

State of the Judiciary: "Dealing With The Recession: A Court System That Won't Roll Over"
Chief Justice Randall T. Shepard, Indiana Supreme Court
Message to the Legislature
January 20, 2010

Governor Daniels and Members of the General Assembly:

Like many of you, I have lived through plenty of economic downturns, but none so serious as the one we are now experiencing, and none so challenging for those who serve in government. Just as the demands on our service peak, finances restrain our capacity to respond.

The pressures of this gloomy reality are felt inside the third branch, just as they are in the rest of government and in the private economy. The Great Recession has driven our new filings to record numbers. This may sound a little technical, but it's very human. It's a tangible marker of a society under stress: more businesses short on cash flow suing people who cannot pay their bills, more families dissolving in divorce, more abused and neglected children, more receiverships, more foreclosures. In short, if it's bad and you can put a name on it, it shows up in our courthouses.

Still, as I work with the men and women of the court system, people who spend their days with those citizens who are struggling the most, what strikes me is how many of them have found the ingenuity and the energy to lift up the legal system under these trying conditions. Even as our team of trial judges moves ahead planning for our future, in place after place, judges and lawyers and court staff have managed in the here and now to summon the energy, the focus, the tough-mindedness to ramp up the system even in the midst of crisis.

We are, for example, nearly overwhelmed by the explosion in mortgage foreclosures. It isn't just the raw numbers, but the complexity of modern financial instruments and the task of handling foreclosed property in a vastly depressed real estate market that strain the courts. When I reported to you last year at this time, I said that we had joined forces with the mortgage foreclosure task force led by Lieutenant Governor Skillman and that our first contribution to the general effort would be to train judges and lawyers in the law and the economics and the mechanics of modern foreclosure so that they could better assist people in need. I promised that afternoon that we would train the largest number of judges and lawyers and mediators anywhere in the country.

I didn't put the actual target number in my speech that day, but I knew what it was. The largest number we could find was 700 and that was in Maryland. With leadership from Judge Melissa May, and help from partners like the State Bar and ICLEF and local judges and pro bono committees and the law schools, we eventually staged training sessions in every corner of Indiana. By mid-October, when Attorney General Zoeller, Senator Tallian and I went down to Evansville for one of the last sessions, we had trained 1,112 people.

What difference does that make? I had a lesson in answering that while attending a gathering later on that same day in Hendricks County, doing what my colleagues often do, saying thank you to lawyers who have volunteered to help families in need. I sat at lunch next to a young lawyer named Traci Twait, who had volunteered to represent two families in foreclosure cases. I asked her what happened. "We haven't reached a settlement in either case, but they're still

talking and so far nobody's been thrown out." I said, "Let's call that a bit of progress." I saw her a few weeks later at a State Bar meeting, and she told me that they succeeded in rewriting the loan in one case and were still talking in the other. That's progress for sure.

Our next objective will be to energize the settlement sessions that your 2009 legislation requires before a foreclosure can be carried out. We will begin placing facilitators in several counties this winter using the temporary fee on mortgage foreclosure filings contained in that legislation, sponsored by Senator Karen Tallian, Representative Jeb Bardon, Representative Eric Koch, and Representative Gail Riecken.

A recession puts other kinds of pressure on families, and last year we had a surge in divorces. We are also encountering more children who are neglected or abused or otherwise at risk. Fortunately, even before the recession, you directed that every abused or neglected child should have an advocate, and we began to make that happen. The number of new volunteers trained as court-appointed special advocates in 2009 was up 26% over 2008, and 2008 was up 51% over 2007.

Speaking of protecting the vulnerable, the strains of recession generate more domestic violence. Last year this time, the Supreme Court's Judicial Technology and Automation Committee (JTAC) was energetically installing the electronic protective order registry so that law enforcement agencies would be notified immediately when an order of protection was in place. On this day last year, we had installed that registry in 72 counties. You decided that every county should implement this system, and today all 92 counties use this tool for protecting vulnerable women and children.

The work we do with law enforcement agencies has also improved through other uses of technology. The electronic citation system developed by JTAC, called eCWS, is now used by 5,000 law enforcement officers, including the State Police and 142 local agencies, and so far they've used the electronic hand-held devices to issue some 1.7 million citations. Among other things, this means that officers and drivers are safer because they spend less time at the side of busy highways and officers spend more time on patrol than they do hand-writing citations. It is doubtless one of the factors helping Indiana reduce highway fatalities to the lowest level since 1925.

The new twenty-first century case management system that links all this together, a private enterprise product called Odyssey, is likewise being deployed throughout the court system. Yesterday, we began using it in one of the courts in Madison County. It's now installed in some 50 courts in 18 counties, large and small alike. Two weeks ago the system went live in Huntington and Blackford Counties. In September, the clerk and courts in Hamilton County began using it, and we expect that Allen County will be on line during the third quarter of this year. We do this with care and deliberateness, which means at any given moment there are more counties asking for installation than our teams on the ground can reach.

The disposition of more serious violations of law is a crucial part of what the court system does, and the sentences judges impose make all the difference in reducing recidivism and saving the most expensive tool, prison beds, for those offenders who represent the greatest threat to society. If you don't get this right, you end up putting low-risk offenders in prison and sending higher risk offenders back out on the street.

Among the weaknesses in Indiana's criminal justice system has been that we mostly use very dated assessment tools to estimate the relative risk of individual offenders. Advances in sociology and criminology make it possible to assess the risk involved with criminal offenders with far more precision. After several years' work by probation officers and criminal court judges and the Indiana Judicial Center, last Friday the Board of the Indiana Judicial Conference adopted a new statewide tool for assessing juvenile offenders, one that can provide information about offenders as they move through the system and the Department of Correction. We did most of this without any general fund money, and in fact because we chose to use public software most counties will save the money they now spend on less effective assessment tools.

This is one of many initiatives we've pursued notwithstanding the recession. Another one is to assure that we have fair and representative juries, and JTAC and the Judicial Center have created a jury list that combines data from the Bureau of Motor Vehicles, the Department of Revenue and the Postal Service. It's the most accurate annual list of who's living in each county ever created. The national leaders in jury improvement came to Indiana last month to recognize this achievement, and the representative of the National Center for State Courts who came to present the award said simply, "Indiana sets the standard." This makes for a genuine jury of your peers, but it also means less time and postage wasted on sending jury notices to people who have died or moved away.

And to make sure juries do their business better once they're in the courtroom, we are about to complete a project called "Plain English" jury instructions. We explain law to jurors thousands of times each year, all too often in jargon that's nearly impenetrable. By this spring we'll issue an entire new set of instructions, legally accurate to be sure, but written with the help of English teachers so that jurors can more easily comprehend them.

And as for understanding law, you'll remember that we planned to use the 200th anniversary of the birth of Abraham Lincoln as the occasion for lawyers and judges to go to Indiana's classrooms to talk about Lincoln the lawyer and about the benefits of the rule of law and about our system of government. That initiative with the State Bar succeeded well beyond our expectations, so well it's already won three awards. Some 500 lawyers and judges gave talks about civics and citizenship to 33,000 students.

Another program designed to give promising students a boost reached a real milestone last year. The Indiana Conference on Legal Education Opportunity, which works to help minority and other disadvantaged college students become lawyers, has enjoyed great support in the legislature. In October, Governor Daniels appointed a member of the inaugural CLEO class, Rudolph Pyle III, as Judge of the Madison Circuit Court. He's the first CLEO graduate to become a judge in a court of record. The first CLEO judge in any court was Eduardo Fontanez, in the East Chicago City Court. Congratulations to both of them!

I want you to know that the judiciary will do its part to aid in the budget crisis. For example, we're going to stop doing something we've been doing since May 1817. For 193 years, we have been mailing the decisions in appeals to the lawyers. We will now send them by e-mail only, and we will save \$39,000 this year alone. Last week, we decided to postpone for this year regional meetings we've conducted with trial judges every spring for at least two generations. That should save about \$16,000. We have held open some senior staff positions at a savings of \$227,000 in State Court Administration. I know these numbers are modest by

comparison to the numbers Governor Daniels mentioned last night, but the whole court system is a very small part of the budget. Some of these changes stand well on their own, but others are things I wish we didn't have to do, but there are lots of people in government making changes they wish they didn't have to make. I want you to know we'll do our part to help manage our way through this distress.

I suggest three topics that might be the subject of legislation and collaboration between the branches.

First, we should be doing everything we can to collect all the revenue that the law says is due as the result of court operations. You'll remember that when you decided that the state should assume responsibility for child welfare and delinquency expenses, the Department of Child Services and the judiciary implemented that legislation in a way that maximizes reimbursement from the federal government. In other kinds of cases we leave money on the table that ought to go toward state and county budgets. Making sure we capture all this revenue is partly a matter of changing practices and partly a matter of legislative authorization, and I suggest we bear down on this in the coming weeks and months.

Second, the recession produced record filings in 2008 and 2009, right at the two million mark. Those filings represent parents who are trying to collect child support, or injured people suing for their injuries, or prosecutors pursuing criminal defendants. Record caseloads means that our ability to give people a hearing has become terribly squeezed. In normal times, we would ask for additional judges to meet this need, but that's not possible now and it likely won't be for a long time. One of our only tools is the cadre of Senior Judges who are willing to work part-time, and it would be helpful during these years if you would authorize us to use retired magistrates as well as retired judges to meet these growing caseloads.

Third, among the most effective strategies we have available are drug courts and re-entry courts, and the General Assembly has created statutory frameworks that help Indiana courts make these techniques work. One of the results of the fact that our nation has experienced eight years of war is that we find people in court with special disabilities and needs that flow from the pressure of their military service. I ask that the legislature give us a framework under which we can establish veterans' courts, and other problem-solving court programs as the need arises. The Commission on Courts has endorsed this idea, and it is contained in House Bill 1271, sponsored by Representatives Linda Lawson and Eric Koch. This bill has no fiscal note at all, and indeed the net of these three ideas is revenue positive.

Finally, I'd like to describe the extraordinary experience I had last month at Emmerich Manual High School, one that says something about Indiana's spirits. Some of you would know that Matt Tully of The Indianapolis Star has been writing stories over the last five months about life in an inner city school so challenged that it can no longer field a football team. This year's senior class started with 490 freshman, of whom about 155 will graduate.

These stories have generated an enormous response, and after he'd been inundated with emails from readers wanting to help, Tully wrote, "If you want to show you care about these kids, come to the choir and band Christmas performance next Tuesday at 6:30." The response was phenomenal. As my family turned the corner on Madison Avenue you could see headlights all

the way up the hill to the next stoplight, cars lined up hoping to get into a parking lot long before filled to capacity.

The two teachers who played key roles in making that miracle happen were centerstage, though obviously not alone. The band director is a man named Mike Weber, and we need all the male African-American role models that Indiana's high schools can get. The choir director Spencer Lloyd came to the inner city from a very small town in Randolph County. They've dedicated their careers to helping young men and women learn music, yes, but also to giving those students the self-confidence to face the world, to stay in school, and build better lives. That thousands of citizens came to cheer them on was simply thrilling.

I can tell you that there are plenty in our court system who, like those persistent and unshakable music teachers, even in this dark hour, are unwilling to roll over and play dead. They've decided to stand their ground, "to spend and be spent" in the cause of building and rebuilding a place worthy of the fine name Indiana.