

The State of the Judiciary
Chief Justice Richard M. Givan, Indiana Supreme Court
Message to the Legislature
January 21, 1981

During the past 10 years there has been an increasing awareness among judges and lawyers that many men and women are entering the practice of law lacking skills necessary in court room work. Chief Justice Warren Burger of the United States Supreme Court discussed this problem in his now famous Sonnett Lecture in 1973 at Fordham Law School. Since that time many reports and articles have expressed the same concern.

Indiana is fortunate at this time to have deans at all four of the law schools located in the state who are farsighted and desirous of effecting a remedy for these perceived shortcomings in legal education.

Dean Plager of Indiana University Law School at Bloomington, Dean Read of Indiana University Law School at Indianapolis, Dean Link of Notre Dame Law School, and Dean Ehren of Valparaiso Law School have joined together and, with much planning and thought, have submitted a bill for your consideration. This bill, if enacted, would facilitate the development of much needed clinical legal education for law students.

The deans are to be commended for their cooperation in an effort to increase the effectiveness of legal education. I urge your careful consideration of this proposed bill.

Trial Court Finance

Another bill before you in this session would provide state funding for the trial courts. Such funding has long been needed. The correct move away from reliance on property tax and the changing economy in Indiana has placed local governments in a difficult position as to the cost of court operations.

Many judges have found themselves at odds with their County Council.

Judges are required by law to perform many functions, both judicial and non-judicial, that require the expenditure of money. In order for a court to function properly, there must be an adequate staff of competent employees. The trial judge must compete with business and industry for persons to fill these positions.

The County Council, on the other hand, must provide funds for many functions of government, all of which are faced with inflationary costs of operation.

The Council in its frustration sometimes denies an item in the judge's budget which he perceives as essential to the discharge of his duties.

When this happens, the judge finds himself in the unhappy position of issuing an order mandating the Council to furnish the requested funds. The Council in turn may appeal the decision of the trial judge.

The time, energy, and funds of the Council, the courts, and the public are needlessly spent to resolve a confrontation that should never have happened.

Although the system pits the Council and the judge against each other, they are in fact all well-meaning persons caught up in a dilemma of too many duties to perform with too little money to go around.

Although trial judges are often thought of as county officials, they are actually members of a single statewide judiciary, the third branch of our cherished three-bodied form of government. They enforce statewide statutes. Their orders are enforceable statewide. For convenience, they are elected in counties and try cases arising in those counties. This territorial assignment is called venue. Their jurisdiction is statewide. Local financing of the judiciary was efficient only so long as the major source of revenue was a property tax. As our economy has grown and urban industrial areas have developed, a locally-supported judiciary has become more and more unbalanced in its ability to carry out its statewide duties.

The bill before you preserves the present safeguard against unlawful or unwarranted judicial spending. Today, a judge's mandate powers are subject to control through the appeal process afforded by statute. Under the proposed bill, all items in a judge's budget would be subject to review at the state level before submission to the legislature.

State financing will not only create a more even and equitable fiscal operation, but will also free existing local funds for much needed services which can best be served at the local level.

The judiciary of Indiana is disposing of more cases per judge per year than ever before. In 1979, there were 382,173 civil cases, including juvenile cases, and 124,318 criminal cases disposed of. In addition, the trial courts disposed of 375,934 traffic cases.

The Court of Appeals disposed of 1,142 cases. The Supreme Court disposed of 358 cases, not including 209 petitions to transfer and 59 original actions.

The output of the Indiana court system is a positive result of several years of planning and cooperation between the Legislature and the judiciary.

Continuing Education For Judges

In 1967, the Legislature created the Judicial Conference to promote continuing legal education for judges.

In 1971, Indiana University Law School at Indianapolis had the foresight to cooperate with the judiciary in establishing the Judicial Center to further promote continuing legal education for judges and to render related services such as publication of notes on late cases and direct

research assistance for trial judges. This service was especially helpful to judges located away from areas large enough to maintain full legal libraries.

The Center also conducts an orientation seminar for newly elected judges following every general election, and it conducts seminars on new legislation following each session of the General Assembly.

In 1975, the Legislature created the Office of State Court Administration. This office, aided by excellent cooperation from the trial judges, maintains judicial cost and performance records which, among other things, enable the Judicial Center to evaluate its work and recognize areas of needed instruction to the Judiciary.

In 1979, the Legislature realized that the Judicial Center had been funded by the federal government, through L.E.A.A., with matching funds furnished by the Indianapolis Law School, and the L.E.A.A. funding would soon end. Therefore, the Legislature made the Judicial Center a state agency in order to ensure its continuation.

Last year the Legislature transferred the responsibility of training of probation officers from the Department of Correction to the Judicial Center.

This year with the closing out of L.E.A.A., financing has become a reality. This session of the Legislature will be asked to provide full funding for the Judicial Center. Each of you will be furnished detailed information on the services rendered by the Judicial Center, and the cost of its operation. I strongly urge you to appropriate funds for this facility in order that it may continue the excellent work it is now doing. I know of no other single task the Legislature could perform that would do more to promote a more efficient court system.

Problems of Penal Facilities

A subject discussed in the last State of the Judiciary message continues to be a problem. It is the overcrowding of our penal facilities and juvenile detention facilities. Too often we hear or read of crimes committed by persons who many feel should be incarcerated because of prior crimes. Too often one hears blame placed on police departments, prosecutors, the courts or the Department of Correction. I submit to you that, notwithstanding the frailties which attend all fields of human endeavor, all phases of law enforcement in Indiana are working remarkably well.

Several years ago, this Legislature voiced a public policy to diminish violent crime in our streets. Programs were invoked to instruct police officers, prosecutors and judges. These programs are working.

Gordon H. Faulkner, Commissioner of Corrections, published a report dated October 14, 1980, which should be studied by each of you. It shows, among other things, that during the period from October 1, 1979, to October 1, 1980, the adult male population of our penal facilities increased over 1,000. The Department of Correction needed an average increase of 78 new beds per month for male felons during the past 12 months and an average of 10 more beds per month for female felons.

In projecting figures for the fiscal year 1981-82, the Department assumed a 2 per cent reduction in the current rate of commitments and a 2 per cent increase in the rate of releases. Even with these optimistic assumptions, there will be an increase of 646 in the inmate population for that year; and, projected to the next year, it will mean an increase of 604 inmates. The entire report reveals a shockingly overcrowded penal system.

The well-intentioned and publicly demanded policy to "get violent criminals off the streets" is working very well until it gets to the beleaguered Department of Correction. There we hit a tragic traffic jam. The harried Department must release prisoners they know to be dangerous to make room for the next group coming in, The police officer is, at best, frustrated at having to rearrest dangerous criminals; or, at worst, loses his life in an attempt to arrest such a person, The prosecutor and judge are frustrated to meet a man on the street who was prosecuted and sentenced only a few months before for a violent crime. The public rightly cries out in anguish, "Why was this man on the streets?"

Ladies and gentlemen, for many years the prisons have been full to overflowing. I am not a penologist or a sociologist. I would not presume to tell you what kind of facilities you should build, but I can tell you this. The prisons are full, If no changes are made, you will see no reduction of crime in the streets. You will only see the same tragic play reenacted every year with a few changes in cast as the prisons wearily recycle the violent criminals who rape our wives and daughters, kill our children who seek some spending money pumping gas or frying hamburgers, terrorize our senior citizens, and kill those brave men and women who, for far too little pay, lay their lives on the line every day against a never-ending cycle of dangerous criminals.

I am confident you will provide the Department of Correction with the housing necessary to complete the excellent criminal control program made possible by prior legislation.