

State of the Judiciary  
Chief Justice Maureen O'Connor, Ohio Supreme Court  
Message to Ohio Judicial Conference  
September 2, 2021

I appreciate the invitation to speak at this this event.

Joyce (Judge Campbell), before you sit down, I want to congratulate you on your reappointment as a director of the National Alliance on Mental Illness. Well done.

It is my privilege to stand before you as chief justice, delivering my 11th address to our judiciary. I can't believe it's been 11 years and I can't believe that next year will be my last.

Before I go any further, I have a few acknowledgments to make.

We have a new justice elected to our court. Our newest colleague is Justice Jennifer Brunner. She served in the 10th District Court of Appeals and as secretary of state. She joined our bench at the beginning of the year. And I know that I speak for all of my colleagues when I say it's been a pleasure to Zoom with you, Jennifer through oral arguments and for conferences. Jennifer, stand up.

Our Court is here today. I'd also like to recognize Justice Kennedy, Justice Fisher, Justice DeWine, Justice Donnelly, and Justice Stewart.

Once again, Stephanie Hess is serving as interim administrative director for the Court, and we could not have a better person in that position. Stephanie's in the back of the room. Thank you, Stephanie, for all you do.

I join you today in person, albeit six feet apart and masked when I'm not up here.

With numbers like 6,100 new COVID cases tested, I know around the state, some courts have required vaccination and masks for employees and many have reinstated the strong protections that have kept us safe for the last 17 months. Courts are not alone in mandating these precautions.

Many other private and public institutions have done the same. It's all done recognizing that the variance of the COVID virus has made even those with vaccine protections vulnerable.

I beg you to keep yourself safe and your employees safe. You all know the drill. True, the vast number of people driving the numbers up are unvaccinated, but everyone is at risk.

I'm going to tell you what we're doing at the Thomas J. Moyer Judicial Center. The Supreme Court has policies and protocols that fall just short of mandating vaccinations for all employees. Justices will wear masks in the robing room and on the bench when they are not speaking. Plexiglass barriers are installed on our bench. Seating in the courtroom has been reduced to allow

for physical distancing. Staff will disinfect the podium and microphone, as well as counsel tables in between attorneys and cases.

Meetings will continue within our building with masks, with physical distancing and disinfecting.

Tour groups of elementary, middle and high school students are suspended until further notice. We don't have any requests at this time, which I'm not surprised, but we'll see how it goes for the rest of the year.

Staff are required to wear masks when working offsite as well.

It's as simple as that.

Staying safe is more difficult in the world for trial judges and for juvenile, probate, and domestic relations judges and I understand that. Trials have taken place and so too have other proceedings in person.

I trust that masks are not optional, that sanitizing takes place, as does social distancing.

The difference between 2020 and 2021 is the appearance of the vaccine, and it has saved countless numbers of lives. But, as I said, we are still all vulnerable.

When masks are ordered to be worn by all? all of the time? in a court or jurisdiction, some problems of application arise.

What are the best practices during a trial? I've been asked that by many, many judges. What should we do during a trial? What happens inside the courtroom regarding who wears masks and when?

Well, I'm going to give you my advice. It's not an order, but it's my advice.

Trial judges should have the following protocol shared: Everyone should be wearing a mask, regardless of vaccination status. However, sometimes that is not practical in the courtroom. At those times, the judge uses common sense.

If an attorney needs to remove his or her mask for opening or closing statements or to examine a witness. If he or she is vaccinated and if social distancing takes place, the judge can certainly allow for that.

The witness can testify without a mask, socially distanced, and then the chair and the microphone in the area are sanitized and the next witness is called and so on.

Again, common sense.

Of course, jurors should be masked at all times and socially distanced.

And I think that is the best advice I can give you. So, I hope that that helps.

I feel for the trial judges with the challenges that you face, during this COVID odd time. But I think that you're all doing a great job.

This gathering is not the one that I envisioned a year ago, and I don't think it's the one any of us envisioned a year ago, virtually. I thought, like many of you, COVID would be vanquished at this point and herd immunity reached, thanks to the devoted scientists and doctors who created life-saving vaccines.

Yet, it is not under control and our struggle continues.

In light of last year, I would be remiss if I didn't pause to thank every judge and magistrate in the state of Ohio, every court staff member in the state of Ohio, and every attorney in the state of Ohio, and all those community organizations that are connected with the work of our courts. So, give yourselves a hand because you certainly deserve a deserve it.

Thank you for your tireless efforts and innovation through a pandemic that surprised us with its emergence, its speed, and its ravages. Unfortunately, as I said, we're still writing our history of the Ohio courts and the handling of this pandemic. But when the time comes, I expect historians and journalists to show that the Ohio judiciary faced a challenge of unexpected size and strength and conquered it through innovation.

The collegiality of our 300-plus courts over the past 18 months is unprecedented. You came up with new concepts and shared them for the benefit of everyone.

And I couldn't be prouder of the Supreme Court staff for its many innovations that helped keep the courts running.

Part of that outreach has been the efforts to bolster our local courts technology needs. In order to be resilient, over the past seven years, I've shared more than \$27 million of the Supreme Court's budget for technology upgrades to the benefit of every county in the state.

As we pivoted to heavier use of technology to meet the continuity of court operations, I convened a task force to study all of the innovations and more. The task force members interviewed judges, staff attorneys, other attorneys, litigants, and justice system partners.

They wanted to make sure that we cataloged all of the originality and all of the new ground.

The task force, known as Improving Court Operations Using Remote Technology, got moving. Now, iCourt Task Force has completed more than eight months of hard work and it produced its final report. All 600 pages of it.

Survey responses topped 5,000. That is such a huge amount for a survey response from the Supreme Court.

Of those 5,000, an overwhelming majority had participated in remote proceedings. Those statistics are testament, not only to the veracity of the report, but the fact that our courts are working so very hard to deal with these challenges.

There are scores of recommendations and examples in this report, and I can't begin, of course, to relate all of them to you today. But I can tell you that with 25 members from the judiciary, plus six subcommittees, and many Supreme Court staff, the report is nothing, but thorough. It is more or less a roadmap for the future of local courts and the furtherance of access to justice.

The increased use of technology in our courts is one of the silver linings of the pandemic cloud, and the iCOURT task force examined every aspect. I cannot thank everyone involved here today, but I do want to recognize the task force chair, Judge Rocky Coss of the Highland County Common Pleas Court and his vice chair, Magistrate Serpul Ergun of the Cuyahoga County Domestic Relations Court, and Justice Pat DeWine, the ex officio member from the Supreme Court. Justice DeWine is in the back row there. Thank you, Pat.

And the MVP of the project, to borrow Judge Coss's exact words: Kyana Pierson, policy counsel for Children and Families Section of the Supreme Court. Kyana was the primary author of the final report and its many, many recommendations.

Among those 97 recommendations are common-sense ones, such as establishing WI-FI in every courthouse and wider use of cell phones for scheduling. Others are a bit more complicated, such as establishing electronic kiosks out in the community so that litigants can "go to court" remotely.

I'm only scratching the surface here. There are so many great ideas.

Nearly every proposal is designed to avoid breaking the bank or your budget. This makes the iCourt report not only a must read, but also a must do when it comes to considering recommendations that fit your court and your circumstances.

Technology is the key to implementing justice today. As always, our staff at the Court stands ready to answer your questions and to help you implement any of these findings.

Now, the North Star for all of us during this past 18 months has been access to justice and, hand in hand with access to justice, is the fair administration of justice for every Ohioan.

Our founders created a system of government that places the judiciary in a unique role, being responsive to current problems as our society evolves.

I believe that bail reform is being responsive to current problems in our involving society.

Reform is long overdue and very practical, thanks to recent changes.

Today, courts in Ohio must use the least restrictive bond conditions and least amount of monetary bail to secure a defendant's appearance. The first consideration for release is O.R. Bond schedules are to be used only for securing release before an initial appearance and not to be

considered by the trial court during a bond hearing.

That's progress.

Yet, the bail reform road remains a long one. We have traveled many miles in the right direction and I believe that we will continue on that course.

I believe this because of the strong bipartisan support of this endeavor. Our Task Force on Bail Reform heard from all sides on the matter and deliberated before issuing its recommendations. Our Court acted on some of those recommendations.

The hallmarks of our current situations are fairness to those who come before the courts and a rational approach to pretrial detention and the use of taxpayer dollars. Fairness for all is the underpinnings of bail reform.

In 1790, George Washington concluded that, and I quote, "The judicial department is essential to the happiness of our country."

*We* know that a just court system is essential to the happiness of our country.

We further bail reform by making new court rules. But my question, is that sufficient?

These reforms are not written in stone. We need to be clear-eyed and take the next step.

Bail reform in Ohio needs to be written into the tablets of our laws, into statutes codified.

Bail reform would add permanence and stability to our whole widely shared endeavor and shield our progress from the more fluid avenues of rulemaking.

Members of the General Assembly helped us get this far. Task force members acted as advocates for our common-sense path, and we need to turn to them once more. And we have.

Putting progress into law is a tradition in Ohio. So, let's take the next step together.

Progress of any type is almost never a straight line. We step forward, we fall backward, and then we push forward again.

This certainly has been the case with racial fairness in our nation and in our state.

Twenty-two years ago, Chief Justice Moyer commissioned a report on racial fairness in Ohio that called for broad reforms. It can't be said that this critical issue has not been examined. It has examined over and over.

What we have failed to do is place race and fairness together at the apex of our national and our state agenda.

Incremental progress is not good enough.

The proof is in the failure of our justice system to consistently deliver justice for all, regardless of race, ethnicity, gender, religion or sexual orientation or identity.

I'll talk about this issue in the context of education in a few minutes. But first, I want to reflect on the unfinished business of the Moyer commission.

Among the many recommendations for the positive change in that 1999 report was the creation of a solid database of criminal justice information. Before successfully tackling any problem, we must know the facts.

That is just common sense that applies not only to the judiciary, but to every other serious endeavor, whether it be private or public.

For far too long, we have denied ourselves the information that we as judges need to administer justice fairly and in context. A year ago, at this forum, and many times since I've talked to you about the criminal justice database system that we launched before COVID. Substantial progress has been made on the database.

The Ohio Criminal Sentencing Commission, the University of Cincinnati and our Supreme Court staff have made rapid advances on this project.

Eventually, it is my vision to collect data on everything that happens, from the decision of an officer to arrest someone, to the charges that the prosecuting attorney brings, to the pretrial phase for that person.

We know whether they've been detained or released, if they were released. We record the circumstances. We record what happens during the course of pretrial and what happens throughout sentencing, post-sentence proceedings, recidivism rates, post-release control violations, and whether there is a successful completion of probation.

This will give us the whole picture of our criminal justice system in the state of Ohio. It will provide a foundation for fairness. Setting up this system involves consistent data entry. At the starting point, the main stumbling blocks for all these years has been collection and assimilation of the data. We are now solving that problem.

It's fair for you to ask if this system will be a burden to your court. I've heard it asked over and over again. how am I going to do this? What will it entail?

Well, the answer is no. It will not be a burden to your court.

Why? Because the data we are seeking already exists.

The best description of this process was noted in a recent forum by Judge Gene Zmuda of the Sixth District, who chairs the Sentencing Commission's ad hoc committee on the uniform sentencing entry.

The information for this database already resides in the various and very often different case management systems in use across our 300-plus courts.

As Gene Zmuda put it, this is an extraction process of data that is already there. It's all about connecting and processing the information.

And, think about his follow up statement: We are yet to find a data point that doesn't exist somewhere in our current work.

In other words, we have been wandering among countless number of trees and not envisioning the forest. Hopefully the forest will materialize.

With this new effort, our statisticians and software experts are working to bring the individual elements of our justice system to light.

Instead of just sitting there unused and unobserved, these elements are being made into a picture. We know this because courts in four counties are piloting the database. In Allen County, Delaware County, Hancock and Lawrence counties.

Three more counties are planning to become pilot sites. Informational meetings on how to get this done are being held in 10 more counties.

I think that is a momentum and I am so proud of it.

I don't want to imply that this effort is easy. It is not easy. That's why we have such smart, analytical people working on it.

Plus, we are still in the first phase of three phases and that's the launch phase. But the next step is building the system and we're seeing how that will take shape.

The final advanced stage would be a system operating efficiently under the continuous improvement model. It will offer data dashboards and will fully integrate with law enforcement and case management systems.

The University of Cincinnati, under the direction of Hazem Said and Sara Andrews and her brilliant staff of the Sentencing Commission are to be commended for their work thus far.

It's still too early to say when the system will be finished. It will probably be finished after I am finished, but that doesn't mean that it has to stop. It won't stop.

But we can say today that a system called for in 1999 in Ohio will be built and it will be delivered on the promise to raise up the knowledge of our judges.

It will give judges the tools needed to make fair and equitable sentencing decisions. It will create efficiencies elsewhere in the criminal justice system.

Yet to level up our statewide system, there's much work to do beyond the statistics. We need to listen to the stories that show us how our criminal justice system has fallen short in some areas.

Last year, Ohio became the first state to engage in a racial and ethnic disparities project with the Center for Court Innovation and the American University. This college has a Justice Programs Office, and the office has developed a racial and ethnic disparity assessment tool. It's known as the Red Tool, and that's R-E-D, another acronym.

The tool captures racial and ethnic disparity information about treatment courts and Ohio. Data was collected from 30 courts between July and August of last year. The Supreme Court received a statewide aggregate report, including recommendations on trainings and developing statewide guidance and policies and to track overall metrics for the state. So that is another project.

I would also like to note that the Supreme Court will soon hire a diversity and inclusion officer charged with creating and implementing the Court's diversity, equity and inclusion efforts for the court and the state judiciary as a whole.

The court and the state judiciary, as a whole, will benefit from the strategies and the programs that will be developed by this person in that position. Our Judicial College has been rigorous in offering curricula that addresses biases implicit and explicit in our court system. These

Today, our society is afflicted with civic ignorance on a scale that would have been unimaginable in past decades.

The collective knowledge of our system of government, including the justice system, is so abysmal that our democracy itself is threatened. I could not agree with that statement anymore.

Whatever the cause, we do have a step to cure it. And that step is educating our youth, starting at the early age in our schools about government and about our judicial system.

We've been taking an active approach at the Supreme Court. Our efforts are tailored so that local courts can join us in educating our people, starting with children.

Just recently, the Court's civic education section won a prestigious national award. It's the Sandra Day O'Connor Award for the Advancement of Civic Education.

It was bestowed by the National Center for State Courts. We are so proud of that accomplishment. Our two-person section ? we have two people in our civics education section.

With the help of educators and the court's Public Information Office, it has been writing curricula for schools that explore our court system. The lesson plans are centered around decided cases at the Supreme Court and feature archived oral arguments.

These materials are being used in three-day and four-day units in high school classes around the state. I'm inviting you to make the acquaintance of a high school social studies teacher or history teacher or government teacher and offer to teach the unit with them.



Having local judges and attorneys come into the classroom and help teachers explain the legal tenants behind the cases will add a dimension to the unit like nothing else can.

As judges, our communities look up to us as leaders and this is the perfect opportunity for you to become involved. Please reach out to our Civic Education Office for more information or go online to find program materials on the Supreme Court's website.

Now, another educational effort needs your attention as well, and that's Judicial Votes Count, the nonpartisan website that was launched in 2015 that asked you to answer questions about yourself for the benefit of others.

Participation by judges, along with usage by voters, reached a record high in last fall's elections, but the figures still are not high enough.

Please make it a point to take part when you are on the ballot. The more Ohioans know about their judges, the more likely they are to cast a ballot. We want more voter participation in judicial races. But remember, the voter knowledge is the most important ingredient.

Taking part in Judicial Votes Count is an easy way for you to connect with the voters. And here's the silver lining for those of you who do participate, the legislature in this past budget has given the Supreme Court \$150,000 per year to promote Judicial Votes Count.

We plan to use that for advertising, probably on social media, to direct voters, people who click on to selected websites, will be directed to Judicial Votes Count. Ladies and gentlemen, this will be free advertising for all of you who are running in the elections. So please fill in the questionnaire.

You can even update it during the campaign as you gain endorsements or other achievements. Or as other things happen and you think it's relevant and you want to put it on the website. There is no reason not to participate in Judicial Votes Count.

I'm going to talk now about a pretty pressing problem that is on the horizon and many of you may have already seen it, and those are evictions.

On August 26 of this year, the United States Supreme Court ruled in *Alabama Association of Realtors et al versus the Department of Health and Human Services et. al.*, that the CDC exceeded the scope of its authority with the most recent eviction extension and found it to be unconstitutional.

There is no more moratorium on evictions in Ohio. Eviction cases will proceed, but there are alternatives to business as usual regarding evictions. State and local governments were recipients of federal economic relief funds. A portion of these dollars has been allocated to individuals struggling to pay rent and utility bills.

Additionally, the federal government distributed targeted rental assistance relief funds available

to both tenants and landlords as part of an eviction prevention strategy.

Rental assistance dollars were distributed to states and transferred to local community action agencies to provide direct assistance to the individuals, landlords and tenants. Early intervention in eviction cases is the key to preserving the tenancy.

Courts provide a venue to connect tenants and landlords with emergency assistance and necessary resources to prevent not only displacement of financial burdens for both parties. Ideally, efforts by courts and clerks of court would divert parties to services prior to an eviction being filed.

Pre-filing intervention has a greater likelihood of success because the strict statutory timelines in eviction cases do not provide much flexibility to allow time for services to be obtained.

With the end of the federal eviction moratorium, now more than ever, courts need to be proactive in their efforts to divert tenants and landlords away from formal court action and instead seek rental assistance or alternative forms of dispute resolution.

We have a toolkit that has been created. This toolkit is hot off the presses, literally. I'll talk a little bit about the tool kit toolkit in a minute, but here's what it is directed to do.

The court has many roles it can play during the eviction crisis. No one can take steps to actively divert evictions from occurring.

It can educate parties about their rights and the availability of assistance? as I said, for both tenants and landlords.

It can serve as a conduit to help connect individuals to resources if an action for eviction is filed, as well as if the eviction is granted.

It can engage community stakeholders to collaborate on their relief efforts and encourage them to launch a coordinated public awareness campaign regarding the availability and the eligibility of rental assistance.

As I said, this toolkit has been created and it outlines strategies courts can employ to help prevent evictions from occurring using rental assistance funds, as well as ways to facilitate collaboration among community organizations, such as local community action agencies and legal aid organizations.

Courts are encouraged to familiarize themselves with the rental assistance eligibility criteria and work with community agencies to better understand the U.S. Department of Treasury's latest guidance so that they can help to remove barriers, where possible, to facilitate the timely administration of justice.

This toolkit exists. It will be on our website and available to you shortly. It has, I think, over 100 pages to it, maybe about 116 pages to it. And it is chock full of the information you judges need

that handle evictions to divert the evictions, pretrial, how to deal with them, or pre-filing, how to deal with them during filing.

You will not have to make up these strategies or these protocols on your own. Everything is contained in this toolkit. So, if you're doing evictions, please, please look on the website of the Ohio Supreme Court, find the tool kit and embrace it.

I'm grateful to the leadership of Supreme Court staff Stephanie Nelson, Brian Farrington, and Kyana Pierson for their work on this toolkit and to Judge Beth Cappelli and Judge Mona Scott as well. And many Legal Aid Society offices and the Poverty Law Center here in the state. They all got together. They collaborated on the toolkit and came up with this result. I'm so proud of it. It's a great resource. And I hope those of you who do evictions will take a look at it

When George Washington made his appointments to the original Supreme Court in 1790, he wrote to them his desires for the court. He wrote, "I have always been persuaded that the stability and the success of the national government and consequently the happiness of people would depend in a considerable degree on the interpretations and the executions of its laws."

For the judiciary, as the foundation of the rule of law and to support our democracy, it is essential for judges to be respected for their independence, independence in the interpretations and the executions of those laws.

We must act independently of political parties and the public needs to understand our independence.

Over the past year, we have had to stand up for the independence of the judiciary and against wrongful attacks on judges who were accused of being partisan.

In one case, I issued a statement, that actually received global attention, admonishing a political party for attacking the integrity of a judge who delivered a decision that didn't favor their political interest.

Every judge and magistrate in Ohio should be greatly concerned and voice their dismay when unfounded assaults are made on judicial independence. Attacks on the judiciary undermine the public confidence of the court that we work so hard to maintain.

We are the interpreters of the law that is our mission. We are a separate branch. A wall of neutrality should separate us from the politics of the day.

Public trust of the judiciary is built on a foundation of knowledge and a recognition of that neutrality. Let's support education.

Civic education is a critical subset education about the judiciary. Let people know what we do as members of the judiciary and help instill further confidence in what we do and who we are.

When organizing the judicial branch, in 1789, Washington wrote to Thomas Jefferson, and I

quote, “The due administration of justice is the strongest cement of good government,” unquote.

It was James Madison, I don't know if he remembers it\*, who said “Knowledge will forever govern ignorance and a people who mean to be their own governors must arm themselves with the power which knowledge gives.” (*\*A skit featuring an actor playing James Madison preceded the chief justice's remarks.*)

I hope that the “forever” part of that quote is true and that we continue to be the cement of good government.

Please enjoy this year's annual meeting and let's not let our guard down. As I said, the Delta variant is at an all-time high, far more contagious than the virus that claimed the lives of our very own judges last year.

Honor them. Keep a safe distance from your colleagues. Consider employing an elbow tap when you'd much rather shake someone's hand and wear a mask.

It's our duty for the common good to wear it.

I want you to be protected. I want your loved ones to be protected. And I want my loved ones to stay safe as well.

Each of you holds a special place to make a difference in our state of Ohio and our nation. And I thank you for that.

And once again, may God bless you all. Thank you.