The State of the Judiciary
Chief Justice Richard M. Givan, Indiana Supreme Court
Message to the Legislature
February 7, 1985

We now have 273 trial courts of record in Indiana. In 1983 there were 926,399 cases filed in these courts. There has been a slight decline in criminal cases filed since 1980 and an even greater decline (14 percent) in civil cases filed since 1980. The revenue produced by these courts was $41 million. The gross cost of operation of the entire judiciary was $63 million. Thus the net cost of the judiciary to the taxpayers was $22 million.

There were 1,946 cases filed in the office of the Clerk of the Supreme Court and the Court of Appeals. The Court of Appeals disposed of 1,137 cases in 1984. Attorneys in 350 of those cases filed Petitions of Transfer in the Supreme Court. Ten percent of these petitions were granted.

The Supreme Court Justices disposed of 425 cases. In addition, 53 writs were submitted to the Court: 38 were denied, 11 were granted and 4 were cancelled. Five hundred and seven special judges were appointed by the Supreme Court and eight persons who failed the bar examination filed Petitions for Review which were handled by the Supreme Court Justices.

There is a bill pending before you to increase the Supreme Court from five to seven members. As the Court is now constituted, this would be some help, but not to the extent additional judges would help in the Court of Appeals.

In the Court of Appeals, a case is assigned to a district consisting of three judges who decide the case. The other nine judges have no part in the decision. Thus, the Court of Appeals is, in effect, four separate courts as far as the handling of case load is concerned. This is possible because it is not a court of last resort.

The Supreme Court, being a court of last resort, must have a majority vote in every case. Every judge must pass on every case. In addition, the Supreme Court must spend at least one day per week with matters such as discipline of lawyers and judges, appointment of special judges, admissions to the bar and examining and revising the rules of procedure.

The change in the criminal code increasing the penalty for many crimes has caused a shift of criminal cases to the Supreme Court. This is due to the constitutional mandate that all criminal cases in which the defendant has received more than 10 years must come directly to the Supreme Court. Consideration should be given to reducing the number of cases brought to the Court as well as the consideration to increase the number of justices.

The 1971 amendment of Article 7 of the Indiana constitution continues to prove to be the greatest single improvement in Indiana government since the adoption of the 1851 constitution. The method of appointment and retention of judges of the Supreme Court and the Court of Appeals has been so successful that the legislature should consider adopting the same method for the trial court system. The most effective provision of the amendment has been the creation of the Judicial Qualifications Commission. As you know, this Commission is made up of three laymen and three lawyers who appoint a chief justice who sits as the seventh member.

This Commission receives and investigates complaints against judges in the entire judiciary. This has proven to be a much more effective method of controlling the judiciary than any method of choosing or retaining judges. When a judge misperforms, the problem can be corrected quickly. There is no need to wait for the next election. Elections have never been effective in removing poor judges.

However, since the Judicial Qualifications Commission has been in existence, eight judges have resigned when notified the Commission would conduct a hearing as to their competency as judges.

In many other instances, the Commission has corrected minor problems either by correspondence or by personal conference with the judge in question.

You have pending before you Senate Joint Resolution 4. This resolution would amend Article 7 of the Indiana Constitution to change the structure of the Judicial Qualifications and Nominating Commission and the method of choosing and retaining the judges on the Court of Appeals and the Supreme Court.

It has been said that this change is needed because the public does not know the judges or anything about their work. If this is true, it is the fault of those who do not know.

The judges of the Court of Appeals and the Supreme Court are the only state officials whose primary works, that is, their decided cases, are published and on file in every courthouse in Indiana.

Any citizen need only examine these books to learn how many opinions each judge has written, how he has voted on every other judge's opinion in which he participated, and what his philosophical approach is to the law.

In addition, both the Court of Appeals and the Supreme Court prepare and distribute progress reports at the close of every calendar year detailing the work record of the Court and each individual judge. There is nothing in the proposed resolution that would increase public knowledge of judicial activity.

There are many aspects of the resolution that are undesirable, but it has one proviso that has the potential to cripple the judiciary. The resolution provides that after a six-year term each judge would go before the Nominating Commission for approval.

If approved, he would be placed on a retention ballot with two other persons chosen by the Nominating Commission. The three persons so chosen would be voted on by the public.

This would give the Nominating Commission the potential power to virtually dictate to a sitting judge. If he did not do their bidding, he would have no chance of being re-nominated for retention. It would indeed be tragic to lodge such potential power with a Commission.

Though this resolution, if eventually resulting in a constitutional amendment, would not affect me personally, I strongly urge you to defeat it. An amendment resulting from Senate Joint

Resolution 4 will not work. It would be a tragic destruction of a carefully planned system that is working.

Throughout the nation the growing complexity of society has naturally increased litigation. Indiana is no exception. Even though Court facilities have been increased somewhat in recent years, that increase has fallen far short of the increase in litigation. As a result, courts are required to work too rapidly to attempt to stay current.

It is not difficult to understand that 270 trial judges have a problem in disposing of over 900,000 cases in a year, that the Court of Appeals has a problem with over 1,200 appeals in a year or that the Supreme Court has a problem with over 400 cases in a year, especially when one realizes the Supreme Court case load must be handled in a four-day week due to other duties which require its attention for at least one day every week.

Such a work load puts great strain on the men and women serving the system, yet with all its problems the judicial system is turning out a remarkable amount of work with a minimum of misfeasance or malfeasance in office.

For the most part, the judges of Indiana are dedicated men and women formally educated to preside in their courts. Considering the large number of cases each must dispose of in a year, their performance is remarkable.

Last year I reported to you that we had appointed a committee, chaired by Justice Pivarnik, to study court records management systems throughout the state with the view in mind of modernizing and standardizing them. The committee is progressing with great cooperation from the clerks and the judges and their staffs. John J. Newman, Deputy Director of the Commission on Public Records, serves on this committee and through his expertise and energy has been invaluable in accomplishing the purposes of the committee.

The Judicial Council has responded to their statutory duty of setting standards for, and testing of, probation officers. We hope to maintain this system without interfering with the control of the trial judge over the probation officer or the person on probation. It is our aim that those placed on probation be given the maximum opportunity to succeed but that the trial judge remain in control in order to terminate probation promptly when indicated.

The Supreme Court Disciplinary Commission continues to maintain close scrutiny of the practicing bar. During the fiscal year from 1983 to 1984, two attorneys were disbarred, three attorneys resigned in the face of disbarment, eleven were suspended for period ranging from 30 days to 3 years and 27 others received lesser sanctions.

It now appears a state judiciary building will be constructed to relieve the overcrowding in the State House and to more adequately house the Supreme Court and the Court of Appeals and the various offices under their jurisdiction. This addition will be of great benefit to both the legislature and the judiciary. As this project develops, rest assured the Courts and their agencies will cooperate with you and your agencies to the best of our ability.

We appreciate your continued attention to the problems of the judiciary.