

State of the Judiciary

Chief Justice Randall T. Shepard

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“Making Progress in Hard Times”

Most of what I want to tell you about today concerns programs to build better courts, but I should begin by giving you the news about what judges do most: decide the disputes that bring people to court.

When I first spoke to you four years ago, the backlog at the Indiana Supreme Court stood at an all-time high. I asked you and the people of Indiana to give us the tools to attack this problem. I promised you that we would eliminate the backlog of cases, which was two years long. Today, I am finally able to report victory. Despite a growing caseload now at record levels, we have whipped the backlog at the Indiana Supreme Court.

I also want to tell you about the incredible record set this year by the Indiana Court of Appeals. The men and women who serve on that court disposed of 30% more cases than ever before. They cut the backlog in the Court of Appeals by 55% in twelve months. That performance deserves applause from all of us.

Important Projects with Small Tickets

We all knew that 1991 would be a year when you couldn't solve problems in government by spending money. Last January I promised you that no one would be better at “Doing More With Less” than Indiana's judges. The best public servants will not just throw up their hands and say, “There's a recession on, we can't do anything.” Hard times force us to do some heavy thinking

about how we can make progress without spending new money. It is an interesting challenge to run a government that way. I suppose a very healthy challenge.

I want to tell you about what the judiciary has accomplished this past year through projects which do a lot of good but really turned out to be small ticket items or no-ticket items.

Several hundred thousand people a year find themselves in our city and town courts. To improve the quality of the justice they receive there, we have adopted a rule requiring the non-lawyer judges in those courts to take the same amount of continuing legal education which lawyers and other judges are required to take. We have staged these courses for many years. Now we will be sure that those who need it the most show up to take advantage of it.

We made Indiana one of the first states in the country to adopt minimum standards for lawyers who represent defendants in capital cases. The most cost of this guarantee will be paid from criminal court costs you adopted two years ago.

We took steps which we believe will strengthen ethical standards in Indiana's legal profession. First, we decided to expand the ethics requirements in the Indiana bar examination by requiring law students to pass a national test, the Multistate Professional Responsibility Examination, which is several times more comprehensive than the one we have been using. Second, we will now require that lawyers who have been suspended from the bar for violating ethical rules must pass the same ethics exam before being readmitted. No cost to the taxpayers.

We launched a new program to address the two most common complaints people have about modern litigation: it costs too much and it takes too long. With the help of the State Bar we developed a new rule for what is called Alternative Dispute Resolution. It authorizes layers and local courts to use arbitration, mediation, mini-trials, summary jury trials, and private judges as alternatives to traditional litigation. We hope this will help people resolve their disputes without the time and expense of traditional litigation. A net savings all the way around. And no new public dollars.

We became one of the first states in the nation where a party in federal trial court can ask the federal judge to certify a question of state law to the state supreme court. The old system required the federal judge to estimate what state law might mean. Only the federal appeals court in Chicago could ask us what Indiana law meant. Our new procedure will save people the cost and delay of that round-trip to Chicago. A no-ticket item.

We also adopted a new rule authorizing trial judges to permit lawyers to use FAX machines as a way of filing documents in court. We think it is cheaper, and we know it is faster, than making people drive to the courthouse or use the mails. As for using technology here in the State House, we recently authorized the Clerk of our court, Dwayne Brown, to send copies of opinions by FAX.

I think we made progress this year on an issue I know you hear about, the Child Support Guidelines which the federal government required Indiana to adopt. A committee of trial judges who hear divorces day in and day out just finished a year-long study of Indiana's guidelines. As a result of their work and extensive public hearings, we have approved changes in the Child Support Guidelines which we think will make them both easier to work with and fairer to mothers, fathers, and children. One area of recurring difficulty under Indiana law is the so-called "second-family" issue. It goes something like this: "When a father remarries and creates a new family, should his support for his first child be reduced?" This is really a substantive question of social policy, and current statutes do not answer it very clearly. We hope you will provide us better guidance on it.

Juveniles in Jails

The greatest success story of the year also concerns children.

What to do with errant teenagers who need secure detention has been a subject of debate in Indiana for more than a century. When the delegates to the constitutional convention of 1850

met in the house chamber, speaker after speaker decried the use of jails as places to store young people who were runaways, or generally incorrigible, or just kids in need of more help than a family could give or would give.

A hundred and twenty-five years later, Hoosier children were still spending thousands of nights every year in local jails with adult offenders. This situation persisted notwithstanding the commands of both state and federal statutes. Congress had set a national goal of removing children from jails by passing the Juvenile Justice Delinquency and Prevention Act of 1974, authored by Senator Birch Bayh. The Indiana General Assembly established the same policy in a variety of statutes.

Given the persistent and long-standing nature of this problem, it is all the more remarkable that there has finally been enormous progress in solving it during the last year, a year when money was scarcer than ever.

Here's how it all used to work. A runaway teenager in Clark County who needed to be detained for his or her own good – or for the protection of others – was until this year put in a sheriff's car and taken hundreds of miles in search of an available bed in a secure facility. The sheriff might take the kid to Fort Wayne if there was a bed available there, at least until that bed was needed by somebody from Fort Wayne. At that point, the sheriff would pick up the kid and take him to South Bend for a week. Then on to Lafayette, or as far as Valparaiso. And occasionally back to Jeffersonville for hearings. It seems impossible, but, believe me, it was very common. And very inconvenient. And very expensive.

Finally, in 1991 things changed. Now Clark County families with children in distress will find that their children are placed in Jeffersonville, because in September of last year Clark County opened a 14-bed juvenile facility with help from the Department of Correction.

This story is now changing in many places. Johnson County will open a 48-bed facility next month which will operate as a regional center. Howard County is operating a temporary 8-bed facility until a new one can be constructed.

Detention centers are also being planned in Dearborn, Henry, LaPorte, Monroe, Tippecanoe, and Warrick counties. Bartholomew County has plans to convert its former children's home into a juvenile center. And in Cass County, the first state-run juvenile facility to open since 1976 will come on line this spring with room for 56. In Fort Wayne, the Department of Correction is converting a work release center to a 90-bed juvenile facility.

Many of these facilities have been opened without constructing expensive new buildings, but they have all cost something. Local judges, county commissioners and councilmen, and private agencies have been ingenious in finding state, county, and private dollars (and, yes, even Lottery profits) to finance start-up costs. You may have seen on television the enormous crowd which turned out in New Castle to support doing something in Henry County so that teenagers could be helped close to home rather than carted around the state in squad cars. The long-term cost should be less than what we were spending under the old and terrible system.

The result is that the number of Hoosier children spending the night in jail with adult convicts has dropped dramatically. In the last thirty months, the number of juveniles housed in adult jails has dropped from 7000 to just over 400.

The heroes of this story are many. They include Commissioner James Aiken and his deputy Chris DeBruyn. They include judges like Clementine Barthold and Jeff Eggers and Alan Brubaker and John Kellam. They include the State Public Defender Susan Carpenter. And they include members of the legislature who helped find state and local funds in difficult times. And the Indiana Supreme Court played a role, by requiring people to get serious about enforcing the laws you passed. Those people and hundreds of others are the heroes. The winners are Indiana's children.

I do not want to be misunderstood to say that we have this problem licked. I do want to say that progress in building a better judiciary and a better society here in this place we call Indiana does not need to stop because there is no idle money sitting out on the table for appropriation.

Rules of Evidence

There are all kinds of things that Indiana can do which do not require new appropriations and the story I have just told you is but one example of how Hoosiers can make progress in hard times. I'll tell you about one we plan for 1992. Most states and the federal courts have adopted rules of evidence to cover problems like how you get a document admitted in court, or how to treat hearsay, or how you can impeach a witness. Indiana has always dealt with these matters through the common law method, meaning that lawyers and trial judges have to find the answers by searching the hundreds of appellate court opinions setting out acceptable practice. The Supreme Court has reached the conclusion that Indiana would be better off if all these practices were available in a single set of published rules. This mostly affects how people try lawsuits and thus it is really our job to solve this problem. We believe that this project would turn out better if all three branches do it together. So, we ask you to be our partners in this work. It is the perfect project for hard times, practically a no-ticket item and one we probably will not find time to do when the recession is over.

Finally, as many of you know, I was recently reappointed to a new term as Chief Justice. Being Chief Justice is not something I ever imagined would be part of my life. Most of the time it is all you could ever ask for. Much of what we have done these last few years is due to the good will and support of my colleagues on the bench, here and in the county courthouses. We owe a lot to the Governor and the other officers of the executive branch. And I owe a great deal to the members of the legislature. There is no way I can repay you for your countless acts of kindness and cooperation and simple friendship. I can only stand in this public place and say thank you. And to promise to stand in this place twelve months from now and answer the question, "What have you done for us lately?"