

State of the Judiciary: "Indiana Courts as Servants of Their Communities"
Chief Justice Randall T. Shepard, Indiana Supreme Court
Message to the Legislature
January 14, 1998

Most of us describe the judiciary in pretty much the same way. Courts don't make policy or deliver services. They decide how laws and policies made by others should be applied in particular cases. Judges listen to facts, read law, and issue decisions.

So it is with the classic image of the judge. Judges sit in the courtrooms, hearing disputes that people bring in the door. And because we expect judges to be neutral and impartial, they do all this with a certain air of authority and detachment. It is part of the craft.

That's the positive version of the traditional view. On the other hand, impartiality and detachment can all too easily be seen as isolation or arrogance. A rigid focus on "applying the law" can readily become narrowness of vision. The law, after all, is a set of rules we establish because we think they will help us work together and live better, common ground rules that will lead to a more decent and prosperous society. The cases that come before us as judges are hardly "cases" in the abstract. They all represent people involved in some sort of trouble or dispute. The decisions we make frequently alter people's very lives, or touch their nearest and dearest interests.

The best judges understand this broader implication of their work. And I think Indiana judges have come to understand it especially well. That traditional description of judges' work does not tell the full story of what Indiana judges were about in 1997. They were fully engaged in building bridges to the community in ways obvious even to casual visitors.

In early December, we staged a two-day session for judges on crimes involving sexual violence. One of our guest speakers was Lynn Hecht Schafran of New York, a national figure whose name is virtually synonymous with the effort to approach the legal problems faced by women with greater care. Shortly thereafter, Ms. Schafran encountered my colleague Justice Frank Sullivan at a meeting and posed a question. "Whenever I do a seminar," she said, "I close by asking judges to tell me what ideas they might have for projects in the community that could combat sexual violence. Usually I am met with blank looks. When I asked that question in Indiana, virtually every judge in the room had several ideas about what to do in the community. Why is that?"

I think I know why that is. I would say that it is because Indiana's judges believe that their work goes beyond hearing evidence and signing orders, that their public duty does not stop at the end of the bench. Indiana judges demonstrated that commitment last year on at least three fronts.

Communication and Education

For one thing, Indiana judges are determined to make courts more accessible and more understandable to the people they serve. This is a mission of communication and education.

On the communication front, Indiana's courts have seized the opportunities of modern technology. Our appellate courts were the first in the country to authorize putting opinions on the Internet four years ago, and late in 1997 we joined the legislature and the executive branch on

Access Indiana. Local courts are now doing the same. If you want to know more about the juvenile court of St. Joseph County, for example, you dial up users.michiana.org/probate, compliments of Magistrate Harold Brueseke. Or if you'd like to print out the guidelines on child support, you can punch up Judge Burnham's new website in Morgan County at www.scican.net.

Judges have also become much more active in educating people by walking out of the courthouse to explain the legal system in person. Last September, the Judicial Center placed in the hands of every judge a video called "Faces of Justice," created under the leadership of Judge Nancy Vaidik of Michigan City. It tells in eleven minutes in the judges own voices the story of how courts function and how judges work, for use with school groups, civic clubs, public television, and so on.

Judges sometimes create their own classes. Judge John Price of Indianapolis ran a pilot project last fall called the Mini Law School, with other judges, lawyers, and school administrators. On a succession of Thursday nights, a thousand people in northern Marion County and southern Hamilton County came to learn about everyday topics like divorce law, automobile insurance statutes, and the laws on cigarettes, alcohol and drugs.

In Clay County last year, Judge Ernest Yelton engaged some 750 fifth and sixth graders in mock trials of a student accused of battering another on a school playground. In Whitley County, hundreds of eighth graders witnessed the actual plea and sentencing of drug or alcohol defendants, in an award-winning education program organized by Judge Michael Rush. In Howard County, Judge Stephen Jessup has been inviting individual students to sit right next to the judge as he manages a jury trial.

Civic education makes people better citizens and helps them work their way through the complexities of modern life. Indiana judges are determined to do their part in helping people be better citizens. And I pledge to help them do just that.

At the Courthouse

Of course, one place where courts interact with the people they serve is the courthouse itself.

The courthouse can be an intimidating and unfriendly place, especially for children, and judges are working to do something about that. In Marion County, for example, the courts and the Indianapolis Bar Foundation have just about completed a children's waiting room. This will be a safe and friendly place for the many young children who for some reason must come to court with parents or guardians.

Thousands of people come to courthouses each year to do public service as jurors. What they do and how they are treated is very important and it is far too easy to overlook the imposition that jury service represents. Many jurors, like single parents, have to pay for child care to serve on a jury. Some have to pay for parking, and a few have to buy their own lunch. The legislature took an important step in the right direction last year when you raised the compensation for jurors to forty dollars for each day of service.

Americans revere the role of juries, and we ought to respect the jurors themselves. To do that, we will launch this year an initiative on the more effective use of juries. It will be spearheaded by

the Citizens Commission on the Future of Indiana's Courts, chaired by Sara Davies of Evansville, and by judges who serve on our Judicial Administration Committee.

We plan to ask all sorts of questions we haven't asked for a long time, if ever. How do we recruit jurors? Who serves and who is exempt? How do we treat jurors once they get to court? What sort of tools do we give them to do their job? What sorts of guidance do we give them? Should they be allowed to question witnesses? How many times should somebody have to serve? What do you do next when a jury appears deadlocked?

Jurors are the community come together in the court room to do justice for all us. They give their valuable time, and often their own money, to do so. We need fresh thinking about their work because they deserve the support of all of us.

Providing Service

Indiana judges have also come to shoulder greater responsibility for creating new ways to prevent crime or other dysfunction. This is easiest to see in the field of criminal justice. There was a time when a judge imposing sentence had two choices: jail and probation. Jail meant jail or prison, and probation meant keep your nose clean and report back each month.

Today, sentencing means something very different. If you have been found guilty of some offense related to substance abuse, for example, the judge will send you to the court's drug and alcohol officers to do an assessment and make recommendations about mandatory treatment. The legislature made possible a great leap forward in this field last year when it transferred the certification and training of local court drug and alcohol programs to the Indiana Judicial Center. In just a few months, we have established standards for local programs and announced a scholarship fund for local court staff who need training in the latest techniques of dealing with addiction. It is the first time in years that the state government has provided this sort of help to people out working in the trenches.

I want you to know I think you made a good investment.

Courts have also created far more innovative ways of requiring restitution through community service. In Evansville, for example, carpenters who owed community service time worked it off by building housing for low-income people through Habitat for Humanity. To pay for the materials, Judge Richard Young organized a drive that prompted a financial contribution by every single member of the Evansville Bar Association.

In Kosciusko County, the local community service program has been rescuing lost cemeteries. Last year, twenty juvenile offenders spent four Saturdays recovering a hopelessly overgrown graveyard near North Manchester, which the township trustee and the descendants will now maintain. They needed a way to haul off the debris, and Judge Jim Jarrette persuaded the county highway garage to lend one of its trucks. Judges are good at that sort of thing.

There are hosts of places around Indiana where the local judge saw something that needed doing and got everybody organized to do it. A few months ago, I traveled to South Bend to help cut the ribbon on the new juvenile center near downtown. The County Commissioners, the Council, the

Mayor, and a good many others were there to celebrate their collective effort, but it was in fact Judge Peter Nemeth who organized it all.

And so it has been in lots of places. The Jackson County Juvenile Group Home exists because Judge Robert Brown and others kept working at it until the job was done. The same could be said in places as different as Valparaiso, Vincennes, Franklin, and New Castle.

Many times you can do great things without a new building.

In Jasper County, for example, an exploding population has brought the problems of gangs to a rural county – worse yet, rival gangs. This led Judges Phil McGraw and Robert Monfort and others to create an annual retreat bringing together two kinds of kids from rival high schools: students who are winners (like scholars and athletes) and students who are not (problem kids who are on the verge of dropping out). These forty-five kids spend two days together talking about things like the benefits of education and dangers of drugs.

Judge McGraw chose not to be a discussion leader, instead taking charge of the cooling. “I felt the young people needed to know that no matter what your position is in society that you can do menial tasks to serve other,” he said. Judge Montfort is in charge of the dishwashing crew. No hint of detachment or arrogance in that picture. These judges created something out of nothing, and last year this was recognized as one of the Governor’s Outstanding Youth Projects.

Judges are also concerned about the problem of families. Not content simply to preside over divorces, they work to combat the problems divorce creates. Many of you know that there are scores of counties where people getting divorced have to attend classes on how to be effective divorced parents. In Marion County by now some 33,000 people have taken the Children Coping with Divorce course, largely a creation of the local judges and social services agencies.

Some judges are working to prevent divorce in the first place. In Lebanon, Judge Steve David is about to launch a Fathering Program, for dads who are willing but ill-equipped. Judge Steven Spindler has assembled several dozen judges and clergymen in Noble County to work on the idea of obliging people who want to get married to undertake a pre-marriage education program. Our minister made Amy and me do that when we asked him to marry us, and so far it has worked out pretty well for us.

It’s an Attitude

I’ve had time to mention just a few of the examples of judges getting down off their perches to improve the way their courts interact with the communities they serve. They do this not because of any statute or financial arrangement but really because of a state of mind. Judge Mark Loyd of Franklin summed it up best. In a recent letter about the efforts in Johnson County at coordinating services for troubled children, he wrote: “Collaboration has become second nature to those of us who deal with at risk children in Johnson County. The resulting accomplishments have exceeded our loftiest expectations. The barriers that previously existed have been replaced by a philosophy of mutual purpose.”

Judge Loyd might well have been writing about a great many Indiana judges. Yes, they adjudicate cases, thousands of cases, last year a million and a half cases, and they tend first and

foremost to resolving those disputes with all the seriousness of purpose they can summon. But they do more than that – they make things happen.

I have mentioned mostly work done by trial judges today, but you should know that the state's appellate judges are very much engaged in these projects – from Judge Rucker's teaching in the mini-law school to Judge Barteau's work organizing several dozen of her colleagues into an Adopt-A-Judge program for middle schools.

And the five members of the Supreme Court are each and all building bridges between courts and the community. It may be Justice Selby traveling to Crane in Southern Indiana to talk with young women about their careers. Or Justice Dickson driving mile after mile to lecture about the Indiana Constitution. Or Justice Boehm continuing as a judge the work he began as a lawyer in making Indianapolis the amateur sports capital of America. Or Justice Sullivan working all over our state on projects that help families and children.

As the board of directors for the judicial branch, we are frequently at work stitching together financial resources, revising rules to facilitate various projects, and acting as enablers for our fellow judges.

A New Constitutional Amendment

Our ability to be effective bridge builders and effective adjudicators is very much threatened by a development I want to mention in describing the Supreme Court's one legislative proposal for 1998.

When I first spoke to you as Chief in 1988, I thanked you for approving almost unanimously a constitutional amendment that went on the ballot as Proposition Two. It changed a provision in the Indiana Constitution that previously permitted all criminal defendants who got ten-year sentences to bypass the Court of Appeals and go straight to the Supreme Court. Increased crime rates and higher sentences had grown the number of such cases to the point where these mandatory appeals were crowding out cases brought by everybody else--parents with custody problems, business owners with disputes, injured people with a claim for damages.

The voters approved Proposition Two at the 1988 election, so that only criminals with more than fifty-year sentences were entitled to bypass the Court of Appeals. That change worked wonders for access to the Supreme Court, and in recent years, fully half of our docket has been opened to law-abiding citizens with everyday legal problems.

Well, it worked wonders until recently. In 1994, the legislature twice amended the sentence for murder, once raising it to fifty years and once reducing it back to the traditional forty years. These blind double amendments, as you might imagine, created more than a little litigation. During the 1995 session, you resolved this conflict and set the standard penalty for murder at fifty-five years.

The result of that change has been to more than double the number of mandatory appeals in the Supreme Court. Last year the Supreme Court had its most productive year since 1991, issuing 30% more opinions than the year before, including moving a record number of death penalty cases. And when we were done, we were farther behind than we were on January 1st. This

development has once again made it very difficult for parents or business people or injured Hoosiers (or for that matter appellants in criminal cases who got two-year sentences or forty-two-year sentences) to get a hearing on the merits in the Supreme Court.

So, we propose to do what we should have probably proposed a decade ago, taking the fifty-year rule out of the constitution altogether. This would allow criminal appeals to flow through the appellate courts in the same way civil cases do. Approval of House Joint Resolution 1, sponsored by Representatives Villalpando, Steele, Keeler, and Sturtz, would start this proposal on its way to the voters for the election of November 2000.

Let me be clear. This proposal is not about reducing the rights of criminal defendants. If it were, we would not enjoy the support of the criminal defense section of the bar association. It is also not about reducing the workload of the Supreme Court. It is, as Proposition Two was, the key to having a Supreme Court that can lead the Indiana judiciary both in caselaw and in service.

And I want to end on a special note about connecting with the community that does involve our Court. This time last year, I asked you for money to start the first state program for minority and other disadvantaged law students anywhere in the country, the Indiana Conference on Legal Education Opportunity (CLEO). You passed that legislation by huge margins. Governor O'Bannon supported it and he signed the act promptly, so that we could get about recruiting the first class of CLEO students for a summer head-start institute.

Twenty-nine of the first thirty CLEO students successfully completed the program and enrolled in law school just a few months ago. As one of them said to me in a letter, "This is a working-class dream, Justice Shepard, and I make no apologies for that." Well, it's a dream about upward mobility and public service shared by many people in this country, and I want you to know that letters have come in from all over America saying "bully for Indiana."

You don't always get to see first-hand the results of the good work you do, and so I have invited that first class of CLEO students here this afternoon so that they could say thanks to you and you can congratulate them on finishing their very first semester.

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

More Examples of Trial Court Bridge-Building

1. Judge Pierson of the Sullivan Circuit Court encourages students to improve their grades. He runs a "Saturday School" for youths who have been found "delinquent" by his court. Students receive help with their studies and the Judge monitors their success.
2. Judge Loyd of the Johnson County Circuit Court is the judiciary's representative in the county's ACT steering council. The council's goal is to coordinate the actions of county agencies to better provide family services to those who need them.
3. The Boone County Circuit and Juvenile Courts are involved in a host of community efforts including; monthly open meetings where juvenile issues are discussed, a "Parent University" day to assist parents in their decision making, and initiative focusing on preventing the sexual abuse of children.

4. Judge Holt of Greene Superior Court reports that two informative brochures prepared by his court have been well-received by the community: one explains protective orders and the other discusses the legal risks inherent in driving while intoxicated.
5. Judge Detamore of Boone Superior Court II writes that his court's award-winning Alcohol and Drug Program continues to improve, offering free treatment to those who can't afford them.
6. In LaPorte, Judge Baldoni of Superior Court III supports P.E.A.C.E., a group whose purpose is to promote community cooperation and development in regard to mental health issues.
7. Newton Superior Court Judge Daniel Molter puts on a "Law Day" at local high schools. Court is convened in a school's library. Students watch the proceedings and sometimes participate by performing errands for the Judge.
8. Judge Dywan of the Lake Superior Court conducts a mock trial for grammar school students and provides them with a tour of the courthouse. Each child also receives a Citizenship Award.
9. In the LaPorte Circuit Court, Judge Gilmore writes that court members are actively involved in several juvenile programs, some of which the court itself has created. The Judge is working on creating several new, community-oriented programs for 1998.
10. The Noble County Courts system continues to put on its annual Noble County Cares Conference, bringing national experts to Noble County for one-day seminars to benefit the local legal community.
11. In the Steuben Circuit Court, Judge Wheat runs several programs including a Teen Court where non-violent offenders are sentenced by their peers according to guidelines set by the Judge. Also, divorcing parents in Steuben County attend the Court's "Parenting is Forever" program, designed to help divorcing parents and their children.
12. In the Lake County Superior Court, Senior Judge Bonaventura has established several programs meant to benefit community children, including an at-home alternative to Boys or Girls School for troubled teens.
13. Judge Cook runs a mock trial for fifth and sixth graders who visit the Marshall Circuit Court. Students participate as witnesses, counsel, and defendants.
14. The Vanderburgh Circuit Court, under the direction of Judge Young, coordinated a community "Kindness for Kids" Christmas project which gathered between 15,000 and 20,000 new toys for less fortunate children.