

January 27, 2012

The Honorable Randall T. Shepard
Chief Justice of Indiana and Chair,
Indiana Judicial Nominating Commission
c/o Division of State Court Administration
30 South Meridian Street, Suite 500
Indianapolis, Indiana 46204

Re: Applications of The Honorable Cale J. Bradford, Mark Massa and
Steven Schultz for Appointment to the Supreme Court of Indiana

Dear Mr. Chief Justice:

Among the candidates for the vacancy on the Indiana Supreme Court that will arise upon your retirement are Judge Cale J. Bradford, Mark Massa and Steven R. Schultz. My position is far from unique in having hoped that this particular vacancy would not arise for quite some time to come. I do, however, have the unusual good fortune of knowing all three of the candidates just mentioned, and of being able enthusiastically to recommend each of them for selection by the Commission for inclusion on the panel of three names it will submit to the Governor.

Taking the candidates in alphabetical order, the reasons for my recommendations are:

Cale J. Bradford

Almost five years ago, when then-Marion Superior Court Judge Bradford was being considered by the Commission as a candidate to fill a vacancy on our Court of Appeals, it was a great pleasure for me to write in support of his application. A copy of that letter, detailing why those who had practiced before Judge Bradford were confident he would also prove to be an outstanding member of the appellate bench, is enclosed.

Without reiterating here all the reasons set forth in that earlier correspondence, I will state simply that Judge Bradford's service on the Court of Appeals has fully vindicated that confidence. He continues to be a model of diligence, preparation and fairness. His appellate opinions set forth, in direct, lucid and persuasive prose, the pertinent facts and analysis in a way that members of the bar and educated lay persons alike can readily grasp. Those opinions are also always fair and always respectful to the parties, to their counsel, and to his judicial colleagues. The same is true of his personal interactions with practitioners and fellow jurists, whether in oral argument or other settings.

The Honorable Randal T. Shepard

January 27, 2012

Page 2

I would add that among the reasons we have appellate opinions, in addition to their vital role in the common law system in which lawyers are trained, is the importance in our overall system of self-governance that decisions of the Judiciary must be open, publicly and logically explained and defended, and accessible to all citizens, including in matters of great public interest. Judge Bradford's decisions, in my judgment, admirably serve that purpose. An example is his careful, thorough opinion in *Myers v. State*, 887 N.E.2d 170 (Ind. Ct. App. 2008), affirming the conviction of the defendant in the widely covered Jill Behrman murder case. The same opinion is model of the diligence and preparation already noted.

Judge Bradford would bring to the Supreme Court not only significant trial and appellate bench experience, but also a thorough understanding—grounded in his personal character and instincts, as well as in that judicial experience itself—of the importance of mutual respect and collegiality among members of the judiciary. This is particularly important on the Court that is the most visible representative of the our system of justice not just to Indiana lawyers but to all to Indiana citizens.

In my 2007 letter supporting Judge Bradford's candidacy for the Court of Appeals, I noted in that he received extremely high marks in the most candid, bottom-line evaluation of members of the judiciary of which I am aware—namely, the unvarnished discussions of judges and their relative merits in which colleagues in law firm necessarily engage in \representing clients in litigation (which is one aspect of their obligation to such clients). Judge Bradford fares just as well in such evaluations of his service as an appellate judge. He is simply first rate.

Mark Massa

I first came to know Mark Massa in the mid-1980s, when he was serving as speechwriter and press assistant to Governor Orr and I was returning to Indiana after four years in Washington as Associate Counsel to President Reagan. My initial highly favorable impressions of Mark's intelligence, character and good humor (including about himself) have repeatedly been strengthened and reinforced over the next 25 years, as he has served our profession and our community in a wide variety of responsible positions that have made him very well prepared to render even more important service as a Justice of our Supreme Court.

As is evident from Mark's resume—which includes seven years as Chief Counsel in our State's largest prosecutor's office, four years as Assistant United States Attorney, and heading the Indiana Criminal Justice Institute since 2011—he would bring to the Court great knowledge and insight on operation of our State's criminal justice system. The Court's strengths during the Shepard era include the diversity of legal and other experiences Justices have brought to their tasks, permitting shared insights that give all Justices a greater understanding of the “real world” context of the controversies that reach them, and the “real world” impact of their resolution of those controversies. Obvious examples are Justice Dickson's many years as a successful trial attorney; Justice Sullivan's background in sophisticated commercial law and State finance;

The Honorable Randal T. Shepard
January 27, 2012
Page 3

Justice Rucker's work as counsel for a major Indiana municipality, and eight prior years on the appellate bench; and the Chief Justice's work for a Federal cabinet department, as executive assistant to the mayor of another large Indiana city, and then (as is also true of Justice David) as a member of the trial bench.

Mark's expertise on matters of criminal justice would make important contributions to this mix, complementing, for example, Justice Rucker's prosecutorial experience. Although necessary constitutional reforms have freed the Court to fulfill its leadership role on the civil side of the Indiana justice system, it is obvious that criminal justice remains (as indeed it should be) a core aspect of the Court's duties and responsibilities. In addition, Mark's criminal law insights would be accompanied by comparable insights (complementing those of Justice Sullivan) on the functioning of the Executive Branch, in which Mark has served both as Counsel to our State's current Governor and as head of an important administrative agency.

Moving to matters that transcend items on a resume, I can testify without qualification or hesitation to Mark's personal character and integrity. While an active participant in our political system, he both understands and is deeply committed to the proper role of the Judiciary in our overall constitutional system. There is zero possibility that Mark would ever let the identity of the parties to a case or their counsel, or the possible impact of a decision on a given political dispute of the moment, influence his decisions as a jurist. We have been friends for a quarter of a century, and much of my practice is appellate; but I know Mark would rule against me in a heartbeat if he thought my position on a legal issue was incorrect. This is one reason I know he would be an outstanding appellate judge.

Mark learned to love our Supreme Court, and appreciate and respect its vital role. during his two years as a clerk to the Chief Justice. He would be an outstanding Justice.

Steven R. Schultz

For six years, I had the privilege of practicing law with Steve Schultz at Barnes & Thornburg. This included opportunities for close collaboration on challenging assignments in the transactional and regulatory arenas, as well as on a professional article and other matters. Steve is simply brilliant, one of the most intellectually gifted persons I have ever met. Rarer still, particularly among some whose intellectual gifts are great, Steve is also a genuinely gracious, humble, empathetic human being, who treats other persons—whatever their own gifts or stations in life may be—with a respect and kindness that honor his own deep religious faith.

Steve, too, would bring a special set of experiences and accompanying expertise to the Court. His governmental experience includes being Counsel to Governor Daniels during the critical first year of the latter's first term, as well as his current position as Executive Director of the Louisville and Southern Indiana Bridges Authority, managing a construction budget of over

The Honorable Randal T. Shepard

January 27, 2012

Page 4

\$2.5 billion and coordinating with governmental officials of two States and at the Federal level on development and construction of vital transportation infrastructure.

On the private sector side, Steve's six years with Indiana's largest law firm were followed by two years in the London office of a leading national and international firm. His service as Counsel to the Governor was sandwiched between periods of serving as general counsel and a senior vice president of a major Indiana financial company, with responsibility for sophisticated corporate governance and financial transaction matters.

Steve's legal experience and background are thus comparable to those of Justice Sullivan prior to the latter's appointment, which, while not entailing significant litigation work, combined important Executive Branch experience with extraordinary commercial, transactional and financial expertise. I believe a background in this field of law is an important part of the overall mix that our Justices bring to their work on the Supreme Court, and was also one of the many contributions brought to the Court by now-retired Justice Boehm. I would add that, again like Justice Sullivan (with whom I also had the privilege of practicing law at the same firm), Steve Schultz is an extremely "quick study" who will have no difficulty in mastering any aspect of the duties of an Indiana Supreme Court Justice.

Steve brings extraordinary talents, unimpeachable integrity, and a servant's mentality to every challenge and every encounter. I could not possibly overstate the high regard in which he is held by everyone with whom he has worked, including at my own law firm. He, too, would be an outstanding Justice.

* * *

Cale Bradford, Mark Massa and Steve Shultz would be an exceptionally well-qualified panel of three to submit to the Governor for his final appointment of the next Justice of our Supreme Court. Choosing just one among the three would be quite a difficult task, and one that I am certainly glad I would not have to make. But Governor Daniels is up to the challenge—and I hope the Commission will present him with it. Thank you for and other members of the Commission for considering these thoughts and recommendations.

Respectively,



Peter J. Rusthoven

PJR/jp
Enclosure

INDS01 PJR 1318412v1