

State of the Judiciary: "Indiana's Place in American Court Reform: Rarely First, Occasionally Last, Frequently Early"

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Message to the Legislature

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Governor Daniels and Members of the General Assembly:

In reporting to you about the state of Indiana's judiciary, I often relate challenges and changes from the months just past. Today, I want to speak about a bigger picture, about where Indiana courts stand in the larger story of reinventing America's courts. Where does Indiana fit in this broad effort at reform, and what do we contribute to it?

Areas of National Reform

Let me begin by mentioning areas in which the nation's state courts face the greatest challenges.

Globalization. Justice John Paul Stevens gave a speech recently in Indianapolis about the effects of a globalizing world economy on the American court system and on the American legal profession. When an American employer strikes a commercial deal with a business partner in Asia or Europe, both parties need to understand how their own domestic law and customary international law will affect the transaction. Likewise, lawyers for the American company and lawyers for the company overseas need to help facilitate that transaction by plying their trade far away from the place where they are licensed. America's state courts, as regulators of the bar, are actively examining how to support those arrangements, so important to our domestic economy.

The legal profession is likewise engaged in a massive effort to help new democracies like - those in Kosovo, Ukraine, Iraq, and Afghanistan - establish the rule of law, believing as most Americans do that a world with more democratic states possessing stable legal systems will be a safer place.

And, of course, globalization shows up in every state's back yard in the form of immigrants for whom English is not the first language. State courts are active in devising ways to assure such people access to justice. Many people with language issues are too poor to even hire lawyers let alone interpreters, and finding new ways to provide legal help to them and to other low-income Americans is a national priority.

Families. Thousands of American judges spend every day asking themselves, "What can we do to strengthen American families and improve the lives of children?" Last year saw the release of a landmark report by a national commission that examined how government can do better for abused and neglected children. And so, in October there was a remarkable national summit of leaders in state courts and child protection agencies gathered to develop action plans to make that happen.

Ethics in Government. Judges and lawyers are in the middle of a major national effort to revise the rules of ethics that apply to courts so that we can assure our fellow citizens that fidelity to high standards is part of their judiciary. The scandal in Congressional lobbying makes this need become ever more apparent.

Correction, Guilt, and Innocence. The growing number of people in American jails and prisons compels a search for an effective, less expensive, means of dealing with offenders and deterring repeaters. The latest inventive projects with this aim focus on courts as institutions that help solve problems rather than as places that simply try cases. Judges and others have devised what are called "problem-solving courts": drug courts, neighborhood courts, mental health courts, and re-entry courts, to name a few.

New Age and New Law. At least since deTocqueville's tour of nineteenth century America, the country's courtrooms have been places where the changes in American society show up quickly, presenting brand new legal questions: "What is privacy in the electronic age?" or "What do civil rights mean in the war on terror?" to name but two examples.

Jury Reform. At the heart of American justice stands the right to a trial by jury. There is a national movement, based in the state courts, to improve the selection of jurors, to give jurors better tools to do their work, and to help them understand the laws they should apply.

Reform Starts at Home

In thinking about how Indiana connects to these major national initiatives, I've come around to a description that fits Indiana's position on the question of law reform, not just today, but through much of its history:

Rarely first, occasionally last, and frequently early.

There are examples that demonstrate this description from our history and from modern times. In 2003, for example, we celebrated the 100th anniversary of Indiana's first juvenile court, the third juvenile court in America, way ahead of everybody. In the 1970's, Indiana was the third state whose legislature adopted determinant sentencing, the regime under which most of the country has now operated for about a quarter century. In the 1980's, Indiana was the second state to adopt standards for the qualifications and compensation of lawyers who represent defendants in capital cases. In the 1990's, we were the sixth or seventh state to launch a project on jury reform. Rarely first, occasionally last, frequently early.

Indiana Is Connected to Every Effort at American Court Reform

So, what has Indiana been doing on the leading national priorities I described?

Globalization. Indiana courts have been front-line participants in devising lawyer rules to facilitate national and international commerce, first to adopt the uniform rule admitting foreign lawyers to reside here and advise on the law of their home country. Indiana has sent judges and prosecutors overseas, to places like Kosovo, Iraq, and Afghanistan, to assist in devising new constitutions and laws, and court rules. (And, since charity begins at home, we also sent people to the Gulf Coast to help rebuild courts and communities after Hurricane Katrina.) And, Indiana has become a place foreign judges want to visit. Most recently we hosted a delegation from Russia and one from Ukraine.

Families. You voted last year to require the appointment of a guardian or child advocate in every case in which a child has been abused or neglected. On this topic, Indiana has been both last and first. We were the last state to enact this comprehensive requirement - but as far as building a

corps of people to speak for the abused child in court, last year there were more than 2,000 adult volunteers who worked with more than 16,000 Indiana children. Indiana has more local programs to recruit and train volunteers to represent the best interest of children than any other state.

Ethics. The national re-examination of the ethics rules for judges I mentioned is being led by the American Bar Association. I have been invited to serve as a standing adviser to the ABA's commission, but more importantly, the ABA has recruited two Hoosiers to do the heaviest intellectual lifting as reporters for the commission: Professor Charles Geyh of the law school at Bloomington and Professor Emeritus William Hodes of the law school at Indianapolis.

A close corollary of ethics reform is working to make government more accessible, more "transparent" as the current saying goes. Indiana has developed an award-winning project for public information and education about its courts. We do this in lots of different media, from printed materials to live lectures to public displays. And, of course, the Internet. On one day last September, more than 19,000 people visited our website.

Corrections and Problem-Solving. A drug court is not really a separate court but a court procedure under which the prosecutor and defense counsel consent to permit a defendant to avoid prison only if they comply with a tight set of treatment requirements and extremely close monitoring directly by the judge. Something like 35 percent of the people sent to drug courts would otherwise be holding down DOC beds, and the number of drug courts in Indiana is rising steadily. You passed legislation last year to strengthen this movement. The executive director of the national organization for drug court professionals is former judge and Attorney General Karen Freeman-Wilson of Gary.

Similar problem-solving techniques are applied in "re-entry courts." As DOC Commissioner J. David Donahue says, "We can't expect much when we push an offender out the prison door with \$75 and a set of clothes." Re-entry courts mean we can expect more. The nation's leading re-entry court is in Fort Wayne, Indiana, under the leadership of Judge John Surbeck.

New Age Law. On issues like privacy and consumer protection in the electronic age, any list of America's top ten legal scholars would include Professor Fred Cate of Bloomington. Professor Cate is one of the jewels of Indiana's legal community, and he helps the profession and the courts in a host of ways. These include advising our effort under the leadership of Justice Brent Dickson to devise new practices for improving public access to court records without making life easy for identity thieves or domestic abusers.

Legal Help for the Poor. Many states have long used a system to gather otherwise uncollected interest from lawyer trust accounts as a way of helping people who need legal assistance. Indiana was the last state to implement such a system. But we were the first state to commit that resource to building a network of volunteer lawyers to assist low-income people. Last year Indiana attorneys contributed over 20,000 hours of time to indigent Hoosiers through this unique network.

Jury Reform. You know that we have made many improvements in how Indiana juries do their work, but I want to report on the newest one, effective just days ago. At the end of last year, we distributed to county clerks the best list of potential jurors ever devised. Justice Ted Boehm led

an effort with assistance from the Bureau of Motor Vehicles, the Department of Revenue, Purdue University, and local court personnel that in the end produced a disc for each county containing non-duplicated, up-to-date names and addresses for use in mailing jury summons. We estimate that it includes 99 percent of the people living in Indiana who are eligible for jury service.

Why does that matter? For one thing, it will save a lot of money. In some counties, 40 percent of the jury notices come back as undeliverable.

But, there's a more important reason it matters. Americans treasure the idea that we are entitled to a "jury of our peers" but the fact is that many jury lists leave out lots of people, especially low-income people and minorities. This new initiative, a product of our Judicial Technology and Automation Committee, has produced the most inclusive list of possible jurors ever. The people summoned for jury duty now will be the most representative array of citizens in all the time since King John signed the Magna Carta in 1214. The country's leading experts in jury reform made this Indiana development the lead story in their national electronic newsletter under the headline "List Heaven."

Indiana Supplies Leaders

Having listed some of the ways Indiana connects to the leading court issues of the day, I suggest that Indiana contributes to national reform in two ways: we provide leaders, and we export new ideas.

First, in a host of settings, Indiana provides leaders for the national judiciary and the legal profession.

I recently made a business call to a judge in Seattle named Eileen Kato; she was national chair of the American Bar Association Conference of Specialized Court Judges. She said, "I know two of your colleagues." "Who?" Her successor as leader of this legion of judges is Judge Michael Witte of Lawrenceburg, Indiana. And she knew Frank Sullivan. "Justice Sullivan's been our leader," she said, "on a project to help more minority law school graduates get appellate court clerkships."

Judge Lorenzo Arredondo of Lake County has been director of the American Judicature Society, the country's leading group on judicial selection and ethics, and Judge John Baker of the Court of Appeals has served on the committee that devises education for appellate judges. Justice Sullivan now guides the ABA Appellate Judges Conference. Former Justice Myra Selby, now helping us on race and gender issues, earlier served on the body that accredits and therefore shapes America's 180 law schools.

Judges Margret Robb and Pat Riley of the Court of Appeals are recognized leaders in the National Association of Women Judges (and last year brought their annual meeting to Indianapolis). Judge Jim Payne, if he weren't now part of the Daniels Administration, would instead be today president of the National Council of Juvenile and Family Court Judges. Don Lundberg, who runs the Supreme Court's Disciplinary Commission, presently serves as treasurer of the National Association of Bar Counsel, the country's organization of lawyer disciplinary agencies. And not far from the judicial circle, it is an honor for our state that the fifty state attorneys general have chosen Attorney General Steve Carter as their president.

Indiana's contribution of national leaders goes well beyond judges and lawyers. Cathy Springer, the director of education at the Indiana Judicial Center, has lately become a member of the faculty and a member of the oversight committee for the number one place in America where people work on how to improve the continuing legal education of judges, the University of Memphis. Anne Davidson, assistant director of the Indiana Continuing Legal Education Commission, was recently president of the national association of organizations that oversee CLE for lawyers, a group called ORACLE. And, Cheri Harris of Indiana has recently become the executive director of ORACLE. (And indeed, we brought the offices of ORACLE here to Indiana.)

And the Judicial Family Institute, which helps spouses and children of judges navigate through judicial waters, was conceived and created by Justice Dickson's spouse, Jan Dickson, now widely regarded as having done more to help judicial families than any other single person in the country.

As you might expect, the people I've just mentioned, and others, fit under the old saying, "If you want something done, ask a busy person to do it." They are people who contribute more than most folks during their day jobs and somehow manage to provide leadership above and beyond, both here and elsewhere.

Indiana Exports Ideas

Second, and at least as important, Indiana is an exporter of ideas about better courts.

I will start with an example that even many judges in our state don't know about. There are two places in Indiana where we try most "mass tort" cases, litigation like asbestos claims. They are presided over by Judge Jeff Dywan in Lake County and Judge Ken Johnson in Marion County. When I spoke to a recent conference at the University of Chicago, the first judge I ran into said, "How's Ken Johnson? I wish we could use his system here in New Jersey." Judge Johnson has developed a case management system for mass torts that is the envy of other judges elsewhere. Why do you need a special system? There was one five-day period when Judge Johnson received 16,000 filings.

Indiana's pro bono plan, by which thousands of Hoosier lawyers volunteer their time to assist low-income people in need of legal assistance has been emulated by multiple states around the country.

On the problem of language, last year we certified the first interpreters qualified to translate formal courtroom testimony. We also need people in the county courthouses who can on a day-to-day basis communicate with persons who walk into the courthouse speaking mostly Spanish. So, last fall we completed a pilot program in Terre Haute, partnering with Ivy Tech, to train local court personnel in Spanish. Next month, we will launch it state-wide basis.

Most recent immigrants are people who speak Spanish, but we have people who appear in local courts speaking everything from Mandarin to Urdu. We're experimenting with a system designed for those situations called "Language Line," and so far we've used it to assist with people who spoke French, Somalian, Russian, Mongolian, Yeman, and Mextaco (a Mexican regional dialect). Last month, for example, Judge James Jarrette in Kosciusko County, had a defendant who spoke only Korean. He called our Division of State Court Administration and was quickly

connected by telephone with a skilled interpreter who spoke Korean, so that people in the courtroom could understand her and she could understand them and the court could resolve the case based on full communication by all.

Quite aside from structural reform, Indiana has been a giver of useful caselaw. When I became Chief Justice, I said, "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.'"

Every few weeks, thousands of American lawyers receive the Supreme Court Reporter, the latest cases of the U.S. Supreme Court. The editors of this publication search the country for decisions from other courts that they think lawyers in America would want to know about and they feature these as "Judicial Highlights." In one six-month period last year, ten of those were Indiana cases - representing issues from the death penalty to criminal sentencing to family law and consumer protection. It is a number far out of proportion to our state's size and judicial output. This level of national recognition reflects the good job our appellate courts do, but it also reflects splendid work by Indiana lawyers and trial judges who skillfully litigate these cases long before the appeals reach this building. I've always wanted to work in a place where common sense and first-rate legal thinking were the order of the day. And I do.

Thanks for Your Confidence

It has always seemed to me that our state's bench ought to have its feet firmly planted on Indiana soil, but its eyes fixed on the horizon. It should be one that cares about individual cases, big and small. And always has in its heart what we can do together, tomorrow, to be better servants than we are today.

That's more true this afternoon than it was a year ago, and Judge Diane Schneider of Lake County best articulated a central reason why. Speaking to a roomful of judges, she said: "A perpetual cloud hung over us year after year, a cloud labeled 'compensation.' That cloud finally has been lifted. This is a time when we should move ahead to better things." She was confirming the response of the state's judges and prosecutors to your action in adjusting salaries during the last session. I stand for the proposition that it will be in Indiana's best interests to make similar adjustments in the other two branches of government.

As for the judiciary, I stand with Judge Schneider in believing that this is a moment when the judiciary must strive to do better than ever at helping Indiana be a safer, prosperous, and decent place to live. I promise you that's what will happen.