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ANNUAL REPORT OF THE COMMISSION ON COURTS

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**Indiana Legislative Services Agency
Room 302, State House
Indianapolis, Indiana 46204**

December, 1993

INDIANA LEGISLATIVE COUNCIL

1993

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President Pro Tempore of the Senate
Chairman

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Boonville
Speaker of the House
Vice-Chairman

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Terre Haute

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Representative Dan Pool
Crawfordsville

Senator William McCarty
Anderson

Representative Richard Mangus
Lakeville

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COMMISSION ON COURTS

Membership Roster

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Jesse Villalpando
Griffith

Earl Howard
Kokomo

Ralph Ayres
Chesterton

Kathy Richardson
Noblesville

Senators

William Soards
Indianapolis

Richard Bray
Martinsville

William Alexa
Valparaiso

William McCarty
Anderson

Lay Members

Chief Justice Randall Shepard
Indianapolis

Judge Ernest Yelton
Brazil

Ms. Mary Lou Schnell
Birdseye

Mr. William Overdeer
Columbia City

Ms. Patricia Smith
LaPorte

Legislative Services Agency Staff

Kathleen Cord
Attorney for the Commission
Office of Bill Drafting and Research

Mark Goodpaster
Fiscal Analyst for the Commission
Office of Fiscal and Management Analysis

November, 1993

I. STATUTORY DIRECTIVE

A. LEGISLATIVE CHARGE:

IC 33-1-15-7 directs the Commission on Courts to do the following:

(1) Review and report on all requests for new courts or changes in jurisdiction of existing courts. A request for review under this subdivision must be received by the commission not later than July 1 of each year. A request received after July 1 may not be considered unless a majority of the commission members agree to consider the request.

(2) Conduct research concerning requests for new courts or changes in jurisdiction of existing courts. This research may include the conduct of surveys sampling members of the bar, members of the judiciary, and local officials to determine needs and problems.

(3) Conduct public hearings throughout Indiana concerning requests for new courts or changes in jurisdiction of existing courts. The commission shall hold at least one (1) public hearing on each request presented to the commission.

(4) Submit a report before November 1 of each year to the General Assembly that includes the following:

(A) A recommendation on all requests considered by the commission during the preceding year for the creation of new courts or changes in the jurisdiction of existing courts.

(B) If the commission recommends the creation of new courts or changes in jurisdiction of existing courts, the following:

(i) A draft of legislation implementing the changes.

(ii) A fiscal analysis of the cost to the state and local governments of implementing recommended changes.

(iii) Summaries of any research supporting the recommended changes.

(iv) Summaries of public hearings held concerning the recommended changes.

B. LEGISLATIVE COUNCIL CHARGE:

Additional Charge No. 1: "Study the feasibility of a comprehensive and thorough review of the entire Indiana criminal justice system. If such a review is recommended, propose the means of accomplishing the review and a timetable." (Reference HCR 121, HCR 134, SCR 95, SCR 25, and SCR 29.)

Additional Charge No. 2: "Study issues related to the state tax court, including the use of Appellate Rule 18." (Reference HCR 68.)

II. INTRODUCTION AND REASONS FOR STUDY

The 1991 General Assembly established the Commission on Courts to review the need for additional courts and for changes in the jurisdiction of existing courts. In doing this, the General Assembly was following up on the findings of the 1990 Interim Study Committee on Courts and Criminal Law Issues that current statutes contain neither procedures for creating courts nor specific criteria for the General Assembly to use in evaluating the need for new courts. This situation had allowed the creation of new courts that could not be justified on the basis of judicial workload.

III. SUMMARY OF WORK PROGRAM

The Commission held four meetings during the interim following the conclusion of the 1993 General Assembly, with its initial meeting in mid-September and three meetings during the month of October.

The Commission began first with a consideration of the legislative proposals that had been approved by the Commission one year ago and introduced during the 1993 General Assembly, but did not pass. Many of these proposals were considered by the Commission to be "non-controversial" because there was general agreement on them at the end of the 1993 Session. However, these proposals did not pass because they were made a part of other proposals on which agreement could not be reached.

The Commission divided the issues for consideration into the following categories:

1. Non-controversial proposals from the 1993 Session:

- ▶ Issues approved by the Commission on Courts during the 1992 Interim and introduced in the 1993 Session in the omnibus courts bill.
- ▶ Issues added to the omnibus courts bill at various points during the 1993 legislative session; either by committee amendments, floor amendments, or conference committee amendments.

2. Requests for new courts or upgrades of county courts to superior courts not considered during the 1993 Session.
3. Requests for new magistrates or upgrades of existing commissioners or referees to magistrates.
4. Salary increases for judges and prosecuting attorneys and accompanying increase in court fees.
5. Election of judges in Lake County and St. Joseph County.
6. Additional study topics assigned by the Legislative Council.

IV. SUMMARY OF TESTIMONY

A. First Meeting (September 24, 1993):

1. Representative Jesse Villalpando reviewed the provisions in the "non-controversial" courts bill (PD 3168) that had not been previously approved by the Commission on Courts but were added to the omnibus courts bill during the 1993 Session.
2. Judge Ernest Yelton and Mr. Dick Good pointed out additional changes needed in the judges' and prosecuting attorneys' retirement laws to conform with changes already in the draft.
3. Senator William McCarty requested an addition to the draft to require the judge of the Anderson city court to be an attorney.
4. Judge Thomas Fisher of the Indiana Tax Court addressed the Commission concerning the additional charge from the Legislative Council to "study issues related to the state tax court, including the use of Appellate Rule 18." Judge Fisher spoke against the proposal to allow appeals from the Tax Court to go to the Court of Appeals instead of directly to the Supreme Court.
5. Chief Justice Randall Shepard told the Commission that it would be a step backward from the effort to centralize tax litigation in a single court to go back to appeals to the numerous appellate courts and would not be advisable.

B. Second Meeting (October 12, 1993):

▶ **Election of Judges:**

1. Representative Craig Fry spoke in favor of electing the judges in St. Joseph County.
2. Representative Thomas Kromkowski spoke in favor of the election of judges in St. Joseph County.
3. Judge George Beamer, St. Joseph Superior Court, spoke against the election of judges in St. Joseph County.
4. Representative Charlie Brown spoke in favor of electing the superior court judges in Lake County.
5. Ms. Karen Pulliam-Willis, President of the James Kimbrough Law Association, spoke in favor of electing the judges in Lake County.
6. Mr. Hilbert Bradley, an attorney representing the Indiana Coalition for Black Judicial Officials, spoke in favor of electing the judges in Lake County.
7. Mr. Steve Laudig, Attorney, spoke in favor of electing judges in Lake County.
8. Judge Scott Bowers, Vanderburgh Superior Court, gave an overview of the system used in Vanderburgh County for the non-partisan election of judges.

▶ **Judicial Salary Increase (PD 3234):**

1. Judge Michael Cook, Marshall County Circuit Court, spoke in favor of the proposal contained in PD 3234 to increase salaries for judges and prosecutors and to increase court fees.
2. Judge Paul Mathias, Allen Superior Court, spoke in favor of the proposal for increasing judicial salaries.
3. Ms. Paje Eting, Indiana State Bar Association, spoke in favor of the proposal.
4. Ms. Kristen Fruehwald, Indianapolis Bar Association, spoke in favor of the proposal.
5. Ms. Debra Cataldo, Legal Services Organization, asked that a portion of the money raised by the increased court fees in the proposal be allotted to a civil legal aid fund, to be used for legal assistance for low income people.
6. Ms. Judy Haller, Legal Services Organization of Northwest Indiana, asked the Commission to distribute a portion of the increased civil filing fees to a civil

legal aid fund.

7. Ms. Crystal Frances, Legal Services Organization of Indianapolis, spoke in favor of the inclusion of a civil legal aid fund in the judicial salary bill.

8. Mr. Dick Good, Indiana Prosecuting Attorneys Council, spoke in support of the proposed bill.

C. Third Meeting (October 22, 1993):

► Magistrate Proposals Previously Considered:

1. Elkhart County: PD 3156: Authorizes the appointment of one full-time magistrate for the Elkhart circuit, superior, and county courts.

► Representative Dean Mock spoke in favor of this proposal.

2. Madison County: PD 3053: Establishes the unified Madison circuit court and authorizes the appointment of one full-time magistrate for the court.

► Senator William McCarty spoke in favor of the proposal.

► Judge Thomas Newman, Madison Superior Court No. 3, spoke in favor of the proposal.

3. Tippecanoe County: PD 3073: Authorizes the appointment of one full-time magistrate to serve the Tippecanoe county court, circuit court, and superior courts. Provides that the magistrate is appointed jointly by the judges of the Tippecanoe county court.

► Judge Gregory Donat, Tippecanoe County Court, spoke in favor of the proposal.

► Representative Villalpando noted that he had received calls of support for this proposal from Representatives Sue Scholer and Sheila Klinker.

4. Porter County: PD 3264: Authorizes the judges of the Porter superior court to appoint two full-time magistrates. Discontinues the offices of commissioner of the Porter superior courts.

► Senator William Alexa spoke in favor of this proposal.

► Judge Roger Bradford, Porter Superior Court, spoke in favor of the proposal.

► Mr. Jeff Tody, Porter County Probate Commissioner, spoke in favor of the proposal.

5. Vanderburgh County: PD 3290: Allows the judges of the Vanderburgh superior court to jointly appoint three magistrates. (Current law allows the appointment of one magistrate.)

▶ Judge Maurice O'Connor, Vanderburgh superior Court, spoke in support of this proposal.

▶ **Magistrate Proposals Not Previously Considered:**

1. Allen County: PD 3296: Upgrades the two Allen superior court referees and the probate commissioner to magistrates. Abolishes the referee positions.

- ▶ Representative Ben GiaQuinta spoke in support of this proposal.
- ▶ Judge Mathias, Allen Superior Court, spoke in favor of the proposal.

2. Allen County: PD 3291: Provides that the Allen circuit and superior courts have concurrent jurisdiction concerning Title IV-D paternity actions. Authorizes the circuit court judges to appoint an additional full-time magistrate to deal primarily with Title IV-D paternity actions.

- ▶ Judge Tom Ryan, Allen Circuit Court, spoke in favor of the proposal.
- ▶ Mr. Steve Sims, Allen County Prosecuting Attorney, spoke in support of the proposal.

3. Marion County: (No bill draft at this time)

▶ Judge James Kirsch and Judge Anthony Metz, Marion County Superior Court, addressed the Commission on the need for assistance of some kind to help reduce the backlog of cases in Marion County Superior Court. Among the proposals being considered are the addition of seven new magistrates and upgrading the current drug magistrate to a superior court.

▶ Senator William Soards spoke in favor of the addition of the new magistrate positions.

4. Clark County: (No bill draft at this time)

▶ Representative William Bailey presented his request to upgrade the county court to a superior court and to allow the appointment of one magistrate by the new court.

▶ Judge Steven Fleece, Clark County Court, spoke in favor of the proposal.

5. LaPorte County: PD 3177 (Rep. Budak): Allows the judges of the LaPorte superior courts to appoint one full-time magistrate. Specifies that the primary duty of the magistrate is to administer and oversee actions that originate in or involve any penal facility located in LaPorte County and operated by the Department of Correction. Allows LaPorte superior courts to hold sessions in any penal facility located in LaPorte County and operated by the Department of Correction.

PD 3363 (Rep. Alevizos): Creates a new LaPorte superior court. Specifies that the governor appoints the initial judges of the new court, with the initial election to be held November 3, 1998.

▶ The following legislators spoke in favor of the LaPorte County proposals:

- ▶ Representative Alevizos
- ▶ Representative Budak
- ▶ Senator Anita Bowser

▶ Judge Paul Baldoni, LaPorte Superior Court, spoke in favor of the proposals.

6. Steuben County: PD 3265: Allows the judges of the Steuben circuit and superior courts to jointly appoint one magistrate.

▶ Judge Forbes, Steuben Circuit Court, spoke in support of this proposal.

7. Lake County: PD 3347: Allows the judge of the Lake Circuit Court to establish a domestic relations division and a domestic relations counseling bureau. Authorizes the appointment of a mediator and "necessary personnel."

▶ Judge Arredondo, Lake Circuit Court, spoke in favor of this proposal. He requested that the draft be amended to include authorization for the appointment of one full-time magistrate for the Lake Circuit Court domestic relations division.

▶ **Proposals Regarding New Courts or Changes in Jurisdiction:**

1. Johnson County: PD 3295: Establishes a third superior court in Johnson County, effective January 1, 1995. Repeals a provision that allows the judges of the Johnson superior and circuit courts to appoint a full-time magistrate. Specifies procedures and deadlines for filing a declaration of candidacy for the new court.

▶ Senator Soards presented this proposal on behalf of Senator Garton. He explained that this was the same proposal that was put forward last year as part of the omnibus courts bill.

▶ Judge Cynthia Emkes, Johnson Superior Court, spoke in favor of the proposal.

2. Lake County: PD 3309: Creates two additional Lake superior courts, one in civil division and one in criminal division. Eliminates the magistrate position in the criminal division.

▶ Senator Randolph spoke in support of this proposal. He asked that the draft be amended to keep the magistrate position instead of

repealing it as in the draft. The Commission agreed by consent to remove the repealer from the draft.

3. Wabash County: PD 3274: Establishes a new Wabash superior court. Provides for the appointment of the initial judge by the governor and for the first election to be held November 5, 1996. Retains the existing county court.

- ▶ Appearing to discuss the Wabash County issue were the following:
 - ▶ Mr. David Magley, President, Wabash County Bar Association
 - ▶ Judge Daniel Vanderpool, Wabash Circuit Court
 - ▶ Judge Michael Sposeep, Wabash County Court
 - ▶ Mr. Steven Downs, Attorney

Those speaking on behalf of the Wabash County proposal asked that the request be changed to upgrade the county court to a superior court instead of the proposal set out in PD 3274. The Commission agreed unanimously to make this change.

D. Fourth Meeting (October 29, 1993):

▶ Election of Judges in Lake County: (PD 3383)

Provides for the election of the 10 Lake Superior Court judges in the divisions other than the county division. The procedure for selecting the three judges in the county division of the Lake Superior Court remains unchanged.

▶ Election of Judges in St. Joseph County: (PD 3361)

PD 3361 had been prepared at the request of Representative Pat Bauer, who was not present at the meeting. The draft contained the following items:

- Provides for the election of the eight superior court judges in St. Joseph County by a county-wide, nonpartisan election.
- Candidates would run for a designated judgeship, first in the primary election and then in the general election.
- Extends for two years the terms of the three current judges whose terms expires December 31, 1996.
- Provides that the remaining current judges serve the remainder of their terms.
- Repeals all statutes establishing and concerning the St. Joseph County judicial nominating commission and the St. Joseph County judicial qualifications commission.
- Deletes cross references to the repealed laws.

► **Testimony:**

(1) Mr. Troy Liggett, Ways and Means Fiscal Analyst, read a statement to the Commission on behalf of Representative Pat Bauer in support of the election of judges in St. Joseph County. This statement is included in the final report as part of Appendix C.

(2) Representative Richard Mangus told the Commission members that he opposed the bill draft at this time, and that he would need time to further study the proposal. He stated that it was his opinion that the current system of selecting judges in St. Joseph County was working fine and that no changes were needed.

(3) Senator William Soards read a statement on behalf of Senator Joseph Zakas, who was not present at the meeting, in support of the current system of selecting judges. This statement, along with a resolution from the St. Joseph County Bar Association, is included in the final report as part of Appendix C.

V. COMMITTEE FINDINGS AND RECOMMENDATIONS

A. "NON-CONTROVERSIAL" COURTS ISSUES:

PROPOSAL: PD 3354: The items contained in PD 3354 were as follows:

1. Warrick County community corrections advisory board.
2. Lake circuit court domestic relations division.
3. Commission on Courts: expanded duties/alternate chair.
4. Residency of Court of Appeals judges.
5. Allen circuit and superior courts; Title IV-D jurisdiction.
6. Senior judges per diem: payment by state.
7. Madison unified circuit court.
8. Allen County nominating commission.
9. Court upgrades:
 - Blackford
 - Clark
 - Elkhart
 - Johnson
 - Lawrence
 - Morgan
 - Posey
 - Wabash
10. Lake superior court: political contributions.
11. Require town court judges to be attorneys in:
 - Anderson city court
 - Brownsburg town court
 - Muncie city court

▶ Plainfield town court

12. Judges retirement fund:

- ▶ Prorating of benefits (1993 SB 528)
- ▶ Benefit reduction factor for judges who die in office (1993 SB 226)
[Corresponding change made in prosecuting attorneys' retirement fund, per Commission agreement at meeting on September 24, 1993.]
- ▶ Purchase of years of service by certain judges.

13. Payment of county portion of judges' salaries to state for FICA purposes (1993 SB 297).

14. Prosecuting attorneys full-time election.

15. Distribution of partial court fees by court clerks.

16. Hendricks superior court No. 3: Changes effective date for creation from July 1, 1994 to January 1, 1995.

The Commission agreed by consent to make a correction to the draft on page 30, line 20, to strike the words "and was in service as a judge" to be consistent with the change on page 27, line 19. This change was approved by the Commission at its meeting on September 24, 1993.

FINDINGS: The Commission found that all of the proposals contained in PD 3354 were of a non-controversial nature, with most having been previously approved by the Commission one year ago. The remainder of the proposals contained in the draft had been added at various points during the 1993 legislative session and were items upon which there was general agreement at the conclusion of that session. The items not fitting into either of these categories had been added to the draft by the Commission during its deliberations this interim and were felt to be of a non-controversial nature, with little or no fiscal impact to the state.

RECOMMENDATION: The Commission approved PD 3354, as amended, by a 10-0 vote.

B. ELECTION OF JUDGES IN LAKE COUNTY:

PROPOSAL: PD 3383: Provides for the election of the 10 Lake Superior Court judges in the divisions other than the county division. The procedure for selecting the three judges in the county division of the Lake Superior Court remains unchanged.

FINDINGS: The Commission made the following findings:

- (1) Ninety counties in Indiana elect their superior court judges. Lake County does not elect its superior court judges.

(2) The citizens living in Lake County are being asked to pay higher court fees to support higher wages for judges, therefore these citizens should have the privilege of electing these public servants as they are in all other counties.

(3) The merit selection system of appointing superior court judges in Lake County has resulted in the appointment of one African-American judge since its enactment in 1973. Lake County's African-American population approaches 25% of the county's total population.

RECOMMENDATION: This proposal was approved by a vote of 11-0.

C. ELECTION OF JUDGES IN ST. JOSEPH COUNTY:

PROPOSAL: PD 3361: The draft contained the following items:

- ▶ Provides for the election of the eight superior court judges in St. Joseph County by a county-wide, nonpartisan election.
- ▶ Candidates would run for a designated judgeship, first in the primary election and then in the general election.
- ▶ Extends for two years the terms of the three current judges whose terms expires December 31, 1996.
- ▶ Provides that the remaining current judges serve the remainder of their terms.
- ▶ Repeals all statutes establishing and concerning the St. Joseph County judicial nominating commission and the St. Joseph County judicial qualifications commission.
- ▶ Deletes cross references to the repealed laws.

FINDINGS: The Commission made the following findings:

- (1) Ninety counties in Indiana elect their superior court judges. St. Joseph County does not elect its superior court judges.
- (2) The citizens living in St. Joseph County are being asked to pay higher court fees to support higher wages for judges, therefore these citizens should have the privilege of electing these public servants as they are in all other counties.

RECOMMENDATION: The Commission approved PD 3361 by an 8-3 vote.

[Those voting "Yes" were: Representatives Villalpando, Ayres, and Howard, Senator McCarty, Ms. Schnell, Justice Dickson, Ms. Smith, and Judge Yelton. Representative Ayres explained his vote by stating that he was generally supportive of elected judges, but did not necessarily favor the form presented in this draft. Senator McCarty explained that he was voting "yes" at this point only to keep the issue alive for further discussion. Judge Yelton noted that he recognized that the judges must work with the election issue.

Those voting "No" were Senator Soards, Rep. Richardson, and Mr. Overdeer.]

D. JUDGES' SALARY INCREASE/INCREASE IN COURT FEES:

PROPOSAL: PD 3234: Preliminary Draft 3234 concerns salary increases for judges and prosecutors, increases in court fees, and the following other items:

- ▶ Increases salaries for judges and prosecuting attorneys.
- ▶ Increases court fees to cover the costs of the salary increases.
- ▶ Eliminates per diem for special judges, judges on change of venue, and judges pro tempore on change of venue who are already receiving per diem.
- ▶ Imposes a cap of \$5,000 on the amount a county may provide as compensation supplementing the minimum compensation for judges and prosecuting attorneys.

FINDINGS: The Commission found that the salaries of Indiana's trial judges rank 49th of all the states and that corrective action is imperative in order to attract and retain a high quality judiciary. The estimated fiscal impact of this proposal is included in the final report as Appendix A.

RECOMMENDATION: The Commission approved PD 3234 by a vote of 12-0.

E. REQUESTS FOR MAGISTRATES:

1. REQUESTS FROM THE 1993 SESSION:

PROPOSAL: ELKHART COUNTY: PD 3156: Authorizes the appointment of one full-time magistrate for the Elkhart circuit, superior, and county courts.

FINDINGS: The Commission found that in calendar year 1992 Elkhart County ranked 12th among all Indiana counties in average number of case filings per court officer, and had experienced a 46% increase in total case filings during the period from 1986 through 1992. The estimated additional state expenditure for this proposal is \$67,711.

RECOMMENDATION: The Commission approved PD 3156 by a 12-0 vote.

PROPOSAL: MADISON COUNTY: PD 3343: Authorizes the appointment of one full-time magistrate for the new unified circuit court (contained in PD 3354, previously approved).

FINDINGS: The Commission found that Madison County ranked 55th among all Indiana counties in 1992 in average case filings per court officer. Madison County has experienced a 15% increase in total case filings over the period from 1986 through 1992. The Commission further found that the creation of a unified court system in Madison County, combining the circuit court, three superior courts and two county courts into a unified circuit court would enable the courts to operate more efficiently. The estimated additional state

expenditure for this proposal is \$67,711.

RECOMMENDATION: The Commission approved PD 3343 by a 12-0 vote.

PROPOSAL: PORTER COUNTY: PD 3264: Authorizes the judges of the Porter superior court to appoint two full-time magistrates. Discontinues the offices of commissioners of the Porter superior courts.

FINDINGS: The Commission found that Porter County ranked 2nd among all Indiana counties in average case filings per court officer in calendar year 1992. Porter County has experienced a 38% increase in total case filings during the period from 1986 through 1992. The estimated additional state expenditure for this proposal is \$135,422.

RECOMMENDATION: The Commission approved PD 3264 by a 13-0 vote.

PROPOSAL: TIPPECANOE COUNTY: PD 3073: Authorizes the appointment of one full-time magistrate to serve the Tippecanoe county court, circuit, court, and superior courts. Provides that the magistrate is jointly appointed by the judges of the Tippecanoe county court.

FINDINGS: The Commission found that Tippecanoe County ranked 9th among all counties in average case filings per court officer for calendar year 1992, and has experienced a 52% increase in total case filings during the period from 1986 through 1992. The estimated additional state expenditure for this proposal is \$67,711.

RECOMMENDATION: The Commission approved PD 3073 by a 13-0 vote.

PROPOSAL: VANDERBURGH COUNTY: PD 3290: Allows the judges of the Vanderburgh superior court to jointly appoint three magistrates. (Current law allows the appointment of one magistrate.)

FINDINGS: The Commission found that Vanderburgh County ranked 11th of all counties in average case filings per court officer in calendar year 1992 and has experienced a 29% increase in total case filings during the period from 1986 through 1992. The estimated additional state expenditure for this proposal is \$135,422.

RECOMMENDATION: The Commission approved PD 3290 by a 12-0 vote.

2. NEW REQUESTS FOR MAGISTRATES:

PROPOSAL: ALLEN COUNTY: PD 3296: Upgrades the two Allen superior court referees and the probate commissioner to magistrates. Abolishes the referee positions.

FINDINGS: The Commission found that Allen County ranked 6th among all counties in average case filings per court officer during calendar year 1992 and had experienced a 29% increase in total case filings during the period from 1986 through 1992. The estimated additional state expenditure for this proposal is \$203,133.

RECOMMENDATION: The Commission approved PD 3296 by a 13-0 vote.

PROPOSAL: ALLEN COUNTY: PD 3291: Provides that the Allen circuit and superior courts have concurrent jurisdiction concerning Title IV-D paternity actions. Authorize the circuit court to judge to appoint an additional full-time magistrate to deal primarily with Title IV-D paternity actions.

FINDINGS: The Commission found that the number of juvenile filings had increased dramatically during the past 6 years, with Allen County experiencing a 266% increase in total juvenile case filings. Thus, the Commission found that allowing both the circuit and superior courts to hear paternity actions and the authorization of an additional magistrate to deal primarily with these cases would help alleviate the problems of the increased caseload. The estimated additional state expenditure for this proposal is \$67,711.

RECOMMENDATION: The Commission approved PD 3291 by a 13-0 vote.

PROPOSAL: CLARK COUNTY: PD 3329: Authorizes the appointment of one full-time magistrate for the new superior court (county court upgraded to superior court in PD 3354, approved earlier).

FINDINGS: The Commission found that Clark County ranked 4th among all counties in average case filings per court officer in calendar year 1992. During the period from 1986 through 1992, Clark County experienced an increase of 53% in total case filings. The estimated additional state expenditure for this proposal is \$67,711.

RECOMMENDATION: The Commission approved PD 3329 by a 12-0 vote.

PROPOSAL: LAKE COUNTY: Authorizes the appointment of one full-time magistrate for the domestic relations division.

FINDINGS: The Commission found that Lake County ranked 16th among all counties in average case filings per court officer during calendar year 1992. During the period from 1986 through 1992, Lake County experienced a 22% increase in total case filings. The estimated additional state expenditure for this proposal is \$67,711.

RECOMMENDATION: This provision was included in the large draft (PD 3354) separately approved by the Commission.

PROPOSAL: MARION COUNTY: PD 3352: Allows the judges of the Marion superior court to appoint seven additional magistrates. (Current law allows the appointment of one magistrate, who is required to hear only drug-related cases.) Specifies that not more than 4 of the 7 magistrates may be from the same political party. Allows a party to a proceeding to have a case heard by the elected judge of the court instead of by a magistrate, upon request of the party.

FINDINGS: The Commission found that Marion County ranked 4th among all counties in average case filings per court officer during calendar year 1992. The Commission made the following additional findings: The total case filings in the 16 circuit, superior, probate, and juvenile courts increased by 87% during the period from 1986 through 1992. The total case filings in the 17 municipal courts decreased by 20% during that same period. The net change during the period from 1986 through 1992 for all Marion County courts was a decrease of 15% in total case filings. The estimated additional state expenditure for this proposal is \$473,977.

RECOMMENDATION: The Commission approved PD 3352 by a 13-0 vote.

[A summary of the estimated fiscal impact of all of the proposals for magistrates and new courts is included in the final report as Appendix B.]

F. REQUESTS FOR NEW COURTS:

PROPOSAL: JOHNSON COUNTY: PD 3345: Establishes a third superior court in Johnson County, effective January 1, 1995. Repeals: (1) a provision that allows the judges of the Johnson superior and circuit courts to appoint a full-time magistrate; and (2) the standard small claims and misdemeanor division of Johnson superior court No. 2. Specifies procedures and deadlines for filing a declaration of candidacy for the new court.

FINDINGS: The Commission found that Johnson County ranked 73rd of all counties in average case filings per court officer during calendar year 1992. During the period from 1986 through 1992, Johnson County experienced a 37% increase in total case filings. The estimated additional state expenditure for this proposal is \$1,104.

RECOMMENDATION: The Commission approved PD 3345 by a 13-0 vote.

PROPOSAL: LAKE COUNTY: PD 3332: Creates two additional Lake superior courts, one in civil division and one in criminal division.

FINDINGS: The Commission found that Lake County ranked 16th among all counties in average case filings per court officer during calendar year 1992.

During the period from 1986 through 1992, Lake County experienced a 22% increase in total case filings. The estimated additional state expenditure for this proposal is \$151,477.

RECOMMENDATION: The Commission approved PD 3332 by a vote of 11-1.

PROPOSAL: LaPORTE COUNTY: PD 3363: Creates a new LaPorte superior court. Specifies that the governor appoints the initial judge of the new court for a term beginning July 1, 1994, and ending December 31, 1998. Provides for the initial election of the judge in the general election held November 3, 1998, with the judge taking office January 1, 1999.

FINDINGS: The Commission found that LaPorte County ranked 5th among all counties in average case filings per court officer during calendar year 1992, experiencing a 1% increase in total case filings during the period from 1986 through 1992. The estimated additional state expenditure for this proposal is \$79,673.

RECOMMENDATION: The Commission approved PD 3363 by a 12-0 vote.

G. OTHER CHARGES FROM LEGISLATIVE COUNCIL:

ADDITIONAL CHARGE NO. 1: "Study the feasibility of a comprehensive and thorough review of the entire Indiana criminal justice system. If such a review is recommended, propose the means of accomplishing the review and a timetable." (Reference HCR 121, HCR 134, SCR 95, SCR 25, and SCR 29.)

FINDINGS: The Commission unanimously agreed that each issue presented in the referenced resolutions was meritorious and should be studied further at a future time.

RECOMMENDATION: Because of the existing heavy workload of the Commission and the November 1 deadline for completion of its work, a comprehensive review of these issues is not feasible at this time.

ADDITIONAL CHARGE NO. 2: "Study issues related to the state tax court, including the use of Appellate Rule 18." (Reference HCR 68.)

FINDINGS: Evidence was not presented to the Commission to support the proposal to revert to the review of Indiana Tax Court decisions by any of the several appellate courts. The review of Tax Court decisions by the Supreme Court is consistent with the effort to maintain a centralized and consistent body of case law on tax issues.

RECOMMENDATION: The Commission unanimously agreed to recommend no further action on this issue.

WITNESS LIST

A. First Meeting (September 24, 1993):

1. Representative Jesse Villalpando.
2. Judge Ernest Yelton.
3. Mr. Dick Good, Indiana Prosecuting Attorneys Council.
4. Judge Thomas Fisher, Judge of the Indiana Tax Court.
5. Chief Justice Randall Shepard.

B. Second Meeting (October 12, 1993):

▶ Election of Judges:

1. Representative Craig Fry.
2. Representative Thomas Kromkowski.
3. Judge George Beamer, St. Joseph Superior Court.
4. Representative Charlie Brown.
5. Ms. Karen Pulliam-Willis, President of the James Kimbrough Law Association.
6. Mr. Hilbert Bradley, Attorney, representing the Indiana Coalition for Black Judicial Officials.
7. Mr. Steve Laudig, Attorney.
8. Judge Scott Bowers, Vanderburgh Superior Court.

▶ Judicial Salary Increase (PD 3234):

1. Judge Michael Cook, Marshall County Circuit Court.
2. Judge Paul Mathias, Allen Superior Court.
3. Ms. Paje Etling, Indiana State Bar Association.
4. Ms. Kristen Fruehwald, Indianapolis Bar Association.
5. Ms. Debra Cataldo, Legal Services Organization.
6. Ms. Judy Haller, Legal Services Organization of Northwest Indiana.
7. Ms. Crystal Frances, Legal Services Organization of Indianapolis.
8. Mr. Dick Good, Indiana Prosecuting Attorneys Council.

C. Third Meeting (October 22, 1993):

▶ Magistrate Proposals Previously Considered:

1. Elkhart County: PD 3156:
 - ▶ Representative Dean Mock.
2. Madison County: PD 3053:
 - ▶ Senator William McCarty.
 - ▶ Judge Thomas Newman, Madison Superior Court No. 3.

3. Tippecanoe County: PD 3073:
 - ▶ Judge Gregory Donat, Tippecanoe County Court.
4. Porter County: PD 3264:
 - ▶ Senator William Alexa.
 - ▶ Judge Roger Bradford, Porter Superior Court.
 - ▶ Mr. Jeff Tody, Porter County Probate Commissioner.
5. Vanderburgh County: PD 3290:
 - ▶ Judge Maurice O'Connor, Vanderburgh superior Court.

▶ **Magistrate Proposals Not Previously Considered:**

1. Allen County: PD 3296 and PD 3291:
 - ▶ Representative Ben GiaQuinta.
 - ▶ Judge Mathias, Allen Superior Court.
 - ▶ Judge Tom Ryan, Allen Circuit Court.
 - ▶ Mr. Steve Sims, Allen County Prosecuting Attorney.
3. Marion County:
 - ▶ Judge James Kirsch, Marion County Superior Court.
 - ▶ Judge Anthony Metz, Marion County Superior Court.
 - ▶ Senator William Soards.
4. Clark County:
 - ▶ Representative William Bailey.
 - ▶ Judge Steven Fleece, Clark County Court.
5. LaPorte County:
 - ▶ Representative Thomas Alevizos
 - ▶ Representative Mary Kay Budak
 - ▶ Senator Anita Bowser
 - ▶ Judge Paul Baldoni, LaPorte Superior Court.
6. Steuben County: PD 3265:
 - ▶ Judge Forbes, Steuben Circuit Court.
7. Lake County:
 - ▶ Judge Lorenzo Arredondo, Lake Circuit Court.

▶ **Proposals Regarding New Courts or Changes in Jurisdiction:**

1. Johnson County: PD 3295:
 - ▶ Senator William Soards.
 - ▶ Judge Cynthia Emkes, Johnson Superior Court.
2. Lake County: PD 3309:
 - ▶ Senator Lonnie Randolph.

3. Wabash County: PD 3274:

- ▶ Mr. David Magley, President, Wabash County Bar Association
- ▶ Judge Daniel Vanderpool, Wabash Circuit Court
- ▶ Judge Michael Sposeep, Wabash County Court
- ▶ Mr. Steven Downs, Attorney

D. Fourth Meeting (October 29, 1993):

▶ **Election of Judges in Lake County: (PD 3383)**

Judge Morton Kanz, Lake Superior Court

▶ **Election of Judges in St. Joseph County: (PD 3361)**

▶ Mr. Troy Liggett, Ways and Means Fiscal Analyst, read a statement to the Commission on behalf of Representative Pat Bauer.

▶ Representative Richard Mangus.

▶ Senator William Soards read a statement on behalf of Senator Joseph Zakas, who was not present at the meeting.

APPENDIX A

FISCAL IMPACT OF JUDGES' SALARY PROPOSAL

ESTIMATED PROPOSAL -- COMMISSION ON COURTS -- OCTOBER 29, 1993
COURT OFFICER SALARIES AND COURT COST FEES:

| | # of Officers | current salary | Proposed for: | |
|-----------------------------------|---------------|----------------|---------------|------------|
| | | | FY 1994 | FY 1995 |
| Supreme Court Justices | 5 | \$81,000 | \$97,000 | \$97,000 |
| Court of Appeals Judges | 16 | \$76,500 | \$92,000 | \$92,000 |
| Trial Court Judges (state share): | | | | |
| Class 1 - 2 | 104 | \$51,265 | \$71,525 | \$71,525 |
| Class 3 - 6 | 116 | 54,575 | \$74,835 | \$74,835 |
| Class 7 - 9 | 66 | 56,780 | \$77,040 | \$77,040 |
| average state share: | | \$53,880 | \$74,140 | \$74,140 * |
| state and county share: | | \$61,740 | \$82,000 | \$82,000 |
| Magistrates | 14 | \$53,471 | \$61,500 | \$61,500 |
| Juvenile Court Referees: | 12 | \$12,078 | \$20,107 | \$20,107 * |
| Full Time: | | | | |
| Prosecuting Attorneys | 34 | \$61,740 | \$82,000 | \$82,000 |
| Deputies @ 66% | 19 | \$40,748 | \$54,120 | \$54,120 |
| Deputies @ 60% | 37 | \$37,044 | \$49,200 | \$49,200 |
| Part Time: | | | | |
| Prosecuting Attorneys | 45 | \$46,305 | \$61,500 | \$61,500 |
| Deputies @ 66% | 20 | \$30,561 | \$40,590 | \$40,590 |
| Deputies @ 60% | 45 | \$27,783 | \$36,900 | \$36,900 |
| Total Number | 533 | | | |

*includes state share only, see Ex. 1

| Estimated Impact on the STATE General Fund: | | |
|---|----------------|----------------|
| Estimated Costs: | FY 1994 | FY 1995 |
| Judges & Magistrates | (\$8,231,650) | (\$8,231,650) |
| Prosecuting Attorneys | (\$2,967,077) | (\$2,967,077) |
| Victims Compensation | (\$1,000,000) | (\$1,000,000) |
| Public Defenders | (\$850,000) | (\$850,000) |
| Eliminate Spec. Judge Fees | \$440,000 | \$440,000 |
| Judges Retirement Fund | (\$46,838) | (\$46,838) |
| Additional Courts | (\$231,151) | (\$231,151) |
| Additional Magistrates | (\$1,421,931) | (\$1,421,931) |
| Convert Magistrates to Judges | (\$1,104) | (\$1,104) |
| Full Time Prosecuting Attys. | (\$345,279) | (\$345,279) |
| Additional Expenditures: | (\$14,655,030) | (\$14,655,030) |
| Additional Revenue: | \$14,606,173 | \$14,606,173 |
| Net Effect on State General Fund: | (\$48,857) | (\$48,857) |

| Estimated Impact on the LOCAL General Fund: | | |
|---|-------------|-------------|
| | CY 1994 | CY 1995 |
| Additional County Revenue: | \$1,563,174 | \$1,563,174 |
| Additional City and Town Revenue: | \$627,692 | \$627,692 |
| Net Effect on Local General Fund: | \$2,190,866 | \$2,190,866 |

| PROPOSED FEES: | | |
|--------------------|-------|-------|
| | FY 94 | FY 95 |
| civil: | \$85 | \$85 |
| probate: | \$85 | \$85 |
| juvenile | 75 | 75 |
| crim. & misdern. | 120 | 120 |
| inf. & ord. viol.: | \$75 | \$75 |
| def. pros. | 25 | 25 |

| changes in % share in court cost fee revenue | | |
|--|-----------|----------|
| | proposed: | current: |
| trial cts. | | |
| state | 60% | 50% |
| city & twns | 3% | 3% |
| counties | 37% | 47% |
| | 100% | 100% |
| city & town cts. | | |
| state | 65% | 55% |
| city & twns | 24% | 30% |
| counties | 11% | 15% |
| | 100% | 100% |

date prepared: 16-Nov-93 date printed: 16-Nov-93

APPENDIX B

FISCAL IMPACT OF MAGISTRATE AND NEW COURT PROPOSALS

SUMMARY OF ADDITIONAL STATE EXPENDITURES ASSOCIATED WITH NEW MAGISTRATES AND COURTS:
AS PROPOSED BY THE COMMISSION ON COURTS, 1993 INTERIM

| New Magistrates: | | salary | total |
|------------------|---|----------|-------------|
| Allen Superior | 3 | \$67,711 | \$203,133 |
| Allen Circuit | 1 | | \$67,711 |
| Clark | 1 | | \$67,711 |
| Elkhart | 1 | | \$67,711 |
| Lake | 1 | | \$67,711 |
| Laporte | 1 | | \$67,711 |
| Marion | 7 | | \$473,977 |
| Madison | 1 | | \$67,711 |
| Porter | 2 | | \$135,422 |
| Tippecanoe | 1 | | \$67,711 |
| Vanderburgh | 2 | | \$135,422 |
| | | ----- | |
| | | 21 | \$1,421,931 |

one additional magistrate:

| | |
|-------------------------|----------|
| salary | \$53,471 |
| fringe benefits @18.87% | \$10,090 |
| health insurance | \$3,350 |
| judicial center | \$800 |
| | ----- |
| total cost | \$67,711 |

one additional judge:

| | Class 1 & 2 | Class 3-6 | Class 7-9 |
|-------------------------|----------------|--------------|--------------|
| state share of salary: | \$51,265 | \$54,575 | \$56,780 |
| fringe benefits @18.87% | \$9,674 | \$10,298 | \$10,714 |
| judges retirement fund: | \$14,000 | \$14,000 | \$14,000 |
| judicial center | \$800 | \$800 | \$800 |
| | ----- | ----- | ----- |
| | \$75,739 | \$79,673 | \$82,294 |

new superior courts:

| | | | |
|---------|---|----------|-----------|
| Lake | 2 | \$75,739 | \$151,477 |
| Laporte | 1 | \$79,673 | \$79,673 |
| | | ----- | |
| | | | \$231,151 |

convert magistrate into superior court

| | | | |
|---------|--|---------|---------|
| Johnson | | \$1,104 | |
| | | ----- | |
| | | | \$1,104 |

Grand Total: \$1,654,185
=====

Johnson Superior Court:

| | |
|---------------------------------------|----------|
| salary of judge in class 3 county: | \$54,575 |
| salary of magistrate: | \$53,471 |
| | ----- |
| additional annual cost: | \$1,104 |
| semi-annual cost: | \$552 |

filed under: f:\mgoodpas\commcts\1993\newcts\summary
date revised: 16-Nov-93 date printed: 16-Nov-93

APPENDIX C

TESTIMONY ON ELECTION OF JUDGES



STATE OF INDIANA
HOUSE OF REPRESENTATIVES

B. PATRICK BAUER
FOURTH FLOOR STATE HOUSE
INDIANAPOLIS, INDIANA 46204-2786

1307 SUNNYMERE
SOUTH BEND, INDIANA 46615

COMMITTEES: 1993-94
WAYS AND MEANS
CHAIRMAN

MEMORANDUM

TO: Chairman Villalpando and Members of the Commission on Courts
FROM: Representative B. Patrick Bauer, Representative Thomas S. Kromkowski, and Representative Craig Fry

RE: Judicial Reform Issues
DATE: October 29, 1993

Representative Bauer, Representative Kromkowski, and Representative Fry would like to state for the record that they do not favor an increase in judges pay without greater participation by the citizens of St. Joseph County in choosing their judges. Some judicial reform must be built into the system which currently disallows voter participation in the selection of judges in their home county.

They support a hybrid of partisan and non-partisan elections of the judges similar to the system used in Ohio. The election of judges would include a partisan selection of candidates in the May primary, followed by a non-partisan selection in the general election in November.

Especially in view of the fact that public employee pay raises in general have been minimal to nil in recent years, it would be difficult to support an increase in judges' pay without some accompanying reform of an unjust system.

Whether you finance the increase in judges pay through a tax increase or fee increase, in view of the fact that the taxpayers, voters, and users of the courts in St. Joseph County would be paying for any increase in judge's pay, this makes reform even more vital.

We realize there are some judges and lawyers who are hesitant to change the system which was pushed through the legislature in the early 1970's and which they benefit from today. However, to be able to support what may be a justified increase in the pay of our judges, we must also accept the equal responsibility of justifiably reforming their selection process.



Senator Joseph C. Zakas
16372 Wild Cherry Drive
Granger, Indiana 46530
Business (219) 294-7473
or (219) 674-8329
Residence (219) 277-5155

Committees
Governmental & Regulatory Affairs, Chair
Judiciary, R.M.
Public Policy
Public Affairs Subcommittee

STATEMENT TO COMMISSION ON COURTS 10/29/93

Although I am not able to attend personally, I appreciate the opportunity to provide the Commission with this statement concerning the judicial selection process in St. Joseph County.

I believe that a majority of those who represent St. Joseph County in the General Assembly do not wish to change the current merit selection process. Certainly no consensus exists for any change. Further, the local bar association opposes any change, and the local newspaper has editorialized against any change. It is clear the community is generally satisfied with the system that is now in place.

The current merit selection process has provided St. Joseph County with a competent judiciary which is diverse racially and politically, and also in terms of gender. Local attorneys, their clients, and the citizenry are well served.

Can the current system be improved? Probably, as any system can. It might be better for the county legislative body to select some members of the judicial nominating committee, for example. Also, perhaps a method can be established for the nominating committee to invite qualified candidates to apply. However, these suggestions, in my view, would make minor improvements only. They would not completely change the selection process.

It is my hope that you would endorse the judicial selection process as it now exists in St. Joseph County.

(Attached: copy of resolution of St. Joseph County Bar Association

RESOLUTION OF
THE ST. JOSEPH COUNTY BAR ASSOCIATION
BOARD OF GOVERNORS

WHEREAS, in 1973 the Indiana General Assembly previously passed legislation establishing merit selection of superior court judges for St. Joseph County by adopting Public Law 311 of the Acts of 1973; and

WHEREAS, twenty years ago the public, various professional associations, bar officials, judges, governmental officials and trial attorneys provided testimony to the Legislature establishing the best process of judicial selection is one where a bi-partisan judicial nominating commission determines "the three (3) most highly qualified candidates from among all those eligible individuals considered" from which the governor appoints a judge; and

WHEREAS, the American Bar Association, the Indiana Bar Association, the St. Joseph County Bar Association and numerous other organizations have previously gone on record endorsing merit selection of judges; and

WHEREAS, it is the desire of the St. Joseph County Bar Association Board of Governors that merit selection of judges for the St. Joseph County Superior Courts be maintained.

NOW, THEREFORE, BE IT RESOLVED, that the St. Joseph County Bar Association Board of Governors urges the 108th General Assembly to retain merit selection of judges for the St. Joseph Superior Courts.

Dated this 25th day of February, 1993.

Michael P. Barnes

Michael P. Barnes, President

Richard A. Nassbaum II

Richard A. Nassbaum, II,
President Elect

Thomas C. Sopko

Thomas C. Sopko, Vice President

Philip E. Kalamaros

Philip E. Kalamaros, Secretary

Robert M. Parker

Robert M. Parker, Treasurer

James F. Groves

James F. Groves, Governor

Mitchell R. Heppenheimer

Mitchell R. Heppenheimer, Governor

Scott M. Keller

Scott M. Keller, Governor

Michael G. Gotsch

Michael G. Gotsch, Governor

Richard W. Morgan

Richard W. Morgan, Governor

APPENDIX D

PROPOSALS NOT RECOMMENDED:

(1) PROPOSAL: STEUBEN COUNTY: PD 3265: Allows the judges of the Steuben circuit and superior court to jointly appoint one magistrate.

ACTION: A motion for the adoption of PD 3265 was made by Representative Howard. There was no second to the motion, thus the proposal failed.

(2) PROPOSAL: PD 3356: Presented by Representative Howard. This proposal eliminates the authority of second and third class cities and towns to establish city or town courts, and retains city or town courts in existence on July 1, 1994.

Representative Villalpando expressed his concern that there had been no public notice that the Commission would be considering this proposal, and stated that for this reason, he could not support it.

Mr. Overdeer stated that since these courts are funded entirely by cities and towns he felt it was not the business of the Legislature to intervene, therefore, he could not support the proposal.

In response to Senator Alexa's inquiry, Representative Howard confirmed that he was concerned with the revenue lost to the state by way of these city and town courts. Senator Bray commented that he feared that this proposal gets at the problem with too broad a brush.

Representative Howard pointed out that his proposal kept the existing city and town courts in place and applied only to the creation of new courts in the future.

Judge Yelton stated that he supports the concept presented in Representative Howard's draft, but that he too was concerned with the fact that there had been no public notice of the proposal. He suggested that perhaps the proposal could be heard by the appropriate standing committee during the Session, even though it had not received an endorsement from the Commission on Courts. Representative Villalpando stated that this certainly would be possible.

ACTION: Representative Howard withdrew PD 3356 from further consideration. No vote was taken.