The State of the Judiciary
Chief Justice Richard M. Givan, Indiana Supreme Court
Message to the Legislature
February 3, 1986

The past year has been unusually eventful for the judiciary. The Judicial Qualifications commission has had some unusual problems with trial judges; however, these problems have been resolved with two exceptions where cases involving judges are still pending. The same persons, functioning as the Judicial Nominating Commission, have nominated persons to fill two vacancies on the Supreme Court resulting from the resignations of Justice Donald H. Hunter and Justice Dixon W. Prentice.

There were 36 applicants for Justice Hunter's replacement and 52 applicants for Justice Prentice's replacement. Some of the latter were repeats from the former.

I have served as Chairman of the Judicial Nominating commission since 1974, Chairman of the Allen County Commission since its inception and have been on the Merit Commission for United States District Court appointments for Indiana for several years. I have never seen a group of applicants more qualified than those applying for these positions on the Supreme Court. There were outstanding trial and appellate judges and outstanding trial lawyers. It was not difficult for the Commission to find qualified persons to recommend to the Governor.

The hard part was having to choose only three names to send to the Governor and leaving so many qualified applicants standing in the wings. In the final analysis, two very qualified men were appointed by the Governor to fill these vacancies, Randall T. Shepard, a Superior Court judge from Vanderburgh County and Brent E. Dickson, a trial lawyer from Lafayette.

There has been much said and printed about the Commission's policy of not releasing the names of applicants. As usual much of the so-called information has been erroneous. Although the Commission does not release the names of applicants, there is no prohibition on an applicant releasing his or her name. In fact, most applicants do publicize their candidacy and solicit support from friends and colleagues. Of the total number applying, there were only five or six who did not go public and who asked that their names not be released.

The State Bar Association has asked the Commission to make public the names of applicants. In response to that request, the Commission is releasing the names of applicants now applying for the judgeship created by the legislature in establishing the Indiana Tax Court. We will evaluate what difference, if any, this makes in the process.

One of the bills pending before you would shorten the term of the Commissioners from six to three years. As it is now, the Commissioners cannot succeed themselves and any one Commissioner is not likely to help fill many vacancies in his or her term. As to their duties on the Judicial Qualifications Commission, it is my experience that they function better and more efficiently the longer they serve. This is especially true of the lay members of the Commission.

There has also been mention of removing the Chief Justice from the Commission. I would strongly recommend against doing so. The Chief Justice, whoever that may be in the future, will be in a better position than anyone to be privy to information concerning the qualifications of

applicants. Before making such a change, I urge you to consult present and past members of the Commission and obtain their views on this or any other proposed change in the present system.

I doubt if we can ever devise a perfect system of choosing and retaining judges. It is certainly proper to continue to improve the system we have; however, I would caution you not to damage a system that is working very well.

I came to the Supreme court 17 years ago as a politician nominated at a party convention and elected in a partisan election. Without reservation, I can assure you that the present method of choosing judges is far superior to the system that brought me to the Court. However, the most important improvement in the judiciary was the establishment of the Judicial Qualifications Commission. The Commissioners constantly receive and evaluate complaints against trial and appellate judges. Since they have assumed these duties, they have notified 10 judges that a hearing would be conducted concerning their qualifications.

In each instance the judge resigned rather than go through the hearing. In cases of age and infirmity, the resignations have been obtained by patience and friendly persuasion. This has been a kind and compassionate service of the Commission, but it has firmly resolved the problem. No matter what method is used to choose a judge, it is very important to be able to remove an unqualified judge. This Indiana is doing.

As I have reported to you in the past, our trial courts are suffering under extremely heavy workloads. From 1978 through 1984, case filings in our courts of record have increased 19 percent. On the average, every judge of a Circuit or Superior Court receives over 1,200 cases a year. County Court Judges receive over 5,160 cases each year. Unfortunately, there appears to be no suggestion that these case loads will diminish in the near future.

To complicate this problem, our court personnel have long struggled without adequate equipment or modern methods. The result has been the development of varied administrative practices from county to county and costly record-keeping systems which overemphasize archaic formalities. Our record-keeping systems were never intended to process the volume of cases now filed each year. Today they are inadequate.

With regard to these problems, I am pleased to report to you that 1985 was a year of growth and significant progress. The Supreme Court Records Management Committee, chaired by Justice Pivarnik, must be given credit for this development.

With the assistance of this Committee, the Supreme Court has adopted comprehensive retention schedules which designate what crucial records are to be maintained by courts.

The schedules also provide for the orderly removal of records from the system as informational needs diminish. This process should free needed space at the county level.

The Supreme Court, again with the assistance of the Records Management Committee, has also placed into effect mandatory standards for microfilming of court records. These standards should guarantee the effective use of technology in preserving significant information. Taken together, these projects should begin to bring order and uniformity to our record-keeping system.

I am further pleased to report that this is only the beginning of our effort to modernize our administrative practices. Under study are uniform entry systems, uniform case identification criteria, security procedures and automation where appropriate.

I hope you will be able to assist us in funding these very worthwhile projects. Investment in these areas will produce cost savings throughout the State.

Additionally, the Supreme Court has embarked on a program to update its internal administrative procedures. Modern equipment has been purchased to expedite opinion preparation and enhance docket control.

This equipment, which will be compatible with other automation in the Clerk's office and in the Court of Appeals, should enable our Court to concentrate its efforts on the disposition of cases in an orderly fashion.

It is also important to note that the Court of Appeals is engaged in a concerted effort to address the problem of delay in a way that does not detract from the quality of adjudication. Through an innovative program now used in the Court of Appeals, civil cases are being reviewed prior to any formal briefing. By this process, issues are narrowed, factual questions are agreed upon, the size of records is reduced and settlements are reached.

This reduces costs for the litigants and taxpayers, shortens time to disposition and weeds out many meritless arguments which serve no purpose. The average time in the Court of Appeals from final briefing to decision is now four and one-half months. That is a very outstanding record.

There is an area of concern, however, in our administrative practices which I would like to address. That is court costs and fees. Courts were never intended to be self-supporting. Like many other services provided by government, dispute resolution is a service which benefits all of our citizens.

Whether or not the taxpayer is involved in litigation, he or she derives a social benefit from a process that affords its citizens an orderly process to resolve disputes. In this regard, courts have traditionally been funded from general revenue sources. Any fees charged were moderate.

Over the years, however, court costs may have become an alternate form of taxation. We now fund many activities, judicial and non-judicial, through our fees mechanisms. I would urge the legislature to review this process and its impact on our citizens.

At the appellate level the pending constitutional amendment passed last year changing criminal jurisdiction to the Court of Appeals in cases in which the sentence is 50 years or less will give much needed relief to the Supreme Court. Last year the individual justices on the Supreme Court disposed of 426 cases.

Because of the other duties of the Supreme Court, the case load of the individual justices must be handled in virtually a four-day week.

This means that each justice must dispose of one case every two work days and read the four cases written by the other four justices in the same period. The constitutional amendment will result in a reduction in the workload.

The Disciplinary Commission continues to handle a heavy workload in a very professional manner. Last year five attorneys resigned following charges of misconduct, one attorney was disbarred, three were suspended for three years, two were suspended for two years, five were suspended for one year and seven were suspended for periods ranging from 30 days to six months. Others received public or private reprimands.

The bench and Bar of Indiana are in better condition today than ever before. Thanks to past legislation attorneys and judges are better qualified than ever before. Continuing legal education for both attorneys and judges is much better than ever before. The present systems of continuing legal education are mandatory for judges and optional for attorneys.

Last year the State Bar Association adopted a resolution asking the Supreme Court to adopt a rule making continuing legal education mandatory for attorneys. Last week the Court met with leaders of the Bar to discuss the implementation of such a rule.

With the continued cooperation of the legislature and the State Bar Association, the quality of legal services should continue to improve.

We are on the eve of the bicentennial celebration of the adoption of the Constitution of the United States. The Supreme Court has joined with the Indiana Historical Society in displaying original copies of newspapers printed during the Constitutional Convention. These may be seen in a display case at the door to the Supreme Court Room. The display is changed every few days in order to show each of the many issues published during the summer of 1787.

A study of the formation of our Constitution reveals the extreme importance of the separation of powers and the system of checks and balances established between the executive, legislative and judicial branches.

Our government works well because of the ability of our three branches to work together but no one branch is allowed to control or destroy the other.

In recognizing the importance of these principles the Indiana legislators adopted and the voters of Indiana ratified the present Constitution of Indiana which preserves and protects each of the three branches of government. I trust it will ever be so.