

State of the Judiciary

Chief Justice Randall T. Shepard

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"Doing More with Less"

As you begin the difficult task of producing a program for our state in the midst of recession, I come today to report on the good health of the Indiana judiciary and to make you a promise. We will do everything we can in the next biennium to run more efficient courts, and nobody will come closer to doing more with less than Indiana's judges.

Part of my report about last year is people. You know how strongly I believe in recruiting and retaining the very best to serve as judges for the people of Indiana. We begin this year with four fine new appellate judges, and I want you to meet them. Three new judges of the fifth district Court of Appeals: widely regarded as one of Indiana's finest trial lawyers, respected by both plaintiffs and defendants alike, John Sharpnack of Columbus; one of the first women judges in Indiana and a nationally recognized contributor to judicial education, Betty Barteau of Indianapolis; a highly capable practitioner whose appointment by Governor Bayh establishes once and for all that the judiciary intends to call on the talents of all people, Robert L. Rucker of East Chicago. Finally, my new colleague: one of this city's best law firms chose him as its managing partner; his arrival on our Court is a matter of great satisfaction. Meet Jon D. Krahulik.

I am also pleased to tell you that after a decade of very high turnover and the loss of experience that turnover represents, a good many excellent trial judges returned for a third term after last November's elections. We now have 32 women serving as judges in Indiana; five years ago there were eighteen. Five years ago we had only four black judges. Today we have nine, including two from Lake County. I promise you we will do even better.

While I intend to talk mostly about the trial courts today, I must mention the remarkable feat by the Indiana Court of Appeals in contending with an exploding caseload. The twelve judges who served last year completed 1685 cases, 30% more than in any previous year.

In an era when money is tight, though, it is the trial judges who lead the way in dealing with increased caseloads without straining the public treasury. There are only two ways to do that: work harder and work smarter.

Consolidating Operations

One way to work smarter and save money is to consolidate local court operations. The Superior Court judges here in Indianapolis, for example, recently created a domestic relations division to focus on dissolutions of marriage, child support and custody issues. They believe that both family law cases and other civil litigation will move more quickly and more professionally with this reorganization. Similarly, the four courts in Marion, Indiana, have recently consolidated probation, community corrections, juvenile and other treatment programs. There can be little doubt that this consolidated effort will be more efficient than separate programs. Finally, just two weeks ago, Monroe County implemented your legislation creating Indiana's first completely unified trial court. Where there were once many courts competing for cases, programs, and budgets, there is now a single team at work in the new six-judge Monroe Circuit Court.

Making the Most of Court Time

Indiana's judges are also reorganizing to make the maximum use of a precious commodity-- court time. In the Lake Circuit Court, for example, litigants must now meet to discuss

settlement before the court will allocate time for a hearing. Along these same lines, the Marion Superior Court has been experimenting with mandatory mediation in divorce and custody cases to see whether early mediation may reduce the number of times people come back to court after a divorce is granted.

Many judges are adopting time standards to move cases. In Lafayette, for example, Judge Gregory Donat has created a system designed to move drunk driving cases. There was a time when these cases moved so slowly that 20% of them were ultimately dismissed because of speedy trial rules. Under the new system, the cases move so swiftly that dismissals are unheard of.

The Cost of Incarceration

Judges are also looking for ways to reduce the cost of keeping people in jails and prisons. A number of trial judges developed electronic home monitoring, for example, to keep track of people placed on home detention in lieu of jail. Now that you have adopted a statute on home detention, scores of counties are using it, and a great deal of money is being saved by placing low-risk prisoners in detention rather than in jail or prison.

Similarly, Judge Wendell Mayer here in Indianapolis has been diverting short-term prisoners who would otherwise be sentenced to weekends in jail to a private facility, the cost of which is paid by the defendants themselves and not by the public.

On another front in the criminal law, many judges, like the four judges in Richmond, now require people who received legal assistance at public expense to repay the cost of that assistance in installments or work it out through community service. Judges also find sanctions which both match the crime and cost the public nothing. Judge Jeffrey Heffelfinger

of Huntington, for instance, requires shoplifters to donate the clothes off their back to the Salvation Army to give them a taste of what it is like to have someone take something that belongs to you.

Paper, Postage and Paperclips

We are also determined to save money on simple things like paper and postage. Some of these savings are very small. Judge Kevin Wallace of Auburn, a new judge two years into his first term, recently wrote me a letter and I notice he is still using the letterhead of his predecessor. The judges of Fort Wayne have created a mail system which transmits notices to lawyers through courthouse mailboxes instead of mailing them. This is a system commonly used in rural counties; when you use it in a county of 300,000 people, it saves a lot of postage.

We have also been searching for ways to reduce statewide the amount of paper which Indiana's courts create, copy, and keep. The Indiana judiciary generates ten million documents a year. Some of these documents are so important that they must be kept forever. Other papers serve short-term purposes and ought to be recycled immediately. Still other documents should never be filed at all. Because there was no rule about what needs to be saved, people tended to keep every piece of paper that came across the counter. Now, for the first time in Indiana history, there is a single set of rules specifying what documents to keep and how to keep them.

The results have been spectacular. More than 1150 four-drawer file cabinets of documents have been removed from local courthouses under this campaign. The savings in copying, personnel, postage, storage space and courthouse expansions over the next few years will be enormous. We're also eliminating those large leather record books you may have seen. They used to cost \$300 each. The old docket sheets cost 40 cents apiece; the new ones cost 5 cents.

These savings have been made possible largely by the skill and vision of Bruce Kotzan, state court administrator, and John Newman, director of our records section.

Keeping People Out of Court

Finally, judges have redoubled their efforts at preventing problems from ending up in litigation. The logical place to start is with youth.

In Bedford, Judge Richard McIntyre operates an inexpensive and highly successful early intervention program for youth who have not yet committed a serious offense. The courts in Angola have taken the lead in creating a local alternative school for troubled children. In Indianapolis, Judge James Payne has started hearing juvenile cases in the schools themselves, to help with discipline and attendance problems. In LaPorte, Judge Robert Gettinger subjects some young offenders to the judgment of juries consisting of other teenagers (who, by the way, turn out to be rather tough). And we are finally making progress on what to do with juveniles who require detention. We have been spending too much money placing juveniles in out-of-state facilities or transporting them around Indiana looking for an open bed. Judges in Kokomo, New Castle, Franklin, Bloomington, and Boonville are working on facilities closer to home and cheaper for the taxpayers. The Department of Correction has helped tremendously on these projects, and the Build Indiana Fund committee has recommended that the legislature use some of those funds for capital costs. Swift completion of these facilities will help save Indiana's youth and help save Indiana's taxpayers.

In short, when the going gets tough, the tough get going. Indiana's judges will do our part in delivering more service without asking for a dollar more than is absolutely necessary. Many of the judges whose efforts I have mentioned are with us in the chamber and I hope you will join me in recognizing the work they have done for Indiana.

Children and the Courts

As I have just suggested, courts play a major role in the problems of children. The only tools we have are the statutes and whatever services courts can find to assist children in need. Both of these require more attention, but the laws themselves badly need re-examination and reorganization. In the decade since the adoption of the present juvenile code, there have been scores of amendments. These amendments have mostly been beneficial individually but not all of them have been consistent with each other or with the existing law. Juvenile judges and practitioners find it increasingly difficult to administer the juvenile code as a coherent whole. Accordingly, the juvenile judges have taken the lead in formulating legislation for a commission to study the existing juvenile code and recommend a new and stronger version. I ask that you give favorable consideration to creating a juvenile code study commission.

The Way Judges Are Paid

It is also time to do something about the way in which trial judges are paid. Part of the Indiana Code sets out a salary for judges, paid by the state and the counties, but other parts of the Code direct that trial judges be paid separately for particular services. If a case is venued from another county, for instance, the Code says the judge should be paid ten dollars for each day working on that case. If the judge is serving as a special judge in another county, you appropriate twenty-five dollars for each day the judge works there. Finally, most county councils pay more than the Code requires, but supplements vary greatly from county to county and even within counties.

The actual salaries of trial judges, therefore, vary by thousands of dollars for reasons often unrelated to the level of caseload or the cost of living. This system leads some citizens to suspect, almost always wrongly, that cases move quickly or slowly depending on whether they generate a higher salary for the judge. It is too much like the old system which paid justices of the peace more if they levied higher fines. It also generates ill will inside the judiciary itself, because judges know that some who work more get paid less and vice versa.

Judges also worry that the intricacies of this system pose a danger; one judge was indicted last year over ten dollars for a venue case.

This is not the way Indiana judges want to serve the public. This system has to die, and I ask you to kill it. The proposal to do that is embodied in a bill, and it is simple: take the compensation which the State and the counties now pay through these bizarre and complex formulas, order that it be paid equally to each trial judge, and put the total up front in the Indiana Code where everybody can see it. Doing that would place Indiana's judiciary on a more equitable, more ethical footing, and it does not by itself cost the State or the counties any new money for salaries. As for whether there is any new money for salaries, I ask only that you do for judges what you do for the rest of Indiana's employees. If, as the Governor's budget indicates, the diagnosis is that there is little or no money for pay increases for State employees during the next biennium, then the medicine must be taken by all. If instead when winter turns to spring and you make final decisions about the State's budget, you find yourselves able to do something for the State's employees and their families, I ask that you treat the three hundred who serve the State as judges the same way you treat the other 37,000 State employees.

Whatever the outcome, Indiana's judges will find ways to meet the challenges of 1991. There is no way to dispense 5% less justice. Indeed, we know that the people of Indiana will ask us to do justice in more cases than ever before, more than 1.5 million new cases. I promise you that somehow we will do substantial justice under the law for all of them--just as promptly as our stamina, our intellect, and our humanity will permit.

More Examples of Trial Court Innovation

1. Judge Palmer of the Gibson Circuit Court encourages use of FAX machines to transmit drafts of legal documents between lawyers and the court.

2. Judge Morton of the Fulton Circuit Court reports that judges in his area have begun acting as hearing officers for one another during settlement conferences on cases that are to be tried to the bench.
3. Persons convicted of drunk driving in DeKalb Superior Court are required by Judge Wallace to read two letters, one from an incarcerated drunk driver, the second from the widow of a young man killed by a drunk driver, that illustrate the tragic consequences of this crime.
4. Judge Cordingley's Marion Municipal Court courtroom serves as a classroom for thousands of third graders studying city government as part of a program entitled "Indianapolis Through the Eyes of a Third Grader."
5. Judge Boles notes that the Hendricks Circuit Court permits high school students to watch and comment on juvenile proceedings as a means of integrating classroom studies with the real world.
6. The Jackson County Juvenile Home, fathered by Judge Brown of the Jackson Circuit Court, is an innovative, inexpensive and effective alternative to traditional detention at Boys or Girls School.
7. Judge Brubaker reports that by emphasizing frequent contact with the child's 'school and home, the Howard Circuit Court's juvenile intensive probation program has a high success rate which saved a million dollars last year in placement costs.
8. Juveniles at high risk for alcohol and drug abuse have been referred by Judge Todd of the Jefferson Circuit Court to an eight-week seminar run by his court's probation office.
9. Judge Carroll of the Madison Superior Court is working with a national panel of judges to educate the nation's judiciary on the demographics of victimization and how judges can play a large role in assisting victims of crime.
10. Judge Colvin's new record management system at the Marshall Superior Court is a model for handling traffic violations and serves as a means of identifying traffic safety issues.
11. Judge Curry reports that the Clerk of the Bartholomew Superior Court has made it possible for citizens, the police, and the media to access the court's public record computer

database 24 hours a day, reducing the time spent by court staff answering simple questions about pending cases.

12. Judge Buls notes that Porter Superior Court's antabuse program, in conjunction with A.A. therapy, has been successful in helping defendants with serious drinking problems stay sober and out of jail pending trial.

13. Judge Kirtley of the Montgomery County Court has taken to the airwaves with a monthly radio program discussing issues like small claims court, landlord/tenant disputes, and alcohol awareness programs.

14. The Judges of the Lake Superior Court have initiated aggressive use of FAX machines to save time and travel.