

State of the Judiciary
Chief Justice Thomas J. Moyer, Ohio Supreme Court
Message to Ohio Judicial Conference
September 8, 1994

Good morning. Thank you for inviting me to address the State of the Judiciary at our annual conference.

In looking over the program for this year's session I was impressed by the theme: Present Shock: The Future is Now.

It is a timely topic, especially this year when we as a society have spent countless hours looking back, marking milestones. This summer, more than most, we have reflected on past glories, foibles and quirks that are part of our national consciousness.

In June, we saluted the boys of Pointe du Hoc while recalling the courage and carnage that was D-Day half a century ago. A few weeks later, we marked the 25th anniversary of a different kind of courage -- the right stuff -- of Ohio's native son, Neil Armstrong. The 20th anniversary of the resignation of a president reminded much of the nation what we as judges see everyday ... that our Constitution is alive and well.

And then there were the lighter celebrations, more party than reflection: 25 years since Woodstock, 35 years since the Edsel and 60 years of Donald Duck.

It is good to look back, to remember who we were and what we have been. It provides us with the knowledge, the hope and the humor to move forward and face the challenges of today and the uncertainties of tomorrow.

Before this summer of reflection ends, I want to take a few minutes to outline the progress we have made and the steps we are taking to meet the issues each of us will face, not in some distant decade, but tomorrow when we return to our courtrooms.

As judges we settle disputes -- disputes between husbands and wives, workers and employers, and our communities and the accused. Regardless of the case particulars, there are differences to be settled, differences which sometimes rub nerves and emotions. As judges, our job is to translate anger and hurt into justice. As conditions in our society have changed so, too, has the nature of our work. Twenty-five years ago, juveniles committed crimes consisting of truancy, vandalism and petty theft. The guilty were punished, showed remorse and were sent on their way with their parents. Today it is often difficult to distinguish the juvenile docket from the general division criminal docket.

With alarming frequency, anger and violence have even shattered the peace and reason of our courtrooms. Judges, jurors, court personnel and members of the public have been injured or killed. These acts are intolerable. Next week, the Supreme Court will consider the final recommendations of the Committee on Court Security. The recommendations will go a long way in helping to ensure safety and security in our courts. We also believe the standards will assist you in working with county or city officials to obtain the necessary funds for this critical effort.

Of course, the issue of security extends beyond the grounds of our courthouses. The longing to be safe and secure burns brightest in our homes with our families. Sadly, another illusion is gone.

While we now have laws protecting the safety and well-being of all family members, we know domestic violence remains a frightening reality.

The Supreme Court is undertaking two steps toward addressing the reality of domestic violence:

We are launching a statewide review of all domestic violence statutes. A task force, funded by a Department of Human Services grant and chaired by Judge Kenneth Rohrs and Senator Merle Kearns, will undertake the review to determine how Ohio's legal system can best respond to this urgent matter through a multi-disciplinary unified response system to domestic violence.

In addition, Judge Don Reader and Judge Gerald Radcliffe have been working closely with our staff and the Human Services Department to establish a Family Court Feasibility study project. That grant will enable us to study the feasibility of implementing the family court concept in Ohio. Stark, Richland, Erie, Franklin, Trumbull and Lorain counties already have combined juvenile and domestic relations divisions. We expect to have their assistance.

Experience tells us domestic violence often erupts in homes where there is alcohol and drug abuse. So, it is gratifying to report that our efforts to attack that problem will continue through a continuation grant from the state Justice Institute. The courts will join forces with corrections, probation, treatment and law enforcement agencies to make the most effective use of available resources and to maintain clear communications about activity in the field.

Street crime, domestic violence and drugs ... these and the constant stream of other complex issues that flow through our courtrooms daily, demand the best that we can give. A legal system also requires that we have the full respect and support of those we serve -- the public, our fellow Ohioans.

We are fortunate to have that support. A state bar association survey released last year reported that the vast majority of Ohioans believe their legal system is both effective and ethical.

Despite a general sense of satisfaction with our legal system, there are legitimate questions about how we elect our judges. Thoughtful citizens rightfully ask how judges whose campaigns must raise vast sums of money can fairly preside over cases that may have an impact on their contributors. To answer this and similar concerns, I appointed a special committee this spring to conduct a thorough review of the judicial election process. Ten members of the 17-member committee are not attorneys. Their fact-finding hearings are well underway around the state. We look to them for new ideas and approaches on how we elect our judges.

Yes, we operate in a political system, but thankfully it is a system where the rule of law, not women and men, prevails. As part of the system one of the periodic challenges we face is increasing judges' salaries. Judicial compensation should have been increased in 1993. As you know, I have been working with your judicial associations and legislative leaders for more than a year to obtain support for an increase. During the past few months, we have been joined in our efforts by other county elected officials.

We have the strong support of the Governor, if the legislation is enacted before the November election, and the support of legislative leaders for an annual salary increase for the next five years. The matter is still before the General Assembly and those who feel as strongly as I could assist us greatly by joining the effort by talking with your local representative and senator.

I would like to take just a few moments to talk with you about an issue that has troubled me for some time. It hovers over our entire judicial process. In fact, it has changed the nature of our job of judging.

Take a moment to think back to one of your recent proceedings and then ask yourself when was the last time you heard the simple statement, "Your honor, I am responsible."

Whether it is the accused in a criminal case, an employer in a case involving a work-related injury, a parent in a child neglect case or the careless user of a product, regardless of how compelling the evidence, fewer and fewer individuals are stepping up to assume responsibility for their actions.

If you turn on any of the popular daytime television shows, you will see it for yourself: In today's world nobody is responsible for anything. Either things just happen or more likely we are all victims. Avoiding individual responsibility is not an excuse, it has become a given.

Interestingly enough, this trend has attracted the attention of both conservative and liberal writers and commentators.

John Leo of U.S. News and World Report has written about a California computer hacker who was accused of breaking into a corporate computer system and stealing valuable security data. Leo noted that the judge saw the accused as the victim of a space age ailment and sentenced him to one year of treatment for a "new and growing" impulse disorder.

New York Times columnist Anna Quindlen observed that the debate over violence on television ignores the central issue of the responsibility of parents. She writes: "Making the distinction between what [children] want to do and what is good for them -- that's a parent's job description. And it extends to the remote control."

It is encouraging to see that public comment is addressing the disturbing inclination to avoid responsibility. But in our discussion it is important to keep two items in mind:

* The Book of Genesis reminds us that shirking individual responsibility is as old as the story of mankind. When it came time to explain the missing fruit and the loss of innocence, Adam blamed Eve and Eve blamed the serpent.

* As judges, living and working in a time of scientific discovery, we are wise to be mindful of the impact of genetics and the role it plays in determining human behavior. Study after study show that we inherit not only our mother's blue eyes but also the sins or diseases of our father.

Writers have the luxury of pointing out society's shortcomings and dilemmas with no obligation to suggest solutions. As leaders in our communities we have the obligation, the responsibility, to

suggest some course of action. To simply say we all should be more responsible for our actions falls short of what is called for. The consequences of a decaying sense of personal responsibility in our society are witnessed no more dramatically anywhere than in your courtrooms. In a civilized society those who deny responsibility shift to others the burden to assume more.

We in Ohio are responding to the need to reintroduce individual responsibility in our state. One example is the felony sentencing bill now before the General Assembly.

In its simplest terms, the felony sentencing bill says: "If you do the crime, you are responsible. You will do the time."

The bill is now in the Senate following overwhelming House passage. While under consideration in the House, members adopted amendments that improve the bill. And we anticipate additional changes in the Senate. But through it all we expect that the end result will be a common sense, fair measure that will ensure Ohio prisons are used to lock up the menacing felons who shadow our safety and security.

The legislation has been the subject of considerable discussion because of the sweeping impact it will have on the system. But it is helpful to keep in mind that the bill is as much about individual responsibility as it is crime and punishment.

Murderers, rapists and major drug offenders will be held accountable with long, mandatory prison terms. Sentence add-ons, beyond the maximum terms, are provided for repeat violent criminals, those who commit sex offenses against children and drug offenders.

Inmates will be expected to follow prison rules, and those who do not will be held accountable with longer sentences.

The bill also speaks to our responsibilities. Judges will continue to be responsible for determining the most appropriate sentence for an offender. Prison sentences for those convicted of violent crimes and serious drug offenses. Judges will have more sentencing options for those convicted of crimes that do not involve physical violence.

Experience tells us passage of the sentencing bill will only go so far. It will set a tone of responsibility and provide alternatives for dealing with those who are responsible and those who are not. But, we must be willing to do more.

Individual responsibility also plays a key role in the success of our mediation programs. By its very nature, mediation requires people to take responsibility for developing a workable solution for their dispute. Creating a solution equals taking responsibility. In juvenile mediation the youthful, nonviolent offender who is faced with making restitution for damage he or she caused, assumes responsibility for the act.

Beyond measures like the sentencing bill and victim reconciliation programs, we would do well to listen to the words of others who remind us that individual responsibility and freedom go hand in hand. A Columbus priest, Father James Smith, shed bright light on the subject when he wrote:

"We are people, human selves who actually create ourselves by the choices we make. Freedom is

not the capacity to arbitrarily choose this or that now and then. Dogs do that. Human freedom is the power to define ourselves by committing ourselves to something."

I look out in the audience this morning and I see men and women who have committed themselves to something. And that something is justice. You commit yourselves daily to the hard work of settling disputes. It is through your efforts that our society operates with reason and established laws.

I look out across the room with the quiet confidence that because of your work and dedication the state of the judiciary is sound, it is healthy, it is thriving.

Any self-criticism or disappointments about the state of our judiciary are quickly put in perspective by the visits to Ohio of Dr. Fedor Bourtchak from Ukraine, Vice Chair Gu from Shanghai People's Congress and Judge Ladislav Derka of the Czech Republic. Some of you accepted the opportunity to meet with them or visitors from other countries. They and their colleagues come to Ohio expecting to observe an independent judicial system functioning pursuant to the principles upon which it is founded. They are not disappointed.

The message of such visits is that our system of justice -- you, lawyers, court personnel -- are doing something that is very important for our citizens; it is so important that leaders from ancient societies who wish to be modern and leaders of new justice systems who yearn to be independent come to observe what we are doing.

It is a message that says: we accept responsibility for preserving our civilized society with the rule of law.

For the sake of all Ohioans, may we never stop living the message.