

State of the Judiciary

Chief Justice Randall T. Shepard

January 13, 2000

“What Has Indiana Done About This?”

In two vastly different settings last month, people reminded me of a statement I made on the day I was sworn in as Chief Justice: “I want us to be a court so well regarded that judges in other states, when considering the toughest legal issues of our time, will be led to turn to each other and ask, ‘I wonder what Indiana has done about this?’”

It is the sort of heady statement one makes when taking office, a reminder of the lofty objectives that come with such a day. Having it quoted back to me twice just in December, though, prompted me to think about the big objectives of the Indiana judiciary and about whether we are doing anything that is truly special or inventive. I think there are five major stories to tell about today’s Indiana courts, and I come today to report to you about each of them.

A Lot of People Need Legal Help and Cannot Afford It

Struggle against it as we might, government and law continues to play a substantial role in daily life. People all too often find themselves in need of a lawyer, and the poorest of our citizens cannot afford to pay what the economics of modern lawyering requires. Indiana is making major strides in helping such people obtain legal assistance.

In the field of criminal law, our state has a long and interesting history of pursuing two seemingly contradictory objectives. On the one hand, we are a state that takes a no-nonsense approach to crime – more police, more prosecutors, higher sentences, more prisons. A national commentator once said that if you committed a crime in Indiana the best thing to do was to drag the body across the state line.

At the same time, we are a state that has for 150 years stood strong for the proposition that if you are charged with a crime you should not have to fend for yourself just because you are poor. Indiana's most recent innovation is the Indiana Public Defender Commission. Created by the legislature in 1993, it is drawing national attention.

This commission has developed standards for effective representation of the poor and invited counties to upgrade their public defender programs in return for a partial reimbursement in state funds. In 1999 alone, the counties participating in this network grew from 13 to 36, and these 36 account for 48% of the criminal cases statewide. When the American Bar Association recently urged that all states adopt minimum standards for indigent defense, its House of Delegates held up Indiana as a model for others to follow.

Of course, most people with legal problems are law-abiding folks entangled in divorces, or employment problems, or housing disputes. Historically, people in those situations received help from the federally-financed Legal Services offices, but since Congress sharply curtailed their funds in 1995, Indiana has been looking for a way to provide more legal assistance to people with these kinds of problems. On this front, 1999 was a big year.

Within the last ninety days, thousands of Indiana lawyers have transferred the small amounts they hold in trust out of traditional zero-interest accounts and placed them instead in accounts that are now earning interest for legal services to the poor. This energetic beginning is the product of a partnership between the Supreme Court and the Indiana Bar Foundation.

That accomplishment is good news, but most states did it long ago. Indiana's unique decision has been to use the proceeds to recruit and organize lawyers who are willing to donate time assisting low-income people. During 1999, the Supreme Court named fourteen local judges to convene meetings in every corner of the state to discuss how bar associations, legal services offices, law schools and the courts could best recruit volunteers, train them, and match them up with people in need. A number of counties already have such programs, and the best of these manage to attract more than half of all lawyers in town.

If we can duplicate this statewide, it will mean an army of some 6000 or 7000 lawyer volunteers. It will be an army organized, trained, and supported with funds generated by interest on trust accounts that would have gone uncollected. That's like finding money on the sidewalk and putting it in the Salvation Army kettle. There is every reason to predict success, thanks to the leadership of Judge Mark Bailey of the Court of Appeals and David Remondini, Counsel to the Chief Justice.

The Courts Need to Support Strong Families

It's a happy fact that the statistics about marriage and children and divorce are improving, but our state still has 40,000 divorces a year and thousands of children born out of wedlock. Dealing with parents and children who face these problems is a central mission of the judiciary. Let me mention some important projects that should make Indiana a leader in this field.

The Supreme Court and the Domestic Relations Committee of the Judicial Conference have launched a project to devise statewide guidelines for child visitation. It's a possibility many legislators have asked about. How this might work on a statewide basis is an intriguing question, but what is really interesting is that our committee has posed a more fundamental question about the nature and purpose of visitation.

Most child visitation orders issued by courts have all the charm and humanity of a railroad schedule: Tuesdays from 7 to 9, every other weekend from 5 p.m. Sunday, alternating birthdays

and Christmases from 6 to 9. These schedules have one thing in common – they organize visitation from the point of view of adults.

Our committee, chaired by Judge Dan Donahue of Clarksville, has decided to examine how visitation works best from the child’s point of view, an idea advanced by people working on family issues in Lake County. They have given a name to this: child-centered visitation. To be sure, part of visitation is the joy of parenting, but the most important objective is rearing good children through the effort of both parents. We know of no other state court system that has decided to look at the issue in quite this way.

On a related front, we have set in motion a comprehensive re-examination of protective orders, an important aspect of combating domestic violence. Just a few years ago, we abolished the old practice of mutual restraining orders, which were routinely issued even when there was no reason to believe that both spouses needed restraining. This new initiative, led by Blackford County Court Judge John Forcum, will examine the effectiveness of protective orders: how to identify the genuine domestic violence situation from the host of other disputes, how law enforcement officers can determine whether a given order is genuine or whether it is still in force, how such orders can be made effective from one county to the next, or for that matter from one state to the next.

The protective order is a leading tool in combating domestic violence, but this system has many flaws. We have charged a committee of judges who work in this field to examine how we can do it better.

The larger issue is how we organize the court system to work better for families. How do we reduce repeat court appearances and avoid inconsistent judicial results for families and children involved in divorce, delinquency, child in need of services, protective orders, and other family law cases? How do we insure that orders affecting children are based on timely and thorough reports, prepared with consideration to the needs and situation of the whole family? How do we foster use of mediation in family matters?

These objectives lie at the heart of the experiment in family courts the legislature financed last year. A Family Court Task Force, headed by Judge Margret A. Robb of the Court of Appeals, is about to help us choose three pilot projects from eight counties that submitted innovative applications. Most importantly, Judge Robb's task force has been bold enough to ask just what a "family court" actually is. It is an experiment worth watching.

This Needs to be a Judiciary for All the People

Opportunity for minorities and women in the courts is a high priority for the Indiana judicial system, and it is a field where Indiana is doing first-rate work.

We are committed to the election and the appointment of minority and women lawyers to positions of responsibility and power in the system. The number of women serving as judges has grown so large that even regular observers cannot easily keep track of how many there are, and the number is growing almost monthly. There are now scores of women serving as judges and magistrates (mostly as judges), two of the three officers of the Indiana Judges Association are women along with a third of the board members, and five women judges chair committees of the Judicial Conference of Indiana. The Supreme Court's Continuing Legal Education Commission is chaired by a woman, and the Board of Law Examiners is chaired by a woman.

There are more black judges than ever before, with eighteen minority judges and magistrates (mostly judges). Two of these judges chair committees of the Judicial Conference, joining the four African-Americans who serve as officers of Supreme Court Commissions.

There has been dramatic progress in the courts of Lake County. You may recall that during my address in 1989, I said, "We need a black trial judge in Lake County." It was simply intolerable that the largest minority group was not represented on the bench in the state's second largest county. Turning that situation around has been a long struggle, which is why I am especially happy to tell you that today, with the last appointment made by Governor O'Bannon, the bench

in Lake County approximates the demographics of that county's population and far exceeds the percentage of minority lawyers.

Of course, we need more minority lawyers, and our state has become know for the Indiana Conference for Legal Education Opportunity, CLEO. This year, there are CLEO students in all three classes of Indiana's law schools, and the first CLEO student has already graduated. Two of these students are about to become law clerks in the state's highest court.

This commitment by Indiana has attracted notice all around the country, including Georgia, where the first Georgia CLEO program began just last summer, prompted by the Indiana ideal. In fact, just yesterday a judge from New York City called my office and asked us to send him everything we have on the ICLEO Program. Rest assured, we are going to send him a briefcase full of information, happy to export a good Hoosier-bred idea.

The Court System Has to Remake Itself

The court structure in our state is largely the product of a hundred years of ad hoc decisions. When it comes to making the most out of time and taxpayer money, this system leaves a lot to be desired, but we are doing our best to make it work effectively. Let me list, in just two sentences each, some things we have done in the last year.

- We have asked judges, county by county, and by groups of counties, to examine disparities in workload and prepare plans to even out the disparities. These plans will be implemented this year so that citizens who find themselves in an overcrowded court have a better chance of getting their cases heard earlier rather than later.
- The Citizens Commission on the Future of Indiana Courts and the Judicial Administration Committee recently completed major studies of how we recruit, treat, and empower juries, recommending substantial reforms. Many of these reforms can be implemented by court rule, and others we will ask you to consider in the next General Assembly.

- With the help of some of our state's most able lawyers, the Supreme Court has issued a sweeping revision of the rules for taking appeals, for the first time in thirty years. These will take effect next January so that lawyers, court reporters, and county clerks have time to implement to the changes.
- We broadcast a session of the Supreme Court over the Internet, only the second supreme court in the United States ever to do so. I believe that this can become a remarkable tool for the continuing legal education of lawyers and for elementary, high school and college students.
- We experimented with providing state-level assistance to a trial judge who confronted a major media-event trial, the one involving Orville Lynn Majors, by assigning senior judges, researchers from the Judicial Center, and the counsel to the Chief Justice to help in making state justice work as well as it can work.

Indiana Needs to be a Place of Good Thinking

Finally, we aspire as a judiciary to hold our own against the growing weight of our caseload, to concentrate on the plight of individuals and to come to grips with the most difficult legal issues of our time. There were hopeful signs suggesting we already do that. For example, a recent decision authored by Judge Jim Kirsch tackled one of our society's most difficult problems – care for people afflicted with Alzheimer's. His opinion on the relationship between patient and caregiver, and Judge Ezra Friedlander's dissent, so thoughtfully analyzed the problem that The Wall Street Journal reported it on page one.

Justice Theodore Boehm's opinion for the Supreme Court about the way insurance companies provide lawyers for people who have been in accidents put Indiana on page one of The National Law Journal. Likewise, other state courts have been citing Indiana in resolving their own cases. Last year, sixty-eight state appellate courts cited and followed decisions of the Indiana Supreme Court and Indiana Court of Appeals and the Indiana Tax Court as authority for their own decisions.

Struggle as we do with the press of volume, Indiana judges will not lose sight of the need for clear thinking and good writing, so that people in other parts of the nation will be led to ask, "I wonder what Indiana has done about this?"

Conclusion

Why does that matter? Standing alone, the fact that others look to us matters not a whit. It makes a difference only as a sign that we are not simply engaged in running the same old machinery. It is some sign that Indiana judges are contributing towards making our state an even better place to live, and prosper, and raise children, and, yes, making a more just society.