

State of the Judiciary
Chief Justice W. Ward Reynoldson, Iowa Supreme Court
Message to the Legislature
February 22, 1982

Mr. President, Mr. Speaker, Senators, Representatives, State Officials, Presidents of the Lawyers Associations, and Fellow Iowans:

In 1980 and 1981, I opened my remarks with brief references to then-current events in foreign lands—not because they directly affected Iowa’s justice system, but because they invited comparison with our nation’s protection of freedom through independent courts. Events like those make us realize that when we improve our courts we strengthen the sinews that bind our society.

As we met in 1980 our hostages still were imprisoned in Iran. They now are freed, but that is still a land where the arrest is the first notification of a prior adjudication of guilt. Shortly before we met in 1981, Polish Solidarity leader Lech Walesa had touched our hearts with his call for “the right of human beings to their dignity, to order and to justice.” His voice is silent now, his condition unknown. Solidarity leaders are scattered or held in concentration camps. Poland remains a country without the “great writ” of habeas corpus, or the court-enforced due process protections of counsel, trial, confrontation of witnesses, jury—all those safeguards sometimes viewed impatiently here when invoked by others, but upon which, consciously or unconsciously, we all daily rely.

Iowans also rely on their courts to enforce their contracts, determine their property rights, adjudicate their personal injury claims, dissolve their marriages, adjust their public employment relations, probate their estates, remedy discrimination, discipline criminals, and perform an expanding myriad of other functions, all pursuant to legislation you have adopted.

Our institutions, however, are not self-regenerating. There is no assurance that our laws, our courts, or even our society will survive. Like all human constructions, they must continually be inspected, repaired, and refurbished. So let us examine together the structure we call Iowa’s justice system to determine its condition and what changes are required if it is to meet today’s problems.

TRIAL COURTS

Focusing on the district court dockets, criminal filings climbed again in 1981. Civil filings remained about steady. Potential civil litigants face the bleak prospect of standing in line for trial behind the criminal cases, which are given priority under our constitution and your speedy trial rules. Our 1981 year-end analysis documented the mounting backlog of civil and criminal cases in district court. The number of civil cases still pending after 18 months, a year and one-half, jumped to 12,566, a 25 percent increase in one year. The number of criminal cases undecided after 18 months surged to 3,930, a 56 percent increase in one year.

These cold statistics blanket books of human tragedy: Iowans’ lives held hostage; their fortunes in suspense. Controversies fester; the innocent carry the mark of the false accusation; the guilty

delay punishment. The latter problem is not new. In the words of “The Preacher” in the Old Testament, “Because a sentence against an evil deed is not executed speedily, the heart of the sons of men is fully set to do evil.” Our criminal justice system is less effective when a potential law violator knows that punishment will not be swift and certain.

This case backlog mounted while district judges worked hard to increase case dispositions: from 394 per judge in 1956 to almost double that, 761 per judge, in 1981. More cases have been terminated in recent years when, through the use of federal and county funds, court administrators were deployed in the eight judicial districts. Last year you wisely picked up this expense, although at a reduced level, with a portion of the funds generated by an increase in district court filing fees. This year we ask that the balance of the filing fee money be appropriated to this branch of government to further supplement court administration.

The combined efforts of our district judges, district associate judges, magistrates, referees, court administrators, law clerks, juvenile probation officers, court reporters, and clerks of court permitted Iowa’s District Court to move a mountain of legal matters in 1981, and we are justly proud of them. This record nevertheless is small consolation to litigants who started the new year with an old lawsuit.

Iowa needs more judgepower. Under the statutory formula, case filings and population now call for 28 more district court judges. Our mutual constituents clearly discern this need. In an Iowa public opinion poll, authorized by the Judicial Coordinating Committee and funded by the Edwin T. Meredith Foundation, 87 percent of the respondents agreed with the statement that “long delays occur before a civil case comes to trial.” Almost 70 percent agreed with the statement that “courts do not have enough judges to handle the workload.”

The need for some of those additional judges might be satisfied by careful attention to support personnel requirements. We could try more cases if the judges now on the line could concentrate on the central task of adjudication. This can be accomplished with your help in continuing to expand the use of trained court administrators, modern technology, and modern business methods. Management of court machinery should be in the hands of permanent, trained personnel — administrators and clerks of court — but always subject to the control and guidance of the judges themselves.

A further efficiency can be achieved by expanding the use of law clerks, young lawyers who cost much less than judges, to do necessary research.

Judges do not and should not decide cases on the basis of their private notions of abstract justice. There is a need for continuity in the law so that persons can know its limits and project its reach. In their daily encounters with new situations and problems, judges turn for guidance to applicable statutes. They search for adjudicated cases in this and other jurisdictions for the experience of other courts and the rationale of their solutions. I need not remind you that there has been an explosive increase in statutory law that must be carefully studied. The reported cases of state and federal courts are now running more than 54,000 per year. Recent law school graduates can do this necessary research and provide it to judges in memorandum form. This saves the judges time for exercise of judgment, including control of the courtroom, sentencing, and preparation of rulings —doing the things only a judge can do.

In fiscal year 1982 boards of supervisors in seven judicial districts provided a total of 14 law clerks for district judges. Those supervisors were on the firing line with the trial judges, hearing the complaints of derailed civil litigants, coping with overcrowded jails and observing other accused but bailed persons walking the streets because their trials were delayed. This burden of supporting state judicial officers should be shouldered and expanded by the state.

By way of comparison, in the federal district courts of Iowa, where 1981 case filings ran 385 per district judge, each judge was furnished two law clerks. In the Iowa District Court in 1981, 1,002 civil and criminal cases were filed per judge – over two and one-half times the federal rate – but the state provided no research support. It would make economic sense to provide a law clerk to every trial judge in Iowa. One clerk for every four district judges should be an absolute minimum. The employment of 24 law clerks in the trial courts would be one of the most cost-effective ways to help slow the increase in Iowa's case backlog.

In the last 32 months 27 district court judges have been replaced, a turnover of 28 percent. We mention this to demonstrate our continued need for educational funding, because judicial skills are not acquired by the simple act of donning a robe. Judicial training has been an essential part of our coordinated effort to intellectually stimulate and retain high-quality trial and appellate judges.

As an example, our staff is preparing a special seminar in May on adjudication of alcohol and drug-related traffic offenses. This subject is timely because over 40 percent of the 35,577 indictable criminal cases filed in Iowa District Court in 1981 were first or second offense OMOVUI – driving a motor vehicle while under the influence. This spring a judges' conference will focus on dissolutions and child support enforcement, again a vital area because almost 50 percent of our civil case filings, excluding small claims, involve domestic relations.

Your consideration and study of these social issues may lead to legislation that stems the rising tide of cases in our courts. Our case filing increase – now growing at the rate of 8.7 percent per year, or 43.6 percent in the last five years – may be dampened by the Uniform Arbitration Act you adopted last session. Experimentation with mediation centers, discussed in last year's message, merits attention. But we all realize our society continues to become more complex, uncertain, and unstable, generating more legal controversies. The reforms we suggest today are necessary to resolve yesterday's continuing problems. They should not be delayed by the forlorn hope district court case filings will fall.

APPELLATE COURTS

The crisis in our courts is not confined to the trial bench. In 1971, when I joined the supreme court, 660 appeals were filed – about 73 for each of the nine justices. By 1976, when you wisely created the Iowa Court of Appeals, the annual filings had climbed to 1,176. When the new court commenced operating on January 1, 1977, the average nonpriority civil appeal took nearly three years to be reached and terminated by formal opinion.

The combined efforts of the two courts drove that backlog down until we could hear ready cases within two or three months. The conscientious and hardworking central staff you provided us has helped enormously. Unfortunately, however, the number of appeals continued to climb and

reached 1,733 in 1981 – about 124 for each of the now-fourteen appellate judges. By October 1981, the delay between ready status and submission had grown to six months. This prompted the supreme court to begin a more summary treatment of appropriate cases, utilizing a panel of five justices, eliminating oral arguments, and writing short opinions. Our disposition rate climbed, but not fast enough.

Every person involved in an appeal believes his or her cause is vitally important, and it is. All supreme court justices would prefer to give every appeal full treatment by all nine members,' with oral arguments and expanded written opinion. Anything less is the equivalent of battlefield surgery. Nonetheless, the battle is joined. Appeals of regular civil cases submitted in January 1982 were made ready in May 1981, an eight-month delay —two months of additional lag over appeals submitted to the court last October. The supreme court has begun a “fast-track” treatment with selected cases: cutting the panel to three justices; deleting oral argument; writing terse, unpublished opinions. Our first rulings resulting from this experiment will be filed February 26.

Although the disposition rate per appellate judge has more than doubled in the last decade, from 54 in 1971 to 123 in 1981, the appeal backlog continues to mount as filings outdistance dispositions. We therefore are driven to recommend that you provide for, and fund with a supplemental appropriation this year, an additional member for the court of appeals and the necessary support personnel. Based on the fine production of that court — 501 decisions in 1981 — we believe an additional judge could increase appellate production by 100 appeals per year.

In addition to deciding cases and disposing of a massive number of motions, the supreme court in 1981 carried out its constitutional duty to exercise supervisory and administrative control over the state courts and to regulate the practice of law and discipline lawyers. Pursuant to authority you gave us by statute, we have formulated and submitted for your approval proposed civil, criminal, and involuntary hospitalization rule changes.

In 1981 you adopted legislation requesting the supreme court to undertake a study of the federal rules of evidence to determine which rules should be adopted for Iowa. In a rare oversight, you forgot to fund the project. As usual, the Iowa State Bar Association and the Iowa State Bar Foundation came to our rescue. The foundation has provided \$7500 for costs and staff expenses. The association printed and mailed our poll of lawyers and judges on the subject. This identified 657 lawyers who offered to serve on an advisory study committee without charge. From these fine volunteers we selected 11 judges, law school professors, and lawyers — professional talent that if retained privately would have cost thousands of dollars. With the aid of the research and comments provided by this committee, you will have the court’s response before your 1983 session.

Since we last met, and pursuant to the bar association's request, the supreme court has amended its rules and has appointed two lay persons as members of the Committee on Professional Ethics and Conduct and nine lay persons to serve on the Grievance Commission — essential components of the court’s attorney disciplinary machinery. These persons join 10 other distinguished lay persons and 93 dedicated lawyers who serve on 14 committees and commissions that assist the court in carrying out its constitutional and statutory duties.

As a closing note on supreme court responsibilities, it appears you may have relieved us of an onerous task when through a fine bipartisan effort you adopted a reapportionment plan that has achieved national acclaim.

OVERVIEW

Time constraints will not allow us to analyze a number of serious problems affecting Iowans and their judicial system. Four must be mentioned.

First, we report that the curtailment of federal funding for Legal Services Corporation will limit legal services for low-income Iowans. Although it may be an exaggeration to say, as some do, that the unrepresented poor have access to the courts in the same manner that early Christians in the Roman arenas had access to the lions, it is true that the United States lags behind other common-law nations in providing legal services for the poor in civil cases. I believe most Iowa lawyers generously contribute legal services of one kind or another. However, it has been estimated that to meet all the legal needs of the poor would cost approximately \$5000 per lawyer — a burden that necessarily would be passed on to the paying clients. The Iowa State Bar Association and the supreme court are cooperating in studying methods to ease the impact. In the end, though, providing the poor access to justice is a public goal and responsibility. It merits your study to the same extent as public education or public health.

Another problem for any Iowan is the cost of going to court. In order to curb that cost, we are exploring the abuse of pretrial discovery. In 1980 you approved our rule limiting the number of written interrogatories, and lawyers tell us there has been a salutary lull in the war of automatic typewriters. We are studying methods to stem the fiscal hemorrhage of endless, and sometimes needless, oral depositions. Of course, the public bears a large portion of litigation costs. Last month we submitted for your review a civil rule permitting the trial judge to impose additional court cost sanctions when the litigants unreasonably wait until they reach the courthouse steps to settle their case. We hope this results in fewer juries called in, paid, and dismissed, and less downtime for judges.

A third major worry is the replacement of quality judges. In less than three years, six district and district associate judges have quit before reaching minimum retirement age. At least four have returned to law practice. Judicial pay and retirement plans must be reviewed annually to attract and retain highly qualified persons. Currently the judicial retirement plan is neither actuarially “funded” nor certified as an IRS “qualified” system.

Lastly, Iowans should salute you for your careful and impressive study of the antiquated support structure and financing of Iowa’s courts. The work of your Court Study Joint Subcommittee, composed of five members each from the Senate Judiciary Committee and the House Judiciary and Law Enforcement Committee, commenced in 1979. Our Justice Allbee for the judicial branch, and Wythe Willey succeeded by Nancy Shimanek for the executive branch, were advisory members. Legislative Service Bureau personnel and the judiciary’s Joseph Thornton provided staff assistance. Resource Planning Corporation was hired by your committee with federal funds to make a seven-month study. To my knowledge, there never has been such a coordinated attack on a problem by the three branches of state government.

This study is a continuation of your national leadership in court reform. Our unified trial court, intermediate appellate court, Judicial Qualifications Commission, and judicial merit selection and tenure programs are modern reforms that you have made while several other states have struggled and failed. Our progress makes me proud and confident that we will continue to adapt our system to meet new challenges.

The subcommittee work terminated on December 18, 1981, with the approval of a study bill and a "Do Pass" recommendation. The bill is formidable in size only because it reenacts most of the present statutory law. This is for the purpose of reorganizing and bringing into one division of the Iowa Code all the judicial branch laws that are now obscurely scattered through three code volumes.

You will hear much of this proposed legislation this session. It provides a plan to bring the personnel serving the courts into the Judicial Department. It does not, however, provide for those people to be appointed and supervised from Des Moines. The supreme court and the bill is committed to the concept of administration through judicial districts. The district chief judge would continue to appoint the district court administrator. The district judges would continue to select their court reporters. Under the bill the district judges would appoint the clerks of court who would hire and supervise their own work force. The judges also would select a chief juvenile probation officer in each district who would hire and supervise the other district officers. Qualifications for these positions would be set by the supreme court, just as we now, pursuant to your statutes, set the qualifications for juvenile probation officers and court administrators.

The study bill proposes a year of preparation followed by a five-year phased-in assumption by the state of that 75 percent of the judicial system cost now paid by the counties. The state would take over at the same rate the counties' share of court-generated revenues. This proposed legislation also picks up from the counties the cost of providing counsel for indigent defendants. Of course, there is a concomitant relief from local real estate taxes.

Under this bill the supreme court would plan for and work toward the transition beginning July 1, 1982. Fiscal year 82-83 would be the "base" fiscal year for determining the cost to counties for operating the trial court system. In fiscal year 83-84, the state would only absorb any growth in court costs above the base year. The phase-in would start picking up 20 percent of county-paid cost in fiscal year 84-85, and the process would be completed in fiscal year 88-89 with a single state budget for the court system.

This coordinated budget approach is designed to provide a more effective and responsible mechanism to the citizens of the state and to the members of the General Assembly for the expression of the financial needs of the judicial branch. Your legislative subcommittee and the supreme court believe increased efficiency and accountability in our state court system will result, together with responsible fiscal oversight by the legislative branch.

The concept undergirding this study bill enjoys broad support. Governor Ray believes state funding of the court system is the way to go and that it is too important an issue to be placed on the back burner. The idea has the endorsement of the Association of County Supervisors, the Iowa Clerks of the District Court Association, the Iowa Juvenile Probation Officers Association, the Iowa Judicial Council, the Association of Trial Lawyers of Iowa, the Iowa Judges

Association, and recently, the Iowa State Bar Association. This support is recognition that we must renovate our court system to acknowledge the reality that we no longer have ninety-nine separate court jurisdictions in Iowa.

There is no dispute that under this bill the state's share of the judicial system expense ultimately would rise from the present amount, representing six-tenths of one percent of the total state budget, to an estimated two and three-tenths percent of the total state budget. This is also a recession year in which mention of money seems to produce a strong negative reaction, regardless of the merits and long-term economics of the reform proposed. Nonetheless, it must be kept in mind that this bill can be adopted now, with the preparatory period to commence in 1982, or in 1983. The countdown can be started, then stopped to allow time for adjustments or emergencies throughout the six-year period. The crucial consideration is that your three-year effort not be abandoned in the panic of a passing fiscal storm.

I think in these days it would do Iowans good to see this General Assembly make a simple statement of faith in the future: the adoption of a forward-looking plan that rests on confidence in this state, its people, and the serene knowledge that conditions are going to improve. There must be present some trace of the faith our grandfathers had in migrating to these prairies —or the faith Iowa farmers displayed in 1981 when they planted their seed in dry ground.

If you lose your grip on this reform now, it will sink from sight as it has in the past. It likely will not reemerge until all of us are gone from this arena. Like Robert Frost's traveler, we are at the crossroads, we will not be back, and the road we take will make all the difference. Perhaps down the road you choose you might like to tell your children, or grandchildren, that you were there when a creaky branch of government got a major overhaul and was brought, slowly but proudly, into position to face the twenty-first century.