

State of the Judiciary  
Chief Justice Thomas J. Moyer, Ohio Supreme Court  
Message to the Legislature  
April 25, 2007, in Columbus, Ohio

Speaker Husted, President Harris, members of the 127th General Assembly, my colleagues on the Supreme Court, Governor Strickland, Attorney General Dann, Secretary of State Brunner, Treasurer Cordray, citizens of Ohio... it is my great honor to be given this opportunity to address you regarding the state of the Ohio judiciary. Mr. Speaker, Mr. President, I thank you.

This is in large measure, a report on the stewardship of the funds you have appropriated to the judicial branch of state government. But I am here to do much more. I am here to thank you, to inform you and to persuade you. The judiciary of Ohio is fortunate. The Ohio General Assembly and Ohio governors have historically recognized the responsibilities and responded to the needs of our courts. You have provided the third branch of government with resources necessary to support the effective administration of justice.

The courthouses that grace the towns and communities of Ohio are a strong symbol of your work. Whether built of sandstone, marble or simple red brick it is there that much of the legislation you so carefully craft enters the lives of the citizens of Ohio.

When you amend criminal codes, the accused and the accuser soon feel the impact in courtrooms. Change probate laws, and families will talk about it as they ascend the courthouse steps from Brown to Medina to Van Wert counties. Change foreclosure laws, and the effect will be brought to bear in each and every courthouse across the state.

The county courthouse is as much a focal point of your work, as it is mine. It is where law is applied, where justice is made real.

Walk into the Common Pleas courtroom in Ashland County, and the inscription on the wall high above the bench will draw into sharp focus the importance of the work conducted there: *There Is No Virtue So Great As Justice.*

In Scioto County, the Ionic columns above the courthouse entrance remind us of the permanence and authority of the rule of law. It is no wonder that such bold architecture graces the facades of so many court structures.

And across Ohio, step inside newly designed courthouses, ones no longer anchored on the town square. Modern court facilities are often located in commercial and business districts, more convenient to the homes and work places of millions of Ohioans.

There are 721 judges in our state. You, in partnership with local governments, provide these men and women the resources necessary to effectively administer the more than three million cases filed annually.

Today I would like to continue the journey, begun six years ago when I was last privileged to stand at this podium....a rhetorical tour of court programs that respond to the changing nature of court dockets.

## **OHIO JUDICIAL CENTER**

The first stop on our tour is just a few blocks from here....The Ohio Judicial Center, a 75 year-old state office building transformed into the home of the third branch of state government. The conversion is a product of the foresight and appreciation of Ohio history shared by two governors and the leaders of both parties in the General Assembly.

As you walk into the building, you will quickly notice the tour groups---many of them students studying state history and government. Teachers tell us the more than sixty murals in the building depict the story of Ohio history better than any textbook. The Visitor Education Center on the ground floor was designed with the help of civics and government teachers.

On the first floor, the large room at the south end of the Grand Concourse is designed to provide continuing education for judges, magistrates and court administrators. Just last week, it was used by local court administrators working on a three-year program that leads to a certification in court administration.

Across the hall is one of the more beautiful, historic conference rooms in the state, with 20 foot high murals depicting the early days of commerce in Ohio. Here you will often find a meeting of the Advisory Committee on Domestic Violence or the Advisory Committee on Mental Illness and the Courts, or the Ohio Criminal Sentencing Commission. These are among the 23 appointed bodies at the Supreme Court composed of volunteer attorneys, judges, legislators and citizens from all regions of the state. They are working to plan for the future of Ohio's judicial system.

In another conference room you might find Justice Judith Lanzinger who is leading members of the Commission on the Rules of Superintendence in a comprehensive review of the rules governing Ohio Courts. Last week's agenda included discussion of draft rules regarding public access to court records. The Commission expects to complete work on those important rules later this year.

You may also walk into a meeting of the Ohio Judicial Family Network which is helping spouses and children of judges adjust to the unique pressures of living with a family member who is a judge. Meeting agendas include discussions on critical issues such as security and ethics.

Susan Hany, wife of Ottawa County Municipal Court Judge Fritz Hany, who joins us today, provided inspiration and guidance during her recent term as chair of the Family Network. She was instrumental in expanding efforts to help members of the court family.

For me, the most important member of the Judicial Family Network is my wife Mary. No one is more supportive of judicial families than Mary. It was her vision that initiated the Judicial Family Network in Ohio. She has been supportive of hundreds of families across the state, and she has been my strongest supporter. Thank you, Mary.

## **COURT INTERPRETERS**

The next stop on our tour is Cincinnati ...where the broad marble hallways of the Hamilton County Courthouse now echo with languages such as Wolof, Farsi and Punjabi. Senator Blessing, Representatives Seitz and Yates....as lawyers, you appreciate how the growing diversity of our state creates new challenges for the legal system.

Mike Walton, the Court Administrator for the Hamilton County Common Pleas Court, says it is a “tsunami, an explosion of people coming before the courts who do not speak English.”

The Hamilton County Municipal Court now has a full-time Spanish speaking interpreter on staff. The cost of providing interpreter services in both the Common Pleas and Municipal Courts in Hamilton County rose to more than 235-thousand dollars in 2005.

President Harris, Representative Book...you know that rural counties are not exempt from the need for qualified sign and language interpreters. A Supreme Court survey identified 60 languages spoken in Ohio courts each year.

So when the need arises in Ashland or Scioto Counties, or elsewhere in Ohio ...how can a judge be certain that parties and witnesses understand the spoken word?

The Supreme Court Advisory Committee on Interpreter Services has developed Bench Cards, quick reference guides for judges that take a judge through the steps for determining if a court situation requires a trained interpreter, whether an interpreter has the requisite skills needed in a court setting and how to properly monitor the proceedings.

The Supreme Court provides training for judges, clerks and court administrators at no cost to the local courts. We trained approximately 450 interpreters on the Code of Ethics, Legal Procedure and Terminology, and on how to identify cases of domestic violence.

Judge Julia Dorrian, of the Franklin County Municipal Court, is leading an effort to make court documents more accessible to the non-English speaking population. A sub-committee chaired by Judge Dorrian is overseeing the translation of the most common forms used in all divisions of common pleas and municipal courts. Documents such as plea forms, explanation of rights, jury waivers and affidavits of indigency will be translated into the most frequently spoken languages.

## **COURT REPORTER CERTIFICATION**

In most every courtroom you will notice the person recording the proceedings....the court reporter.

The court reporter is one of the most important persons in the courtroom, yet they are required to meet no state minimum standard for skill or performance. At the request of the Ohio Court Reporters Association, a task force will soon produce minimum standards for certification of court reporters.

Our goal is to ensure that every position in the court system is served by a person who is competent to discharge their responsibility: the judge, the clerk, the administrators, the bailiffs and security personnel. The Supreme Court now provides advance training to most all positions....often at no charge to the local courts.

## **ASTAR**

In the Putnam County Courthouse, Common Pleas Judge Randall Basinger recently approved a settlement that resolved a dispute among a number of parties regarding the alleged deleterious effects of hydrogen sulfide, a byproduct of manure lagoons, and barns.

Neighbors close to a mega farm alleged that the hydrogen sulfide produced neurological harm. Judge Basinger is one of 20 Ohio judges who have completed 120 hours of advanced training in a wide range of scientific knowledge in medicine, and the bio and life sciences.

One of the courses attended by Judge Basinger was created at the request, and with the assistance of the Ohio Judicial College. The College of Food, Agricultural, and Environmental Sciences, the College of Veterinary Medicine, and The Ohio State University Extension developed and presented the science curriculum for the judges.

Judge Basinger used the information from that seminar to conduct hearings and write opinions with respect to the science presented by the parties to the lawsuit. He was even advised by the lawyers that they were pleased that he had advanced knowledge of the science that was critical to the settlement of the case.

The Advanced Science and Technology Adjudication Resource Center is a national program supported with federal funds and spearheaded by the states of Ohio and Maryland. The program exposes a selected number of state and federal judges to basic science—the knowledge necessary for judges to understand the science that is increasingly critical to a myriad of legal issues with economic, social and moral consequences. ASTAR gives judges new tools to be used in their role as gatekeepers of the flow of reliable evidence to juries.

In late June, the 20 Ohio judges who have been certified as science resource judges will, with the help of scientists from throughout the country present the fourth Ohio program—a boot camp on the language of life sciences. But this time, the new class of 15 selected Ohio judges will be joined by judges from 15 other jurisdictions from throughout the country. More than 80 judges will learn basic science they can expect to see in their courtrooms—Life Genetics 101, Genes and Human Behavior, Risks of Avian Flu, Microbiology, Immunology.

## **COMPLEX COMMERCIAL CASE DOCKETS**

As citizens of this great state, we all share a concern for the economic realities challenging creators of public policy and creators of jobs. When making decisions to locate or remain in Ohio, employers assess a number of criteria. Not so obvious, but important to many, is the prospect of civil litigation arising from commercial transactions—costly, time-consuming litigation.

A number of states have responded to that reality by creating business or complex commercial dockets in courts of general jurisdiction. Such dockets are devoted to litigation between businesses, not consumer transactions. Most business-to-business litigation is different from other litigation in the number of documents and witnesses, the extent of the motion practice, discovery disputes, and increasingly, knowledge of technology. Often such cases benefit from advanced case management techniques and the availability of dispute resolution alternatives.

A concurrent resolution adopted by 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.

For these reasons, I appointed a task force co-chaired by Judge John Bessey and Pat Fischer, President of the Cincinnati Bar Association, to develop a pilot project for common pleas courts in Ohio. The project will determine the best means of adopting commercial dockets in some of our common pleas courts.

## **COURT COSTS AND FILING FEES**

The leaders of the General Assembly and I recently appointed our designees to constitute a new Joint Committee to Study Court Costs and Filing Fees. I thank the General Assembly for creating the joint committee. Our research reveals 308 references in the Revised Code to the authority of a judge to assess court costs and fines.

The addition of a court cost has been viewed as an easy means of funding programs not directly related to the operation of the courts. That practice has produced court costs in a number of counties that exceed the fine assessed by the judge. Many persons pay only the court costs and not the fine.

This joint committee needs to take a hard critical look at the assessment of court costs and fees. With few exceptions, such user fees should be assessed for the operation and maintenance of the courts, and not as a source of revenue for purposes unrelated to the administration of justice.

## **TECHNOLOGY**

There are few, if any developments that have changed our work as much as information technology. Court filings and payments are made on-line and word searches have replaced book indexes as the preferred method for finding an applicable law.

In recent years the Supreme Court launched a newly designed and improved web site, began offering closed-captioning of oral argument broadcasts, implemented new systems for citizens to track individual cases on-line and made case filings available on-line.

These new services join a list of information resources the Supreme Court already provides, including the on-line attorney registration database, on-line access to rulings and opinions, summaries of merit decisions with opinions, and streaming of oral arguments.

Technology is not a substitute for judgment. Technology opens the justice system to provide timely, practical information.

## **MEDIATION**

Instead of stepping into a courthouse to learn about the use of mediation, I encourage you to take a ride with Chris DeFavero...as he drives from his office in Napoleon to a mediation scheduled between a husband and wife who are seeking a divorce. It seems they cannot agree on how many nights the children will stay with their father.

Northwest Ohio cannot support a full-time mediator in each county...so six counties share a single mediator. This model is proven to be cost effective but with resources spread thin...the parents with whom DeFavero is meeting waited seven weeks before their appointment.

That is why the counties are now seeking money for a second mediator. Judges say the demand is there, but scheduling delays complicate efforts to resolve contentious issues such as child custody or volatile neighborhood disputes.

Funding from the General Assembly has helped initiate mediation programs in 79 Ohio counties.

Mediation continues to grow as an effective alternative to adversarial proceedings. Over the last fifteen years we have supported an average of three new programs a year while offering technical assistance and training to hundreds of personnel. Every county now has access to a mediation program for at least one type of case in their jurisdiction. The goal is access for all case types in all counties.

And by the way, the hypothetical mediation session I mentioned ended in agreement...an agreement that stood up over time because it was shaped by the people who were most familiar with the disputed issues: the parents.

## **SPECIALIZED DOCKETS**

The Akron Municipal Court is an important court to visit...not because of its docket of traffic and misdemeanor cases...but because of the people you will meet, the people who participate in the Akron Mental Health Docket, the first of its kind in the state.

The specialized docket was started a few years ago by Elinore Marsh Stormer after she noticed that many of the people who repeatedly came to court suffered from mental health disorders. When Judge Stormer was elected to the Summit County Common Pleas Court, Judge Annalisa Stubbs Williams assumed the docket. Judge Williams meets each week with parties who have been diagnosed with severe psychological disorders and now receive treatment and prescribed medication.

A study by the Kent State University Department of Sociology concludes that graduates of the program spend far fewer days in jails and area hospitals...saving the state and the community

hundreds of thousands of dollars. Some of the graduates now hold jobs and are reunited with their families.

Ohio has 31 courts with mental health dockets, more than a quarter of all the mental health dockets in the country. Ohio is a leader in other specialized dockets, with 75 drug courts.

The success of the mental health docket effort is due in large part to the vision and determination of my colleague, Justice Evelyn Lundberg Stratton, who chairs the Supreme Court Advisory Committee on Mental Illness and the Courts.

This week, the Council of State Governments announced the award of grants to seven states to model Ohio's experience. It is just one indication that Ohio courts are at the forefront of efforts to stop the costly revolving door of justice.

## **CHILDREN, FAMILIES AND THE COURTS**

Before I take you to the next courthouse I want to draw in your mind's eye the face of one of our most perplexing challenges. A challenge for both the courts and all of society.

Picture a small child perhaps four, five or six years old.

There is a father and a mother. Things were fine until money got tight and the drinking got out of control. First came the late night shouting, followed by a bruise here and a small cut there. A visit to the emergency room, the parents told the doctors, was the result of a fall down the basement stairs.

The doctors knew better. So did the social workers, and the investigator from Children Services. And yes, the judge knew better too. That's why the judge ordered the child removed from the home and placed in foster care.

That was the response until a few years ago. The child protection system would slow to a crawl as authorities struggled to develop a permanent solution....either returning the child to the home....or terminating parental rights. Weeks would turn into months, months into years....as psychological evaluations were delayed and court appearances were missed....either because the parents were not served with the proper notices or the lawyers needed more time to prepare. Case workers were often overburdened and the lines of communication not always open.

If not carefully monitored the entire process could easily take three or four years.

Three or four years that in the eyes of a six year old is seemingly a lifetime. To say that a child could languish in foster care is not an overstatement.

Now shift your attention to a converted storefront in downtown Marion, an open, well-lighted complex of offices that is now the home of the Marion County Family Court. It is an inauspicious store front that frames the site of remarkable progress—progress in reducing the time children spend in foster care.

The judges, clerks, and court administrators hold regular meetings with child welfare officials, lawyers and guardians ad litem. They identify problems...and develop solutions. They set goals for themselves and measure their successes and failures. And most importantly, they have produced results.

Since 2003, the collaborative approach in Marion County has reduced the time a child spends in a foster home waiting for adoption by more than one thousand, one hundred days.

That's three years a child does not spend in a foster home.

That's three fewer years that the county pays for foster care.

And it is three years sooner a child is living in a safe and supporting permanent home.

We have two of the persons most responsible for the improvements in Marion County joining us today in the gallery: Judge Deborah Alspach and the director of Marion County Children Services, Eric Bush.

Here is one simple idea they implemented: a paralegal for Marion County Children Services now has an office at the Family Court, reducing the time it takes to serve notices on the parties and improving the scheduling of hearings.

The collaboration in Marion County is the out-growth of Beyond the Numbers, an intensive day-and-a-half training program sponsored by the Supreme Court that draws together all the affected parties in a county. Trained facilitators have already trained personnel in 44 counties.

In Franklin County the Juvenile and Domestic Relations judges report a 50 percent reduction in the number of cases re-filed each month for missing time guidelines.

Probate and Juvenile Judge Robert Stewart reports that currently in Athens County there are no abuse, neglect and dependency cases pending beyond the time guidelines. Just two years ago....38 percent of the cases were outside the deadline.

We have made significant progress, but these examples of collaboration do not yet create a statewide pattern. To help ensure the continued progress, I am pleased to announce that Governor Strickland and I will co-chair the Ohio Summit on Children to be held in Columbus in May 2008. I am pleased that Director Helen Jones Kelly has joined us in the gallery. We will invite five-member teams from each Ohio county.... with the local juvenile court judge and the director of the county children services or jobs and family services board serving as the team leaders for each county.

Each county will be required to submit an action plan within 90 days after the summit. A follow-up conference will be held in 2009 to report on progress made by the counties.

I also commend the House and the Senate for approving Senate Bill 238, the Alternative Response to Reports on Childhood Abuse Neglect and Dependency. The measure authorizes



early intervention pilot projects in ten counties that will allow a family to receive assistance before a matter involving abuse, neglect and dependency is filed with the courts.

If a neighbor or a teacher notices that a child's clothes are consistently not clean or the child is missing too many days of school...child welfare officials in the pilot project will be able to make a first attempt at intervention. The family might only need access to a washing machine or predictable transportation. Supporters of the project hope it will reduce the adversarial nature of the current system and encourage parents to seek help before there are legal troubles. If effective, it should reduce court dockets and most importantly, reduce the amount of time children spend in foster care.

These are just a few of the efforts of the judiciary to be responsive to the needs of society. There are so many others.

I wish I had time to tell you more because the courts of Ohio are committed to sustaining the trust you have placed in us.

## **UNFINISHED WORK**

I have taken you to courts that reflect some of the ways in which we have applied your allocation of general revenue and capital funds. Some of you may be thinking of the imperfections, the deficiencies, the unfinished work before us. We assure every person whose life, liberty, or property will be affected by a court decision or court program that we do strive for fairness, impartiality and for the trust and the confidence of our citizens.

We have not yet convinced every lawyer that she or he is expected to provide some form of legal services to those who cannot afford them. The Court will soon take action on proposals from our Task Force on Pro Se and Indigent Litigants and the Ohio State Bar Association that will address this important issue of equal access to our courts.

In some courts, cases are not managed efficiently. Complaints abound regarding delays in some domestic relations courts. Our case management division provides consulting services to those courts.

Although it is a very tiny percentage of the more than 40,000 lawyers registered to practice in Ohio, the number of lawyers receiving a sanction from the Supreme Court for their conduct is too high. A mentoring program for new lawyers, required continuing education courses on ethics, adoption of a lawyers' creed, and strong sanctions from the Supreme Court are partial responses.

A related activity to which we are giving increased attention is judicial conduct. A judge's temperament and patterns of conduct may create a perception that the judge is not a person who can be truly fair and impartial. There are not many of these judges, but their number seems to be increasing. When a judge is sanctioned by the Supreme Court for inappropriate conduct, it is like ringing a bell loudly in a small room. The consequences of the judge's conduct reverberate not just within the bounds of the judge's jurisdiction, but beyond.

Two actions have been initiated to address this issue.

First is the creation of The Judicial Advisory Group whose members are veteran, well-respected judges who are available on request to assist judges reported to have problems. Through informal contact the Advisory Group of judges attempts to convince the judge that his or her conduct is harmful to the judge and to the court.

In the second development the Ohio Judicial Conference and the Ohio State Bar Association are urging local bar associations to conduct mid-term judicial evaluations. Participation in the evaluations would be voluntary. A judge would be advised during a non-election year of the judge's strong and weak attributes, identified by a survey of members of the local bar association.

The survey results and a follow-up conference with the judge regarding the results would be strictly confidential. Topics surveyed include integrity, temperament, legal knowledge, respect for time demands, preparedness, quality and promptness of written opinions.

The program has proven effective in Columbus, Toledo, and other areas of the state by helping judges to recognize deficiencies and build on positive attributes.

## **REQUESTS**

### **MAYOR'S COURTS**

One stop on our tour of Ohio courts does not take us to a courthouse. I promised I would attempt to persuade you in this speech and now is that time.

The General Assembly has assisted the judiciary in the incremental elimination of part-time judges by creating full-time courts from two or more part-time courts. It is now time to address mayor's courts.

Last week, Representative Larry Wolpert introduced House Bill 154. The bill creates a straightforward restructuring of an outdated system of adjudicating rights and responsibilities. Only Louisiana and Ohio retain the system. Adoption of House Bill 154 will move Ohio closer to our goal of assuring every person whose rights and responsibilities are adjudicated in a judicial forum that the only concern of the adjudicator is the case before him or her.

Chief Justice William Howard Taft in a 1937 Ohio case, and the Sixth Circuit Court of Appeals more recently, have recognized the inherent conflict of one person serving as an executive of a village and also as the judge who assesses fines that enhance the funds with which the village operates.

It is not enough that a mayor appoints a lawyer to act as a magistrate in mayor's court. House Bill 154 separates the function. It simply provides that the administrative judge of the municipal court of the county in which mayor's courts are established would appoint the magistrate. The result is a community court, conducted at the same convenient location as a mayor's court. But

the perception will no longer exist that the adjudicator may be influenced by the village's need for funds.

I urge swift enactment of this legislation.

## **COURTS NETWORK**

I have told you about the many technological advances the courts have adopted but a major piece of the picture is missing: The Ohio Courts Network.

For the sake of demonstration I would like to take a few of you with me for a visit to the Cuyahoga County Juvenile Court.

The young boy appearing before the judge faces charges for fighting with one of the neighbor kids.

Unknown to the judge, the boy has moved three times in four years. Not even the prosecutor knows the boy has an arrest record in each of his former communities....with each arrest for a crime more serious than the one before.

Without the child's juvenile court history, the judge will not be able to fashion an appropriate rehabilitation program.

Currently in the state of Ohio a system does not exist that ensures that the courts and law enforcement have instant access to complete information. This information gap is detrimental to efforts to combat a broad range of problems including domestic violence, drunk driving and sexual offenses.

In response, the Supreme Court budget that is now before the General Assembly requests money for the Ohio Courts Network, a secure, internet-based system that will link the courts and law enforcement community.

The network will identify information that is critical to investigations, dispositions, and sentencing.

The goal is to gather specific information to share, and by doing so, enhance and streamline the legal process. A web portal will allow all Ohio courts to access internet resources, share new application technologies and provide a single point of contact.

It will also give justice system partners access to critical court information, and improve public access to appropriate court resources. Attorney General Dann, I know how urgently you want to link your law enforcement personnel to this database.

Today, court information is used to make critical decisions regarding background checks, handgun purchases, issuance of commercial driver and pilot licenses, immigration, Amber Alerts, domestic violence protections and child support compliance. These are vital to the safety

of Ohio communities, and information contained in the court system is critical to this effort. The courts network will build a statewide infrastructure for the judicial branch of Ohio to enable the discreet sharing of critical information.

## **HOUSE BILL 173**

On Tuesday, Representative Seitz and Representative Todd Book introduced House Bill 173. You have seen much of this legislation in the last session as House Bill 266. House Bill 173 addresses the experience, training, appropriate allocation and compensation of those to whom we entrust the responsibility of judging the conduct of others.

I thank Governor Strickland again for adopting a process for selecting a person to fill a judicial vacancy that excludes no one and encourages many more highly competent lawyers to apply for an appointment.

House Bill 173 will assist us in attracting to the bench and retaining more highly competent and experienced attorneys. It increases the number of years a lawyer must be in practice before she or he becomes a judge, provides for some level of education regarding the responsibilities of being a judge before one takes office, and creates an institutional process for determining the number of judges required to meet changing demands and populations. The bill also would adopt a system of judicial compensation that will rectify the fact that 30 states compensate their general jurisdiction trial judges at higher rates than Ohio. And Ohio is well behind states of comparable size and diversity.

The role of a judge in Ohio — the value to our citizens of highly competent judges — is no different than it is in Michigan, in Pennsylvania, in Indiana, in Illinois, in Florida, Arizona, Arkansas. And yet, a comparison reveals in some instances vast disparities in the compensation of Ohio judges versus the compensation of judges in more than a majority of the states. One could conclude that the citizens of those states place a higher value on the role of the judge in their community than do the citizens of Ohio. Most of us would not agree with such a conclusion. House Bill 173 presents an opportunity to correct that perception.

The founders of our country knew that an independent judicial system, built on fundamental principles of fairness and impartiality would preserve democratic institutions, protect individual rights and ensure a civil society.

Those principles were no more evident—no more important—in 1787 than they are in 2007. We are the beneficiaries of 220 years of the American experience. Of all the lessons of history, none is more enduring than the simple inscription in the Ashland County Courthouse--- *There Is No Virtue So Great As Justice.*