

The State of the Judiciary
Chief Justice Richard M. Givan, Indiana Supreme Court
Message to the Legislature
January 24, 1984

The work load of the trial courts appears to be leveling off. The 266 trial courts of record received 918,316 new cases in 1982. Fifty-four percent of these cases were civil. Although there was a slight drop in total filings last year, the filings represent a 22.1 percent increase over 1977 with no corresponding increase in judges or court personnel.

The Court of Appeals disposed of 1,207 cases in 1983. Their backlog has been reduced from 801 cases in 1978 to 322 cases in 1983.

The Supreme Court disposed of a record 441 cases in 1983: 281 opinions on direct appeals, 27 opinions on petitions for transfer, 114 criminal petitions for transfer were denied, 15 opinions on original actions, and 4 petitions for transfer disposed of by order. The backlog in the Supreme Court continues to increase. At present there are 295 cases pending.

Over 90 percent of appeals are affirmed by both the Court of Appeals and the Supreme Court. Over 90 percent of the petitions for transfer from the Court of Appeals are denied. These statistics do not mean that the appellate courts are overly reluctant to reverse, but rather reflect excellent work by both the trial courts and the Court of Appeals.

The office of the Clerk of the Supreme Court and the Court of Appeals reports 2,220 appeals filed in 1983. This is an increase of 139 over 1982, or a 7 percent increase. It is interesting to note that the number of direct appeals to the Supreme Court decreased slightly in 1983, whereas the number in the Court of Appeals increased. In 1982 the percent of increase was greater in the Supreme Court than in the Court of Appeals.

The Clerk, Marjorie O'Laughlin, and her staff are doing a remarkable job considering the ever increasing appellate filings and the other duties added in recent years, such as the collecting of disciplinary fund payments from the attorneys throughout the state. The time is fast approaching when she will need additional personnel and additional space in which to operate.

The excellent work done by the trial courts is remarkable when one considers the rate of turnover among the trial judges. Seventy-five percent of the trial judges have taken office since 1975. Twenty-two percent of the trial court judges assumed the bench with five or less years of practice. We continue to experience difficulty in keeping young judges for very long periods of time. This is due to the economic pressures of providing for young families and the relatively higher income available in the practice of law.

Logic leaves one to believe even higher judicial efficiency would be achieved if we could keep good judges on the bench for longer periods of time. I believe the excellent law schools in Indiana deserve much of the credit for the unusually high performance of young judges.

Women should be encouraged by the increase in the number of women attorneys and women judges in Indiana. In the last 20 years, in courts of record, we have come from one woman judge to 17 women judges, one of whom, V. Sue Shields, serves on the Court of Appeals. In addition,

an outstanding woman attorney, Sarah Evans Barker, has just been nominated Judge of the United States District Court for the Southern District of Indiana.

Women are also serving the state in the prosecution of criminal cases. Susan Carpenter is the State Public Defender. She administers a large and busy office with great skill and efficiency. Mary Place Godsey is the first attorney to hold the position of Executive Director of the State Board of Law Examiners. This is a position requiring great security and confidentiality. Lilia Judson is Assistant State Court Administrator. She serves well in all facets of that diverse and complicated office.

The increased efficiency of police agencies, prosecutors and courts has created a problem of overcrowding of our penal institutions. However, I presume this is preferred to having the excess number of criminals on the streets of Indiana.

In dealing with the overcrowded condition of our penal system, I hope you will seek the counsel of the Department of Correction Commissioner, Gordon Faulkner, and his staff.

They have done a remarkable job in handling the rapid increase in the inmate population. Their ideas on what is needed comes from years of experience and are both practical and realistic. Dangerous criminals cannot be kept off the streets if the Department of Correction is not given the proper facilities.

The Supreme Court has appointed a committee chaired by Justice Pivarnik to study the records management systems throughout the entire state court system. The statistical data necessary for this study is being gathered by the State Court Administrator, Bruce Kotzan, and his staff. This study will result in modernization of, and increased efficiency in, the court system.

In recent years it has become popular to fund certain governmental expenses by increasing court costs. Much of this type of funding has been recommended by the judiciary. However, it is now becoming apparent that we have gone as far as we can go with this type of funding.

Although it is entirely proper for the users of our courts to pay a fair share of the operating costs and related funding, it is also important that those of modest means not be deprived of "their day in court" because of excessive costs. We recommend that court costs not be used as a source of additional revenue.

The judicial conference, with the aid of the Judicial Center, has adopted standards of qualification for probation officers after receiving both professional and public input through a public hearing, and individual contact from interested persons.

The performance of probation officers is especially critical concerning juveniles where diversion from a criminal career has the best chance for success.

Some observers are still concerned about judicial mandate, although such cases have decreased in the past year and the Supreme Court appellate rule concerning mandates has been an effective control. There has been some talk of a constitutional amendment to deprive the courts of mandate power.

Such an amendment would constitute a fundamental change in our form of government. The federal government and the governments of the 50 states are comprised of three branches: the legislative, the executive and the judicial. It is fundamental that each must, at the same time, cooperate with the others, but also be independent to the extent one cannot overpower the other.

One of the fundamental functions of the judiciary is to preserve this independence. Mandate is a necessary adjunct to this function. If mandate powers are taken from the judiciary, there will no longer be an independent judiciary or an independent executive. Each would be totally subservient to the legislature.

Either could be completely closed down by simply withholding funds. In that event, our form of government would be changed to a legislative oligarchy. In that case, if the governor vetoed one of your bills, you could close his office. If the courts declared one of your statutes unconstitutional, you could close the courts.

I hope, for the sake of the next generation, you forego any temptation to make such a change in our government.

There has been a suggestion that the First and Third districts of the Court of Appeals be housed in their respective districts rather than in Indianapolis.

Such a move might be welcomed by some of the judges who would be working closer to their homes and by some of the practicing bar who have business before the Court of Appeals.

However, there are some other considerations. Interchange of personnel between districts would become less practical and more expensive. Full court conferences would, of course, be more difficult.

But possibly the most important consideration in today's economy would be the tremendous increase in the cost of operating the court. In order to provide office space for three judges, their secretaries, law clerks, filing clerks, administrative personnel and their library, the Court has estimated they will need over 7,000 square feet of floor space. This does not include a courtroom for hearings and oral arguments. There would, of course, be a duplication of administrative personnel and library facilities in separate systems which are now shared in the centrally located court.

Although the Court has not given a specific dollar estimate of the cost increase, it is obvious that it will be considerable. This move would save money to the extent that the Court of Appeals would be able to move all offices now housed in Merchants Plaza to the vacated offices in the State House, thus saving that rental expenditure.

We appreciate the fact that the many improvements in the judiciary in the past few years and our ability to handle the tremendous work load are due to the cooperation of the legislature.

Our offices and the offices of our administrators remain open to all of you. We welcome your examination of any of our statistics at any time.