State of the Judiciary
Chief Justice Thomas J. Moyer, Ohio Supreme Court
Message to Ohio Judicial Conference
September 9, 1999

Good morning. Thank you, Chairman Wolff, for providing me with the opportunity to once again share some of my observations regarding the state of our Ohio judiciary. I thank you and the officers of the Conference and Anne McNealey Larrison and her staff for enhancing the professional working relationship that the Supreme Court and the Ohio Judicial Conference have enjoyed over the life of the Conference. I am particularly impressed with the topic of this year's conference and the distinguished members of the bench and the bar who will be taking us through issues that are being debated across the country.

I look forward to continuing our good work together.

A few weeks ago I was prepared to tell you that the state of the judiciary is the best in recent memory. I thought of how our drug courts are showing promise, how caseloads are down, how crucial sentencing legislation is ready for action by the Ohio General Assembly, and how many of you continue to improve the administration of your courts.

By that measure the state of the judiciary is good.

I will talk about those issues in a few minutes, but first I want to address an issue of deep concern.

Over the past few weeks I read two disturbing stories. In Delaware County, one of the fastest growing areas in the state, the lack of jurors delayed a trial. A few days later it happened again. This time in Hancock County. A trial could not begin until court staff phoned citizens on the jury list. A second jury trial in the same courthouse was postponed for a month because jurors were not available.

So I must say the state of the judiciary concerns me.

My concern comes not from the delay itself.

My concern is with citizens who did not wish to participate in something as constitutionally vital as a jury trial. That right is a bedrock of the judicial system, and without citizen participation the system becomes flawed.

The answer is not in lecturing people that they must participate, or sending out bailiffs to round-up jury candidates. Scolding or forcing people to do anything produces minimal results.

The answer is in convincing our citizens that the judicial system is something they want to be part of. What I am talking about is creating a public sense that serving on a jury is not a duty, but a responsibility in the history of the best of noble causes.

That is easier said than done, but I think a starting point may be found in new polling data from two recent national surveys regarding citizens' attitudes about state and federal courts. One was commissioned by the National Center for State Courts, and the other by the American Bar Association.

The results of both surveys are strikingly similar. They found that people still hold the courts in high regard: 73 to 75 percent of the respondents have at least some confidence in local courts. That puts state courts on par with the U.S. Supreme Court and governors' offices. Only doctors and police officers scored higher.

The surveys also reveal that the more knowledgeable people are about court operations, the higher their confidence in them. And, perhaps ironically, a high percentage said jury trials are the best part of the court system, reflecting Thomas Jefferson's belief that trial by jury was the anchor by which a government can be held to the principles of its constitution.

But more detailed polling questions revealed issues that need to be addressed. For example, forty-four percent of those surveyed say the courts are out of touch with their communities. We must do something to improve those numbers.

Judicial elections appear to play a role. Three of four people say elected judges are influenced by having to raise campaign funds. And eighty-one percent say politics influences court decisions. That perception, although inaccurate, is not good.

A vast majority, a full eighty percent, say the wealthy get better treatment by the courts than the rest of the population. We need to change that perception.

In commenting on the polling results, Hearst Corporation President Frank Bennack, whose organization conducted the National Center survey, said, "Unfortunately, a problem identified is not a problem solved." So that begs the question, what do we do to build public confidence in the courts?

It is not simply a matter of public relations though that plays a role. It is a matter of tapping into the soul of a community, listening to the people, while at the same time using our sense of wisdom and sense of fairness to serve justice and serve the citizens of our great state.

The first step to improving confidence and trust in the judicial system is bringing order to our own house. From 1990 through 1995 seven judges were sanctioned by the Ohio Supreme Court or resigned with disciplinary action pending. In the last three and half years that number has grown to twelve, and several cases are in the system. In recent years it has taken nearly half the time to double the number of judges disciplined in the first part of this decade.

Other judges have taken their disputes with colleagues to the news media, or even filed suit to settle disputes with colleagues. And there seems to be a growing list of judges whose names appear in news reports for reasons other than their decisions and opinions.

Each unethical act or dispute aired needlessly in public tarnishes not only the judge or judges involved but the entire judicial system. Public confidence can be damaged in a heartbeat but the impact on the system can be far-reaching and long lasting.

One of our colleagues, in a letter sent to me, recently observed: as jurists our fundamental purpose is to preserve order within the social structure. A burden carried by every judge is the expectation that judges are held to a higher standard of conduct than the community norm. If we are to credibly order consequence for the misconduct of others, our own conduct must be beyond reproach. We need to take some tangible steps while at the same time conducting our public and personal affairs with a sense of wisdom and dignity.

I am open to any and all suggestions and I hope you are too. But allow me to briefly outline actions in which we are involved at the Supreme Court.

An important step toward building public confidence in the courts already has been taken with the implementation of the Bell Commission recommendations. The Ohio State Bar Association, after lengthy study and deliberation, presented the Supreme Court with a number of proposals to change disciplinary procedures that have been adopted by the Court. The new rules, which took effect last week, strengthen attorney de-certification procedures while at the same time allowing for quicker disposition of complaints filed against lawyers and judges.

Another important body of work is that of the Ohio Courts Futures Commission which will release its final proposals in the next few months. Since the first of the year the Commission has held eleven public hearings in which nearly 180 people testified. Nearly 850 citizens have attended the hearings and roundtable discussions.

While the over-arching goal of the Commission is to prepare the judicial system for the next century many of the proposals also address concerns of public confidence in the courts. For instance, using technology to make courtrooms more accessible to all including the handicapped. Commissioners are also looking at proposals to expand jury pools, improve compensation, and make more effective use of a jury member's time.

Some of the jury reform debate is being shaped by research by the Ohio State Bar Foundation. The Foundation found that some courts in northwest Ohio have close to 100 percent response due primarily to an excellent system of placing information in the hands of citizens before they are expected to appear for jury duty. It is no coincidence that the Futures Commission is looking at ways to improve juror education and information.

I know many of you will not like some of the Futures Commission recommendations. They will probably not all please me, either. But that is part of the process of developing new ideas, to bring together persons representing a cross-section of Ohio residents and to make decisions based on what is best for the future of the courts and the future of society. I thank those judges who have served on the Commission. You have made a prodigious contribution to the future of the Ohio court system.

The recommendations of the Futures Commission in which I will have the greatest interest

will be those that de-mystify the courts, make them understandable, and build citizen confidence.

Since we last gathered for this conference a year ago, the Ohio Sentencing Commission has delivered two major sets of recommendations: One concerning misdemeanors and the other on juvenile dispositions.

In its work on misdemeanors, Commission members have developed a streamlined, accessible system that maintains a judge's discretion.

On traffic matters the Commission's proposals will result in a more concise set of laws. The section on the suspension of drivers' licenses, for example, has been standardized, and the area concerning waivers has been made more clear so that lawyers, judges and people can better use the system.

The Commission's juvenile recommendations, I think, will make Ohio a leader in the nation in the way we respond to young people who step on the wrong side of the law.

Many of the Commission's proposals were shaped by the participation of Juvenile Judges Sylvia Hendon, Stephanie Wyler and Fenning Pierce. Judge Joe Bressler, chair of the committee, brought the insight of the common pleas court to the discussion. The recommendations also benefited from the comments and proposals of the Ohio Juvenile Court Judges Association.

One proposal would create what is called "blended sentencing," which will allow juvenile judges to impose both a juvenile disposition and an adult sentence. Part of this proposal also would allow juvenile courts to retain jurisdiction until a child reaches twenty-five years of age.

When you look at the complete package of juvenile recommendations you will find that they give judges more discretion--an attribute that reverses national sentencing trends over the last decade.

On an unrelated topic, there is potentially good news to report on the success of Ohio's drug courts. Preliminary results of a study sponsored by the Supreme Court suggest that Ohio's drug courts are performing better than similar programs around the country. Researchers from the University of Cincinnati tell us 76.3 percent of the drug offenders who have gone through the program in Ohio have not reappeared in a courtroom for at least two years. Compare that to a national success rate of roughly 60 percent. That's great news.

In just a few days we will have a full-time drug court coordinator. Meghan Wheeler, who is currently the Richland County drug court coordinator, will be joining the Supreme Court staff September 20. She will be Ohio's first full-time drug court coordinator. Meghan is here.

Increasingly, entire families come before the courts. That issue also is being addressed. Thanks to nearly one million dollars in federal grants, courts in Clermont, Fayette, Lorain,

and Mercer Counties expanded their family services just a few months ago. Depending on its success we are prepared to expand the Family Court concept to all counties that are interested.

Finding family law in the Ohio Revised Code will soon be easier. Thanks to efforts led by Judge Phil Rose and Judge Dave Basinski, family law that was once scattered over fourteen titles of the Code will be located in a more concise six titles.

Remember the statistic I used earlier, that forty-four percent of Americans believe the courts are out of touch with their community? These developments, drug courts and family courts, together with our long-term commitment to dispute resolution, will go a long way toward changing public opinion. Ohio's courts are working to address the needs of our communities.

At the Supreme Court we are working to improve the efficiency of the administrative staff. That is why we have announced a major reorganization of the senior staff. Some of you already know our new court administrator, Steve Hollon, who served as administrator and chief staff counsel of the Second District Court of Appeals. In just a few months on the job Steve has streamlined the staff within the Supreme Court, the first reorganization of the Court in twelve years. I think this will make us more efficient and better able to respond to your needs.

With that goal in mind we have named Ruth Newcomer assistant director for judicial and court services. Ruth will be working closely with many of you. So will Rick Dove, who now carries the title of assistant director for legal and legislative services. Another name I'm sure you know is Doug Stephens, who is now associate director for judicial and court services. We also are hiring a new case management coordinator, Diane Hatcher. Diane has been the case management consultant to the Montgomery County Common Pleas and Juvenile Courts. Diane is here.

I am expecting great things from the staff, and you should have high expectations as well because one of their primary missions is to help you.

The Supreme Court is increasing its education commitment to help the staff of courts around the state. I am announcing today that we have committed one-hundred-and-fifty-thousand dollars to provide tuition-free professional training for all court personnel. Part of that money also is earmarked for videoconferences in order to reduce expenses and travel time.

In addition, eight new courses are being added to the curriculum of the Judicial College. We will train as many as forty court personnel from around the state to teach the courses and eight others will be trained in course planning. This will allow your staff to conduct regional training programs, making them more accessible while saving you time and money.

The Supreme Court also is offering a Y-2-K conference for judges and other interested parties. The day-long conference will focus on using mediation to resolve the lawsuits that are expected as a result of date-related computer failures.

I also want to thank judges and court administrators around the state who have taken steps in

the past year to make court facilities safer for all who enter them. Nearly 370 courts received funds appropriated by the General Assembly for increased courthouse security. The state funds allowed many courts to update their security equipment, and provided advanced safety and security training for more than 9200 court employees. The remaining money in the fund will soon be distributed to you in a second round of grants.

I appreciate the work of Justice Evelyn Lundberg Stratton on this issue. Her leadership continues to be a key part of the security program's success. And Anne McNealey Larrison has been excellent in coordinating the grants, training programs and budget. I want to thank her for performing what is often a thankless task.

Nearly each point I have mentioned in the last few minutes speaks to the theme of this conference, "The Scope of Judicial Power." Since 1968, the Ohio Constitution has granted the judicial branch the power to adopt rules of conduct and rules of procedure. We have been given the constitutional authority to manage our own house. Not all states grant such powers to their Supreme Courts. But the true nature of judicial power comes not from the general assembly and not from the executive branch. As Abraham Lincoln observed, the true nature of power in a democracy comes from those who are governed.

The citizens of Ohio have bestowed immense power upon the courts of our state. We are able to say what the law is. That essence is written into the Constitution. And supreme courts are even able to decide what the law should be.

But in a democracy there is a more fundamental factor that is not so clearly defined in law, one that draws a much broader circle in defining the scope of judicial power, that is the question of judicial authority. If we are bestowed with power upon election to the bench, then the scope of judicial authority is what we earn from citizens.

The authority of the judicial branch is rooted in the expectations of citizens that we will use our powers with wisdom, fairness and restraint. In doing so we protect the viability of the system by respecting the confidence extended by the people. That is the difference between a democracy and almost any other system of government. In a dictatorship there is little, if any, expectation that the ruler will exercise moral authority because the power is absolute.

Likewise in a monarchy, there might be hope that the crown will exercise its power with authority, but without the check and balance of the ballot box a monarchy presents a different dynamic.

History tells us that whether it is the imposition of a Stamp Act on the Colonies or South Africa's unyielding apartheid system or Suharto's firm grip in Indonesia, when a leader or institution extends power beyond the public's perception of authority, citizens will somehow bring about change.

Right now across the country there is talk of limiting the powers of the judiciary. I am steadfastly opposed to the imposition of limits on the independence of the judicial branch.

The moral authority of the courts in America derives in large measure from our independence, independence from inappropriate influences upon our adjudications and our administration of the courts.

But independence is not the equivalent of unrestrained freedom. So long as we exercise our power with wisdom and restraint , we will remain independent.

In our democracy tension among the branches of government is a product of design. The ongoing reasoned debate over the power and authority of each branch creates a stronger, more vital spirit of democracy. It is our birthright. It is to be embraced.

I thank you for this opportunity and want you to know that I am honored to be your chief justice.