

State of the Judiciary
Chief Justice Louis A. Lavorato, Iowa Supreme Court
Message to the Legislature
January 10, 2006

On behalf of the court and all judges and court personnel across Iowa, I want to thank you for the invitation to speak about the State of the Iowa Judiciary. The court regards this annual report as the best opportunity to provide you, as well as the people of Iowa, with our assessment of the state's justice system.

This is the sixth time I've had the great privilege to speak to you from this podium, and it is my last. Later this year I will retire. Serving as Iowa's chief justice has been the honor of my life. Today, standing at this podium, I feel as I did five years ago, a genuine sense of humility and awe.

This is the perfect occasion to reflect back over the years, take stock of our accomplishments, and confront our greatest challenges. My first thought was to use 1979 as the starting point for this review. That was the year I began my career as a judge, and the changes since that time have been dramatic. But then I remembered that you want to adjourn by April 18.

Administration of Justice

With this in mind, the starting point for my review will be 2001, the year of my first report to you. In that report I outlined steps that would make the court system more accessible, more convenient, and more accountable. So much has happened since that day: events that remind us time and time again that the only thing certain is uncertainty.

For the past five years, we've struggled with many problems, but the problem that stands out, of course, is the state's serious financial difficulties that brought about drastic budget cuts. These have been tough years for all of us. My reason for mentioning this now is not to dredge up bad times, but to observe with pride that we pulled through. In the face of unprecedented budget cuts, the Iowa Judicial Branch managed to fulfill its mission to the people.

Last year, I reported that the years of fiscal austerity were taking a toll. Court resources were spread painfully thin and the quality of justice was at stake. We are grateful to you for heeding our concerns. The resources you provided were enough to return the courts to near normal operations. We believe we can maintain the current level of service with only a modest increase in our operating budget and sufficient salary adjustment funds to cover rising personnel expenses.

Despite the financial hardships of the past five years, we've achieved many of the goals I presented to you in 2001 – and we've achieved more. Today, I will highlight some of those achievements. I will also discuss some of our present concerns.

I'll begin with our continuous efforts to expand access to justice.

Access to Justice

Our mission is to administer justice under the law, equally to all people. To fulfill this mission courts must be accessible to the people they serve. Access means more than having a courthouse with convenient parking nearby. It also means such things as providing interpreters, facilitating self-representation, and making courthouses safe.

Interpreters

Iowa's population is becoming much more diverse as a result of steady growth in the state's immigrant population. As I said in my first state of the judiciary message, we must be vigilant to provide access to all who come to the courts regardless of the language they speak.

Today, I'm proud to report we've made progress in this regard. Over the past few years, we have adopted a series of measures to ensure quality language interpretation for litigants. For example, our courts now have:

- A code of professional conduct and a professional oath for court interpreters;
- A partnership with colleges and agencies to provide orientation training and to test potential court interpreters on the code of conduct;
- Standardized application forms and screening questions;
- A statewide roster of trained court interpreters; and
- Membership in a national consortium that develops and provides test materials for certification of language interpreters.

These measures were relatively easy and inexpensive to implement. They are just the beginning. Our next goal is to establish a certification process for interpreters.

Assisting Pro Se Litigants

Another necessary corollary to achieving equal access to justice is self-representation. Courts throughout the nation, including Iowa, are experiencing more and more cases in which litigants represent themselves, a practice known as "pro se representation." There are several reasons for this trend, but whatever the reasons, self-representation in court is a right.

In today's complicated world, however, merely acknowledging the right of litigants to represent themselves in court is not enough. The vast majority of pro se litigants are ill equipped to represent themselves effectively. They are typically unfamiliar with intricate but necessary court procedures; uninformed about the precise meaning and implications of controlling legal authority; and unaware of the potential for adverse legal consequences resulting from their actions.

Their lack of knowledge and skill affects more than the outcome of their cases. Pro se litigation places additional burdens on an already overtaxed court system. Pro se litigants frequently expect judges and court employees to help them with their lawsuits. This takes time away from other cases and court services. It also places judges and court employees in the awkward position of

trying to be helpful public servants without giving legal advice or creating the appearance of favoring a pro se litigant over other litigants.

In line with what other states have done, our court recently established a new committee to develop easy-to-use-forms and instructions to facilitate pro se litigation. We have directed the committee to focus its efforts in family law because this area draws the most pro se litigants.

Unbundled Legal Services

Although do-it-yourself forms and instructions are helpful, they will never be a substitute for professional legal advice. Even limited legal representation is better than none at all. Therefore, we encourage people to obtain, at a minimum, legal help for some of the more complicated aspects of their case. This piecemeal approach is commonly referred to as "unbundled legal services." Our old rules prohibited this practice and required an all or nothing approach to legal representation. Our new rules now permit unbundled legal services.

Both steps I have just described, self-help forms and unbundled legal services, are significant policy shifts that will benefit litigants and the public immensely. These steps will:

- Facilitate pro se litigation;
- Encourage more people to secure professional legal help;
- Lessen pro se litigants' dependence on judges and court staff;
- Eliminate delays in court proceedings involving pro se litigants; and
- Hopefully, encourage more pro bono work by attorneys.

I want to acknowledge and commend the joint task force of the Iowa Judges Association and the Iowa State Bar Association that provided the impetus and ideas for these policies.

Safe and Secure Courts

All of our efforts to expand access to the justice system mean little if our courthouses are unsafe, and court participants and personnel are targets of intimidation, threats, and violence. Last year, our nation experienced a number of murders of court officials, litigants, and, in one incident, the husband and mother of a federal judge.

These senseless tragedies shatter our complacency and shake us to the core. Incidents such as these jeopardize several crucial principles of America's justice system:

- Our courts, like other governmental institutions, must operate in the open;
- Participation of jurors and witnesses must not be checked or influenced by intimidation; and
- Judges must operate independently.

We, therefore, must do our utmost to ensure the safety of every person who comes to, and works in, the courthouse.

In Iowa, county governments have a large stake in courthouse security. The vast majority of courthouses throughout the state contain county government offices along with the courts. Iowa law requires counties to provide and maintain physical facilities for local court operations and to provide the courts with bailiff and other law enforcement services upon the request of a judicial officer.

Earlier this year, an Iowa State Bar Association task force observed that the growth in "pro se litigation, the explosion of domestic relations and domestic violence cases, and the onslaught of drug-related criminal prosecutions" combine to "heighten volatility within courthouses." The task force concluded that security in most courthouses is insufficient.

Let's face it: most counties outside of Iowa's urban centers do not have the financial resources to install and staff sophisticated security equipment, retrofit old courthouses, or provide deputies around the clock-nor should counties shoulder the responsibility alone. The incidents I mentioned earlier clearly demonstrate that it's time for the three branches of state government to join with the counties in a meaningful discussion about strengthening courthouse security throughout the state. This is of paramount importance. Let's act before a tragedy occurs in Iowa.

Efficient and Convenient Court Services

As I mentioned earlier, access to justice takes different forms. Access to justice now comes in a variety of media thanks to modern technology. Technology also adds convenience and efficiency. In my first state of the judiciary message, I discussed a number of new initiatives that would make the courts more convenient and efficient. Since then, we've made steady and solid progress in this direction.

Online Court Records

In 2002 we began our online records service. This service provides public access to court dockets from all ninety-nine counties and the appellate courts. The docket contains a summary of information such as criminal charges and dispositions, child support payments, judgments and liens, scheduled violations, fines, and court costs. Our docket information is up-to-the-minute. Most of the information is accessible free of charge. This online service is tremendously popular. It attracts an average of 500,000 hits a day from a broad range of users – private citizens to insurance companies, lawyers to private investigators, and government agencies to private employers.

E-Pay

In 2003 we added another online service: E-pay. E-pay enables people to pay their fines and court costs online. As many people have discovered, this service is highly convenient. Consequently, last year the judicial branch collected nearly five million dollars through this service.

Our online services bring tremendous advantages. They enable us to serve the public with remarkable speed and efficiency, expand access to the courts beyond the courthouse walls, and allow busy court officials to devote more time to other important court duties. But the online records and E-Pay are only the beginning.

Electronic Data Management

In my first state of the judiciary message, I told you of another online service – electronic data management, or EDMS. In 2001 we were ready to test EDMS, but then the state's budget woes prevented us from doing so. Now, we're gearing up again, and we plan to launch a pilot project later this year. EDMS will enable people to file their court documents and access complete documents, indeed entire court files, electronically. It is likely our most ambitious undertaking ever.

Accountability

So far I have addressed access to justice as well as convenient and efficient service. Now I want to turn your attention to accountability-in other words, our duty to maintain the integrity of our courts. Because accountability involves the judiciary as well as attorneys, with whom the courts are closely linked, I will discuss both.

The Legal Profession

As the supervisory head of the judicial branch, our court is responsible for regulating the practice of law in Iowa. The practice of law is a privilege, and lawyers, as officers of the court, have a duty to their clients, to the court, and to the public.

This is the first time I have ever talked with you about this aspect of our responsibilities. I mention this today because last year we approved several reforms aimed at raising the already high standards of professionalism possessed by Iowa lawyers.

Code of Conduct

Last year, we updated our attorney rules of ethical conduct so that they closely follow the American Bar Association Model Rules. This was an enormously time-consuming undertaking, but well worth the effort. Our new rules of conduct:

- Provide lawyers and the court clear and detailed guidance for each ethical standard;
- Address the complexities of the modern day practice of law; and
- Increase ethical standards in many respects, and thus, better protect the public.

Reform of Disciplinary System

At the same time that we approved the new rules of conduct, we overhauled our attorney disciplinary system. Among other things, we strengthened the procedures for investigating and prosecuting complaints, and added more enforcement alternatives.

The Iowa Supreme Court Attorney Disciplinary Board is responsible for investigating and prosecuting complaints alleging unethical conduct on the part of attorneys. For years, local bar associations around the state assisted the disciplinary board with the intake and initial investigation of complaints. Our new disciplinary procedures consolidate control of investigations and prosecutions in our board alone. Local bar associations and other bar groups are no longer authorized to receive and dispose of complaints through dismissal or private admonition.

We also added some new enforcement alternatives in addition to our traditional disciplinary sanctions of reprimand, license suspension, and license revocation. These new procedures are intended to cure problems affecting a lawyer's practice before they lead to more serious disciplinary infractions.

For example, one new procedure enables the disciplinary board to intervene when there is probable cause to believe an attorney's drug or alcohol addiction, or mental health condition, is impairing the attorney's discharge of his or her professional responsibilities. The rule authorizes the board to require the attorney to submit to evaluation and treatment.

Through all of these reforms we hope to strengthen the integrity of our attorney disciplinary system, and thereby assure the public that the system is effective and beyond reproach.

The Judiciary

I cannot cover the state of the judiciary without talking about our judges.

Iowa's judiciary is recognized as among the best in the nation. In surveys conducted by the Harris Poll for the United States Chamber of Commerce, our state judiciary has consistently ranked in the top five state court systems in terms of fairness, competence, and creating a fair and reasonable litigation environment.

Iowa's high standing is, in large part, a result of its merit selection process for appointing judges. Because merit selection emphasizes professional qualifications above all else, Iowa's judges possess the attributes most valued in judges—fairness, integrity, legal excellence, civility, diligence, and prudence.

Two other factors contribute to the state's top-rated bench: our ability to draw the most qualified attorneys into judicial service and our efforts to make sure they stay. Naturally,

lawyers become judges for many reasons, including professional satisfaction, interest in public service, and quality of life issues. But, as with all professions—doctors, lawyers, engineers, professors, and others—compensation is of utmost importance.

Judicial compensation should reflect the vital and difficult role judges play in our society. It should be sufficient to attract the best lawyers to the bench and to keep our first-rate judiciary motivated and committed for the long term. We believe the salary levels recommended by the Iowa State Bar Association's Judicial Compensation Task Force would achieve these important goals.

We are pleased and grateful that you approved the first phase of the task force plan to raise judges' salaries over a period of three years. We hope you will follow through this year with the second phase of the plan.

I would be remiss if I did not talk about the role of judges and judicial independence, given the present climate surrounding the judiciary. In recent years, we've seen an escalating national discourse about judges and judicial decisions.

I'm all for vigorous public debate regarding the merits of judicial decisions and the role of the courts. But the quality of discourse about the courts has degenerated. Rather than legitimate criticism and thoughtful commentary intended to inform and enlighten, the public is barraged with rash generalizations, loaded sound bites, and alarmist overstatements, intended to exploit and inflame. The sole purpose of these tactics is to politicize our courts so that judges are servants of popular ideologies rather than servants of the law. These attacks are designed to weaken the very institution Americans rely on to uphold the Constitution and protect their rights. It's time to replace the excessive rhetoric with plain facts and measured responses.

Judicial Independence Means Fair and Impartial Courts

Our government is not only one of checks and balances between the three branches, but also one of limitations and constraints between the individual citizen and the government. The indispensable role of an independent judiciary is to preserve this vital balance. By judicial independence, I mean fair and impartial courts that uphold the Constitution and laws free from intimidation and interference. Former Chief Justice William Rehnquist referred to judicial independence as "the crown jewel of our system of government."

Independent Courts Protect Our Rights

Independent courts protect the rights of the powerless. The drafters of our Constitution were keenly aware of the dangers and excesses that can occur when the majority in government controls virtually all matters, a situation James Madison referred to as the "tyranny of the majority." To prevent those dangers, our founders painstakingly designed a balanced government with a wall of separation between the branches, an independent judiciary, and a Constitution that is supreme in all respects.

Today happens to be the birthday of Alexander Hamilton, one of the founders of our government and the first Secretary of the Treasury. Hamilton was a brilliant constitutional lawyer and one of the authors of *The Federalist*, a series of 85 essays that explain and defend the Constitution. *The Federalist* is considered one of the world's most important pieces of political theory. Hamilton recognized the need for judges to be insulated from political intimidation and interference when he wrote, "There is no liberty if the power of judging be not distinct from both the legislative and executive powers."

Independent Courts Follow the Rule of Law

Independent courts guarantee that judges follow the rule of law, the foundation of our civilized society. Under the rule of law, judicial decisions are based strictly on our statutes and

constitutions as well as prior judicial decisions known as legal precedent. The rule of law creates predictability in the application of our laws.

If you followed the confirmation process of Chief Justice Roberts, you heard or read statements by members of Congress, the president, and Chief Justice Roberts himself about the duty of judges to render decisions based upon the rule of law, not personal views or the views of politicians or special interest groups. This is how the judiciary works.

Although it may be appropriate for politicians to consider public opinion and the views of special interest groups when drafting laws and regulations, it is never appropriate for judges to do so when deciding cases. In this respect, the judiciary is very different from the other two branches of government. Judges are accountable to the Constitution and the law-not political pressure.

Independent Courts Foster Respect for the Law

Independent courts foster respect for the law. As journalist Theodore Olson explains: "In this country we accept decisions of judges, even when we disagree on the merits, because the process itself is vastly more important than any individual decision.... Americans understand that no system is perfect and no judge immune from error, but also that our society would crumble if we did not respect the judicial process and the judges who make it work."

Surely, respect for the work of all government is critical to the continued vitality of our society. The current popular sport of lodging spurious and vitriolic attacks against the nation's judiciary threatens not only to diminish respect for our courts, but also to further diminish the public's opinion of government.

Independent Courts are Accountable Courts

Some detractors of our fair and impartial courts would like people to believe that courts are not accountable. This is wrong. Our system of government is carefully designed to foster fair and impartial courts while maintaining strict judicial accountability through a series of checks on judicial power. Let me give you several examples of established procedures that keep courts accountable.

State court judges issue nearly all of the millions of judicial decisions in this country every year. On occasion, when a trial court judge renders a controversial decision, supporters of the losing side will express alarm that the ruling sets "bad precedent." First, I want to make it clear that trial court decisions are not legal precedent. Setting precedent is the function of appellate courts. More important, however, if a party believes a trial court judge made an error, the party may appeal to a higher court to review the judge's ruling. This is an appropriate and effective check on judicial power.

Here's another example.

Every day judges are called upon to construe the meaning of statutes-a fundamental function of the courts. If the legislature disagrees with the way a court has applied or interpreted a law, it may pass legislation to amend the law and prospectively change the impact of the court decision. In a manner of speaking, you get to critique our work. And on certain occasions, I've observed

that you have proven yourself quite able, even eager to do this. This is another appropriate and effective check on judicial power.

I have one other example.

Courts are frequently called upon to determine whether a statute violates the Constitution. As Hamilton recognized, this is the most important function of the courts. When analyzing a statute in this context, courts strive to construe a statute broadly in order to avoid declaring it unconstitutional. This is a cardinal rule of constitutional interpretation. But there are well-defined Limits to how far courts may go to save a statute.

Naturally, there are times when we disagree with our conclusions. When they do, the people have the power to amend the Constitution to undo our interpretation. Without question, amending the Constitution is an appropriate check on judicial power and on legislative power as well.

The examples I have mentioned clearly illustrate some of the many ways in which courts are accountable. Courts are accountable to the laws, and above all else, to the Constitution. And in this way the courts are always accountable to the people.

Conclusion

Accountability-this is one of our most important values. It's why we are here today-to account to the people of Iowa about the condition of their justice system.

Certainly, we have done everything in our power to assure the effective delivery of justice. Despite recent budget cuts and prolonged fiscal hardships, the judicial branch has continued to perform its constitutional responsibilities. The remarkable resilience and unwavering dedication of Iowa's judges and court employees make this possible. Their profound commitment to justice is truly gratifying.

We also forged ahead, making Iowa's court system more accessible, more efficient, and more accountable. While we are proud of our achievements, we will not rest on our laurels. We will continue to anticipate and attend to the changing needs of Iowans.

We will also continue to identify and address problems that threaten to impede the delivery of justice. A looming problem that we must deal with now is courthouse security. Citizens must feel confident that they can come to court without risking their safety or the safety of their families.

Finally, nothing matters more than safeguarding the independence of our courts. Americans must believe that their courts are fair and impartial, accountable only to the law and the Constitution. Yet, these values are under attack. Around the nation there are forces working to undermine judicial independence, a principle that has served the people well for over two hundred years.

Thankfully, Iowa's far-sighted constitutional merit selection process ensures that we have high-caliber judges of utmost integrity, who are selected based upon their professional qualifications-not ideologies. Judicial independence ensures that our judges base their decisions on the law and the Constitution and nothing else. Ultimately, however, the preservation of our fair, impartial,

and independent court system requires more than the integrity and fortitude of individual judges, it requires the fervent and steadfast support of the people.

Thank you.