

State of the Judiciary
Chief Justice Thomas J. Moyer, Ohio Supreme Court
Message to Ohio Judicial Conference
September 14, 2006

Judge Krueger, Officers of the Judicial Conference, Judge Schweikert, and to my colleagues ... thank you for the privilege of offering my views with respect to the state of Ohio's judiciary. Our judiciary is resilient, and strong. We face many challenges in changing times. I extend my gratitude to Judge Krueger, the officers, the Executive Committee, and the members of the conference committees for a productive year of accomplishments, and we have all benefited from the selection of Judge Mark Schweikert as Executive Director of the Conference. Judge Adkins, we look forward to working with you during the next two years.

The passage of time brings change for us all. Tomorrow John Meeks will serve his last day as Director of the Judicial College. John will assume the position of Vice President of the Institute for Court Management at the National Center for State Courts. He will be advancing his career and increasing his income.

We are grateful for John and his staff, and for those of you who helped him mature the Ohio Judicial College to become one of the preeminent entities for judicial education in the country. John's peers expressed their respect for him when they elected him President of the National Association of State Judicial Educators.

John will leave a large void that we will attempt to fill with a nationwide search for his successor. Please express your gratitude to John Meeks as he begins a new chapter in his professional life.

Many of you benefited from the services of Jim Mendel, a member of our technology division, as you worked to apply the marvels of modern technology to court administration. In July, Jim left this life unexpectedly, leaving behind a profound legacy of service to many of the courts of this state.

On Sept. 11, 2001, Jason Thomas began his day in New York City as many days had begun—he drove his daughter to the home of his mother and would then drive to his class in criminal justice. But on this day when he arrived at the home of his mother, he was informed that an airplane had flown into one of the towers of the World Trade Center. He cut his class that day.

Instead he dug out the Marine uniform in the trunk of his car and drove to the site of Ground Zero, knowing that his training as a Marine and his compassion would enable him to assist those who would need help. When he arrived at the site of the disaster, he assisted a number of injured persons who were on the sidewalk and in the street.

He met another retired Marine and the two of them ventured into the smoldering ruins of the tower to search for survivors. They called out that they were Marines and were there to help.

Digging through the rubble, they were able, with the assistance of others whom they had summoned, to pull out two Port Authority Officials, thereby saving their lives.

Jason talked to no reporters, no officials, left his address and phone number with no one. Jason was exhausted physically and emotionally. His mission completed, he went home. But he returned during the next couple of weeks to continue to assist those who needed his help.

Jason seldom mentioned his role in 9/11. He barely mentioned it when he applied for a security officer position at the Supreme Court. Even his children were not aware of his courage.

It was when Jason saw the trailer for a new movie about the attack on the World Trade Center that he began to talk. After nearly five years of anonymity, Jason stepped forward to receive the praise and recognition he so richly deserved.

We had hoped Jason would be here today, but he is in New York attending the various ceremonies and events marking the five-year anniversary of Sept. 11, 2001. He has told me that he is overwhelmed by the outpouring of public support since he came forward. None of us will be in the presence of a person who has acted with more courage and exudes more humility.

Carl Sandberg said—“Valor is a gift. Those having it never know for sure whether they have it ‘till the test comes.” Everyone who knows of his valor has marked Jason's test with a one hundred.

How refreshing it is in a cynical world that values superficial acts that Jason Thomas receives adulation for taking the ultimate risk and being so comfortable in his humility.

Thousands of stories of courage have been created by the events of Sept. 11, 2001. Each day in America, thousands more could be reported, but none are more classic; none define more precisely the attributes of courage and humility than the Sept. 11 mission of Jason Thomas.

When one attempts to identify those in a risk averse society who take risks everyday, high on the list are judges. When you issue a decision that is unpopular, you face the risk of unfair criticism.

When public opinion points to a certain outcome, or an outcome not found in the law or the Constitution, a judge assumes the risk when she follows the law. Elected judges risk political defeat.

The early supporters of mediation, drug courts, mental health courts, rehabilitative services, were undaunted by those who would cling to tradition. We are a profession of risk takers in a society that is risk averse. We do not risk our lives and some of us are not very humble, but we conduct ourselves by fundamental principles that have burnished the character of our nation.

PRO SE LITIGANTS

Meeting the Pro Se Challenge—the theme of this conference is bold and to some, is risky. During recent years the Ohio State Bar Association, local bar associations, the Supreme Court

Task Force on Pro Se and Indigent Litigants, chaired by Judge Adkins, have brought into the open a disturbing fact for us. Too many of our citizens who should have legal representation go without it.

Most every docket in the state is experiencing a growing number of cases filed by parties that cannot afford an attorney or choose not to use one. The Task Force found that increasingly, litigants in complicated matters such as divorce and child custody cases are not seeking advice of counsel.

The Supreme Court is not immune. Earlier this year the court heard an argument presented by a pro se litigant. Across the state judges, court clerks, and administrative staff navigate the boundary between providing assistance and offering legal advice.

In Cleveland, Judge Ray Pianka says his Housing Court is part courtroom, part emergency room that performs legal triage on a mix of criminal and civil cases for people who fall behind on their rent and mortgage payments--financial problems that lead to other charges such as housing, zoning and fire code violations.

Judge Pianka says the court directs pro se litigants to resources that may provide assistance, but he says, "this leniency toward the pro se litigant, of course, is balanced with the court's inherent power to manage its docket."

In Middletown, Judge Mark Wall says few plaintiffs come to his Municipal Court represented by an attorney who knows the law and has experience before a judge. Everyday, several dozen people stand before him without a clear understanding of the proceedings or the ramifications of their plea.

The short-comings of pro se litigation are often chronicled in the dockets of family and domestic relations courts. Mothers, fathers, children and grandparents struggle to untangle their complicated lives only to be confronted by a system of rights and protections that seem at odds with raising a family.

Jim James, a Family Court Judge in Stark County, took a phone call from a grandmother who was caring for her daughter's four children living with her after the daughter was sentenced to prison. The children needed Medicaid benefits, and school was about to reopen ... but without a custody order, the children could not enroll for healthcare or in school.

At this year's meeting of the National Association of Court Managers—a demographic composite depicted the pro se litigant as female, high school educated and poor. She typically believes she cannot afford an attorney or chooses not to pay one, in part, because she does not trust lawyers.

On Monday, Sept. 18, the Supreme Court will hold a special conference at which we will consider the thoughtful and comprehensive recommendations of the Task Force on Pro Se and Indigent Litigants and the recommendations of the Council of Delegates of the Ohio State Bar Association with respect to the responsibility of lawyers to provide pro bono services.

The Court will soon take action on the 54 recommendations of the Task Force and the recommendations of OSBA.

COURT COSTS

A matter that affects all litigants, pro se included, is the growing array of court costs and filing fees. The Ohio House this week approved legislation requested by the Chief Justice that creates a Joint Committee to Study Court Costs and Filing Fees. I know this is a topic of interest to the Conference.

The committee will include members of the General Assembly, judges, clerks of court, court administrators, a county commissioner and a representative of the Ohio Municipal League. The general public also will be represented.

We need to establish an orderly, coordinated process for determining court costs so that they are set at a level that provides citizens reasonable access to the courts. With few exceptions, they should be assessed for the operation and maintenance of the courts.

COURT TECHNOLOGY

An example of an effective use of court fees is the dramatic development and implementation of new information technologies. We now use computers and related technology as the primary means of communication, case management, legal research, document creation, and filing.

All court clerks in Ohio now have computerized case management systems, and for many judges, the modem has replaced the telephone as their most frequent form of communication. From the initiation of a case until its conclusion, no aspect of the justice system has been unaffected by technology.

We are now ready to take the next step ... creating a digital connection between all courts through the Ohio Courts Network. Development of the network took an important step forward this week as the Supreme Court formally asked technology vendors to submit detailed proposals to build the system.

After years of planning by the Advisory Committee on Technology and the Courts the decision has been made to implement the system.

The request for proposals anticipates a pilot project of 15 to 20 courts of various sizes, localities and existing technology ... providing a model for how a statewide system will be configured.

Once fully operational, courts will be able to share information with each other and with other partners in the justice system. Imagine a juvenile judge in Brown County who is hearing the case of a juvenile who appeared in the juvenile court in Lucas County. Access to those records will enable the Brown County judge to craft an appropriate rehabilitation program.

In instances of domestic violence the Ohio Courts Network will provide quicker and wider distribution of protection orders. Timely access to reliable information could make the difference between physical harm and safety.

The Network will feature a data warehouse for the collection of case information. A Web portal will allow all Ohio courts to access that information. The public will be able to access much of this information from a single Web site.

The system is designed to minimize the investment required in new information technologies, and reduces the trial and error of developing new systems in each county. All of this will be accomplished while maintaining local control over data and information.

There may be other plans by other state agencies that want to bring data processing systems to the courts ... but I assure you that our clear purpose is to develop a system for the courts, operated by the courts. The Ohio Courts Network will be the connection to these other state systems.

As we move from concept to reality, we will also create a permanent Commission on Technology and the Courts to oversee the ongoing operation of the Ohio Courts Network, and most court technology matters across the state.

We are grateful to the members of the Advisory Committee on Technology and the Courts. Under the leadership of John Bessey, the committee has helped us make the transition from the old dial-up modems to fiber optics. The Task Force has made a valuable contribution to efforts to modernize the courts.

The clerk of the Supreme Court and our Office of Information Technology are developing a subscription service that will provide electronic notice of developments and deadlines of a particular case.

If someone is interested, for example, in a tax appeal pending before the court, they can sign-up for e-mail alerts that will automatically notify them of deadlines and provide immediate access to case filings. If testing is successful, we hope to open the service to the general public later this year.

COMMERCIAL LITIGATION DOCKETS

The theme of this annual conference reflects our perpetual challenge to improve access to justice for all. As California Chief Justice Ronald George observed, "Improving access to justice is not limited simply to measures designed to assist the indigent. Courts must be responsive to all constituencies that need their services." He made that observation at the inauguration of a pilot project in California to improve the management of complex commercial cases in California's state courts.

States like Ohio have recognized the benefits of establishing commercial or business dockets to manage cases presenting new and unique issues produced by emerging technology and new business models.

A task force in Maryland observed that, “Judicial decisions will have to look forward to the potential impact of technology as well as back to established legal precedent. The judiciary can nevertheless take a leadership role in the development of new rules and enhancement in its functions to adapt to these new challenges.”

Pennsylvania and New York are two states that report positive results from the establishment of commercial case dockets. A concurrent resolution of the West Virginia legislature observed that states with a business court system report that they have successfully used business courts to persuade businesses to locate or remain in those states.

Advocates of a commercial litigation docket emphasize that most kinds of business litigation is different from other litigation in the number of documents and witnesses required, the extent of the motion practice, discovery disputes, other applications to the court, and the complexity of the legal issues. Often such cases benefit from advanced case management techniques, the availability of dispute resolution and technology.

We in Ohio are living with a dramatically changed economy. We should be able to say to the entities of a new economy that the court system in this state is prepared to facilitate the resolution of legal disputes presented in complicated business and technology cases.

For this reason, the Commission on the Rules of Superintendence, chaired by Justice Judith Lanzinger, will form a subcommittee with the purpose of designing a pilot project in one or more common pleas courts that will assess the feasibility of adopting commercial litigation dockets in the appropriate common pleas courts in the state.

The committee will be co-chaired by a common pleas judge who has expressed an interest in such a project and Pat Fischer, President of the Cincinnati Bar Association and representing the Ohio State Bar Association.

At a minimum, I would expect the pilot project to consider the publication of a desk book, recommending a curriculum for judicial education in commercial litigation case management, revising of the Rules of Superintendence, amendments to statutes, and the documentation of best practices.

I am aware of some of the objections to the creation of commercial litigation dockets, the intricacies of judicial selection, and the concern for allocation of resources. All of these concerns are addressed in the plans in other states.

This is a project that follows our very successful training of a select group of judges who volunteered to commit to a course of education in biomedicine and biotechnology.

I am pleased to report that next month the first class of Ohio judges will be designated as fellows of the Advanced Science and Technology Adjudication Resource Center as they complete two years of intensive training in technology, bio-technology and the life sciences.

The ASTAR judges have been tutored on the inner workings of computers, taught how the Avian Flu could affect Ohio farms and they unraveled the double-helix as they were exposed to concepts of medicine and the reproductive sciences.

One thing we have found is that judges are eager to learn and doctors and researchers are eager to teach. At one of the early programs about agricultural sciences, we almost had to turn out the lights so they would stop talking.

We were recently informed that the U.S. Justice Department has approved close to a million dollars to fund the Advanced Adjudication Activities Project ... a nationwide program that will help train approximately 200 judges over the next two years. The federal funding will take ASTAR to a higher level in training and sophistication. And thanks to Congressman David Hobson and Ralph Regula, Congress will appropriate additional funds.

CIVIC EDUCATION

It is no secret that what we do everyday in administering the justice system and performing our judicial responsibilities is either not understood or misunderstood by the vast majority of our citizens. It is also troubling that too many of our citizens do not know who we are and cannot identify us.

A recent survey (the Zogby Poll), released in August of this year, revealed that 77 percent of those polled could identify two of the seven dwarfs, but only 24 percent could name two justices of the United States Supreme Court.

Seventy-four percent were able to name Moe, Larry and Curly as the Three Stooges, while only 42 percent knew that the legislative, executive and judicial branches comprise the federal government. If citizens do not know these basic facts, think of the deficiency in knowledge about the theories and premises upon which American constitutional government was created.

The survey also found that more people know Harry Potter than Tony Blair, and could identify the planet Krypton as Superman's home as compared to Mercury as the planet closest to the sun.

In a *New York Times* article (Aug. 16, 2006), describing this survey, Professor Robert Thomson of Syracuse University was quoted as saying, "These results are not about how 'dumb' Americans are, but how much more effectively popular culture information is communicated and retained by citizens than many of the messages that come from government, educational institutions and the media. There are important lessons to be learned here."

During lunch today, Bill Weisenberg will describe to you an exciting new program called the "Least Understood Branch," a program designed for civic education to inform and educate the

public about our judicial system and the important role courts play in the everyday lives of our citizens.

The program, a collaborative effort of the American Bar Association Standing Committee on Judicial Independence and the ABA Judicial Division, and coordinated with the National Center for State Courts, Justice at Stake, a non-partisan national campaign working to keep our courts fair and impartial (of which I am on the Board of Directors) and the League of Women Voters, has developed resources to enable lawyers and judges to communicate the message that fair and impartial courts accountable to the law and the constitution are indispensable to a free and democratic society and provide the essential balance to our system of checks and balances.

This is a long-term program, and through the efforts of the Judicial Conference, Ohio State Bar Association and local bar associations, it can achieve that “effective popular culture information” delivery noted by Professor Thomson.

I strongly endorse the initiative as vital to our educational institutions.

Justice Anthony Kennedy recently challenged all of us to educate, to speak-up, to spell-out to our fellow Americans and the rest of the world that the rule of law is our best hope for a civilized society.

Speaking this summer at the ABA annual meeting, Justice Kennedy said “We must explain to the rest of the world the meaning, the essentiality, the purpose of the rule of law, as it's understood by the American people and other democracies throughout the world. And we must begin to do a better job of it and we must begin that now.”

I call on all of us to take up his challenge. We can and we should explain to anyone who will listen that reverence for the law built our nation and now provides the light on the hill for struggling democracies around the world.

Law is a liberating force, it places controls on governments and expands the rights of people. The law forces ruthless politicians to stand down, it opens the school house door and it gives voice to the unpopular.

Our profession, the legal profession shapes the American story, making real the dream of our founding fathers that justice is for all people.

From John Marshall to John Roberts, America turns to the judiciary to bring certainty and predictability to a civilized society. Our dockets are diaries of the perpetual balancing of rights with responsibilities in a free society.

An impartial judiciary is the one institution entrusted by the citizens to balance the concerns of society against the time-tested virtues of our constitutions. A citizen could be poor and unpopular... when they come before the court they will be offered the same reading of the law as the rich and the famous.

As judges, we take the risk to be unpopular. We take the risk to faithfully apply the law so that there may be justice for all.

I am honored to belong to a profession of risk takers.

I am honored to be your Chief Justice.