

## **State of the Judiciary**

**Chief Justice Randall T. Shepard**

**February 4, 1993**

### ***“Work Finished and Work Ahead”***

One of the benefits of the election of a President or a Governor every four years as required by the constitution is that it prompts all of us – the country, the state, individuals – to take stock of what we have done and what we still need to do. The same is true with our rituals required by the constitution – such as the mandate that Governor Bayh and I come before a joint session, really a town meeting for five and a half million Hoosiers, to give an accounting and lay out our visions for the future.

I spend months thinking about what I will say here about what Indiana needs from its courts and about what we’ve done and still must do. So, I come today to tell you about “work finished and work ahead.”

As for finishing the work of appeals, when I first spoke to you in 1987 it took the typical case two years to get to a decision in the Supreme Court, not because the Court took two years to make up its mind, but because it took two years for a case to work its way to the head of the line. The story of 1992 is dramatically different. Even though the number of appeals being submitted reached an all-time high last year, we reduced the number of pending criminal appeals by 67%. We reduced the number of civil appeals pending by 78%. We decided a thousand cases for the first time in history. And when we meet next Wednesday for our regular weekly conference, most of the cases we will discuss will be people cases submitted to us in February.

On the subject of reducing delay, I want to report what the Indiana Court of Appeals did last year in cutting the amount of time it takes to finish cases. The press recently reported that the Michigan Court of Appeals had accumulated a backlog of 4000 cases and that the typical

turnaround time was 24 months. On the other hand, the Wall Street Journal recently reported glowingly about the solid achievement of the Minnesota Court of Appeals – disposing of most of its cases in 3.2 months. That may seem like a record to the Wall Street Journal, but it's 50% slower than what the Indiana Court of Appeals did last year – turning around cases in 2.2 months!

### **New Child Support Guidelines**

We finished work beyond the business of appeals. Many of you will recall that during the 1989 session we discussed who should adopt the guidelines required by Congress for setting child support orders in individual cases. The committees of both houses decided that this job should be undertaken by court rule rather than by statute, and we have spent thousands of man-hours developing and adopting guidelines pursuant to the federal mandate. As you know, we recently made sweeping changes to solve a number of fairness problems made evident by the experience of the last few years. Many people contributed to these reforms. Among current legislators, I want to thank particularly Representatives Klinker and Cottey for their part in this work. The next major revision required by Congress is scheduled for 1996 and during the next biennium I will likely suggest that we spend the time and money necessary to re-examine the underlying economics of child support.

### **New Rules on Ethics**

We passed another milestone recently when we completed the first comprehensive revision of the Indiana Code of Judicial Conduct in a generation. The new Code covers more subjects in better detail and with greater clarity than ever before. I believe it will help all of us build on the decent ethical record which has largely been the history of Indiana's courts.

There is news as well on yet another front we share, the care and attention of children. I reported last year that after your recent amendments we were making good progress on the 100-year-old

problem of what to do with young people who are runaways or delinquent. The news continues to be good. On Monday of last week, the people of Henry County opened a new facility for troubled teenagers at New Castle, a project led by the county's judges, financed by the county council in the midst of a recession, assisted by Hoosier Lottery funds, and supported by the Department of Correction. Three other new centers for kids opened this year – in Bartholomew County, LaPorte County, and Johnson County.

### **Bad News on Teen Violence**

On the broader front of problems with teenagers, though, I report with regret that I think we are losing ground. There was recently great publicity about a case in Madison in which two teenage girls stabbed, mutilated, and murdered another teenager. Cases like this shock our senses, but we do not read about much of the violence by teenagers because juvenile court proceedings are confidential.

Our juvenile judges describe four undeniable trends: the offenders are getting younger, they are committing more heinous acts of violence, sexual assaults are more common, and more and more young girls are turning to crime. What's more, our juvenile judges say that many of these young criminals stand before the bench utterly without remorse and without empathy, whether their victims are elderly or infants.

Familiar patterns which judges saw in juvenile court for many years no longer hold true. It used to be that the typical young recidivist made his first trip to juvenile court for fighting or stealing. He might then move on to burglary or auto theft. Today, it is not unusual for the first entry on a juvenile's record to be a gun charge.

Here in Marion County, gun charges in juvenile court went up 37% in 1992 over the year before. Sex offenses like molestation, rape, criminal deviate conduct and sexual battery were up 65% in one year. And the offenders get younger and younger.

A 12-year-old boy whose mother dropped him off – dropped him off – at juvenile court, to testify for a friend, walked through the metal detector. The guards took a .38 caliber semi-automatic handgun off him. It turned out this 12-year-old knew a great deal about guns. He was in fact the neighborhood gun dealer of sorts, trading and supplying guns to other kids like you and I used to trade baseball cards.

This year two Indianapolis police officers were investigating suspicious activity in a vacant building, when they overheard one juvenile say to the other, “Let’s off ‘em.” The police got the drop on these two and arrested them without firing a shot. They recovered a .40 caliber semi-automatic handgun with seven live rounds. The age of the gunman? Thirteen. His accomplice was sixteen.

In Lake County, a juvenile court magistrate asks the parent of an habitually truant youth why she doesn’t make her son go to school. “Because it’s too dangerous,” she says. Week after week, judges hear accounts of children being shot and stabbed for such trifles as bumping into someone in the hall or wearing the wrong colored jacket. In Fort Wayne last year, 51 juveniles were injured by firearms and five were killed, about twice as many as in 1991. In the decade ending 1991, referrals for violent crime rose 250%. Then last year they went up another 28% in one year.

I mention these depressing developments because I believe that the three branches of Indiana government do have the capacity to reshape those trends. Governor Bayh recently created the Juvenile Code and Youth Gang Study Commission, chaired by Lake County Prosecutor Jon DeGuilio. He charged this Commission of legislators, judges, lawyers, police, social service and correctional experts to recommend ways to reduce juvenile crime and delinquency, and improve the administration of juvenile justice in Indiana. I applaud Governor Bayh for this initiative and thank the five legislators who agreed to serve: Representatives Cottey and Villalpando and Senators Meeks, Alexa, and Landske.

Be assured that the courts will match your commitment, and continue to make juvenile justice a priority. New juvenile centers will open this year in Porter, Howard, Dearborn, Madison, and

Hamilton counties. We will expand programs like mandatory divorce counseling for parents in broken families. Trial judges in two of our largest counties, Marion and Vanderburgh, launched such programs this year. And we hope to take state-,wide a project to strengthen juvenile probation departments now being tested in twelve counties.

I know that many of you have filed bills this year which represent new ideas for ways to better the lives of troubled children. I hope that the many of you who are sponsors will persevere with this sort of legislation and that those who are not sponsors will respond with a critical eye and a warm heart.

### **We're 50th in Judges Pay**

Finally, I want to turn to an issue which has long laid without attention -- how Indiana judges are paid and how much they are paid. It has lots to do with who our fellow Hoosiers find sitting on the bench when they go to court.

To understand why we want to change the way judges are paid, I need to tell you how judges are paid. Every trial judge receives a specified statutory salary, paid mostly by the state and partly by each county. There are three other ways they can be paid. First, in many counties judges receive a supplementary salary from the county. Second, a judge earns ten dollars a day if he or she is working on a case transferred in from another county. Third, a judge earns \$25 for going over to a neighboring courthouse to work as a special judge.

This patchwork system is both tawdry and wrong-headed. I say wrong-headed because we pay \$25 extra if a judge drives to a neighboring county courthouse to do something which might be accomplished by FAX or conference call. I say tawdry because it provides incentives to run the meter. The Judicial Reform Bill, HB 1755, sponsored by Representatives Villalpando and

Cochran, and co-sponsored by Representatives Mannweiler and Keeler, would wipe out this patchwork and replace it with a single salary for everybody.

The bill proposes a higher salary, only marginally higher than some judges make under the existing arrangements. It would make a considerable difference, however, for the judges (and prosecutors) making only the statutory minimum. Those judges rank 54th in the nation among trial court judges. Only the municipal court judges in Puerto Rico who tried Bobby Knight in absentia make less.

There are two reasons we need to fix this – one has to do with equity for those who've been serving and the other has to do with whom we can recruit to serve in the future.

First, it is not equitable that people who became Indiana judges ten or twenty years ago stand alone in diminished purchasing power among workers in another private or public sector. On the average, wages for Americans in the private sector have kept pace with inflation. Indeed, employees of the State of Indiana have kept pace with inflation. They received raises nineteen times in the twenty-two years since the 1970's began. Similarly, our largest group of public employees, teachers, have made regular advances over the decades and now stand as the eighteenth highest paid in the nation.

Second, this problem needs fixing because the long decline in real wages affects the kind of people we attract to the bench. You can, of course, always fill most jobs at any salary. You can sometimes persuade people to take a new job for the same money they're now making. Occasionally, you can get somebody to take less, but not very often. A recent survey by the American Bar Association shows that 70% of American lawyers earn more than Indiana judges. A recent survey by the Indiana State Bar Association shows that about 60% of Indiana lawyers make more than our judges. Because we usually cannot recruit people to take a cut, we must usually recruit judges from lawyers who are at the lower end of the pay scale in their profession.

Frequently, we have difficulty recruiting enough people to hold an election. Last November, there were 58 judicial elections scheduled in Indiana. In 41 of those, one party or the other could not find any candidate. In 1990 there were supposed to be 138 judicial elections. In 97 of those

instances one of the nominations went unclaimed. The last time we elected prosecutors in Indiana, two-thirds of the counties had no election. As for the appellate courts, last year I sent 2600 letters to lawyers in fifty-three southern Indiana counties about an opening on the Court of Appeals. Three practicing lawyers responded. Here in central Indiana, we invited 5800 lawyers in nineteen counties, and fourteen applied. How fortunate we were that two of those applicants were Ted Najam and Zeke Friedlander.

All of this has to do with the kinds of people Hoosiers find when they enter a courtroom. They walk in expecting grey hair, experience, and many times they find it. Many other times, though, they discover that the youngest, least experienced, lowest-paid lawyer in the courtroom is the judge.

I want Hoosiers to walk into a courtroom and know their cases will be heard by our brightest and best, women and men of talent and experience, people who've been recruited from among the most successful lawyers. I want them to find dedicated people, a winning team, of high morale.

### **Three Branches, One Government**

Asking you to fix this is a tough ask, my friends say, telling me something I already know. These last years we've done some important things together. I asked you to change the constitution and promised we'd do more cases faster – and we have. You asked us to get Indiana's teenagers out of adult jails, and judges have taken the lead in getting that done. We asked you to add a trial judge here and there and promised we would figure out how to do more with the people we have. This year I think we'll finish 1.5 million cases for the first time. You asked us to take responsibility for working out the federal mandate on child support guidelines, and we've put heart and soul into it.

I stretch my luck but I really ask two things today. One is to pay special care to the changing problems of children in our state. The other is to do something to make sure that when those future generations need to go to court looking for justice they will enter the courtroom both looking up at the judge and looking up to the judge.