

State of the Judiciary: "Counsel, Computers, Compensation, and a Few Words About Dimpled Chads"

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Message to the Legislature

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The last few days we have celebrated that remarkable American classic, the peaceful transfer of the most powerful office in the world. Just two weeks before, the largest inauguration in Indiana history launched a renewed state administration, led by Governor O'Bannon and Lieutenant Governor Kernan.

These celebrations occur at a moment when the nation and the state have seldom had it so good. And while we sense at least a moment of economic pause, I join the sentiment expressed by Governor O'Bannon last week that there is every reason to move forward building a better Indiana, selecting carefully what is most important and acting with the fiscal restraint that has always been a hallmark of this state.

It is in that spirit that I come to report on the state of our judiciary, committed to the notion that those of us in this branch of government will never stand pat. Today, I will focus on three of the areas where we need urgently to move ahead: computers, counsel, and compensation, and then I'll say a few words about dimpled chads.

Courts and the Information Revolution

The central mission of the judicial system is finding truth, giving justice in accordance with the law, and seeing to it that people get what they are entitled to. This last part is pretty important, and carrying out the decisions of our juries and judges makes for a lot of paper memorializing the decisions and declaring what should happen next. These papers have power: the suspension of a license, commitment to prison, release from jail, a protective order.

Over the last fifteen years we have made great progress in bringing order to the chaos this mountain of information represents. The documents used by local courts now have standard numbers, standard names, standard formats. Whether it's the Bureau of Motor Vehicles, or title researchers, or the police, people who rely on court information as a predicate for action now have a better chance than ever of finding what they need to know and understanding what it says.

Indiana's counties have spent millions bringing this mass of material into the information age. You know what the information age is like, for all of us experience it in everyday life. The credit card with the magnetic stripe. We put it in the gas pump down at the corner, and the machine knows whether it's OK to give us gas. It charges our account before we even leave the premises. It works defensively as well, for if someone steals my number and starts charging for jewelry in Italy, the machine somehow knows it's probably not me and a human being calls to ask whether there's a fraud problem.

For all the money Indiana counties have spent on court records, our world does not work like the credit card industry or even the grocery stores. If a judge in Kokomo suspends the license of a drunk driver who hurts someone, and the police in Anderson stop him the following week because he ran a red light, they'll check the electronic record, find that his license is still in good standing, hand him a traffic ticket and let him go -- perhaps to the next drunk driving incident.

This happens because the order suspending the license frequently does not show up in the computer for several weeks.

If a judge in Indianapolis issues a protective order for a battered spouse and the police in Noblesville find him waiting for her outside a restaurant, they likely have no way of knowing that something harmful may be about to happen. The order probably doesn't show up in their computer.

All this occurs because there has never been any central coordination of the way local court data is collected, displayed, and conveyed, despite the millions of dollars spent at the local level. We are unable to transmit information effectively and efficiently to the people who need it -- here in state government, or in local government, or law enforcement, or even inside the court system itself.

This cold reality, and its consequences for citizens and for their government, have led us to devise a strategy to correct these problems, under the leadership of Justice Frank Sullivan and a committee known as the Judicial Technology and Automation Committee. This plan is the product of several years of hard work, and we are ready to move.

I've talked about this subject by mentioning the bad things that happen because government is not as well organized as the banks, or even an Internet startup, but let me mention the upside of moving ahead: judges will be able to manage their caseload more effectively, reduce the time required for things like sentencing hearings, and thus, as in Evansville, help fight the problem of jail overcrowding. Judges will be able to tell when people who come to court owe money to the state or local government, such as fines or taxes. Charged felons who show up in the courthouse even though they are wanted on outstanding warrants can be identified and taken into custody.

We are ready to make this happen. We very much appreciate the willingness of Governor O'Bannon and the State Budget Committee to recommend that the state make an investment in bringing uniformity and credibility to this situation. And we thank Chairman Bauer and Representative Cochran for including it in the budget bill as introduced.

Whether we can buy gasoline with a credit card is a matter of convenience -- whether the police know to take in a repeat drunk driver or a wife beater is frequently a matter of life or death.

This is something that needs serious fixing. Borrowing a famous phrase, my request is this: "Give us the tools, and we will finish the job."

Lawyers for People Who Are Too Poor

There are no higher values in Indiana's courts than finding the truth and doing justice under law. In the criminal part of our work, this means convicting the guilty and freeing the innocent. It means extending a second chance to those who deserve it, and holding accountable those who do not.

For more than a hundred years, Indiana has held to the ideal that in a decent society someone charged with a crime should not go to trial without a lawyer just because he or she is too poor. Indiana's right to counsel was spelled out more than a hundred years before the Supreme Court of the United States made it a national rule in *Gideon v. Wainwright*.

Of course, if this right of counsel is real, it must mean you have a lawyer who actually has the time and talent to help you. It cannot be one who is brand new and carrying hundreds of active files. That phenomenon exists, and it has generated major publicity in other states during the year just past, especially for prisoners sentenced to death.

Most of you have seen this news coverage. “Death Row Justice Derailed,” said The Chicago Tribune. “Bias, Errors and Incompetence in Capital Cases.” So serious were the deficiencies uncovered that the Governor of Illinois, a conservative Republican, imposed a moratorium until he “could be sure everyone sentenced to death is truly guilty.”

There was a little good news in that story: it was not a story about Indiana. The decisions of this legislature and this Supreme Court and this Governor and his predecessors have over the last decade created a model for indigent death penalty representation that just in the last year has been the subject of inquiry by legislators, commissions, and judges in Illinois, Michigan, New York, Mississippi, Texas, and a host of other places.

But the quieter and for most people more pertinent progress that Indiana has made relates not to the dozen capital cases a year but to the 280,000 felony and misdemeanor cases filed each year. Many of these involve people who cannot afford a lawyer, and we know from experience that some of them are innocent. During the last two years, county commissioners, council members and judges in county after county have decided to upgrade the quality of representation they provide. They have done this in part because they believe it represents a respectable and moral policy. They have also done it on the representation, enacted in the Indiana Code, that the State would pay a part of the cost.

This move to improve access to justice has never been on the top ten in the political hit parade, but it is plain that Hoosiers want the justice in their criminal courts to be meted out to those who deserve it and only to those who deserve it. This advancement has cost some money, both at the local and the state level. I thank Governor O’Bannon and the Budget Committee and the many legislators who have been willing to make good on this commitment to the counties.

It will keep Indiana out of the headlines that have plagued so many other states and instead mark us as a place that works hard at doing justice for all.

Yes, Compensation

Even more than most public and private organizations, courts depend on the talents and wisdom of two public officers at the heart of the legal system, the judges and the prosecutors. Citizens who are victims of crime, or who have a family in distress, or are about to lose their job or their business all expect that the judge who makes decisions about their future will be a grown up, somebody who knows about the law and knows about life.

Attracting and retaining the kinds of people we want to be making crucial decisions about our lives requires that we offer remuneration sufficiently competitive with the private market to make good people feel they can serve in these critical positions without sacrificing the well-being of their families.

You know the history of decisions concerning pay for Indiana judges and prosecutors. It a story of years of stagnation interrupted by occasional high-pressure catch-ups. We are now in one of

those periods of stagnation. The good people who choose to serve understand that public sector salaries almost never equal those in the private sector. What they don't understand is why the disparity must widen each year they serve.

This has not been the case anywhere else. During the last four years, private sector wages have grown at a very healthy pace. Public sector wages have likewise grown respectably, as the legislature and the governor worked to do better for the state's employees. But the only full-time employees in the state's workforce of over 35,000 who have not had a raise over the last four years are the judges and prosecutors. Our state, the fourteenth largest in the nation and firmly in the middle as to prosperity, is 42nd in pay for trial judges, and we are falling fast.

This has made a difference in whom we can recruit. During the elections last fall, in eighty percent of the judicial races, one party or the other could not find a lawyer of any sort willing to take the office. This was worse than 1998, which was worse than 1996.

Competition from the private sector is a major reason -- in Marion County, for example, the principal law firms will pay freshly minted, 25-year-old Class of 2001 law grads about the same amount of money in their first year of work as we pay trial judges.

The public needs to have confidence that the decisions affecting them will be made by the wisest and most able people available, and I have to believe that the citizens of Indiana would want this problem solved. You know what the politics of delay look like: the longer we go without any adjustment at all the larger the pot of money required simply to catch up and the greater the political weight of bills designed to do so.

This problem is not just a judge and prosecutor problem. It extends to people in the executive branch and to people in the legislature. The long-time freeze in pay for the General Assembly puts special pressure on citizen legislators as they struggle to meet the obligations of their day jobs back home in the district while doing their duty here.

When is a good time to fix problems like this? Is there ever a best time? It wasn't a good time ten years ago when the state's economy was suffering. It wasn't a good time last year or the year before when the state had record surpluses. I believe that the political difficulty of dealing regularly with this task demands that we do what so many other states have done. We must create a mechanism that operates on some kind of organized, incremental basis, functioning regularly to make small inflationary adjustments in public officer salaries, the same sort that most Hoosiers experience in public and private life. The compensation commission bill passed twice last year by the Senate was a good way to do this. I support it completely, and urge the House to take it up this year.

And, Dimpled Chads

None of us have lived through such a period as the post-Presidential election weeks of 2000. This astounding national civics lesson emphasized if nothing else the importance of voting and the importance of running a voting system that befits a great democracy.

As we passed each other in the halls during those weeks, many of you have asked me, "What do you make of all this?" or more often, "I'll bet you're glad you're not in Florida." Well, yes, I was relieved not to be in Florida. Let me mention two things I make of our recent experience.

First, I took some pride in the fact that reporters, lawyers, and judges deeply involved in the Florida matter, all recognizing that there were major weaknesses in the way that state handles multi-county recounts, so often pointed to a state that seemed to have a better system: Indiana.

That we have a better system is hardly an accident. It is the result of deliberations here in this legislature in the years following the famous “McRace” in the Eighth Congressional District.

Indiana’s reforms have not just positioned us better to deal with state-wide or multi-county elections contests, they have also had a positive effect on the processes used in individual counties. Last fall, we had a judicial contest decided by just nine votes, and a county recorder’s race decided by just seven votes, to name two, and the resulting publicity was largely local, not just because the offices were local but because the processes at work seemed to the public and the press to be orderly and reliable.

And so, during that dramatic, historic event--Bush versus Gore in the Supreme Court of the United States--one of the justices asked of the combating lawyers, “So, you think a system like Indiana’s would pass constitutional muster?” and the lawyer responded, “It would be a fine start.” This legislature, and all Hoosiers are entitled to be proud about that.

My other reaction was not so uplifting. As a judge, I wish it hadn’t happened at all.

One wise remark uttered in the midst of the conflict was that people who run elections love landslides. Cliffhangers cause disruption, embarrassment, and anger. And so it is with moments when judges find themselves so uncomfortably close to an election, for judges hold the strong conviction that courts should have as little role as possible in the processes that lead to electing a President, or any other public official. These are not judicial moments; they are democratic moments.

I know eleven of the sixteen members of the Florida Supreme Court and the U.S. Supreme Court, and I believe that all of them wish those cases had never arrived. They would say something akin to what Abraham Lincoln said about the Civil War: “All dreaded it--all sought to avert it. Both parties deprecated war.... And the war came.”

One of the reasons for wishing the contests never came was that they inevitably produced predictions about how each judge might vote based on his or her party or the president or governor who made the appointment.

Surely it is true that all of those justices started someplace; indeed most judges started someplace. Chief Justice Earl Warren was a Republican candidate for Vice-President, Justice Sherman Minton was a New Deal Democratic Senator, Chief Justice Richard Givan was a Republican member of this legislature in the 1960s, Judge Hugh Dillin was the Democratic minority leader in the House and President Pro Tem of the Senate. Justice Boehm and I ran for office on the slates of our respective parties. A judge, they sometimes say, is a lawyer who once knew a governor. Fair enough.

But serious-minded members of the judiciary, people who mean business about the oaths they take, know that the public needs more than justice that is dished out according to party affiliation. The public expects that judges will hear facts and apply law and do justice regardless of who you are, or what you’re worth, or what party you belong to. Good judges do as much as

human beings can to make good on that expectation. How can I resolve this case in a way that's fair and impartial, consistent with the laws? What's the just outcome without respect to person or position?

And, really, when all the dust had settled, the members of the Florida Supreme Court had ruled twice for Mr. Bush and twice for Mr. Gore, once in a decision that split those seven Democratic appointees four to three. And the Supreme Court in Washington issued its first decision by a unanimous vote and its second decision with five Republicans voting one way and two voting the opposite and with one of the Democrats voting with Bush on the applicable law. All were striving to do the best that mere mortals can to deliver justice under law for our country, putting personal preferences and party to one side.

This striving must command the allegiance of all members of the judiciary. I tell you that we will spend 2001 trying to make that happen in Indiana courtrooms.