

## **State of the Judiciary**

**Chief Justice Randall T. Shepard**

**January 17, 1996**

### ***"The Challenge of a Challenged Profession"***

There has never been a time when the legal profession occupied center stage more than it has in the last year. The trials of the Menendez brothers, Heidi Fleiss, Susan Smith, and O.J. Simpson both captivated and repulsed the country. Ninety percent of all American adults watched part of the Simpson trial live, and several hundred million watched the verdict being handed down, more people than view things like Presidential inaugurations and the Super Bowl.

It appears that most Americans did not particularly like what they saw, and I do not blame them. The focus on these nationally notorious trials, though, has obscured an important story in Indiana, where the legal profession has been actively engaged in renewing itself and reinventing the work it performs.

Nineteen-ninety-five was a year when we in Indiana's legal profession made a dedicated effort to build a better system of justice, and with some success. In many ways this campaign began in May, when we staged the first joint state-wide conference between judges and lawyers. The leadership of the profession spent three days in remarkably candid and constructive debates about civility and professionalism in our walk of life. These debates set the stage for a host of initiatives aimed at building the credibility of the legal system.

### **Opening the Doors**

Within the last few weeks, for example, the Supreme Court ordered the first substantial reforms in the twenty-year history of the current lawyer discipline system. These

reforms are the product of a study commission of the state bar, a separate effort by our own Disciplinary Commission, extensive debate within the profession as a whole, and days of line-by-line examination by the members of our Court. These reforms will make open disciplinary hearings the rule rather than the exception, and the disciplinary files in the Clerk's Office, even the files of pending cases, will be open to public inspection for the first time. We have also changed the composition of the Disciplinary Commission itself. Like most of Indiana's professional boards, it has traditionally consisted only of members of the profession. Now, it will include members of the public as well, consumers and users of the legal system.

Of course, these decisions focus on policing, but we are also interested in prevention. The Supreme Court has decided to require regular and continuing ethics education as a condition for holding a law license, both for lawyers and judges.

We have also tightened our rules about attorney advertising, adopting new regulations for people who advertise themselves as specialists in a certain kind of law--to make sure that such claims actually have a real foundation. And we have revised our rules limiting the sort of statements advocates can make during the heat of trial. We have drafted our rule about public statements in a way we believe is constitutional, enforceable, and forceful. From here on out, declarations made on the courthouse steps had better be accurate.

Many of these changes will affect how the larger legal profession operates, but there has also been a remarkable commitment inside the judiciary to improve itself. Last year, judges spent 38 percent more time in class learning new techniques and new law than they did the year before. This summer, thanks to your approval of a modest appropriation, we will launch an intensive, new, week-long, education program for judges willing to make the most serious commitment to excellence. We have also been building a stronger training program for court employees such as clerks and probation officers. For example, we trained over 900 probation officers last year, a new record.

These officers supervise seven times as many convicts as the Department of Correction; it's a thin line of protection, and we are determined to help them keep the rest of us safer.

I also want to report the results of your decision last year to abolish the special judge payment system which had been an uninspiring feature of Indiana's court system for several generations. The old system meant that on any given day dozens of judges were traveling Indiana's highways, passing each other on the way to hear cases in other courthouses. I promised you that those assignments would become part of the regular, expected workload of each judge. All of the state's judges, meeting by district, created a new system of assigning this work in each county. As part of this reorganization, we also decided that all the work of this sort ought to be done by regular, sitting judges, and we largely abolished the practice under which private attorneys were drafted to serve as special judges.

This allocation of work, fashioned by local judges to meet local situations, will soon be supported by the new weighted caseload measuring system. It should be ready later this fall after two years and thousands of hours of work. This system will give us an apples-to-apples way of knowing where we really need new courts—and where we do not. The legislature has regularly been asked to create new courts over the decades, and frankly, the information needed to make such a decision has never really been adequate. That will not be true in the future.

We are also implementing the largest change you made last year in court structure: creating a single court out of the formerly balkanized Superior and Municipal courts in Marion County. Indianapolis was probably the largest city in America without a unified court system, and indeed we have had unified local courts in places like Fort Wayne, Evansville, South Bend, Gary, and Bloomington for more than twenty years. The thirty-one judges of this new unified court were sworn in last Thursday here in the rotunda of this building, and I want you to know that the two presiding judges,

Wendell Mayer and Steven Eichholtz, have launched this new enterprise in a thoughtful and professional way. In years not too far past, the old local court system made the front page of national legal publications as an example of what can go wrong. I believe this new court will show us a great deal more of what can go right.

### **Court Finance**

There is also progress on some of the knottiest problems involving courts and public finance: the cost of residential placements for abused, neglected, and delinquent children. You will recall that Justice Frank Sullivan chaired a task force of people from all three branches to study this problem. In 1994, you passed legislation implementing many of the resulting recommendations, including a provision for collaboration by juvenile judges, county offices of family and children, and local elected officials.

The benefit of growing local cooperation on budgetary issues is best illustrated by its dramatic effect on that dreaded event, the county welfare bond. In 1993, a total of 14 counties borrowed \$45 million to balance their welfare budgets. In 1994, only 4 counties found it necessary to borrow a total of \$2 million. And in 1995, only 2 counties needed to borrow a total of \$1 million. While these numbers most assuredly do not mean that the crisis in funding residential placements has been solved, they do illustrate the progress that can be made when we all, regardless of our sphere or level of government, work together to solve common problems. You can count on continued cooperation on problems like this from your state's judiciary.

No respectable court system can discuss finances without renewing its commitment to alternative means of dispute resolution, means that are cheaper and faster for taxpayers and litigants than traditional litigation. Last year, Indiana judges sent 4,500 lawsuits to mediation, and most of those cases settled, at a great savings to everybody involved.

The force of mediators is growing. Some 300 people spent 8,600 hours last year training to do mediation work. We built on this enthusiasm by writing a rule about ethics for mediators and arbitrators, and this year we expect to improve the method by which they are certified and appointed. The practising bar has responded to alternative dispute resolution in a very positive way. Just a few weeks ago, the first book for Indiana practitioners came to press about how to use these faster, simpler, cheaper methods of resolving disputes. Lawyers are doing more mediation all the time, and they talk about it a lot, always in very favorable terms.

### **Courts and the Age of Technology**

We are also committed to using technology to do our work, and people from other states and countries make regular visits to inquire about what Indiana is doing. Our appellate courts became the first in the country this year to put all our opinions on the Internet, thanks to the magical work of our own computer staff and the Indiana University School of Law at Bloomington. Last month, there were 3,900 requests over the Internet by people who wanted to read about decisions by Indiana courts, many from within Indiana and some from places like Sweden, Singapore and South Africa. Clerk of the Courts John Okeson is now at work examining how we might put the Clerk's own docket information on the Internet, so that people in Angola or Mount Vernon can find out with the careful push of a button the status of any case on appeal.

Indiana's court system generates something like twenty million documents a year, and a great many of those eventually come to Indianapolis when cases are appealed. The Supreme Court has approved a proposal to transmit a large part of that paper on computer disk instead, the first real change since the advent of the typewriter, and we expect to have an experimental project under way by the end of the year.

We are also designing a system that local courts can use to manage and transmit case information. I wish I could say we had 92 different computer systems in Indiana's courts.

Unfortunately, we probably have 192 or 292. Simple tasks like finding out whether somebody has a criminal record in another court or sending traffic offense data to the Bureau of Motor Vehicles is all too often done the same way it was done forty years ago. We already have a few pilot projects up and running under which juvenile case information and motor vehicle data are transmitted electronically. Extending this to the rest of Indiana's courts is a major undertaking, but we are determined to throw away the remaining quill pens.

### **People and the Profession**

The Indiana judiciary also has to remake itself in terms of who serves here. The number of women and African-Americans serving in the judiciary is at an all-time high, and growing faster as time goes by. The Supreme Court, of course, isn't really involved in selecting judges, but we can create opportunity inside the system through our ability to appoint people to positions of power--positions in court administration, Disciplinary Commission members, the Board of Law Examiners, the people who screen new bar applicants for character and fitness, and court hearing officers. The number of women and minority lawyers serving in these roles is also at an all-time high, the result of careful, purposeful work by the five members of the Supreme Court.

We care, too, about opportunity for the next generation. The Court of Appeals has initiated a very successful summer internship program aimed at recruiting minority law students, which earned that court national publicity. We thought it was such a good idea the Supreme Court has now followed their example.

We have also just received the first results of a multi-year project in which we have joined with most other large and medium-sized states to study seriously the law school and bar admissions problems of minority law students. We are part of a five-year, multi-million dollar national effort to identify barriers to a fully-integrated legal profession and to develop new solutions. I

suggest that no other profession in America has undertaken such a massive effort. I expect it will help us make even more important things happen.

### **Justice for Children**

All of this effort, of course, has only one purpose--giving faster and less expensive justice to individual citizens. And I want to say a few words about our work as it affects a particular group of citizens--children. The Supreme Court has launched a major initiative to improve the work courts do for children most at risk: those who need to be removed from abusive or neglectful homes and placed in foster care. Justice Sullivan, Judge Viola Taliaferro and I lead a fourteen-member committee now embarked on quantifying how well the legal system does everything from the time we first learn of trouble, through our role in directing placement, all the way to how promptly we handle cases on appeal. There is tremendous room for improvement here and I can start with but a single example--the time it takes when a case involving a child goes off to Indianapolis on appeal. The Court of Appeals has recently decided to stop permitting routine extensions of time in cases involving children, and I recently directed the Supreme Court Administrator's Office to bring every case involving the care of children to the top of the stack. Cases that involve child custody or neglected or abused children will be moved to the front of the line in Indiana's appellate courts.

To do a proper job, however, we need your help with the existing juvenile code. All of the law under which we do this work with children, the Indiana Juvenile Code, has not been comprehensively revised since the 1970s. Individual amendments each legislative session over that period of time have led to a code that judges find makes protecting the public and protecting juveniles and kids very difficult. At the request of the judges who

do juvenile and family work, Representatives William Friend and Dale Sturtz have introduced legislation to establish a juvenile code study commission to take a comprehensive look at the Juvenile Code and prepare a new one. The juvenile law is the ground rule under which judges, social workers, law enforcement, lawyers, and agencies operate to deal with children in trouble. That law itself is now part of the problem, and you are the only ones who can fix it. I ask you to begin the task of doing that during this session.

### **The Indiana Initiative**

Just as the juvenile law is in trouble, many people in our state find themselves with legal problems and not enough money to hire an attorney to help them work their way out of it. Middle class people in divorce court, or folks with landlord-tenant problems, or minor consumer or business disputes, are all too often left to fend for themselves when the complexity of the matter really requires legal help.

The Supreme Court recently announced an initiative to address this unmet need. Over the last few months we have appointed a series of committees' to design a program which will allow lawyers to accumulate minor amounts of interest earned on funds held in trust accounts (accounts which traditionally have earned no interest at all) and commit those funds toward legal aid to the poor. Every other state in the Union has such a program, this legislature has endorsed the idea a number of times, and now there will be such a program in Indiana.

Unlike other states, though, we intend to leverage the money this trust account program will generate by using the funds to recruit, train, and organize volunteer lawyers from the practising bar. The Indiana initiative will eventually ask every single lawyer to play some role in helping people who cannot afford a fee. A great many individual lawyers already do this in their own offices, and several sections of the state



bar and county bar associations have formal programs under which lawyers volunteer their time. We believe that a well-organized, state-wide, volunteer pro bono program can make a significant difference in the lives of thousands of people with real legal problems.

### **Conclusion**

The spirit to give that help still lives in my profession, in the practising bar and among judges. This plan will make us more effective in serving our fellow citizens than ever before, and I promise you we will make it happen.

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