

2013 State of the Judiciary Address

**To a Joint Session of the Indiana General Assembly
Brent E. Dickson, Chief Justice
January 23, 2013**

Gov. Pence, Lt. Governor Ellspermann, Members of the General Assembly:

What a profound honor it is for me to appear before you, the men and women of the Indiana General Assembly, in these historic chambers. Just being in this Statehouse continues to inspire me despite walking these halls for over 27 years now. This building constantly reminds me—as I'm sure it does you—of the greatness of our State and its people, and of the privilege and responsibility of public service.

As you know, the Indiana Supreme Court has just been through a massive change. During the past year, both former Chief Justice Randy Shepard and Justice Frank Sullivan retired from the court, as did Justice Ted Boehm just two years ago. And so, after more than ten years of no change in the five member court, we now have not only a new Chief Justice, but also a 60% turnover with the appointments of Justices Steve David, Mark Massa, and Loretta Rush. Despite the change of faces, however, we intend that the "new" court will be a continuance, and even an enhancement, of all the things admired in the "old" one.

I am here today because the Indiana Constitution directs that I report to you on "the condition of the courts." In thinking about today's remarks, I couldn't help noting that this "condition of the courts" is so much a product of your efforts through the years, and just how instrumental you have been in helping create the high quality judiciary in which we all take such pride. The Court has a rich and vibrant connection to the legislature—from the Indiana statutes that often form the bedrock for many appellate decisions, to the many legislative commissions that have included representatives from the judiciary, to the array of special responsibilities and programs you have assigned to the Court and its agencies, and to your support and funding for our operations.

When I was appointed to the Indiana Supreme Court in 1986, it was a very different place than it is now. Our workload consisted of few civil cases but primarily involved direct review of criminal cases -- which consumed over 93% of our docket.

Thanks to the General Assembly adopting, and the people of Indiana ratifying, two constitutional amendments adjusting the nature of the Court's jurisdiction, one in 1988 and one in 2000, the Indiana Supreme Court has since been able to provide serious review and to oversee Indiana law in all kinds of cases, criminal and civil, large and small. Last year, 37% of our written opinions were in a wide variety of criminal cases—ranging from counterfeiting, domestic violence, misdemeanor criminal trespass, and operating a vehicle while intoxicated, to rape, and murder involving the death penalty.

In the other non-criminal cases, the Court was able to tackle issues such as child support and family law, tax law, constitutional law, employment law, contract law, environmental law, evidence law, municipal government law, and even to address how Indiana courts resolve disputes among religious organizations. The access of everyday Hoosiers to their Supreme Court for such a wide assortment of cases would have been impossible twenty-five years ago.

The judiciary is also grateful to the General Assembly for the many various important efforts and functions in which we have partnered together, among them, the creation and sustenance of the Family Court project; the Mortgage Foreclosure program (which also involved the Lieutenant Governor's office); the Court Appointed Special Advocate program; the Public Defender Commission; Indiana's Conference for Legal Education Opportunity; and the Civil Legal Aid Fund program—to name just a very few. Indiana citizens are indeed fortunate to have our deep tradition of teamwork in government. It is really remarkable that our two branches -- each independent and co-equal—have such a strong heritage of working together.

On the subject of cooperation, I am very happy to have served on your Criminal Code Evaluation Commission this summer, and I greatly admire its focus on evidence-based practices that can make our criminal justice system more effective in protecting public safety, reducing repeat criminal activity, enabling offender reformation, and at the same time substantially reducing incarceration costs. I support the resulting legislation, House Bill 1006, including its reassignment of salaries for chief and assistant chief probation officers from the counties to the state.

While working together on mutual projects, our two branches each respect the other's essential function. You determine public policy and make the laws, and we follow and apply them—whether we agree or not. And if you disagree with the way we interpret a statute, you amend it as you wish. That's the Indiana way. We've seen some good recent examples of this in the past year or so.

In one case during the past few months, we rejected a defendant's claim that it was bad public policy to convict a passenger in a motor vehicle for "public" intoxication. We held that changes in the criminal law must come from the legislature, not the courts. So then you promptly did just that—you changed the law by revising the statute defining public intoxication to better fit the various issues raised. In another recent case, we decided that an underground aquifer was a "watercourse" subject to municipal regulation under the Indiana Home Rule Act.

But you felt Indiana law should be otherwise and enacted a new statutory provision declaring that henceforth a "watercourse" does not include an underground aquifer. And in another case, after our opinion was issued noting that the statutory defenses to crimes are "in the hands of the legislature," you responded by revising the statute that deals with a citizen's right to use force against intruders. These real examples vividly demonstrate to Indiana students and citizens the principle of separation of powers and show it in action.

My task today is to report to you on the work of Indiana's courts. Here are some brief statistics. During the last decade, we have seen almost two million new criminal and civil cases filed per year in Indiana's trial courts. In appeals from trial court judgments, our intermediate appellate courts (the Court of Appeals and the Tax Court) decide appeals in about 2,400 cases per year. The Indiana Supreme Court is asked to review about forty percent of these. Between these and other cases presented to us, the Supreme Court received and considered about 1100 cases this past year, and issued 90 full written decisions.

All this judicial work was accomplished by 315 trial judges, 92 full-time magistrates, 63 full-time and part-time commissioners and referees, 9 small-claims judges, 70 city and town court judges, and 21 appellate judges, and their staffs at the county and state level. And we must acknowledge the crucial importance of the hundreds of supportive Indiana judicial families.

Deciding cases may be the principal task of judges, but the men and women of the judicial branch are also deeply engaged in a variety of related programs and activities. I'd like to point out just a few examples of what's being accomplished. In child abuse and neglect cases, under our program for Court Appointed Special Advocates

(often called CASA volunteers), over 3,000 people serve as trained volunteers on behalf of the children involved. Last year these volunteers served over 18,000 children in 73 of Indiana's 92 counties.

Since 1981, pursuant to statute, our Indiana Judicial Center has been performing its assigned oversight and management of probation, including setting probation officer standards and doing training and certification. During the past year, the Judicial Center offered various training programs that reached over 1400 probation officers, and it conducted testing in which 81 new probation officers passed and were certified. In addition, we are working to develop, as you directed last year, a schedule of progressive probation incentives and violation sanctions, which we all believe will increase public safety while reducing prison populations.

Trial judges across the state are also implementing special "problem solving courts" and other innovative programs and techniques to improve access to our courts, to enhance the quality of justice achieved, and to help people throughout our state solve difficult problems and to regain positive control over their own lives. We now have 54 certified problem-solving courts, with 12 new ones expected in 2013 that include veterans' courts, drug courts, reentry courts, a mental health court, and one for family dependency and cases involving Children in Need of Services.

Indiana's problem-solving courts became the center of national attention in November, when our own John Surbeck of the Allen Superior Court in Fort Wayne was selected from over 40,000 trial judges in America to receive the William Rehnquist Award for judicial excellence. The award was presented to Judge Surbeck by Chief Justice John Roberts at a ceremony at the United States Supreme Court. This honor also reflects on the marvelous dedicated work of all Indiana trial judges. [Judge Surbeck, would you please stand and accept our congratulations.]

One of the growing challenges before us is the need to enable full access to the courts for people with limited English language proficiency. Significant inroads have been accomplished by the Court's Commission on Race and Gender Fairness and its program for training and certifying almost 100 court interpreters statewide. In addition, we provide "Language Line," a telephonic interpreter service, to all Indiana courts. But much more is needed. People with limited English language proficiency also need help in court-related functions outside the courtroom. In charge of these issues for the Court is Justice Robert Rucker.

Your Indiana judiciary this year has also completed a revision of the Indiana Parenting Time Guidelines, again based on a "child centered" approach, to help courts and parents deal with disrupted families. These Guidelines are largely the result of enormous efforts by family law judges and practicing lawyers with real every day experience in this area.

We are also very proud of the growing impact of our Conference for Legal Education Opportunity (known as "CLEO"). Thus far, this program has made it possible for over 450 disadvantaged students to become Indiana CLEO fellows as they work to complete law school and to become practicing attorneys. A bonus for our state is that the legal profession is becoming more diverse as a result.

One of the Supreme Court's specific constitutional responsibilities is the admission and discipline of lawyers. During the past year, there were 692 people admitted to practice law in Indiana—bringing the current total number of active Indiana attorneys to 18,228. Lawyers are vital components of our judicial system, and the Indiana bar is an exceptional body of honorable and dedicated attorneys. Of particular note, I want to publically commend the exemplary efforts seen this past year to further enhance attorney professionalism and civility. In addition to several special legal educational programs on civility provided by various bar associations, you should know that the Indiana Trial Lawyers Association and the Defense Trial Counsel of Indiana—organizations for

lawyers representing traditional courtroom rivals—plaintiffs and defendants—came together this past year for a joint conference on civility. And at the annual Indiana State Bar Association meeting every year, each of these two groups present a civility award to a lawyer from the opposing group. What great examples to show that Indiana lawyers don't fit the negative stereotype so often portrayed.

Beyond deciding appeals and the admission and discipline of lawyers, another of the Supreme Court's significant constitutional responsibilities is the "supervision of the exercise of jurisdiction by the other courts of this State." As part of our efforts to fulfill this obligation, the Supreme Court has for the past twelve years been working hard to identify and secure the best possible technology so that all Indiana courts can do their work more accurately, more efficiently, more promptly, and more economically. After extensive research, investigation, review, and an open public procurement process, we selected and entered into a contract with a major national technology company—one we found to be best equipped to serve Indiana's judicial system, and to do so at the most reasonable cost. Then we worked to tailor this product—the Odyssey case management system—to serve the various unique needs of Indiana courts. The results have been very gratifying.

Our Odyssey system is now being used to process over 40% of the workload in Indiana's trial courts, and we're working hard to meet the demand from counties wishing to come aboard. In fact, Odyssey installation was successfully completed this past weekend in the Orange County Circuit and Superior Courts. Next up are the St. Joseph County Criminal Courts, then Hancock County courts, and after that, the Marion County Civil Courts will receive Odyssey training. This will bring the portion of Indiana's caseload being handled by the Odyssey system to over 46%. Once we complete these installations, there are over 20 other counties waiting in line, anxious to receive and use Odyssey. All this demand is quite understandable. We provide the Odyssey system to counties that want it, and we maintain it—all at no charge to the counties. And the taxpayers in Odyssey counties no longer have to pay license and maintenance fees to private vendors for separate case management systems.

In addition to its accomplishments with Odyssey, our technology team and our private sector partners from an array of Indiana firms have also devised about twenty innovations permitting Indiana's courts to communicate electronically not only with each other but also with various executive branch and other government agencies, including the Bureau of Motor Vehicles, the Indiana State Police (and local prosecutors and law enforcement agencies), the Department of Health, the Department of Child Services, the Department of Revenue, the Department of Correction, the Department of Homeland Security, and the Family & Social Services Administration Division of Mental Health and Addiction, just to name a few.

This all produces tremendous advancements in serving Hoosiers. In Odyssey counties, when a judge faces an accused person, the judge can now access a computer and immediately learn if the person is out on bond from another county, or is on probation, or has another case pending (so long as it's from another Odyssey county). This information, in real time, is invaluable to trial judges, to public safety, and to justice itself. And our technology team's related projects now make it possible for police officers to write traffic tickets in minimal time to reduce their exposure to highway dangers, for victims of domestic violence to obtain prompt protective orders immediately enforceable in every Indiana county, for the Bureau of Motor Vehicles to quickly receive accurate notifications of actions by county courts, and for all judicial mental health decisions to be immediately transmitted to the FBI's National Instant Criminal Background Check System for gun purchase background checks -- to name just a few illustrations of what's been accomplished.

The bonus is that the Odyssey case management system and all the associated inter-agency interactive systems being developed are funded almost entirely by user fees—court filing fees—and not from property tax, or

sales tax, or income tax, and thus there's no burden to the State general fund. Justice Mark Massa is now leading this effort for the Court. Don't hesitate to contact him if you'd like more information. The Court intends to do everything we can to bring our Odyssey system as soon as possible to every county that wants it. But this requires more resources. The Court really needs help from the General Assembly this session to upgrade the necessary filing fee revenue stream. We present this to you as one of our most urgent priorities.

Not only will we be focusing on trial court technology, but we also seek to enable our appellate courts to begin using e-filing and paperless processing and storage of appellate documents, like most other states are already doing.

We are also particularly excited about the success and promise of the new Juvenile Detention Alternatives Initiative, a reform effort that strengthens the juvenile justice system by focusing on a variety of ways to reduce reliance on detention. It emphasizes putting the right kids in detention for the right amount of time. A joint cooperative effort between the judiciary, the Department of Correction, the Indiana Criminal Justice Institute, and the Department of Child Services—this initiative has already been rolled out in eight counties, representing about 34% of Indiana's at-risk youth. This is a proven model that really works to improve community safety, to get more kids back on the right track, to reduce school drop-out rates, to reduce juvenile detention, and to lower incarceration rates. Justice Steve David is spearheading the Court's efforts to move forward with this program, and Justice Loretta Rush is exploring the possible formation of a Commission on Children, which would also involve other branches of government.

And finally, I want to tell you about our vision and efforts to meet the growing need for basic legal services for people who can't afford it—without burdening taxpayers. We want to encourage and empower Indiana lawyers to more fully realize the vision of their oaths and the Code of Professional Responsibility to serve "the cause of the defenseless, the oppressed, or those who cannot afford adequate legal assistance." I believe that Indiana lawyers can and will meet this need as innovative ways are found to incentivize and effectively utilize their skills and efforts, and to match lawyers' individual areas of expertise with the unmet legal needs of Hoosiers. I am encouraged by the interest already being expressed by many lawyers and by the organized bar.

These are just a few of our accomplishments and aspirations, and there are many other exciting developments on the horizon. Today's judiciary involves much more than simply ruling on cases. Deeply connected to our communities and invested in shared objectives of fairness, impartiality, justice, compassion, public safety, and human renewal, all with fiscal restraint, the dedicated men and women of the judicial branch join you, the members of the Ind. General Assembly, as we all work to better serve our fellow citizens.

Looking forward to what the Judicial Branch and the General Assembly can accomplish together in the coming year, I close this, my first, State of the Judiciary message. Thank you.

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