, and others, chaired by Judges Spahr and Routson, and supported by the National Center for State Courts, to make a comprehensive review of jury management in Ohio and to make recommendations.

Last month, the Supreme Court adopted, at the team's request, the Ohio Trial Court Jury Use and Management standards. The Standards make many constructive suggestions for statutory and rule changes, and require trial courts to develop and implement, by local rule, a jury management plan by July 1, 1994. The Standards can be found in draft form in the June 21, 1993, Ohio Official Reports/Advance Sheets.

The Judicial College is offering a course on jury standards at six sites this fall.

### Project Benchmark

In the technology area, many critical issues have been identified, funding has been secured, and it is now time to hire an "architect" to convert concepts into a workable plan. Under Project Benchmark, the Supreme court will assume more of the responsibility for setting standards and specifications for automated information systems. This will improve the capacity to collect and

exchange meaningful information among courts. Consistent standards will also reduce the risk and uncertainty courts currently face when no coordination exists. We will hire a system engineering organization soon to take the next step in developing software for a statewide automation system for Ohio's courts.

As I indicated earlier, we were asked on our visit to Ukraine if we believed our judicial system was perfect. Our answer was swift, unequivocal, and honest -- the American judicial system is not perfect. There are reminders of that fact all around us.

### Court Security

The Committee on Court Security chaired by Judges Stratton and Voris has begun the difficult but critically important task of reviewing the status of courtroom security in Ohio and developing recommendations to improve security. Data from the survey sent to each administrative judge are being analyzed and, together with the information received from state court administrators across the country, will give us a clear picture of the status of court security. We appreciate the excellent response rate on the survey. You have indicated that you want us to stress the need to take court security seriously, you are concerned about funding, and you recognize the need to balance security with open court operations.

The committee will draft standards based upon the surveys and on security measures in place in other states and will make recommendations with respect to funding.

### Criminal Sentencing Commission

The Ohio Criminal Sentencing Commission has submitted its comprehensive recommendations to the General Assembly. In association meetings and through correspondence, many of you have offered your comments and received answers to questions. There are five points that are most important in considering the Sentencing Commission recommendations, which demonstrates that the Commission achieved real consensus on the many difficult issues:

1. There is no minority report; although individual commission members did not agree entirely with every recommendation, the report is a delicate balance of competing interests that required compromise by all interested parties;
2. The recommendations strive to create truth in sentencing;
3. Discretion of judges in sentencing is increased;
4. Many intermediate sanctions are more effective for nonviolent offenders than a short prison sentence; the Commission proposes greater availability of these types of sanctions and suggests a continuum of sanctions;
5. proposal for the adoption of a continuum of sanctions that includes sentencing to community programs should not be adopted by the General Assembly if it does not provide funds for local government to implement those sentencing options.

We expect bills to be introduced in the House and Senate in late September or early October to implement the recommendations. We will be requesting the support of all judicial associations for the legislation.

### Gender Fairness and Racial Fairness Task Forces

You will soon be receiving the final recommendations of the Gender Fairness Task Force. Interim recommendations are being implemented with the change to gender neutral language in court rules, jury instructions, and other court-related documents.

Last week, the Commission on Racial Fairness, appointed in June, conducted a productive and helpful retreat. We are ready to proceed toward reviewing and making recommendations with respect to the state court system and the legal profession in the manner in which African Americans, Hispanics, Native Americans, and Asian-Americans are perceived and treated as parties, victims, lawyers, judges, and employees; public perceptions of fairness or lack of fairness in the judicial system and legal profession; and needed reforms and remedial programs.

### Grants

I am pleased to announce that in the last 18 months, the State Justice Institute has awarded to Ohio grants totaling more than \$430,000 for projects to improve the administration of justice. Ohio has received more than five percent of the 82 grants awarded to state or local courts.

These grants help us extend and make better use of our limited general revenue fund dollars and support and enhance innovative programs in court administration, education and training.

Two of these grants went to the Judicial College, including an exciting "cutting-edge" video teleconferencing program, which Steve Stover will discuss with you tomorrow.

Also in the area of grants, we are pleased with our strong working relationship with the Office of Criminal Justice Services. Director Gary Mohr clearly recognizes the important role of the judiciary in the criminal justice system, and we are working closely with that office to enhance our relationship and provide greater funding opportunities to the trial and appellate courts. Here again, we have greatly expanded our ability to secure grant funds from the Office of Criminal Justice Services, and record grant dollars to the courts have been the result.

### Judicial Elections

A high priority of the Supreme Court and those truly concerned with the public perceptions of our justice system must be a critical review of the process by which we select judges in Ohio.

Last year, I asked the Board of Commissioners on Grievances and Discipline to review Canon VII of the Code of Judicial Conduct to develop recommendations for changes in our judicial campaigns. In June, the Board transmitted recommendations for Canons I through IV and this week the Board submitted its recommendations for amendments to Canon VII. Those recommendations will be submitted to a special committee of the Supreme Court chaired by Judge Richard B. McQuade that will include a number of persons outside the legal system to give the recommendations a comprehensive review.

### Committee to Study the Rules of Superintendence

In 1968, the voters of Ohio approved the Modern Courts Amendment, and 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. The Rules of Superintendence are the framework on which the orderly administration of the courts of Ohio is structured. And now, 25 years later, it is time to take a fresh look to determine whether the Rules of superintendence should be updated.

Today, I am pleased to announce that Judge John W. McCormac has accepted my invitation to chair the Commission to study the Rules of Superintendence. I would hope that the Commission will be able to report back next year.

### Conference of Chief Justices' 1997 Annual Meeting

I am also pleased to report that the national Conference of Chief Justices has accepted our invitation to hold its annual meeting in Ohio in the summer of 1997. The meeting will include the Chief Justices of the 50 states, American Samoa, Puerto Rico, Guam, the Virgin Islands, and the Northern Mariana Islands, as well as the state court administrators from those jurisdictions.

In closing, another experience in Ukraine comes to mind. As a part of our delegation was leaving the city of Liv where we had met with the law school dean, the minister of justice, and several judges with whom we are working, they walked us to the car on the train that would return us to Kiev. The parting was difficult because in just a few days together, we had formed a bond that transcended our ethnic, cultural, and political differences. As we Americans were hanging out the windows to touch the hands of our new friends one more time, I was struck by a dramatic contrast. The curious onlookers surrounding our hosts bore expressions of depression, weariness, and in some instances desperation. Our hosts exuded a spirited determination and sense of hope that masked their economic condition and intense political struggles. As the train chugged away from the platform on which they were standing, I could have been looking at a Ukrainian James Madison or Alexander Hamilton. And I had a better understanding of how fortunate I was to be returning to America.