

## RANDALL T. SHEPARD A TRIBUTE

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I am pleased to contribute to this issue of the *Indiana Law Review* honoring retiring Chief Justice Randall T. Shepard who has served for twenty-five years as chief justice of the Indiana Supreme Court and as a member of that court for twenty-seven years. I have been privileged to have been associated with Chief Justice Shepard in many capacities for these past twenty-seven years.

Chief Justice Shepard is a unique individual in the firmament of the American legal profession. Many have spoken and written about his leadership in the advancement of American jurisprudence. He is a leader among the justices of America's highest courts. He is also a leader in American legal education. It is in this context I should like to reflect on his influence and contributions to American legal education.

In preparing this tribute I have reflected upon aspects of Chief Justice Shepard's personality and character and how they relate to legal education, which formed the basis of his professional career as a jurist. He has epitomized the axiom that a legal calling includes not only service to one's clients but to society as a whole.

### SHEPARD AND LAW SCHOOLS

In an article in the *Indiana Law Review* entitled "What the Profession Expects of Law Schools," Chief Justice Shepard stated:

The able organizers of this symposium printed my title in the program, and that is how I learned about it. I am glad they did so. Thinking through the title, "What the Legal Profession Expects of Law Schools," has been an interesting experience.

For one thing, the demands of law practice are such that most members of the profession do not actually expect anything at all from their law schools once they have graduated. Lawyers receive most of what they expect from their school during the three years they spend as students. By and large, they take their diploma and seldom give the matter another thought.

On the other hand, the organs and institutions of the profession, such as the bar associations and the courts, and those individual lawyers who pay close attention to legal education and admissions to the bar, actually do form and articulate discrete expectations with respect to the schools. These expectations, of course, are shifting and often conflicting.

In thinking about both the modest expectations of the great bulk of lawyers and the specific expectations of the organizations, I have come to rest on five enumerated demands. I list them here, in no particular order, and specifically disclaim any authority or presumption to speak for

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the profession.<sup>1</sup>

He listed the following expectations:

1. Honor my Degree
2. Train Good Lawyers
3. Provide Useful Scholarship
4. Contribute Toward Ethical Conduct; and
5. Honor the Practitioners<sup>2</sup>

In addressing the topic of “Honor my Degree” he stated:

[T]his chance to move modestly upwards in life along with one’s school plays some role in leading graduates to contribute to the success of the alma mater. The new building campaign, the new professorship, or the new lecture series, to name a few building blocks of thriving schools, are all things that likely enhance the value of the ticket which the graduate has received from the school.

This saga in which America’s lawyers find greater fulfillment through the world of higher education has run for more than a century. Lawyers and bar associations spent several decades attempting to transfer the training of lawyers from the Nineteenth Century system of reading the law to the present system of university education, believing in part that a trade that required a post-graduate degree in a seat of higher learning would always be thought a more noble or important one. This burnishing of the trade and its schools began ever so modestly, for when AALS established its first membership requirements in 1901, it elected to admit only schools that limited admission to high school graduates.

Our trade has come a long way since then, and lawyers expect we can go further yet. Thus, one of their expectations is that their schools will manage their own affairs so that people will say, “Ah!”, when we tell them where we went to law school.<sup>3</sup>

In his work with American law schools, particularly his year as chair of the ABA Section of Legal Education and Admissions to the Bar, he stressed these expectations of the Bench and Bar.

#### SHEPARD AND OPPORTUNITIES FOR ENTERING THE LEGAL PROFESSION

In 1997, with the support of the Indiana General Assembly and Governor O’Bannon, Indiana approved funding for an Indiana Conference for Legal Education Opportunity. Under Chief Justice Shepard’s leadership, Indiana was the first state to adopt a state CLEO program to assist minority, low income or

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1. Randall T. Shepard, *What the Profession Expects of Law Schools*, 34 IND. L. REV. 7, 7 (2000).

2. *Id.* at 7-13.

3. *Id.* at 8-9.

educationally disadvantaged college graduates to enter law school, graduate, and enter the legal profession.

In his 1997 Annual Report of the Judiciary to the General Assembly of Indiana, Chief Justice Shepard stated:

I want to talk with you about another area where I want Indiana to be first. All of you know that the demographics of America are changing, with more women in the workforce and more citizens from minority groups. The legal profession is changing, and the people in it are changing. I recently received a notice for the 25th reunion of my law school class. My class was unusual in that it contained about ten percent women and about five percent African-Americans. These were considered groundbreaking numbers. Today, of course, the number of women in law school has risen to [forty-three] percent.

The number of minority students in law schools has been growing, but it is still far too small and the number of minority lawyers serving people even in the urban areas of our state is pitifully small[,] [i]n Lake County, for [example].<sup>4</sup>

He has continued his support for this program by stating:

The legal profession benefits when we recruit minority applicants and help them succeed. Our job is to ensure all citizens have faith and confidence in our system—faith and confidence that they are truly equal in the eyes of the law. When there is diversity at all levels of the legal system, our entire system better serves society.<sup>5</sup>

In 1998 Chief Justice Shepard was awarded the 1998 Mark of Distinction Award from the National Association for Law Placement (NALP). This award recognizes people or organizations whose programs or practices “effectively and ethically meet the needs of participants in the process of legal employment.”<sup>6</sup>

In its citation NALP stated:

NALP decided to honor Chief Justice Randall T. Shepard of the Indiana State Supreme Court for his visionary leadership in the creation of the first state-sponsored Conference on Legal Education Opportunity (CLEO) Program for minority and disadvantaged students. This innovative residential program provides students with an intensive training and “preview” of legal education that is effective in preparing them for the rigorous challenges of law school. In addition, successful graduates of the program are provided with a significant financial award

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4. Randall T. Shepard, Chief Justice, Ind. Supreme Court, Annual State of the Judiciary Address to the Indiana General Assembly: Trying Something New (Jan. 30, 1997).

5. Randall T. Shepard, *Hello from CLEO!*, IND. JUD. BRANCH: DIVISION STATE CT. ADMIN., <http://www.in.gov/judiciary/cleo/2674.htm> (last visited June 7, 2012).

6. *NALP Report: Randall T. Shepard Receives Mark of Distinction Award*, 29 SYLLABUS, no. 2, 1998, at 6, 6.

to defray the cost of their legal education in each of their three years of law school. While assisting students in doing their academic best, this program will ultimately promote diversity in law schools and the legal profession.<sup>7</sup>

Following Indiana's lead, a number of states subsequently adopted their own CLEO program.

During his chairmanship of the American Bar Association's Section of Legal Education and Admissions to the Bar, Chief Justice Shepard placed particular emphasis on Standard 211 of the ABA Standards for the Approval of Law Schools which provides:

Standards 211. NON-DISCRIMINATION AND EQUALITY OF OPPORTUNITY

(a) A law school shall foster and maintain equality of opportunity in legal education, including employment of faculty and staff, without discrimination or segregation on the basis of race, color, religion, national origin, gender, sexual orientation, age or disability.

(b) A law school shall not use admission policies or take other action to preclude admission of applicants or retention of students on the basis of race, color, religion, national origin, gender, sexual orientation, age or disability.<sup>8</sup>

Thus, in many ways Chief Justice Shepard has been a leader in expanding opportunities for entry to law school and the legal profession. He has been honored for his efforts by many organizations including the National Black Students Association and the Indiana Civil Rights Commission.

SHEPARD THE EDUCATOR

Throughout his career on the court, Chief Justice Shepard has been a frequent lecturer and visiting professor at America's law schools. He has written more than sixty-five law review articles in thirty different law journals. He has frequently taught at both Indiana University's Robert H. McKinney School of Law and at its Maurer School of Law. He has taught complex litigation at his alma mater, Yale Law School, and regularly teaches at New York University's law school new appellate judges seminar.

He served with distinction as Chair of the American Bar Association's Section of Legal Education and Admissions to the Bar, the entity responsible for accreditation of America's law schools.

Chief Justice Shepard's understanding of legal education is illustrated by an article he wrote for the National Law Journal at the beginning of his chairmanship

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7. *Id.*

8. ABA Section of Legal Educ. & Admissions to the Bar, STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 211 (2012).

of the Section of Legal Education and Admissions to the Bar.

As the practice of law becomes more international, the Section of Legal Education and Admissions to the Bar is focusing increasingly on how to educate lawyers for the new world, how to reform both legal education and bar admissions, and how to build bridges with both the practicing bar and the universities that house America's law schools.

The section is especially interested in opportunities for American students to conduct part of their education abroad, and for foreign lawyers to learn about U.S. law by visiting the United States. U.S. law schools have been expanding their overseas programs rapidly in recent years. There now are 150 programs operating in foreign countries on six continents.

These programs provide excellent experiences for both students and faculty, but can also present management and quality-control problems for their sponsoring institutions. In December, the section will sponsor a Workshop on Overseas Programs to help these schools deal with these issues.

At the same time, the number of foreign law graduates seeking education in the United States is growing. American schools have responded by creating [LL.M.] programs specifically aimed at this interest. In October, the section will conduct a workshop to help schools design better law masters programs.

The section will also be expanding its consultations with other ABA sections and with foreign law societies about the admission of foreign lawyers to U.S. practice. In addition, the section will continue its work in central and eastern Europe and in Africa to help universities and law societies in these regions build stronger systems of legal education and bar admissions.

The internationalization of law practice is only one of the many changes taking place within the profession. Both law schools and bar-admitting authorities must help shape the course of these myriad changes.

The section's Curriculum Committee will work this year to identify innovative ideas for teaching and research, with plans to make the results of that effort available for use as models. The Professionalism Committee will be examining the movement to stage conclaves on legal education in various states, bringing together the bench, the bar and the academy to examine the continuing task of educating lawyers.

Moreover, the section will be deeply involved in assessing the validity and reliability of the standards that the ABA uses to accredit law schools. This year, the section will examine the standards governing educational programs and faculty as part of its commitment to conduct a complete re-examination of every ABA standard over a period of [thirty-six] months.

Reforming legal education is not a mission solely for lawyers and law schools; it must include those responsible for overseeing the

institutions of higher education in which most law schools sit—namely presidents and provosts. In February, for the first time in five years, the section will convene a meeting of presidents, provosts and deans interested in issues for universities that educate lawyers.<sup>9</sup>

Chief Justice Shepard was nominated to chair the United States Conference of Chief Justices the same year he was scheduled to chair the ABA Section of Legal Education. He declined the Conference of Chief Justices nomination because of his commitment to the Section and legal education. Happily, the Chief Justices Conference tapped him following his Section chairmanship.

During the period of his Section leadership he provided wise and effective direction during a period of turmoil for the Section and for American legal education. He was a calming influence in the Section's interfacing with federal agencies and universities.

In July 2000, as part of the American Bar Association's London meeting, the Section of Legal Education and Admissions to the Bar sponsored a Joint Program with the University of London on the topic of "*Legal Education in the United Kingdom and the United States in the New Millennium.*"

At that program, Chief Justice Shepard moderated a program entitled "*Advanced Legal Education, Academic and Continuing.*" It was appropriate that Chief Justice Shepard moderated this session of the symposium and particularly the portion dealing with the role of ethics in legal education. He has been a forceful proponent of ethics as part of the legal education experience.

#### SHEPARD THE LEADER

In a tribute to New York Chief Judge Judith Kaye, Chief Justice Shepard wrote:

Yet I propose that Judith Kaye be declared great on a quite different basis. It is one that receives far less attention than jurisprudence: building a better system of justice. Achieving important systemic change usually requires that judicial leaders, sometimes at the top of the pyramid and sometimes in the rank and file, decide to place themselves at risk in the arenas where change can be made. It requires a determination that those of us on the bench and in the bar can do more justice in individual cases if the court system is better organized.

Recharting the course of a court system has never been an easy matter. The judiciary in form and inclination is both beholden to what has been done in the past and typically comfortable with it. Moreover, judges value the relative independence that they possess, an aspect of judicial work that confers benefits on litigants but that also leads to intransigence.<sup>10</sup>

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9. Randall T. Shepard, *Globalization Leads Changes Affecting Practice of Law*, NAT'L L.J., Aug. 3, 1998, at C9.

10. Randall T. Shepard, *Judith Kaye as a Chief Among Chiefs*, 84 N.Y.U. L. REV. 671, 672

Justice Shepard's remarks about Judge Kaye can equally be applied to him. Under his leadership the Indiana court system has become a benchmark for court administrative reform.

Under his leadership, Indiana passed Proposition 2 delineating the responsibilities of the appellate courts in Indiana. He was instrumental in the establishment of the Indiana Pro Bono Commission and a statewide pro bono program funded by IOLTA funds.

He has served as president of the Conference of Chief Justices and the National Center for State Courts, chair of the Appellate Judges Conference of the American Bar Association and chair of the American Bar Association Section of Legal Education and Admissions to the Bar. In 2006, Chief Justice John Roberts appointed Justice Shepard to serve on the U.S. Judicial Conference Advisory Committee of Civil Rules, the only state court judge to receive such an appointment.

Chief Justice Shepard has been in the forefront of support for diversity in the legal profession. He has never wavered in his commitment to diversity. He has the ability to appreciate and to understand difficulties experienced by persons of color. He has always been committed to enlarging access to the legal profession so that it is more representative of American society, and the law school student body has changed not only to have more women and persons of color, but also persons from a variety of backgrounds, experiences and ethnic groups. He is forthright in addressing important issues relating to access to the profession.

He often is called upon for new public service such as co-chairing the Kernan-Shepard Indiana Commission on Local Government Reform or serving on the Butler University Presidential Search Committee.

Perhaps the greatest tribute to Randall Shepard can be stated thus—he has a quiet manner but is clear and genuine in his aspiration. He embodies the intellectual curiosity of an academic with the skills, wisdom and practicality of a jurist. His enthusiasm is genuine, sincere and effective. He possesses low-key but irresistible powers of persuasion. He knows and understands legal education and the legal profession. He has an understanding of what are the current successes and problems and what and how legal education and the profession should, will, and must change.

I am proud to have Randall Shepard as a friend, colleague, advisor and helper. He is a person of great character and strength, a person of conviction and principle. His contribution to the betterment of legal education and the profession are many. They will not diminish with his judicial retirement. He will continue to give of himself to the betterment of all.