

State of the Judiciary
Chief Justice Thomas J. Moyer, Ohio Supreme Court
Message to Ohio Judicial Conference
September 11, 2008

Thank you Judge Farmer and Mark Schweikert for the invitation to once again offer the State of the Judiciary address to the judges of Ohio.

We have completed another year of collaboration and work towards shared goals.

The committees, officers and staff of the Conference have helped us advance the agenda for the perpetual improvement of the administration of the courts of Ohio.

Together, we will continue our efforts to produce a level of compensation that reflects the value of our work to the communities we serve.

The days since we met 12 months ago have been both demanding and rewarding. Our dockets have expanded - our caseloads are more complex.

The flood of mortgage foreclosures, the challenge of our criminal dockets, the critical choices that must be made in family matters - draw on our energy, our wisdom and often our creativity.

Each case, each conflict requires that we, as judges, guide the parties through a thicket of rules, statutes and case law to the resolution of a dispute or the administration of an estate.

Our highest reward is recognition by those we serve that the legal process has been fairly applied to them.

That is why the theme of this conference is so appropriate.

Ensuring Fairness In Ohio's Courts is fundamental to our work. It is our responsibility, yours and mine - to ensure that the decisions of courts are fair and that they are perceived to be fair.

With this as our measure, I can report that the judiciary of Ohio is faithful to the law and with some exceptions, faithful to the expectations of the citizens who look to the courts to resolve their conflicts. We have not achieved perfection, yet it remains our aim.

The state of the judiciary is healthy and vibrant, thanks in large measure to the respect you hold for the law, the judiciary and the citizens of Ohio.

I join my colleagues on the Supreme Court in thanking you for your commitment to the rule of law.

In past years I have used this opportunity to discuss various programs and activities in the courts of Ohio - such as the expanded use of alternative dispute resolution, the Ohio Courts Network

and updates to the Rules of Procedure and the Codes of Conduct, services to children and families and the training of resource judges in the emerging advances in science.

Today I will take a step away from tradition, foregoing the status reports. Those will be available as a handout at the conclusion of my comments.

Instead, I will take a different tack - talking not about what we do, but why we do it.

Why. Why are we judges?

Certainly not the compensation.

What compels us to pull that black robe up over our shoulders - to preside over the unrelenting stream of disputes that society brings our way?

What draws us as judges to sort between those who are hurt, and those who are hurtful - to seek justice where others see conflict?

If we push ourselves beyond our daily tasks we will realize it is because the law touches us. It excites us.

It is because law reminds us that we follow in the footsteps of the masters - the greats such as Locke, Montesquieu, and Jefferson.

We are judges because the law brings order from chaos. Like brush strokes on canvas, law brings form to cloudy images of the mind.

We are judges because of the beauty of the law.

As president of the Ohio State Bar Association, Rob Ware, wrote about the beauty of law in the January edition of *Ohio Lawyer* magazine.

He observed:

“There are certain qualities that are common to most judgments of beauty. Among these are order, harmony, proportion and purity. Thus it has been said that beauty is the perfect reconciliation of the sensual and rational parts of human nature.”

He concluded:

“We see the elements of beauty reflected in law. There is harmony and symmetry: Law is both consistent and evolving; coldly logical, yet alive. Underneath it all is a pursuit of justice and truth.”

The beauty of law is found in the text of our long-held beliefs in liberty and freedom and fairness. It is found in the contract that brings shape to the hope and promise of a new beginning.

The beauty of law, in my humble opinion, is that it is the product of the ages—wrapped in the opinion of the moment.

The law takes from Aristotle, Coke, and Aquinas and is applied to the disorder and unruliness of mankind - just as an artist borrows from Michelangelo, Botticelli, and Van Gogh.

Law is our seamless connection with the past.

The rabbi and the minister guide us to Psalm 19 to learn that “the law of the Lord is perfect, reviving the soul.” This Psalm tells us that the Lord’s law, the historical inspiration of natural law - is sure, right, and clear - desired more than gold.

The most visible symbols of the beauty of the law are the centerpieces of our communities, our courthouses - sometimes ornate like a Rembrandt painting, others strong as a Wagner opera.

The broad marble halls of many of our historic courthouses are typical of the architectural symbols of our civil aesthetics — symbols that remind us that the rule of law anchors a civilized society.

The restored strength and grandeur of the Stark County Courthouse talks to us about the high regard generations of citizens held for the rule of law.

Think of the message of your courthouse:

The painting by Archibald Willard in the Fayette County Courthouse.

The elegant and stately rotunda of the Tuscarawas County Courthouse.

In many Ohio counties stone columns and miles of marble flooring are a message that citizens respect the rule of law and the mission of the judiciary.

One of Ohio’s finest examples of the blend of art and law is now the home of the Supreme Court of Ohio, the Ohio Judicial Center.

It was not designed as a courthouse, but the governor and leaders of the Ohio General Assembly, when it was constructed in the early 1930s, directed that it should be a monument to the greatness of the people of Ohio.

Sixty-one original murals reflect Ohio’s industry and commerce that built a nation.

Thomas Aquinas determined that beauty has three elements; “conditions” as he called them.

Integrity or perfection.

Proportion or harmony.

Brightness or clarity.

Aquinas's conditions had lost a bit of their luster when applied to Ohio law. That is, until 40 years ago this year - when Ohio voters approved the Modern Courts Amendment granting the judiciary the authority to direct the business of the courts.

Until then, the courts had the symmetry and proportion of an Escher drawing, with a mix of rules of evidence and procedure.

A constitutional amendment adopted in 1912 required a super majority of the Supreme Court to declare that a statute offended the Ohio Constitution - which effectively allowed a minority to establish the constitutionality of a statute.

The Modern Courts Amendment restored the integrity and proportion that Aquinas set as a condition of beauty. The third element - brightness or clarity has been our responsibility.

The judiciary, with the assistance of the bar and judicial associations, has administered with dignity and respect, the authority granted to the courts - striving to create clarity in the rule of law in Ohio.

Those of us with years of practice have a well trained eye for the beauty of law in its daily practice, in the well crafted opinion or pleading. A skilled trial attorney arguing a case before a judge or jury can be a work of beauty.

Imagine if you sat in the courtroom as Clarence Darrow and William Jennings Bryan eloquently, artistically argued the Scopes trial in a brutally hot Tennessee courtroom.

Darrow's skillful pleadings and Bryan's flare are an equal match for an F. Scott Fitzgerald or a Norman Mailer.

The enduring qualities of the Scopes case were captured in the elegant reporting of noted journalist H.L. Mencken and again in the book and play, *Inherit The Wind*.

Any good writer will tell you that a well-crafted story requires a compelling subject.

I present my case to you that the beauty of the law also may be found in the written decisions of a court. *Marbury v Madison* is a clear, concise essay—one with a beginning, a middle, and an end—that makes clear the authority of the judiciary.

The rules of grammar that guide exquisite legal writing are no different than the rules that guide authors of fiction or history.

A contract, a public utilities decision should be written with the conciseness and clarity of a Joyce Carol Oates and Arthur C. Clarke.

When young students ask me what skills they need to become a lawyer I tell them it's important to be an accomplished writer.

Judge Learned Hand is one of a long list of judges remembered for spending hours, even days writing and re-writing opinions.

He was also a gifted orator. Consider the speech he gave in New York City in 1944:

“Liberty lies in the hearts of men and women; when it dies there, no constitution, no law, no court can save it ... While it lies there it needs no constitution, no law, no court to save it.”

Judge William Bootle, a federal judge in Georgia certainly knew the law. He lived to be 104 and could remember opinions that he had not seen in more than 70 years.

He combined a sharp legal mind with a keen appreciation for the aesthetics of the legal profession.

He once told an audience:

“Pity the person, if such there be, who can go through life reading, studying, teaching and practicing law, and adjudicating cases without ever beholding the beauty of the work material or the grandeur of the work product.

“Such a person would be like the man who thinks he is just pushing a wheelbarrow, when in fact, he is building a cathedral.”

Great theater has both conflict and compassion - a strong crescendo that gracefully gives way to a satisfying resolution - not so different than the real-life plot uncovered by foreclosure mediators across the state.

It is a work of beauty when a homeowner and a lender sit across from each other - guided by somebody trained to promote resolution—not conflict. It's a double-feature matinee with *Places in the Heart* and *It's a Wonderful Life*.

The symmetry and order of fine artwork extends itself to the Elyria courtroom of Judge David Basinski.

As a Family Court judge, Judge Basinski is now able to remove a child from a threatening home and then place the young boy or girl in a safe, nurturing home - new authority that gives the Judge a greater appreciation of the order, the beauty of the law.

To see beauty in the law all one needs to do is witness a drug court graduation ceremony.

A graduation ceremony may include a simple poem, even a song written by a graduate of the drug court program - in which they have received counseling, suppressed their addiction and regained control of their lives.

This is real-life art and literature. It is beautiful courtroom drama.

Its American story telling - wrapped in an opportunity at redemption that would rival any Jimmy Stewart movie.

The law is beautiful when it reveals the human side - when lawyers demonstrate compassion and a concern for the greater good of society.

Day-in and day-out in Ohio, attorneys help those in need - whether it is a family with a child who has been summoned to juvenile court, or someone who needs help understanding a contract.

There are few examples of human conduct more pleasing to observe than the mediated resolution of a dispute.

The beauty of the law is found in efforts to provide free legal services to the thousands of families whose lives have been torn apart by foreclosure actions.

The billable hour might be the way a lawyer puts food on the table, but it is compassion that feeds the lawyer's soul.

I would like to offer one last observation on the beauty of the law.

Law is beautiful because it works.

The law expresses the will of a nation's citizens to live in an abundance of freedom.

It protects and defends those values that, we as Americans, have held dear since our founding - freedom of expression, freedom of assembly - the freedom to seek happiness and to worship God as we will.

The law works because it allows us to correct our mistakes. When it became clear that no man or woman should be de-valued as three-fifths of a person - the courts corrected a mistake.

When separate but equal no longer could be disguised as lawful - the courts corrected a mistake.

The law helps the needy, it makes commerce possible, it protects us when we say something unpopular - and in its own gentle way it will encourage you to drive the speed limit on your way home.

Law. Law is beauty in motion.

Citizens seek solace, even comfort in the law.

Remember the conflict in the House Judiciary hearing room in July 1974.

As the committee prepared its vote on articles of impeachment, Congresswoman Barbara Jordan took her turn at the microphone to declare “My faith in the Constitution is whole, it is complete, it is total.”

More than a quarter century later Al Gore conceded defeat in the 2000 election - acknowledging that he strongly disagreed with the decision of the US Supreme Court - but that the case was resolved “as it must be resolved, through the honored institutions of our democracy.”

Clarity, order, coldly logical.

Law’s beauty, indeed.

Lawyers and judges, as artists, challenge the conventional view - while remaining true to the underlying values and principles of their craft.

The artist and the judge share an eye for detail. The well-placed brush stroke is as important to the craft of the artist - as is the well-written order of a judge.

And the great judges share with the great artists a vision for the big picture, the entirety of society.

The artist and the judge share a concern for life in its many forms; its successes and its failures.

As judges, we scrape away the stone, we shape the rock.

As judges, we use our sculptor’s eye to reveal the beauty, the proportion in the rule of law.

As judges, we use our fine brushes, our colorful pallets to bring symmetry and order.

As judges, we are fortunate that this is our life’s work.

Thank you. And have a beautiful life.