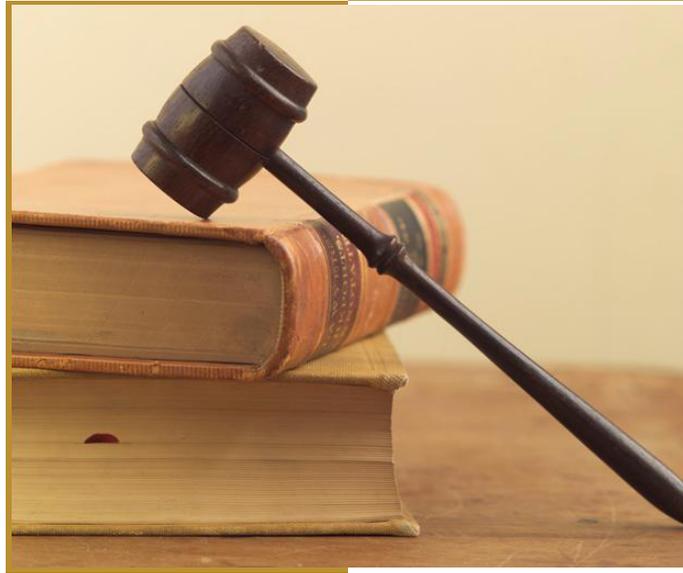


2009

The STATE of the JUDICIARY



MARSHA TERNUS

CHIEF JUSTICE OF THE IOWA SUPREME COURT

Iowa Judicial Branch

Iowa Supreme Court

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Introduction

Thank you for inviting me again this year to talk with you about the condition of Iowa's judicial branch. As your partner in government, we look forward to working with you on issues affecting the administration of justice. If I could capture the condition of our courts, indeed the condition of our state, in a few words, it would be: "We live in challenging times." No one knows the true meaning of this phrase better than those Iowans hit by natural disasters. But my focus today is, of course, on the courts. Ensuring the delivery of equal, affordable and accessible justice is always challenging work, but it will be especially so this year and the next in light of the State's budget problems. Given the magnitude of this challenge, it is even more imperative that we work together in the spirit of unity, candor and cooperation. And I address you today in this spirit.

We are deeply concerned, as you are, about the present financial situation and its effect on individual Iowans. Naturally, we are particularly troubled about its impact on the delivery of justice to our citizens. Even in good economic times, the administration of justice is difficult to fulfill given the sheer volume and complexity of problems Iowans bring to their courthouses. Because of the effects of the nation's economic downturn, people will need access to justice now more than ever. We already see this happening. The number of mortgage foreclosure cases in Iowa rose 14% in the past year. Debt collection cases increased 20% in the same time. An increase in these types of cases is predictable in tough economic times, but other types of problems may escalate as well. Some experts fear that a recession may also give rise to more crime, child abuse, domestic violence, and substance abuse. Naturally, for the sake of the people who may be harmed by these problems, we hope they do not occur. If they do, however, these matters will demand our immediate attention.

We are resolved to do everything in our power to reduce our operating expenses while fulfilling our constitutional responsibilities to the people of Iowa. However, we must not be so focused on the present budget dilemma that we lose sight of the future. Our court system faces a host of serious issues that have long-range implications. Left unaddressed, they will only grow more onerous, and as they do, they will test the fabric of our government. We cannot afford to march in place until state revenues improve. We must ensure the fundamentals of governing our State, including the administration of justice, are strong, especially in tough times such as these.

We are frequently reminded these days that government cannot do everything. We agree. Government cannot do everything, and in times like these it cannot afford to do everything. But bear these simple truths in mind: there are some things that only government can do, and these things it must do well. Administering justice under the law equally to all people is a function that only government can fulfill. The determination of guilt and innocence, property rights and parental rights, and legal privileges and power are judgments only government can make. Administering justice is one of the reasons that government exists. If we neglect this fundamental obligation to the people, we break trust with them, and ultimately, lose their confidence. And for government, public trust and confidence is everything.

I know you have difficult decisions ahead. My goal today is to provide you with a thorough account of Iowa's court system so you have a clear picture of how your decisions will impact not only the administration of justice—but the people whose lives it affects. I will also suggest steps the judicial branch will take to address the challenges we face, as well as steps you can take to help us move forward, notwithstanding the State's financial situation.

Unmet Legal Needs

One of the most serious challenges facing Iowa's court system, indeed the nation's courts, is meeting the civil legal needs of people who cannot afford to hire a lawyer to represent them. We cannot ignore this growing problem.

Equal access to fair and impartial justice is a deep-seated tenet of our democratic society. As United States Supreme Court Justice Lewis Powell said, "Equal justice under law . . . is perhaps the most inspiring ideal of our society [I]t is fundamental that justice should be the same, in substance and availability, without regard to economic status." I believe that. I think you do too. But more and more citizens cannot access the courts, or cannot access them effectively, because they cannot afford an attorney. We have long recognized that the cost of legal representation is beyond the reach of the poor, but it is now often beyond the reach of the middle class. The end result: we have equal justice for some, but certainly not for all.

There is no single, surefire response to this particular problem. The solution will require a combination of steps by government, as well as by the legal profession. Today, I will discuss some pragmatic and reasonably achievable steps we can take to improve the situation.

Legal Service Organizations

Providing financial support to legal service organizations is the most effective way to direct legal services to the poor. These organizations serve as a lifeline for thousands of low-income Iowans who have serious civil legal problems—problems that affect their basic life needs such as shelter, income, food, and medical care. Your appropriation of state funds to legal service organizations in prior years demonstrates your commitment to this important public service. We strongly encourage you to maintain the current level of funding for legal service organizations. For obvious reasons, these services are especially critical in hard economic times.

For our part, we will step up our efforts to encourage lawyers to offer pro bono services to those who cannot afford an attorney.

Self-Represented Litigants

One way in which the courts have attempted to address the civil legal needs of our citizens is by making it easier for people to navigate through the courts on their own. For different reasons, but primarily for financial ones, many people go it alone in court without the help of an attorney, especially in family law cases. This development is a nationwide trend that has accelerated in the past decade. We do not have any statistics to measure this trend in Iowa, but we know that last year more than 32,000 people served as their own lawyers in the Nebraska courts. We believe Iowa's experience is comparable.

In recent years, we have adopted relatively easy-to-use standard legal forms and hope to develop more. Even so, standard legal forms alone are not enough to effectively meet the needs of self-represented litigants. Ideally, we would like to provide services like those used by courts in other states such as self-help centers in courthouses, self-help hotlines, online how-to videos and live-chat email services. These examples are just some of the ways we can serve the needs of our citizens who

represent themselves in court. If and when we find the resources to enable us to provide these new services, the payback for Iowans will be immeasurable.

New Strategies for Civil Litigation

Another access-to-justice issue arises from the cumbersome and costly process for litigating common civil disputes, such as contract claims, personal injury lawsuits, malpractice claims, and commercial disputes. Some citizens, individuals and businesses alike, simply don't pursue valid claims because doing so costs too much and takes too long. Similarly, some persons who are sued settle claims that have no merit simply to avoid the cost of litigation. For these Iowans, the court system is not a viable option. Instead of using the courts, many would-be litigants turn to private dispute resolution where they can more easily control the timing and cost of the process. But even private mediation or arbitration is not a practical alternative for many persons who face civil legal problems. For them, the promise of justice is a luxury they cannot afford.

Why, you might be wondering, is the civil justice system costly and slow as compared to private dispute resolution? Well, first of all, courts must concentrate limited resources on priority cases such as criminal, abuse-and-neglect, and juvenile cases. Consequently, civil litigants, including those involved in family law cases, must wait in line. In addition, traditional civil legal procedures are cumbersome, and therefore, time-consuming and costly. We do not intend to stand by and do nothing. We must improve the civil justice system so it is faster, easier to use, and more affordable.

So where do we start?

Fortunately, we do not have to reinvent the wheel. Other states have taken steps that we can build upon. For example, the New York state courts use an expedited process called a summary trial. This process is a voluntary option that is structured like a traditional trial, but by agreement between the parties, the scope of discovery is limited, the length of the trial is restricted to one or two days, and relaxed rules of evidence are employed. As a result the case is resolved faster and at less expense than using traditional civil legal procedures.

Another idea that many states have used successfully is a specialized business court that handles cases involving disputes between businesses. Judges assigned to a business court are uniquely experienced

in commercial litigation. Participation by litigants is often voluntary, and such courts usually offer the option of limited discovery and a fast-track timetable. In addition to the obvious benefits, business courts bring an added bonus. Because businesses like business courts, states view them as a way to attract new business.

These two examples—summary trials and business courts—illustrate how we can make enormous improvements at little to no additional cost to taxpayers. There are many other innovative ideas that are worthy of our discussion and consideration. We do not propose a particular strategy, nor do we recommend any action by you in this regard at this time. We believe the best results will come from a thorough and comprehensive study involving all stakeholder groups. To this end, we plan to organize a statewide conference for the purpose of exploring different options, and hopefully, building consensus regarding the procedures that hold the most promise and are best suited for Iowa litigants.

Interpreters

Now I turn to another serious challenge for our courts—our struggle to serve people who are not proficient in English.

Earlier I described the difficulties self-represented litigants have trying to understand our legal system. Now imagine the difficulties for persons who do not speak or understand English. Yet, due to Iowa's increasingly diverse population, we see more and more of these people in court. Our courts have a constitutional obligation to ensure equal justice for everyone, including people who speak and understand little or no English. For this reason, the use of interpreters is an essential court service.

The essential nature of this service is reinforced by a federal law that states all agencies and courts that receive federal funds are responsible to provide access for limited English proficient persons to important services. Noncompliance may result in the loss of federal funding—something we cannot let happen.

In the past decade, the judicial branch has adopted measures to ensure that our courts use well-qualified interpreters. Still, we struggle to provide interpreters to litigants and witnesses in civil cases, interpreters in rural parts of the State, and interpreters for languages other than Spanish. Surely, we are not alone in this regard. State agencies, local governments, hospitals, school districts, and private companies throughout Iowa must struggle with this problem too.

For this reason, we propose that the State consider a comprehensive solution: a statewide language interpreter center that pools and coordinates interpreter resources. Having a central point of service can better meet demands for different languages, enhance quality control, match interpreter qualifications to different jobs, and regulate costs through economies of scale. The fact that the State's financial resources are limited is only more reason that the State should explore this collaborative solution—perhaps, through a legislative interim study committee. By pooling our experiences and our resources, however limited, we can surely accomplish more than we do with each governmental entity and private business struggling to address this issue on their own.

Juveniles

Now I shift to some of the courts' most important work—our work with troubled juveniles. Each year, our juvenile court officers, staff, and judges work closely with thousands of troubled children and teens. When working with these young people they have three goals—to ensure community safety, hold young offenders accountable, and teach them how to change their ways. As I told you last year, we urgently need more juvenile court officers and support staff to strengthen our work with these young people. This need is urgent because a relatively new federal law requires that our juvenile court officers visit youths in out-of-home placements and the parents of these young people more often. A similar requirement applies to DHS and children under its care. Obviously, our juvenile court officers have only so much time in a day. We have shifted some resources to address part of this need, but we must have more staff to fully comply with this federal mandate.

Noncompliance threatens the availability of federal funds—valuable resources Iowa cannot afford to lose.

Drug Courts

Another challenge we face is age-old—the impact of substance abuse on our society. Alcohol abuse and drug addiction are often the root of juvenile delinquency, adult criminal behavior, child abuse and neglect, and other problems that damage individuals, destroy families and hurt communities. We know because we struggle with these problems in our courts every day.

As I reported to you last year, we have achieved good results with drug courts. Experience shows that, when compared with offenders handled in the traditional way, drug court participants are more inclined to follow through with their treatment. Successful treatment in turn increases the odds these people will not commit more crimes.

Iowa currently has 15 drug courts, including family drug courts and juvenile drug courts. Drug courts are labor intensive. A recent Iowa time study shows that a judge-centered drug court uses as much as twelve times more judge time than the traditional criminal process. We would like to expand the number of drug courts in Iowa to benefit more people and more communities. However, absent federal funding, expansion efforts will wait until we have more resources.

Resources

Of course the most immediate and significant challenge before us is the current fiscal situation.

We will do our part to help you reduce the State's operating expenses. Honestly, though, our options for cost cutting are quite limited. Our resources are spread painfully thin due to the lasting and cumulative effects of the budget cuts in the first part of this decade. Many cost-saving measures we adopted then are still in place today. Because labor costs constitute 96% of our operating budget, it is impossible to significantly reduce our expenses without cutting personnel. Depending on the size of the cut you impose on the judicial branch, in all likelihood we will have to institute furloughs to reduce expenses this fiscal year.

You may wonder: why furloughs rather than layoffs? Our workforce today is nearly 7% smaller than it was in Fiscal Year 2000 when we had substantial layoffs. Further staff reduction through layoffs would cripple our ability to fulfill our constitutional responsibilities. We learned from our

previous budget-cutting experience that furlough days scattered throughout the year will do the least amount of harm to the public, now and in the long run. It's that simple.

That is not to say, however, that furloughs will not impact our citizens. Quite the contrary: furlough days will cause gaps in services such as forwarding child support payments to parents, updating criminal case history and fine payment data used by state and local agencies, and sending copies of orders and notices of hearings to litigants and law enforcement agencies. Cases, in particular civil cases, will have to wait. Some businesses that depend on court records will experience delays. There is simply no way around these problems.

There is another side of the revenue picture I wish to discuss—our efforts to collect unpaid court fines and fees—a matter of particular importance today. We work with allied agencies and local officials to find ways to keep the pressure on people who do not pay their court-imposed fines and fees. We produce solid results using procedures such as contempt hearings, computer-generated noticing, income tax offset, and vehicle registration renewal stops. We collect a sizable amount with the help of the centralized collections unit, revenue and finance, county auditors, and county attorneys. Despite these diligent efforts, however, millions of dollars of fines and fees remain unpaid.

We know we can improve our efforts to collect unpaid fines. We are in the process of implementing the statutory changes you approved last year, and that should help. But let me be frank. Putting a good idea down on paper is one thing; making it into a working reality is another. Complex changes to our database and operating procedures take time and money, so we would appreciate your patience as we tackle this difficult task. I assure you, though, that we are ever mindful of the importance of the effective enforcement of fines and fees, and we are determined to strengthen our efforts within the limits of our resources. For us, this problem is more than a matter of revenue; it is a matter of the integrity of our court orders.

But as John Adams said, "Facts are stubborn things." And the fact is that many of the people who owe these debts are poor. In fact, 22% of all unpaid court debt springs from the cost of providing state-paid legal representation to indigent defendants, who by definition have no money to pay. So, in reality, even the most forceful measures to collect these debts will never produce a windfall.

Renovation, Innovation, and Reallocation

Up to this point, I have described a number of serious challenges we must address sooner rather than later to meet the demands of our changing society. As I have acknowledged, many of the solutions to these challenges require resources. We know that in the current environment new resources are out of the question. We are confident, however, that we can address some of these challenges without additional funds. We can do so using a three-pronged approach: updating, innovating, and reallocating. We must update our long-established court structure and procedures to achieve maximum efficiency. We must use technology in innovative ways to lower the cost of performing routine, labor-intensive business processes. And we must shift existing resources to meet the new challenges we face. Mind you, we cannot accomplish all of these goals in one session or even in one year, but we can accomplish them in due time if we all set our minds to it.

Updating Court Structure and Procedures

With the exception of our use of information technology, we are working with a trial court structure that is outdated in many respects. At best, much of the way we process our cases is right out of the 1970s, in some respects out of the 1870s. Nonetheless, we believe there are improvements that can be made to update our court system so it can better address modern day realities.

Before I mention some of our proposals for improvement, I want to address an issue that has come up in the past and will likely come up again in the face of the State's current financial situation and that is the possibility of consolidation: consolidation of clerks offices, consolidation of trial courts, and consolidation of judicial districts. The suggestions that we propose and that I intend to discuss with you this morning do not include plans for any sort of consolidation. The omission of this topic is not meant to imply that we believe it is not worthy of examination. Nor do we suggest consolidation is a good idea. We simply do not want to spend precious time on a concept that you are not prepared to consider, and in the past, you have acted to prevent any movement toward consolidating court operations.

Times like these demand action, so we intend to concentrate our time and efforts on change that is realistically achievable. We hope to work with you to implement a number of commonsense proposals that will enhance the efficiency and effectiveness of the court system without additional resources, without disruption of services, and without delay.

Streamlining Procedures, Eliminating Obsolete Tasks

Streamlining the procedures our clerk-of-court offices must perform is absolutely essential. Clerks are the pulse of our court system. They touch and move nearly everything we do. In addition, their workflow directly affects the work of other government agencies and offices, including the Department of Corrections, the Department of Transportation, the Department of Public Safety, and the Department of Human Services.

Over the years, we have boasted about the efficiency and effectiveness of our statewide court information database. This database contains a myriad of information that we use and that we push to state and local agencies. This database is the source of information the public sees on our popular online court records service. Now, I'm going to let you in on a secret: the information in this database does not get there by magic; our clerks manually enter every single detail. They must enter this information promptly and accurately. At the same time, they must perform hundreds of other duties, most of which are required by statute. The capacity of our clerk-of-court offices is stretched to the limit, and we cannot realistically expect them to do more work without either adding more staff or reducing their workload. Because adding more staff is not in the cards right now, we must find ways to streamline and reduce their workload.

We know of a number of statutes that require clerks of court to perform obsolete and cumbersome tasks. There are probably others out there yet to be identified. We propose to amend some of these statutes and to eliminate others. On the surface, some of these changes may appear inconsequential, but please remember—even the smallest improvements have the capacity for a large impact.

Judges

Judges are another important resource. We propose a number of changes to modernize our use and assignment of judicial officers, so we can make the most of their time.

Before I share those ideas, I want to make you aware that with the assistance of the National Center for State Courts, the judicial branch recently updated its judicial officer formula. We use this formula to gauge the number of judges we need to handle Iowa's caseload. The formula shows that the amount of time judges spend on certain types of cases has grown significantly in the past nine

years. The best example of this fact is the growth in time judges must devote to sex offender cases. So, although our caseload has recently dropped somewhat, Iowa needs more judicial officers. Notwithstanding this need, we are not asking for more judges this year because of the State's budget situation.

With your help, however, we can do more with the judges we have. For starters, it is time to update the statutory scheme for selecting and assigning district associate judges. This judicial position is the offshoot of the municipal courts and police courts of old. In the 1970s, Iowa changed these judgeships into the position of district associate judge. Over the years, you have expanded the case jurisdiction and duties of these judges, but by statute their geographical jurisdiction and selection method remain unchanged. We believe that the geographical jurisdiction and method of selecting district associate judges should reflect their expanded role and the importance of their work. Their jurisdiction should be district-wide, and their selection should involve the district nominating commissions. These improvements will increase the pool of qualified applicants for these judgeships and improve our ability to prudently manage our judicial resources. We know you cannot provide the courts with more judges, but you can pass legislation to give us the management flexibility we need to more effectively use our current judicial resources.

Magistrates

Now I turn to another type of judicial officer—part-time judicial magistrates. Our magistrates play a key role in the delivery of justice in Iowa. They handle procedures that require urgent judicial attention such as search and arrest warrants and emergency hospitalization matters. They preside over thousands of everyday lawsuits such as small claims, landlord-tenant cases, simple misdemeanors, and traffic offenses. Our magistrate system has remained unchanged in many respects since its inception in the mid-1970s. We have a number of proposals that will modernize our judicial magistrate structure, which in turn will improve the delivery of judicial services across the state, and most particularly, in the rural areas of Iowa.

Last year, I told you of the special task force we created to examine Iowa's judicial magistrate structure. I am pleased to announce that the task force submitted its report last month. This valuable report is thorough and insightful. I want to recognize and thank the members of our task force, many of whom are here today. I want to specially mention and thank the talented chair of our

task force—Cedar Falls attorney and former state senator, Donald Redfern. We are grateful for his capable leadership on this important study.

After comprehensive examination and thorough analysis, the task force concluded that while magistrates throughout the state are doing a very good job, there are significant problems with the current system. Among the problems identified by the task force are substantial disparities in workloads among magistrates, even though each magistrate receives the same amount of compensation, a very limited pool of qualified applicants in some counties, an increase in the complexity of civil and criminal laws within the jurisdiction of magistrates, and significant quality-of-life problems that diminish job satisfaction. These problems, the task force concluded, will become a greater challenge in the future if not addressed now.

The task force made sensible proposals for legislation and other measures to improve Iowa's magistrate system. For the sake of time, I will only mention some of the recommendations that require legislative action, including the following proposals:

- Require that a magistrate must be an attorney licensed in Iowa, but make an exception for current non-lawyer magistrates.
- Allow a magistrate position in one county to be filled by a lawyer living in a contiguous county.
- Authorize the creation of a full-time magistrate position through the conversion of two part-time positions.
- Eliminate the requirement that each county have a resident magistrate or judge, but require that magistrate court be held regularly in every county.

Your approval of these recommendations along with the recommendations we intend to adopt will bring about important improvements. Moreover, we ask for no additional funding to implement them. These recommendations give you the chance to improve the delivery of court services to local communities, even in these difficult economic times. Please do not pass up this opportunity.

Other Legislation

We have many other recommendations for legislation that we think will improve the operation of the courts, but time does not allow me to mention them all. Let me just say that they are all important and will improve the delivery of court services in our state. They merit your approval.

Innovation: Leverage Technology

And finally, I want to mention the potential of innovation through the use of technology. In the long run, information technology holds great promise for increasing our efficiency and productivity. By automating labor-intensive, routine manual processes, we can shift tight resources to meet public demand; and in particular, to address the challenges I mentioned previously. Leveraging technology is a smart approach for taxpayers.

In the past twenty years, we have changed and expanded the meaning of access to Iowa's court system through the use of information technology. We have also made extensive use of information technology to more efficiently and effectively exchange data with state and local government agencies, to eliminate unnecessary duplication of effort, and to conserve state resources. Now we are poised to do even more.

At long last we are ready to implement electronic filing and document management. This system is being designed as I speak, and this summer we will test the system in two counties, and later, in the appellate courts. As I have said before, this technology will revolutionize the way our courts do business. It is a case-processing tool that will make us more efficient and productive. It will improve access to court records. It may eventually allow clerk-of-court staff to focus their time on other important duties, such as data quality assurance, fine collections, working with the public, and assisting self-represented litigants.

This technology offers other important benefits. For one thing, it will eventually eliminate the need for vast storage space for court records. Counties will appreciate this benefit because right now they have the burden of providing this space. Also, this technology will greatly improve document safety because electronic documents can be easily backed up and stored in a safe location. We cannot afford another devastating loss such as the one we experienced in Linn County this summer when flood waters rose well beyond predictions and inundated the first floor of the courthouse. Although our judges and court employees worked frantically to move these records to a safe place, they could not anticipate the 500-year flood. We lost files in more than half a million cases!

We are confident there are other ways to leverage technology to make our court operations run more efficiently and affordably. We promise to scrutinize our business procedures from top-to-bottom to identify other technological advances that have this potential.

Conclusion

As I have discussed, even before the current economic downturn, our courts were facing many serious challenges, and now the budget problem, and its potential impact on the delivery of justice to Iowans, looms large. But we face two other challenges that are no less daunting: the challenge of change and the challenge of maintaining public trust and confidence.

These days we hear a lot about the need for change. But I have enough experience to know that humans naturally resist change, even when they know it's good for them. It reminds me of a bumper sticker I recently saw: "Change is good. You go first."

We stand at a crossroads. Change will come whether we want it or not. We cannot stop the sweeping forces that are transforming our society, but we do have control over our response. We can choose to shape the future or we can wait for the future to shape us and then face the consequences of our inaction.

For our part, the Iowa Judicial Branch is ready to be a catalyst for change. We are fully prepared to prudently change Iowa's court structure, procedures and services and to reallocate its resources to better meet the demands of our changing society. Because most of our structure and procedures are statutory, we cannot move forward unilaterally; we must have your support. As I have discussed, we propose a number of statutory changes required to bring about the improvements we envision, and we urge you to approve them all. With your approval,

- we can support the continued delivery of high quality justice in Iowa,
- we can ensure that a fundamental function of our democratic government stays strong, and
- we can build and maintain public confidence in our government for generations to come.

Martin Luther King once said, "The ultimate measure of a man is not where he stands in moments of comfort or convenience, but where he stands at times of challenge and controversy." Iowa has

faced challenging times before, and the bright points in our history have been when Iowa's leaders have found the vision, the courage, and the commitment to shape the future.

Let this be such a time.