

State of the Judiciary: "Judges Building a Stronger Indiana"
Chief Justice Randall T. Shepard, Indiana Supreme Court
Message to the Legislature
January 15, 2003

Governor O'Bannon and Members of the General Assembly:

We assemble at a moment when everyone's attention is focused on the economy and its effects on our state budget. It is not as satisfying to be in government, or anywhere else, during times like these.

Challenging as the budgetary task is, I have found it encouraging that so many have recognized that the biennial budget is but part of a larger issue: how can Indiana organize itself so that we will not be so vulnerable to shifts in the national economy in the future. This requires both a special kind of ingenuity about what Indiana can achieve and the discipline to move us in that direction.

Dealing with this larger challenge is mainly a job for legislators and the Governor and other executive officers. But I want you to know that the judiciary will do its part to make Indiana stronger and smarter in the world of tomorrow than we are today.

The reforms in the judiciary about which I will report today will contribute to the same goals that are center stage for you: (1) how to sustain progress in education, (2) how to assist families threatened by the economic downturn, and (3) how to build a better workforce and a more diverse economy. Though we rarely express it in just this way, this is part of the judiciary's work, just as it is part of yours.

Contributing to Education

To survive in a changing environment, we need the best-educated citizens Indiana can have. And building better schools and colleges and sustaining them during lean years is close to the top of your agenda.

In the last year, we in the judiciary have been doing more than ever before to provide education in a field where we have a unique capacity to contribute: civic education.

Since I reported to you last, we have deployed one of the historic features of appellate courts—public hearings—as a tool for educating both students and adults. We are now broadcasting live over the Internet every hearing of the Supreme Court and selected hearings of the Court of Appeals and Tax Court. Our central goal is to make high school and college students better-educated citizens. We have broadcast 54 proceedings, created lesson plans for highlighted cases, and met with hundreds of government and social studies teachers to explain this new resource. Demand by schools and others is so strong that these hearings represent well over half of state government's most frequently demanded videos. We expect that in 2003 people will tap into this resource 60,000 times.

The lessons from these broadcasts are only incidentally lessons about appellate courts. They teach people about law and society: what should the law of search and seizures be during a war

on terrorism, does your insurance policy cover you when you drive a car you borrowed from a friend, who's responsible if you get sick from exposure to asbestos?

Our colleagues in the practicing bar have taken these same lessons live into Indiana classrooms. Last fall the Indiana State Bar Association sent 450 lawyers to more than 500 schools for presentations on the Bill of Rights.

We likewise are working to help educate the growing number of Hoosiers for whom English is not the first language. We provide a growing body of information about the legal system and a good many basic court documents in Spanish, through our Self-Service Legal Center. The Supreme Court has approved a proposal by our Commission on Race and Gender Fairness for a major initiative in providing translation, focusing first on people who speak Spanish. Indiana must not be a place where people get lost in the legal system just because they have not yet mastered English.

Supporting Families

We pay special heed to the strength of families during hard times because we believe that strong family units both make for better educated children and sustain a more effective workforce. Just as this will be part of your deliberations, supporting strong families is a central mission of the Indiana judiciary.

Last year we made major changes in our approach to family cases. The Superior Court in Lake County, for example, created a consolidated domestic relations division to deal more effectively with problems like custody, parenting time, and child support. To relieve the trauma children often experience in domestic litigation, the Lake Circuit Court created a children's room, a special haven in a difficult environment.

Our statewide family court initiative seeks to develop a coordinated approach to dysfunctional families who frequently bounce around from one courtroom to the next (in Porter County we found one group of 115 families who had generated 443 different cases). We are now providing direct support to reform projects in five new counties, and a good many more are using some of the techniques we are developing.

And as we closed the year, families in Lake County had the advantage of a state-of-the-art facility for juvenile court and social services and residential care, created through the leadership of Judge Mary Beth Bonaventura. And today a similar testimonial to the importance of families rises in Fort Wayne under the leadership of Judge Steven Sims and Allen County government.

From family courts, to new facilities, to reforms in procedure, building stronger families for Indiana's future is never very far from the hearts of Indiana judges.

Stronger Workforce, Stronger Economy

Strategic decisions about rebuilding Indiana's economy are rightly in the hands of legislators and executive leaders, but effective courts play an important supporting role.

Indeed, the very creation of the first civil courts some 600 years ago was driven by the desire to build commerce. If merchants in Rome wanted to trade with makers of goods in Nice, they

needed common rules about enforcing contracts and they needed reliable courts where they could seek relief if they did not get paid. The same is true today. They announced new jobs last week at Toyota, and that couldn't happen unless you could with confidence manufacture cars, ship them elsewhere, and know you would get paid by the buyers and that there would be recourse to effective courts if you did not.

Much of what we do by way of refashioning Indiana's judicial system helps improve the state's economic environment. Let me cite a few examples.

- Last week, a new set of rules took effect reforming Indiana's jury system in ways that will make our juries more representative, make it easier for jurors to serve, and reduce the economic costs associated with mistrials.
- The Supreme Court's decision to take more cases on civil law will provide greater certainty in fields like finance and insurance and contribute to economic development. Last year we decided more civil cases than in any year in the Court's history.
- The monumental effort led by Justice Sullivan to create a computerized statewide case management system will among other things help reduce the cost of litigation, because cases will move through the system more quickly and people will have easy access to information.
- Our emphasis on mediation as an alternative to litigation, including brand new rules supporting the role of mediators, makes it cheaper and faster and simpler for people who have a dispute to get it resolved.
- And judges in criminal courts are devising new techniques that will make for a better workforce. I spent an afternoon last week at a drug court graduation in Evansville, presided over by Judge Wayne Trockman. There were five graduates, all people who had pleaded guilty to non-violent class D felonies, people who had survived eighteen months of a rigorous discipline and whom the court and the prosecutor were satisfied had entered into serious recovery. Every one of them had an actual job, going to work and paying taxes (and not taking up a bed at the DOC).

Many of you could name states where some dysfunction in the court system has become a millstone around the state's economic future. We are determined that that will not happen in Indiana.

Our Leadership

Our contributions to education, stronger families, and a better economy are all led by a remarkable cadre of: judges, prosecutors, and lawyers. They are widely recognized in their own communities. Every year the Journal-Gazette recognizes a citizen of the year for outstanding leadership in the betterment of Fort Wayne. This year's citizens of the year were three judges: Judge Fran Gull for what she has done to reform jury practices, Judge John Surbeck for what he has done to integrate returning offenders, and Judge Steven Sims for leading the community to a new juvenile facility for the first time in fifty years.

I could tell you stories about others who have performed similar feats. And I want to close by saying something about what we owe them.

The General Assembly did the right thing twenty months ago when it adjusted the pay for judges and prosecutors (and legislators, and I want to say something about that before I'm done). Though that legislation did not become law, we cannot let that need you recognized then go ignored.

I could not make this argument to you without knowing that the version of the budget proposed by Governor O'Bannon and most other versions I've heard about contemplate that state employees should not go a third year without some pay raise. Judges and prosecutors have now gone six years without any change, and they are the only full-time employees in state government, or local government, or the private sector, who have gone that long.

Our request to you is contained in three bills sponsored by Senator Richard Bray and Representative Sheila Klinker.

One speaks to the state's standard practice on raises. As you know, in those years when our fiscal situation can permit it, the legislature appropriates funds in contemplation that state employees should have an adjustment—to account for the cost of living or increases in health insurance, for example. The Governor, later decides what can be afforded based on appropriations and reversions and he implements the changes by executive order, usually helping the most those who are paid the least.

We believe that judges and magistrates and prosecutors and chief deputies should be part of this age-old system that applies to the other 35,000 state employees. In those years when there is a general pay adjustment, whatever rule applies to the psychiatrists in the state hospitals or the executive branch department heads or maintenance workers in the highway department—whether that means 2% or 4% or 0%—should apply to judges and prosecutors as well.

It's the failure to make these small, periodic adjustments that necessitates our second request—a pay bill, drafted so that it has no General Fund impact. It looks bigger than it really is because mostly it amounts to catching up for six years of standing still.

And that brings me to our third proposal. The way Indiana makes decisions about compensating not just judges and prosecutors but legislators and executive officers is “broke and needs fixing.” The Speaker proposed just three sessions ago that we start on a new page, with a salary commission led by citizens. The one lesson we can take from recent experience is that the way we do it now doesn't work very well for anybody. We say it is time to try something different.

People say to me that doing anything about this in the present environment will be hard. I say that anything of consequence that happens around here in the next 120 days will be hard.

Our dysfunction in dealing with this problem depresses the spirits of those who have dedicated their lives to public service, and it constitutes an unnecessary point of friction in a government all of whose branches ought to be pulling together. For the families of judges and prosecutors, this is a matter of simple fairness. In short, action on this front is just the right thing to do.

Brighter Future Than We Fear

I said earlier that government isn't as satisfying in bad times, and that fact can be bad for the soul. I found myself driving to Evansville last week and thinking about how bleak the immediate future sometimes seems.

That particular Tuesday initially seemed like a lot of work on a cloudy day—four speeches in just five hours. Those four stops changed what I felt in my heart about Indiana's future.

First, I visited an inner city school started by a Baptist Church, a Catholic hospital, some Methodist laypeople, and some lawyers. The students are age three through fifth grade, overwhelmingly African-American. And they are doing remarkable things: teaching four-year-olds to read and write, and teaching second graders to speak Spanish. I spoke at an all-school assembly that began with a recitation of the school creed; it took five or six minutes for the 110 kids to recite it from memory. "I am responsible for my decisions. What I get out of school depends on me." What the creators of that school and those teachers were doing in those Sunday School rooms was simply breathtaking.

I then visited a small new high school downtown in a renovated hotel that I remember as a flophouse. It began as an enrichment school, where students came from all over the city to take subjects that were not always available in other schools, like international studies and advanced science and math. It's now a free-standing enterprise. I spent an hour engaging with some really top-notch juniors and seniors, and an old friend toured me through the arts facilities, where a ballet class practiced before the mirror and saw the skyline of downtown Evansville behind them.

Over the lunch hour, the Evansville legal community gathered in the city's largest courtroom to honor attorney Edwin Johnson in a moving memorial service that reminded us all of the highest aspirations of the legal profession.

And finally I went to speak at the drug court graduation ceremony I mentioned earlier. It was a packed courtroom: thirty or forty felony defendants still struggling through the rigor that drug court demands. But their families were also there; there were members of the county council and a county commissioner, the prosecuting attorney, the chief of police, a healthy collection of sheriff's deputies (including one who had originally arrested one of the day's successful graduates). And the people who'd made it, who'd earned dismissal of their charges, had climbed significant mountains. Drug court makes people report in person to a court officer every single day—there was one graduate who had worn out two sets of bicycle tires complying with this requirement. And the crowd was there to celebrate the fact that the graduates had transformed their lives from being a scourge on the community's landscape to being tax-paying employees in the private sector.

You couldn't go through those experiences over a period of just five hours without driving back to Indianapolis with a new sense of confidence about what the people of this state can do—with a conviction that in the end Indiana will do right by itself. And I promise you that judges will do their part to make it happen.