

2-1937

A Suggestion to Eliminate Delays in the Courts of Marion County

William E. Riley
Member, Indianapolis Bar

Follow this and additional works at: <http://www.repository.law.indiana.edu/ilj>

 Part of the [Courts Commons](#)

Recommended Citation

Riley, William E. (1937) "A Suggestion to Eliminate Delays in the Courts of Marion County," *Indiana Law Journal*: Vol. 12: Iss. 3, Article 3.

Available at: <http://www.repository.law.indiana.edu/ilj/vol12/iss3/3>

This Article is brought to you for free and open access by the Law School Journals at Digital Repository @ Maurer Law. It has been accepted for inclusion in *Indiana Law Journal* by an authorized administrator of Digital Repository @ Maurer Law. For more information, please contact wattn@indiana.edu.



JEROME HALL LAW LIBRARY

INDIANA UNIVERSITY
Maurer School of Law
Bloomington

A SUGGESTION TO ELIMINATE DELAYS IN THE COURTS OF MARION COUNTY

By WILLIAM E. RILEY*

The mechanism of practice and procedure has not changed in Marion County in the last thirty or forty years, and very little if any in seventy-five years. It would be remarkable if surrounded by a world that has changed industrially, commercially, and socially, so violently in the last generation the system had not become obsolete insofar as business and social conditions are concerned.

When the present mechanism of practice and procedure was adopted we were truly in the horse and buggy days. The people were slow and leisurely. The noon-day meal was often the most substantial and stores remained open after six o'clock. The hour surrounding the noon meal, while not used for the siesta of the Latin countries, was the hour of rest and relaxation. Courts were adjusted to that tempo. They have remained adjusted to that surrounding. Business progressed, or at least changed; industry evolved; social conditions by necessity changed to meet the changing conditions.

Our courts alone remain in the same groove. As the number of cases increased, the courts became congested. The phrase, "the laws delay" took a permanent place in our lexicon. No class suffered from this like the lawyers. The lawyers saw institutions grow up about them and take away their business because, we are forced to admit, it was handled more quickly, if not more intelligently. This doesn't apply to trust companies alone. It applies also to attorneys-in-fact, representing literally thousands of automobile owners, real estate agents, and collection agencies which have taken away much of the legitimate practice of law from lawyers.

* Of the Indianapolis Bar.

Editor's Note. While this article is written from the standpoint of Marion County alone it was felt that the number of members of the Association practicing in Marion and other counties having three or more courts justifies its publication in the Journal. Ed.

The Workmen's Compensation Law can be attributed in the greatest part to the lawyers and courts who caused or countenanced the "laws delay". The same Industrial Board Law, I might add, is, in my opinion, one of the prolific sources of the Townsend Old Age propaganda. If a man approaches the age of 50, 55, or 60 years with the constant reminder that industrially he is becoming a poor insurance risk and soon he will lose his position, you can't blame him for looking around for some sort of insurance in his old age.

The following are a few suggestions based on observations in three other counties containing cities not dissimilar to Indianapolis which might help to make the operations of the courts more efficient in Marion County than they are at the present.

Since the Circuit Court is a constitutional court and cannot be readily changed, make the Superior Court a court of seven Rooms or Departments, all of which shall have co-ordinate and concurrent jurisdiction; four of the courts designated as civil departments; one domestic relations department; one probate department, and one criminal department. At the beginning of the calendar year the judges shall elect one of their number the presiding justice or the calendar justice. He shall preside for a full year over the calendar department or Room No. 1. Rooms Nos. 2, 3, 4 shall be civil departments; Room No. 5, probate department; No. 6, domestic relations department; No. 7, criminal department. The judges of each department shall be assigned at least every three months by the presiding justice to different departments.

It has been found in other jurisdictions that changes in the last three departments are efficacious: (a) because a particular justice does not become obsessed with the foibles, etc., of the environment of the particular class of cases so that his view becomes circumscribed; (b) the control over a particular class of cases, such as a lengthy tenure over criminal cases, probate cases and domestic relations, puts a judge in close touch with a particular class of people and enables him perhaps unwittingly and maybe unconsciously to build up a

political following; (c) it has been found advantageous to the legal profession and litigants if litigants can not and do not know what particular judge may try their cases, in advance.

Opposition has been met in discussing these changes with members of the profession in regard to the last three departments. In most instances it was due to the foggy philosophy that all changes are presumptively wrong. Other opposition is founded on a basis even more unhealthy. To suggest that a judge of a criminal matter, a probate matter or a domestic relations matter should of necessity "stay with a case" is pure nonsense. There is nothing sacred about any of these classes of cases that put them in a category different from any other civil matter. The administrative forces of these courts, as a matter of course, look after the details of the "cases" anyhow and if the judge would be called upon to act only in judicial matters, it would be better anyhow. No one can suggest an incident where any lawyer or litigant suffered by reason of a change of judge controlling these matters nor by reason of elections, or death. As a matter of fact, changes of judges in not a few instances have had a refreshing effect.

All civil, probate, and domestic relations matters are filed in Room No. 1. All dockets are under the supervision of Room No. 1. All jury venires are under the supervision of Room No. 1. All cases are assigned by Department No. 1; civil cases to civil departments; probate to the probate department, No. 5; domestic relations to department No. 6; criminal cases are filed direct in department No. 7, and the grand jury under the supervision of the criminal department, appeals in criminal misdemeanors are filed in department No. 1, and assigned to any department that is open, not including probate or domestic relations departments. The domestic relations department presides not only over divorce cases but all matters regarding the family relation, including juvenile matters not necessarily involving petty crimes which are to be tried in the juvenile department of municipal court as hereinafter set out.

But the mere fact that a judge is assigned to a particular room does not mean he is confined to that department. The judges are mobile; they can be moved or assigned temporarily to any other department or to consider any other matter that may arise due to congestion or emergency. In this matter it must readily be seen that every judge is on the job every minute of the court day and when not busy the clerk of that particular room reports the same to the clerk of the presiding judge and the judge is subject to call.

Demurrers, motion defaults, etc., are all passed on by the presiding justice, who in view of the keeping of the calendar and passing on these matters cannot try many cases, at least no jury cases. Opposition has been heard on this on the ground that the judge that makes up the issues should try the cases. This sounds well, but as a matter of practical application it is of no great effect because not in one case out of fifty does the judge trying the case recall making up the issues and if the law is any sort of an exact science as it is supposed to be it should have no effect whatever. Furthermore, if courts insist by appropriate rules that all lawyers must file trial briefs with the court (but not with the opposition) at the beginning of the trial, this will be obviated. In addition to this, it will acquaint the court not only with the issues, but the nature of the evidence in advance. Two judges will then be passing on the legal questions involved.

Demurrers, motions, etc., are regulated by rules of court and in the handling of which the court eliminates a great percentage of the causes of delays. These matters should automatically come up, say, four days after filing. We hear four days is too soon. This gives the defendant about twenty-four days to study the complaint. (In other jurisdictions this time is shortened, by requiring pleading on return day.) If he can't puncture it in that time its fabric is not very thin. On the other hand, the one who drafts the complaint should be able to defend it when it is filed. No additional time should be allowed for filing briefs—one has had twenty-four days to prepare his brief, the other has had a good part of a life-time—at least until the tolling of the Statute of Limi-

tations. No one hurried the lawyer in the filing of the complaint.

Extraordinary proceedings, habeas corpus, quo warranto, prohibition, etc., are filed and assigned to department No. 1. If they demand more time than the calendar department can allow to them, they can be assigned to any other department.

Receiverships are a bugaboo; some judges may regard these as proper emoluments of his office. Whether this is so or not, we do know that no incident of the law has been the subject of so much general criticism in the last few years throughout the entire United States. It seems that receiverships by a rule may be assigned in rotation and with this proviso that fees shall be allowed only by petition, the petition to be filed in the calendar department and heard by a justice who did not make the appointment.

Systems somewhat akin to the above are in practice in other jurisdictions containing cities larger than Indianapolis. Cases under this system are tried from five to nine weeks after filing—whether by court or jury. This may seem incredible but it is true. The practice of having juries only in the winter months would make this impossible. But the mere fact that our forefathers ruled that jury trials should be held only during the winter months is no reason why we can't have a jury trial anytime. Jury panels are available anytime now. Under the present we know that a jury case filed in the spring won't be tried before the late fall for no reason other than we know courts won't call a jury. Of course, this would immediately do away with changes of venue from a judge. The law relative to changes of venue from the county without the necessity of a showing of cause should be stopped. Everyone knows this. Affidavits in almost every instance, except occasionally when utilities are involved, are false, yet judges are forced to countenance this perjury.

Appeals from the Municipal Court are to be assigned to the appellate department of the Superior Court. Every three months the presiding justice is to assign one or two of the superior justices who are to hear (not *de novo*) in addition to their other duties, appeals from the Municipal Court.

Where an appellate court holds a case for more than ninety days after submission without a decision no salary is to be paid said justice unless a written reason is filed with the clerk of the court for so doing. This rule has been found efficacious in other jurisdictions. There is no reason why the jurisdiction of the Municipal Court is not increased to \$1,000. Municipal Courts in other jurisdictions run as high as \$2,000. Provision could be made for written opinions if necessary.

Appeals from the findings of the Industrial Board come under the same general head as appeals from the Municipal Court and could be heard by the appellate department of the Marion Superior Court. There is no reason why appeals from the full Industrial Board should glut the proceedings of the Appellate Court. The proceedings in almost every instance are very simple and, if not, no one seriously contends that the mental caliber of the judges of our Appellate Courts is superior to our trial judges either in age, learning or experience. Perhaps it should be, but is not. If this plan is not feasible for appeals of the findings of Industrial Boards when heard by a single member of the Board in the county where the accident occurred, then a procedure might be made to appeal to a court composed of one or two trial judges in a circuit resolving itself into an appellate department. There would not be anything in a law like this that would conflict with the reasoning in *Kingan, etc., v. Oxam*, 190 Ind. 554.

This leaves only the Municipal Court of Marion County. This court should be made part of the judicial system of Marion County and under the supervision of the presiding justice of the Marion Superior Court, with power to draft municipal judges to the Superior bench if necessary and appoint special judges, etc.

The Municipal Court should include the juvenile cases exclusively. All cases involving adults should be sent to the department of domestic relations. Finally this court should be mobile and the judges should rotate under the supervision of the presiding justice of the Superior Court. Again there may be criticism from professional charitable workers who have come to regard the juvenile matters of the city as

particularly allocated to them under the universal scheme of things. This court is sacred to them only insofar as it carried out their whims, etc. A change of judge will be very wholesome the same as changing the judge in the criminal branch.

Lastly, the judges of the Municipal Courts should be elected. If anyone imagines that the appointment of judges by the Governor has taken it out of politics, his vision or intelligence is limited. Politics has influenced every appointment of every judge and every governor. This does not say that politics has been reflected in any judgment rendered by any judge.

These changes in some degree would do away with the "laws delay."

Another prolific source of criticism is the habit of some judges in taking cases under advisement. A judge can always analyze evidence better when it is fresh in his mind. The weight to be given any evidence can always be ascertained while the character and the demeanor is fresh in the mind. This in effect is what all Federal Judges do now in commenting on the evidence. While they do not decide the case they analyze the evidence immediately and could decide it if they wished when finished. In Equity cases they generally in effect decide immediately and only give time to prepare the special findings. There is no reason for delay in making findings on a factual matter. If there is a legal question involved, perhaps the court may desire and need a little time. But if the case is properly briefed in advance this would be reduced to a minimum. A rule of court that briefs on new matter should be filed by all parties in two days and the cases decided within five days would not be harsh. Anyone with trial experience has observed that the more experienced and learned a judge the more quickly he decides. Delays and doubts only indicate a lack of knowledge, generally.

Judges under the immediate supervision of one of their number and responsible at least for the time being to one whom they selected as their superior would open court on time and keep it open, and would keep on holding court

through the entire court hours if they were under the scrutiny of one of their number and accountable for their time. Further, two or three judges should be on duty throughout the entire summer. There is no sense in abandoning law business for two months.

There is nothing so disgustingly irritating to a litigant who goes into court as to be compelled to sit and await the whim of the judge to take the bench, or the long intermissions. The litigant is on "pins and needles"; he appeals to his lawyer. He does not and cannot understand why the lawyer must sit there impotent while the judge wastes the time of the court, sometimes the jury, the lawyer, the litigant and the witnesses. It is practically impossible to get a doctor to go into an adjoining county due to the long delays in some of these courts. Nothing is so irritating as a wait—and everyone knows many judges make you wait. No one has the temerity to address a judge on the matter, but one of their number could very well call his attention to the matter in a forcible manner. So far as the habit of judges in other counties keeping lawyers waiting while they discuss crops with their constituents who have brought their business to their counties is concerned, if the lawyers rise and do away with the change of venue nuisance they will solve it.

There is no reason for this waste of time in opening court or the long recesses during the trial and, lastly, the two hour adjournment at noon time. Fifty to seventy-five years ago two hours for noon was highly necessary, no doubt. Lawyers and litigants needed the time then, perhaps. Now, no such time is needed by bankers, doctors, professional men and laborers, and there should be no such need for judges or lawyers. There is no reason for courts to use more than an hour. Perhaps it would be better to convene at 10 a. m. and run to 4 or 4:30 with a half hour for noon. This would expedite trials considerably.

Finally, here is a suggestion that will keep the judiciary out of politics, at least to some degree, out of partison politics. First, elect all judges—Superior and Municipal judges. If there are seven judges, the four highest on the predominating

ticket, and the three highest on the second ticket are the judges. In the Municipal Court, if there are five judges, the three on the predominating ticket and two on the second ticket shall be the successful candidates. If this does not appeal to the lawyer we might adopt the Massachusetts plan—but if we decide to adopt that plan let us not proceed on an abortive method that leaves all of its defects and none of its virtues. At that, the standing given the Massachusetts Courts in an attempt to make a scientific rating of the courts in all states, in a recent issue of the *American Bar Journal* was not so encouraging.

The method here is in no sense “patented”. Something similar would work just as well.

There has been no attempt to make this a “judicial paper”. The cases on jurisdiction of both trial and appellate courts of the matters discussed have been read (perhaps not exhaustively) but nothing here recommended is repugnant to any of the cases read, at least not to the extent that substantial compliance can't be had.

Professor Edwin Bourchard, of the Yale School of Law, in the April issue of the *Indiana Law Journal* said: “It is an aphorism that the enemies of law reform are the lawyers.” The changes, or similar changes, suggested here, will no doubt find resistance in some quarters. If they are adopted the excuse that lawyers sometimes have, that if they won't do it others would, would be eliminated. The “laws delay” directly affects those it distresses most. In its final analysis it is not very much of a sporting proposition for a lawyer to use all the learning and the skill he has acquired to take advantage of the devious ways of the law to hinder and delay the final adjudication of human rights. No one can or does object to a lawyer winning a case by any lawful method, whether against a rich or a poor litigant. One certainly has a right to criticize the lack of sportsmanship of a strong vigorous healthy lawyer in breaking down the spirit of a distressed litigant by delays. Dilatory motions and changes of venue are two of the striking examples by which this is done. While on the subject, a comparison might be made between the much

criticized lawyers who represent the cracked-brained Dillingers when they are brought into court and the eminently respectable lawyers who are paid to keep their clients out of court. Reference is made to those who are always zealous to do anything for their eminently respectable clients so long as it does not violate the letter of the law forgetting entirely the morals of the matter. There never has been a great wrong perpetrated that was not engineered by a lawyer, whether it was the building of an Insull dynasty or keeping a bank open after its insolvency became notorious. These delays of justice have emptied many a market basket. There is no great distinction between representing a Dillinger after he gets into court and keeping another violator of the code, whether civil or criminal, out of court or postponing a timely appearance in court. Justice to be adequate must be timely. So-called communism or socialism in the United States, except in a few isolated cases of professionals, is entirely a disease of the stomach and not of the mind or heart. If we promote quicker adjudication of human rights there will be fewer belly aches.

INDIANA LAW JOURNAL

Published Bi-Monthly October to August, inclusive, by the
Indiana State Bar Association

OFFICERS AND BOARD OF MANAGERS OF THE INDIANA STATE BAR ASSOCIATION

ALBERT H. COLE, *President*.....Peru
LOUDEN L. BOMBERGER, *Vice-President*.....Hammond
THOMAS C. BATCHELOR, *Secretary-Treasurer*.....Indianapolis

BOARD OF MANAGERS

1st District	7th District
Ray C. Thomas, Gary	Donald A. Rogers, Bloomington
2nd District	8th District
John W. Kitch, Plymouth	John M. Paris, New Albany
3rd District	9th District
Aaron H. Huguenard, South Bend	T. Harlan Montgomery, Seymour
4th District	10th District
Abram Simmons, Bluffton	Will F. White, Muncie
5th District	11th District
Donald F. Elliott, Kokomo	Bartlett H. Campbell, Anderson
6th District	12th District
John M. McFaddin, Rockville	Joseph G. Wood, Indianapolis

Member-at-Large—Fred C. Gause, Indianapolis

ALFRED EVENS, *Editor*

THOMAS C. BATCHELOR, *Business Manager*

Faculty Board of Editors

Robert C. Brown	Frank E. Horack
Milo J. Bowman	James J. Robinson
Bernard C. Gavit	Hugh E. Willis
Leon H. Wallace	

Student Board of Editors

William Henry Snyder, Chairman

Norman C. Burnworth	William King Harvey
Hilbert S. Cofield	Charles D. Leist
David Cohen	William I. Marlatt
Paul D. Ewan	Robert E. Meyers
Henry A. Fleck	Russell H. Nehrig
Otto E. Grant, Jr.	Herman L. Trautman

The Indiana State Bar Association does not assume collective responsibility for
matter signed or unsigned in this issue.