

## **State of the Judiciary**

**Chief Justice Randall T. Shepard**

**January 18, 1994**

### ***“Cheaper, Faster, Simpler”***

Like legislators and governors, judges and lawyers hope the public will have confidence in the work they do. Just as public opinion polls revealed last year that the voters hold government itself in lower esteem than ever before, however, they show that lawyers were less popular than anybody but stockbrokers and politicians. With lawyer jokes at an all-time high, one hardly needed polls to hear the message. Though public complaints frequently focused on lawyers, they were more often aimed at the larger legal system of which lawyers are a part and at the court system in which lawyers practice their trade.

Lawyer jokes aside, the public's attitudes about the legal system are remarkably consistent. People most often mention three things they find frustrating about the nature of their legal system: It costs too much. It takes too long. It is too complicated.

As with other public institutions under attack, the temptation is to think that the public just doesn't understand, or that we are not using the right techniques to get our message across, or that with a little less public bickering amongst ourselves our rating with the voters will rise. These explanations are tempting, but they do not weigh for much in light of the fact that the people who are the best informed level the harshest criticisms. People who know a lot about the legal system have very unfavorable opinions, and those who admit they know little or nothing about it like it the most. These same polls show that college graduates are among the most negative of all. Those in the legal system, like those in government itself, cannot brush off these judgments by our fellow citizens, however distasteful they may seem.

And so, in preparing to report to you and to the people of Indiana, I have asked myself the questions

pollsters tell us the voters themselves would want to ask. What have you done to make it cheaper? What have you done to make it faster? What have you done to make it simpler?

### **Making It Cheaper**

There is not much doubting that the legal system can be expensive. The cost of modern litigation can be downright breathtaking. These expenses are onerous enough for people of means, but those who suffer the worst are the poor, who cannot afford a lawyer at all, and the middle class, for whom legal services can be a crushing expense. We have done several things this year to help place legal help within the reach of more people.

First, boosted by expressions of support from the General Assembly and the state's lawyers, after more than a decade of dispute and debate the Supreme Court has approved a program for interest on lawyer trust accounts. This permits the pooling of small sums held in trust accounts which have not traditionally earned interest. The interest which will now be paid on these accounts can be used to provide civil legal services to the poor.

Second, and closely tied to the IOLTA initiative, the Supreme Court will launch a further effort to expand the availability of legal services. Indiana will have one of the first state-wide pro bono programs in the country. Every one of Indiana's 13,000 lawyers will be asked to participate somehow in providing legal assistance to people who cannot afford it. We envision a collective effort by state and local bar associations, law schools, and legal services programs. It should make available tens of thousands of hours of legal assistance for people who need it and cannot now afford it.

Third, we are also working to reduce the legal expenses incurred by the 100,000 Hoosiers who become divorced each year. It is a sad fact that far too many parents use their children as tools to continue fighting the battles which led to divorce in the first place. They spend money litigating disputes over custody and visitation which they ought to be able to work out for themselves. These battles can be an expensive drain on family budgets already overextended.

In this last year, more and more Indiana trial courts began requiring parents who file for divorce to take at least minimal training on the effects of divorce on children and how to avoid the damaging battles which make divorce even more difficult for kids. These are very inexpensive programs organized jointly by local courts and agencies specializing in families and children. Thousands of people a year now go through these programs (usually titled "Children Cope With Divorce") in Marion, Porter, LaPorte, Vanderburgh, Gibson, and Noble Counties, to name a few. Just last Saturday, Dearborn, Ripley, Franklin, and Ohio Counties also began to send divorcing parents through such a program.

The evidence so far is that this minimal investment of time and money is worthwhile. Information collected from divorced parents in five counties in central Indiana indicates that most of them come away understanding better that children should not be involved in struggles between parents. Some 82% of the parents involved predict they will use what they have learned. These are lessons most people would not have learned unless the courts caused them to take divorce training. Our judges institute these programs because they believe that investing just four hours in such training at the beginning will eventually save a lot more in court time, lawyer time, client time and client money. It is another way of making the legal system cheaper for people who are short on money to begin with.

Our Court also became one of the first in the nation to issue guidelines on the use of paralegals. This is another technique which can reduce the cost of legal services.

Finally, we are looking for new ways to make the court system cheaper for the public as taxpayers. When somebody asks you to create a new court, for example, they can usually demonstrate that the existing courts are busier than they used to be, but there is no good way to measure whether they are busier than courts in other counties. We have asked one of the best committees of the Judicial Conference, the Judicial Administration Committee chaired by Judge Thomas Snow of Richmond, to begin work on a weighted caseload measurement system. We hope to provide a reliable measure, apples to apples, which will show where we need new courts and where we do not.

We also support the changes in the way we provide care for children in need of services, mentioned by Governor Bayh in his address last week. These ideas were generated by the Special Committee on Welfare Property Tax Reform, chaired by Frank Sullivan, now Justice Sullivan, on which I also served. The Committee has proposed to reform the County Welfare Fund so that taxes for the foster care of children are easier to identify and manage. Representatives Bauer and Turpin, and Senators Mills and Gery have sponsored legislation for this purpose. Legislation about the way we finance mental health, sponsored by Representatives Crosby, Bayliff, and Goeglein, should allow Indiana's courts to serve more severely emotionally disturbed children at less expense to Hoosier taxpayers.

On these and other fronts, I pledge our cooperation to make the legal system serve more people less expensively.

### **Making It Faster**

The most dramatic improvement in the Indiana legal system this year which makes for faster justice is alternative dispute resolution. Almost two years ago now, the Supreme Court adopted rules authorizing methods to resolve people's disputes other than traditional litigation: mediation,

arbitration, summary jury trials, and private judging, for example. The most important of these has been mediation, and Indiana lawyers and others have now spent over 42,000 hours training to be mediators. We now have 1045 trained mediators at work, of whom about 250 are social workers and counselors mediating in domestic relations courts. All of Indiana's judges have also taken training in alternative dispute resolution.

In 1993, this system was up and running full force. The result is that during 1993 some 3045 cases were referred to mediation, five times the number mediated the year before. The judges most active in this effort have been Judges Nancy Boyer and Paul Mathias of Fort Wayne, James Rieckhoff of Elkhart, Dan Donahue of Jeffersonville, Jerry Barr of Noblesville, Mary Lee Comer of Danville, Lorenzo Arredondo and Morton Kanz of Lake County, Judges Kenneth Johnson and Jerry Zore of Indianapolis, Ray Kickbush of Valparaiso, and Charles O'Connor of Shelbyville.

A capable mediator working directly with the parties involved can help resolve a dispute long before it could ever be tried or settled through traditional means. Results vary by case and county, but we estimate that something like 65% of cases sent to mediation are resolved. People get a solution earlier, and they participate directly in creating it. It makes for a faster legal system, and a higher level of satisfaction with the results.

For those people whose cases must go to court, we have begun to use more modern means of communication to provide faster filing, by authorizing trial courts to accept papers faxed to the courthouse. Indeed, we are expanding the boundaries of the traditional courthouse by creating an electronic bulletin board, so that people can read the decisions of the appellate courts within minutes of their issuance.

To make cases move faster in courts which are particularly congested, we have up and running a program for the use of Senior Judges. We now have 16 judges working in 46 different courts to supplement the work of the regular full-time judges. This corps of retired judges works essentially as volunteers, and last year they disposed of several thousand cases. They are volunteers who help people get faster justice, everywhere from divorce court to complex civil litigation.

Speaking of the people who make this system go, I wish to thank the great majority of both houses who voted last year to change the amount judges are paid and reform the way in which they are paid. This bill died in the melee at the end of the session, and I hope you will try again.

### **Making It Simpler**

The law certainly does get more complicated as time goes by and lawyers and judges are frequently guilty of making it so, but we do not do it alone. A hundred years ago, the 1893 session of the Indiana General Assembly passed 380 pages of new law. Fifty years ago, the 1943 General Assembly passed 1070 pages of laws. Last year, you passed 4919 pages of new laws. The executive branch participates in this expansion, too. Fifty years ago there were so few state rules and

regulations that they were just simply printed up from time to time in paperback pamphlets. Now we use the Indiana Register, and last year the Register published 2639 pages of new, revised, or proposed regulations. These laws and rules passed because those responsible thought they were good for the public. Still, it's a lot of law for the average citizen.

Sometimes we are able to strike a blow for simplicity; your recodification project, for example, is a fine effort to make law simpler. Last year the judiciary made things simpler by adopting rules of evidence. For the last 175 years, we used appellate court opinions to specify how to submit evidence in court -- how to establish that a document is genuine, what is hearsay and what is not. People in court confronted with these issues traditionally had to search thousands of pages of opinions for guidance. When they were lucky, they found an appellate opinion giving the answer. If they were not so lucky, they would find two opinions giving different answers.

As of two weeks ago yesterday, those millions of words were replaced by the new Indiana Rules of Evidence, just 24 printed pages covering everything from the definition of hearsay to the limits on methods of discrediting a witness on cross-examination. The rules define, for example, when you need the original of a document and when a copy will suffice; they simplify ways of proving up medical bills; and they describe the use of judicial notice, which means there are some things you can establish without any evidence at all.

There will still be disputes in court about what is admissible, but from now on everybody will be singing off the same page. Lawyers and judges will know which rule applies and can debate how to apply the rule in a particular situation. Citizens who find themselves in court without a lawyer will be able to use this relatively simple handbook to prepare for going it alone. This advancement is the result of thousands of hours put in by people from all over Indiana. Former Justice Jon Krahulik and Judges Thomas Webber of Valparaiso, William Fee of Angola, Kenneth Johnson of Indianapolis, and Richard Young of Evansville led a team of fifty volunteers who made this come to pass. It should make court simpler for everyone who goes there.

## **Conclusion**

The easiest thing for the judiciary, as for other branches, is to keep doing what we have been doing and report that we have done more of it. The hardest thing is to take off our blinders and see our work as the people see it. Judging, like legislating and executing, is something we do not do for ourselves or for the other branches of government. We do it for the people whose servants, not masters, we are. I pledge that in the year ahead we will do all we can to make Indiana's judiciary cheaper, faster, and simpler for everybody.