

State of the Judiciary
Chief Justice Maureen O'Connor, Ohio Supreme Court
Message to Ohio Judicial Conference
September 8, 2011

Good morning.

Thank you Judge Swift for that introduction. And thank you for the leadership you have shown since assuming your duties as chair of the Ohio Judicial Conference.

I also want to extend my gratitude to the officers and members of the Judicial Conference Executive Committee, the staff of the Ohio Judicial Conference, and the Supreme Court Judicial College for once again putting together an informative and dynamic program for this annual meeting.

The fact that we have over 300 judges in attendance speaks volumes about the quality of this year's program ... that and mandatory CLE.

Each year we gather – judges at every level from across Ohio – for this important event.

Here we learn from each other, renew friendships, make new connections and gather because we care about good judging and strong courts.

And it is customary – in fact it is tradition – that the Chief Justice is given the opportunity as part of this annual meeting to deliver a speech, a speech that has come to be known as the “State of the Judiciary Address.”

My message to you today is simple: There has never been a more important time for judges to come together and work toward the common goal of supporting the courts. We must work together to forcefully and tirelessly make the case that strong courts are critical, that justice is indispensable, and that even in times of economic distress, the courts must be a top priority.

My fellow judges, the state of the Ohio judiciary is strong even in the face of uncertainty. We have many challenges, but with these challenges also comes opportunity. And opportunity if seized is the vehicle for positive change.

There are two simple ingredients to creating and embracing change: hard work and an open mind.

President Reagan said: “There are no constraints on the human mind, no walls around the human spirit, no barriers to our progress except those we ourselves erect.” Today, I want to talk to you about some of the challenges I see for the judicial branch and some of the solutions that I see to these challenges.

At every turn, our success depends on cooperation.

This is the critical key to meeting our challenges; the necessary condition for success in all things in the administration of the courts ... and for government in general.

When we collaborate, when we genuinely and sincerely listen to alternative viewpoints and work together, there is no limit to what we can do.

Collaboration comes in many forms, but in Ohio, we know that collaboration has a geographic dimension. We know that solutions to problems don't always come from Washington or Columbus. More often, they come from places like Huron and Ashtabula and Marietta and Hillsboro.

Particularly in the judicial system, our strength lies in our geographical diversity.

Each day across this state, judges do the important work of administering justice. In between the big cases, away from the media spotlight, in the quiet of courthouses big and small, judges do the heavy lifting. Judges do the hard work.

And because of this, you are the ones who understand what is needed to make our system even better.

So, I have spent my first nine months as Chief Justice listening to you. I view my speech today as a continuation of a conversation that we have been having together about where we are, where we want to be and how we get there.

It's a conversation that will continue for as long as I am honored to serve as your Chief Justice. And I thank you for joining me in this important work.

When I took office in January, I said my hope was for us to collaborate in the pursuit of a vision for the Ohio judicial branch that builds on and expands upon the legacy of Chief Justice Moyer with one purpose in mind: to make the greatest system of justice even better.

The first challenge we face in accomplishing this is money.

What started as a mortgage lending crisis in 2008 spiraled into one of the worst economic times in this nation's history. While there have been positive signs of recovery, recent news leaves us with a prognosis that is at best mixed.

For at least the near term, we know that we will continue to have to reckon with the classic dilemma that governments face in times of economic crisis: Reduced revenue and funding coming at the same time as increased demand for services.

In the courts, we will have to continue to work as a team to respond.

At the national level, the situation was described by the ABA's Task Force on the Preservation of the Justice System as a "crisis."

They wrote in their report issued just last month: "The failure of state and local legislatures to provide adequate funding is effectively – at times quite literally – closing the doors of our justice system."

Here in Ohio, the most recent biennial budget has been difficult for everyone. Local courts are experiencing difficulty providing services in a hostile fiscal environment.

Courts are being asked to do more while Local Government Funds are cut 31 percent.

Courts are being asked to pick up the slack when the budget cuts funding for Adult Parole Authority pre-sentence investigation personnel. Courts are being told that local funding authorities now have appropriation authority over special project and other restricted funds.

All of this is not positive news for Ohio's judicial system and for the administration of justice.

However, there is some good news. In Fiscal Year 2013 \$45 million dollars will be allocated to the Government Innovation Fund to provide grants and loans to local entities that foster collaboration. In addition, some grant money may be available from the Department of Rehabilitation and Correction to off-set the increased costs of courts writing pre-sentence investigation reports

Finally, courts can forestall the appropriation of special project funds by local funding authorities by issuing an annual public report of how those funds are used.

Please, if you are a judge with special projects funds, communicate. There's that word again. Communicate with others such as county commissioners to apprise them of your use of those public dollars. Work with others in local government to accomplish goals. That is not a weakening of the judicial branch, that is a sign of leadership and good government.

The innovative practices courts are employing to combat shrinking budgets goes beyond simply pinching pennies, they are leading to better management practices. Consider these examples:

- Rocky River Municipal Court now uses electronic receipts for certified mail instead of green cards, which saves on purchasing costs.
- Dayton Municipal Court has hired a private security firm to provide security for the court to save money.
- The Mansfield Municipal Court Clerk's office cross trained staff to perform multiple tasks and was able to reduce personnel positions from 23 to 17 staff members.

We at the Supreme Court are working to help respond to the budget problem. We reduced the Supreme Court's discretionary biennial budget by 10 percent and continue to examine cost cutting ideas while ensuring the continued fair and efficient administration of justice. We are literally counting light bulbs.

But, it is not enough to cut costs and balance our current books.

We must also look beyond the immediate crisis and examine the long-term solutions that will strengthen the financial picture of Ohio's courts.

We need to pursue systemic change and further cost savings through a collaborative process involving Ohio's judges, bar associations and all stakeholders in the legal community.

To take that longer view, I announced in January that we would establish a bi-partisan Task Force on the Judicial Budget to examine the current structure and the funding of the judicial branch.

Letters appointing the members of this task force are going out this week. The task force's make-up is based on the appointment recommendations of various judicial associations and representative organizations.

The panel will be charged with issuing a report next year with specific recommendations. I hope you will join me in supporting this work, bringing your ideas forward identifying cost savings and efficiencies within the judiciary.

As we move forward with the difficult work of addressing the important budgetary issues we face, it will be critical that we work on a parallel track to demonstrate to the public and to public policy makers the need to make courts a top funding priority.

We do this in many ways, big and small. We do it with our words and with our actions.

Alexander Hamilton wrote famously in the Federalist No. 78 that the courts are by design the weakest branch of government.

"The judiciary ... has no influence over either the sword or the purse; no direction either of the strength or of the wealth of the society; and can take no active resolution whatever. It may truly be said to have neither FORCE nor WILL, but merely judgment," he wrote.

Former U.S. Supreme Court Justice Sandra Day O'Connor has referred to the judiciary's power as the "Power of the Quill." She recently said: "The Judicial power lies in the force of reason and the willingness of others to listen to those reasons."

So, we are called as judges not just to judge, but to support public understanding of the judicial system, to be open and accessible to the public, and to do everything in our power to uphold the integrity of the judicial system.

We have our work cut out for us.

You've all seen the sobering statistics.

The public's knowledge of the judicial system is inadequate and at times disconcerting. And, while the courts and judges tend to fare better than other governmental leaders and institutions, public confidence in the courts is not what it should be.

One recent poll found that the proportion of the public expressing "a great deal of confidence" in the United States Supreme Court was only 30 percent and that for state and local courts the number was only about 25 percent. The real work and power of the courts is often masked by the media's portrayal of the court and judges. Without a strong foundation in civics no wonder our citizens believe the utter nonsense they see on TV - both as entertainment and what passes for news coverage.

When the public knows about the judicial system, the higher their opinion of the courts. How do we, as members of the judiciary set aside the misperceptions of what we do and replace them with honest information?

We do it ourselves.

When I look around Ohio, I see some great work being done in this area.

The Cleveland Metro Bar's award-winning 3 R's program on rights, responsibilities and realities seeks to improve Cleveland and East Cleveland 10th-grade social studies students' understanding of and respect for the rule of law.

Using a real-world curriculum focused on the U.S. Constitution and career counseling, more than 500 volunteer judges, attorneys and law students work with 4,000 students in 18 high schools throughout the year. Not only does the initiative give the students the right information about the courts it also assists in improving passage rates on the social studies portion of the Ohio Graduation Test, and it is spurring more minorities to enter legal careers in the region.

For the first time this year, the General Division of the Montgomery County Common Pleas Court held a week-long Court Camp for students enrolled in the Dayton Early College Academy.

Fifteen students learned about the courts and legal system by observing court proceedings, visiting law offices and through classroom lectures presented by judges, clerks, attorneys and court staff. By sparking an interest in the law and showing the level of higher education required to work in the field, it is hoped that more students may consider pursuing a career within the legal community.

At the Supreme Court of Ohio, we have our award-winning Visitor Education Center which has helped teach thousands of Ohioans young and old about the legal system.

By the way, I want to put in a plug for a great program recently announced by the Ohio Judicial Center Foundation. Schools who need help paying the cost of a trip to the Supreme Court's Visitor Education Center can now apply for a grant from the Ohio Judicial Center Foundation to defray transportation costs. Please share this with your teachers, and tell them to visit sc.ohio.gov to apply.

So, there is good work being done around the state to put in place programs to educate citizens about what we do and thereby support trust and confidence in the system, which is particularly important as we continue to weather the economic storm.

But these are just the basics.

We can also lead by example. As judges, we are called to a higher standard of conduct. We can support trust and confidence by how we behave and what we say, both on and off the bench.

We are no longer served by the old model of the separate, distant – even aloof – judge dispensing justice from upon high.

As judges in the 21st century, we are now called to a new form of service, one that requires that we regularly come out from behind the bench.

There are so many ways to engage with the communities we serve. Coach a kids sports team. Join a service organization like the Rotary. Offer to speak frequently to your community organizations about the Ohio Court System. Be active in your place of worship. Take your work to the media. Medina judges have regular programs that focus on actual court proceedings. Can your local public access channel put some of your daily proceedings on TV for the average citizen to view? It's worth checking out.

For each of you the call will be different. Whatever your interest, I urge you to get involved and use that involvement to foster a better image of the judiciary and the courts

The final area where we can work to support trust and confidence in this time of continued change and challenge is in the public policy arena.

As judges, we don't make public policy, we interpret the law. So very often we lose sight of the fact that in order to continue to strive for excellence in the judicial system, there is one area where not only **can** we be involved in shaping public policy, but where we are **obligated** to be involved.

This is, of course, in the area of judicial administration.

So, I want to spend the next couple of minutes discussing some of the areas where I think we can work together on improvements in our court system.

By working together to take a leadership role in discussions about improving the administration of justice, we support public trust and confidence in the judicial system and ensure that we are making our case to ensure that funding courts will continue to be a top priority for the leaders of the legislative and executive branches.

This will put us in a better position down the road when the time is right to discuss a difficult issue that cannot be ignored indefinitely: This issue is judicial pay.

I don't need to tell you that judges at every level – none of us – have had a raise or even a cost of living adjustment in almost four years. Ohio is now falling behind states of comparable size. I also don't need to tell you that this is unsustainable if we are to continue to have the very best judiciary in the world. But judicial pay cannot be addressed alone. It must be linked to a discussion and initiative about improving the judiciary as a whole.

Now is not the time for anyone to ask for a raise. But when that time comes for Ohio's judges, we will be in a better position to make the case, if we have all along been doing the hard work of improving the judiciary, increasing accountability, transparency and efficiency in all that we do.

What do I mean when I urge a systemic improvement? I mean looking at all facets of the judiciary starting with judicial selection.

How judges take the bench is as important as what they do when they get there.

You might ask the first question, why do we need to make changes here?

Certainly we have, as I said earlier, an excellent judicial system in Ohio, and we manage to attract and retain men and women of the highest caliber to sit on the bench. But the system is not perfect, and there is always room for improvement.

If nothing else, we need to address the public's perceptions – or perhaps I should say misperceptions.

Eighty two percent of Americans surveyed in a Zogby poll said they were very or somewhat concerned that judges are subject to undue influence by political special interest groups.

No matter what the basis for the public perception or the misperceptions of politics affecting the judiciary, we can and should examine the institution of judicial selection and discover ways to improve it.

One place we might look to as a model is the Cleveland Metro Bar's Task Force on Judicial Excellence and their formed Judicial Qualifications Committee.

Through these innovative programs, the legal and judicial communities in Cleveland, have come together, Democrat, Republican and independent; judges and lawyers, to make the process for filling judicial vacancies in Cuyahoga County as free from partisan influence as is humanly possible. It's a program that can serve as a model for judicial appointments across this state.

Other things I think we should consider in judicial selection reform include moving to a nonpartisan judicial primary system, establishing nonpartisan judicial appointment panels on a statewide basis. I would also advocate for requiring the advice and consent of the Senate for Supreme Court appointments.

I want to hear your ideas as we continue to work together on this important issue.

A closely related issue to judicial selection is the examination of potential changes in judicial qualifications, including pre-judicial education for lawyers contemplating a career on the bench.

What else can we do to strengthen our courts and support trust and confidence in this time of economic challenge?

We need to support diversity.

We have made progress in supporting diversity on the bench and bar, but we clearly have more work to do.

And we can do better.

Until we have a bench and a bar in Ohio that is truly representative of our diverse population, we have much more work to do in this area.

Many of you are stepping up to help with this.

Judges in Cincinnati, Toledo, Akron and other 4 other jurisdictions have been active in participating in the extremely successful Law and Leadership program that prepares the next generation of urban students to consider a career in the law.

Is age a diversity issue? I suppose it is. What are we doing to educate Ohio voters about State Issue 1, which is on the ballot this Nov. 8? Raising the mandatory constitutional retirement age to 75 is something I know many in this room have supported. What can we be doing to ensure that voters understand this issue as they head to the polls? If not you, who will help to get the word out about the issue? Realistically there are two other issues on the ballot and Issue 1 will be swept along with the message each supporter and opponent of those two issues will be advocating.

Finally, there is work to be done on the death penalty.

If we are to support trust and confidence in the judicial system, there is arguably no issue more important than ensuring that justice is served when the state imposes the ultimate form of punishment.

That's why I am announcing today that the Supreme Court of Ohio and the Ohio State Bar Association are forming a Joint Task Force to Review the Administration of Ohio's Death Penalty.

The impetus for the formation of this Joint Task Force is a desire on the part of the Court and the Ohio State Bar to ensure that Ohio's death penalty is administered in the most fair, efficient, and judicious manner possible.

Examination of the process by a broad-based task force of judges, prosecuting attorneys, criminal defense counsel, legislative leaders, and academics is appropriate to determine if the criteria, laws, and procedures regarding the imposition of the death penalty in Ohio are in need of attention. Is the system we have the best we can do? Convening persons with broad experience on this subject will produce a fair, impartial, and balanced analysis.

It should be made perfectly clear that the exercise to be undertaken is in no way a judgment on whether Ohio should or should not have the death penalty. This will not be in the charge to the Joint Task Force. The Task Force will examine the current laws on the subject, the practices in other jurisdictions, the data, costs, etc. It will review the ABA death Penalty Report and identify areas in need of action and recommend the course of action.

We anticipate a Joint Task Force of approximately 20 members with diverse backgrounds in the criminal justice system, with expertise and experience in death penalty prosecution, defense, adjudication, and scholarship. The Joint Task Force will be chaired by Retired Judge James A. Brogan of the Second District Court of Appeals.

From the death penalty to judicial selection reform to supporting diversity on the bench and bar, there is much we can do together to support continued progress in our court system. It is imperative that we renew our efforts to demonstrate the value and necessity of strong courts during this time of change, transition and economic challenge.

And it is imperative, if we are to succeed, that we undertake these efforts in collaboration.

So, I want to close today by sharing one final bit of news.

For nearly 50 years, the Ohio Judicial Conference has done remarkable work as the voice of Ohio's judges. The conference has always served this role side by side with the Justices and administration of the Supreme Court.

Today I am excited to announce that the Court and the leadership of the conference have agreed to further strengthen our relationship and increase collaboration among Ohio's judges, the associations that represent them and the Supreme Court.

A working group is being established to explore a process for building a more collaborative model. The process will itself be collaborative made up of the leadership of the Conference, myself, other judges and justices and your director and the court's administrative director.

What we hope to end up with is a model that further empowers all of you to play a role in working with the Court to support a judicial system that is open, transparent, and efficient and that the public can have the utmost confidence in. The objective is to increase communication and cooperation for the purpose of working together to strengthen Ohio's system of justice.

As I said in the opening, there has never been a more important time for judges to come together and work toward the common goal of supporting the courts. We must work together to make the case that strong courts are critical, that justice is indispensable, and that even in times of economic distress, the courts must be a top priority.

Thank you for your time and attention today. Thank you for all you do every day to serve the cause of justice. And God bless you.