

State of the Judiciary  
Chief Justice Thomas J. Moyer, Ohio Supreme Court  
Message to Legislature  
September 5, 1997, in Columbus, Ohio

Speaker Davidson, President Finan, Representative Boggs, Senator Espy, distinguished members of the 122nd General Assembly, Justice Douglas, Justice Resnick, Justice Sweeney, Justice Pfeifer, Justice Cook, and Justice Stratton, Lieutenant Governor Hollister, Secretary of State Taft, Auditor of State Petro, Attorney General Montgomery, members of the Governor's cabinet, and, in the gallery, leaders of our Court family and of the 22 Supreme Court committees, and my wife, Mary Moyer, and my fellow Ohioans...

I stand in borrowed space. Historic space. Hallowed space.

This hour, tomorrow, will mark 136 years that these doors were opened to another visitor. It was February 13, 1861 that Abraham Lincoln addressed the 54th Ohio General Assembly.

As he was making his way to Washington for his inauguration, Lincoln stopped in Columbus and spoke in this room. It was, of course, an ominous time. The opening shots of the Civil War were just weeks away. In his remarks Lincoln said nothing about the tenuous state of the union. Instead he asked for time, patience and a reliance on God.

Lincoln then went to the front steps of the Statehouse, where he addressed the thousands who had gathered outside. Looking out at the crowd, he noted that many there were not supporters of his party. Yet, the crowd was wildly enthusiastic. He was heartened, as it showed honor to the office of the president and the country.

Seven years ago, the leaders of the legislative branch provided the leader of the judicial branch with an historic opportunity -- an opportunity that showed great honor to the judiciary, for it marked the first time that a chief justice of the Supreme Court of Ohio addressed the Ohio General Assembly on the state of the judiciary.

Today, as we mark Lincoln's birthday, I return with some measure of humility. Thank you, President Finan; thank you Speaker Davidson for allowing me to speak to the 122nd General Assembly.

Allow me to begin with a story.

It was a day in October 1994; the place -- the World Congress of Judges, Kiev, Ukraine; the question from a Ukrainian judge: "What is the size of the police force you employ to enforce the judgments of your state courts?"

The question was startling. It came from a judge who works in a country in which the courts had been appendages of an authoritarian, centralized government. It was directed to a judge in a judicial system that for more than 200 years has drawn its strength from its independence.

In the United States, courts have no police forces to enforce their judgments. Most citizens respect the law and are willing to live by the law so long as they believe their courts are places in which disputes are fairly decided. And unlike the citizens of many countries of the world, the expectation of Americans is that our courts are independent.

The state of the judiciary in Ohio is strong and vibrant due to the strength we inherit from our independence, and because of the cooperative efforts the legislative and executive branches that enable us to exercise our constitutional role.

Our strength, in fact, derives from our responsibilities which are quite different from those of the other two branches. As Chief Judge Judith Kaye of New York explains: "Other public officials are supposed to be responsive to the popular will. Judges are not."

By design, there is tension among the three branches. It is what the founding fathers intended -- not to create disputes and gridlock -- but to constrain the powers of each and generate debate and solutions. In Ohio, we have met the challenge.

The State of Ohio's judiciary can be described in many ways. One is the simple citation of statistics. Remember that 97 percent of all the cases filed in all the courts in this country are filed in state courts -- about 86 million cases each year. For each of the years since I last addressed you, three million new cases have been filed in Ohio's courts. That is more cases than are filed in all the federal courts in a year. And in each of those same years, the judges of our courts have disposed of more cases than have been filed. They have conducted more than 5,000 jury trials per year and heard over 15,000 appeals per year. That is one face of Ohio's judiciary.

The other face is a product of the relationship between the judicial branch and the legislative and executive branches. Regardless of who is governor or who leads the two houses of the General Assembly, we in Ohio have demonstrated the benefits to be derived from a rational, constructive, interdependent relationship created by the Ohio Constitution. So today as I report the state of our judiciary, I would like to focus on those many times when reasonable public servants, respecting the authority of the other, have produced significant progress in addressing the broad concerns and pressing needs of Ohioans.

Ohio's new criminal sentencing law stands as an outstanding example of what we can accomplish when we work together.

The General Assembly in 1995 enacted sweeping revisions of the state's criminal sentencing laws. The measure provides for lengthy prison terms for murderers, rapists and major drug offenders. It preserves judicial discretion, provides for the more effective use of public funds, provides rights for crime victims, and establishes truth-in-sentencing. Now, the time actually served by an offender will equal the sentence imposed by the judge.

This landmark measure was enacted following an exhaustive study by the Criminal Sentencing Commission, which I have the privilege to chair. All interested parties had seats at

the table. There was no minority report.

As a result of your action, Ohio has a sentencing law that makes protection of the public and punishing criminals the overriding purpose of judges' sentences. The law has been in effect since last July and early data show that it is working:

- Prison-bound offenders are serving longer sentences.
- Despite early anxieties, counties have not been overloaded with felons serving community sanctions.

Since the General Assembly convened last month, I have followed with interest the introduction of additional crime bills. Some of the proposals address felony issues not included in the new sentencing law.

Speaking as the Chair of the Criminal Sentencing Commission, I ask for your patience and careful attention when considering those calls to rewrite a law that has been in effect for only seven months. Judges, attorneys, court personnel and the law enforcement community are assiduously working to implement Senate Bill 2. There are many changes; there is much to learn.

I echo the wise observations of those who advise to let the dust settle.

The sentencing law mandates careful monitoring and reporting of its implementation. Before enacting new measures that create unintended consequences, let us first determine how well the new law is working.

Few crimes jar the conscience and nerves of our citizens as those involving domestic violence. For decades, domestic violence was one of society's dark secrets. While never accepted, it remained behind closed doors, never fully addressed. We know now domestic violence is a serious problem that is not limited to particular neighborhoods. Court dockets dramatically reflect the growing public awareness of a critical problem in our society.

Thanks to legislative-judicial cooperation, we have new proposals for better meeting this threat to our families. Sen. Merle Kearns and Judge Jeffrey Ingraham led the Supreme Court's 31-member Domestic Violence Task Force that issued its report late last year.

The report represents one of the most comprehensive studies produced by a Supreme Court committee. It calls for changes in the law, court procedures and law enforcement, aimed at increasing the safety of both actual and potential domestic violence victims. It also calls for increased accountability for those who commit these crimes.

The Supreme Court has begun to implement those recommendations that apply to the judiciary. As the lead sponsor of Senate Bill 1, Sen. Kearns continues to play a key role in seeing that the recommendations are implemented by the General Assembly.

Anthropologist Margaret Mead once said that no matter what happens in society "the family

always creeps back." Based on the cases on our courts' dockets, we certainly hope so. While families have always been one of our most treasured institutions, today, they are also one of our most fragile.

One third of Ohio's 701 judges daily preside over family dispute cases: divorce, support, custody or unruly children. According to the most recent statistics, they are collectively hearing 200 cases every hour.

The harsh realities of the state of our families is underscored by the fact that the United States has the highest rates of childhood- homicide-, suicide- and firearms-related deaths of any of the world's 26 richest nations.

The suicide rate alone for children 14 and younger is double that of the rest of the industrialized world.

In this decade, while the number of cases in Ohio's juvenile courts has increased about 10 percent, the rate for violent crimes committed by juveniles has doubled.

It is foolhardy to simply call this a juvenile problem. When children are killing children and children are killing themselves, it is a crisis. A crisis that we all must face. It is an American tragedy that in a country where so many have so much; our constitutional rights are so vigorously protected; and where so few would deny the value of the rule of law; we have permitted violence to pervade so many of the images to which our children are exposed in our culture.

I ask you -- I beseech everyone in this chamber-- to stretch beyond the formal duties of your office and to search for and assume every opportunity to speak out against those who, for their own purposes, make violence socially acceptable in our country.

No one is more aware of this phenomenon than the judges in domestic relations and juvenile courts. As the statistics show, more than ever, families are turning to our courts for solutions that once were the domain of ministers, rabbis and community elders.

With so many families appearing in our courts, judges remain committed to serving them well. But we are challenged as never before.

Judges are exploring new strategies for meeting the needs brought to their courtrooms. A recently completed study of the juvenile and domestic relations courts notes that an increasing number of families are coming to the court system for a variety of reasons. In most instances, each case is heard by a different judge.

Consider the case of a family that is going through a divorce in which there are separate charges of domestic abuse and unruly juvenile behavior. The divorce is heard in domestic relations court, the abuse case goes before the municipal judge and the unruly juvenile case is in juvenile court.

An alternative is to expand the jurisdiction of our juvenile, probate and domestic relations judges to allow them to address multiple cases when appropriate or necessary.

We have just received the final report of the 18-month Family Court Feasibility Study. Funded by the Human Services Department, the comprehensive study recommends that we adopt legislation that would permit, not require, the creation of family courts. In some counties this is the right approach. However, given the diverse nature and resources of our 88 counties, family courts may not always be practical.

Mediation programs are proving to be successful across Ohio in many courts and especially in visitation, custody, and even juvenile cases. Mediators report that the disputes are often resolved outside the courtroom because those involved just want someone to listen.

Judges Tom Swift and Chip Henry in northeast Ohio are leading the way with a pilot project aimed at streamlining the adoption process. Working with local children services agencies, the aim is to complete adoption cases in months rather than the normal period of one to two years.

The Supreme Court and judiciary budgets are closely scrutinized; that is your responsibility. Unlike the experience in some states, in Ohio there has always been the recognition and appreciation of the judiciary as an independent branch with its own unique responsibilities. For that we are deeply grateful.

Legislative leaders and Governor Voinovich have exhibited a true understanding of judicial independence by their recognition of the critical need for new quarters for the Supreme Court and its related agencies. As the Court has assumed increased responsibilities for attorney discipline, library services, management assistance and other duties, we have run out of working space.

Preliminary plans call for the conversion of the Ohio Departments Building to a building for the Supreme Court. We are hopeful that the building with its fine historical and architectural details will meet the Court's needs well into the 21st century. The final decision will rest on cost and efficiency.

In addition to the practical applications, a separate and distinct Supreme Court building carries a strong symbolic message. The Supreme Court of Ohio has never occupied its own house. A public that has only a vague notion about the judiciary can be further confused when the state's highest court shares quarters with other government offices responsible for everything from operating the state treasury to monitoring bingo operations. A Supreme Court building leaves little doubt about mission or purpose.

Through the years, the judiciary, legislative and executive branches have accomplished much by working together. We have made genuine progress in combating crime and drug abuse, developing new strategies for curbing domestic violence and advancing dispute resolution and court services to all citizens. These accomplishments are the envy of other states.

I have taken some time to describe in detail a few of the most dramatic benefits of our interdependence. You have also:

- Authorized local courts to collect filing fees to fund court computerization and technology. More than 80 percent of our courts now have some technology to manage their work.
- Provided funding to the Court and Attorney General's office to support the Ohio Center for Law-Related Education. This hands-on program assists students and teachers in learning more about the justice system and about becoming good citizens.
- Created 33 new judgeships in the last eight years to assist courts in administering the growing caseloads and more complex issues on our dockets.
- Invited judicial views on a wide range of issues directly affecting the courts.
- Through adoption of the Governor's Reclaim Ohio program you have made available substantial new funds to juvenile courts for the local rehabilitation of juvenile offenders.
- Enacted legislation responding to security needs of the courts, such as those posed by the threats of the so-called common law court movement by prohibiting the filing of bogus liens against judges and other public officials. The legislation sponsored by Representative Schuck sent a clear message: "We live in a state governed by laws; we will not be intimidated by your threats."
- In the last session, provided for the increased compensation of judges -- an act that is appreciated by us all.

We can achieve even more through a better understanding of our respective institutions. So as I stand in this borrowed space, I would like to extend to you an invitation to come to our courts; observe the process and talk with the judges.

My colleagues in several states regularly invite legislators to their courts, and they report it is beneficial for all concerned. Legislators say the experience provides them with an inside look at local court operations. Others note that it adds a human presence to the measures you consider. Judges find this time well spent as it gives them the opportunity to answer questions about a system that to many appears mysterious.

This is not to be considered a "Let's-have-lunch" invitation. Denise Dartt, chair of the Ohio Judicial Conference, says you will be invited to spend at least a half day in a court or courts in your district.

In 1968 the Ohio Constitution was amended to give the Supreme Court exclusive authority for the admission to the bar and discipline of lawyers. It is our responsibility to assure the citizens of Ohio that lawyers and judges follow the Code of Professional Responsibility and Code of Judicial Conduct. In the past 10 years we have made substantial changes to the discipline system to ensure independence, efficient administration of claims, and a means by which attorneys can receive formal advice regarding ethics issues. It is still a work in progress.

Last year the Supreme Court disciplined 84 attorneys and judges for various violations of the Codes. We have recently ordered strong sanctions for such conduct as breaching the duty of

honesty to courts and to clients.

The Court is expected to consider recommendations from the Ohio State Bar Association directed at streamlining the process for investigating complaints against judges and attorneys.

It has been almost two years since the Court adopted limits on campaign contributions, campaign expenditures and candidate conduct in judicial races. Our action was taken simultaneously but independently of legislation adopted by the General Assembly relating to campaigns of other elected officials. We appreciate the deference to our constitutional responsibility expressed in your legislation. There is little question that reforms are necessary. To combat public skepticism about the role of campaign contributions in judicial decision making, we must maintain the wall between judges and their campaign funds.

I have discussed with you some of the reasons I believe the Ohio judicial system is strong and vibrant. But we must be prepared to meet future demands.

Think back 25 years ago, no one, not even Alvin Toffler, could have foreseen the realities we face today in our courtrooms. The nightmare of AIDS, the promise of digital technology and the mystery of in vitro fertilization, not one was imagined 25 years ago. Yet these and countless other developments have profoundly shaped the reality of our dockets today.

Reviewing our 200-year history, we know that as judges we cannot sit back and wistfully hope that somehow the future will take care of itself.

Perhaps Yogi Berra said it best: "If you don't know where you are going, you might end up somewhere else."

As an independent branch we know it is our responsibility not to simply cope, but to lead. To be effective, courts must determine how they provide justice today and in the future.

For that reason, I am forming the Ohio Courts Futures Commission.

The Futures Commission will consist of 50 members. Some of the names will be familiar; others will not. But all will be outstanding. Judges and attorneys will comprise half of the Commission -- nonattorneys, the other half. This balance will provide the best of both worlds: judges and attorneys will lend the necessary expertise, and the nonattorneys will provide their individual perspectives and help build support to ensure that the recommendations are implemented.

Two distinguished individuals will lead the effort as co-chairs:

Bob Duncan is a name familiar to many of you. He is steeped in the law. He has served as an assistant attorney general, judge on the Franklin County Municipal Court, Ohio Supreme Court, U.S. Court of Military Appeals and U.S. District Court. Several years ago, Bob co-chaired a committee appointed by the General Assembly to study judicial compensation, and, until recently, he was Vice President and Secretary to the Board of Trustees at The Ohio State

University.

He will be joined by Susan Lajoie, the associate director of the venerable Cleveland Foundation. Her extensive experience in strategic planning provides us with the ideal credentials for the work ahead. In her current post, Susan is responsible for policy and program development and direction of the Foundation's grant making activities.

And I am pleased to announce that Senator Nancy Chiles Dix and Representative Jim Mason have agreed to serve as members of the Commission.

The purpose of the Futures Commission will be to help us chart a course for our justice system as we move into the next century.

It has been said that judicial reform is not for the short-winded. That will be the operating principle of the Commission. I expect members to take the long view -- consider not only tomorrow's possibilities; consider what today may loom as impossibilities.

The actual study of the court system -- its strengths, its weaknesses and possibilities for the future -- will be conducted by five task forces.

The Structure and Organization Task Force will look at how our courts are structured to administer this crush of cases and funding. Surely if we were to design a new court system it would not look like what is in place today. The Commission will review the number of courts and related agencies and answer difficult questions relating to cost and efficiency.

The Rules and Procedure Task Force will not be as dry as its name implies. While this panel will study the very technical issues, such as the rules controlling court procedures, it will also review our jury system.

Juries are the essence of democracy in our courtrooms. The belief that citizens should be judged by their peers is held more strongly in our country than in any other. Thomas Jefferson described the citizen jury as the only anchor by which a government can be held to the principles of its constitution.

Several years ago the Supreme Court adopted jury standards to make jury service more attractive. Through the years, statutory exemptions for certain occupations, and even those who have reached age 70, have been adopted. They are all persons whose knowledge and experience could lend wisdom to a jury. Why do we exempt persons who would make good jurors? In 1997 I cannot think of a logical answer to that question. I will therefore seek adoption of legislation that will eliminate all occupational and age exemptions for jurors. Two-thirds of the states have eliminated such exemptions. Ohio should do the same.

Likewise, the law currently restricts to \$15 per day the compensation of persons called to jury duty. That is \$25 less than a citizen would be reimbursed for sitting on a federal court jury and substantially less than juror fees in many states. In larger counties, the \$15 does not even cover parking and lunch. We deem jury duty to be a responsibility of good citizenship; we pay jurors

as if the responsibility includes an economic hardship. I will seek legislation to raise the ceiling on juror compensation to make it at least equal to the compensation received by jurors who serve in federal court.

The Rules Task Force of the Futures Commission will also consider the role of jurors in a trial. If the jury trial system is to remain strong, we must answer some of the difficult questions being asked and we must be willing to give up old practices. An example is the significant jury reform being implemented in Arizona. There, the new practice of permitting jurors to ask questions of witnesses through the trial judge has received very strong support from persons who have served on juries where the practice was allowed.

The courts will survive as an institution of justice only so long as they are perceived to be accessible to all citizens for the equal administration of justice. We have no natural constituency; the quality of our decision making is the source of our strength.

The Access and Quality Task Force will determine to what extent our courts provide access to all citizens and the quality of the justice they receive. It is a fundamental issue as it raises questions about the opportunities to resolve disputes without undue hardship, cost, inconvenience or delay.

In the spring, the Racial Fairness Task Force will submit its recommendations to the Court. We expect the work of the Task Force to help us as we consider issues of diversity in the justice system and the availability of legal services for the poor. The General Assembly has provided legislative assistance as we established a Legal Services Foundation and by authorizing and reauthorizing a court cost for the express purpose of legal assistance.

Technology will make our courts more efficient, more accessible and more understandable. The Technology and Facilities Task Force will study the appropriate application of technology to our courts. This will include electronic filing, remote access, system security and video applications. The Commission has already established an Internet site to provide updates and announce public hearings.

A survey by the Washington Post 18 months ago found that more than half of the American public could name the Three Stooges but could not name a single justice of the United States Supreme Court. Obviously, members of the Education and Awareness Task Force have their work cut out for them. The committee will study public perception about the courts and their mission. It will survey public attitudes, media-court relations, court- community relations and law-related education.

In preliminary discussions with a variety of people about the Commission, the Education Task Force generates the most interest. This reflects the need to enhance citizens' understanding of the courts and the importance of maintaining public confidence and respect for the rule of law.

Most citizens are not likely to trust a court system that feels foreign, bureaucratic or autocratic. Again, Thomas Jefferson offered a wise observation, albeit in words cloaked in the gender bias of his era: "That government is the strongest of which every man feels himself a part." The

observation is as true of the courts as of any other branch of government. In some of our courts, we are already involving the public in ways that are not inconsistent with judicial independence but which open windows to our processes through which the public may gain a deeper appreciation and respect for the mission of justice. One example is the camera in the courtroom, which, in the Ohio experience, has for 16 years been permitted without disruption or disrespect.

The challenge of the future will be to develop more community collaborations that will enhance public trust and confidence; such collaborations as exist in our nationally recognized effort in the battle against substance abuse.

I stand in borrowed space, but I do not stand alone. Thousands of persons across this state, some of whom are in this chamber today and some of whom no longer live, have demonstrated their commitment to a state justice system that has given life to the desire of our citizens to live civilly, under the rule of law. Our courts are places for the fair hearing of disputes.

Members of the General Assembly past and present have provided us with the resources to fulfill our constitutional duties. And, your careful deliberations have given us a framework for the hopeful expectation that we can live with peace in our homes, our work places and our communities.

I also stand with judges -- judges who struggle daily with the expectations of citizens who bring their disputes to the courthouse in order that they be heard in a place in which decisions are founded upon justice.