State of the Judiciary
Chief Justice W. Ward Reynoldson, Iowa Supreme Court
Message to the Legislature
January 19, 1983

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

An Iowa statute requires the chief justice to appear here each session to report the condition of the Judicial Branch of government, and to make suggestions. This is the fifth time you have extended this courtesy. Unfortunately, despite the best efforts of all of us, judicial department problems persist. Recently I worried aloud to a wise politician that I might become repetitious. I was advised not to worry: that forty-one of you would be here for the first time and on my prior visits some of the remainder may have missed the message!

On a more serious note, we all realize our three co-equal branches of government serve the same constituency. Together we share the responsibilities and burdens that all Iowans have placed upon us. It is in this spirit of shared responsibility that we present our report and list our suggestions.

We know we do so at a time of grave economic crisis. And herein lies a paradox. In times of economic crisis the public funds necessary to operate the courts are increasingly harder to come by. Yet, at the same time, citizens turn to the courts with increasing urgency for resolution of their problems. The shortage of money is itself a cause for increased demands for prompt judicial services.

So, at a time when a public fund shortage has driven you to explore ways to cut government spending, we are called by our joint constituency to say the times demand an expansion, rather than a contraction, in court services. Times of crisis are the worst times to curtail social order. Especially now, it would be dangerous, as well as just plain wrong, to ration justice.

All available evidence indicates people not only want prompt and effective judicial services, they are willing to pay the price. In an Iowa public opinion poll, 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.” Results of a national survey by the pollsters for Time magazine, Yankelovich, Skelly and White, disclosed that 74 percent of the public is more willing to spend tax dollars on improving the judiciary than on any other part of the criminal justice system.

Another and more recent manifestation of this willingness lies across our northern border. Minnesota and Iowa have the same volume of appellate caseload. As you know, Iowa has a five-judge court of appeals. Minnesotans, by a 77 percent affirmative vote in last November's election, adopted a constitutional amendment that will provide a twelve-judge court of appeals, deployed in panels of three throughout the judicial districts. The amendment carried in every county. The affirmative vote exceeded by 16 percent the vote of the nearest candidate for state public office.

As a final fiscal observation, we note judicial branch expenditures have always represented a small fraction of the total state budget. This year the $13.1 million budget of the judicial branch represents six-tenths of one percent of Iowa's general fund appropriation of over $2 billion.

Against this backdrop, let us briefly examine what has happened in our trial and appellate courts.

TRIAL COURTS

In 1972, enhancing its national reputation for leadership in good government, the Iowa Legislature integrated the trial courts into one "Iowa District Court." Mayors' courts, justice of peace courts, police courts, superior courts and municipal courts were abolished. Iowa now has 95 district court judges, 39 district associate judges, and 165 part-time magistrates, all officers of a state court system and salaried by the State of Iowa.

We are inordinately proud of Iowa's dedicated trial judges who have been operating admirably under stressful conditions. In the last five years inflation has eroded their compensation by one-third. It is significant, we think, that in this five-year period twenty-five judges have resigned before reaching mandatory retirement age, five even before reaching the age when they might draw retirement compensation. In these five years, the district court civil and criminal case load has increased over 31 percent. The number of full-time practicing lawyers has increased 25 percent. Although in that five-year period only three additional district court judgeships were established — a 3.3 percent increase — these judges increased their production, in terms of case dispositions, by 29 percent. They have traveled over a million miles per year in all kinds of weather to bring regular court services to rural counties.

The statutory formula for judgeships is your own. The plan you devised to add trial judges on the basis of case load, population and travel now calls for at least twenty-eight additional judges. By amendment though, the statute's operation has been frozen since 1977 except for the addition of three judges in 1981. We know it is unrealistic to expect the system to be brought up to full complement, but let me give you a practical illustration of what a judge shortage does to a community. Lee County, which includes Ft. Madison, is in Judicial Election District 8B, now one-third short of its statutory quota of judges. Because of the priority assigned to criminal cases and child custody cases, no civil jury trials have been scheduled in Lee County since last April. There are 1086 civil cases pending in Lee County, and 310 are over a year and a half old.

Last year, to provide some support for our beleaguered trial judges, we requested state funding for twenty-four law clerk positions at the district court level — one law clerk for every four district court judges. Iowans should thank you for providing sixteen law clerks, but we now ask that the remaining eight positions be funded. Surely one legal assistant for every four judges of general jurisdiction is not above the absolute minimum for effective operation of Iowa's trial courts.

There is nothing revolutionary about this concept: three-fourths of the states now have law clerks in their trial courts. In Minnesota every Twin Cities judge of general jurisdiction has a law clerk, in rural areas two judges share one. In the federal court system, every full-time magistrate is entitled to one law clerk, a district judge is authorized two, circuit judges three, and supreme court justices four. We can think of few areas where a modest investment would provide larger dividends for Iowa's justice system.

Despite the best efforts of our trial judges, and their increased productivity flowing from hard work and the law clerk and administrative support you have provided, we can feel the floodwaters rising. We project over seventy-three thousand pending cases in district court at the end of 1982, a 37 percent increase in a five-year period. In plain words, this means more accused persons will be walking the streets while they wait for the courts to reach their trials. It also means unfortunate Iowans will stand in line with their personal or financial lives at stake, or the future of their children in doubt.

APPELLATE COURTS

The picture is just as grim at the appellate level. In 1972, my first full year on the supreme court, there were 646 appeals filed. By 1982 there were 1849 appeals filed, a ten-year increase of 186 percent. Despite the invaluable support of the five-judge court of appeals that came on line in 1977, this ten-year increase generated an 83 percent increase in case load for each of our now fourteen appellate court judges.

To put it bluntly, we can no longer cope with this case load. Believe me, we have done everything we could. Fighting the rising backlog of ready cases, the supreme court commenced a more summary treatment of selected appeals. We are sitting in three-member panels, doing without oral argument, writing more short per curiam opinions – practices that add nothing to the satisfaction of the litigants, and much less to our own job satisfaction. In the last ten years production per appellate judge has increased 110 percent. The average number of formal opinions per judge has increased 117 percent. But we are losing ground. We closed out 1982 with 8 percent more pending appeals than we had in 1981. Before the legislature provided the court of appeals, cases that were briefed and ready for submission waited twenty-one months to be argued and submitted. In 1979 and 1980, with the five additional appellate judges, we reduced that time to two months. Although we have increased production, the relentless avalanche of appeals has already extended this time to seven months, and that's an intolerable delay.

We have noted that for a comparable appeal load, Minnesota has determined it needs a twelve-judge court of appeals. We suggest that Iowans require at least half that number. Surely you will take another look at our last year's request, now repeated, for one more judge for the court of appeals. It will facilitate that court's sitting in panels of three and thus increase its production, in addition to the efforts of the one additional jurist.

Our work on the supreme court is not limited to opinion writing. We necessarily face a myriad of other tasks. As one example, we struggle with an immense motion practice. In 1982 we studied and researched motions and applications, then entered 904 orders that disposed of cases without formal submission. We entered or supervised entry of almost five thousand other necessary orders that still did not dispose of appeals.

There is more we must do. With the indispensable assistance of appropriate advisory committees of lawyers and judges, we have studied, finalized, and last week submitted to you proposed rules of civil procedure, appellate procedure, criminal procedure and juvenile procedure. These proposals are needed to fine tune our processing of cases and appeals, and.to make our branch's operations more efficient, effective and fair.

Two years ago you adopted House File 779, requesting the supreme court to undertake a study of the federal rules of evidence for the purpose of determining which rules should be adopted in Iowa. As we reported last year, you inadvertently overlooked funding this project. The Iowa State Bar Association and the Iowa State Bar Foundation came to the rescue with printing, mailing, and a $7500 grant. A blue-ribbon committee of lawyers, judges and a law professor, aided by an enthusiastic group of young lawyers, provided research and an outstanding report to the court. Following the court's intensive study, we adopted most of the committee's recommendations with a few revisions. As we promised a year ago, we will forward these proposed rules of evidence to you this month and on time.

As part of our function, we have tracked the problems of the judicial retirement system. A number of alert legislators have been alarmed for years — and with good reason — by its condition. As you know, this system is not derived, as retirement systems commonly are, from a statute. Judicial retirement compensation was created by the people in the Iowa Constitution. Lack of actuarially sound funding ultimately will generate a crisis like that now confronting the federal social security system.

The poll of Iowans, already referred to, documented public misunderstanding and ignorance about the judicial system and how laws are interpreted and enforced in the courts. Working together, the supreme court and the Judicial Coordinating Committee, using a federal grant, have launched a project to expand the knowledge of Iowa's court system among students. Working with social studies instructors throughout the state, instructional units are being developed with more than two hundred activities illustrating key concepts and the legal process. Within grades kindergarten through twelve, printed and audio-visual material have been organized around three basic concepts: social interaction, norms and rules, and conflict resolution. We are pursuing other ways to enhance the public understanding of the legal process. We welcome any suggestions you might offer to serve these ends.

Last session you enacted, and Governor Ray signed, Senate File 2304, awarding the state court administrator's office $100,000 to establish or improve dispute resolution programs. This effort is well under way and is reported more extensively in an appendix attached to the written message we leave for each of you here today.

The supreme court has a constitutional mandate to exercise supervisory and administrative control over all other state courts. Accordingly, in 1982, we examined not only our own but also district court case dispositions. In this examination we had the cooperation of the judicial council and clerks of court. A statewide sampling of over 4700 cases disclosed what we, and you, suspected: There are unfortunate delays and still unidentified differences in production.

A follow-up study is now under way. Last month, the Supreme Court Advisory Committee on Rules of Civil Procedure received a grant from the Iowa State Bar Foundation and Association to identify factors contributing to litigation cost and delay. Working with our staff, the committee will review selected case files and interview numerous trial participants, then evaluate the impact of various pretrial practices and procedures — including depositions — on case processing. We have high hopes the committee's study will result in innovative suggestions to expedite litigation without compromising the quality of justice.

Iowans, however, should hang their highest hope for judicial branch improvement on the legislature's continuing study and development of legislation to overhaul the antiquated support structure and financing of Iowa's courts. It is surprising this was not accomplished during one of the earlier reorganizations of Iowa's judicial system. On the other hand, we must remember that improvements in the legal arena historically are slow. Seven hundred and sixty-eight years after King John, under the sword at Runnymede, promised not to appoint judges "but of such as know the law of the realm," Iowa appoints a number of magistrates with no prior training in the law. Mr. Jim Henry of Carson, Iowa, veteran of two terms in the House and two terms in the Senate, now president of the Iowa Property Taxpayers Association, referring to the current legislation just mentioned, has observed that some bills fly through both houses, but a good government bill will take several years.

This good government legislation has been developed by many people over a four- year period. After a seven-month study by an independent firm, it was drafted and fine tuned by three successive joint interim study committees. Like a patient under the scalpel, we have followed this development with more than a little interest. Last year, designated as Senate File 2233, the legislation cleared the Senate on a 40 to 9 vote, but stalled in the House in the press of activities relating to winding down the session.

The concept is quite simple: Iowa's state court system should be funded by the state. Currently 75 percent of that cost falls on the counties and only real property tax-payers bear this financial burden. State court financing, including expenses of indigent defense, provides property tax relief, by spreading court costs over a broader, more equitable tax base. The five-year implementation of this concept would raise the judicial branch's share of the state budget from six-tenths of 1 percent to about 1½ percent. The legislation preserves and improves upon the current administration of the courts through judicial districts. This allows for necessary local control and flexibility while relieving unhealthy tensions between local taxing entities and state judicial officers.

For the first time, this legislation will attach to the judicial branch all those persons who serve that department. This includes clerks of court. Clerks shall be residents of the county but shall be appointed by majority vote of the judges in the judicial election districts who will supervise their work, just as the supreme court appoints and supervises its clerk and as you appoint and supervise your key personnel.

This concept has been perceived in some quarters as a blow against representative government. But it is not in the public interest that clerks continue to be part of the political process. The ninety-nine clerks of court are essential to the flow of cases through the judicial system, yet they are not now responsible to the judicial branch. Some clerks are lost to the election process before they develop professional management skills and gain familiarity with the court system. Others are victims of political tides that sweep them out of office regardless of their expertise and dedicated contributions to that system. Appointed clerks could be trained to assume more ministerial functions, thus freeing judges to handle more motions and trials. Appointment of these clerks by majority vote of the district judges is the administrative centerpiece of this legislation, without which we do not believe its administrative features are either workable or acceptable. Each clerk, of course, would hire, fire and discipline deputies and other employees in his or her office.

This current bill is thick enough to scare you, but that is because it merely reenacts most of the present statutory law relating to the judicial branch, thus making it all available for the first time in one title of the code. It includes a number of salient features other than those already addressed, which we have capsulated in an appendix attached to the written message.

The bill adopted by the Senate last session would implement the administrative improvements following one year's preparation, and pick up the counties' costs over a five-year period, during which the counties' share of court-generated revenue would be transferred to the state in similar five-year installments. Last month, however, the most recent joint interim study committee, by a close vote, adopted an amendment that would phase in the state's fiscal responsibility by functional area. Under this amendment the district court would not be given administrative control of its clerks for five years, rather than one year. Transfer of court-generated revenues from counties to state would continue in five yearly steps. The committee on a 9 to 1 vote approved the proposed legislation as amended. Its recommendation that the amended bill be forwarded to the judiciary committees of the Senate and House was approved by the Legislative Council.

With all deference to the sincerity and good faith efforts of those committee members who proposed and voted for the amendment, we believe the bill adopted by the Senate in 1982 is better. The indispensable administrative changes should not be delayed for five years.

The legislation you will consider has broad support. It has the endorsement of the supreme court, the Iowa Judicial Council, the Iowa Judges Association, the Iowa Clerks of the District Court Association, the Judicial Coordinating Committee, the Iowa Juvenile 'Probation Officers Association, the Iowa State Bar Association, the Association of Trial Lawyers of Iowa, the Iowa Academy of Trial Lawyers and the Iowa Defense Counsel Association.

The bill you have devised that comes before you will affect components of the judicial system that essentially have not been modernized in the last hundred years. Not one of you who has a farm, business, or profession is managing it the same as you did even ten years ago. You would not dare run your operation under the management handicaps that have hamstrung the courts. If you did you would have been out of business long ago.

A critic has complained we should not meddle with the "county courts." The legislature abolished county courts in 1868, county judges in 1869. We believe this legislature will find it past time to overhaul the archaic and ineffective structure originally designed to support them. This does not mean counties should be deprived of courts. It means the courts should be better structured to serve all ninety-nine counties.

In the final analysis, access to the courts is a basic and fundamental constitutional right. Failure to match support with the pace of accelerating case loads now has endangered this right for all Iowans. It is now time to act in the light of a great truth that John Madison best expressed in Federalist Paper No. 51:

> Justice is the end of government. It is the end of civil society. It ever has been and ever will be pursued until it be obtained, or until liberty be lost in the pursuit.