

State of the Judiciary
Chief Justice Arthur A. McGiverin, Iowa Supreme Court
Message to the Legislature
January 14, 1998

Madam President, Mr. Speaker, Members of the General Assembly, State Officials, Judicial Colleagues and My Fellow Iowans:

On behalf of the court, thank you for the invitation to report to you on the state of the Iowa judiciary. It is a great honor for the Judicial Branch, as well as a personal privilege for me, to meet with you each year at this time. This address marks my tenth state of the judiciary message. However, I know that one should never assume that a repeat performance is automatic. Winston Churchill once used this fact to his advantage.

Churchill received an invitation from George Bernard Shaw to attend the opening of one of his plays. Shaw's note read: "Enclosed are two tickets to the first-night performance of one of my plays. Bring a friend-if you have one."

Not to be outdone, Churchill shot back this reply: "Dear G.B.S., I thank you for the invitation and tickets. Unfortunately, I am engaged on that night, but could I have tickets for the second performance-if there is one?"

After I finish my remarks, we hope you can join the other judges and me for coffee and conversation downstairs in our courtroom. We can get better acquainted there.

We regard this address as one of the most important things I do. It is our opportunity to share with you an assessment of the administration of justice in Iowa; in other words, it is an account of our stewardship. I trust you will conclude, as I have, that the past year has been exciting, marked by significant milestones for Iowa's court system.

You should be aware of a number of important trends. So far as we have been able to learn, none of them are related to El Nino.

During the past few years, you have been told of our struggles to keep up with the rising tide of criminal cases pouring into the courts. I am pleased to announce that after ten years of dramatic growth, the number of indictable criminal case filings decreased slightly last year. We do not know the reasons for the sudden change in this long-term trend, so we are only cautiously optimistic. But if the rate of criminal filings continues to slow, it will ease some of the pressure on our courts, jails and prisons.

However, I must report that the news about our overall caseload is mixed. I won't burden you with all the numbers. Information about the caseload is detailed in the appendix to these remarks.

We're concerned about the growing backlog of cases in the appellate courts. In the past ten years, filings in our appellate courts increased over twenty percent; twice as fast as dispositions. Parties appealing civil cases involving contracts, personal injury, and administrative law must wait seventeen months from the time of filing the notice of appeal to a decision. Typically, these cases are ready to be submitted to the court within ten months. But

because cases involving children, crimes and certain other matters take precedence, the civil cases must wait in line to be heard.

While it appears that appeals will continue to increase in the foreseeable future, the number of dispositions per judge cannot continue to increase without negatively affecting the quality of justice. The Supreme Court and the Court of Appeals are working together to come up with solutions to cope with the volume, and we'll keep you posted.

We are especially concerned this year about the trend in juvenile cases. No work of the courts is more important. Since 1991, juvenile case filings have increased nearly forty percent. What do these numbers mean? For one thing it clearly means increasing demands on our juvenile court system—a system already in real need of repair.

This is not to say our hard-working juvenile court system is devoid of innovative tools to help rescue troubled children. One of our brightest examples is the CASA program.

A CASA is a trained volunteer who advocates in court for abused and neglected children. Each CASA volunteer works closely with a child and the child's family to gather information about their personal life. This information, which is furnished to the court in written reports and courtroom testimony, provides the court with extra insight about the child's circumstances.

CASA makes a difference for youngsters who might otherwise become lost in the juvenile court system—often a very dramatic difference. Thanks to your support, CASA is reaching more children than ever before.

Last year we added nine counties to our CASA program. With these additions, CASA is now operating in a total of twenty-two counties, covering all eight judicial districts. Next fiscal year, we hope to take CASA into more counties so that we can reach more children in need.

Anthropologist Margaret Meade, once said, "Never doubt that a small group of thoughtful committed citizens can change the world. Indeed, it's the only thing that ever has."

Iowa is blessed with many generous people—volunteers and professionals—who dedicate their lives to helping abused and neglected children. Recently, the Supreme Court, together with the Friends of Iowa CASA foundation, established the Child Advocate of the Year Award to recognize the special people who work tirelessly on behalf of Iowa's children. It's my privilege to announce the first award winner – Patty McKee, a shelter caseworker at Jasper County Youth Services. I will present the award at the courtroom reception immediately following this address. I look forward to seeing all of you there.

"It's time to light a fire under Iowa's child welfare system." These are the words of Dr. Jim McCullaugh, one of the members of a special Supreme Court committee that is examining Iowa's child welfare system. After extensive study, the committee found serious inadequacies in the state's procedures for termination of parental rights and adoption.

What are some of the problems?

- Unacceptable delays,
- Children left in temporary placement too long,

- Judges do not have fast access to key information,
- Parents do not know the serious consequences of removal and placement, and
- Parties and their attorneys rarely confer before court hearings.

With the help of juvenile justice professionals from around the state, the committee developed solutions to these problems. Several proposals involve statutory changes that will speed up the adoption process and provide better information to parents. I ask your approval of these proposals, which we will be furnishing to you. There are other proposals that require further study. The committee recommended more review hearings and less time between hearings. These changes could vastly improve judicial oversight of these cases if there are more judges to handle the extra hearings. We have asked the committee to determine the number of judges that would be needed to accomplish its worthy goal. We advise you to withhold acting on this specific recommendation pending the outcome of the committee's study.

At this point, I want to briefly discuss our need for judges in general. We appreciate your response to our requests for more judges in recent years. The added judge power has made a tremendous difference in our ability to administer justice. Last fall, two of our districts asked that we include more judges in our budget request. We did not. After a careful evaluation of our overall needs, we decided that support staff for our judges is a more critical need in our district or trial courts this year. That support is needed in the offices of our clerks of district court and juvenile court services. We also need more law clerks to help our judges with research and rulings. This year we will evaluate, with the help of our planning office, our need for judges. We will report our findings to you next year.

We obviously must do what we can to attract and retain good judges. We appreciate your strong support of judicial compensation and retirement requests over the years and hope that we can continue to count on your support this year.

Now, I'd like to again switch gears and report on the progress that we've made with the help of technology. We're proud of our statewide computer network which was completed last September. More than thirty clerk of district court offices were computerized last year alone. This achievement represents the culmination of more than ten years of planning and hard work by many people. I want to thank and commend you for your support over the years.

It wasn't easy changing from a paper-based record keeping system to a computer-based system. There were many times in the early years of the program when I thought we might have a revolt on our hands. In fact, there were times when I thought I might lead the revolt! But we made it through the tough times, and today we are one of few court systems in the country with a statewide computer network.

The completion of our statewide computer network does not mean that our work is finished. The system must be updated, maintained, supported, and enhanced if we are to retain it and realize its full potential.

Two of the promising technological innovations now within our grasp deserve special mention.

IowAccess. Think of accessing court records from the convenience of one's home or office. Or what about specialized reports in a format generated to fit a customer's specific needs? Automation adds value to court information. Justice Marsha Ternus of our court has been working with the IowAccess Project to explore the idea of marketing these value added services. It could turn into a revenue producing venture for the state.

We're excited about an interface with the DOT which will completely automate the processing of criminal citations from start to finish. When issuing a citation, law enforcement officers armed with computers and scanners, will enter information about the citation into their computer systems. At the end of the officer's shift, the information will be sent electronically to the appropriate clerk of district court office. The time consuming job of shuffling mountains of paper citations will be a thing of the past.

It's easy to be overly enthralled by technology. We're captivated by all the bells and whistles that promise to improve our productivity and public service. While it's true that technology is dramatically changing the way the Judicial Branch does business, we must remember that it is just a tool to help us perform our basic function of resolving disputes in a dispassionate, well-reasoned manner. It frees judges to perform their function in our independent branch of government.

I was originally going to end my remarks here but I cannot cover the state of the judiciary today without talking about judicial independence. The word "independence" refers to independence in decision-making. Judicial independence means upholding the law without fear of the consequence of political retribution. Judges are under constant pressure to surrender their judicial independence and decide cases based upon the popularity of a particular result or party. Examples of this pressure are everywhere.

Last fall, America watched as Louise Woodward, a young British au pair accused of shaking to death an infant left in her charge, was tried for murder in Massachusetts. Public opinion about the case seemed to change with the wind. One day public opinion blamed the parents of the infant – especially the working mother – for the child's death. Another day, public opinion was sympathetic toward Woodward. When the jury found Woodward guilty of second-degree murder, Woodward's supporters expressed outrage and condemned the justice system.

One week after the jury verdict, the presiding judge, Hiller Zoebel, saying that he had erred, by not allowing the jury to consider the possibility of a manslaughter conviction, changed the conviction to manslaughter and entered a jail sentence for only the time Woodward had already served. Immediately, Judge Zoebel's decision was criticized by the public as too lenient. Armchair legal scholars speculated that Judge Zoebel was swayed by public opinion.

It would be inappropriate for me to join in the public debate about Judge Zoebel's decision, and I won't. But it is proper for me to observe that this is a dramatic illustration of the impossibility of pleasing the court of public opinion.

Judges must not test the winds of public opinion before entering a decision. They are bound by their oath of office to render decisions based on the constitution and statutory law. When there is disagreement about the meaning or application of a law, judges turn to well-established legal

principles to guide their decisions. This is the rule of law. Without the rule of law, our legal system would be unstable and recent gusts...

Judicial independence ensures that judges uphold the law. Judicial independence ensures that judges defy current popular opinion in favor of the long-standing principles established in our constitution. Judicial independence ensures social order and stability. It is of supreme importance to all citizens because it is the ligament which holds our justice system together. Unfortunately, there are forces working to undermine this important principle that has served our nation well for over two hundred years. I'm talking about well-orchestrated campaigns to intimidate judges into entering decisions that favor specific outcomes over legal merits. For example:

- Following the last general election, all Iowa Supreme Court justices received copies of newspaper articles about the ouster of a Nebraska Supreme Court justice who was targeted for rulings that invalidated term limits for Nebraska elected officials. The copies of the newspaper articles were from a group called "Citizens for Common Sense Justice" out of Washington, D.C. Although the group didn't include a cover letter, its message was unmistakable- intimidation.
- Some of our district court judges have come under attack for their decisions in hog lot cases. These attacks are not based on the soundness of the judges' legal analyses but on the critics' unhappiness with the outcome. I've been told that anti-hog lot organizers, who came to the statehouse in November to attend the Supreme Court hearing of a hog lot case, reminded their followers to vote against the justices in the next retention election if the court didn't rule in favor of the group's cause.
- Business associations in several Midwestern states have hired consultants to evaluate judges for "anti-business" bias.
- During the 1996 presidential race, both candidates attacked a federal district court judge in New York for his evidentiary ruling in a drug case. The judge changed his order, forever calling into question his impartiality and credibility.

These attacks and intimidation tactics do a grave disservice to the public. Criticism of the courts is not new and is to be expected. For judges, criticism comes with the territory and we are entirely accustomed to it. However, the kind of efforts I have just described threaten the integrity of our nation's justice system.

Just what, then, is the condition of Iowa's judicial branch of government? The short answer is that it closely matches the condition of Iowa itself-good enough to be the source of pride but in constant need of attention. Certain areas, such as juvenile court, need special attention just now. Technology is an enormous help to Iowa's courts as we embark upon a new millennium. Our greatest present threat is a frontal assault on judicial independence by some who would politicize and thereby destroy-or at least severely damage-the courts' usefulness to our citizens.

Finally, like our other two branches of government, courts do not belong to the temporary incumbents but rather to the people who sent us all here. Let us keep that foremost in our minds as we work together to make the Iowa government a source of lasting pride for us all.