

## **State of the Judiciary**

**Chief Justice Randall T. Shepard**

**January 30, 1997**

### **“Trying Something New”**

This annual opportunity to speak with you about the state of the judiciary forces me to focus on what Indiana’s courts accomplished in the last twelve months and to ask what we can do in the future. In a year like 1997, of course, there is a strong temptation to speak about what our goals should be before the new century. Indeed, I think a good deal about where Indiana’s court system needs to be over the long run. In my report today, I plan to mention four of the particular things I would like to accomplish in the coming year. The essence of my message will be that in all four areas we will have the chance to try something new.

### **Courts and Children**

I start first with the special role courts play in dealing with the problems of children in distress. I start here partly out of a new personal sense of how important children are to the future of our society, and partly because in this field I re-learned this year an old lesson about how you really can change things if you are determined to do it. This time last year I observed that the time it takes for an appeal, sometimes a year or eighteen months, is an eternity in the life of a young child whose custody is being litigated. I promised you we’d do something immediately about shortening the time it takes. I said then: “Cases involving children will be brought to the head of the line.” Since I spoke to you from this same podium last January, we have cut the time people wait for a final decision by five months.

That kind of progress reinforces my belief that the effort we make will pay off in the lives of our children. Indiana has long had a good record in caring for children. Many of you know that at the last turn of the century Indiana pioneered the movement to develop a special

system of courts for children. We are to this day well ahead of many of our sister states. The U.S. Supreme Court just ruled last month that when a state terminates parental rights it cannot force that parent to forfeit her right of appeal just because she is too poor to pay for a transcript of the evidence at trial. Our state has embraced that principle for a long time, not just for parental rights cases, but for indigent litigants in all sorts of cases. Now, the Indiana rule, which has a long history, will become the national rule.

I know that 1997 can be a year when we make some new history of children in the courts. The Supreme Court spent all of 1996 assembling the most comprehensive data ever collected about how Indiana's courts handle cases involving abused or neglected children. Hundreds of juvenile judges and magistrates, office of family and children directors and caseworkers, guardians and court-appointed special advocates, parents, and practitioners contributed toward this effort. Within the next month or two, we will be ready to announce a series of reforms we plan to make as a result of this work. These will include a plan to "fast track" CHINS cases, new ways to train the people who work in this field, and a method to improve coordination of CHINS services.

Let me say a word more about this last item. We spend something like \$50 million a year for children who need to be placed in new, foster homes or other facilities. Unfortunately, we historically purchased these services one child at a time, one placement at a time. We have thus been a big purchaser with not much purchase power. In the last four years, our juvenile judges have begun to coordinate their efforts so the money that we do have can help as many children as possible. Last year, as a result of a task force chaired by Justice Frank Sullivan, you adopted a statute directing the Indiana Judicial Center to devise a system for organizing purchases of juvenile placement. We have now developed a plan for a coordinated method of purchasing, and this plan is part of our budget proposal for the next biennium. It's time to try something new.

It's also time to find new ways to iron out the disputes that lead to broken families and neglected kids. Every year there are 40,000 new divorces filed in our state, and litigation is not always the best path to harmony. The trial judges who see these cases day after day are increasingly convinced that even a little pre-divorce training goes a long way. There are now some forty counties where the local courts require parents to attend training with professionals about how to be a good divorced parent and how to avoid using the children as tools. Participants in these seminars come out telling evaluators that they expect to use what they have learned. We also have one major county court, Allen Circuit, in which people requesting court time for lengthy divorce hearings must try mediation before they can be put on the court's calendar. The result has been a higher settlement rate, and the waiting time for people who really need to go to trial has been cut in half. I expect we will learn a lot from this project in Fort Wayne.

The legal problems generated by tens of thousands of troubled families come to the courts in many ways – divorce, delinquency, children in need of services, domestic violence, to name a few. In counties of any size, it is possible that the same family may wind up in two or three different courtrooms depending on the legal label used for the cause that brought them to court. The solution to that problem is a family court. A family court is a place where you deal with the whole family in a single courtroom regardless of legal label. Just about every session one of you asks me whether we ought to have family courts in Indiana. Last session, the General Assembly asked its Commission on Courts to examine the idea of creating family courts in Indiana. The Commission on Courts decided that the best way to find out is to go out and experiment in three counties, counties where people would like to volunteer to try something new. That proposal is now before you in Senate Bill 117, sponsored by Senator Bray. It passed the Senate Judiciary Committee on January 15<sup>th</sup> by a unanimous vote. I think it is something new that's worth trying.

## **Mediation, Not Litigation**

Any judge who looks at the challenge of the next century comes quickly to the problem of how to manage the expanding caseload. When I left the trial bench in Evansville in 1985 there were 27,000 new lawsuits filed. Last year, there were 43,000 new lawsuits. Last year there were 1.53 million new lawsuits statewide, the largest number of all time. The same thing is happening in the appellate court. The caseload of the Court of Appeals jumped 26 percent last year, and the number of mandatory appeals in the Supreme Court went up 51 percent.

The prospects of litigating all those cases by traditional means is more than enough incentive for creativity. That is why we have worked so hard to develop alternative means of resolving cases, a movement launched five years ago with the Supreme Court's rules on alternative dispute resolution. Last year, our trial judges sent more than 5,000 cases to mediation alone. The encouraging news is that many times that number were mediated without court order because the lawyers handling the cases agreed that mediation might produce a settlement. The practicing bar has taken to these new techniques with enthusiasm. Nearly 400 lawyers and others took training or re-training as mediators. They also spent 199,000 hours in Continuing Legal Education classes and \$4.8 million to do it.

This year, we will be implementing a new system for training and certifying mediators, one that makes the names and qualifications of mediators available for the first time in a central place, at our Court's Commission Continuing Legal Education. Local judges will be able to use this information to decide which mediators to appoint for cases in their own courts. The legal profession, through its State Bar Association, has just launched a program to promote mediation of disputes before they get filed in court. This initiative symbolizes the positive attitude our lawyers have about finding ways to solve problems faster and cheaper.

Not every case can be settled, though, so we need to be smarter about managing the caseload that we do have. This has not been easy because of a terrible misdistribution of workload. Some citizens who wind up in a court that's not particularly busy get their cases heard quickly and other people who find themselves in an overcrowded court wait years.

We have never had a very good way to measure which courts are overburdened and which are not. In the last eighteen months, nearly a third of all judges and magistrates kept regular timebooks and made thousands of entries, to determine how much time each sort of case requires on the average. The result is a measuring stick that matches apples to apples. We call it the weighted caseload measuring system. It is a system that you as legislators can use in assessing requests for new courts and we can use in making the most of the courts you give us.

The study verifies what everybody suspected. In one area in southern Indiana, the calculations show one court that has three times the work as another court. This is not just a matter of burden on judges, it is a matter of how long citizens have to wait depending on where their case got filed. This new system will permit us to begin rectifying that problem. It's something new, and its worth trying.

### **Use of Technology**

In the long run, Indiana's courts can only keep up with the demand by taking the maximum advantage of advances in technology. This is basically a story about replacing paper and typewriters with electronics.

Here, too, Indiana has had a good record. I noticed the other day a news bulletin about a sister state where the mountains of paper in courthouses had gotten so high they decided they

needed a system for deciding what paper to keep and what to throw away and when. Indiana's courts created just such a system ten years ago this month. Over that ten years, local court clerks, trial judges, and staff from the Supreme Court have disposed of tons of unneeded records. They measure the amount of discarded paper by counting dump truck loads. In the ten years this effort has been under way, we have covered 65 counties and disposed of 5,400 file cabinets of paper. We all owe a debt of gratitude to the leaders of this effort, John Newman and Tom Jones, of the State Court Administrator's staff.

Still, we need to find electronic ways of keeping the records we do need to retain. This year lawyers will begin bringing their appeals records here on disk and not paper. We don't really know exactly how many pages of paper come through the door of our clerk's office, but it is certainly over a million pages a year. Now, thanks to a system developed by Clerk of the Courts John Okeson, Judge Linda Chezem, State Court Administrator Bruce Kotzan, and others, litigants can file transcripts from trial on disks. It will save money for taxpayers; it will save money for litigants; it will save time; it will save space. It is something new worth trying and we're going to try it.

We also plan to launch this year a program to standardize the way all our courts keep information on computer. Most courts in Indiana use computers for a variety of tasks, but they do that in so many ways that it makes it difficult to use the information. There are still places where traffic tickets are recorded one ticket at a time and sent to Indianapolis for recording again. In many places, if you want to know the record a criminal defendant has before you sentence him, you have to call other counties on the telephone. This is the modern equivalent of getting in your buggy and going there in person. We do not plan a state-wide computer system. We do plan a single set of standard documents, screens and other protocols that can be made available to private and public bodies that will eventually use the same language.

All of that will use existing technology, but I'd like to go beyond existing technology in 1997. In most Indiana courthouses, we record what happens in the courtroom by audiotape. In most of the rest of the country they have been using computer-assisted stenography.

Technology keeps moving, though, and it is now possible, with just the right equipment and under carefully defined circumstances, to speak into a microphone and produce printed words. This technology has the potential to revolutionize the recording of what goes on in local courts, but nobody in the country has yet tried to use it for this purpose. I'd like Indiana to be the first. Representatives Dvorak and Pond and Senators Wyss and Kenley have offered to help us obtain the relatively modest funds needed to experiment with this new technology. It's something new, worth trying.

### **Opportunity for All**

Finally, I want to talk with you about another area where I want Indiana to be first. All of you know that the demographics of America are changing, with more women in the workforce and more citizens from minority groups. The legal profession is changing, and the people in it are changing. I recently received a notice for the 25th reunion of my law school class. My class was unusual in that it contained about ten percent women and about five percent African-Americans. These were considered groundbreaking numbers. Today, of course, the number of women in law schools has risen to 43 percent.

The number of minority students in law schools has been growing, but it is still far too small and the number of minority lawyers serving people even in the urban areas of our state is pitifully small. In Lake County, for instance, where black and Hispanic residents make up 35 percent of the population, the best estimate is that there are 9 or 10 percent minority lawyers. In Marion County, the percentage of minority lawyers is actually lower than that. In St. Joseph County, there are only three African-American lawyers. In Vanderburgh County, one. That's not good enough. I believe for America to thrive as a common society, all the people in the society must have the chance to succeed in business, in politics, in the professions, including the legal profession.

Indiana's law schools have worked seriously to increase the number of minority students, but one of the best tools they have is about to be eliminated. For some twenty years, the

American Bar Association and the leading minority bar associations have joined forces to create the Conference on Legal Education Opportunity, called CLEO. CLEO has recruited for law school and kept in law school minority and other disadvantaged students who would not otherwise have a chance for careers in law. It does this through an intensive summer institute and a modest living allowance. The success rate for students who have this "head start" is more than 80 percent. Now, however, the principle sources of funds for this effort has dried up, as the Congress deleted CLEO from the federal budget.

We cannot let this sort of opportunity dry up here in Indiana. Representative Jesse Villalpando and Representative Earl Hams introduced a bill last week to create a CLEO program for Indiana. Quite a number of legislators of both parties have agreed to support this effort. No other state has done this. Indiana ought to be the first state to do this because the chance for young minority and other disadvantaged students to grow up helping people from their communities needs to be a part of Indiana's future.

I very much agree with what Governor O'Bannon said the other night about this as an auspicious time for our state. There is every reason why Indiana should show itself at the front of the line in the areas I've talked about today: children, resolving disputes without litigation, maximizing our use of technology, and offering opportunity to people who haven't always had opportunity. I want Indiana and Indiana's courts to be first in the country in these and other fields. I pledge to you that Indiana's judges will work hard to make it so.