

State of the Judiciary
Chief Justice W. Ward Reynoldson, Iowa Supreme Court
Message to the Legislature
February 11, 1981

Mr. President, Mr. Speaker, Senators, Representatives, State Officials, and Fellow Iowans:

A statute you adopted in 1978 calls for the chief justice to report the condition of the judicial branch of government. Iowans must appreciate your concern, thus evidenced, for the operation of their courts, and we welcome this third occasion to consider with you ways and means to deliver justice to Iowa's citizens. In a world where basic freedoms and justice are frequently nonexistent, we are fortunate that here our efforts may be limited only by our own will to undertake the task.

You doubtlessly have been watching events in Poland with the same fear we feel for the Solidarity union members who seek for the Polish people some of those freedoms we take for granted. Recently the Solidarity leader, Lech Walesa, stood in the city of Gdansk before a monument erected to honor Polish workers gunned down in confrontation with their Communist masters. Ignoring the presence of the Communist leaders, defying fifty-five Soviet divisions poised on the borders, he said:

"This monument was erected for those who were killed, as an admonition to those in power. It embodies the right of human beings to their dignity, to order and to justice."

Human dignity. Order. Justice. From time to time we need the Lech Walesas, relaying down the halls of history the call of generations of persecuted people, to bring us to a reexamination of our priorities.

Over in Southeast Asia, thousands of boat people in leaky vessels, launched into shark and pirate infested waters for an unknown destination, remind us that they are willing to risk death for what we merely need to preserve and perfect.

And so this morning let us briefly look at the problems of preserving and perfecting Iowa's judicial system, with the goals of justice, and order, and human dignity.

JUSTICE

In a broad context, Iowans may obtain justice through legislation enacted by your branch of government, and through effective administration of those laws by the executive branch. But ordinarily and in a more personal sense, people think the delivery of justice is the business of the courts. They want it delivered with all deliberate speed; efficiently and fairly. Of course, the ability of the judicial branch of government to satisfy these expectations is controlled by our caseload and by the resources you provide to cope with it.

1. Case Load.

We report first on caseload. There were 5,498 juvenile petitions filed and 27,732 probate cases opened in the Iowa district court in 1980. Our judges and magistrates of limited jurisdiction,

together with the clerks of the district court, disposed of over three-quarters of a million simple misdemeanors and scheduled violations and more than 80,000 small claims. In addition, they handled many preliminary hearings, search warrant applications, and emergency hospitalization hearings. Altogether, the judicial department processed approximately 1,000,000 legal matters in 1980.

Focusing on the district court, filings have soared 176 percent from 1960, when 34,027 civil and criminal proceedings were filed, until 1980, when 93,915 were filed. This burden is reflected graphically on Appendix A. During the same period the average number of civil and criminal case dispositions per Iowa district court judge has increased from 428 in 1960 to 761 per Iowa court judge in 1980, as shown by Appendix B.

While this production increase results in part from procedural improvements and administrative assistance, in large measure it reflects the long hours and dedicated efforts of Iowa's trial judges. These officers have been sprinting – not merely running – since your 1977 amendment freezing the operation of code section 602.18, designed to add district judges under a formula based on increased caseload and population. This sustained sprinting necessarily has reduced the concentration a judge can give to each decision. And it has taken a toll on the morale of those who serve in the courts.

Despite the hard work of district court judges, there were 6,274 more civil and criminal cases pending at the end of 1980 than there were at the beginning. Of the pending cases, 12,323 were more than one and one-half years old, an increase of 65 percent over January 1980. Thousands of Iowans are frustrated by delayed justice caused by the burgeoning backlog of pending cases in their trial courts.

A break in the logjam at district court level would bring a flood of appeals. Even with this unfortunate obstruction, appeals are rising steadily, as shown by Appendix D, which is before you. Just ten years ago, in 1970, only 617 cases were appealed, about 69 per appellate judge. In 1980, 1,620 appeals were filed. Taking into account Iowa Court of Appeals members, this volume averages 116 appeals per appellate judge. Despite the enormous assistance you provided in creating the court of appeals, and despite the best efforts of both courts, pending appeals have mounted at each year's end and reached 1,168 as we closed out 1980. Although for about three years the appellate docket has been largely free of backlog and delay in cases ready for decision, the number of cases ready for disposition increased over 17 percent during 1980.

2. Resources.

The sole product of the judicial branch of government is the adjudication of disputes. That product is generated from the services of judicial officers and support personnel. The quality of that end product can rise no higher than the quality of person you can attract to, and retain in, the system. Of course the attractiveness of positions in the system is directly affected by compensation. I have addressed this situation for two years and will not dwell on it now. Appendix F which is before you illustrates the erosion of the real purchasing power of Iowa district court judges from July 1977, projected to July 1981 at the present 12.5 percent inflation rate. Measured in terms of 1977 dollars, compensation of these judges will fall 36 percent to an annual rate of \$25,568 by July of this year.

Everyone understands the issues you confront because the increase in state revenues has fallen below expectations. But certain studies and steps could be continued or undertaken that may ultimately aid in stretching judicial department resources while costing little or nothing at this time.

I suggest that you continue your consideration and study of the plan to finance Iowa's state court system from the state level, even though you may elect not to implement it financially now. In 1979 your Legislative Council wisely adopted a resolution resulting in the Court Study Joint Subcommittee, comprised of five members each from the Senate Judiciary Committee and the House Judiciary and Law Enforcement Committee. The joint subcommittee, aided by a private contractor paid funds, undertook a study with the following objectives:

- First, to determine how much Iowa's court system costs, how much the counties pay for it, and how many people work for or with the courts.
- Second, after comparing Iowa's court system with those of three other states, to design a model for a statewide judicial department with one budget and one overall personnel policy.
- Third, to provide a plan to gradually implement the proposed model.

With its work completed, the joint subcommittee has recommended a bill draft to the Legislative Council. The bill has been assigned to subcommittees of the judiciary committees in both houses.

All of this activity has resulted in some interesting and useful information.

In fiscal year 1979, the total cost of Iowa's state court system was \$38.3 million. The state paid approximately 25 percent of that expense in the form of salaries and travel expenses of the judges and magistrates, and for appellate court operations. This comprised about one-half of one percent of total state appropriated funds, as shown by Appendix G, which you have in the pack on your desk. Seventy-five percent of the cost of court operations was paid by the 99 counties. Of course, only persons who own tangible property and pay property taxes directly bear this burden.

The study disclosed that about 1,700 persons serve the judicial department. Yet there are no statutes permitting us to devise a logical, overall, cohesive personnel policy.

A good illustration relates to juvenile probation officers. We ask you to examine code section 231.8, creating an administrative maze that beclouds the authority and leadership of juvenile judges and chief probation officers. It is the product of nine amendments to one code section over a thirty-year period!

The district court clerks fulfill important court duties. They have large responsibilities of a highly technical nature in managing case flow in the trial courts. They record and index all relevant court papers. They have no policy making function. Nonetheless, these clerks are not directly responsible to the judges with whom they work. Every four years they must campaign in a partisan election to retain their positions. This anomaly interferes with the long-term training and supervision of these key managers. It results in the loss of skilled and experienced persons

through the sweep of broad political tides unrelated to their duty performance. We strongly suggest district court judges should be permitted to appoint their clerks of court, just as the supreme court appoints its clerk and you in the legislature appoint the key persons who assist you with your work. By resolution, the district court clerks' association has endorsed this concept, as well as the overall design for centralized funding and personnel responsibility.

Your continued study might lead you to provide for appointment of district court clerks without assuming the payroll obligation this year. This would be no different from the case of court reporters and juvenile probation officers, who now are appointed by and responsible to the state's judicial department although paid by the counties.

Your Court Study Joint Subcommittee recommended that all personnel serving the judicial branch be brought into the judicial department. This does not mean that these people would be hired and directly supervised from Des Moines. The supreme court is committed to the concept of utilizing judicial districts in fulfilling its constitutional responsibility under article V, section 4, to "exercise a supervisory and administrative control over all ... judicial tribunals throughout the State."

Your committee study showed that an integrated judicial department, with a centralized budget and personnel system, would increase accountability for tax dollars, work loads and productivity. It would make it possible to pool resources and apply them in areas of need. It would lead to uniform operating and management procedures and allow for planning. The overall concept has been endorsed and approved by resolutions of the Iowa Clerks of the District Court Association, the Iowa Juvenile Probation Officers Association, the Iowa County Supervisors Association and the Judicial Council. Certainly a temporary fiscal reversal should not derail your further consideration and study of this reform, which after all is a continuum of your past accomplishments and reforms. These include: the integration of Iowa's trial courts into one "Iowa District Court"; Iowa's modern procedure for judicial selection and tenure; the Iowa Court of Appeals; and the Commission on Judicial Qualifications to initiate the discipline of judges.

In this fiscally "lean" year you might find time to consider unaddressed recommendations contained in our 1979 message, and in the report of the court's 1979 Litigation Costs Study Committee. Two of these recommendations, not yet adopted, relate to the Uniform Arbitration Act and the taxation of court costs.

The committee recommended, and the court endorsed, adoption of the federal method of taxing court costs under which a single or "flat" docket fee is collected. Court costs, of course, are a small portion of the cost of litigation and relate to minor charges for court services. Care must be taken that the fees are not fixed so high that people are denied access to the courts, thus creating serious constitutional issues. Provision must be made for indigents, protected today only by our decision in *Hightower v. Peterson*.

No one would suggest the judicial branch be self-supporting any more than the executive or legislative branch. Like police and fire protection, the court system functions as a public service and should not be financed by the users. It must be available to all Iowans. However, one set, reasonable filing fee has obvious advantages over the present system. A great deal of time could be saved that is now spent in laboriously entering numerous statutory charges ranging from

twenty cents to five dollars, and ultimately accounting for and distributing the money. In addition, these statutory costs have not been increased to keep pace with recent inflation.

In best utilizing this department's resources for the benefit of all Iowans, perhaps you will analyze the trial court case load to determine whether there is any way to reduce it.

The Litigation Costs Study Committee's recommendation to adopt the Uniform Arbitration Act was endorsed by the supreme court except for cases involving adhesion (consumer-type) contracts, and I believe I heard the other day, that this was reported out of the House Judiciary and Law Enforcement Committee. This merits your attention.

Soon you will have before you a bill permitting childless married couples with limited property and indebtedness to jointly file for "Summary Dissolution of Marriage." The marriage then terminates, without a court appearance, upon an automatic court order. The wisdom of that measure, of course, will be in your hands where it properly belongs.

The proposal is mentioned here because it would extend "no fault" marital dissolutions, or divorces. In your study you might review, as a part of your continuing effort to control the caseload for Iowa's courts, the present status of "no fault" marriage dissolutions.

Since "no fault" dissolutions were allowed there has been an explosive increase in dissolution filings. In 1980 they comprised one-third, one-third of all civil cases filed. Coupled with the often-related uniform support and domestic abuse cases, they amount to 48.1 percent, nearly one-half, of our civil case load.

In allocating our judicial resources, these are traumatic and time-consuming cases. Many involve children and demand the finest judicial efforts to decide custody and the related and continuing struggles over visitation and support.

Few would suggest turning back the clock to the abuses that prevailed under the old law. On the other hand, you might consider a reexamination of these statutes to determine if they are functioning as you intended them. Your consideration might extend to questions whether human suffering and hidden costs sometimes attend effortless dissolutions, including delinquency, school academic and disciplinary problems, and resolution of attendant financial crises by the taxpayers through aid to families with dependent children.

Your study might find that the pendulum has swung too far and that ways could be devised to retain what is best in the no-fault concept while at the same time slowing the stampede of married couples to the courthouse.

In both 1980 and 1981-83 judicial department planning, we adopted our Judicial Coordinating Committee's program to establish dispute settlement centers, using federal funds. We hoped these centers might divert disputes from the courts through the use of mediation, a device claimed to be effective where the conflicting parties have an ongoing relationship, such as husband and wife, landlord and tenant, or adjoining neighbors. It was an exciting and promising idea. Our pilot program in the sixth judicial district terminated with the demise of federal funding. The concept remains a means for exploring whether some of those disputes might be satisfactorily resolved outside the courthouse.

We briefly turn now to another objective of enlightened and effective government that Walesa identified: order.

ORDER

The fundamental civil right of people to be secure in their persons and property was addressed by Governor Ray in his report. It is of grave concern. This ancient and continuing problem was reported by Ezekiel about 2,500 years ago when he wrote, "The land is full of bloody crimes, and the city is full of violence." It surfaced as the quaintly expressed goal of "Domestic Tranquility" in the preamble to the United States Constitution.

The rising crime wave dramatically and adversely impacts the judicial branch in two ways.

First, the respect that we work to achieve for the courts, and consequently for law, is eroded when unthinking persons blame the courts for the lawbreakers. It ought to be clear that crime is not created by the judicial law process. Its roots are deep in sociological, psychological and economic causes, including the breakdown of restraints formerly imposed by the family, the neighborhood, and organized religion. This disease is societal, and we can no more control it in the courts alone than we can eliminate biological disease in the operating rooms. We are investigating the dimensions of disparate sentencing. We are devising tight schedules to move the thin line of trial judges through the counties to satisfy code and constitutional speedy trial requirements. But the judicial branch cannot single-handedly restore safety to the streets, no matter how we may fine tune our criminal judicial processes to be just, fair and speedy.

The second adverse blow to the judicial branch comes with the accelerating landslide of criminal case filings, while the same number of judges, magistrates, and support personnel struggle to stay on top and process them.

We enthusiastically commend proposed legislation to apprehend more lawbreakers. Judges, like other people, have families, homes and concerns for safety and property. But in any plans to increase arrest rates – say, from the present rate of 171 per 1,000 reported crimes to 300 per 1,000 reported crimes – we hope you will accept the offer we extended last year to furnish, at your request, studies relating to the impact of new legislation in terms of judge time, and additional judges. We must have the means to fulfill the judiciary's role in a concerted attack on crime, in order to restore and preserve order, to bring safety to our streets and security to our homes.

Finally, we examine our justice system in light of Walesa's third right for free people: human dignity.

HUMAN DIGNITY

An overview of this country's history reveals a relationship between Walesa's demand and our own requirements. Through explosive technological advances, we have created the greatest industrial machine on earth. It has been superimposed upon legal concepts and social values grounded in the frontier individualism of an agrarian society. The mass migration of people to cities fractured the old, smaller neighborhoods. It diminished each person's role in community relations and government.

In 1840 about 75 percent of our citizens were self-employed. By the 1970 census only 7 percent of the people in this country were self-employed, and the 1980 census probably will show fewer still. We have become a nation of employees – all of us, assembly-line workers, justices, teachers, store clerks, corporate executives – a status that often invokes a sense of powerlessness to control one's own destiny.

The complexity of our economic, social and political structures finds us dependent upon others, including those beyond our national boundaries, for every basic necessity. We are frustrated by scarcities, inflation, and our inability to control our environment. We suddenly are vulnerable to emotional and economic blackmail by irrational persons halfway around the world. Our society is characterized by the movie episode in which the people shout in unison, "I'm mad – and I'm not going to take it anymore!"

It is not the function of this report to classify the conflicts resulting from all this, or to analyze the confrontations which often seem primarily aimed at attracting the attention of mass news media. We need only recognize, with Walesa, the hope in every human heart to be viewed as a person – not as just another social security number, a statistic in a computer, an unknown lever-puller in a polling place.

It is vital that a person in crisis be viewed and treated as an individual by the judicial branch – the last refuge that a democratic, civilized society provides against oppression, even by the government itself. But there is a barrier, which we jointly ought to study, created by a caseload that calls for assembly-line production when human dignity demands handcrafted justice and respect for individual litigants. Together we should provide the vision and resources required to preserve Iowa's system of justice, and thereby give to every Iowan the justice, the order, and the dignity that Lech Walesa identified as the right of every human being.

Thank you.