

State of the Judiciary  
Chief Justice W. Ward Reynoldson, Iowa Supreme Court  
Address to the Legislature  
January 20, 1987

Ms. President, Mr. Speaker, Governor Branstad, Senators, Representatives, State Officials, Justices and Judges, my fellow Iowans:

Two hundred years ago the persons who had signed the Declaration of Independence had little cause for celebration. While many of those signers were gathering in Philadelphia for the constitutional convention the states were in disarray. Daniel Shays was mustering his rebels to attack the Springfield arsenal in Massachusetts. Spain was forcibly interfering with Mississippi River traffic. The British were inciting native Americans in the territories along the Ohio, and the postmaster was demanding "solid coin" to deliver a letter.

In the turbulent months that followed, those convention delegates framed a constitution that, with the amendments soon adopted, strengthened central government while still retaining the individual liberties and protections that lay at the heart of the Declaration of Independence. Now, two hundred years later, let us explore the role Iowa has played in implementing the aspirations and dreams of those framers. My focus is on two concepts that undergird the charter they devised: federalism and an independent judiciary.

Just as the federal constitution borrowed the principles of the rule of law and the protection of individual liberties from state constitutions, so too the framers contemplated that state courts should carry the burden of enforcing those constitutional provisions. As provided in the Supremacy Clause, state judges to this day swear to uphold and support the Constitution of the United States, and over 95% of the litigation in this country still takes place in state courts.

At the same time, the doctrine of federalism that pervades the United States Constitution leaves wide latitude for the states, serving as social laboratories, to utilize innovative investments of energy and resources to fulfill the national and state constitutional promises of freedom.

It is here that the legislative and executive branches of Iowa's government, by modernizing and streamlining the judicial branch, have attracted (and rightly deserve) national acclaim. Among other reforms, in 1962 you submitted to the voters a constitutional amendment that removed judges from the partisan political process and provided merit selection and tenure. In 1973 you transformed Iowa's hodgepodge of overlapping and inefficient municipal courts, superior courts, mayors' courts, police courts, justice of peace courts, and state courts into one unified, integrated state trial court system. In 1976 you created the Iowa Court of Appeals to expedite case flow.

Finally, in 1983, you set in motion that massive reorganization of the judicial branch, phasing in state funding of the Iowa court system and the transfer of court support personnel from county and judicial districts to the state judicial system. The wisdom of that reform already is apparent. Projected through fiscal year 87/88, you will have achieved equality and better judicial services for all Iowans, while at the same time providing \$28,437,000 in net property tax relief.

Leaders from other states have visited Iowa to explore how you have accomplished these reforms. Our judicial personnel have been invited to other states to explain Iowa's progress in these areas. You indeed have fulfilled the trust the Constitution's framers, two hundred years ago, left to your keeping.

The \$61,000,000 judicial branch budget we submit today targets the goal you have pursued so consistently: an effective and responsive court system. At the same time, it must be noted this budget will comprise only about 2.4% of the total state budget, and the impact on state finances will be reduced by non-earmarked, court-generated revenues in the projected amount of \$32,763,000.

Our internal budgeting process included lengthy written and oral budget submissions by various components of the judicial branch. The hearings were attended by all members of the supreme court. Before we finalized our request, we painfully carved from this budget fully justifiable proposed expenditures totaling more than \$5,000,000. A few items in the budget deserve special mention.

We noted in last year's address that the clerks had become governmental orphans, that broken equipment had not been replaced and personnel vacancies had not been funded. This budget does not propose any additional employees in clerks' offices even though some offices are three weeks behind in critical filings. The budget does, however, contain almost \$690,000 to place all persons in those offices on a 40-hour work week, eliminating 35 and 37-hour work weeks.

Parenthetically, one of the exciting benefits of your judicial reorganization act is the collective, enthusiastic response of the clerks of court and their employees. With the cooperation of the district chief judges and court administrators, clerks meet in their districts and exchange ideas for improving their operations. They are working to streamline forms and office procedures. They have found new flexibility in moving workers from county to county to meet emergencies. We should consider a new title for these clerks that more accurately reflects their ever-expanding responsibilities.

We also ask you to remove by amendment the statutory cap on the salaries of clerks and deputy clerks. By way of explanation, another provision of the reorganization act made us the first branch of Iowa government to complete comparable worth classifications of then current employees. Classification for the clerks' offices is now underway, affecting about 900 people. We confront the situation in which clerks' office workers, paid on a comparable worth basis, may earn more than the clerks and deputies whose salaries are frozen in place by the statutory cap. The removal of this restraint will permit us to do what you have required us to do in comparable worth for the 99 clerks and their deputies.

The court's special concern for young people is ongoing. Last year we obtained a one-year federal grant for a program designed to link volunteer lay person advocates with children under the jurisdiction of our juvenile courts. In just seven months since the director was appointed, this program is now operational in two judicial districts with 39 volunteers. Each carefully-recruited volunteer has received fifteen hours of training and observed the juvenile court in action. Each represents and advocates the best interest of the affected children, many of whom have been displaced from their own homes for various reasons ranging from neglect to physical and sexual

abuse. Most of the overworked caseworkers, juvenile court officers, teachers, and attorneys have expressed appreciation that these volunteers can provide continuity in time and attention to these children.

We need more time with the promising and exciting “CASA” (court-appointed special advocates) project to collect reliable cost-savings data. We therefore join the CASA advisory board in recommending \$92,931 in funding to continue and expand the program for another full fiscal year in the two districts before deciding whether to recommend it for the other six judicial districts.

We have been active in other child-related areas. We are consulting with the director of the Iowa State Foster Care Review Board on mutual problems. We are forming a joint committee with the Department of Human Services to study out-of-state placements of children by the juvenile court and by the department. We have sought to instill respect for the law and good citizenship by supporting law-related education in Iowa's schools. Speaking of good citizens, seated in the gallery today are students and faculty representatives of Goodrell Transitional School, our “partner” in the Des Moines Community School District’s “Partners for Progress” program.

Another item in our budget addresses a need that legislators recognized before the judges did: that public administration today requires effective management of information and communications. You, along with the executive branch, have recognized the necessity of modern technology as a tool of efficient operations. Two years ago we requested, and you provided, funds for a statewide study of judicial information retrieval and transmission, together with current and future computer needs in the Iowa court system.

The Iowa Judicial Department, with over 1900 employees, is the last major unit in state government to enter the computer age. In our budget we have asked for the management tools required to administer this unified court system.

In a separate budget we project it will cost the state \$10,300,000 to pay for the defense of indigents in criminal cases. This is, you will recall, the final proposed step in the five-year phase-in of state court funding and local property tax relief. A supreme court advisory committee chaired by Chief Judge Havercamp of Davenport has been working to formulate proposed policies, standards, and operating procedures for this step.

Appendices attached to the written message I leave this morning reflect the massive ten-year increase in case filings both in the Iowa district court and appellate courts. Other attached appendices reflect the 60% increase in case dispositions in the trial courts and a 71% increase in formal dispositions per appellate judge during the same ten-year period. This is a proud record of the dedicated efforts of Iowa’s judges, and of your response in furnishing support personnel, including court administrators and legal assistants.

Since we began collecting caseload statistics in 1956, the number of civil, criminal, juvenile, and probate filings have increased 131%, 630%, 291%, and 48%, respectively. This compares with a five percent increase in Iowa’s population and only a 41% increase in the number of district judges.

Sometimes we sense a general impatient reaction that these burgeoning caseloads are the fault of the courts. We plead not guilty. The same social, economic, and technological convulsions that have multiplied your problems have found their way to the courts.

The Acts of the Fifty-sixth General Assembly, published in 1955 (about the time we began keeping case statistics), comprised only 221 pages of general laws. The general laws of the Seventy-first General Assembly, published in 1985 and 1986, covered 1241 pages, a 462% increase. You as legislators and we as judges confront these issues in different ways. They arrive at our courtroom doors as cases that must be adjudicated, and sometimes we long for the option of adjourning and going home.

Thus far, we have looked at the ways you have fulfilled your role under our federal system. Under that system, the framers of the Constitution left to the states the major task of creating and supporting courts where the individual rights and liberties we prize would be preserved. There is a corollary concern that framers also considered: an independent judiciary.

Alexander Hamilton's essay in support of the adoption of the United States Constitution, reprinted as number 78 in *The Federalist*, underscored the importance of the independence of the judicial branch. He wrote:

Nothing can contribute so much to [the judiciary's] firmness and independence as permanency in office. This quality may therefore be justly regarded as an indispensable ingredient in its constitution, and, in a great measure, as the citadel of the public justice and the public security.

Decades later, Justice Benjamin Cardozo developed Hamilton's thought when he wrote:

The great ideals of liberty and equality are preserved against the assaults of opportunism, the expediency of the passing hour, the erosion of small encroachments, the scorn and derision of those who have no patience with general principles, by enshrining them in constitutions, and consecrating to the task of their protection a body of defenders.

How does this concept of independence through permanency in judicial office, embedded in the United States Constitution, translate to Iowa's situation? I suggest the principle is sound: Iowa does need to attract and keep highly qualified lawyers as judges, and insure that they can remain in office for so long as they meet your high expectations.

This goal requires, first of all, adequate judicial compensation. Here the General Assembly must face up to years of benign neglect. Iowa is able to attract bright young lawyers of limited legal experience to the bench, but the trend is for law firms to pick off the best after the public has provided them on-the-job training. This loss is a public loss.

In the last three years we have sworn in 33 new district and district associate judges. Fourteen were 35 years of age or younger; 8 more were 36 to 40 years of age; only two were over 50. Few of these people will maintain a long bench career unless overdue salary adjustments are made. Your concern must be that they are compensated sufficiently to assure that they feel a sense of permanency in position; that their minds are focused on the merits of the cause before them and not on which law firm will rescue them with an employment offer.

Responding to a request from the Statutory Compensation Commission, I Recently wrote a letter detailing the deplorable history of judicial salaries in Iowa since 1977. A copy of that letter is attached as an appendix to my written message, which I leave with you, and I respectfully ask each of you to read it. The Iowa State Bar Association has become sufficiently alarmed to appoint a Blue Ribbon committee of citizens to study the problem of judicial compensation. That committee is holding hearings and we assume will furnish you with its findings.

I suggest that your decisions, with respect to judicial salaries, should not be controlled by your view of the qualifications or lack of qualifications of me or any present judge. A judicial position ought to be evaluated and a rate of compensation fixed that will attract the quality of person you want on the bench. It would be naive to imply our present system has produced perfect judges. I submit, however, that our present system's most obvious shortcoming is in not providing adequate financial incentives to attract and keep the brightest and the best.

We cannot close out a discussion of salaries without reference to compensation for the office of Iowa's state court administrator. Only three states pay their state court administrator less than Iowa. The average salary for state court administrators in our six bordering states exceeds the amount paid in Iowa for that position by over \$15,000. Nor does the salary of Iowa's state court administrator match the compensation given to the heads of several executive branch agencies who administer smaller budgets and fewer people than represented by the judicial department.

In Iowa permanency in judicial office has been enhanced by the 1962 constitutional amendment that removed judges from partisan politics and provided for merit nominations by nonpolitical nominating commissions. Judges, as you know, now run for retention in office on a nonpartisan ballot.

A key provision of the 1962 amendment was that nominating commissioners on both the state and district levels "shall be chosen without reference to political affiliation." Some members of the last General-Assembly, asserting several Governors had violated this provision in making commission appointments, took the astonishing position that this constitutional safeguard, therefore, should be deleted by amendment. The goal, it was stated, was to clear the way for a statute that would supposedly balance the commissions by political party, this in lieu of the option to call for compliance with Iowa's constitution. A resolution that would strip away this constitutional safeguard passed both Houses last year as SJR 2002. If it is introduced and passed this year, it will be submitted to the voters in a form that will not advise them of the deleted language.

As one who has followed these nominating commissions for 25 years, I can assure you the commissioners, however appointed, have been beholden to the citizens of Iowa and not to a particular political party. The proposed constitutional amendment would require nominating commissioners to change their allegiance. Adoption of the amendment would sensitize them that they were now representing their political party for the advancement of its interests, and the selection of judges would be based upon the applicant's political clout, organization, and funds, not necessarily his or her judicial qualifications.

Picking judges by dividing the commissioners with divisive political caucuses would turn back Iowa's clock to 1961. The process contemplated by the constitutional change will attract neither

successful lawyers as candidates nor those who will add permanence to Iowa's judicial ranks. SJR 2002, by whatever designation it may arrive this year, is a bad idea and the time has come for its quiet interment.

Before closing, I want to express the Supreme court's gratitude to the leaders of the bar organizations, many of whom are in attendance today. They represent the high standards of professionalism and attention to duty that make our work easier. We also welcome to the State Capitol, the Chief Judges of the eight Judicial Districts. They are dedicated to the goal of streamlining procedures to meet the case processing time standards the supreme court adopted upon their recommendation. They meet this afternoon as members of the Judicial Council to take up administrative matter. The court also has asked me to express its appreciation for the work of the 318 persons —50 of them public-spirited citizens who play no other role in the justice system—who serve on the 28 committees, boards, and commissions that make it possible for the court to fulfill its many constitutional and statutory duties.

We especially salute the U.S. Magistrate Celeste Bremer, who chairs the new Supreme Court Council on Judicial Selection, and who, with other dedicated young lawyers, spearheaded the drive to commit hundreds of attorneys to provide pro bono services to the poor in civil matters. We commend all Iowa lawyers and the many financial institutions whose combined efforts in implementing the court's IOLTA program have provided hundreds of thousands of dollars to assure that disadvantaged Iowans have not lost access to legal advice, to the courts, and to justice.

Finally, the court thanks each of you legislators, in advance, for your consideration of the budget our branch has submitted, and the concerns we have expressed today. Together we have endured, and still experience, the pain and tensions of Iowa's severe financial stress. At the same time, we hope that you derive the satisfaction that we feel in these joint efforts to secure our most priceless heritage—to give life and breath to the constitutional guarantees of freedom dreamed and envisioned by those farmers two hundred years ago. A poet may have expressed it best when he wrote:

There are those who will say that the liberation of humanity, the freedom of man and mind are nothing but a dream. They are right. It is a dream. It is the American dream.

Thank you very much.