

# WHY THE COURTS MATTER IN BUILDING A STRONG ECONOMY

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It has been a year when policymakers and public alike have focused on an important question about Indiana's future: how can Indiana organize itself so that we will not be so vulnerable to shifts in the national economy?

Dealing with this challenge is mainly a job for legislators and the governor and other executive officers, but the state's judiciary and the legal profession must also act to make Indiana stronger and smarter in the world of tomorrow than we are today. Those who lead our state have understandably focused on: (1) how to sustain progress in education, (2) how to assist families threatened by the economic downturn, and (3) how to build a better workforce and a more diverse economy. Though we rarely express it in just this way, this is part of the judiciary's work, too.

## I. IMPROVING PUBLIC EDUCATION

To survive in a changing environment, Indiana needs the best-educated citizens Indiana can have. Toward that end, building better schools and colleges and sustaining them during lean years have been close to the top of the public agenda. In the last year, we in the judiciary have been doing more than ever before to provide education in a field where we have a unique capacity to contribute: civic education.

We have deployed one of the historic features of appellate courts—public hearings—as a tool for educating both students and adults. We now broadcast live over the Internet every hearing of the Supreme Court and selected hearings of the Court of Appeals and Tax Court. Our central goal is to make high school and college students better-educated citizens. It is quite obviously a useful resource for law students and faculty as well. We have broadcast more than fifty proceedings, created lesson plans for highlighted cases, and met with hundreds of government and social studies teachers to explain this new resource. Demand by schools and others is so strong that these hearings represent well over half of state government's most frequently demanded videos. We expect that during 2003 people will tap this resource 60,000 times.<sup>1</sup>

The lessons from these broadcasts are only incidentally lessons about appellate courts.<sup>2</sup> They teach people about law and society: what should the law

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1. Elizabeth Osborn of the Indiana Supreme Court's staff has taken the lead in this effort. She is Assistant to the Chief Justice for Court History and Public Education.

2. See, e.g., Jeff Goodell, *The Supreme Court*, WIRED, Mar. 3, 1995:

But the real power of Court TV is more than just good journalism, more than just interpretation or analysis. You get hooked on Court TV because of the purity of the medium. The bad lighting, the bad sound. The slow pan and focus of the single camera; no obnoxious cutting, no two-shots. You have to concentrate, you have to look.

of search and seizures be during a war on terrorism, does your insurance policy cover you when you drive a car you borrowed from a friend, who is responsible if you get sick from exposure to asbestos?

Our colleagues in the practicing bar have taken these same lessons live into Indiana classrooms. Last fall the Indiana State Bar Association sent 450 lawyers to more than 500 schools for presentations on the Bill of Rights.<sup>3</sup>

We likewise are working to help educate the growing number of Hoosiers for whom English is not the first language. We provide a growing body of information about the legal system and a good many basic court documents in Spanish, through our Self-Service Legal Center. The Supreme Court has approved a proposal by our Commission on Race and Gender Fairness for a major initiative in providing translation, focusing first on people who speak Spanish.<sup>4</sup> Even in dark economic times, the legislature has been willing to find new money to support this effort.

Indiana must not be a place where people get lost in the legal system just because they have not yet mastered English.

## II. COURTS AND FAMILIES

We pay special heed to the strength of families during hard times because we believe that strong family units both make for better educated children and sustain a more effective workforce. Many of the social problems that have plagued American society are caused by the breakdown of families.<sup>5</sup> According to criminologists, social scientists, and other observers, evidence suggests that such breakdown is the real root cause of crime in America.<sup>6</sup> It is a widely

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And the closer you look, the more nuance is revealed. The nervous tick of a defense witness. The finger-tapping judge. Nothing escapes notice. In the courtroom, the camera becomes the unblinking eye of God.

3. Stephen M. Terrell, *What's Great About America? "We Stick Together,"* RES GESTAE, Oct. 2002, at 8. During the Indiana State Bar Association's "Ask me what's great about America", whereby attorneys spoke to schoolchildren across the state to discuss "the Bill of Rights and other freedoms that make America great." *Id.* "What greater way to ensure the continuation of freedom and strike a blow against those who wish to destroy this nation, than by spending time with our young people, passing on lessons of freedom to yet another generation." *Id.* at 9.

4. The Indiana Supreme Court Commission on Race and Gender Fairness recommended that the court participate in an interpreter consortium through the National Center for State Courts to implement an interpreter testing system for Spanish. *See* Executive Report and Recommendations of the Indiana Supreme Court Commission on Race and Gender Fairness, App. at E (Dec. 20, 2002).

5. "Any family form that differs from the traditional two-parent, biological family is assumed to place children at risk." *See* Amy Lofquist, *The Effects of Remarriage on Children*, at <http://nips.med-web.com/Handouts/Individual%20Pages/REMARRIAGE.htm>. In 1996, the number of children being raised in single-parent families rose to about eighteen million. *See* Dr. Tom O'Connor, Justice Studies Department at North Carolina Wesleyan College, *MegaLinks in Criminal Justice*, at <http://faculty.ncwc.edu/toconnor/juvjusp.htm#CAUSAL>.

6. *See* Patrick F. Fagan, *The Real Root Cause of Violent Crime: The Breakdown of the*

accepted premise that children born into single-parent families are much more likely to fall into poverty and welfare dependency than children born into intact families.<sup>7</sup> Such children are also more likely to fall behind in school and experience emotional problems.<sup>8</sup>

Furthermore, statistical data supports the notion that married couple households yield a higher percentage of employment than single parent family households.<sup>9</sup> In Indiana, 6.7% of all families are below the poverty level. Among female households where no husband is present, however, the poverty rate is more than three times higher, 23.4% .<sup>10</sup> For this reason, supporting strong

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*Family*, at <http://www.libertyhaven.com/politicsandcurrentevents/crimeandterrorism/realroot.shtml>.

“A major 1988 study of 11,000 individuals found that ‘the percentage of single-parent households with children between the ages of 12 and 20 is significantly associated with rates of violent crime and burglary.’” *Id.* The same study makes it clear that the key factor explaining the incidence of crime is the absence of marriage and the failure to form and maintain intact families. *Id.*

7. *Id.*

8. See Kathleen Sylvester and Kathy Reich, *Restoring Fathers to Families and Communities: Six Steps for Policymakers*, at <http://npin.org/library/2002/n00621/n00621text.html>.

9. Statistical data from the U.S. Census Bureau denote the percentage of families in the labor force.

| Title                          | Number           | Percentage |
|--------------------------------|------------------|------------|
| <b>I. Married Couple</b>       | <b>1,272,826</b> |            |
| • Husband in labor force       | 989,222          |            |
| • Wife in labor force          | 710,422          | 71.8 %     |
| • Wife not in labor force      | 278,800          | 28.2 %     |
| • Husband not in labor force   | 283,604          |            |
| • Wife in labor force          | 78,773           | 27.8 %     |
| • Wife not in labor force      | 204,831          | 72.2 %     |
| <b>II. Other Family</b>        | <b>338,219</b>   |            |
| • Male household, no wife      | 88,995           |            |
| • in labor force               | 71,012           | 79.8 %     |
| • not in labor force           | 17,983           | 20.2 %     |
| • Female household, no husband | 249,224          |            |
| • in labor force               | 176,972          | 71.0 %     |
| • not in labor force           | 72,252           | 29.0%      |

10. Statistics on families below the poverty line.

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|--|---------|--------|
| • Families below the poverty line                    | 107,789 |        |
| • with related children under 18                     | 84,392  | 78.3 % |
| • Families with female household, no husband present | 58,402  |        |
| • with related children under 18                     | 53,075  | 90.9 % |

families is a central mission of the Indiana judiciary.

Last year we made major changes in our approach to family cases. The Superior Court in Lake County, for example, created a consolidated domestic relations division to deal more effectively with problems like custody, parenting time, and child support. To relieve the trauma children often experience in domestic litigation, the Lake Circuit Court created a children's room, a special haven in a difficult environment.<sup>11</sup>

Our statewide family court initiative seeks to develop a coordinated approach to dysfunctional families who frequently bounce around from one courtroom to the next. (In Porter County we found one group of 115 families who had generated 443 different cases.) We are now providing direct support to reform projects in five new counties, and a good many more are using some of the techniques we are developing.

And as we closed the year, families in Lake County had the advantage of a state-of-the-art facility for juvenile court and social services and residential care, created through the leadership of Judge Mary Beth Bonaventura. And a similar testimonial to the importance of families is now under construction in Fort Wayne by virtue of the leadership of Judge Steven Sims and Allen County government.

From family courts, to new facilities, to reforms in procedure, building stronger families for Indiana's future is never very far from the hearts of Indiana judges.

### III. STRONGER WORKFORCE, STRONGER ECONOMY

Strategic decisions about rebuilding Indiana's economy are rightly in the hands of legislators and executive leaders, but effective courts play an important supporting role.

Indeed, the very creation of the first civil courts early in the last millennium was driven by the desire to build commerce, and protect economic trade and self interests. For example, if merchants in Rome wanted to trade with makers of goods in Nice, they needed common rules about enforcing contracts and they needed reliable courts where they could seek relief if they did not get paid.

The legal profession itself emerged during the reign of Edward I (1272-1307),<sup>12</sup> as a necessary predicate to better protect economic trade and further economic self-interest. Creating a law for merchants was necessary since traders from diverse cultures and backgrounds were exchanging goods and no technical jurisprudence was suitable to govern them collectively.<sup>13</sup>

Likewise, the custom of merchants in England, the predecessor to our current

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11. See Mark Kiesling, *Court Makes Room for Children*, THE TIMES (Northwest Indiana), Aug. 21, 2002, at B1.

12. Jonathan Rose, *The Legal Profession in Medieval England: A History of Regulation*, 48 SYRACUSE L. REV. 1, 7-8 (1998) (discussing the emergence of the legal profession).

13. 1 SIR WILLIAM HOLDSWORTH, A HISTORY OF ENGLISH LAW 543 (7th ed. 1956).

judicial system, was recognized as a law apart from the common law.<sup>14</sup> The relation between the laws, however, was close.<sup>15</sup> As commerce continued to increase during the eleventh and twelfth centuries, and as the rise of great commercial cities continued to flourish, the law of merchants received great momentum.<sup>16</sup> With better organization and foreign trade and as the collection of customs became more convenient, “special courts provided for merchants who resorted thither.”<sup>17</sup>

As Jonathan Rose has observed, “These substantive and thematic aspects are not merely interesting from a historical perspective.”<sup>18</sup> They serve as the antecedent to modern jurisprudence.<sup>19</sup>

Law and lawyering are still crucial to a healthy economic environment. Toyota recently announced several hundred jobs at Princeton, Indiana, and that could not happen unless you could with confidence manufacture cars, ship them elsewhere, and know you would get paid by the buyers and that there would be recourse to effective courts if you did not.

Much of what we do by way of refashioning Indiana’s judicial system helps improve the state’s economic environment. Let me cite a few examples:

- At the beginning of 2003, a new set of rules took effect reforming Indiana’s jury system in ways that will make our juries more representative, make it easier for jurors to serve, and reduce the economic costs associated with mistrials.<sup>20</sup>
- The Supreme Court’s decision to take more cases on civil law will provide greater certainty in fields like finance and insurance and contribute to economic development. Last year we decided more civil cases than in any year in the Supreme Court’s history.<sup>21</sup>
- The monumental effort led by Justice Sullivan to create a computerized statewide case management system will among other things help reduce the cost of litigation, because cases will move through the system more quickly and people will have easy access to information.
- Our emphasis on mediation as an alternative to litigation, including brand new rules supporting the role of mediators, makes it cheaper and faster and simpler for people who have a dispute to get it resolved.<sup>22</sup>

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14. *Id.* at 539.

15. *Id.*

16. *Id.* at 528.

17. *Id.* at 542.

18. Rose, *supra* note 12, at 85.

19. *Id.*

20. *See* Ind. Jury Rules 1-30 (adopted Dec. 21, 2001, effective Jan. 1, 2003, including amendments received through Oct. 1, 2002).

21. *See* Ind. Supreme Court Annual Report, July 1, 2001, to June 30, 2002, at App. A (providing a case disposition summary and case inventories).

22. *See* Ind. Alternative Dispute Resolution Rules 8.1- 8.8 (amended July 19, 2002, effective

- And judges in criminal courts are devising new techniques that will make for a better workforce. I recently visited a drug court graduation in Evansville, presided over by Judge Wayne Trockman. There were five graduates, all people who had pleaded guilty to non-violent class D felonies, people who had survived eighteen months of a rigorous discipline and whom the court and the prosecutor were satisfied had entered into serious recovery. Every one of them had an actual job, going to work and paying taxes (and not taking up a bed at the Department of Correction).
- Finally, Indiana courts and courts across the country continue to formulate specialized court systems to increase case management and reallocate case loads. The tax court, for example, provides direction on tax matters to create uniform guidelines and structure. Other states have implemented business courts to “promote efficient resolution of all cases.”<sup>23</sup> Eighteen states have or are presently considering whether to establish a business court.<sup>24</sup> The notion is that assignment of cases to judges with particular interests and expertise “enhance consistency, predictability, and accuracy of decisions” on legal issues.<sup>25</sup>

#### CONCLUSION

Most of the time, we lawyers are so caught up in handling the many cases that come our way that we do not have the time to contemplate the collective effects our work can have on the vitality of the society we serve. It is fairly easy, however, to name states where some dysfunction in the court system has become a millstone around the state’s economic future. We are determined that that will not happen in Indiana.

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Jan. 1, 2003).

23. State Bar of Michigan Business Law Section, Business Court Ad Hoc Committee (June 2002), *at* <http://www.bodmanlongley.com/a-110802a.htm> (listing general facts about business courts).

24. *Id.*

25. *Id.*