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TRIBUTES

A TRIBUTE TO RANDALL T. SHEPARD JUSTICE, INDIANA SUPREME COURT, 1985-2012 CHIEF JUSTICE OF INDIANA, 1987-2012

CHIEF JUSTICE BRENT E. DICKSON*

“We want to be a court known widely for the clarity of its thinking, the common sense and humanity of its decisions, and the excellence of its writing. We want to be a court so well regarded that judges in other states, when considering the toughest legal issues of our time, will be led to look at each other and ask: ‘I wonder what Indiana has done about this?’”¹ With remarks including these words, Randall Shepard accepted the responsibilities of Chief Justice of Indiana in 1987. After more than twenty years in the position, he reflected, “Just as the adjudicating judge long ago ceased being the passive non-manager of litigation, today’s judge must take interest and responsibility for building better systems of justice.”² He has similarly noted the growing role of state supreme courts in “remaking the American court system,” and urged that “the judiciary must do what lies within us to help our fellow citizens in fostering a decent, safe, and prosperous society, by building a system of justice that befits a great nation.”³ These themes have been the hallmarks of Randall Shepard’s tenure on the court and his historic string of five consecutive five-year terms as Chief Justice.⁴

In his judicial opinions, the Chief Justice’s contributions to Indiana jurisprudence have been significant, particularly in areas of state constitutional law,⁵ local government law,⁶ shareholder rights,⁷ choice of law,⁸ criminal law and

* Chief Justice, Indiana Supreme Court. B.A., 1964, Purdue University; J.D., 1968, Indiana University Robert H. McKinney School of Law. Justice Dickson and Chief Justice Shepard have served together on the Indiana Supreme Court for over twenty-six years.

1. Randall T. Shepard, Remarks on Assuming the Office of Chief Justice at the Old Vanderburgh County Courthouse (Mar. 4, 1987) (on file with author).

2. Randall T. Shepard, *The Changing Nature of Judicial Leadership*, 42 IND. L. REV. 767, 772 (2009) [hereinafter Shepard, *Changing Nature*].

3. Randall T. Shepard, *The New Role of State Supreme Courts as Engines of Court Reform*, 81 N.Y.U. L. REV. 1535, 1536, 1552 (2006) [hereinafter Shepard, *The New Role of State Supreme Courts*].

4. Shepard is the longest-serving Chief Justice of Indiana, far exceeding the thirteen years served by Chief Justice Richard M. Givan from 1974 to 1987, the next longest-serving Chief Justice. As to his total length of service as a member of the supreme court, only Isaac N. Blackford (36 years) and Roger O. DeBruler (28 years) have served longer.

5. See, e.g., *Branham v. Varble*, 952 N.E.2d 744 (Ind. 2011); Alpha Psi Chapter of Pi Kappa

procedure,⁹ commercial law,¹⁰ family law,¹¹ and torts.¹² His majority opinion in *Price v. State*¹³ found particular favor with Indiana University law professor Patrick Baude, who compared it approvingly with *Marbury v. Madison*.¹⁴ During his enormously productive twenty-six plus years on the court, Shepard has written 917 majority opinions which have been cited more than 729 times by appellate courts of other states.

Chief Justice Shepard has also been a prolific author of articles published in bar journals and historical periodicals, plus fifty articles published in various law reviews throughout the nation.¹⁵ One of these, his 1996 publication on campaign

Phi Fraternity, Inc. v. Auditor of Monroe Cnty., 849 N.E.2d 1131 (Ind. 2006); *Malinski v. State*, 794 N.E.2d 1071 (Ind. 2003); *Songer v. Civitas Bank*, 771 N.E.2d 61 (Ind. 2002); *State v. Moss-Dwyer*, 686 N.E.2d 109 (Ind. 1997); *Bayh v. Ind. State Bldg. & Constr. Trades Council*, 674 N.E.2d 176 (Ind. 1996); *Citizens Nat'l Bank of Evansville v. Foster*, 668 N.E.2d 1236 (Ind. 1996); *Ind. Gaming Comm'n v. Moseley*, 643 N.E.2d 296 (Ind. 1994); *Conner v. State*, 626 N.E.2d 803 (Ind. 1993); *In re Zumbrun*, 626 N.E.2d 452 (Ind. 1993); *Price v. State*, 622 N.E.2d 954 (Ind. 1993); *Campbell v. Criterion Grp.*, 605 N.E.2d 150 (Ind. 1992); *Bayh v. Sonnenburg*, 573 N.E.2d 398 (Ind. 1991).

6. *See, e.g.*, *Town of Avon v. W. Cent. Conservancy Dist.*, 957 N.E.2d 598 (Ind. 2011); *Cooper Indus., LLC v. City of South Bend*, 899 N.E.2d 1274 (Ind. 2009); *City of Carmel v. Certain Sw. Clay Twp. Annexation Territory Landowners*, 868 N.E.2d 793 (Ind. 2007); *Tippecanoe Cnty. v. Ind. Mfr.'s Ass'n*, 784 N.E.2d 463 (Ind. 2003); *Dep't of Local Gov't Fin. v. Griffin*, 784 N.E.2d 448 (Ind. 2003); *Farley Neighborhood Ass'n v. Town of Speedway*, 765 N.E.2d 1226 (Ind. 2002); *City of Fort Wayne v. Certain Sw. Annexation Area Landowners*, 764 N.E.2d 221 (Ind. 2002); *Bradley v. City of New Castle*, 764 N.E.2d 212 (Ind. 2002); *Tax Certificate Invs., Inc. v. Smethers*, 714 N.E.2d 131 (Ind. 1999); *Rogers v. City of Elkhart*, 688 N.E.2d 1238 (Ind. 1997); *Noblesville Redev. Comm'n v. Noblesville Assocs. Ltd. P'ship*, 674 N.E.2d 558 (Ind. 1996); *City of Hobart v. Chidester*, 596 N.E.2d 1374 (Ind. 1992); *Town of Beverly Shores v. Bagnall*, 590 N.E.2d 1059 (Ind. 1992); *Natural Res. Comm'n v. Porter Cnty. Drainage Bd.*, 576 N.E.2d 587 (Ind. 1991); *Schloss v. City of Indianapolis*, 553 N.E.2d 1204 (Ind. 1990); *City of Crown Point v. Lake Cnty.*, 510 N.E.2d 684 (Ind. 1987); *City of Crown Point v. Knesek*, 499 N.E.2d 261 (Ind. 1986).

7. *See, e.g.*, *In re ITT Derivative Litig.*, 932 N.E.2d 664 (Ind. 2010); *In re Guidant S'holders Derivative Litig.*, 841 N.E.2d 571 (Ind. 2006).

8. *See, e.g.*, *Hubbard Mfg. Co. v. Greeson*, 515 N.E.2d 1071 (Ind. 1987).

9. *See, e.g.*, *Lannan v. State*, 600 N.E.2d 1334 (Ind. 1992); *Cooper v. State*, 540 N.E.2d 1216 (Ind. 1989); *White v. State*, 497 N.E.2d 893 (Ind. 1986).

10. *See, e.g.*, *Insul-Mark Midwest, Inc. v. Modern Materials, Inc.*, 612 N.E.2d 550 (Ind. 1993).

11. *See, e.g.*, *Voigt v. Voigt*, 670 N.E.2d 1271 (Ind. 1996); *Straub v. B.M.T. ex rel Todd*, 645 N.E.2d 597 (Ind. 1994); *In re Lawrance*, 579 N.E.2d 32 (Ind. 1991).

12. *See, e.g.*, *Doe v. Methodist Hosp.*, 690 N.E.2d 681 (Ind. 1997); *Burrell v. Meads*, 569 N.E.2d 637 (Ind. 1991); *Peavler v. Bd. of Comm'rs*, 528 N.E.2d 40 (Ind. 1988).

13. 622 N.E.2d 954, 956 (Ind. 1993).

14. 5 U.S. (1 Cranch) 137 (1803); Patrick Baude, *Has the Indiana Constitution Found Its Epic?*, 69 IND. L.J. 849 (1994).

15. Randall T. Shepard, *Changing the Constitutional Jurisdiction of the Indiana Supreme*

Court: Letting a Court of Last Resort Act Like One, 63 IND. L.J. 669 (1988); Randall T. Shepard, *Land Use Regulation in the Rehnquist Court: The Fifth Amendment and Judicial Intervention*, 38 CATH. U. L. REV. 847 (1989); Randall T. Shepard, *Second Wind for the Indiana Bill of Rights*, 22 IND. L. REV. 575 (1989); Randall T. Shepard, *Indiana Law, the Supreme Court, and a New Decade*, 24 IND. L. REV. 499 (1991); Randall T. Shepard, *A Bill of Rights for the Whole Nation*, 26 VAL. U. L. REV. 27 (1991); Randall T. Shepard, *Indiana Law and the Idea of Progress*, 25 IND. L. REV. 943 (1992); Randall T. Shepard, *Classrooms, Clinics, and Client Counseling*, 18 OHIO N.U. L. REV. 751 (1992); Randall T. Shepard, *Lawyer-Bashing and the Challenge of a Sensible Response*, 27 IND. L. REV. 699 (1994); Randall T. Shepard, *On Lawyers and Writing: Pass the Constitutional Mustard, Please*, 28 IND. L. REV. 811 (1995); Randall T. Shepard, *Campaign Speech: Restraint and Liberty in Judicial Ethics*, 9 GEO. J. LEGAL ETHICS 1059 (1996) [hereinafter Shepard, *Campaign Speech*]; Randall T. Shepard, *Why Law Review Survey Issues Are a Good Idea*, 29 IND. L. REV. 765 (1996); Randall T. Shepard, *The Maturing Nature of State Constitution Jurisprudence*, 30 VAL. U. L. REV. 421 (1996); Randall T. Shepard, *The Importance of Legal History for Modern Lawyering*, 30 IND. L. REV. 1 (1997); Randall T. Shepard, *Reflections on a Decade at the Indiana Supreme Court, 1987-1997*, 30 IND. L. REV. 921 (1997); Randall T. Shepard, *State High Courts as Central Figures in the Future of the American Legal System*, 72 NOTRE DAME L. REV. 1009 (1997); Randall T. Shepard, *What Judges Can Do About Legal Professionalism*, 32 WAKE FOREST L. REV. 621 (1997); Randall T. Shepard, *The Renaissance in State Constitutional Law: There Are a Few Dangers, But What's the Alternative?*, 61 ALB. L. REV. 1529 (1998); Randall T. Shepard, *From Students to Lawyers: Joint Ventures in Legal Learning for the Academy, Bench, and Bar*, 31 IND. L. REV. 445 (1998); Randall T. Shepard, *Moving the Rock: The Constant Need to Re-Invent the Profession Using the Nation's Judiciary as Leaders*, 32 IND. L. REV. 591 (1999); Randall T. Shepard, *Why Changing the Supreme Court's Mandatory Jurisdiction Is Critical to Lawyers and Clients*, 33 IND. L. REV. 1101 (2000); Randall T. Shepard, *What the Profession Expects of Law Schools*, 34 IND. L. REV. 7 (2000); Randall T. Shepard, *Judicial Professionalism and the Relations Between Judges and Lawyers*, 14 NOTRE DAME J.L. ETHICS & PUB. POL'Y 223 (2000); Randall T. Shepard, *Building Indiana's Legal Profession*, 34 IND. L. REV. 529 (2001); Randall T. Shepard, *Judicial Independence and the Problem of Elections: "We Have Met the Enemy and He Is Us,"* 20 QUINNIPIAC L. REV. 753 (2001); Randall T. Shepard, *Telephone Justice, Pandering, and Judges Who Speak Out of School*, 29 FORDHAM URB. L.J. 811 (2002); Randall T. Shepard, *Takings Law: Do We Really Want More Judicial Intervention in State Land Use Regulation?*, 1 GEO. J.L. & PUB. POL'Y 99 (2002); Randall T. Shepard, *The Special Professional Challenges of Appellate Judging*, 35 IND. L. REV. 381 (2002); Randall T. Shepard, *Making Good Law Requires More Lawyers*, 35 IND. L. REV. 1111 (2002); Randall T. Shepard, *The Personal and Professional Meaning of Lawyer Satisfaction*, 37 VAL. U. L. REV. 161 (2003); Randall T. Shepard, *Norman Lefstein—Splendid Dean, Legitimate Hoosier*, 36 IND. L. REV. 1 (2003); Randall T. Shepard, *Why the Courts Matter in Building a Strong Economy*, 36 IND. L. REV. 913 (2003); Randall T. Shepard, *Plu Ça Change: Indiana Judges and Salaries*, 37 IND. L. REV. 885 (2004); Randall T. Shepard, *On Licensing Lawyers: Why Uniformity Is Good and Nationalization Is Bad*, 60 N.Y.U. ANN. SURV. AM. L. 453 (2004); Randall T. Shepard, *Is Making State Constitutional Law Through Certified Questions a Good Idea or a Bad Idea?*, 38 VAL. U. L. REV. 327 (2004); Randall T. Shepard, *What Can Dissents Teach Us?*, 68 ALB. L. REV. 337 (2005); Randall T. Shepard, *Jury Trials Aren't What They Used to Be*, 38 IND. L. REV. 859 (2005); Randall T. Shepard, *In a Federal Case, Is the State Constitution Something Important or Just Another Piece of Paper?*, 46 WM. & MARY L. REV. 1437 (2005);

speech and judicial ethics,¹⁶ was cited by both the concurring opinion of Justice Kennedy and the dissenting opinion of Justice Ginsburg in the United States Supreme Court's landmark decision on judicial campaign speech.¹⁷

Notwithstanding his extremely significant contributions to the law and jurisprudence of our state and nation, perhaps Randy Shepard's most lasting and noteworthy achievements have been in the institutional and programmatic changes resulting not only from his own passion and innovation, but particularly as a result of his own remarkable management style that motivates, encourages, empowers, and inspires others to assume responsibility and to achieve. Several current and former agency staff members aptly describe his remarkable management effectiveness as being characterized by "dignity without arrogance," "quick to listen, slow to talk," "makes people feel they're working with him, not for him," "the ability to make people feel special," and "inspires others to be more than they are." One person described it this way: "His is not a high energy, high charisma, whirlwind sort of leadership [but] the force of his quiet leadership has the power to move mountains, but so subtly that you often don't even realize it is happening." The result, of course, has been enormous creativity, productivity, satisfaction, and loyalty achieved in the staff and supervisors responsible for the court's numerous administrative functions.¹⁸

Randall T. Shepard, *Indiana's Constitution as a Document of Special Aspirations*, 69 ALB. L. REV. 529 (2006); Randall T. Shepard, *Indiana's Place in American Court Reform: Rarely First, Occasionally Last, Frequently Early*, 39 IND. L. REV. 723 (2006); Shepard, *The New Role of State Supreme Courts*, *supra* note 3; Randall T. Shepard, *The "L" in "CLE" Stands for "Legal,"* 40 VAL. U. L. REV. 311 (2006); Randall T. Shepard, *Introduction: The Hundred-Year Run of Roscoe Pound*, 82 IND. L.J. 1153 (2007); Randall T. Shepard, *Access to Justice for People Who Do Not Speak English*, 40 IND. L. REV. 643 (2007); Randall T. Shepard, *Defining Community in a Society Based on Rights*, 2 ALB. GOV'T L. REV. 354 (2009); Shepard, *Changing Nature*, *supra* note 2; Randall T. Shepard, *Robust Appellate Review of Sentences: Just How British is Indiana?*, 93 MARQ. L. REV. 671 (2009); Randall T. Shepard, *Judith Kaye as a Chief Among Chiefs*, 84 N.Y.U. L. REV. 671 (2009); Randall T. Shepard, *Four Big, Dumb Trends Affecting State Courts*, 43 IND. L. REV. 533 (2010); Randall T. Shepard, *The Judiciary's Role in Economic Prosperity*, 44 IND. L. REV. 987 (2011); Randall T. Shepard, *State Constitutional Remedies and Judicial Exit Strategies*, 45 NEW ENG. L. REV. 879 (2011); Randall T. Shepard, *Elements of Modern Court Reform*, 45 IND. L. REV. (forthcoming Aug. 2012).

16. Shepard, *Campaign Speech*, *supra* note 15.

17. *Republican Party of Minn. v. White*, 536 U.S. 765, 793 (Kennedy, J., concurring), 816-17 (Ginsburg, J., dissenting) (2002).

18. Although vastly incomplete, the following are a representative sampling of some of the many advances and accomplishments during Chief Justice Shepard's twenty-five years of leadership: creation of Indiana's Interest on Lawyer Trust Accounts (IOLTA) program to benefit the administration of Indiana's pro-bono legal services initiative; promulgation of child support and parenting time guidelines; dramatic improvement in the adequacy and reliability of criminal defense representation for indigent persons; development of a system for assessing and improving workload equality among Indiana's trial judges; creation, development, and substantial deployment of an advanced electronic case management system for Indiana trial courts; establishment of the

On a more personal note, a crucial component of Randy Shepard's leadership is seen in the way he has treated others, especially his judicial colleagues during both our public proceedings and the justices' decision conferences—where he has effectively influenced others not by demand, insistence, or attempt to exercise authority, but rather by openness, institutional awareness, quiet strength of conviction, and a heart for Hoosier institutions and citizens. During his twenty-five years of presiding at oral arguments and leading our weekly court conferences, the Chief Justice has been a model of courtesy, respect, collegiality, consideration, and decency. Always kind and welcoming to lawyers presenting their cases, the Chief Justice has often been lenient in enforcing oral argument time limits. In the court conferences that follow, the Chief moved through the agenda with gentle efficiency but invariably allowed each justice to fully express his or her views. When expressing his own, it has not been unusual for the Chief Justice to introduce them by saying, "You have stated a perfectly respectable point of view, but it's just not one with which I agree."¹⁹ His comments at conference often reflected his own common sense wisdom about the judicial function and its limits: "We can't do something about everything,"²⁰ "Let's not

Indiana Conference on Legal Education Opportunity (Indiana CLEO) to assist disadvantaged students to pursue and succeed in law school; adoption of court rules promoting Indiana's use of alternative dispute resolution techniques; providing Spanish language training for court and clerk personnel throughout Indiana; adoption of a foreign language interpreter certification program; providing access-to-justice assistance for non-English-speaking persons and also those desiring to use the legal system without lawyers; enhancement of Indiana's jury procedures including the comprehensive revision of civil trial jury instructions to replace "legalese" with ordinary, everyday English; restoration of the supreme court's historic courtroom, conference room, and clerk's offices; allowing television coverage of appellate case presentations, including the now routine webcasting of all supreme court oral arguments; development and implementation of a fourth generation offender risk assessment system utilizing evidence-based tools for more effective treatment of offenders and resulting reduced recidivism and prison cost; adoption of the bar admission requirement of graduation from an ABA-accredited law school; addition of the Multistate Bar Exam and Performance Exam as components to Indiana's bar admission regimen; creation of the award-winning "Courts in the Classroom" program to assist civics education; creation of the annual "Law School for Journalists" program; adoption of rules to address the issues of public access and privacy of court records; development of a robust program of special grants for local court improvement projects, law school lecture series, and judicial education scholarships for individual judges; creation and operation of the Indiana Graduate Program for Judges; providing assistance to local judges in high-profile cases; initiating programs for family courts, drug courts, and a variety of other problem-solving courts; creation of a foreclosure assistance program; and development and implementation of numerous technology-based improvements in a variety of areas of judicial administration.

19. Reoccurring comment by Chief Justice Shepard as recalled by former Supreme Court Administrator Doug Cressler, now Chief Deputy Clerk for the United States Court of Appeals for the Tenth Circuit.

20. Comment by Chief Justice Shepard at the court's conference on September 1, 2011.

doctrine it up,”²¹ and “A little studied ambiguity here is probably the best the system will be able to achieve.”²²

Chief Justice Shepard has also been a powerful influence in encouraging and improving the quality of trial court judicial service and administration. From the personal touch of knowing and addressing each trial judge by name at the court’s annual series of district meetings, to his encouragement of trial judge participation in state-wide judicial improvement programs and judicial education, to his development of a series of grants for local court improvement projects, and much more, the Chief Justice’s keen interest in the work of trial court judges has been apparent and appreciated. With great respect for local trial judges, and, in characteristic Shepard leadership style, several trial court administration measures²³ were successfully implemented not by general state-wide uniform supreme court regulation but rather by assigning specific achievement goals to groups of courts in the same geographical area to develop methods to achieve the objectives in ways most suitable to local needs and bar culture.

In the discharge of his constitutional responsibilities to submit regular reports to the Indiana General Assembly,²⁴ Chief Justice Shepard has given a series of twenty-five remarkable annual “State of the Judiciary” addresses to joint sessions of the Indiana Senate and House of Representatives, usually also attended by the governor and lieutenant governor. Reflecting his oratorical skills, natural eloquence, and political acumen, his uplifting addresses not only have reported achievements of Indiana’s trial and appellate judiciary, usually replete with specific expressions of appreciation for legislative cooperation, but they also have advocated new advancements and envisioned a brighter future. These masterful addresses have been consistently well received by legislators of both parties, often drawing warm praise and support. He has also maintained a warm, cordial, and approachable relationship with legislators and all of Indiana’s governors and elected executive officers, regardless of political affiliation. To the applause of many, when Governor Mitch Daniels organized the Indiana Commission on Local Government Reform in 2007, he named Chief Justice Shepard and former Governor Joseph E. Kernan to co-chair the commission.

Significant tangible benefits to the judiciary have resulted from Shepard’s inter-governmental effectiveness. The Indiana Constitution was amended to modernize the jurisdiction of the supreme court, enabling it to serve primarily as a court of discretionary review and thereby address legal issues on a greater variety of matters affecting Indiana citizens.²⁵ Another transformational achievement was legislation revising the method of compensation of Indiana

21. Comment by Chief Justice Shepard at the court’s conference on November 8, 2007.

22. Comment by Chief Justice Shepard at the court’s conference on May 11, 2011.

23. Among these were programs to provide robust pro-bono representation, to improve equalization of case workloads among judges, and to eliminate the possibility of forum-shopping in the filing of criminal cases.

24. IND. CONST. art. 7, § 3.

25. See H.R.J. Res. 1, 110th Leg., 2d Reg. Sess. (Ind. 1998) (eliminating cases of life imprisonment and imprisonment greater than fifty years from the court’s mandatory jurisdiction).

judges to provide ongoing fair and equitable treatment, which resulted in a major restoration of judicial morale and productivity.²⁶

Any reflection on the contributions of Chief Justice Randall Shepard would be incomplete without recognizing his significant national influence and leadership. His efforts with the American Bar Association included service as Chair of the ABA Appellate Judges Conference, 1996-1997, and Chair of the ABA Council of the Section for Legal Education and Admissions to the Bar, 1998-1999. He served as President of the Conference of Chief Justices and Chairman of the National Center for State Courts, 2005-2006. In 2006, United States Chief Justice John Roberts appointed Shepard to the U.S. Judicial Conference Advisory Committee on Civil Rules. In addition, he has done considerable state and national teaching, including serving as an adjunct professor at Indiana University Robert H. McKinney School of law, Yale Law School, and the University of Evansville, and as a Lecturer at the Opperman Institute of Judicial Administration at New York University School of Law.

As a profound visionary with great passion for Indiana judicial excellence; an abiding concern and respect for the citizens whose lives may be affected by the judiciary; a thorough understanding and appreciation for the role and responsibilities of the judiciary as one of the three co-equal branches of government; a deeply embedded personal civility, decency, and integrity; an enormous intellect; and an uncanny gift for inspiring, encouraging, and motivating colleagues and staff to undertake and achieve substantial accomplishments, Chief Justice Randall Shepard has dramatically exceeded his goal of building Indiana's judiciary into "a system of justice that befits a great nation."²⁷ Under his leadership, the Indiana Supreme Court has become nationally recognized for the quality of its judicial opinions and an abundance of innovative advancements in judicial administration. His beloved state and nation are rightfully grateful for his twenty-five spectacular years as Chief Justice of Indiana and his over twenty-six years of service as a member of the Indiana Supreme Court.²⁸

26. IND. CODE § 33-38-5-8.1 (2011).

27. Shepard, *The New Role of State Supreme Courts*, *supra* note 3, at 1552.

28. For information regarding Randall Shepard's personal background, see Kevin W. Betz et al., *Randall T. Shepard*, in JUSTICES OF THE INDIANA SUPREME COURT 395, 396 (Linda C. Gugin & James E. St. Clair eds., 2010).