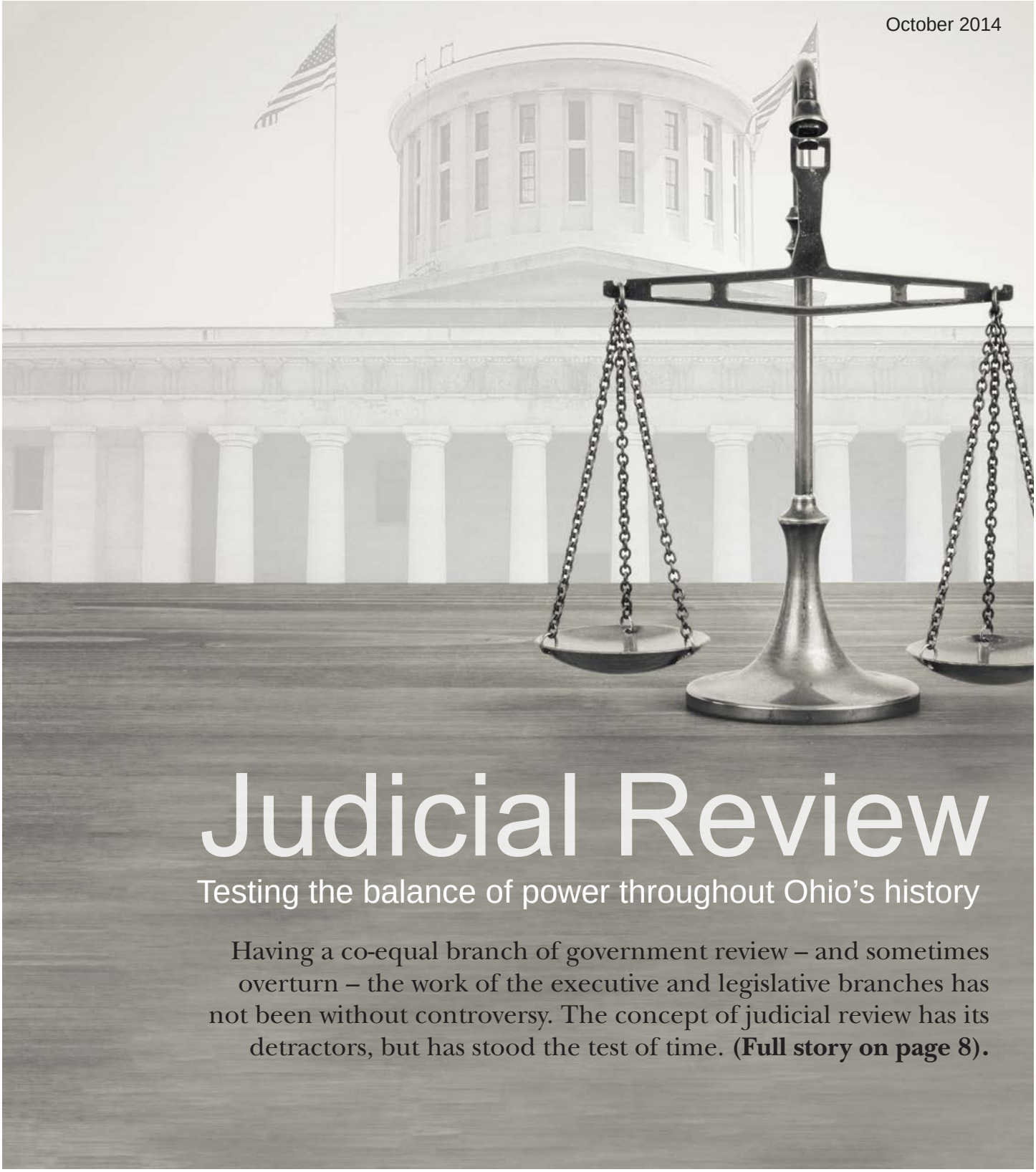
Commission Releases 'Dos and Don'ts' Guide for Legal Writing (p. 5)

Decision Reversed in Dentures Refund Case (p. 13)

CNO REVIEW

October 2014



Judicial Review

Testing the balance of power throughout Ohio's history

Having a co-equal branch of government review – and sometimes overturn – the work of the executive and legislative branches has not been without controversy. The concept of judicial review has its detractors, but has stood the test of time. **(Full story on page 8).**

About Court News Ohio

Court News Ohio is a service of the Office of Public Information of the Supreme Court of Ohio and Ohio Government Telecommunications. Court News Ohio includes a website (courtnewsohio.gov), a monthly print publication (CNO Review), a television program (CNO TV), a Facebook page (facebook.com/courtnewsohio), a Twitter feed (@courtnewsohio), and a YouTube channel (youtube.com/CourtNewsOhioTV).

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Cases

Visit courtnewsohio.gov for the most current decisions from the Ohio Supreme Court, Courts of Appeals, and Court of Claims.

Supreme Court of Ohio

Contract Does Not Prohibit Strip-Mining on ODNR Land

The holders of the mineral rights under more than 600 acres owned by the state in southeastern Ohio have the right to strip-mine for coal, the court ruled on September 17. In a 6-1 decision, Justice **Paul E. Pfeifer** concluded that the contract between the Ohio Department of Natural Resources and the mineral rights holders did not exclude strip-mining as a method to extract coal from about 10 percent of the Jefferson County property. The case was sent back to the trial court to determine the extent of strip-mining that is reasonable, as required by the contract. The decision reversed the judgment of the Seventh District Court of Appeals.

Snyder v. Ohio Dept. of Natural Resources
Slip Opinion No. 2014-Ohio-3942

Overwhelming Evidence Identified Alleged Perpetrator

On September 4, the court unanimously reversed an appeals court decision that there was insufficient evidence proving a man's identity in a kidnapping at a Cuyahoga County library. The decision sent **James Tate II**'s appeal back to the Eighth District Court of Appeals. Tate was found guilty of kidnapping, importuning, gross sexual imposition, and public indecency, and the trial court sentenced him to seven years in prison. Tate appealed to the Eighth District, which reversed the trial court and overturned Tate's conviction. The appellate court noted that neither the victim nor her friends identified or were asked to identify Tate as the perpetrator in their testimony during trial. The Eighth District concluded that there was not sufficient evidence that Tate was the man they referred to in their testimony. In the 7-0 opinion, Justice **Judith L. French** wrote that "no fact was more established at Tate's trial than Tate's identity," including Tate's own admission to police and in testimony during the trial that he was the man who approached the teen, walked with her to the pool, and asked her to perform a sexual act.

State v. Tate
Slip Opinion No. 2014-Ohio-3667

Courts of Appeals

Stables Can't Be Sued for Injuries Sustained in Dog and Pony Encounter

Ohio's law that generally always excuses the unruly behavior of horses trumps the law that nearly always penalizes the mischievous acts of dogs, the Ninth District Court of Appeals ruled in a split decision. In a 2-1 decision, the court on September 15 upheld a Lorain County Common Pleas Court's decision to dismiss a lawsuit against Shamrock Stables brought by a woman injured when she was knocked to the ground by Barney, the miniature horse she considered adopting. **Lethea Graham**, who already owns eight horses, was looking over Barney and walking him back to his stall when she was knocked to the ground by the horse and seriously injured two fingers. Graham alleges that one of two large dogs owned by the stable owner's daughter, and allowed to roam free on the property, spooked Barney, causing him to swing around and knock her down. The dog's owner, **Wendy Montoney**, contends the dogs were put away and locked up before Graham was walking with the horse.

Graham v. Shamrock Stables
2014-Ohio-3977

Wendy's Franchise Owner's $510,000 Judgment Against Bowling Green Reversed

When Bowling Green State University learned students were spending $1.2 million at the Wendy's in the student union, most of it with meal plan funds that could be used at university dining halls, it cut off Wendy's from the meal cards. The franchise owner, who won a contract from Bowling Green to be the only non-university-owned restaurant in the refurbished student union more than 12 years ago, sued the university in 2010 and was awarded $460,000 in damages plus interest from the Court of Claims. The Tenth District Court of Appeals on September 2 overturned the Court of Claims declaring that the university never promised Wendy's it would always have access to the meal plan funds.

Pertoria, Inc. v Bowling Green State Univ.
2014-Ohio-3793

Court of Claims

$82,000 Settlement in Wrongful Imprisonment Case

A West Alexandria man who wrongfully spent more than a year behind bars settled with the state of Ohio for $82,000. The Court

Story continues on page 13.

HappeningNow

News and Notes from Courthouses Across the Buckeye State

Judicial Pay, Court Funding Top State of the Judiciary Remarks

Judicial pay and court funding were highlighted in remarks made by Ohio Supreme Court Chief Justice **Maureen O'Connor** during her State of the Judiciary address on August 28 where she spoke to nearly 300 judges at the Ohio Judicial Conference in Columbus.

Chief Justice O'Connor said judicial salaries have not been adjusted since 2008 when a statute providing for annual adjustments expired.

"Choosing a career in public service shouldn't mean being saddled with a stagnant salary for the entire time you serve on the bench. This amount of time without a pay raise is far too long," Chief Justice O'Connor said.

Chief Justice O'Connor said she's worried judges will switch to private practice to make a better living and that attorneys won't even consider becoming a judge due to current judges' salaries.

"It is extremely troubling and this translates into some real loses within the judicial family across this state," Chief Justice O'Connor said.

The chief justice also addressed court funding during her speech. She said the Task Force on the Funding of Ohio's Courts has estimated that it costs more than $1 billion to operate the state's courts.

"At first glance, that may seem like a lot – $1.1 billion, but with a closer look and in comparison with other sections of government it truly is not," Chief Justice O'Connor said. "Given the constitutional and statutory obligations required of Ohio courts and their programmatic initiatives, it's not a stretch to say quite possibly that Ohio courts are underfunded."

> "Choosing a career in public service shouldn't mean being saddled with a stagnant salary for the entire time you serve on the bench. This amount of time without a pay raise is far too long."
>
> - Maureen O'Connor
> Chief Justice

In addition, Chief Justice O'Connor explained about the 11-member Task Force on Access to Justice that helps identify obstacles for low-income and disadvantaged Ohioans going through the judicial system.

"I urged the task force to broaden the definition to not only include those who cannot afford an attorney, but also to those who encounter other barriers to the legal system, such as language barriers," Chief Justice O'Connor said.

The judicial branch should be proud, the chief justice concluded, for its successful and innovative programs that better serve Ohioans. She urged judges to share these success stories with their communities.

View Chief Justice O'Connor's State of the Judiciary address at www.ohiochannel.org/MediaLibrary/Media.aspx?fileId=144606.

Supreme Court Hires Reporter of Decisions

The Supreme Court of Ohio on September 9 voted to hire law clerk **Jason (Jay) Macke** as its new Reporter of Decisions.

Macke, who joined the court in July 2013 and serves as one of three senior judicial attorneys for Justice **William M. O'Neill**, begins his new duties on October 6.

Macke will lead the office responsible for editing, reporting, and publishing Supreme Court opinions, rulings on motions, miscellaneous orders, and rule amendments. The Reporter's Office also posts to the Court's website opinions from the Supreme Court, the courts of appeals, the Court of Claims of Ohio, and selected trial courts. In addition, the reporter manages the process of reporting the justices' votes on individual cases.

Article IV, Section 2(C) of the Ohio Constitution requires the Supreme Court to report all its decisions including its reasoning.

Macke said he's excited to work with the justices and the staff in the Reporter's Office.

"I am grateful to the court for allowing me this opportunity, and look forward to serving the court and working closely with the assistant reporters to continue the tradition of accuracy of information and excellence in distribution that has always distinguished the Office of the Reporter," he said.

Previous to serving Justice O'Neill's office, Macke worked for nearly six years in the Office of the Ohio Public Defender, most recently as the supervisor of Legal Services in the Appeal and Postconviction Section. Macke also was the office's designee to the Ohio Criminal Sentencing Commission. In addition, Macke held

the positions of trial attorney in the Athens branch and supervisor of Intake and Prison Legal Services for the public defender's office. His experience also includes serving as staff attorney for The Ohio State University Moritz College of Law's Justice for Children Project, as an attorney in private practice for five years, and as staff attorney to Judge **Stephen Shaw** of the Third District Court of Appeals.

Macke graduated cum laude from Ohio University with a bachelor's degree in philosophy. He received his law degree from Moritz, where he was a member of the Ohio State Law Journal and was a Public Service Fellow.

Internal Promotions Fill Supreme Court Senior Staff Positions

In addition to Macke's new job at the court, two other recent internal promotions filled senior staff roles.

Christy Tull was named Interim Director of the Judicial College effective September 1. Tull brings more than 27 years of experience in education and has worked with the Judicial College since 1997, most recently serving as Manager of Curriculum Development. Before coming to the court, Tull worked at the Center for Law-Related Education and the Legislative Office of Education Oversight.

Bret Crow was named Director of Public Information effective September 1. Crow has served as Public Information Officer/Manager with the court since 2008. Before joining the court, Crow served in several communication roles with statewide agencies and in reporting and editing jobs at three daily newspapers.

Commission Releases 'Dos and Don'ts' Guide for Legal Writing

In an effort to promote professionalism among Ohio's attorneys and judges, the Supreme Court of Ohio Commission on Professionalism released the sixth edition of best practices publications titled *Professionalism Dos and Don'ts*. The series of Dos and Don'ts includes suggested guidelines for judicial and attorney conduct. On September 11, the commission released *Professionalism Dos and Don'ts: Legal Writing*, which outlines best practices of written communication in a legal setting *(see sample Dos and Don'ts below)*.

The commission does not regulate conduct or discipline, but Commission on Professionalism Secretary **Lori Keating** said the publications help practicing attorneys, judges, and law school students understand and meet professionalism standards by suggesting guidelines.

"Legal writing is an essential part of legal practice," Keating said. "Attorneys rely upon the written word to communicate with clients, opposing counsel, and the courts. Effective legal writing is well-researched and organized, logical, and respectful in tone."

DO	DON'T
✓ Provide a consistent and coherent argument.	✗ Make a reader's job more difficult.
✓ Present an honest and accurate position.	✗ Make inappropriate comments.
✓ Provide appropriate signposts.	✗ Mischaracterize a lawyer's position.

View the complete list of *Professionalism Dos and Don'ts: Legal Writing* at www.supremecourt.ohio.gov/Publications/AttySvcs/legalWriting.pdf.

Judges and Attorneys Give Testimony on Drug Epidemic

More than a dozen Ohio judges and attorneys presented testimony about the drug epidemic impacting their court systems to a committee made up of 10 General Assembly members.

Four Ohio judges from Warren, Highland, Cuyahoga, and Mahoning counties gave in-person statements and three others from across the Buckeye state submitted written testimony on September 9 to members of the Law Enforcement Perspectives on the Drug Epidemic & Its Impact on Families Study Committee at the University of Cincinnati.

The committee members listened to sentencing and prison issues for judges in dealing with the drug epidemic. Prosecutors from Butler and Hamilton counties also participated, as well as **Gary Mohr**, director of the Ohio Department of Rehabilitation and Correction.

The committee members traveled across the state during the past month listening to testimony on how the drug epidemic affects educators,

Story continues on page 7.

Check-In Kiosks Ease Montgomery County Court's Caseflow

With anywhere between 5 and 15 court appearances a week, family law attorney **Brian Sommers** had his routine down pat when arriving for his hearings at the Montgomery County Domestic Relations Court.

But in June, his usual habit changed when the court invested in four check-in kiosks – the first of its kind in any Ohio court.

"It's taken a little while to get used to but it's much more efficient, and I think the clients are picking up on it and it's good to see the courts trying to stay with the current technology," Sommers said.

With the click of a mouse, the kiosks allow the receptionist, judges, and magistrates to know when attorneys and their clients are at the court. The kiosks also provide hearing times and directions to the correct courtrooms.

There are two judges and eight magistrates at the domestic relations court located in Dayton. Judge **Denise Cross** said on busy days each judge may have up to 50 cases in addition to the magistrates' hearings.

"We use to have to rely upon one receptionist to let us know in 10 different courtrooms who's here, who's here, who's here – we're calling her, she is calling us and she's also answering the public telephone," Judge Cross said. "But now we can instantly know within seconds that a party is here, their lawyer is here, and we can call the case and get started."

Court receptionist **Sheila Jarvis** said allowing attorneys and their clients to check-in helps with caseflow management.

"On the busy days it's helpful because 4 people can check in at one time," Jarvis said.

"The public is used to utilizing kiosks. You go to the airport you have them, you do self checkout at the grocery store. I mean computer systems are just things they expect to have," Judge Cross said.

The entire kiosk system cost $25,000 with a yearly $3,000 fee to maintain the software. Judge Cross said it's already proven to be cost effective based on the amount of time it saves.

Cuyahoga County Court Distributes Millions to Ohio Charities

The Cuyahoga County Common Pleas Court on September 4 announced the distribution of more than $6 million to 226 Ohio charities.

The money comes from a civil case heard by Judge **John J. Russo**, and is part of more than $11 million that has been distributed by The Honor Project to charities throughout the state.

The Honor Project is a "cy pres" (see-PRAY). If there are unclaimed funds in a class action settlement, a judge can use the cy pres doctrine to distribute funds that remain for beneficial use. After settlement of *State of Ohio, et al. v. American International Group, Inc., et al.*, excess proceeds, termed "disgorged funds," remained. The Attorney General's Office requested that Judge Russo, the presiding judge in the case, distribute the funds under the court's authority. The Honor Project Cy Pres Initiative was created, outlining how the funds would be applied for and distributed.

There have been three phases to The Honor Project. The first phase was a $2.6 million distribution to the companies involved in the litigation and companies that could have potentially suffered damages. In the second phase, $2.45 million was provided to companies that agreed to use the funds to hire new employees, thus reducing Ohio unemployment.

In the third and final phase, the remaining money was distributed to charitable organizations that were selected after an extensive application process.

THE HONOR PROJECT TRUST
CY PRES INITIATIVE TO BENEFIT OHIO

Learn more about the Honor Project at www.honorproject.org.

Ohio Center for Law-Related Education Honors Long-Time Volunteer

PICTURED (left to right): **Marion Smithberger**, President of the OCLRE Board of Trustees; **Rick Dove,** secretary to the Board of Commissioners on Grievances & Discipline; and **Lisa Eschleman**, Executive Director of OCLRE.

For his 20 years of service to law-related education in Ohio, **Rick Dove**, secretary to the Board of Commissioners on Grievances & Discipline at the Supreme Court of Ohio, was awarded the Founders' Award at the recent Ohio Center for Law-Related Education (OCLRE) Law & Citizenship Conference.

The Founders' Award recognizes individuals or organizations that have made significant contributions to the ideals and growth of law-related education. Like the OCLRE founders for whom the award is named, recipients are considered visionaries and have devoted their time and talent to develop and support programs that engage students in learning about and valuing the rule of law. The program also teaches students about democracy and the importance of civic responsibility.

Throughout his tenure on the OCLRE Board of Trustees, Dove served in every officer position and volunteered for many programs, including Mock Trial, We the People, and Youth for Justice.

During the September 22 awards ceremony, Dove said, "I have loved every minute of my time with OCLRE ... and now [see] lawyers in practice who were Mock Trial participants in my early years on the board."

Certified Court Managers Graduate

At a ceremony at the Thomas J. Moyer Ohio Judicial Center in Columbus on September 12, Ohio added 39 court managers with a nationally recognized certification to its ranks.

The graduation ceremony closed the 3-year Court Management Program for the class of 2014. The program, available through the Institute for Court Management of the National Center for State Courts and the Ohio Supreme Court Judicial College, includes six modules that address topics pertaining to the management of courts as organizations. Upon completion, participants receive the designation of certified court manager.

The class of 2014 includes court or agency staff members from 21 Ohio counties. Nearly 240 Ohioans have earned the certified court manager credential since the Judicial College entered its partnership with the national Institute for Court Management in 2002. Ohio is one of several states to offer the training locally for court professionals.

More information about the program is available at www.ncsc.org. Those interested in participating in the program can contact the Judicial College at cmp@sc.ohio.gov.

Justice **Sharon L. Kennedy** offered remarks to participants and their guests, and **Sandra Grosko**, Clerk of the Court, offered her congratulations and handed out diplomas during the graduation ceremony.

DRUG EPIDEMIC TESTIMONY: Continued from page 5.

employers, law enforcement agencies, and the court system. This was the last of four meetings held by the committee. Members also traveled to Marion, North Canton, and Wilmington. In Wilmington, the committee listened to how the city's police officers charged 72 people with drug offenses after a year-long investigation.

The committee plans to submit a report to the General Assembly by the end of the year and it may submit legislation changes based on the testimony they heard.

Judicial Rev

Testing the balance of power throughout

From the beginning more 200 years ago, having a co-equal branch of government review – and sometimes overturn – the work of the executive and legislative branches has not been without controversy. The concept of judicial review has its detractors, but has stood the test of time.

Judicial Review Then...

Four years after Ohio became a state, the Ohio Supreme Court decided the extent of the authority given by the constitution to the state's legislature. In *Rutherford v. M'Faddon* (1807), the court asserted its right to nullify an unconstitutional act of the General Assembly. Supreme Court Judges **Samuel Huntington** and **George Tod** held that courts have the authority to judge the constitutionality of laws.

A year before, **Calvin Pease**, the presiding judge of the Third Judicial Circuit, came to a similar conclusion about judicial review in *E. Wadsworth v. Solomon Braynard, Trumbull County Court of Common Pleas*. He ruled that a section of an 1805 statute passed by the Ohio General Assembly that allowed justices of the peace to hear cases exceeding $20 was unconstitutional. Pease said the law violated the Ohio Constitution because it denied the right of trial by jury.

To say the concept of judicial review was controversial in the legislative branch would be an understatement. Members of the Ohio House of Representatives viewed the General Assembly as the superior branch of government. Lawmakers were so incensed by the rulings that they brought impeachment charges against Tod and Pease on December 24, 1808. Both men escaped removal by one vote in the Senate on January 20, 1809.

The two men later lost their judgeships with the passage of the "Sweeping Resolutions" in 1810 that cut short the terms for those judges who challenged the idea of unchecked legislative power. The resolution was repealed two years later, but a significant legal principle was established that secured the system of checks and balances among branches of government in Ohio. While legislators possessed the authority to make laws and judges the power to interpret and even annul laws, the constitution represented the ultimate authority.

... And Now.

In modern times the legislature has been more amenable to challenges raised by the courts to laws it has passed and has looked to the courts to reshape state statutes.

One example is the July 2013 adoption of Senate Bill 64 to revise the state's "criminal child enticement" statute. The bill was introduced in March 2013, about a month after the Ohio Supreme Court said it would consider a Tenth District Court of Appeals ruling on the statute. In drafting the bill, the Legislative Service Commission noted that four separate appellate courts had ruled on the law, three of them indicating the law was unconstitutional and one ruling it was constitutional.

In 2014, the Supreme Court declared the law unconstitutionally overbroad with Justice **Judith A. Lanzinger** cautioning in the majority

A LOOK BACK: Significant Rulings in the Concept of Judicial Review Throughout Ohio History.

1806: In *E. Wadsworth v. Solomon Braynard, Trumbull County Court of Common Pleas*, Third Judicial Circuit Presiding Judge **Calvin Pease** rules that a section of an 1805 statute passed by the Ohio General Assembly is unconstitutional.

iew

Ohio's history

opinion that the court would not rewrite the law for the state, but rather point out the flaw that made it unconstitutional.

"The statute fails to require that the prohibited solicitation, coaxing, enticing, or luring occur with the intent to commit any unlawful act," she wrote.

Her point reinforced the claims made at the appellate level. In SB 64, the new law simply added what was missing in the court's opinion, the requirement that the enticement was with the intent "for any unlawful purpose." The new law now reflected the concerns raised by the courts during their review.

The current judges and justices ruling on that matter did not receive the harsh rebuke that judges faced in Ohio's early years. Judge Huntington escaped impeachment by the Ohio House because in October 1808, he campaigned successfully for election as Ohio's third governor.

Judicial review and the constitutional tug-of-war between

Story continues on page 16.

Image: iStock

1807: In *Rutherford v. M'Faddon* Supreme Court asserts its right to nullify an unconstitutional act of the General Assembly. Judges **Samuel Huntington** (pictured) and **George Tod** hold that courts have the authority to judge the constitutionality of laws.

1997: Justice Francis E. Sweeney Jr. authors the court's 4-3 majority opinion in *DeRolph v. State*, declaring the school funding system unconstitutional. As a result, the Ohio General Assembly establishes the Ohio School Facilities Commission, which spends more than $3.5 billion over the next seven years building and renovating 293 school buildings in 124 school districts.

ON THE BENCH

Avon Lake Judgeship Now Full-Time Position

Judge Darrel A. Bilancini

Avon Lake Municipal Court Judge **Darrel A. Bilancini** played both sides of the field for the past nine years as he served as a part-time judge and part-time civil law attorney. Now he hung up his shingle and dons a robe as he became a full-time judge at the municipal court on September 15.

"We will operate a lot better," Judge Bilancini said. "We would sit in the courtroom for 6.5 hours without getting up and had case after case after case, and we realized we really needed to go full-time because we were jamming so much in the two days we were in session."

The Ohio Supreme Court in May submitted a review and analysis proposal to the General Assembly that supported the need for a full-time judge at the court. The analysis showed increased criminal and traffic caseloads – an 81 percent increase in criminal cases since 2004 and a 54 percent increase in traffic cases over the 10-year low of 927 filings in 2008.

"The proposal ensures that the goals of judicial efficiency and access to justice are maintained and not compromised," the review team wrote in its proposal.

Even with the increased caseloads over the past 10 years, the review team noted that Judge Bilancini would still have a thinner caseload compared to other municipal courts across the state. The board recommended that Judge Bilancini sit by assignment in other nearby jurisdictions as needed.

Judge Bilancini said he was surprised how quickly the General Assembly acted to convert the judgeship to a full-time position.

"But it was the right thing to do based on the caseload, so as a result the state and county all supported it – saw how busy we were," Judge Bilancini said.

With the switch, Judge Bilancini had to dissolve his private practice.

"My practice over the last 35 years was civil," Judge Bilancini said. "My law partner retired a year ago, so the timing was right to go from part-time to full-time."

Judge Bilancini's salary will increase from $65,650 to $114,100 with the switch to full-time work.

New Appellate Judicial Association Officers Selected

The Ohio Courts of Appeals Judges Association recently elected its officers for next year, with Judge **John W. Wise** named chief judge.

Judge Wise has served on the Fifth District Court of Appeals since 1996. He graduated from Ohio Northern University School of Law and was admitted to the practice of law in 1979. After 10 years in private practice, Judge Wise was elected to the Canton Municipal Court bench in 1990. From municipal court, Judge Wise was elected to the Stark County Court of Common Pleas.

The association consists of 69 appeals court judges who serve on Ohio's 12 appellate courts. As intermediate level appellate courts, their primary function is to hear appeals from the common pleas, municipal, and county courts. Each case is heard and decided by a three-judge panel.

Chief Judge
Judge John W. Wise
Fifth District Court of Appeals

Chief Judge-Elect
Judge Cheryl L. Waite
Seventh District Court of Appeals

Secretary/Treasurer
Judge Donna J. Carr
Ninth District Court of Appeals

Immediate Past Chief Judge
Judge G. Gary Tyack
Tenth District Court of Appeals

Ohio Judicial Conference Elects Officers

After his recent election, Mahoning County Common Pleas Court Judge **John M. Durkin** begins a two-year term as chair of the Ohio Judicial Conference on October 1.

He was among six judges elected as officers of the conference:

Chair Elect
Judge James A. Shriver
Clermont County Probate/ Juvenile Court

First Vice Chair
Judge Stephen W. Powell
Twelfth District Court of Appeals

Second Vice Chair
Judge Joyce A. Campbell
Fairfield Municipal Court

Immediate Past Chair
Judge Jim D. James
Stark County Family Court

Honorary Chair
Chief Justice Maureen O'Connor
Ohio Supreme Court

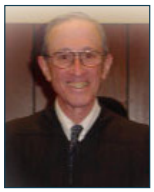
Judge Durkin has served as an officer of the conference and is the chair of its Specialized Dockets committee. Since 1997, he has been on the Mahoning court bench. He established the court's felony drug docket, which has been recognized as a "mentor court" by the U.S. Department of Justice.

Judge Shriver serves as co-chair of the conference's Court Administration committee; Judge Powell serves as co-chair of the conference's Judicial Education committee; Judge Campbell, the newest conference officer, serves as co-chair of the Criminal Law & Procedure committee; and as the outgoing conference chair, Judge James will continue to serve on the conference's executive committee.

As the organization of all Ohio judges, the conference coordinates the work of all courts in Ohio and promotes the administration of justice throughout the state. It was founded in 1963.

Two Honored for Judicial Excellence

Farmer


Rice

Judge **Sheila G. Farmer** and Judge **Walter H. Rice** were honored as recipients of the 2014 Thomas J. Moyer Award for Judicial Excellence at the Ohio Judicial Conference Annual Meeting in Columbus.

The award was established in 2010 by the Ohio State Bar Association (OSBA) in honor of the late Chief Justice Moyer, who was posthumously given the inaugural award, to recognize a current or former Ohio state or federal judge who displays outstanding qualities of judicial excellence, including integrity, fairness, open-mindedness, knowledge of the law, professionalism, ethics, creativity, sound judgment, courage, and decisiveness.

"Both Judge Farmer and Judge Rice have long been recognized for qualities that Chief Justice Moyer also exhibited. Judge Farmer worked with Chief Justice Moyer as chair of the Ohio Judicial Conference and is known for her education, mentoring, and peacemaking efforts, and for her ability

Story continues on page 13.

Judicial Appointments

Gov. John Kasich recently appointed the following judges to courts around Ohio.

Tammie K. Hursh
Lima Municipal Court

Hursh assumed office September 22 in place of Judge **William G. Lauber**, who retired. Hursh must win in November 2015 to retain her seat for the full term commencing on January 1, 2016. Hursh formerly served as the deputy law director for Lima. Prior to that, she served as Lima's assistant law director and chief prosecutor. Hursh received her bachelor's degree from Bowling Green State University and her law degree from the University of Toledo College of Law

Shirley J. Christian
Mahoning County Court of Common Pleas

Christian's term begins October 2. She replaces Judge James C. Evans. who retired on October 1. She must win in November 2016 to retain her seat for the full term commencing on January 1, 2017.

Christian is a member of the Ohio State Bar Association and is a former president and current trustee of the Mahoning County Bar Association. She has practiced law in Ohio since 1986 and currently works at Harrington, Hoppe & Mitchell Ltd. Christian received her Bachelor of Science and Master of Education degrees from Edinboro University. She received her law degree with distinction from Ohio Northern University.

CNO Legislative

Digest

Each month, Court News Ohio Review tracks bills and resolutions pending in the Ohio General Assembly that are of interest to the judicial community.

Photo courtesy of the Ohio Statehouse Photo Archive

HB 597, Rep. Andy Thompson (R-Marietta); Rep. Matt Huffman (R-Lima)

To repeal and replace the Common Core State Standards Initiative academic content standards and related assessment system and to revise the high school graduation requirements.

STATUS: Introduced in the House on July 28, 2014 and referred to the House Rules & Reference Committee. The committee adopted a substitute version of the bill during its sixth hearing on September 4, 2014.

HB 618, Rep. John Becker (R-Union Twp.)

To permit a member of a township police or joint police district and a township constable to make arrests on a portion of an interstate highway located within a township with a population greater than 40,000, instead of a population greater than 50,000 as provided in current law.

STATUS: Introduced in the House on September 8, 2014.

HB 620, Rep. Matt Huffman (R-Lima)

To provide for payment to an ex-spouse of part of any survivor benefits or return of contributions payable to the surviving spouse of a state retirement system member who dies prior to retirement and to modify eligibility requirements for benefits provided to survivors of deceased members of the State Teachers Retirement System and the Public Employees Retirement System.

STATUS: Introduced in the House on September 16, 2014.

HB 621, Rep. Tony DeVitis (R-Uniontown)

Regarding the admission of sex offenders to residential facilities for persons with developmental disabilities.

STATUS: Introduced in the House on September 16, 2014.

SB 361, Sen. Bill Seitz (R-Cincinnati)

To clarify when strict criminal liability is imposed or a degree of culpability is required for the commission of an offense, to modify the concept of acting recklessly, and to require that future acts creating criminal offenses specify the requisite degree of culpability.

STATUS: Introduced in the Senate on September 8, 2014.

Rule Amendment Summary

A summary of select significant rule amendments proposed or enacted by the Ohio Supreme Court

Professional Conduct Rules

The court will accept public comment until October 15 on proposed amendments to the Ohio Rules of Professional Conduct concerning technology, confidentiality, client development, client solicitation, and other matters. An update to the American Bar Association's Model Rules of Professional Conduct spurred the Supreme Court's Board of Commissioners on Grievances & Discipline to review and recommend adoption of the changes. The board also considered other changes – proposed by Ohio lawyers – to the professional conduct rules and Gov.Bar R. III.

Practice & Procedure Rules

The court will accept public comments until October 15 on amendments to the annual update to the Rules of Practice and Procedure. The proposed amendments to the Rules of Practice and Procedure concern changes to the rules of appellate procedure, civil procedure, and juvenile procedure. Many of the proposed changes would make simple clarifications, target inconsistencies, or account for renumbering of rules. There are, however, a few substantive changes to existing rules and two new rules: Civ.R. 43 and Juv.R. 41.

JUDICIAL EXCELLENCE: Continued from page 11.

to help the Fifth District Court remain above political discord. Judge Rice is known for his patience, especially with the attorneys who come before him, for his commitment to serving the needs of the most vulnerable in his community, and for his efforts to encourage dialogue among his fellow citizens. These two jurists are more than deserving of this award," OSBA President **Martin E. Mohler** said.

In Judge Farmer's 37 years on the bench, she served the Massillon Municipal Court, the Stark County Court of Common Pleas, and has served on the Fifth District Court of Appeals since 1993. A graduate of Marymount College and Case Western Reserve University School of Law, Judge Farmer began her career as assistant Cleveland City Police prosecutor. In 2009, she received the Lex Cristi award for her commitment to her profession and the local community. A mentor for many young women who have benefitted from her encouragement as they pursue legal careers, Judge Farmer also served on the Supreme Court of Ohio Gender Bias Task Force.

A 1958 graduate of Northwestern University who received a joint J.D. and M.B.A. degree from Columbia University in 1962, Judge Rice entered private practice in Dayton after his admission to the Ohio bar, and began his public service as a prosecutor in Montgomery County. Judge Rice took the bench as a Dayton Municipal Court judge in 1970, and was a Montgomery County Court of Common Pleas judge when he was nominated for service to the federal court by President Carter in 1980. He served as the Southern District's chief judge from 1996 until 2003, and assumed senior status in 2004. He continues to serve as an active district judge. Judge Rice's commitment to fairness and justice includes his service as president of the Steering Committee of Dayton's Dialogue on Race Relations, as co-chair of the Montgomery County Ex-Offender Reentry Policy Board, and as a founding member of the Montgomery County Volunteer Lawyers Project that provides civil legal services to indigents.

CASES: Continued from page 3.

of Claims of Ohio approved the settlement on September 12, in a case that determined that **Scott Chessman** was wrongfully imprisoned from May 4, 2009 through July 16, 2010 for failing to notify officials about a new telephone number from a pay-as-you-go cellphone his sister bought him. On July 9, 2010, the Second District Court of Appeals vacated Chessman's sentence stating that because "there is no penalty specified for such a failure, there can be no criminal offense."

Scott Chessman v State of Ohio
Case No. 2014-005591-WI

Decision Reversed in Dentures Refund Case

A man who wanted compensation for dentures lost during an August 2011 assault will receive funds for a replacement in a Court of Claims case that reversed a decision made by Attorney General **Mike DeWine**. **Jeffrey Childers** was considered a "victim of criminally injurious conduct as a result of the assault" and was awarded $319. DeWine denied Childers' request, though, for dental expenses due to "the lack of supporting documentation." Childers, who was acting as his own attorney, said he didn't have documentation because his dentures were 20 years old. Commissioners for the Court of Claims' Victims of Crime Division said Childers' request was not unreasonable and reversed the March 25, 2014 decision.

In re: Jeffrey A. Childers
Case No. 2014-00409 VI

Conferences & Meetings

October 15 – 17
Ohio Association of Municipal/County Court Clerks Fall Conference
Members, Columbus
oamccc.org

October 16 & 17
Ohio Justice Alliance for Community Corrections 28th Annual Conference
Members, Columbus
ojacc.org

October 28 – 31
Ohio Association for Court Administration Fall Conference
Members, Dublin
ohiocourtadministration.org

The Agenda

Upcoming events, training opportunities, and conferences for judges and court staff.
For more information, contact the event sponsor at the website provided.

Judicial College Courses

judicialecademy.ohio.gov

October 7
Probation Officer Training Program: Introduction to Motivational Interviewing (016)
Probation Officers
Dayton/Beavercreek

Guardian ad Litem Continuing Education Course: Understanding Child Development: Tools for the GAL
Guardians ad Litem, Toledo
1 p.m. – 4:30 p.m.

Leadership Series (1 of 2): Managing Conflict: Dealing with Difficult People & Situations in the Workplace
Court Personnel, Columbus

October 8
Guardian ad Litem Continuing Education Course: Understanding Child Development: Tools for the GAL
Guardians ad Litem, Toledo
8:30 a.m. – Noon

Leadership Series (2 of 2)
Court Personnel, Columbus

October 8 – 10
Court Management Program (CMP) 2014B Gray Class: Managing Human Resources (Module VI)
2014B (Gray) Class, Columbus

October 9
U.S. Constitutional Law Update
Judges & Magistrates, Cleveland

Connecting Custody Evaluation Recommendations with the Analysis and Synthesis of the Evidence
Domestic Relations Court Personnel, Columbus

October 10
Addressing Implicit Bias in the Court: Best Practices and Interventions
Judges & Magistrates, Cleveland

October 14
Probation Officer Training Program: Introduction to Assessment & Case Planning (013)
Probation Officers, Toledo

October 16
Basic Defensive Tactics (2 of 2)
Probation Officers, London

Acting Judge Essentials 2014: Domestic Violence & Traffic Issues (3 of 4)
Judges, Magistrates & Acting Judges, Cleveland

October 17
Advanced Defensive Tactics (2 of 2)
Probation Officers, London

October 17
Juvenile Traffic Video Teleconference
Judges & Magistrates
1 p.m. – 3:45 p.m.

October 21
Probation Officer Training Program: Introduction to Motivational Interviewing (016)
Probation Officers, Akron

October 22
Guardian ad Litem Pre-Service Course (8 of 9)
Guardians ad Litem, Youngstown

October 24
Bankruptcy Issues in Municipal/ Common Pleas Courts Video Teleconference
Judges, Magistrates & Acting Judges
1 p.m. – 3:45 p.m.

October 28
Probation Officer Training Program: Introduction to Assessment & Case Planning (013)
Probation Officers, Columbus

Guardian ad Litem Continuing Education Course: Psychiatric Disorders in Children
Guardians ad Litem, Cleveland
1 p.m. – 4:30 p.m.

October 29
Guardian ad Litem Continuing Education Course: Psychiatric Disorders in Children
Guardians ad Litem, Cleveland
8:30 a.m. - Noon

November 4
Probation Officer Training Program: Introduction to Offender Skill Building (017)
Probation Officers
Dayton/Beavercreek

Supreme Court of Ohio
sc.ohio.gov

October 15
Mayor's Court Reporting Deadline for Third Quarter 2014

October 23
Roundtable Meeting for Court-Connected Mediators
Columbus

October 31
July Bar Exam Results Released

Seminar on the Unauthorized Practice of Law
Columbus

November 3
Application Deadline for February 2015 Bar Exam

Dispute Resolution Training
sc.ohio.gov/JCS/disputeResolution

October 16 & 17
Basic Mediation/Uniform Mediation Act Training
Cleveland

October 24
Advanced Mediation Training: How Neuroscience Helps Mediators Resolve Conflict
Columbus

October 29 & 30 and November 12 – 14
Specialized Family/Divorce Mediation Training

Language Services Training
sc.ohio.gov/JCS/interpreterSvcs

October 16 & 17
Certified Interpreter Testing: Oral Exams

October 22 – 24
Certified Interpreter Testing: Oral Exams

October 29 – 31
Certified Interpreter Testing: Oral Exams

Local Court Roundtables
sc.ohio.gov/JCS

October 10
Juvenile Chief Deputy Clerks, Rural Courts
Less than 60K Population

November 6
Probate Magistrates, Urban Courts

November 7
Juvenile Courts, Title IV-E
All Counties

Ohio Center for Law-Related Education
oclre.org

October 15
We the People Professional Development

November 5
Youth for Justice/Project Citizen 2015 Professional Development

JUDICIAL REVIEW: Continued from page 9.

the judicial branch and the legislative and executive branches of government has been revisited countless times over the 200 years since.

Just like the *M'Faddon* case, the 1997 *DeRolph v. State* Supreme Court decision that declared Ohio's school funding system unconstitutional caused a similar vociferous reaction. The decision admonished the General Assembly to "create an entirely new school financing system" and hinged on the meaning of "a thorough and efficient system of common schools throughout the State."

In a March 18, 2007 story, The Columbus *Dispatch* recalled the next-day reaction by the executive and legislative branches to the court's ruling.

"Joined by Senate President **Richard H. Finan** and House Speaker **Jo Ann Davidson** at a Statehouse news conference the next day, (Gov. George V.) Voinovich, who had labeled himself the 'education governor,' angrily blasted the majority justices, accusing them of legislating from the bench and suggesting that his administration might defy the decision."

Justice **Francis E. Sweeney Sr.**, who wrote the court's 4-3 majority opinion, described the conditions many students in Ohio's poorest school districts endured to receive an education. In addition to poor buildings, the school districts often did not have funds to purchase textbooks. Besides these problems, the school districts were so limited financially that they could not offer foreign language, computer courses, music, art, science lab, and honors courses. Many students were hampered in their desire to attend college, because they could not take the courses many universities desired for college admission. He wrote:

> *"Today, Ohio stands at a crossroads. We must decide whether the promise of providing to our youth a free, public elementary and secondary education in a 'thorough and efficient system' has been fulfilled. The importance of this case cannot be overestimated. It involves a wholesale constitutional attack on Ohio's system of funding public elementary and secondary education. Practically every Ohioan will be affected by our decision: the 1.8 million children in the public schools and every taxpayer in the state. For the 1.8 million children involved, this case is about the opportunity to compete and succeed."*

> *"We recognize that money alone is not the panacea that will transform Ohio's school system into a model of excellence. Although a student's success depends upon numerous factors besides money, we must ensure that there is enough money that students have the chance to succeed because of the educational opportunity provided, not in spite of it. Such an opportunity requires, at the very least, that all of Ohio's children attend schools, which are safe and conducive to learning. At the present, Ohio does not provide many of its students with even the most basic of educational needs."*

As a result of this decision, the Ohio General Assembly established the Ohio School Facilities Commission in 1997. From 1997 to 2004, more than $3.5 billion was spent to build or renovate 293 school buildings in 124 school districts.

Throughout history, Ohio Supreme Court rulings have not been limited to interpreting the authority of the legislature, however. A recent case concerned the timing of an incoming governor's veto power when one administration leaves and another begins.

In 2007, the Supreme Court ruled that Gov. **Ted Strickland's** veto of a bill enacted during the final days of the 2006 Ohio General Assembly session was invalid because the 10 days had already elapsed when former Gov. **Bob Taft** chose not to veto the bill.

Writing for the 5-2 majority, Justice **Robert R. Cupp** held that under Section 16, Article II of the Ohio Constitution, when the legislature passes a bill and adjourns its session sine die before presenting the bill to the governor, the 10-day time limit after which the bill becomes law unless vetoed by the governor runs from the date the legislative session was adjourned, not from the date on which the bill was presented to the governor. Based on that analysis, the court ruled that Gov. Strickland's January 8, 2007, veto of Am. Sub. S.B. 117 was not filed within the 10-day time limit, and that Secretary of State **Jennifer Brunner** was required to accept and process the bill as filed by Gov. Taft on January 5, 2007, as duly enacted legislation.

While absent the hue and cry that accompanied the *M'Faddon* and *DeRolph* rulings concerning the legislature, the decision in *Ohio Gen. Assembly v. Brunner* still served to clarify when the 10-day count begins.

After 200 years in action, the separation of powers doctrine that allows judicial review has played a role in allowing Ohio's government to function to the highest ideals outlined by its founders.

2007: The Supreme Court rules that Gov. Strickland's veto of a bill enacted during the final days of the 2006 Ohio General Assembly session is invalid because the 10 days had already elapsed when former Gov. Bob Taft chose not to veto the bill.

2013: The Ohio General Assembly reacts to the appeals court's and Supreme Court's ruling in *State v. Romage* by enacting legislation revising the "child enticement law" to clarify portions of the statute the courts deemed unconstitutional violations of free speech.