

State of the Judiciary: "A Judiciary With A Plan For Its Future"
Chief Justice Randall T. Shepard, Indiana Supreme Court
Message to the Legislature
January 13, 1999

There was a time when the best that could be said of Indiana's highly fragmented court system was that the people in it worked hard and honestly.

The challenges of the present era, however, require that we also work smarter. Indiana's judges approach their assignment of rendering justice with a muscular attitude about how we might act collectively to do a better job. The work Indiana judges do collectively becomes weightier with every passing year.

I want to tell you today about our ambitious plans for our own future.

Building a State-Wide Court System

First, there are many things the judiciary can do for itself to build a better system of justice.

The project that will do the most for individual citizens is the implementation of our new tool to assess the relative workload of each Indiana judge. We call it the "weighted caseload system" because it takes into account the caseload of each court, weighted by the differing amounts of time different types of cases require.

The disparities in the workload from one court to the next do much more than affect judges. They affect citizens who need a hearing on a child support order or a domestic violence problem and have to wait too long because they happen to find themselves in an overcrowded court.

The unevenness of the workload is something both the legislature and the courts need to address. Your committees, for example, have begun using the weighted caseload system as a way to decide which requests for new judges should be approved. We in the court system intend to use this tool to rearrange our local caseloads so that people will have more equal access to justice. This rearrangement of local assignments will affect every court in every county in every judicial district, and it will be carried out by local judges, as really it only could be. That method is central to our basic strategy for improving local courts: decisions made at the local level, not by the Supreme Court, decisions made by local judges acting cooperatively.

Our project for data processing is more daunting. Thirteen years ago we launched an effort to manage the mass of paper that is a part of Indiana's court system. We have now spent two years designing an Automated Information Management System (we call it AIMS) that will eventually require that information in every county court be stored in the same way so that all court computers can talk to each other and to entities in Indianapolis like the Bureau of Motor Vehicles, and so that members of the public will have easy access to information about the status of pending cases, including their own. Creating this kind of public access may take five or ten years, but we are determined to begin.

We are also looking at ways to improve the venerable jury system. With the help of a substantial grant, the Citizens Commission on the Future of Indiana Courts will this year conduct surveys and hold public hearings to make sure the jury system can meet the needs of the next century.

We also realize we must continue to find ways to justify the public's trust in us. Led by Court of Appeals Judge Jim Kirsch, a broad-based working group is taking part in a nationwide effort to raise trust and confidence in the judiciary. Judge Kirsch will lead Indiana's team to Washington this spring for a national summit on this.

We are also determined to help people who are forced to come to court without adequate legal help. There are far too many citizens confronting legal problems who cannot afford a lawyer, and, fortunately, there is a strong impulse among practicing lawyers to contribute their time pro bono.

We intend to create committees in every judicial district to take better advantage of this willingness to contribute. The Supreme Court has recently appointed judges to lead the first two of these efforts, Judge William Davis in northwest Indiana and Judge David Dreyer in the district in and around Indianapolis. During 1999, we will extend this planning to every other region of the state using funds generated by our program of Interest on Lawyer Trust Accounts.

On the criminal law side, we are rapidly improving public defender services in local courts, using legislation you gave us for the Indiana Public Defender Commission in 1993. Thirteen Indiana counties now have state-approved public defender systems and another twenty-some are in the pipeline. This year, the Department of Justice has invited us to tell the story of Indiana's progress at a national conference. And Indiana's effort has been noticed even overseas, as a new British book says "few states can match Indiana's initiative" in the public defender services.

Did we do this because Indiana legislators and judges have an affection for burglars? No, we did it because Indiana has believed since 1854 that people facing a loss of liberty should not go to court without a lawyer simply because they are too poor.

Mistake me not. Indiana is a place that is tough on crime. But, it is also a place that believes some people deserve a second chance and that we ought to do the best job we can at sorting out one from the other.

Our Own Capacity

A court system willing to take on those kinds of challenges is fairly serious about building its own capacity to act.

For example, we need to be better equipped to deal with the pervasive problem of drug and alcohol abuse. We are now in the midst of implementing legislation you gave us in 1997. We have court-annexed drug and alcohol programs in some fifty counties, and our determination to make them more effective ought to help us fight this sort of crime.

In addition, I believe much progress has been made in recent years in improving the working relationship between juvenile court judges and the child welfare caseworkers and deputy prosecutors who bring child abuse, neglect and delinquency cases to court. Such cooperation is good for children -- and good for taxpayers.

The most costly part of juvenile justice is the cost of placing children in foster care or specialized institutions. Our Judicial Center will now issue regular and detailed information about all facilities in Indiana that have space available, including the rates. And as you consider in this

session changing the funding mechanism for the placements, you can count on us to do our part to hold costs down.

We are also determined to build our capacity to communicate. Within the last few months we have decided to take over our destiny with respect to the Internet, installing our own web server to be programmed for the work done by judges. We expect soon to use the Internet and e-mail for creating an electronic clearinghouse to allow judges to ask each other questions about problems they confront, and supply ideas and dialogue, post notices about meetings.

Shaping the Profession

We are also a judiciary determined to re-shape the future of the legal profession as a whole.

One of our objectives is to create more opportunity for minority and other disadvantaged students who aspire to join the profession. You've given us the best tool in the nation to do that, Indiana CLEO, the Conference for Legal Education Opportunity. The second class of CLEO is here in the balcony. Won't you welcome them?

We have also been asking new questions about what it should take to become an Indiana lawyer. Many of you will recall that about eight years ago we decided to add a separate test on ethics as a condition to obtaining a law license in our state. Now, we are about to redesign the bar examination itself.

We want Indiana's new lawyers to be people who know what the law is, but we also want them to be good problem solvers. To make it clear that we want lawyers who can effectively apply the techniques of lawyering to help answer people's particular problems, in 1999 we expect to add the National Performance Test to the battery of examinations one must master to receive an Indiana law license.

We will pursue that same objective by re-writing the rules on continuing legal education. During the twelve years since we adopted mandatory continuing education for lawyers and judges, brand new lawyers have been exempt from CLE for the first three years of their practice. Now, brand new lawyers will be sent to the sort of training that helps bridge gaps between what they learn in law school and what they need to know to help clients out in the real world.

Other Branches

Ours is a judiciary which has not been shy about asking the other branches for the tools we need to do justice.

In this year's session, for example, we hope the General Assembly will provide additional judges and magistrates in various places, in accordance with the recommendations of your Commission on Courts. It has been four years since you added to our workforce and we have thirty or forty thousand more cases in the meantime.

We are also ready to do something on family courts.

We suggest experiments with Family courts in three counties, and we ask in our budget for the money to make those experiments take wing. I am glad to say that the O'Bannon administration and the State Budget Committee have recommended the money to make this happen in 1999.

One more important thing that happened in 1998 was action on our proposal for a constitutional amendment to alter the jurisdiction of the Supreme Court. We are very grateful for your virtually unanimous adoption of this amendment in last year's session. As you know, this proposal needs to be passed by this General Assembly before it can be submitted to the voters.

We also ask that you approve the recommendation of your Commission on Courts for a modest pay adjustment for judges and prosecutors. Since the last such raise in 1997, the other 35,000 full-time employees have had two raises. My first choice would be to change the way we make decisions about pay. Regular adjustments will make our work on pay bills less difficult for all of us.

We also need to solve the problem of judicial and legislative space that has been brewing now for thirty years. A few members of today's legislature were here during the 1971 session when the General Assembly voted by lopsided margins to construct a judicial building so that the legislative branch could occupy the space we now use in the State House. Even more of you were here in 1984 when the legislature voted for such a plan a second time.

The problems that led to legislation in 1971 and 1984 have not disappeared. They have become worse.

These are hardly just problems for public officials. They are problems for citizens who come here to attend hearings and cannot get in the hearing room, or come to visit their representatives and find there is no place to meet. It is a problem for a fractured Court of Appeals with some judges here and some a block away. It is a problem for a Tax court that has no courtroom. It is a problem for a Supreme Court, most of whose staff is across the street.

Most of you know how much I love this building and how important I think it is that the three branches regularly interact here in the State House. Still, it seems obvious that the present arrangement is utterly inadequate and that the Grubb plan, involving facilities across Ohio Street for both the judicial and legislative branches is the best option for the future. I say that future should begin in 1999.

Conclusion

In short, we believe that this is a moment chock full of opportunities to build a better society. The Indiana judiciary has made the decision that we can build a better court system, and we will throw our energies at making it happen.