

State of the Judiciary
Chief Justice Thomas J. Moyer, Ohio Supreme Court
Message to Ohio Judicial Conference
September 17, 2009

Justices of the Supreme Court, Judge Farmer, members of the executive committee, Mark Schweikert and my judicial colleagues ...

It is impressive that 320 judges registered to attend this week. It seems that each year I see more faces as I look out across this podium ... a testament to the work and dedication of the Judicial Conference leadership and staff, and the quality of the educational program.

Sheila and Mark, through your leadership, and the work of countless committee members, the concerns and insights of judges across Ohio are reflected in legislation before the General Assembly. The work of the Community Corrections Committee is one example of judges and legislators sharing their perspectives as the state struggles with difficult budget decisions regarding the Department of Rehabilitation and Corrections.

Any judge who has the critical task of instructing a jury relies on the work of the Ohio Jury Instruction Committee. The hours of research by committee members—their keen eye for distinguishing the meaning and intent of legislative changes—is a vital service for the courts.

I know I speak for my colleagues on the Supreme Court in thanking the Judicial Conference for its insightful comments regarding the proposed changes to the Code of Judicial Conduct. Your comments ensure that the code effectively addresses the ethical challenges of the future.

The Ohio judiciary also has benefited from the work of the Rapid Response Team which helps citizens understand that often there is more to a judicial decision than what meets the eye. By correcting misrepresentations and misunderstandings of court decisions, the Rapid Response Team helps to protect public trust and confidence in the work of the judiciary.

I am pleased that the calls some of you made to legislators and meetings and conversations Steve Hollon and I had with the Governor and all the legislative leaders, produced a budget for the conference that enables it to continue your important work.

In fact, my discussions helped restore the budget of the Ohio Center for Law Related Education and the Commission on Dispute Resolution—both of which had been reduced to zero by Senate Committee members.

Moving forward to improve communication between the court and conference leaders will assist us as we develop a working plan that responds to the Strategic Plan adopted yesterday by the conference executive committee.

At the third Georgetown Conference on the Independence of the Judiciary hosted by Sandra Day O'Connor and Justice Breyer, Alan Greenspan's opening remarks began with this

observation: “It is a pleasure to be among you who represent the only branch of government still functioning.” Although a bit of an exaggeration that statement is a prologue to the theme of this year’s conference.

The theme is both timely and important. Judicial Reasoning and Philosophy: Making Good Judicial Decisions is a topic that should rejuvenate our synapses and reinvigorate our love for the law. Re-examining the fundamental precepts of our profession helps cast new light on the decisions each of us makes most every day.

This theme calls on us to search inside ourselves to examine how we work—what process, what thought pattern assists us in our application of the rule of law to the lives of those who come before us.

Justice Benjamin Cardozo was one of our profession’s most prolific writers on the nature of the judicial process, but suggested that words failed him when he attempted to explain the process.

“The work of deciding cases goes on everyday in hundreds of courts throughout the land. Any judge, one might suppose, would find it easy to describe the process which he had followed a thousand times and more. Nothing could be farther from the truth. Let some intelligent layman ask him to explain: he will not go very far before taking refuge in the excuse that the language of craftsmen is unintelligible to those untutored in the craft.”

Never one to allow the failure of words to stop his prolific pen, Justice Cardozo followed his observation with several thousand more words describing how a judge crafts a decision.

Words may fail us, but the actions of 852 sitting and assigned Ohio judges speak clearly and eloquently.

When Judge Annalisa Williams talks with a person who is participating in the Akron Municipal Court Mental Health docket, asking them about their week and about their job search, Judge Williams demonstrates that a thoughtful judicial decision calls on more than just our knowledge of the law.

When a systemic review of procedures by court and county officials on the Hancock County Community Corrections Advisory Board results in reducing by 40 days the average time from an alleged offense to its resolution, the judges demonstrate that creative judicial reasoning may impact an extended community.

When Judge Tom Swift launches an effort to coordinate the disparate services offered to senior citizens in Trumbull County ... the judge adds meaning to our concept of judicial philosophy—using our authority to alleviate challenges unique to a discrete population.

When the 5th District Court of Appeals, one of the largest and fastest growing Appellate Districts in Ohio, is able to conduct off-site oral arguments and maintain one of the most efficient dockets in the state ... the judges there are demonstrating that judicial reasoning includes principles of effective case management.

When Judge Janet Burnside develops and conducts a course for the Judicial College ...

When Judges John Bessey and Richard McMonagle manage a docket for complex commercial litigation ...

When Judge John Rohrs works with all interested parties to fairly and effectively manage domestic violence matters ... the judges demonstrate the reasoning, the philosophy of making judicial decisions that uphold our laws and constitutions ... while ensuring that the judiciary is fair, efficient and accessible.

The body of work accumulated in the 3 million cases decided each year in Ohio tells us that the path to our decisions is more than the accumulated books of laws, codes and procedures—more than simply our keen observation of the facts and merits of the case.

Today and tomorrow you are exposed to distinguished speakers who analyze the precise, and sometimes disparate, paths we use in judicial decision making.

Our path was elegantly stated by Justice Oliver Wendell Holmes when he said, “The life of law has not been logic; it has been experience.”

The experience each week ... in each courtroom in Ohio ... demonstrates that sound judicial decisions require knowledge of the law but also a sense of the community, a sense of the human psyche and a sense of how to navigate the Excel spread sheet and the budget process.

Our path is marked by all of these matters. The whole collage, if you will. Not just the individual pieces.

Our skills have been summoned as the state, counties and cities confront declining revenues which eventually find their way to budget reductions that produce consequences for the administration of our courts.

Budgeting seems to require an inordinate amount of our attention in these difficult times but a number of courts have charted new courses to navigate budgetary shoals.

In Green County, officials have saved tens of thousands of dollars in prisoner transportation costs through the use of video conferencing ... linking courtrooms to both local jails and any state prison.

Judge Steve Hurley uses video conferencing in his Domestic Relations Court ... opting for a portable system that enables him to share it with magistrates.

Each morning when Judge Pat Carroll arrives at the Lakewood Municipal Court he is seen holding a cup of coffee in one hand and the jail list in the other ... checking on the people arrested overnight or over the weekend. Non-violent persons who are not a flight risk, promptly are released ... saving the city thousands of dollars per day.

Judge Carroll also reduced subscriptions to a variety of printed publications, saving thousands of dollars each fiscal year. Now when he needs to consult a rule or statute, Judge Carroll goes online to the Supreme Court of Ohio Web site.

Montgomery County officials asked the Common Pleas Court there to absorb a five percent budget reduction, which the judges met in part by merging the offices for magistrates with the dispute resolution office ... eliminating several staff positions. Other staff reductions were the result of financial incentives to staff.

Administrative Judge Michael Hall says the judges opted to make systemic reductions because the judges believe more budget cuts will be necessary in the next fiscal year.

Judge Hall and his colleagues also decided to continue the development of the court e-filing system ... a completely modern case management system which allows for the digital management of a case from its filing until sentencing. Funding for the system comes from a variety of court fees and Judge Hall says it was important to move forward with the project, saying "We can't abdicate our responsibility to prepare for the future."

In Cleveland, county officials sought to reduce spending by closing offices on selected days ... including the Cuyahoga County Justice Center.

Municipal Court Administrative Judge Ron Adrine gently but persuasively reminded authorities that courts are not like other government agencies. While a property transfer can be delayed or a road resurfacing project delayed a few days or even months ... the doors to justice cannot be closed to the safety of a community and the constitutional rights of a person.

Some of you are thinking, "I do that" or "The Chief has overlooked a program in my court." These examples represent the many actions throughout the state that improve the administration of Ohio's courts.

An observation on the separation of powers: The authority of a local funding authority to allocate public funds to the courts does not include the authority to direct the management of those funds. An example—whether a court budget is balanced by furloughing employees is a decision to be made by the court, not by the funding authority.

I commend the efforts of the Judicial Conference in hosting programs for judges regarding county and local budgets.

The Supreme Court remains committed to providing assistance at no charge to the local courts.

As one example, the Case Management Section of Judicial and Court Services has dovetailed its reviews of case management systems with training programs that are conducted locally or regionally. Recently Stephanie Hess, Manager of Case Management Programs, provided training for 60 staff members at the Hamilton County Domestic Relations Court, all at no cost to the county.

The Section on Dispute Resolution provides similar training sessions and discussions on basic mediation, family matters and foreclosure. Some 25 sessions were held already this year, with 17 more scheduled between now and the end of the year.

The Judicial College has an established record of providing training to court personnel at no charge to local courts. Now through the use of technology, the College is providing more online programming.

A Webinar ... I'm told you pronounce it like seminar, but it's on the Web, so it is called a Webinar ... gives court personnel no cost, real-time access to lectures and training without necessitating a trip to a Columbus or a regional site.

Soon the Judicial College will unveil an online learning program for judges on topics related to the ASTAR science and technology program ... hopefully making it the first opportunity for judges to earn continuing education credit for Internet based programs.

Judges will be able to download training sessions featuring leading national experts in fields such as addiction treatment technologies, neuroscience, nano-science and DNA testing. Funding to produce the online learning modules comes from a Byrne Memorial grant from the US Department of Justice and it is our expectation that we will soon be able to offer the programming to a national audience of judges.

Budget

In the spirit of the Governor's executive orders, we have reduced Supreme Court expenditures in Fiscal Year 2008 and Fiscal Year 2009 by 5 percent each year. We eliminated eight positions, frozen staff salaries, and I have substantially reduced the assignment of retired judges.

We expend over \$3 million a year to provide retired assigned judges and active judges to multiple jurisdictions. Those expenditures have decreased by 24 percent in the last 12 months and will continue to drop. Several retired judges have volunteered to serve without compensation, and some sitting judges have waived their per diem when presiding in adjoining counties.

I received a letter earlier this month from a judge who has sat on cases in a nearby jurisdiction without expecting per diem compensation. The judge wrote that he was offering his services, "As a prior recipient of similar assistance from the Supreme Court" and that it had been his pleasure to help.

A few jurisdictions have developed reciprocal agreements in which judges waive their per diem when serving in adjoining jurisdictions. Courts in Willoughby, Painesville, Mentor, Licking County, Fairfield County, Parma, and Rocky River have such agreements.

Some of the judges who have served without reimbursement or compensation are here, and I would like you to stand to be recognized for your personal contribution to meeting budgetary challenges. You have provided an example for your colleagues.

Judicial Branch Leadership Group

State and local budget matters are two of the topics raised by officials participating in the Judicial Branch Leadership Group, a forum for discussing issues of common concern that I first announced in this address two years ago.

Since that time, Steve Hollon and I have met three times a year with leaders of all judicial associations ... including representatives from the magistrates, court administrators, clerks, and with prosecuting attorneys and the state bar association.

The meetings have provided an important forum for discussing issues of common interest to the third branch, providing a broader conversation, a broader understanding of the work and challenges of the courts and the legal profession. Budgets, of course, have been a major topic of concern but the meetings also have featured presentations regarding the Ohio Courts Network and the Public Access Rules.

Members of the Leadership Group also made a compelling argument that judges, clerks and court administrators would benefit from more information regarding budget and personnel issues ... especially from courts of comparable size and jurisdiction. This recommendation preceded the fiscal impact of the economic recession on the courts.

At the recommendation of the Leadership Group the Supreme Court will conduct the first ever survey of court staff and budgets of all courts. Administrative judges will receive a letter next week announcing the survey which, to save money, will be conducted online.

Courts will be requested to supply general staffing information and their process for developing and expending the court's budget.

The survey will also enable courts to compare position categories such as magistrates, law clerks, and court administrators. The survey should assist all court officials in determining what is a reasonable spending level for their court and should help them make more informed decisions. Please complete the survey as soon as possible.

Public Information

This month, the Supreme Court Office of Public Information will launch a new service that will significantly enhance our ability to provide you with important and timely information. GovDelivery is a service already used by the federal courts and dozens of federal agencies, including the FBI, the White House and the Department of Homeland Security. Ohio is the first state supreme court to use the service.

Essentially, GovDelivery will allow you, at no cost, to sign up to receive information on particular topics of interest. From rule amendments, to changes in probate forms and training opportunities, you will be able to customize the service and receive e-mails as often or as infrequently as you choose.

This is a supplement to our standard Web site.

In the coming weeks, you should receive an e-mail inviting you to register for the new service.

Summit on Children

Governor Strickland and I will hold a follow-up to the Ohio Summit on Children, the successful conference held last year that drew together teams from Ohio counties to address the needs of children and families whose lives intersect with the courts.

One of the recommendations produced at the first summit was to open more lines of communication. So on Nov. 12 and 13 we will ask county teams to return to Columbus for an opportunity to report to each other on the activities in the local communities.

This also will be an opportunity for the state to report back to the counties on the issues identified by them.

Some counties have expressed reservations about conducting a conference while state and local budgets are being reduced. I share their concern but I offer two mitigating arguments: no local or state tax revenue will be spent on the Summit on Children. Funding is provided by foundations and a federal grant.

And a second point ... a main objective of the Summit process has been to coordinate and streamline local systems to improve the delivery of services to children. Improved coordination and communication helps ensure that limited resources are focused in a manner that accomplishes the most.

And in many circumstances, improved coordination reduces the amount of time children spend in foster care and leads to reductions in spending.

Based on the success of these meetings, we hope to address issues affecting the other end of the age spectrum. A summit on issues confronted by the elderly is being organized for October of 2010.

Advisory Committee on Specialized Dockets

From the inception of the first drug court in Hamilton County in 1995, the use of specialized dockets in Ohio has been broadened, to address such issues as mental illness, domestic violence and re-entry courts. Today, 129 specialized dockets are used by courts ranging from Common Pleas, Juvenile, Municipal and County Courts.

The Supreme Court Specialized Docket Section offers technical assistance to courts and conducts training for key personnel and stakeholders involved with the specialized docket programs at no cost to the local community.

To advance the success of these programs and provide additional guidance to the Court, I am announcing the creation of the Advisory Committee on Specialized Dockets, chaired by Judge Michael Sage of the Butler County Court of Common Pleas. For the past 10 years, Judge Sage has administered a Substance Abuse and Mental Illness docket which addresses felony level offenders with a primary diagnosis of both a severe mental health disorder and drug dependency.

I thank both him and Judge Daniel Spahn of the Steubenville Municipal Court who will serve as vice-chair of the Advisory Committee. Comprised of 15 members, including nine judges and one magistrate, the multi-disciplinary Advisory Committee will be charged with developing standards, performance measures, and training requirements for specialized dockets in Ohio.

Justice Oliver Wendell Holmes once said that the role of the judge is to act interstitially—to fill the gaps left by those who write the laws.

Some days when our dockets seem to wash over us, when the cases seem more complex, more demanding—we may wish that we lived in the simpler times of Justice Holmes.

Today, filling the gaps is just one of our responsibilities.

To make effective, well reasoned judicial decisions—we as judges must be well trained in the law and procedure—but we must be so much more.

We must be part sociologist and part scientist.

Part systems planner, part fiscal analyst.

We must understand the brain development of a juvenile offender and the dynamics of the non-nuclear family.

We must, as judges, understand that the public asks for, indeed expects, a fair hearing of the matter they seek to resolve.

The dignity and stability of government, as John Adams said, depends upon the “skillful administration of justice.”

That is our mission given to us by a civilization that lives under the rule of law.

Thank you, Judge Farmer, for this opportunity.

Thank all of you for your good decision making.

And thank you for the privilege of serving as your Chief Justice.