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TRIBUTE

A TRIBUTE TO JUSTICE JON D. KRAHULIK

FRANK SULLIVAN, JR.*

Former Indiana Supreme Court Justice Jon D. Krahulik passed away on September 6, 2005. It was a terrible loss to his wonderful family and his many, many friends. It was a terrible loss, too, to Indiana law.

Jon Krahulik was a hard-working member of the editorial board of this journal, a proud alumnus and strong supporter of the law school that publishes it, a practicing lawyer of considerable distinction, and a beloved mentor of more than a generation of younger lawyers. Much could be said of his work in each of these regards. I choose to focus in this tribute on Jon Krahulik's significant, lasting, positive mark on Indiana jurisprudence.

Jon Krahulik's contributions to Indiana jurisprudence came first—and last—as an advocate. In hundreds of cases in state and federal court, the force of his argument and strength of his reasoning influenced the outcome of cases great and small, affecting the path of Indiana law as they were decided. Two of the best known of these, *State Election Board v. Bayh*,[1] and *Ritter v. Stanton*,[2] influenced Indiana's political and tort landscape in profound ways.

Jon Krahulik's client in the *State Election Board* case, Evan Bayh, as Governor, subsequently appointed him to the Indiana Supreme Court. Justice Krahulik took his seat on the bench in January 1991, just as the court began to benefit from a 1988 amendment to the state constitution that gave the court much greater freedom to select the cases on its docket. Prior to the constitutional amendment, the court had been required to spend most of its time on criminal cases; now it would be able to select those cases—particularly civil cases—that most required supreme court attention.

During his nearly three-year tenure on the court, Justice Krahulik was a prolific writer of opinions in both civil and criminal cases. By my count, he authored 141 majority opinions, nearly half on civil law topics. A review of these writings leads me to make the following observations about his jurisprudence.

First, there is an unmistakable theme running through his opinions of a deep and abiding faith in the jury system. This is perhaps best illustrated in a capital murder case, *Kennedy v. State*,[3] in which the trial judge had sentenced the

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* Justice, Indiana Supreme Court. A.B., 1972, Dartmouth College; J.D., 1982, Indiana University School of Law—Bloomington.

1. 521 N.E.2d 1313 (Ind. 1988).
2. 745 N.E.2d 828 (Ind. Ct. App. 2001), *trans. denied*, 774 N.E.2d 506 (Ind. 2002).
3. 620 N.E.2d 17 (Ind. 1993).

defendant to death even though the jury had recommended life. Justice Krahulik's opinion for the court directed that the jury's recommendation be followed. And in at least a dozen of his civil law opinions, summary judgment or judgment on the pleadings was reversed because, in his view, issues of fact for the jury remained.[4] His philosophy in this regard (as well as his clear and straightforward writing style) is illustrated in the opening and closing lines of *Ross v. Lowe*:[5] "Does a landowner fulfill his duty to invitees by fencing his yard and leaving the family dog in the care of his twelve-year old daughter? Not necessarily. . . . The jury should have been allowed to resolve these factual issues."[6]

Second, Justice Krahulik felt that it was important to keep the theories of recovery under contract and tort law separate. His opinions in *Miller Brewing Co. v. Best Beers of Bloomington, Inc.*,[7] *Martin Rispens & Son v. Hall Farms, Inc.*,[8] and *Reed v. Central Soya Co.*[9] illustrate his efforts to maintain bright lines between tort and contract actions. And in *Erie Insurance Co. v. Hickman*,[10] he stepped up to the plate and created a new cause of action in tort—for the breach of an insurer's duty to deal in good faith with its insured—when necessitated by a corresponding holding that such an action did not lie in contract.[11]

Third, Justice Krahulik's opinions were characterized by his willingness to speak to the legislature on legal anomalies that he believed were created by certain statutes. A good illustration of this is in his opinion in *Templin v. Fobes*,[12] where he cites three examples of "difficulty encountered when one of the plaintiff's claims is subject to [comparative fault] but another is not" because of the statute exempting government from the Comparative Fault Act.[13]

There are many additional observations that could be made about the contributions of Justice Krahulik—other major contributions in the criminal and civil law areas, contributions in the area of procedure, particularly the creation of the Indiana Rules of Evidence, and contributions to the profession, such as his

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4. *See* Belding v. Town of New Whiteland, 622 N.E.2d 1291 (Ind. 1993); Quakenbush v. Lackey, 622 N.E.2d 1284 (Ind. 1993); Shourek v. Stirling, 621 N.E.2d 1107 (Ind. 1993); Martin Rispens & Son v. Hall Farms, Inc., 621 N.E.2d 1078 (Ind. 1993); Ross v. Lowe, 619 N.E.2d 911 (Ind. 1993); Jordan v. Deery, 609 N.E.2d 1104 (Ind. 1993); Malachowski v. Bank One, Indianapolis, 590 N.E.2d 559 (Ind. 1992); Wehling v. Citizens Nat'l Bank, 586 N.E.2d 840 (Ind. 1992); McCarty v. Hosp. Corp. of Am., 580 N.E.2d 228 (Ind. 1991); Shuamber v. Henderson, 579 N.E.2d 452 (Ind. 1991); Allied Resin Corp. v. Waltz, 574 N.E.2d 913 (Ind. 1991); Cullison v. Medley, 570 N.E.2d 27 (Ind. 1991).

5. 619 N.E.2d 911 (Ind. 1993).

6. *Id.* at 913, 915.

7. 608 N.E.2d 975 (Ind. 1993).

8. 621 N.E.2d 1078 (Ind. 1993).

9. 621 N.E.2d 1069 (Ind. 1993).

10. 622 N.E.2d 515 (Ind. 1993).

11. *Id.* at 519.

12. 617 N.E.2d 541 (Ind. 1993).

13. *Id.* at 544 n.1.

support while a member of the court for Interest on Lawyers Trust Accounts ("IOLTA") program.[14] Discussion of those contributions would be well worth serious scholarly attention in the future. But even this limited review makes clear that in opinion after opinion, both criminal and civil, Justice Krahulik helped give new law that resolved unanswered questions and updated old rules to the needs of the 1990s.

As a member of the Indiana Supreme Court, Justice Jon D. Krahulik made a significant, lasting, and positive mark on Indiana jurisprudence and we are all the better for his service. We shall miss him greatly.

14. *See* IND. PROF'L CONDUCT R. 1.15(f)-(g); Indiana State Bar Association, IOLTA: Interest on Lawyers Trust Accounts, http:// www.inbar. org/content/iolta/ioltaintro.asp (last visited June 1, 2006).