THE OHIO MODERN COURTS AMENDMENT: 45 YEARS OF PROGRESS

*Maureen O'Connor**

One of Ohio's greatest sons, Ulysses S. Grant, was not known for his dapper appearance.[1] Upon entering an inn one stormy night, he is said to have encountered a group of lawyers.[2] They were there for court—as was the custom in that day—and they were huddled around the fire.[3] One of the attorneys cracked that Grant looked like he had come through hell to get there and asked the future President what it was like in the underworld, to which Grant replied, "[just like here:] lawyers nearest the fire."[4]

Unfortunately, this is a common sentiment. The eminent legal scholar Roscoe Pound famously said in a 1906 speech to the American Bar Association that "[d]issatisfaction with the administration of justice is as old as law."[5] "[A]s long as there have been laws and lawyers," Pound said, "conscientious and well-meaning men have believed that laws were mere arbitrary technicalities, and that the attempt to regulate the relations of mankind in accordance with them resulted largely in injustice."[6] Pound went on in his seminal—and at the time controversial—speech to detail the reasons for this persistent and insidious misperception of the law and to offer his recommendations for countering it. Pound's speech came at the height of the Progressive Movement and served as the catalyst for salutary reforms in the U.S. legal establishment.[7]

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* Chief Justice, Ohio Supreme Court.

[1] *See, e,g.*, LLOYD LEWIS, CAPTAIN SAM GRANT 375 (1950) (describing a story where Grant was "haggard, and dressed poorly in an old slouch hat and faded blue overcoat").

[2] Lewis attributes it to Thomas L. Stitt, *"Who Put Down the Rebellion?"*, *in* WAR PAPERS READ BEFORE THE INDIANA COMMANDERY MILITARY ORDER OF THE LOYAL LEGION OF THE UNITED STATES 273, 274 (1898).

[3] *Id.*

[4] *Id.*

[5] Roscoe Pound, *The Causes of Popular Dissatisfaction with the Administration of Justice*, 40 AM. L. REV. 729, 729 (1906).

[6] *Id.* at 729–30. Various versions of this anecdote abound. *See, e.g.*, LEWIS, *supra* note 1, at 375.

[7] *See* DAVID WIGDOR, ROSCOE POUND: PHILOSOPHER OF LAW 147–59 (1974) (describing

Indeed, while Pound may have been right that there have always been "conscientious and well-meaning men" who have lamented what's wrong with the law, there also have always been equally conscientious and well-meaning men and women who have worked tirelessly to improve the administration of justice. In Ohio, the history of this struggle is one of slow, incremental progress punctuated by specific moments of major advancement.

When I consider the question what makes the Ohio Supreme Court great, there is one specific improvement of our legal system that stands out. It is a major reform that was led by the bench and bar—that celebrates its forty-fifth anniversary this May—and that put into place a new framework for the administration of justice, which resulted in a process of reform and improvement that continues to this day. It is the Modern Courts Amendment.

On May 7, 1968, the people of Ohio passed the Modern Courts Amendment by an overwhelming margin, approximately sixty-two percent to thirty-eight percent, with the ballot initiative passing in seventy-nine of Ohio's eighty-eight politically diverse counties.[8] It was the first major revision of Article IV of the Ohio Constitution governing the judicial branch since the Ohio Constitution of 1851.[9]

In many ways, the Ohio Modern Courts Amendment was the direct progeny of Pound's 1906 address. While he had initially been chastised for his frank criticism of the U.S. judicial system, ultimately, there was a groundswell of support for judicial reforms around the country. It took several decades for this to translate into action, and in the 1950s and 1960s, a plurality of states, including Ohio, began initiating many of the reforms Pound had promoted.[10] These included proposals for so-called merit selection of judges, court consolidation, centralized management of state judicial systems, and adequate court funding.[11] In Ohio, the Ohio State Bar Association, the Legislative Service Commission, the Ohio Judicial Conference, and leaders in the General Assembly worked for the better part of a decade studying the Ohio court system, examining reforms in other states, and crafting a concrete proposal for reform

Pound's speech and procedural reform).

[8] William W. Milligan & James E. Pohlman, *The 1968 Modern Courts Amendment to the Ohio Constitution*, 29 OHIO ST. L.J. 811, 819 (1968) (passing by a vote of 925,481 to 556,530).

[9] *Id.* at 811.

[10] *See* G. ALAN TARR & MARY CORNELIA ALDIS PORTER, STATE SUPREME COURTS IN STATE AND NATION 59–67 (1988) ("The modern movement for court reform originated with Roscoe Pound's famous speech . . . .").

[11] *Id.* at 60–61.

that ultimately became the Modern Courts Amendment.[12]

The amendment made a number of relatively minor changes, like establishing that the Chief Justice's six colleagues on the bench would be designated "justices" as opposed to the previous designation of "judges."[13] It also made changes that, at the time, were of keen interest to the judges and other parties but that did not have broad effects on the administration of the court system. For example, the amendment eliminated a previous constitutional prohibition on judges receiving compensation adjustments mid-term.[14] This had caused uncomfortable and needless disparities among the compensation levels for judges, with new judges on the bench often earning more than senior members of the same court.[15] Also of significant note is what is *not* in the amendment. As is often the case with reform packages on their way to enactment, major pieces of the original package were removed by the legislature before it went to the ballot. These included a proposal for consolidating all Ohio trial courts into courts of common pleas, one for each county, divided into specific divisions as dictated by local need, and also a proposal for abolishing competitive judicial elections in favor of an appointive system with retention elections for judges of the courts of appeals and supreme court justices.[16]

There were those at the time—and perhaps still today—who lamented the removal of these substantive provisions.[17] But, it is a valid question whether the measure would have received the backing of Ohio's judges and ultimately been approved by Ohio voters if it had still contained the merit-selection and court consolidation proposals. Arguably, the measure passed by the comfortable margin that it did because it took the less sweeping—though still comprehensive and substantial—form that it did. Certainly, the Modern Courts Amendment that we ended up with is more in keeping with the general political tendency Ohioans have that "gradualism [i]s the better part of valor."[18] Incremental change as a general principle is more feasible in most cases, and the Modern Courts Amendment gave us the best of both worlds: significant, immediate, fundamental reform that put in place a

[12] Milligan & Pohlman, *supra* note 8, at 812, 847.
[13] *Id.* at 846 (footnotes omitted).
[14] *Id.* at 819 n.16.
[15] *Id.* at 847.
[16] *Id.* at 812–13, 814.
[17] *See id.* at 813 (including the statement from the Modern Courts Committee of the Ohio Bar Association).
[18] *Id.* at 815.

structure for continued, gradual improvement.

This structure came in the form of the amendment's most significant central feature: the establishment of the Ohio Supreme Court's authority to establish Rules of Superintendence.[19] The amendment established:

> [i]n addition to all other powers vested by this article in the supreme court, the supreme court shall have general superintendence over all courts in the state. Such general superintending power shall be exercised by the chief justice in accordance with rules promulgated by the supreme court.[20]

It was clearly understood at the time the amendment was passed that the establishment of the supreme court's authority and responsibility of general judicial superintendence would be the beginning of a gradual process of reform that would unfold for years, if not decades.[21] That is precisely what ensued.

Since the passage of the amendment, working with the Ohio Judicial Conference (the statewide association of Ohio's judges), the organized bar, the legislature, and interested parties, the court has established rules on a wide range of issues, including courthouse security, facilities standards, jury standards, and alternative dispute resolution.[22]

Here, I would like to examine in detail, three areas where the court has been very successful in improving the administration of justice through exercising its authority of superintendence: caseflow management, access to court records, and language interpretation.

CASEFLOW MANAGEMENT

Article I, Section 16 of the Ohio Constitution states that "every person . . . shall have justice administered without denial or delay."[23] The importance of this provision is reflected in the Preface to the Rules of Superintendence for the Courts of Ohio, which states:

> [t]he foundation of our government rests upon the confidence

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[19] OHIO CONST. art. IV, § 5(A)(1).
[20] *Id.*
[21] *See* Milligan & Pohlman, *supra* note 8, at 813.
[22] *See* OHIO SUP. R. 5(B)(1) (case management plan and alternative dispute resolution); *id.* at R. 9(A) (courthouse security standards); *id.* at app. b (jury management standards); *id.* at app. d (court facility standards).
[23] OHIO CONST. art. I, § 16.

> of the people in the ability of their courts to achieve liberty and justice for all under the law. The fair, impartial, and speedy resolution of cases without unnecessary delay maintains this confidence, safeguards the rights of litigants to the just processing of their causes, and earns the trust of the public.[24]

One will notice a common thread running through these two passages—the word "delay." As the British statesman, William E. Gladstone, said in the nineteenth century, "[j]ustice delayed is justice denied."[25] His quote is today a common refrain understood by those both in and outside of the legal community—delay is the foe of an effective judicial system. As Dr. Ernest C. Friesen, a nationally recognized educator in court management, argues, delay undermines the very purpose of courts.[26]

In fact, a 1961 report of the Ohio Legislative Service Commission that served as a precursor for the development of the Modern Courts Amendment identified delay as one of the major issues facing Ohio's courts and calling for reform. "The oldest and most publicized problem facing the courts of the state is delay,"[27] the report found:

> [d]elay in the courts is unqualifiedly bad. It is bad because it deprives citizens of a basic public service; it is bad because the lapse of time frequently causes deterioration of evidence and makes it less likely that justice be done when the case is finally tried; it is bad because delay may cause severe hardship to some parties and may in general affect litigants differentially; and it is bad because it brings to the entire court system a loss of public, confidence, respect, and pride.[28]

It is this judicial delay that brings into focus the importance of caseflow management. Although it may be misunderstood as a mere bureaucratic concern, caseflow management is in fact a key element in combating judicial delay and, ultimately, achieving the very purpose of our judicial system.

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[24] OHIO SUP R. preface.

[25] LAWYER'S WIT AND WISDOM: QUOTATIONS ON THE LEGAL PROFESSION, IN BRIEF 139 (Bruce Nash & Allan Zullo eds., 1995).

[26] Videotape: Caseflow Management Principles and Practices: How to Succeed in Justice (Nat'l Ctr. for State Courts & Inst. for Court Mgmt. 1991).

[27] OHIO LEGISLATIVE SERV. COMM'N, THE OHIO COURT SYSTEM: ITS ORGANIZATION AND CAPACITY 6 (1961).

[28] *Id.* at 37 (quoting HANS ZEISEL ET AL., DELAY IN THE COURT xxii (1st ed. 1959)).

The Supreme Court of Ohio plays a significant role in overseeing caseflow management throughout Ohio's local courts. Pursuant to Rules 35 through 43 of the Rules of Superintendence for the Courts of Ohio, the supreme court, through its Case Management Section, exercises a variety of caseflow management oversight powers, all with the goal of reducing delay and ensuring the effectiveness of the judicial system.[29]

These include:

- Setting case time limits;
- Collecting, analyzing, and monitoring statistical caseflow data from the state's local courts;
- Conducting audits of the state's local courts;
- Assisting and training judges, court administrators, clerks, and other court personnel in caseflow management areas.[30]

However, the extent to which the supreme court has exercised this role has varied over the years. The supreme court's oversight of caseflow management is part of and interwoven into its general administrative authority over local courts, which itself has changed over time. As a result, the history of the supreme court's caseflow management oversight authority is reflected in the history of its superintendence power.

One of the earliest documented steps towards the supreme court's current caseflow management oversight dates back to 1923. At this point in Ohio history, the supreme court lacked constitutional superintendence authority over the state's local courts.[31] Cognizant of the need for an administrative review of the Ohio judicial system, the eighty-fifth Ohio General Assembly enacted Senate Bill 165, which created the Judicial Council of Ohio.[32] The council was charged with the "continuous study of the organization, rules and

[29] *See* OHIO SUP. R. 35–43.

[30] OHIO SUP. R. 35(A)–(D) (case management section OHIO SUP. R. 36(B)(1) (assignment system).

[31] *See* SUPREME COURT OF OHIO & THE OHIO JUDICIAL SYS., AMENDMENTS TO THE OHIO RULES OF APPELLATE PROCEDURE, THE OHIO RULES OF CIVIL PROCEDURE, THE OHIO RULES OF CRIMINAL PROCEDURE, THE OHIO RULES OF JUVENILE PROCEDURE, AND THE OHIO RULES OF EVIDENCE (2008), *available at* http://www.supremecourt.ohio.gov/PIO/news/2012/practiceProcedure2012.pdf ("In 1968, the citizens of Ohio approved proposed amendments to Article IV of the Ohio Constitution granting the Supreme Court, among other duties, rule-making authority for the judicial branch of Ohio government.").

[32] S.B. 164, 85th Gen. Assemb., Reg. Sess. § 1 (Ohio 1923). For a history of court caseload and statistical reporting in Ohio, see THE SUPREME COURT OF OHIO, OHIO COURTS STATISTICAL SUMMARY 2008, at 28 (2008), *available at* https://www.supremecourt.ohio.gov/Publications/annrep/08OCS/summary/Trend.pdf.

method of procedure and practice of the judicial system in the state of Ohio, the work accomplished and the results produced by that system and its various parts."[33] In its 1931 initial report to the General Assembly, the council, under the chairmanship of Chief Justice Carrington T. Marshall, noted its ongoing work, including the consideration of a standardized routine caseload reporting process.[34]

However, subsequent reports from the Judicial Council of Ohio indicate that its efforts to standardize caseload reporting were largely abandoned due to a lack of funding.[35] It was not until over a quarter of a century later that the supreme court, under the direction of Chief Justice Carl V. Weygandt, began to engage in caseflow management oversight.[36] Specifically, in 1957 the supreme court began "publishing *Ohio Courts*, a monthly report containing caseload statistics of the Supreme Court, the courts of appeals, and . . . the general and domestic relations cases [of] . . . the . . . courts [of] . . . common pleas."[37] Because the supreme court continued to lack constitutional superintendence authority over the state's local courts, submission of the data was voluntary.[38] However, "by year's end, all 88 . . . courts of common pleas [we]re submitting regular monthly statistics to the [Supreme] Court."[39]

Voluntary reporting continued until the adoption of the 1968 Modern Courts Amendment to the Ohio Constitution.[40] With the amendment's grant of superintendence authority, caseflow management oversight power was officially conferred upon the supreme court.[41] Exercising this new authority, in 1971 the supreme court adopted superintendence rules that, "among other things, fixe[d] upon individual judges the responsibility for case disposition and mandate[d] the regular reporting of caseload statistics for appellate courts and courts of common pleas."[42] In

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[33] Ohio S.B. 164 § 1 (internal quotation marks omitted).

[34] *See* FIRST REPORT OF THE JUDICIAL COUNCIL OF OHIO 8 (1930).

[35] *See* ELEVENTH REPORT OF THE JUDICIAL COUNCIL OF OHIO TO THE GENERAL ASSEMBLY OF OHIO 25–26 (1953); TENTH REPORT OF THE JUDICIAL COUNCIL OF OHIO TO THE GENERAL ASSEMBLY OF OHIO 25 (1951); NINTH REPORT OF THE JUDICIAL COUNCIL OF OHIO TO THE GENERAL ASSEMBLY OF OHIO 23 (1949); EIGHTH REPORT OF THE JUDICIAL COUNCIL OF OHIO TO THE GENERAL ASSEMBLY OF OHIO 24–25 (1947).

[36] THE SUPREME COURT OF OHIO, *supra* note 32, at 28.

[37] *Id.*

[38] *See id.*

[39] *Id.*

[40] *See id.* (noting that reporting continued).

[41] *See* OHIO CONST. art. IV, § 5(A)(1).

[42] THE SUPREME COURT OF OHIO, *supra* note 32, at 29.

1975, the supreme court adopted additional superintendence rules to "require municipal and county courts to report caseload statistics."[43]

Over the past quarter century, the supreme court's exercise of caseflow management oversight has developed and continues to do so to this day. For example—in light of technological advances and in an effort to streamline the data submission process—the supreme court is currently developing means by which local courts may submit the case statistical data electronically via the internet.[44]

ACCESS TO COURT RECORDS

Until the adoption of the supreme court's Rules of Superintendence for the Courts of Ohio 44 through 47 in 2009,[45] also commonly known as the Public Access Rules, the idea that the case and administrative records of courts should be governed by a court rule instead of a statute passed by the legislature, had never been broached by the supreme court.

Supreme Court of Ohio cases had long considered court case documents as public records within the meaning of R.C. 149.43 ("Public Records Act").[46] Of all the government records generally accepted as public records, there is probably no record type that is inherently more accessible to the public than the documents produced during an open court trial. In fact, Rule 45(A) of the supreme court's Public Access Rules states that all court records are presumed to be open to public access.[47]

It is not surprising that the basic concept, that government records should be accessible to the public, finds its roots in the common law. In 1901, the Superior Court of Cincinnati—a body that no longer exists—stated in *Wells v. Lewis*,[48] "public records are . . . the people's records . . . . The officials in charge of these [records], therefore, can be no other than trustees in possession of property belonging to the people."[49] The Supreme Court of Ohio later cited the framework of *Wells* when it first adopted a universal

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[43] *Id.*

[44] *See* THE SUPREME COURT OF OHIO, OHIO COURTS STATISTICAL SUMMARY 2010, at 4 (2010), *available at* http://www.sconet.state.oh.us/Publications/annrep/10OCS/summary/Trend.pdf.

[45] *See* SUPREME COURT OF OHIO, AMENDMENTS TO OHIO SUP. R. 44–47 (Nov. 19, 2007) (noting that the Rule amendments became effective July 1, 2009).

[46] *See, e.g.*, Cincinnati Enquirer v. Winkler, 805 N.E.2d 1094, 1096 (Ohio 2004).

[47] OHIO SUP. R. 45(A).

[48] Wells v. Lewis, 12 Ohio Dec. 170 (Cincinnati Super. Ct. 1901).

[49] *Id.* at 176.

principle of open records as statewide law in 1960.[50] The same principle was later codified in statute with the passage of the Public Records Act in 1963.[51]

After more than one hundred years since *Wells*, it was only appropriate that the branch of government declaring records are generally available to the public would also direct, by court rule, the access to its own records. Outside of general administrative matters, court forms, and case management rules, the promulgation of the Public Access Rules is perhaps the first rule of superintendence adopted by the supreme court to have the most impact on the interaction of the courts and the public at large. By adoption of the rule in 2009, the supreme court effectively announced to the other branches of government that it would direct Ohio courts—through its superintending authority—on how court records would be made accessible; access was to be restricted through application of a balancing test, mandated preservation of the privacy of personal identifiers, and by which records should be accessible electronically. The rules also govern basic administrative documents of a court that were used to conduct the daily business of the court. Lastly, the rules successfully incorporated the types of records already prohibited from public release by various sections of the Ohio Revised Code.

During the pendency of the rules' adoption, several in the media believed the rules would restrict longstanding access to court records.[52] This fear was alleviated in the first case before the supreme court concerning the application of records sealed by a court under the method prescribed in the Public Access Rules. In *Vindicator Printing Co. v. Wolff*,[53] the media sought access to all sealed records in a criminal case, specifically bills of particulars and statements of facts contained in the state's various court filings.[54] The supreme court ruled in favor of the media and found that the presumption of public access to the records was not overcome by clear and convincing evidence of a higher interest and therefore the media were entitled to the sealed documents.[55] The case

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[50] State *ex rel.* Patterson v. Ayers, 171 N.E.2d 508, 509 (Ohio 1960).

[51] *See* Act of June 27, 1963, Amended Substitute House Bill No. 187, 1963 Ohio Laws 1644, 155 (codified at OHIO REV. CODE ANN. § 149.43(A)(1), (B)(1) (LexisNexis 2012)).

[52] *See, e.g.*, *Chief Justice Offers Historical Perspective on Public Records, Open Government*, SUPREME CT. & JUD. SYS. NEWS (Feb. 12, 2008), http://www.supremecourt.ohio.gov/PIO/news/2008/pubrecords_021208.asp.

[53] State *ex rel.* Vindicator Printing Co. v. Wolff, 974 N.E.2d 89 (Ohio 2012).

[54] *Id.* at 93–95.

[55] *Id*. at. 99–101.

demonstrated for the first time the methodology present in the rule for seeking access to a restricted document through the filing of extraordinary relief. Further, and as a demonstration of the authority of the court to prescribe its own public record rule for the courts, it denied a request for attorney fees because the Rules of Superintendence do not provide a method for awarding attorney fees like in R.C. 149.43 cases.[56] The *Vindicator* case also settled many unanswered questions that remained concerning the application of the Public Access Rules after their adoption.

Only three years after the adoption of the rules, the supreme court announced via *Vindicator Printing Co.*, that it fully intended to preempt the state law concerning public records in favor of its own rule.[57] The media also responded favorably to the decision, characterizing it as an accurate interpretation of the Rules of Superintendence by the supreme court, and a reflection of the need for transparency in court case documents.[58]

LANGUAGE INTERPRETATION

Examining literature on Ohio court reform leading up to the Modern Courts Amendment reveals that there was keen interest in many of the same issues identified by Roscoe Pound in 1906 and pursued by court reformers for decades since—delay, fragmented administration, and lack of adequate funding. However, there is a paucity of discussion about an issue that is no less fundamental to the administration of justice: ensuring that people of all languages and backgrounds can understand court proceedings and meaningfully participate in their cases.

As Ohio and the nation became more diverse, and we began to recognize the need to adjust to the reality of a multicultural society, there grew in the court system recognition that language access was an issue of critical importance. It is an example of how—by vesting in the supreme court a centralized authority to manage the court system through the Rules of Superintendence—the Modern Courts

[56] *Compare id.* at 92, 101, *with* OHIO REV. CODE ANN. § 149.43(C)(1) (LexisNexis 2012) (noting that Rules of Superintendence do not allow for recovery of reasonable attorney fees whereas the Public Records Act does).

[57] *See generally Vindicator Printing Co.*, 974 N.E.2d at 101 (stating that the relief granted was premised upon the Superintendence Rules, and all claims based on state law were moot) (citations omitted).

[58] *See, e.g.*, Emily Miller, *Ohio Supreme Court Orders Unsealing of Records in High-Profile Criminal Prosecution*, REPORTERS COMM. FOR FREEDOM OF THE PRESS (July 27, 2012), www.rcfp.org/browse-media-law-resources/news.

Amendment succeeded in giving us the flexibility to incrementally improve our system and respond to changing needs.

The effort to certify court interpreters began on January 20, 1995. The Ohio Commission on Racial Fairness "voted unanimously to recommend to the Ohio Supreme Court the adoption of a set of policy guidelines" to address interpreter issues in the courts.[59]

On April 25, 1995, the supreme court adopted the Commission's recommendations. These recommendations included the certification of court interpreters, the adoption of a code of conduct for interpreters, and the establishment of educational requirement for judges regarding the proper use of interpreters.[60]

The full report of the Commission on Racial Fairness was presented to the Supreme Court of Ohio in 1999.[61] The report included issues regarding judges' and attorneys' perceptions, employment and appointment practices, jury issues, criminal justice and sentencing, law schools, and interpreter services.[62] In 2000, the supreme court formed the Racial Fairness Implementation Task Force and charged it with implementing the recommendations of the Ohio Commission on Racial Fairness.[63] The Task Force completed its Action Plan and published it in September of 2002.[64]

The plan graphed a series of steps for each of the commission's areas.[65] The steps for interpreter services included adopting statewide standards, becoming a member of the State Court Interpreter Certification Consortium, adopting a code of conduct for interpreters, adoption of a Rule of Superintendence for the use of credentialed interpreters, publishing a guidebook for judges on the use of interpreters, and surveying trial courts to determine language needs.[66]

In December 2008, the supreme court proposed Amendments to Rules 80 through 87 and Appendix H of the Rules of

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[59] SUPREME COURT OF OHIO & OHIO STATE BAR ASSOC., THE REPORT OF THE OHIO COMMISSION ON RACIAL FAIRNESS 72 (1999), *available at* http://www.supremecourt.ohio.gov/Publications/fairness/fairness.pdf.

[60] *Id.*

[61] *Id.* (noting on the inside of the cover page that the volume was published in 1999).

[62] *Id.* at 10, 19, 30, 36, 56, 68.

[63] RACIAL FAIRNESS IMPLEMENTATION TASK FORCE, ACTION PLAN (2002) (noting in the introduction that Chief Justice Thomas J. Moyer suggested the idea of forming the task force in 2000, in order to implement the Commission's recommendations), *available at* http://www.supremecourt.ohio.gov/Publications/fairness/Action-Plan-dev.pdf.

[64] *Id.*

[65] *See id.* at 71–89.

[66] *Id.* at 62, 64, 65, 66.

Superintendence to become effective Jan. 1, 2010.[67] Under the rules:

> Ohio began the certification of court interpreters in 2010. The rules provide the mechanism to screen, test and certify interpreters. Bilingual individuals are able to obtain the credential by completing training, taking written and oral exams, and complying with the professional standards provided by the court.
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> . . . .
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> The certification ensures that interpreters working in the courts meet the minimum standards of language fluency. Applicants take the written exam developed by the Consortium for Language Access in the Courts, an arm of the National Center for State Courts. Candidates also take an oral exam, to measure their English and foreign language ability. Each supreme court credentialed interpreter takes an oath under which the interpreter pledges to know, understand, and act according to the Code of Professional Conduct for Court Interpreters and Translators, as set forth by the rule.
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> Credentialed interpreters complete at least 24 credit hours of continuing education offered or accredited by the Interpreter Services Program for each two-year reporting period. The program keeps a roster of supreme court certified interpreters and makes this information available to the courts. The first group of interpreters was certified in February 2011. As of January 2013, 52 interpreters have been certified statewide.
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> In July 2011, the court adopted Superintendence Rule 88, *requiring* courts to hire a certified foreign language or sign language interpreter, when available, to ensure the "meaningful participation" of deaf and limited English proficient individuals in court proceedings. The rule took effect on January 1, 2013.
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> Rule 88 also requires courts to "use all reasonable efforts" to avoid the appointment of interpreters who may have a conflict of interest.
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> Taken together, the interpreter rules [will] . . . help provide the most qualified interpreters available given the

[67] *See* SUPREME COURT OF OHIO, AMENDMENTS TO OHIO SUP. R. 80–87, APP. H (Dec. 15, 2008).

> number of possible languages that may appear in the state court system. Ohio courts accommodate approximately 80 languages and handle more than 25,000 cases per year that require a court interpreter.[68]

CONCLUSION

Fifteen years after the adoption of the Modern Courts Amendment, in 1982, the journal *Judicature* assessed the development this way: "[t]he Modern Courts Amendment was the first major step down a long path of court reform, but to achieve its goals of reducing delay and simplifying procedure, the Ohio Supreme Court had to exercise its newly vested authority. The court did not tarry . . . ."[69] The focus was initially on case management and reducing delays, and since that time, the supreme court has used the rules to tackle a myriad of issues facing the state judicial system, from cameras in the courtroom to access to justice to court records.

Every four years, the world's eyes turn to Ohio as the perennial presidential "swing state."[70] Standing at the crossroads where the Midwest meets the east meets the south, our state is also known as a test market for consumer products and a microcosm of the nation. I believe there is a reason that "[s]o goes Ohio, [s]o [g]oes the [n]ation."[71] The reason lies in our history and tradition as a practical people who are not afraid to face problems head on and find solutions, but who are wary of quick fixes and radical change.

After forty-five years of operation, the Modern Courts Amendment stands as a testament to this spirit of practicality and penchant for incremental improvement. We owe a debt of gratitude to Roscoe Pound for having the courage and foresight in 1906 to launch the modern court reform movement. Most of all, we are indebted to the men and women who led the bench and bar in the 1960s, who crafted a common sense approach to managing our judicial system that is an expression of old fashioned Ohio

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[68] *Guide Assists Potential Court Interpreters*, COURT NEWS OHIO (Mar. 14, 2013), http://www.courtnewsohio.gov/happening/2013/ISGuide_031413.asp#.Uev_o1PrbBc (noting also that applications were being accepted for twenty different languages).

[69] Charles W. Grau & Arlene Sheskin, *Ruling out Delay: the Impact of Ohio's Rules of Superintendence*, 66 JUDICATURE 108, 111 (1982).

[70] Mike Bostock & Shan Carter, *Over the Decades, How States Have Shifted*, N.Y. TIMES www.nytimes.com/interactive/2012/10/15/us/politics/swing-history.html?_r=0 (last updated Nov. 2, 2012).

[71] Zak Lutz, *So Goes Ohio, So Goes the Nation*, HARVARD U. INST. OF POL., http://www.iop.harvard.edu/so-goes-ohio-so-goes-nation (last visited May 24, 2013).

pragmatism and serves us well to this day.