State of the Judiciary

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"1995 Is Bound To Be A Better Year"

When I think about the state of the judiciary in 1994, I have some mixed feelings. The central event of spring 1994 for us was the death of the pay bill for judges and prosecutors in the last six hours of the session. We spent our summer investigating charges of sexual harassment and ghost employment in the office of the clerk. We spent our fall working to keep the clerk's office open after the clerk got indicted for the first time in history. And during the winter, a prominent trial judge plead guilty to abusing his office and went to jail.

In short, there was much about 1994 that did not recommend it. Still, the state's 300 judges managed to put their shoulders to the wheel and complete over 1.5 million cases last year. The Indiana Court of Appeals managed to decide a hundred more appeals than it received last year, an accomplishment for which they deserve our congratulations. As for the Supreme Court, I want to report on a promise I made to you in my 1989 speech:

> At the end of 1985, the average time it took to resolve a direct appeal was two years. By the end of 1987, it was 13 months. It is now 10.3 months. In short we have cut in half the time people have to wait for a decision. We need to cut it in half again and we will.

At the end of 1994, the time was down to 5.8 months. It's not 50%, but it's awful close, and frankly we are proud of the accomplishment and determined to do better yet.

Saying goodbye to 1994, I am struck by how many of our priorities for 1995 are issues brought center stage by members of the legislature and mentioned by Governor Bayh in his speech

earlier this week. I'll talk about two of those today -- the problems of crime and the needs of children.

Courts and Crime

A reporter recently asked me about the court's role in fighting crime, and in truth, about half of all the things we do involve enforcement of the criminal laws. Last year prosecutors filed more than 46,000 felonies and 183,000 misdemeanors in Indiana's courts, not to mention another 575,000 infractions. Bringing those prosecutions to a conclusion takes serious management, and just last month the Supreme Court directed the criminal court judges in each county to prepare a plan for allocating and managing the criminal cases in each county. It is our assignment to sort out who is guilty and who is innocent, and these plans, which will be put in place by July, should help make that happen more promptly and fairly.

The courts take seriously our role in meting out punishment to the guilty, and Indiana has more prisoners partly because prosecutors are pursuing more criminals and judges are imposing tougher sentences. Even with all the money spent in the last few years building new prisons, there are nearly seven times as many convicts serving at least part of their sentences under the supervision of local court probation departments as there are in the state's prisons. The number of people supervised under probation rose from 76,000 in 1989 to 104,000 in 1994. Convicted felons make up the fastest growing segment of this expanding population, and probation officers tell us that a growing number of those felons are people who have committed some violent act. Some of these might have been sent to prison in a quieter time, but there is no room in prison now, and there still will not be even much room if the 1000-bed new prison is constructed.

Concerned about this trend, judges have been working to toughen up the leash which probation represents. We now commonly impose mandatory drug testing, mandatory drug and alcohol

treatment, mandatory community service (call it labor, if you like), restitution to victims, and very tight supervision through methods such as electronic home detention.

Judges are concerned about effectively keeping tabs on these convicts. The number of convicts to be supervised has been growing since 1989 at a rate 75% faster than the number of officers doing the supervising. We have asked from time to time that you consider beefing up the force of officers who constitute this line of public protection, presently financed only by county governments and fees extracted from the convicts themselves. You have not had the money to do that, though, so we have moved to tighten up local court programs using whatever resources we could round up.

First, we have begun to create a real state-wide system. Every probation officer now uses professional and standard instruments for assessing an offender and providing judges with data which can allow them to make good decisions about whether to send people to prison or to do something else. We have also created a standard state-wide method by which probation departments determine the level of supervision each convict requires. This caseload management system promotes public safety by identifying people who need the tightest supervision, and it helps probation departments prioritize their work at a time when there really aren't enough people to go around. These management tools have been several years in the making, and every department in the state began using this system two weeks ago. It will take some money to make it succeed. Representatives David Frizzell and Dennis Avery have introduced House Bill 1105 to provide the Indiana Judicial Center with the implementation of funds, just $79,000, to make this work. I ask that you invest this small amount in insurance. Absent major new expenditures, it represents our best thinking about what to do.

Death Penalty Cases

On the absolute other end of the spectrum, many of you have recently asked questions about the death penalty and how it works and why it all seems to take so long. It does take a long

time, and I am far from content about how it functions. Long before the recent spate of publicity, the Supreme Court launched a number of initiatives to save time in death penalty appeals without damaging the presentation of legitimate issues by people sentenced to death.

First, we turned to technology to help on the physical preparation of the first document in an appeal -- the transcript of the evidence presented at trial. The Court amended its rules to require that all death penalty trials be recorded through the use of a modern technique called computer-assisted transcription. The change has been dramatic. Some death penalty cases in the 1980s were delayed as long as two years while people typed the trial transcript by hand. Now, the transcripts tend to come in 90 days.

Second, the Supreme Court began supervising individual death penalty cases. We review every case several times a year, and we have become more aggressive about demanding that the cases be moved through the system. In two cases within the recent past, when prisoners waited three months, six months, nine months before filing petitions for post-conviction relief, we finally said, "if you have something to file, do it in 30 days or we'll direct the trial judge to set an execution date." That works.

Third, we have now limited the number of times that all prisoners, including death penalty prisoners, can go back to court for another appeal. Until last year, a prisoner was entitled to file new post-conviction petitions as many times as he wanted. Now, every death row prisoner may file one post-conviction petition as a matter of right, and no one may file another one without permission of the Supreme Court.

Fourth, while working to combat delay, we have redoubled our commitment to assuring that people charged with the ultimate penalty get adequate legal help. There is one southern state where a death penalty defendant was defended by someone with six-months experience as a lawyer, and another state where a third-year law student was appointed to represent the defendant.

Indiana has held itself to a higher standard. With help from the Public Defender Commission, an agency you created in 1989, the Supreme Court made Indiana just the second state in the country to adopt minimum qualifications for lawyers handling capital cases. They assure that if you are a poor person charged in a capital case your lawyer is not doing his on-the-job training on you. It's something Indiana has done that is right and decent, and I was proud last year at a meeting of the American Bar Association where Indiana's effort was widely heralded. It is a critical corollary, I think, of our effort to bring death penalty cases to a fair and just and faster conclusion. I tell you firmly that we spend more time on these cases and take them more seriously than any other thing we do.

Courts and Children

We take pretty seriously, too, our responsibility for Indiana's children. We all know that a great national debate has begun about making drastic changes in helping the children of broken families. The word "orphanage" has re-entered our vocabulary. These problems have long been high on the list for juvenile and family judges here in Indiana. The Supreme Court's initiative for 1995 will be a major project to assess how well courts handle matters involving mistreated children, preservation of families versus removal of children from the homes, periodic review of children in foster care, and so on. We will re-examine what decisions we make and how we make them and develop new plans to do a better job.

I think we are already doing better as a result of plans laid last year. Our juvenile judges begin 1995 with local budgets for the care of children developed for the first time ever through a cooperative effort by county councils and county commissioners, the county Office of Family and Children, and the judges themselves. This is a direct result of your action last year in adopting House Act 1380, one of a series of recommendations resulting from a task force Governor Bayh appointed from all three branches of Indiana government, chaired by Justice Frank Sullivan when he was still in the Governor's Office. This system of joint fiscal planning

at the local level is a good step forward, and we stand ready to join with you on other elements of that task force report.

We think we made progress, too, a few weeks ago when we reformed our rules on injunctions in domestic cases to abolish the ancient system of perfunctory mutual restraining orders. We think our new rules will make courts more effective at combating domestic violence.

Speaking of new tools, we think there is much merit in the proposals made by Speaker Mannweiler and by Governor Bayh to give juvenile court judges a wider range of tools, including more sentencing options, to deal with the changing nature of children in distress and children who inflict distress. These proposals reaffirm that children need separate attention, and we look forward to discussing these changes with you over the next few months.

Pay for Prosecutors and Judges

Finally, as I was on my way out the door the other night after the Governor's speech a member of the House said he knew I would be speaking today and asked, "Will you be needling us about the pay bill?" "Well, just a little", I said. "That's OK", he replied, "we probably could use some reminding. It's something we need to get done."

I want to begin by acknowledging that last spring 46 members of the Senate and 90 members of the House voted to raise the pay of judges and prosecutors and to change the way judges are paid. Those votes were very gratifying, and I thank you for casting them. After those bills failed on the last night of the session, a few judges reacted in ways that were less than constructive, and I apologize for that. Let me say a few words about this unfinished business, and why Senate Bill 82, sponsored by Senator Luke Kenley and House Bill 1570, sponsored by John Keeler, are such a good idea.

About how judges are paid. Every trial judge receives a specified annual salary, paid mostly by the state and partly by each county. There are three other ways they can be paid. First, in many counties judges receive a supplementary salary from the county. Second, a judge earns $10 a day if he or she is working on a case transferred from another county. Third, a judge earns $25 for going over to a neighboring courthouse to work as a special judge. With all this in place, it is very complicated to say just what Indiana judges make, but we do know that many judges get none of these extras, and they make the same salary they've made for five years now, and they rank 54th in the country.

The Kenley bill and the Keeler bill each call for this crazy-quilt to be abolished and replaced with one salary and a limited county option. This is exactly the right thing to do. The present system bears no relation to any known public policy, it causes people to do things more inefficiently because they are paid to do them that way, and it is generally an embarrassment reminiscent of the old justice of the peace system in which the justice of the peace got paid more when he levied higher fines. It needs to be buried and I implore you to bury it.

Second, on the question of how much judges and prosecutors are paid. In the last 24 years, there have been 18 pay raises for Indiana's 35,000 full-time state employees and only 7 pay raises for Indiana's prosecutors and judges. Had prosecutors and judges been treated the same -- some years getting 2%, some years getting 4%, some years getting nothing -- there would be no pay bill because there would not need to be. The Kenley bill and the Keeler bill and the Supreme Court's budget request largely take this approach, setting the pay at what it would have been if it had been part of the regular annual adjustments. All three proposals are within a few thousand dollars of each other, and they are all pretty close to the bill both houses voted out last year. In short, these bills are a pretty reasonable way to complete last year's business.

All of this has to do with the kinds of people Hoosiers find when they enter a courtroom. They walk in expecting gray hair, experience, and many times they find it. Many other times, though, they discover that the youngest, least experienced, lowest paid lawyer in the courtroom is the judge.

I want Hoosiers to walk into a courtroom and know their cases will be heard by our brightest and best, women and men of talent and experience, people who've been recruited from among the most successful lawyers. I want them to find dedicated people, a winning team, of high morale.

We need to find a better way, though, to conduct this business with each other. Instead of the periodic big pay bills and the political din which accompanies them, we need to find a way to make these decisions as small adjustments, just as the state does for its other full-time employees. Senator Kenley's bill proposes a good way to do this, but there are other ways to avoid the tension between the branches of Indiana government that these issues generate. A real accomplishment for 1995 would be for us to find our way off the treadmill on which we have encountered each other over these last twenty-five years.

I express it that way because there are so many things on which the legislature, the executive, and the judiciary cooperate in ways that make Indiana a fine place to work on the public's business. I've mentioned several of the ways we work together today, in areas like crime and the needs of children. We are three branches, but just one government, and the atmosphere of respect and cooperation has of late been one that makes public service all so much easier than it might be otherwise. Like you, I consider this work a privilege and a trust, and much of the time it is a pleasure, and I thank you for helping it be so.

And that, ladies and gentlemen, is the state of your judiciary.