

State of the Judiciary
Chief Justice Thomas J. Moyer, Ohio Supreme Court
Message to Ohio Judicial Conference
September 7, 1995

To look at the state of the judiciary in September 1995 is to see two very different worlds.

First, there is the world that as judges we know quite well. It is the world of docketing, assignments, motions, orders, administrative issues and making difficult decisions. This is the work we do. We resolve disputes.

The other world is far murkier. The issues are not as clear cut or well defined. It is the world of public perception. This world is dominated by media, hype, spin control, access and questions -- troubling questions. How does the public perceive our work? Do they understand the role of the courts in a democracy? Do they understand the work of the courts, our powers, our limitations? Do they believe the courts work for them? And an even larger question: Do they understand at the most basic level the reason for our courts' existence -- the preservation of order in a civilized society.

We know, or at least we have strong indications, that, sadly, many of our citizens have very little idea of the scope and nature of the American court system.

To look at the state of the judiciary in 1995 is to see a disconnection between the courts and the public. The questions, the misunderstandings, the blurring of reality and the related frustrations have existed for years. But today, in this time of the high profile and notorious trials, the gap between the reality of the judiciary and the public is widening. The alienation is reaching the point where future consequences are troubling and, some would suggest, ominous. Frankly, in interviewing the finalists for the position of president of the National Center for State Courts -- three judges and three administrators -- all six gave "public confidence in the courts" as the number one issue facing the state court system.

This morning I would like to address some of these issues. The temptation, of course, is to become defensive, claim that the public just doesn't understand and has it all wrong. While such a posture would momentarily buoy our spirits, ultimately it would cause greater harm by closing all lines of discussion with those to whom we need to be listening. The focus is to connect with the communities we serve to instill confidence in our work and mission.

The courts have always been in the news, but even more so today because of the O.J. Simpson trial. During this year-long spectacle, we have all have asked about it, probably more than we would like. I have not talked about it much and do not intend to spend much time discussing it this morning. But it has become part of the daily news diet -- almost to the point of a forced feeding. And it has not informed the public of what is happening in hundreds of courtrooms across our country every day.

Consider this statistic: One study showed that during a one-year period the three major networks have devoted more coverage to the Simpson case than to the combined coverage of the war in Bosnia, the Haitian uprising and the Oklahoma City bombing.

In addition to the amount of coverage, there are questions about the nature and scope of coverage. And the ABA Journal, in the June issue, reported that when the trial is completed the mail chutes and fax machines of Attorney General Reno and bench/bar leaders "will be jammed with complaints from the public about the fairness and efficiency of the criminal justice system."

Such a comment may be expected on talk radio or even a news magazine, but it is unfortunate that such a sweeping generalization based upon one aberrant trial in one state appears in a respected legal publication.

Yet, this and other high-profile trials highlight serious and legitimate questions about our courts. The issues of race, jury and trial management, and the cost and quality of legal representation -- they all deserve our thoughtful attention and efforts. But, as you know, we have been discussing and acting on these very issues for some time.

Here is a very brief summary of the steps we in Ohio have taken together to address these public issues.

For more than a year, the Commission on Racial Fairness has been immersed in its study of the role and treatment of minorities in our legal system. The Commission has conducted interviews, public hearings and studies to obtain a clear and accurate picture of the system's progress and shortcomings. The Commission's report next year will reveal important insights and present new challenges.

The Supreme Court two years ago adopted new standards for jury management. The aim is to assure that our juries be as inclusive as possible and to make effective use of citizens' time in performing one of the most important duties of citizenship.

In 1994, a new case was filed in an Ohio court at the rate of every 10 seconds. While many are routine, others are not. But the statistics show that 90 percent of the cases are processed and resolved within a reasonable time.

One of the principles of our system is that all parties in disputes have access to competent legal representation. It is encouraging to see that Congress appears ready to continue funding for the Legal Services Corporation, albeit with severe cuts. Yet future support remains in doubt. Meanwhile, here in Ohio the Supreme Court has aided the Ohio Legal Assistance Foundation in the effort to provide legal representation at the local level.

Despite these and many other initiatives we have put in place to improve both the overall system and our individual courts, the questions persist.

In part, that reflects our times and culture. Chief Justice Rehnquist reminded us of this reality in 1986 when he noted that "beyond the walls of the courthouse run currents and tides of public opinion which lap at the courtroom door." Nine years later, we still hear those currents and tides, and they are running as fast and strong as ever.

This is an opportunity. With the public focused on trials we have the opening to educate and engage them. We can show them how our courts operate in reality away from the influence of Studio City. The words of the philosopher who said, "skepticism is the first step towards truth," provide us with the hope of making progress.

One truth that we know is that the scope of our work -- the work of the courts -- is far different than that of the other two branches of government. Actions by both the legislative and executive branch are broad and sweeping. By their nature and necessity, legislation and executive decisions affect segments of society.

The contrast is striking. For the most part, courts focus on the disputes and competing interests of individuals. While we are striving to act in the general interests of our state and communities, our focus in resolving disputes or administering estates is on the case and the parties before us. What can be more personal than a judge weighing the needs and conflicts of a wife, husband and children in a divorce, the appointment of a guardian, or the decision to order an individual to die? To those of us on the bench, this is a basic and obvious point. To create better understanding in the public, it is a point that cannot be too often repeated.

Our opportunities to educate the public about the nature of our work are greatly enhanced by television. Given the technological advances of video equipment and satellite communications, we now have the emergence of Court TV. It is a fact of our time. And it is an appropriate time to renew the debate about cameras in the courtroom.

We long ago established the principle of open courtrooms with trials in full public view. Cameras are simply the logical progression of the tradition. The equipment used today has advanced considerably from the era of the lumbering studio cameras and blinding, hot lights.

If we are truly sincere about our efforts and desire to make the public more aware about the work and role of our courts, cameras must be part of the process. The rules governing the presence of cameras were carefully drafted by the Supreme Court to protect the decorum and rights of the defendants and witnesses. The judge must control the use of cameras at all times. We do not and will not tolerate video free-for-alls.

Capital cases, which generate the most interest, are heard regularly in Ohio. But to date, there has been little or no evidence that such trials have been disrupted by cameras. In fact, a 1992 Ohio State Bar Association survey revealed that 74 percent of judges believe that cameras can be kept in proper balance and allow the public greater access to court

proceedings.

One of the promises of the information super highway is that it will provide more choices for the information and programming coming into our homes. Perhaps this will open the way for regional and local Court TV. If the day comes, it will offer another opportunity, not an intrusion. Our attorneys, jurors, court personnel and judges typically make the correct decision. You deserve more, not less, exposure.

As I sat through the National Center interviews to which I referred earlier, I asked myself whether we in Ohio suffered from the phenomenon of a disaffected public to which the judges and administrators from other states were referring. Our good fortune is that we have so many outstanding judges throughout the state; how could citizens of our state feel disconnected from their courts -- if only they understand what it is we are doing. To the uninformed, the misinformed and the skeptics, we can say, "come to Ohio."

Come to Lake County where TV cameras were permitted to report a highly publicized cult murder trial that took eight days to complete.

Come to Hamilton County where Deidra Hair resigned her seat on the municipal court from which she imparted so much of her wisdom and wit to become judge of Ohio's first drug court. Although she did not hear her first case until late March, Judge Hair is making a difference. Her work is a striking example that courts can and do focus on individual needs as well as justice for society.

The goal of the drug court is to rehabilitate substance abusers and keep them out of court and out of prison. Those arrested on drug abuse charges or those who commit a nonviolent felony under the influence of drugs may have their case heard by the drug court. If accepted, they must plead guilty.

The criteria are strict. Applicants cannot have a violent criminal background, and the offense must be a low-level felony that does not require prison time. The goal is to break the cycle of addiction, so the court selects those who are most likely to be helped.

By late July, Judge Hair's court had ordered 140 individuals into treatment. Only two of them have failed to follow the court's orders, resulting in their imprisonment.

The Hamilton County Commissioners, who deserve high praise for taking the risk to launch the program with local funds, hope to direct 400 defendants this year. This would reduce repeat crimes by drug abusers by 40 percent and produce an estimated savings of \$12 million in jail costs.

We know Judge Hair is making progress. In the words of a mother of one of the early offenders in Judge Hair's courtroom, "Without it, I don't know where my son would be. He's now headed in the right direction."

In a related matter, I am pleased to announce that we were informed on Tuesday by the U.S. Department of Justice that Cuyahoga County Juvenile Court and Montgomery County Court of Common Pleas have each been awarded a \$35,000 drug court planning grant from the federally funded drug court program. These eight-month planning grants will permit the courts to convene the appropriate stake holders and gather the necessary statistics to determine whether a drug court is appropriate in their jurisdictions.

In Pickaway County Judge John Adkins is a reminder that our justice system is a mosaic, not a monolith. Just as each individual case has its own set of facts and circumstances, each judge has his or her own approach.

The differences in style reflect the strength of the system. Judge Adkins is an example of a judge who develops programs and procedures aimed at connecting the Circleville Municipal Court with the community.

One of his projects is the Court Advisory Council. Its intent is to ensure that the court remains responsible to the community. The 14-member council includes representatives from the bar, the mayors' and clerks' associations, law enforcement, social service agencies and citizens groups. The judge works with the group, keeping members informed about court operations and seeking information regarding new programs.

Judge Adkins believes working closely with jurors produces the best results. Before a trial, he sends them letters and provides a courthouse tour so they know what to expect.

In addition to the briefing, John Adkins takes steps to engage them in the process. He maintains that trial schedules should be carefully managed so as not to create an undue burden on jurors' time and lives. Instructions to juries are in plain English. They have the opportunity to express their concerns, complaints and recommendations on how to make jury service more effective and efficient.

Judge Adkins is fond of saying, "If a juror leaves the court and is not an advocate of the court, the judge has missed an opportunity."

To be convinced that a 19th century courthouse can serve the community in the 21st century, come to Union County; visit the courthouse in the town square of Marysville. Judge Richard Parrott has successfully created a partnership with his community. Court facilities were in disrepair. The ceiling over a jury box had fallen; the plaster in the courthouse rotunda was badly water damaged; the building was showing every day of its age.

Judge Parrott worked closely with the county commissioners, local schools, citizens groups and the bar to make them a part of the \$1.2 million renovation. He devised a contest for middle and high school students to design a special court flag. He would remind the students that the court is an important part of their civic life; he believes this simple reminder helps

instill pride.

Judge Parrott also found it valuable to work with a group of handicapped citizens in order that the plans for design and access would be sensitive to their needs.

He was also successful in encouraging the bar to help contribute to the costs for the remodeling and the law library.

Through Judge Parrott and other judges in other communities who have successfully pursued refurbishing, our courthouses will remain strong symbols for justice in our communities.

To be reassured that judges care about public perceptions of courts, come to Ohio -- come to Gallia County where this summer Judge William Medley took the initiative to remind citizens that a court is not a remote institution but a place for the peaceful resolution of disputes and the development of appropriate sanctions for those who fail to live by society's rules.

Judge Medley developed and directed a public opinion survey of attitudes about the Gallipolis Municipal Court. The focus of the survey was the use of community service as a sentencing option and the possibilities for expanding it for those convicted of nonviolent offenses. The poll of approximately 300 Gallia County residents found that 90 percent approved of the current program and favored expanding it.

Questions also covered treatment of DUI offenders, domestic violence cases and overall attitudes about the court's performance. Of those who reported having experience with the court, the overwhelming majority said they were treated courteously and justly.

The project demonstrates that listening and communicating directly with the public does not need to entail levels of bureaucracy or high costs. The judge used a modest grant from the Supreme Court's technical assistance fund and the help of a college student to conduct the survey, which was taken door-to-door, at a junior county fair and a senior citizens' center. Business consultants call that approach low tech, high touch. I call it common sense and creativity. Critics who might argue that courts are not in the public opinion business would miss the point.

In explaining the survey to a local reporter, Judge Medley made this accurate observation: "It is important to get the public perception on how we're handling things. We want to determine if we are responsive and treating people the way they should be treated."

In our efforts to reach out to educate and communicate about the courts' role and responsibilities, there is no more important group to touch than our young people. If we do not instill an understanding of and confidence in our court system and the rule of law, our future generations will inherit a world of chaos.

In Ohio we can look with pride and hope to the Ohio Center for Law- Related Education. Through its efforts we are making strides in providing educational programs that increase the knowledge and understanding about our courts.

The program is possible because of the support from the bar, the bench, law enforcement and educators. Judge Robert Hines is one of the true standouts. Judge Hines, the probate/ juvenile judge in Holmes County, has served as the legal advisor for the West Holmes High School mock trial team for the last nine years. Each year, he works with a teacher and a new group of students to prepare for the trial program. He obviously is as effective as he is dedicated. In 1988 Bob Hines coached the school to the state championship. In 1987 and last year the team was one of the top finishers. He recently received a national award for his work.

Judge Hines's efforts extend beyond the mock trial program. He is a regular visitor to classrooms throughout the county, providing his insights about the law. In addition, he has instructed teachers and other legal professionals on the many aspects of law-related education at the annual law and citizenship conference.

Few activities in which any of us are engaged will produce more benefits to the community than connecting our youth to the justice system.

Judges Hair, Adkins, Parrott, Medley and Hines are but five of our Ohio success stories. They represent the creativity, the risk taking, the plain hard work stories that I see across this room.

A popular comedian is fond of saying that 90 percent of life is just showing up. Our judges have done that and more. Through your efforts in and out of the courtroom, you have built connections with the community, enhancing not only the image but also the public's confidence in the fairness of our courts.

As judges, we know that the state of the judiciary is healthy. In fact, it is thriving. But a skeptical public is not necessarily convinced.

Our challenge is to build confidence. Our challenge is to convince Ohioans to look beyond the showmanship and misperceptions to the true substance of our courts. And we will do this not so much with speeches that will bring them to their feet, as with continued hard work and commitment that will bring them to reality.