

**“A New Beginning”**  
**State of the Judiciary**  
Chief Justice Randall T. Shepard  
January 11, 1988

It is a great honor to come before you for the first time to report on the state of Indiana's judiciary. I do so with gratitude for the support and assistance I have received in my first year as Chief Justice from my colleagues on the bench and from the Governor and from you.

I particularly appreciated the speeches by Senator Garton, Speaker Mannweiler, Lt. Governor Mutz, and Governor Orr at the ceremonies last winter when I took office, and the fact that so many of you attended as well. The support from people like Representative Phillips and Senator O'Bannon and from the members of the judiciary committees of both houses has been more than anyone could ask, and the many kind notes and words of encouragement from so many of you have been very gratifying. For a young man busy tackling the greatest challenge of his career, this has made more difference than I can possibly express, and I thank you very much.

Doubtless there are times when a report like this one contains both good news and bad news, but I am happy to report that most of what happened in our bailiwick during the last year is good news and to tell you about the excitement with which we approach 1988.

Most justice is dispensed in Indiana's county courthouses, where last year our trial judges rendered final decisions in over a million lawsuits. That 275 men and women dispose of this mountain of litigation with such care is nothing short of phenomenal.

Thanks to the Governor's appointments and the voters' decisions, the number of women on the bench reached an all-time high, rising by nearly a third in one year. Indiana's trial bench on the whole is better trained and harder working than ever before.

Still, by comparison to other states and to the rest of the legal profession, our trial bench is relatively young and less experienced. Some 85% of our judges are serving their first or second term. While we are increasingly able to attract excellent people to be judges, they do not stay long enough.

In part, this has been related to compensation, and I thank you for your recent attention to this problem. The salary increases you enacted last year raised Indiana's trial judges from 50th in the nation to 41st. Legislation now pending for your consideration proposes that Indiana be average.

Another important reform you adopted last year abolished the complicated hodgepodge of fees collected in the trial courts and created a uniform fee schedule. Simply put, this legislation created order out of chaos, and the county clerks and trial judges are very grateful of it.

Perhaps most important was your decision to create the Commission on Trial Courts to review proposals by the Indiana Judges Association for reform of the trial court system. There is broad interest in this effort in the legal community and the consultative process which Senator Pease and the Commission have initiated is one well suited for a thorough examination of how our trial courts work. I do not think that Indiana's trial courts are "broke" and need fixing. Indeed, quite the contrary is true. Still, courts are human institutions, and it is the considered judgment of the trial bench that we may be able to do better. By creating the Commission, and by manning it largely with legislators, you have provided the best forum for a comprehensive review we have ever had. I am glad to be a part of this effort and confident that the Commission's report to you later this year will lead to a stronger trial court system.

As for other areas ripe for action, I would like to highlight House Bill 1249 concerning fees paid for jury service. While it is the duty of every citizen to serve, the present fee of \$17.50 a day places a significant burden on those least able to bear it. While salaried workers can often serve with little or no loss of pay, people who work by the hour frequently suffer a considerable loss when they are called. Even a modest increase would mean a great deal to people like factory workers, restaurant employees, and shop clerks.

Senate Bill 31 and House Bill 1304 propose important improvements in our probation system. Probation is the leading and least expensive alternative to prison, particularly for non-violent offenders and many first-timers. Pursuant to your direction, the Judicial Conference of Indiana has promulgated standards for probation officers and organized an excellent training program. This has promoted professionalism among probation officers, but we still experience a very high turnover rate. We support your efforts to strengthen the probation system and stand ready to assist.

One cannot report fully on the state of the judiciary without saying that the Indiana Court of Appeals has posted one of the best records in the country for timely disposition of cases. Judge Ratliff and his colleagues issued more than 1100 opinions last year, and during much of the year the average time required for a decision has been about three months. Aside from this record productivity, the Court demonstrated its commitment to innovation by adopting a rotation system under which one judge from another district sits on each panel deciding a case. This system affirms the district method of organization while promoting

uniformity of decision-making and greater collegiality among the members of the Court. It is an excellent example of progressive action by Indiana judges.

Without a doubt the most important development last year for the Supreme Court took place right here. Your virtually unanimous approval of a constitutional amendment raising from ten years to fifty years the sentence for which a convict has an automatic right of direct appeal to the Supreme Court is, in my view, the most significant reform for us since 1970. The present ten-year rule has flooded the Supreme Court with criminal cases--93 of our opinions in 1986--and nearly forced off our docket the kinds of civil cases which bring most people to court: custody and child support, landlord/tenant disputes, tort law, and the like.

If the public approves this amendment, it will permit a more balanced docket consisting of the most significant cases, those posing new questions or particularly close ones. Unlike the lottery amendment, though, this amendment is a subject rather foreign to most voters. I expect that many of them will look to you for information and advice, and I hope that you will assist by continuing the overwhelming support for this proposal which you have already demonstrated.

In the meantime, the Supreme Court has been determined to do something about the two adverse effects of the present rule: great backlog of direct criminal appeals and too few civil opinions.

I am pleased to report that the Supreme Court reduced its criminal backlog for the second year in a row, something which has not happened since the 1970s. This is simply the result of hard work. Saying that we issued 363 majority opinions does not describe this achievement as well as telling you that Justice Givan and Justice Pivarnik each wrote more opinions last year than all seven members of the well-respected Supreme Court of New Jersey. The criminal appeals backlog is now less than a year. That is still too long, but it is better, and we are proud of it. Second, the Supreme Court increased by more than 50% the number of civil cases it heard last year. These covered everything from constitutional questions about the use of anti-psychotic drugs for mental patients, to collection of child support, to wrongful termination of employment and small claims fender-benders. We heard these cases by conducting almost twice as many oral arguments as we did the year before, giving more occasions for people to present their cases in person and for the public to see the judges judging.

Among the brightest stories of the year was the response to the new requirement for continuing legal education, adopted by the Court on recommendation of the State Bar Association. As first proposed, this rule exempted judges. We believed strongly that if

anybody was going to do it, everybody should do it, and adopted a rule which applied to all of us.

The response of the legal community has been overwhelming. To meet the minimum requirements of the rule, the state's 10,000 lawyers and judges would have had to register 60,000 hours of class time. Instead, we took 165,000 hours. Nearly all of this education occurred in programs sponsored by Indiana institutions: state and local bar association and our law schools. It should help build them as organizations.

In further action to build professionalism among Indiana lawyers, the Court became one of the first in the country to adopt the new ABA Rules of Professional Conduct. We also revised the ethical rules governing part-time prosecutors. The former rules posed special problems, particularly for prosecutors in small counties, because of the potential conflicts of interest between a part-time prosecutor's public responsibility and his or her private law practice. Justice Brent Dickson developed a new rule for us on this subject, in consultation with the Indiana Prosecuting Attorney's Council. We believe it goes a long way towards helping local prosecutors hire the best people to represent the public interest in criminal cases.

Another important rule change was prompted by Senate Concurrent Resolution 12, which urged the Supreme Court to curtail the use of specific monetary demands in pleadings. The occasional abuse of such pleadings fostered erroneous impressions and led to headlines like- "Attorney Files Billion Dollar Lawsuit." The proposal in your Resolution to prohibit such things was a good one, and we adopted it.

We have also made significant strides by hiring a professional law librarian, Ms. Constance Matts, who comes to us from the law school library at Indianapolis. Although it is called the "Supreme Court Library," it is in fact the principal law library for all of state government, used regularly by Legislative Services, the Attorney General, and dozens of state agencies. We believe Ms. Matts will help us provide better service to everyone.

Another important initiative which you have made possible for the coming year relates to judicial ethics. The Judicial Study Commission formerly rendered staff support for the Commission on Judicial Qualifications, which receives and investigates complaints against judges. By transferring that responsibility to the Division of State Court Administration, you provided for the first full-time professional staff to monitor compliance with the canons of judicial ethics.

The Qualifications Commission intends to take advantage of this opportunity by reorganizing its operations to give citizens and judges faster and more predictable resolution

of complaints. It also wishes to create a more formal method by which judges can receive advice on particular ethical questions and improve the education which judges in courts of record and in the city and town courts receive on ethics. Finally, because we believe that a more visible compliance system will be a more credible one, we plan to report more regularly about the Commission's activities.

The Court, the Judicial Conference, and the Judges Association regard this as an important opportunity to improve in an area critical to public confidence in the judiciary. We thank you for providing the resources to make it possible.

I believe that 1988 will give us excellent opportunities to:

- Prepare our trial courts for the 21<sup>st</sup> century through deliberations in the Commission on Trial Courts;
- Build a stronger appellate system by adopting the constitutional amendment which will let the Supreme Court address a broader range of issues;
- Upgrade our probation system and give the voters who serve as jurors a better a better shake, and;
- Promote the professionalism of Indiana's judiciary by improving administration of the Code of Judicial Conduct.

These are exciting challenges which make us proud to serve the people of Indiana as judges. Most citizens come to court at a time when their dearest interests are at stake--family, home, job, liberty. The judge's challenge is to fulfill the citizen's hope that he will find on the bench someone who will listen carefully to the evidence, find the truth of the matter, and give a wise decision in accordance with the laws which you have written.

Indiana's judges begin the new year with pride in what took place during 1987, and confident and determined that 1988 can be even better.

And, that, ladies and gentlemen, is the state of the judiciary.