

December 31, 1997

ADMONITION

THE HONORABLE DAVID EVRARD, JUDGE OF THE

PERRY CIRCUIT COURT

The Indiana Commission on Judicial Qualifications issues this public statement of admonition of Judge David Evrard, Perry Circuit Court. The Commission's admonition results from its finding of probable cause that Judge Evrard violated the Code of Judicial Conduct. Judge Evrard cooperated fully with the Commission during its investigation and has agreed to accept this admonition in lieu of the filing of formal disciplinary charges with the Indiana Supreme Court.

The facts which led to the investigation are that Mark Berry was transferred from the Department of Correction to the Perry County jail after he was charged with several counts of trafficking in drugs in the DOC where he had been serving a prison term for a burglary conviction. While in the Perry County jail, his term with the DOC expired, and he remained in the Perry County jail with no bond. In November and December, 1994, his defense attorney and the Prosecutor negotiated a plea bargain on the trafficking counts which called for a prison term of three years. After arriving at the plea agreement, Mr. Berry's defense attorney contacted Judge Evrard's staff and obtained a plea and sentencing date for early January, 1995.

Subsequently, on December 6, 1994, Judge Evrard telephoned the defense attorney and advised him of his intention to release Mr. Berry on his own recognizance. The judge made reference at the time to jail overcrowding as a reason for his release of Mr. Berry. However, on that date, the jail population was not at its maximum and many inmates were in jail without bond on what were bondable offenses. The judge also made reference to the State's dilatoriness in "processing inmates". However, no issues relating to delays in Mr. Berry's prosecution had been raised by the defense, nor had a speedy trial motion been filed. During the telephone conversation, the defense attorney advised the judge of the plea agreement in the Berry case. On the same day the judge spoke with the defense attorney, he also placed a call to the prosecutor who was not available.

Judge Evrard then ordered Mr. Berry released on his own recognizance without notice to the State, and caused an entry to be made on the Chronological Case Summary indicating that his release order was due to the "State's failure to proceed". On December 14, 1994, Mr. Berry murdered a 13-year-old girl in LaPorte County, Indiana.

Canon 3B(8) of the Code of Judicial Conduct requires a judge to "accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law". Certainly, this rule includes the State and its lawyers in its protection. The Commission has concluded that Judge Evrard violated Canon 3B(8) when he released Mr. Berry without giving the State an opportunity to be heard. It may be that under certain circumstances a trial judge has the inherent authority to release an inmate on his or her own recognizance after having incarcerated the defendant pending trial. To do so without giving the State an opportunity to be heard on the issue, however, would be proper, if at all, only under extraordinary circumstances which did not present themselves here. The Commission also has concluded that by making the unsubstantiated entry to the effect that his release of Mr. Berry was "due to the State's failure to proceed, Judge Evrard violated Canon 1 and Canon 2 of the Code of Judicial Conduct which require judges to uphold the integrity of the judiciary, to avoid impropriety, and to act at all times in a manner promoting public confidence in the integrity of the judiciary.

For this conduct Judge Evrard now is admonished by the Commission, which admonition, with Judge Evrard's consent, is in lieu of formal proceedings before the Indiana Supreme Court.

Questions about this public admonition may be directed to Chief Justice Randall T. Shepard, Chairman of the Commission, at (317) 232-2550, or to Meg Babcock, Counsel for the Commission, at (317) 232-4706, or to Charles L. Berger, attorney for Judge Evrard, at (812) 425-8101.