

Indiana Law Review

Volume 57

2023

Number 1

REFLECTIONS

JOINING THE INDIANA SUPREME COURT: ROOKIE YEAR REFLECTIONS

JUSTICE DEREK R. MOLTER*

Having just crossed the one-year mark for service on the Indiana Supreme Court, the *Indiana Law Review* has invited me to reflect on my experience over that first year. When Governor Holcomb announced he had selected me to succeed Justice Steven David, Chief Justice Loretta Rush offered kind remarks that included a description of this new role as “a big job” with a “high bar” and “a lot of responsibilities.”¹ One year later, I can confirm: She was right. But it is also a rewarding and fulfilling opportunity, and as I reflect on this first year, a few things stand out.

First, I am struck by how many others have been transitioning to new judicial roles throughout Indiana lately. Around one-third of Indiana’s trial judges joined the bench in the last few years, and by the end of next year, roughly half of the fifteen judges on the Court of Appeals will have been appointed since 2018. Adding to newly-elected judges, Governor Holcomb recently noted he has appointed 90 trial court and appellate judges.² Those appointments include the new Indiana Tax Court judge, Judge Justin McAdam, who is only the third judge to preside over that court.³ That is a lot of change in not a lot of time, presenting the challenge of integrating a large number of judges into the judiciary along with the opportunity to inject fresh perspectives and energy into courts at all levels and across the state.

From what I have observed, our judiciary is handling these transitions well. Before joining the Supreme Court, I spent almost a year on the Court of Appeals, and I think that fifteen-member court is a good example. When I joined that court,

* Justice Derek R. Molter was appointed to the Indiana Supreme Court in 2022. He was previously appointed to the Court of Appeals in 2021 and is originally from Newton County. Justice Molter received his B.A., with High Distinction, from Indiana University in 2004, and he earned his J.D., *magna cum laude*, from Indiana University Maurer School of Law in 2007.

1. Gov. Eric Holcomb, *Governor Eric Holcomb Announces Indiana Supreme Court Appointment (June 10, 2022)*, YOUTUBE (June 10, 2022), <https://www.youtube.com/watch?v=mJiLXV-GS6Q> [<https://perma.cc/KRD3-TAZB>].

2. Tyler Fenwick, *McAdam Appointed Next Indiana Tax Court Judge*, IND. LAW. (July 11, 2023), <https://www.theindianalawyer.com/articles/mcadam-appointed-next-indiana-tax-court-judge> [<https://perma.cc/2GJA-QNZ8>].

3. *Id.*

I was immediately struck by how sophisticated and prudent its collective mindset was toward integrating new colleagues. Some of that was reflected in its processes. For example, judges hit the ground running with the aid of a detailed operational manual and the assistance of three colleagues appointed as mentors. There were also many welcome dinners and lunches, and friendly advice along the way.

More important though was the group's mentality. Longer-serving judges are just as eager to welcome new judges into the fold as the new judges are to join. Seasoned judges are interested in hearing fresh perspectives from new colleagues, and new colleagues remember there is much they can learn from their more senior colleagues. Together, the group continues improving the court's work, and others are noticing. The National Center for State Courts recently bestowed on the Court of Appeals the Sandra Day O'Connor Award for the Advancement of Civics Education, recognizing the court's Appeals on Wheels program, which conducts traveling oral arguments all across the state as a means of advancing civics education.⁴

Transitioning to the Supreme Court has been a similar experience, and as I have interacted with new judges on trial benches around the state, they often report the same. These transitions bring into focus the importance of institutional tools the Supreme Court has developed over the years to enhance the competence and stability of our courts. That includes the numerous opportunities for continuing education that judges enjoy throughout the year, including through an annual gathering of all judges where attendance is required. There are also opportunities for more in-depth, intensive learning experiences through the Indiana Judicial College, the Indiana Judicial College's Masters Certificate Program, and the Indiana Graduate Program for Judges. One of the most rewarding experiences that spanned my time on both the Court of Appeals and now the Supreme Court was completing the Graduate Program for Judges alongside judges from all over the state.

Second, innovation remains pervasive throughout our judiciary. During one of the budget hearings this legislative session, a legislator complemented our judiciary's innovative mindset and asked Chief Justice Rush—who recently served as President of the Conference of Chief Justices Board of Directors—where our judiciary ranks nationwide for innovation. As she noted, it is now difficult to find examples of a more innovative judicial environment. Quickly receding farther in the rearview mirror is the version of the Indiana judiciary once described as “a collection of silos that rarely connected,” with “rules and practices [that] varied so much from one courtroom to the next that even lawyers, and certainly citizens, could rightly think they were crossing the state line when they simply went over to the county next door.”⁵

4. *Court of Appeals of Indiana Receives National Civics Education Honor*, NAT'L CTR. FOR STATE CTS. (May 8, 2023), <https://www.ncsc.org/newsroom/news-releases/2023/court-of-appeals-of-indiana-receives-national-civics-education-honor> [<https://perma.cc/2KFK-5X95>].

5. Chief Justice Randall T. Shepard, *On the Way to Something Better*, State of the Judiciary Address (Jan. 11, 2012), in 55-FEB RES GESTAE 9, 9 (2012).

Much of the innovation we now enjoy is technological. All 92 counties utilize online dockets operating from the same platform allowing for both electronic filing and access to case documents. Last year, 8 million documents were filed electronically, and 50 million pages of documents were viewed online.⁶ The courts have worked with other non-profits and the Indiana Bar Foundation to provide 120 self-help kiosks in courts, libraries, and community centers around the state, which help unrepresented Hoosiers navigate their legal issues.⁷ Four million text messages were sent to remind parties of upcoming hearings. And the courts alerted the Department of Veterans Affairs to connect with 20,000 veterans with upcoming court cases to get them specialized help. The courts also enabled 1,500 parties to settle cases through online dispute resolution.⁸

Courts are innovating to improve litigation processes as well. A Family Law Taskforce has begun implementing new processes to triage cases with early screening and assessment to resolve cases more quickly; developing resources for self-represented litigants; creating order banks for judges; and developing guidelines, a code of ethics, and standard training for guardians ad litem. A Civil Case Management Pathways Pilot is also underway, which automatically assigns cases to various scheduling and case pathways depending on the type and complexity of the case, decreasing the amount of time to case disposition, reducing discovery disputes, and allowing judges to spend more time on complicated cases. And our Commercial Courts—specialized courts focused on resolving complicated business disputes—continue to grow and expand their resources. There are now ten Commercial Courts statewide, and they maintain an online database of past Commercial Court orders. They also recently published a 109-page Indiana Commercial Court Treatise.⁹ These courts have dramatically reduced the amount of time required to resolve complicated business disputes.

Third, our courts maintain productive relationships with the other branches of government and institutional partners. We are one of only eight states whose statehouse still houses all three branches of government. That physical proximity constantly reminds us that we are all working towards the same goal: improving the lives of Hoosiers. These strong working relationships were one of my first observations in this new role. Just a few weeks after joining the Court, I attended the 2022 Mental Health Summit, which convened over 1,000 leaders from all three branches of government and all 92 counties to work together towards improving responses to mental health needs.

Fourth, our Court remains interested in developing case law that examines how our state constitution operates separate from the federal constitution, either because the provisions in the two constitutions sometimes vary, or because our

6. Chief Justice Loretta H. Rush, *Indiana Courts as Engines of Economic Development, Fairness, and Public Safety*, State of the Judiciary Address (Jan. 11, 2023), in 66-FEB RES GESTAE 12, 16 (2023).

7. *Id.*

8. *Id.*

9. INDIANA COMMERCIAL COURT TREATISE (2022 ed.), <https://secure.in.gov/courts/iocs/files/commercial-court-treatise.pdf> [<https://perma.cc/7UJA-HCCF>].

Court's interpretation of similar provisions may differ from how the federal courts interpret them.¹⁰ We had occasions this year to explore that terrain,¹¹ and even when we declined to resolve such questions, we benefited from excellent advocacy analyzing the issues.¹² That said, there remain plenty of missed opportunities to advocate for a state constitutional analysis that is distinct from the federal constitution.

Early in my career, I worked on many products liability cases proceeding down parallel tracks in state and federal courts around the country. As a result, anytime I had the occasion to consider federal constitutional arguments, I considered also whether there was an opportunity to develop arguments under the state constitution where we were litigating. That is probably a good habit in any case. Anytime an attorney is making a federal constitutional argument, it is worthwhile to stop and ask: Can I make a related argument under a state constitutional provision, which the court might interpret more favorably to my client than federal precedent compels? And are there any applicable state constitutional provisions that have no federal analog? Otherwise, as Sixth Circuit Chief Judge Jeffrey Sutton puts it, the advocate is like a basketball player who takes only one of their two free throw shots.¹³

Finally, some of what I expected about our Court's operation was right, and some was wrong. I was right about its collegiality. Like my experience on the Court of Appeals, we all respect each other and enjoy spending time with one another. We share with the group our family photos and videos, updates from concerts, and even, on occasion, a well-timed GIF. We often eat lunch together in the Statehouse, and we enjoy other meals and activities when we travel for court functions. This of course makes the job more enjoyable, but more importantly, it improves our work. Virtually everything we do is a group project,

10. Hon. Randall T. Shepard, *The Renaissance in State Constitutional Law: There Are a Few Dangers, but What's the Alternative?*, 61 ALB. L. REV. 1529 (1998); Hon. Randall T. Shepard, *The Maturing Nature of State Constitution Jurisprudence*, 30 VAL. U. L. REV. 421 (1996); Hon. Loretta H. Rush & Marie Forney Miller, *Cultivating State Constitutional Law to Form a More Perfect Union – Indiana's Story*, 33 NOTRE DAME J.L. ETHICS & PUB. POL'Y 377 (2019); Hon. Loretta H. Rush & Marie Forney Miller, *A Constellation of Constitutions: Discovering & Embracing State Constitution As Guardians of Civil Liberties*, 82 ALB. L. REV. 1353 (2019).

11. See *Members of Med. Licensing Bd. of Ind. v. Planned Parenthood Great Nw., Haw., Alaska, Ind., Ky., Inc.*, 211 N.E.3d 957, 966-75 (Ind. 2023) (holding that Article 1, Section 1 of the Indiana Constitution, which guarantees "life, liberty, and the pursuit of happiness" is judicially enforceable); *Hoosier Contractors, LLC v. Gardner*, 212 N.E.3d 1234, 1242-46 (Ind. 2023) (Goff, J., concurring) (discussing the differences in state and federal constitutional standing principles).

12. *Duke Energy Ind., LLC v. Bellwether Props., LLC*, 210 N.E.3d 809, 810 (Slaughter, J., respecting the denial of transfer) (agreeing with the decision to deny transfer, noting the quality of briefing the Court received on the question of whether Indiana should adopt its own takings standard different than the federal standard, and explaining he remains "open to adopting an Indiana-specific takings standard").

13. Joan Larsen et al., *51 Imperfect Solutions: State and Federal Judges Consider the Role of State Constitutions in Rights Innovation*, 103 JUDICATURE 33, 41 (2019).

and the quality of our work depends greatly on our ability to collaborate. Collaboration is much easier and more effective when you enjoy the company of your collaborators.

What I got wrong was underestimating the fluidity of the decision-making process. Our Court has an almost entirely discretionary docket, meaning that with only a few exceptions we have discretion whether to hear a case. There are occasions when initially only a single justice believes a case merits discussion, but in the end we not only take the case, we all recognize the case as an opportunity to develop an important point in the law. As a practitioner, I attended many CLEs where attendees asked whether oral arguments make a difference, and a common answer is they usually do not impact the outcome of the case, but they impact how the opinion is written (e.g., how narrowly or broadly). My experience, thus far, is that oral argument impacts both the decision of which party wins and our explanation as to why. I am not alone in that observation. Former Chief Justice Randall Shepard observed that, in his time on the Court, oral arguments frequently changed “at least one vote on a given case,” and the oral arguments proved an “excellent way to flesh out a question or gain a new perspective on a well-litigated issue.”¹⁴

As new justices to courts of last resort often relay, the transition experience entails the proverbial drinking through a firehose, and my experience has been no different. These are just a few observations of our Court and the judiciary it leads that I have gleaned through this first year. At the center of all our work is the constitutional promise that in our state “[j]ustice shall be administered freely, and without purchase; completely, and without denial; speedily, and without delay.”¹⁵ I look forward to many years of working with my colleagues in every part of our judiciary to fulfill that promise.

14. Hon. Randall T. Shepard, *Reflections on a Decade at the Indiana Supreme Court, 1987-1997*, 30 IND. L. REV. 921, 925 (1997); Hon. Randall T. Shepard, *Building an Appellate System Worthy of a Great Nation*, 8 J. APP. PRAC. & PROCESS 207, 209 (2006) (“It is more common than not that after oral argument some member of our court declares a change of heart about the outcome as a result of the argument.”).

15. IND. CONST. art. 1, § 12.