

State of the Judiciary: "In Search of Excellence"  
Chief Justice Randall T. Shepard, Indiana Supreme Court  
Message to the Legislature  
January 17, 1990

One hundred seventy-five years ago, your predecessors in the territorial assembly petitioned Congress for statehood, and began the long effort to build a society in what had been wilderness. I come today to report on the state of that society's judiciary. I want principally to talk about the quality of what Indiana's courts are trying to do, but I have to start by telling you about the record-breaking year my colleagues and I had.

The highlights of that record-breaking year were these:

- The Court of Appeals completed more cases than in any year in its history.
- The Supreme Court completed more cases than in any year in its history.
- The Supreme Court decided more cases than it received for the fourth year in a row.
- The average time people waited for a decision from the Supreme Court was reduced by 30%.
- The criminal appeals backlog in the Supreme Court was cut by 40%.
- Judge George Hoffman completed his 2000th opinion; and Justice Richard Givan authored more opinions than anyone in the history of the Court, breaking my record, and writing more cases himself than all seven members of the Supreme Court of New Jersey.

And now we close the books on 1989 and start thinking about how to do better.

### **The Promise of Proposition Two**

Many of you will recall that in 1985 both houses of the legislature adopted bills adding judges to the Supreme Court to deal with the criminal caseload. Justice Givan suggested that you reduce the mandatory criminal jurisdiction of the Supreme Court and add judges to the Court of Appeals instead. You ultimately sent to the voters a constitutional amendment, Proposition Two, to give the Supreme Court time for the civil issues that bring most people to court--employment problems, divorces, child custody and support, accidents--for which there was little time before. The promise of Proposition Two has been kept. The Court decided 42 civil transfer cases last year, another record, and more than twice the number we had been deciding.

This record-breaking pace of civil cases featured many issues important to the people of our State. One leading case resolved the applicability of the statute of repose to hundreds of pending asbestos claims. *Covalt v. Carey-Canada*. Two others were the first to apply the comparative fault act you adopted in 1985. *Cornell Harbison Excavating v. May*; *Boles v. Tatum*.

It was an important year for the environment. The Supreme Court upheld the constitutionality of the procedures the legislature created to protect the archaeological history of Indiana, *DNR v.*

Indiana Coal Council, and affirmed the enforcement of the measures you provided to protect fishing in Lake Michigan. *State ex rel. Ralston v. Lake Superior Court*.

We construed for the first time the Open Door Law, deciding that a sheriff's disciplinary hearing must be open to the public and that the deliberation of the merit board need not be. *Berry I and II*. We also affirmed the rule that a person may not be fired from a public job solely due to exercising free speech. *Department of Highways v. Dixon*.

The Court of Appeals issued a landmark decision on the rights of a child born as the result of the rape of a retarded patient. *Crowe v. Forum Group*. It also concluded a case of national significance on the First Amendment, reporters, and grand juries. *Heltzel v. State*. Finally, the Supreme Court decided more cases involving families and children than ever before, giving better guidance on divorce settlements, custody decisions, child support, and juvenile law.

We also initiated the broadest set of rule reforms in two decades, including an entirely new set of rules to speed up death penalty cases. We set in motion an initiative on judicial ethics, including a new committee of the Judicial Conference, which should report late this year on proposals to improve the Code of Judicial Conduct.

We also authorized the Indiana Public Defender to represent juvenile status offenders placed in adult jails contrary to statute. The broad effort of which the Public Defender has been a part has in six months reduced dramatically the number of juveniles being placed in adult jails in violation of Indiana law.

### **A Reputation for Excellence**

Beyond the significance of the cases being litigated in Indiana courts, I want to report that there is reason to believe that Indiana judges are building a reputation of excellence and leadership for our state. The leading educational institution for American judges, the National Judicial College, has made Indiana trial judges a substantial part of its faculty. Judges Lorenzo Arredondo and Jim Richards of Lake County, Judges Sally Gray and William Vaughn of Putnam County, and Judge Betty Barteau of Indianapolis are leading faculty members at the College. Indeed, Judge Barteau chairs the College's faculty council.

And George Glass, director of the Indiana Judicial Center, was recently asked to teach other judicial educators about Indiana's system of continuing legal education for judges.

Judge Linda Chezem is a confidant and adviser to William Bennett, the nation's drug czar, and one need only open the National Drug Strategy to see that Judge Chezem is one of its crafters. Judge Stanley Miller was recently asked by the U.S. Department of Justice to lecture nationally about the problems AIDS presents in our courts. Judge William Garrard became the first Indiana judge accepted for post-graduate work at the University of Virginia. Judge Sue Shields has been asked to assist the American Bar Association in accrediting law schools. Judge Richard McIntyre has been designated to lead a model project, one of five in the nation, to design coordinated services for juveniles. Judge Gerald Zore is about to be elected to a leadership position in the National Conference of State Trial Judges. Justice Roger DeBruler was quoted this year in an opinion by the Supreme Court of the United States.

I mention these signs of excellence to emphasize that Indiana needs judges who both move the caseload and preside with compassion and intellect. We need judges who attend to the simplest eviction in small claims court and also contribute to the advancement of the law in this country. There are many good examples of both in 1989.

### **Five Leading Initiatives**

We set in motion or completed this year five major initiatives at your direction. First, we established the Office of Guardian Ad Litem/Court Appointed Special Advocates and began providing financial and technical assistance for local programs to help children in need of services.

Second, the Judicial Conference finished your assignment to issue guidelines for the operation of probation departments and rules for the training and compensation of probation officers. The probation system is the leading alternative to incarceration for first and non-violent offenders. It handles seven times as many criminals each year as the Department of Correction houses, and probation is under siege for many of the same reasons that plague the Department of Correction. Inattention to salaries and working conditions has caused turnover that requires us to replace and re-train nearly a fifth of all probation officers each year. I ask for your consideration of Senate Bill 49, sponsored by Senator Pease, which would provide counties with some assistance for the probation system.

Third, we finally connected Indiana to the national network on probation. Thanks to legislation carried by Representative Dennis Avery, Indiana may now send and supervise probationers across state lines. Until last year, 49 states were singing from the same hymnal and only Indiana was not.

Fourth, the Supreme Court issued state-wide Child Support Guidelines. As you know, Congress required every state to adopt guidelines by statute or court rule. The Supreme Court thought this was arguably either legislative or judicial and informed legislators interested in the subject that we would certainly defer to a statute but would issue a rule to assure that Indiana complied with federal law if no statute was forthcoming. The relevant committees of the legislature eventually decided they preferred a court rule, and we issued one in September. The conscious objective of the new guidelines is that Indiana's child support payments should be neither the highest nor the lowest, but rather close to the national average.

Fifth, Governor Bayh and I each completed our appointments to the new Indiana Public Defender Commission and it will hold its first meeting this month. I expect that the Commission will soon assist us in distributing the funds you provided to help counties pay the tremendous costs of death penalty cases and that this time next year I will be able to report the adoption of standards to assure adequate legal representation in such cases.

### **Equal Opportunity**

I also want to tell you about progress in making more room for women and minorities in the judiciary. The Supreme Court is doing a better job using its appointment powers to assure wider participation. We are increasingly using talented black and Hispanic lawyers as special judges and Supreme Court hearing officers. We appointed a second woman to the Disciplinary

Commission for the first time in its history. The initiatives on which I have just reported gave us the chance to add some talented women and minority professionals to the Supreme Court's permanent staff.

Governor Bayh's appointments to the bench in 1989 brought both the number of women judges and the number of black judges to an all-time high. You should know that the general caliber of the people Governor Bayh has appointed is excellent. They will be an important part of his legacy as Governor.

### **Crisis in the Court of Appeals**

While it is my job to convey to you the good things that have happened during the year, it is also my duty today to sound a serious alarm.

Chief Judge Ratliff reported last week that while the judges of the Court of Appeals were completing cases at a record rate, the Court fell behind for the first time in a decade. It is now clear that the time people will have to wait for a decision will get longer with each passing month.

I believe there are three reasons for this explosion. First, prolonged economic expansion has generated regular increases in litigation. Second, the war on drugs produces more arrests, more prisoners, and more appeals. Every time there is a major drug bust, you can count the number of people under arrest and make a pretty good guess about how many appeals have just been created. Third, the decision in 1985 not to add justices to the Supreme Court but rather to amend the Constitution and expand the Court of Appeals is unfinished business that must now be completed.

Although I describe this deluge using numbers, these cases are not mere numbers. They are personal matters, important to individual people. People like the Muncie man whose probation was revoked and who sat in jail until the Court of Appeals decided that his probation should not have been revoked.

People like a 3-year-old named Ashley in Indianapolis-who waited six months while her divorced parents appealed the issue of whether she would live with her father in Indianapolis or her mother in Germany. People like the Classroom Teachers Association in Highland, who could not complete collective bargaining with the school board until an appeal resolved a dispute about the scope of the issues which could be bargained.

Because people like these and thousands of others will soon begin to ask all of us why it all takes so long, I urge you to add three judges to the Court of Appeals by passing House Bill 1070, sponsored by Representatives Villalpando, Cochran, Donaldson and Musselman. I recognize there are forces at work that make such legislation difficult. They include finding about \$670,000 in a difficult year. They include getting over the natural reluctance some might feel about giving a governor from the other party new judicial appointments.

These are hurdles we have to overcome. I want to thank the House Ways and Means Committee for doing just that last evening. Thank you to Chairman Bauer and Kiely for giving this bill a hearing, and thank you-to all the members of the Committee for passing this bill out with a

unanimous vote. Please pass this bill, not for Evan Bayh or for me or for the Court of Appeals. Pass it for the people you represent, like the ones I have described for whom justice delayed can be justice denied.

When I came before you this time last year, many had just cause to wonder about the state of the judiciary. I promised you then that we would make it through 1989 in a productive and professional way. A year later, I think we have proven that Indiana's courts were open for business, that the state's judges worked tirelessly and thoughtfully, and that the people could enter Indiana's courtrooms with confidence in the search for "Equal Justice Under Law."