

**RICHARD M. GIVAN:
JUSTICE, INDIANA SUPREME COURT, 1969-1994
CHIEF JUSTICE OF INDIANA, 1974-1987**

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INTRODUCTION

Born June 21, 1921, Richard M. Givan is a fourth-generation Hoosier lawyer. His roots in Indiana go back to Dearborn County, where his great-grandfather was a lawyer and Dearborn Circuit Court Judge. His grandfather practiced law in Lawrenceburg, and his father later moved to Indianapolis where he was a lawyer and superior court judge in Marion County. Justice Givan was reared in Indianapolis, attended Indiana University and earned his law degree from the Indiana University School of Law—Indianapolis in 1951. He and his wife, Pauline, have four daughters; the youngest, Libby Givan Whipple, is the fifth-generation Hoosier lawyer in the Givan family.

During law school Givan first came into contact with the institution that would figure prominently in his professional career. Givan served as assistant librarian and law clerk for all five judges of the Indiana Supreme Court. As a law clerk, Givan researched and drafted opinions for all of the judges and came to know them intimately. At that time, the court was comprised of an extraordinary group of judges, including James A. Emmert from Shelbyville. Emmert, a former mayor of Shelbyville, Shelby Circuit Court Judge and Indiana Attorney General, was a colorful individual with a keen intellect and a concise, lucid writing style. He lived in his third floor statehouse office during the week and on Friday would drive back to Shelbyville. To this day, Justice Givan tells stories about Judge Emmert, including tales of Emmert roaming the halls of the statehouse in his bathrobe and shooting at a flock of pigeons inhabiting the statehouse lawn.

Following graduation and admission to the bar, Givan was appointed to the position of State Deputy Public Defender. From 1953 to 1964, he served as a deputy attorney general where he argued many cases before the Indiana Court of Appeals, Indiana Supreme Court, and the U.S. Supreme Court. He was also a Marion County Deputy Prosecutor, and, during the course of over seventeen years, he built a private law practice in Indianapolis.

During this time, Givan actively participated in Republican Party politics, supporting candidates and working on campaigns. In 1966, he ran for the Indiana Legislature and was elected to the Indiana House of Representatives, serving one term. While in the house, he helped shepherd through the constitutional amendment placing judges of the supreme court and court of appeals on a merit selection system.¹

In 1968, Givan had the option to run for judge of the Indiana Supreme Court.

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1. IND. CONST. art. VII, § 10.

At that time, judges of the Indiana Supreme Court and Indiana Appellate Court were elected for six-year terms. Givan campaigned hard and was nominated at the Republican Convention. In the course of the Republican victory in the fall of 1968, Givan was elected judge of the supreme court. He assumed office in December 1968.

I. OPINION-WRITING

Because of newly-elected Justice Givan's experiences as a general law practitioner and as a deputy attorney general, he was keenly aware of how supreme court decisions impact the judicial system. This awareness, coupled with his experience and expertise in the areas of criminal law and trial practice, gave him the opportunity to be a leader in opinion-writing and formulating decisions in these areas. True to his nature, Justice Givan took this opportunity, regularly writing eighty to one hundred opinions per year for the court.

Justice Givan was also very sensitive to the problems of ordinary people and practicing attorneys. One example of this sensitivity was his sparing use of footnotes. His reason: Lawyers don't have time, and clients don't have the money to pay lawyers to take the time, to read through a judge's musings on the law. Justice Givan believed that cases should be decided in a straightforward manner on the merits and without any detours into unnecessary verbiage.

II. APPOINTMENT AS CHIEF JUSTICE

In 1974, Justice Norman Arterburn decided to relinquish the office of chief justice. Arterburn had been on the bench since 1955, and he wanted to finish his career on the court without the added responsibilities of that office. The Judicial Nominating Commission considered Justice Givan and another justice for the post. Givan had been on the court for nearly six years. He also had extensive trial and appellate experience gained as a result of his private practice and his position as a deputy attorney general. He had argued dozens of cases before the Indiana Supreme Court and the Indiana Court of Appeals and, in addition, had argued *Irvin v. Dowd*² for the State of Indiana before the U.S. Supreme Court. He also had been personally acquainted with every judge who served on the Indiana Supreme Court from the late 1940s until that time. These qualifications, added to Justice Givan's knowledge of the workings of the supreme court, its institutional traditions, and the interaction of all three branches of state government made him the perfect choice for chief justice. He assumed the office of chief justice in November, 1974. In 1979 and again in 1984, he was selected for additional terms as chief justice.

III. LEADERSHIP IN THE JUDICIARY

The Indiana court system had grown and was handling many more cases in the 1970s than it had been in the early 1950s when Justice Givan was a law clerk for

2. 366 U.S. 717 (1961).

the court. Thus, in order to properly function, the court system needed a support staff and support agencies.

It has been said that a ship in a harbor is safe, but that is not where a ship should be. As chief justice, Givan did not moor in the harbor, but instead navigated uncharted waters, taking a leadership role in developing new initiatives and responsibilities for the court system's support agencies which are overseen by the Indiana Supreme Court. He was principally responsible for the creation and development of the Division of State Court Administration. That office made many improvements in caseload reporting and case management for trial courts in Indiana. The Indiana Judicial Center and the Judicial Conference, under Givan's leadership, made vast strides forward in assisting trial judges across the State. Givan helped recruit Professor William A. Kerr of the Indiana University School of Law—Indianapolis to head the Judicial Center. Under Givan's and Kerr's leadership, the Judicial Center and Judicial Conference improved their program of continuing education for the Indiana judiciary, developed research capabilities to assist trial judges, and promoted camaraderie among the state's judges. As a result of these and other changes during Givan's tenure, the office of Chief Justice of the Indiana Supreme Court evolved into the office of Chief Justice of Indiana. This evolution was for the most part a smooth one, largely due to Chief Justice Givan's able leadership.

Givan also played a key role in the development of Admission & Discipline Rule 13V.(C).³ In the early 1970s, the State Board of Law Examiners began to see significant deficiencies in the performance of law school graduates on the Indiana bar examination. The supreme court held a meeting with law school representatives and eventually developed Rule 13V.(C), which contained a set of law school courses required of graduates who take the Indiana bar exam.⁴

During the 1980s, Givan was also the driving force behind the amendment of article VII, section 4 of the Indiana Constitution. A constitutional provision, adopted in 1970, had required the supreme court to exercise original appellate jurisdiction in criminal cases in which the sentence was more than ten years.⁵ By the early 1980s, however, the volume of criminal cases left little time for the supreme court to decide civil cases. Givan spearheaded a redrafting of the constitutional provision, and along with others, worked with the legislature for its passage.

IV. BABY DOE CASE

In 1982, the supreme court faced a difficult decision which sparked a political controversy.⁶ The case involved a baby born in April 1982 in a Bloomington

3. IND. ADMIS. DISC. R. 13V.(C) (1987) (amended 1995).

4. The 1995 Amendment to Rule 13V.(C) eliminated the specific course requirements except for "legal ethics or professional responsibility."

5. IND. CONST. art. VII, § 4.

6. This chronology is taken from Dean Olsen, *The Baby and the Judge*, LAFAYETTE J. & COURIER, Oct. 28, 1984, at B1, and CHRONOLOGY OF EVENTS IN THE INFANT DOE CASES,

Hospital. The baby suffered from Down's Syndrome and a tracheoesophageal fistula, a condition in which the passage from the mouth to the stomach is not fully developed. Due to this condition, the child could not be fed orally. The attending physician recommended against emergency surgery and intravenous feeding because of the baby's minimal chance of survival. The parents accepted the attending physician's recommendation; however, other doctors in the hospital disagreed.

Unsure of its legal and medical obligations, the hospital petitioned the Monroe Circuit Court for a ruling on the matter. The trial court found that the parents had the right to choose a "medically recommended course of treatment for their child."⁷ However, the court also appointed the Monroe County Welfare Department as the child's guardian ad litem to determine whether an appeal of the court order should be taken. The welfare department investigated and decided not to appeal the court order. The next day, another guardian ad litem was appointed and, on that day, the Monroe County prosecutor filed a petition for detention, claiming the child was in need of services. The Monroe Circuit Court denied the petition. The prosecutor then petitioned the supreme court for a writ of mandamus ordering the baby to be fed intravenously.

The supreme court voted 4-0 not to intervene. The court did not consider whether the rulings of the trial court were correct, but only whether the trial court had the jurisdiction to consider the case and make a ruling. The supreme court based its unpublished ruling on the well-known restrictions on its issuance of writs of mandamus. The supreme court may only issue a writ of mandate or prohibition where either one of two circumstances is present: (1) the absence of jurisdiction by the lower court; or (2) the absolute duty of the trial court to act or refrain from acting.⁸

Although that ruling was in accord with the parents' wishes, it did not settle the controversy. Two years later, a group calling itself the "Remember Baby Doe/Retire Judge Givan Committee" began a campaign to defeat Justice Givan in his November 1994 retention vote. The committee, based in Lafayette, recruited a number of people, including law professors from Indiana University and Notre Dame, to support its position.

In response, Justice Givan formed "The Bipartisan Committee to Support Chief Justice Givan." This committee was chaired by Howard S. Young, Jr., an Indianapolis attorney, and Frank W. Campbell, a Noblesville attorney. The committee raised money, did some advertising, spread the word, and organized support groups around the state. Givan, for his part, toured the state giving interviews and holding press conferences. At an interview in Lafayette, Givan acknowledged a judge's occasional role of being in the middle of a controversy:

BIPARTISAN COMMITTEE TO SUPPORT CHIEF JUSTICE GIVAN (Oct. 1984) 1 [hereinafter BIPARTISAN COMMITTEE].

7. BIPARTISAN COMMITTEE, *supra* note 6, at 2.

8. *State ex. rel. White v. Marion Superior Court*, 391 N.E.2d 596 (Ind. 1979). *See also* IND. CONST. art. VII, § 4; IND. CODE § 34-1-58-1 (1993).

Anytime we make emotional decisions, there are people who become very hyper and emotional about it. . . . You know you're going to stir up a hornets' nest. But then, you don't pay much attention to that because if you set it all on making your decision on being popular, you'd be an awful poor judge.⁹

Justice Givan eventually was retained by a wide margin.

V. THE CHIEF JUSTICE

The office of chief justice was a perfect match for Richard Givan. A decisive person by nature, he never had trouble making decisions. He always said that, as judge, he was just like an umpire calling balls and strikes: he doesn't control what pitches come to the plate, he just calls them as he sees them. And he can't delay the call. He must make a decision immediately and then wait for the next pitch. Similarly, a judge cannot control the cases which come before him. He simply must call them as he sees them and do so promptly, because more cases are on the way. Though Givan joked that, because he lived in a house with five women (his wife, Pauline, and his four daughters), he had to become a judge so he could make a decision now and then, the fact is he was very decisive as a judge and as a person.

The same was true of his tenure as chief justice. Many decisions had to be made daily on various aspects of the judiciary and the supreme court, and Givan made them without hesitation. One decision, in particular, might have generated considerable controversy had the circumstances been different, but it was still made promptly and firmly. In the spring of 1977, Governor Otis R. Bowen appointed Judge Alfred Pivarnik from Porter County to replace Justice Norman Arterburn on the supreme court. For several years, a group of people in Northwest Indiana had been criticizing Pivarnik and running a campaign against him. Givan got wind of the critics' plan to disrupt Judge Pivarnik's swearing-in ceremony. In response, Givan arranged for police to be present and ready to deal with the protestors. A police bus was made available so that the court could consider holding the protestors in contempt of court and, if necessary, haul them away. As it turned out, no one showed up to disrupt the ceremony.

He also was a straightforward individual who preferred to meet problems head-on. Several years ago, Givan was present at a meeting of the House of Delegates of the Indiana State Bar Association to give his annual State of the Judiciary message. During the meeting, the House passed a resolution urging the court to adopt an Interest On Lawyers' Trust Accounts (IOLTA) program. When Givan rose to give his message, he spoke directly to the IOLTA issue. He told the delegates that he did not believe the court would adopt an IOLTA program and that he personally was very much opposed to the idea of taking interest earned on client monies and giving it to someone else.¹⁰ That was the way you dealt with

9. *The Baby and the Judge*, *supra* note 6, at B1.

10. Givan's visceral reaction seems to have been prescient: *See* Washington Legal Found.

Richard Givan as chief justice: open, candid, and straightforward.

VI. GIVAN THE STORYTELLER

But perhaps more than anything else, Justice Givan will be remembered for his ability to tell a good story. As chief justice, his door was always open, and he was always willing to listen to anyone who had comments about the judicial system. He understood and empathized with ordinary people. He could just as easily sit down at a table and talk to a farmer or truck driver as he could a governor or legislator. And those who know him can attest that no one can tell a story like Justice Givan.

His stories about the nightly goings-on at the statehouse in the 1940s and 1950s, when some judges lived in their chambers during the week, are legendary. So are his “Givanisms,” slogans so named by his law clerks and friends. The author, who was privileged to serve as one of his law clerks in the late 1970s, can recall his returning from a meeting with the legislature in which the subject of the legislature taking over some supreme court statehouse offices was discussed. Givan was firm in his resolve not to allow the legislature to do so, because “it’s like letting the camel get his nose in the tent.” Another time, when speaking of an effort to push a bill through the legislature, he warned of putting too many provisions in the bill: “If you pile on too many apples, you can’t shove the cart.”

VII. THE LEGACY OF DICK GIVAN

To those who have known him and dealt with him, Justice Givan was remarkable for being, as he would put it, “as common as an old shoe.” Rarely did he identify himself when calling on the phone as “Justice Givan” or “Judge Givan”; he was simply “Dick Givan.”

He also had a knack for being able to laugh at himself. In the mid-1980s, a lawyer was unhappy with a decision of the supreme court affirming his client’s criminal conviction and was quoted in the newspaper as calling Justice Givan a “jackass with his head in the sand.” Givan could have taken action against the lawyer, but he declined, observing that controversy and criticism come with the job of chief justice. Instead, he brought the subject up a week later at a bar admission ceremony with several hundred persons in attendance. After relating to the crowd what the lawyer had called him, Givan said he considered suing the lawyer for slander—that is, until his fellow judges reminded him that, in a slander suit, truth is always a defense. Suffice to say, Justice Givan’s self-deprecating humor and style served the state and the judiciary well during his tenure as chief justice.

Givan retired from that office in March 1987, shortly after the Givan-led fight to change the constitutional jurisdiction of the supreme court was successful in the legislature. However, he remained on the court another seven years, retiring on December 31, 1994, after twenty-six years on the court. It was both fitting and

v. Texas Equal Access to Just. Found., 94 F.3d 996 (5th Cir. 1996) (holding that IOLTA program is an unconstitutional taking).

coincidental that his successor, Myra C. Selby, was the first African-American and first woman to serve on the supreme court. Though he was very conservative and highly critical of the social engineering of the Congress and the U.S. Supreme Court, he fiercely believed in equal opportunity for all Americans, regardless of race, gender or religion. This view of equal opportunity for all did not mean, for Givan, a mandate of equal results for all. It meant simply that every person in this country should have, under the law, the opportunity to work, to excel and to dream—and to be judged in their endeavors on their merits and without discrimination.

When Dick Givan retired from the Indiana Supreme Court in 1994, he left a legacy not just in his written opinions, but in his unique brand of Hoosier common sense and integrity. He continues to live on his farm near Plainfield, where he is an active community volunteer and a highly regarded retired member of Indiana's judiciary.

