

Emerging Trends and Issues

After examining the history of Iowa's courts and their current conditions, the Commission on Planning for the 21st Century turned its attention to the central focus of this project—the future of the courts. To understand the future of any institution involves the cultivation of “foresight”—the capacity to see into the future with some measure of predictability and understanding, *and* to respond effectively to what has been seen. Such a capacity runs counter to the very nature of the courts.

America's courts are reactive institutions, bound by tradition and governed by precedent. As much as the courts may influence the future in their decisions and judgments, they have little if any tradition or experience in planning for it. Yet, like virtually every other public institution in the late 20th Century, courts must necessarily cope with trends of change that are rapidly transforming our society and our system of justice. If the courts are to adapt and respond to change—even if only to maintain their traditional adjudicatory roles—they must learn to anticipate and plan for the future. This means they must try to understand what the future holds.

In order to accomplish such a task, the Commission undertook several distinct activities. First, it analyzed information on emerging trends both external and internal to the justice system. Next, it examined statistics and forecasts on court-related indicators developed by the Iowa Judicial Branch. Finally, it developed *probable* scenarios for Iowa's courts—hypothetical snapshots of the future based on such trends and forecasts. Together, these investigations revealed just how serious the potential issues facing Iowa's courts were—and pointed to potential steps that might be taken in order to create a *preferred* alternative.

ANALYZING FUTURE TRENDS AND FORECASTS

In August 1994, the same month the Commission was formed, the *American Bar Association Journal* published a sweeping analysis of the once and future state of justice in America. Entitled "Troubled Justice," this collection of articles examined major issues currently confronting the American justice system, raising the specter of what might happen to this venerable institution if such conditions were to persist.

The bottom line, the *ABA Journal* concluded, was a real and ever-widening gap between the perception of justice in America – a noble system of adjudication founded on such basic concepts as "equal access" and "due process"—and the emerging reality of justice—a beleaguered case-processing system overwhelmed by overcrowded court dockets, increasing litigation costs and growing inequities regarding public access. According to a survey conducted for the *Journal* by the Gallup Organization, only 14 percent of Americans believed it very likely that "justice for all" could be achieved in the future.

With the specter of a looming crisis in the justice system, the *ABA Journal* articles set the tenor for the Commission's investigation of emerging trends that will shape the future of Iowa's courts. Commission teams began by scanning a wide variety of publications, articles and reports for key "external" trends—larger demographic, economic, technological, governmental and societal forces that are reshaping the nation in general, and by extension, the state of Iowa. Key external trends identified by the Commission—some of them already in force, but all of them likely to exercise their influence well into the next century—included the following:

- Aging of the American population
- Growing racial, ethnic and cultural diversity
- Shifting population base; from rural to urban
- Increasing social problems in rural areas
- Shifting national economy; from industrial to knowledge/service base

- Globalization of the American economy
- Shrinking of the American middle class
- Exploding scientific and technological knowledge
- Growing use of information technology; computers and telecommunication
- Declining federal funding; decreasing federal entitlement programs
- Decentralization of government power and authority
- Increasing societal disintegration; breakdown of family/community values
- Restructuring of the American family
- Growing child poverty; the “feminization” of poverty
- Increasing presence of single-issue groups, cults and vigilante movements
- Accelerating pace of change in all aspects of society

Such identified trends seemed to confirm the Commission’s understanding that, as we approach a new millennium, American society is undergoing a major transformation. Direct evidence of these trends can be seen in Iowa.

Next, Commission teams scanned for key “internal” trends—major justice-specific trends that will have a direct impact on the justice system in general and the courts in particular. Drawing on reports and studies developed by the American Judicature Society, the State Justice Institute, the National Center for State Courts, and other federal and state court futures commissions, team members identified key justice-specific trends likely to have profound implications for Iowa’s courts. Key existing and emerging justice-specific trends identified by the Commission included the following:

- Increasing court caseloads
- Growing complexity of the law and court cases
- Accelerating codification of the law; more statutes and regulations
- Increasing demand for specialization of both courts and attorneys
- Growing costs of litigation

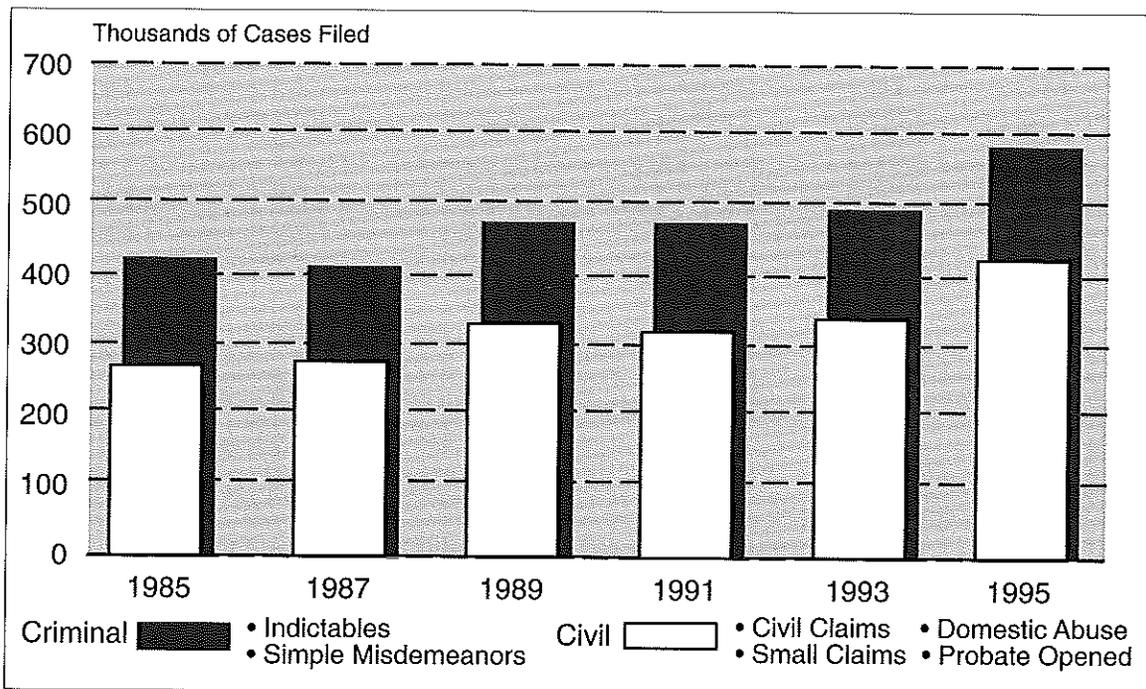
- Increasing number of cases with multiple litigants
- Increasing number of “mass tort” cases (class action suits)
- Declining respect for the rule of law
- Increasing criminal, juvenile and domestic abuse case filings
- Continuing ineffectiveness of criminal rehabilitation programs
- Rising expectations for incarceration of criminals without a corresponding increase in funds
- Overcrowding of prisons, correctional facilities and probation programs
- Growing recognition of the need for total family case management
- Rising volume of “pro se” litigation (legal self-representation)
- Rising use of alternative dispute resolution methods (ADR)
- Increasing private resolution of disputes
- Declining proportion of precedent-setting cases
- Growing “rights-based” judicial system
- Continuing non-lawyer presence in legislatures
- Increasing demands for quality justice
- Continuing shortfalls in funding for courts

In short, these justice-specific trends indicate a wave of existing and emerging issues that portend dramatic, even ominous, changes for the courts. Such trends clearly raised the question whether Iowa’s court system will be able to continue to deliver quality justice consistent with its time-honored traditions and values.

The Commission turned its attention to statistics on court caseloads and related indicators prepared by the Iowa Judicial Branch. The purpose was to see to what degree related trends in Iowa’s courts might be detected or measured. It is only in recent years that more comprehensive and reliable data on Iowa’s courts have become available. The most recent numbers reveal how much change Iowa’s courts have already undergone.

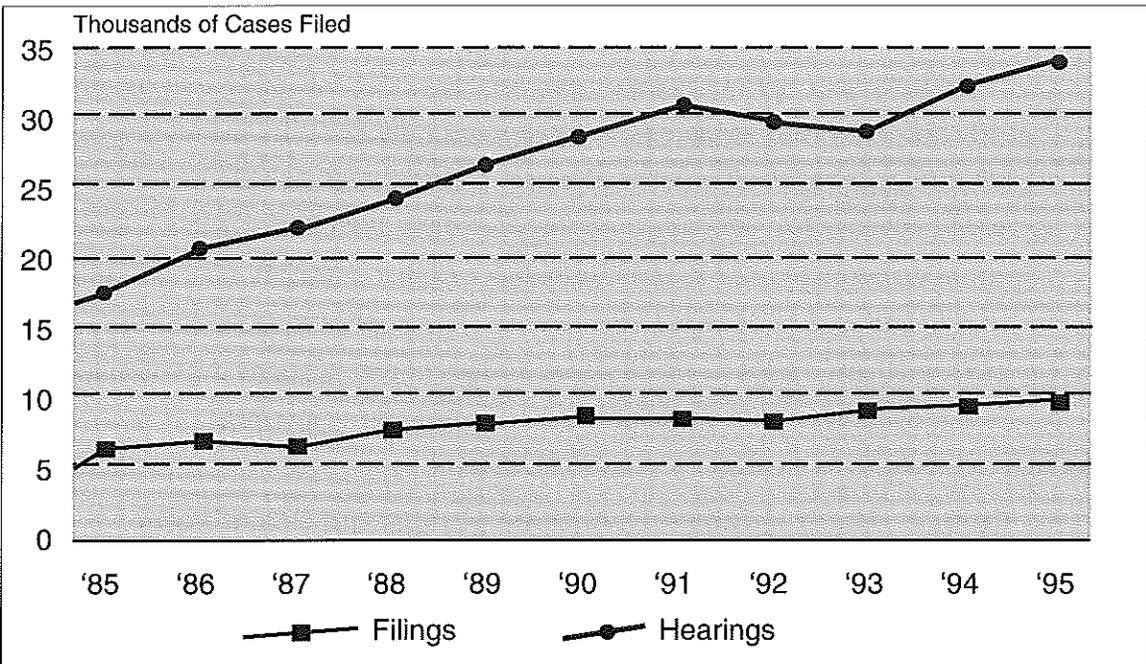
Between 1985 and 1995 there was a sustained increase in the number of filings for most major case types in Iowa's courts. Total civil and criminal cases increased substantially. (See Table 1.) Significantly, during this period the number of major criminal cases first surpassed, then steadily outpaced, the number of major civil cases. (See Table 4.) While juvenile cases increased steadily, juvenile *hearings* nearly doubled during the same time frame, revealing the increased complexity of issues confronting juvenile courts. (See Table 2.) Domestic abuse cases literally exploded, in part due to legislative changes making access to the courts easier for abuse victims. (See Table 3.) Not surprisingly, Judicial Branch statistics showed that case dispositions per judge (i.e., district court judges, district associate judges, and magistrates) also reached an all-time high during the same ten-year period.

Table 1: Civil/Criminal Filings in Iowa Trial Courts



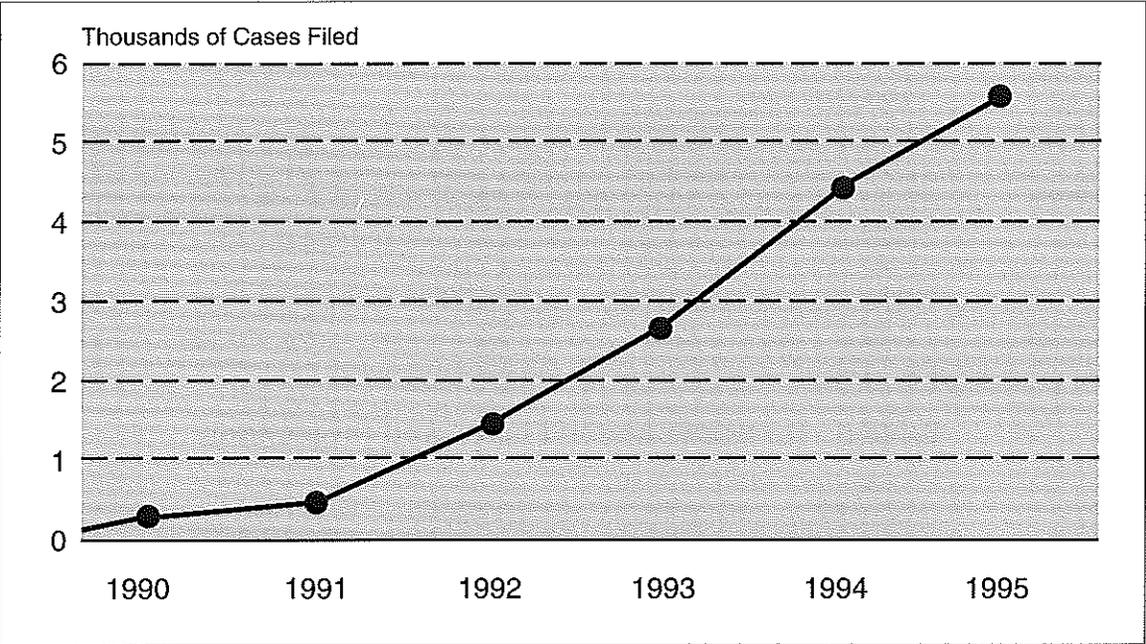
Source: State Court Administrator's Office

Table 2: Juvenile Filings and Hearings



Source: State Court Administrator's Office

Table 3: Domestic Abuse Filings



Source: State Court Administrator's Office

Of greater interest to Commission members were Judicial Branch forecasts for the future of the courts. Of course, attempting to forecast future caseloads is, at best, a complex and difficult proposition. Many factors can potentially influence the growth in court caseloads. However, assuming that the historical caseload trends of the past ten years continue on their current trajectory, the Judicial Branch's five-year forecasts reveal how the burden on the courts could increase between now and the year 2000. (See Tables 4, 5, 6.) Most dramatic would be the rising number of criminal cases, juvenile case filings and hearings, and domestic abuse cases. The implications for court funding, personnel and facilities are obvious. If the same projections were extrapolated to the year 2020, the consequences would be staggering.

Table 4: Major Criminal/Civil Case Filings and Projections

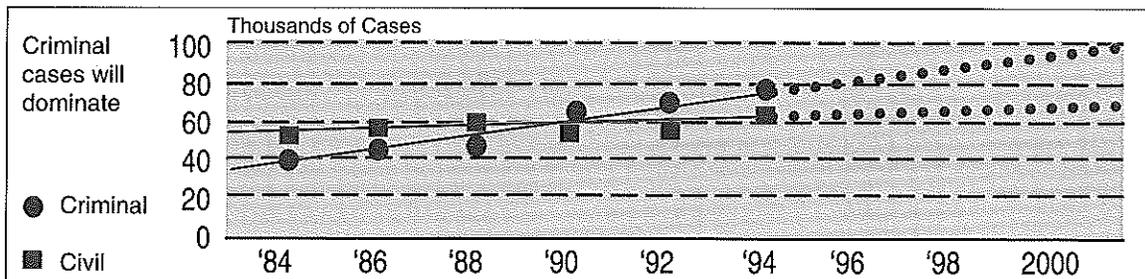


Table 5: Juvenile Filings/Hearings and Projections

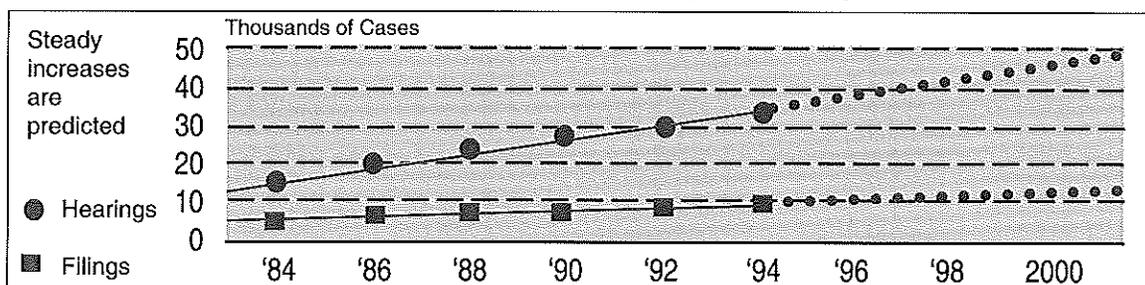
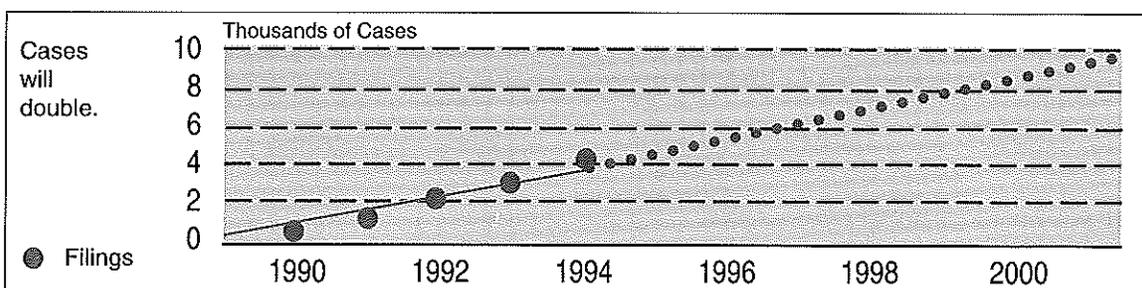


Table 6: Domestic Abuse Filings and Projections



Source: State Court Administrator's Office

A “PROBABLE” SCENARIO FOR IOWA’S COURTS

Commission teams then developed a “probable” future scenario for Iowa’s courts—that is, a picture of the future of the courts assuming (1) identified trends continue apace and (2) no significant changes in court policies, administrative procedures or overall direction. The “business-as-usual” picture of the future that resulted represents the Commission’s best guess at what Iowa’s courts might look like in the year 2020 if they continue on their current course. Among the images generated for Iowa’s courts in 2020, most were decidedly bleak:

- District court dockets overwhelmed by criminal, drug, juvenile, domestic cases
- Growing backlogs of untried cases
- Lack of space on court dockets for civil trials, especially jury trials
- Judges as case-processing “robots” and supervisors of criminal populations
- Judge and court personnel “burnout”
- Decreased quality of judicial personnel due to undesirable nature of the work
- Assembly-line justice; insufficient time for judicial deliberation
- Forced “regionalization” of court services
- Application of new technologies for efficiency purposes only
- Increased stringency of trial management practices
- Drastically reduced “discovery” in many cases
- Compromised constitutional rights of litigants
- Mandatory mediation of civil and perhaps criminal cases
- Criminal cases increasingly dismissed due to lack of speedy trials
- Fewer criminals serving time due to dismissed cases
- Increased barriers to access to courts; no public access to judges
- Exclusionary costs of litigation; decreased access to justice
- Unequal allocation of court resources statewide (urban versus rural)
- Overcrowded, inadequate court facilities

- Lack of space for court records
- Courts users and personnel in danger of increased violence
- Decreased quality of justice
- Erosion of public confidence in the courts and our democracy
- Evolution of private justice system
- Anarchy and resort to self-help; vigilante justice

The point of creating a probable scenario, of course, is not so much to predict the future as it is to predict the consequences of not acting. At the same time, it would be misleading to think that this scenario can simply or easily be averted. Indeed, major preemptive initiatives will be necessary.

"The future
is not a
gift—it's an
achievement."

—Henry
Lauder

The challenge this scenario presented to the Commission is clear: If we know where the courts may be headed and that destination is unsatisfactory, then where, instead, would we like the courts to be? More importantly, how do we get there? In short, what is our *preferred* scenario – or vision – for the courts and what must we do to make that vision a reality? These questions became the driving force behind the Commission's further investigations. The visions and recommendations that follow form its answers.



Delivery of Justice: Access and Quality

VISION STATEMENT

In the 21st Century, all Iowans have access to multiple options for the resolution of both civil and criminal disputes. A formalized case and dispute administration system managed by the courts enables the courts and participants in the justice process to select the most appropriate approach and place for the resolution of disputes. By combining different approaches and access points, the courts and all those involved in the delivery of justice have access to a matrix of dispute resolution options, each providing the degree of formality, cost, convenience, efficiency and timeliness appropriate to the situation. For example, one option may offer an abbreviated, less complicated method that saves time and money, while another may provide for in-depth exploration of issues and a more formal decision-making process.

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Taking advantage of various locations, types of facilities and technology, multi-option justice is able to bring people to the justice system, and justice to the people. It also ensures the quality of the process and the result. Delivery of justice is thus attuned to the needs of the major stakeholders in the process—court users, judges and court employees, attorneys and society at large.

RECOMMENDATIONS

MULTI-OPTION JUSTICE SYSTEM

1.1 Administer Delivery of Justice — The Judicial Branch, as an independent branch of state government, should continue to administer our system of delivery and access to justice.

Rationale: In accordance with the Constitution of the State of Iowa, the Iowa Supreme Court and our other state courts are vested with the exclusive exercise of judicial power in Iowa. The Iowa courts provide an independent and accessible forum for the fair and prompt resolution of disputes, administering justice equally to all people according to the law. In addition to these guiding principles, the courts recognize and honor other core values, including providing quality dispute resolution services, serving the interests of the public, protecting the rights of the individual, maintaining its non-partisan status, remaining accountable, and making justice affordable to all people.

- **Implementation priority:** Ongoing

1.2 Establish Multi-Option Justice System — The Judicial Branch should establish and administer multiple forms of dispute resolution as a part of the Iowa court system. In addition to traditional jury trials and court cases, this system may include, but not be limited to, mediation, arbitration, and other forms of alternative dispute resolution (ADR).

Rationale: Iowans are turning to the courts for help more now than at any other time in the state's history. The number of cases filed in the state court system has soared to an all-time high, and current projections indicate that this trend will continue into the foreseeable future. Without new initiatives or measures to relieve some of the case pressure on the courts, court users will undoubtedly encounter increased delays, escalating legal costs, greater uncertainty and diminished control in resolving their disputes. In the end, the quality of justice for all Iowans will suffer.

Due in part to these trends, citizens are beginning to seek out alternatives to traditional forms of adjudication that allow them to resolve their disputes in a less adversarial manner and in a system over which they have greater

Four out of five survey respondents say they would rather use alternative dispute resolution than go to court.

control. The Commission's public opinion survey indicates growing public interest in and desire for ADR options. Four out of five survey respondents say they would rather use ADR than go to court. At the same time, over half believe that such alternatives should be part of the formal court system.

In the future, dispute resolution may take many forms, including not only formal litigation, but also mediation, arbitration, and other non-traditional options. A "multi-option" system of dispute resolution is consistent with sound principles of judicial administration, and the core values of Iowa's courts, including fairness, accessibility, efficiency and affordability. It is also supported by developing national research and the experiences of both state and federal courts. The changing expectations and experience of Iowans and their legal counsel warrant the implementation of such a system. If legitimate extra-judicial processes of dispute resolution are not prohibited or discouraged, the public justice system will be improved and advanced.

The courts should explore alternatives to court-based resolution of disputes, and foster those programs that will best serve the needs of Iowans. Central to this recommendation would be a concerted effort by the courts to actively solicit input from various providers of alternative dispute resolution and to understand the opportunities and constraints presented by various methods. Important, too, will be the establishment of ongoing assessment efforts to identify the effectiveness of specific programs and measure user satisfaction.

- **Implementation priority:** Medium/long-term

1.3 Establish Early Assessment System — The Judicial Branch should establish an early assessment system to help citizens determine the most appropriate approaches and forums for the resolution of specific disputes.

Rationale: In order to establish a multi-option justice system, the Judicial Branch needs to develop a mechanism by which to determine the most

appropriate forums for the resolution of specific disputes. Currently, no formal system exists to direct the flow of potential cases through the courts or other dispute resolution forums in a manner that serves the best and highest interests of potential litigants, the courts and the public at large. The Iowa court system should establish and implement an “early assessment” system to help determine the most appropriate legal options and forums for resolving disputes, and encourage citizens to pursue those options. Without such a system, the backlogs and expenses currently sustained by the courts and the public at large are bound to continue growing.

As an extension of existing pretrial, discovery, scheduling and settlement conferences, the system would be administered by trained personnel according to the principles of fairness, openness, economy and practicality. Disputes would be assessed early in the judicial process, with citizens selecting the most appropriate means of resolution from a wide array of options. Use of the system would be explained through various computerized or printed information systems, but trained resource personnel also would be available, as needed.

The rights of civil litigants to trial by jury and access to the court system are recognized and preserved inviolate by the U.S. and Iowa constitutions. Although good-faith differences of opinion exist about the implementation of a multi-option justice system, the philosophical and practical validity of ADR is well-established and ought to be incorporated formally within the Iowa justice system. *Voluntary* court-annexed ADR processes will always be desirable, but courts should have the authority to explore responsible and incremental innovations with *mandatory* approaches to ADR. An early assessment system would screen out those cases and disputes that are voluntarily recognized to be inappropriate for the traditional jury trial.

- **Implementation priority:** Medium-term
- **Related recommendations:** Planning and Public Education 3.2

“The right of trial by jury shall remain inviolate Misjoinder, camoullage, or subterfuge cannot deprive the plaintiffs of this right.”

Kosman v. Thompson,
204 Iowa 1254 (1927)

1.4 Set Standards for Dispute Resolution — The Supreme Court should set standards for dispute resolution when court approval of the outcome of an alternative form of dispute resolution will be sought or required. The courts should continue to protect the rights of all persons who have not agreed to be bound by the decisions reached in alternative forms of dispute resolution.

Rationale: Today in Iowa, mediation, arbitration and other forms of ADR are unquestionably on the rise. Both the reality of overcrowded court dockets and the desire of the public to have greater control over the resolution of their disputes have furthered this growth. Many ADR practitioners are not lawyers, and that trend is expected to continue. Clearly, a new system of dispute resolution options is evolving, which leads to the question of how this new system will interface with the formal court system and what assurances will be provided that the same standards of conduct and professionalism will be applied to alternative forms of dispute resolution as are currently applied to the practice of law.

In the most optimistic scenario, alternative dispute resolution will relieve pressures on the courts and provide new, less costly and more conciliatory options for dispute resolution. In the worst case, it will lead to a patchwork system of dispute resolution that is unregulated, arbitrary and potentially inequitable. Such a system necessarily lacks the precedent and predictability commonly associated with traditional court decision making. The difference will depend on an established and accepted system for setting standards and overseeing the delivery of dispute resolution alternatives. The Judicial Branch has a keen interest in these issues.

The Judicial Branch has already begun to explore the role of the courts in overseeing dispute resolution options. For example, a Supreme Court committee is currently examining the role of lawyers in ADR and will make recommendations to the Court as to whether the Iowa Code of Professional Responsibility for Attorneys should apply to lawyers when they serve as mediators and arbitrators. In 1995 the Supreme Court funded a mediation training seminar for lawyers in the Second Judicial District, as well as mediation programs based in Ames, Davenport, Iowa City, Mason City, Waterloo.

It is the belief of this Commission that court regulation and/or oversight of private ADR is appropriate with regard to the training, qualification and certification of neutrals, the ethical responsibilities of ADR participants who are lawyers, and pro-active court rules that encourage the early identification of appropriate cases and their referral to ADR. It is also important that no private dispute resolution system make decisions that affect the rights of persons or entities who have not voluntarily consented to be bound by those decisions.

- **Implementation priority:** Short/medium/long-term

ACCESS TO JUSTICE

2.1 Provide Access Points in Every County — The Judicial Branch should provide a system of access points to core court services in every county, including information and referral to allied agencies.

Rationale: Citizen access to justice is at the heart of the Iowa court system. According to the Commission's public opinion survey, 88 percent of respondents identified "conveniently located courthouses" as an accurate description of the present system, while 57 percent felt that reducing the number of places where court services are offered is a bad idea. Clearly, Iowans want and deserve the greatest local access the system can provide.

The current system of county-owned and -operated courthouses has resulted in limited access for some Iowans. Resources are neither efficiently nor effectively allocated. In addition, some county governments are experiencing fiscal difficulties, and county support of physical court facilities may not be a priority as resources grow increasingly scarce. As technology brings changes, our existing notion of a courthouse may change as well. The demand for court services in locations other than courthouses will likely increase.

Central to this recommendation is the idea of increased, not decreased access to justice. Accordingly, every Iowa county should contain at least one and as many as needed "access points" where persons can avail themselves of court

services conveniently and efficiently. The exact form these access points may take may not be capable of definition today, and may be prompted by changes in technology and other trends. Certainly, however, the increased use of computers, fiber optics and “video-presence” can be used to bring people to the court system and bring the system to the people.

Success Story: Laptops for Judges

The Judicial Branch has purchased 103 personal computers for judges and court reporters. Many chose laptop models for the flexibility they offer to staff traveling daily from courthouse to courthouse within a judicial district. Judges report using their PCs to edit orders, compute child support, access legal research using CD-ROM technology, and craft jury instructions “on the road.”

Already, court systems in other parts of the country are beginning to experiment with such systems as computer-based “kiosks” in courthouses and other public places where people may retrieve information or conduct simple legal transactions. The rise of the “information highway”—including home computers and the “Internet”—promises to offer other new possibilities for citizens to have access to the courts in quick, simple and cost-effective ways.

Information and referral services are viewed as an important resource for the community, and are important components of the total service package the courts should offer in the future. An informed public will be better equipped to more fully avail itself of the services of the justice system, and a lack of information will be a deterrent to full access. The use of referrals may divert matters away from the court system that are more appropriately addressed by other agencies or service providers.

- **Implementation priority:** Short/medium/long-term
- **Related recommendations:** Technology 2.4, 2.5, 3.4

2.2 Explore Expanded Venue — The Judicial Branch should explore expanded venue to provide more flexible and efficient services to court users.

Rationale: In coming years, the advent of information technology and the public's desire for greater convenience and access to justice will see the authorization of such practices as statewide electronic filing. Under such a system, court users throughout the state would be able to file documents electronically from remote locations other than their local county courthouse. In addition to providing Iowans with greater access to the courts, such a system could also bring greater efficiency to the filing, docketing, and management of cases.

If county lines become to some degree artificial boundaries with little practical meaning in this application, the concept of "venue"—the geographical location in which a case is to be filed and heard—may need to be reassessed. As litigation becomes more complex and specialized, and if the need for physical courthouses decreases due to growing use of new technologies, the Judicial Branch should actively explore the concept of expanded venue to provide more flexible and efficient services to court users. As part of this effort, the use of regional litigation centers—where trials and other proceedings could be held, as needed, with state-of-the-art technology—may be considered. However, implementation of regionalized litigation should be considered only if it could provide better, more timely and more efficient service and would not pose a barrier to local access. Ultimately, the use of technology by Iowa's courts may in fact reduce or eliminate any potential need for regional litigation centers.

Implementation of regionalized litigation should be considered only if it could provide better, more timely and more efficient service.

- **Implementation priority:** Medium/long-term
- **Related recommendation:** Technology 2.5

2.3 Eliminate Barriers to Justice — The Judicial Branch should work to identify and eliminate physical, language, cultural, gender, economic and racial barriers to justice.

Rationale: The findings of the Equality in the Courts Task Force and the Commission’s public opinion survey, in which a majority of respondents felt that court procedures are often biased in favor of one side, point out a perceived need to improve access to and fairness in the Iowa court system. As Iowa’s population grows increasingly diverse, the court system should be ever-vigilant in safeguarding the rights of all participants to enjoy equal access to quality court services. The courts should continually assess their performance in these regards, and any barrier to access must be carefully scrutinized and eliminated, if possible. This may require an ongoing effort in educating, sensitizing, training, and evaluating all court personnel in maximizing access for all Iowans. Any persons who feel they have been aggrieved in this regard must have a mechanism for meaningful input.

- **Implementation priority:** Short/medium/long-term

2.4 Ensure Safety and Security — The Judicial Branch should establish and enforce measures to ensure the safety and security of participants and employees in the judicial process.

Rationale: The court system is dedicated to the peaceful resolution of disputes. An increase in violent crime, especially that involving the use of drugs and weapons, has heightened the need for the court system to maintain secure facilities. New facilities should be designed with state-of-the-art security systems in place, and those existing facilities still in use should be retrofitted with weapons and explosives screening, surveillance capability, etc. Safety protocols and other security procedures should be continually practiced and revised as needed to meet the changing safety needs of the system. All employees and users of the court system should be made aware of potential safety risks and should be educated on ways to best minimize those risks.

- **Implementation priority:** Short-term
- **Related recommendation:** Technology 3.3

2.5 Promote User Satisfaction — The Judicial Branch should promote increased user satisfaction, emphasizing professionalism, courtesy, civility and responsiveness. Judges and court personnel should be provided with appropriate opportunities for personal and professional development in these areas.

Rationale: The court system is an institution that affects the lives of all Iowans. The Commission's public opinion survey showed that nearly half the respondents had visited a county courthouse within the last three years. While most respondents thought they would be treated fairly by the courts, they also perceived the courts as giving preferential treatment to the rich and powerful. In addition, a significant number felt that the courts are too expensive, not user-friendly, and not timely in resolving cases.

The manner in which court users are treated by judges and court personnel influences not only their personal experiences, but also their perceptions of the institution as a whole. User dissatisfaction could reinforce public distrust of the justice system. As such, it is important that the courts treat users with the utmost respect, civility and responsiveness. As is seen in the private sector, a customer service orientation creates greater satisfaction among users of the system. Judges and court personnel should be provided with appropriate opportunities for personal and professional development in these areas. The Judicial Branch should encourage training, education and other programs that will promote user satisfaction.

- **Initiate implementation:** Short/medium/long-term
- **Related recommendations:** Administration 1.2., Planning and Public Education 1.4, 3.1, 3.3

QUALITY OF JUSTICE

3.1 Retain Merit Selection of Judges — The State of Iowa should retain its current system of merit selection of appellate judges and trial court judges of general jurisdiction.

Rationale: The excellence of Iowa's judicial system is in part the result of its commission-based judicial selection process for appellate judges and general

jurisdiction judges. This process, commonly known as the “Missouri Plan,” relies on nonpartisan judicial nominating commissions composed of lawyers and non-lawyers. Periodic training sessions are held for commissioners to inform them of the responsibilities of judges and the professional skills needed by members of the judiciary. After interviewing the applicants for a judgeship, each commission submits a list of nominees to the Governor, who selects an appointee from among those on the list. Judges selected under the merit system stand for a retention election one year after appointment and at regular intervals thereafter.

In Iowa, the State Judicial Nominating Commission selects nominees for the Supreme Court and Court of Appeals; District Nominating Commissions, one for each judicial election subdistrict, select nominees for district court judgeships. The lawyer members of the commissions are elected by their colleagues, whereas lay members are appointed by the Governor. The senior justice of the Supreme Court serves as the chair of the state commission, while the senior judge of each election subdistrict serves as the chair of its district commission.

The commission-based selection process is a time-proven method for choosing judges. Iowa has used it for over 30 years. Its goal is to remove from the judicial selection process the more undesirable aspects of partisan politics and to base the selection of judges on their professional qualifications. This process was established in Iowa by a constitutional amendment approved by voters in 1962. Iowa was the second state in the nation to endorse merit selection of appellate judges and all trial court judges of general jurisdiction.

- **Implementation priority:** Ongoing

3.2 Evaluate Judicial Performance — The Judicial Branch should regularly monitor and evaluate judicial performance in order to improve the quality of justice.

Rationale: Courts should discharge their responsibilities in a fair, courteous and timely manner. The current system of lawyer plebiscites and retention elections for judges provides little meaningful feedback to judges or useful

information to the public concerning judicial performance. While judges must continue to make decisions based upon legal principles and not political or even publicly popular considerations, they must do so in a manner that inspires public confidence in the judicial system. In order to ensure such public confidence, regular monitoring and evaluation of judicial performance is essential. Judicial performance standards should include the appearance of fairness, courtesy to participants, decisions rendered in a timely fashion, and related concerns.

- **Implementation priority:** Medium-term
- **Related recommendation:** Administration 3.4

3.3 Ensure Staffing and Resources — The Judicial Branch should have the staffing and resources needed to assure high-quality decision making and administration of justice.

Rationale: In order for the public to receive timely, fair and well-reasoned decisions of the disputes brought to the court system, that system must have the resources at all levels to support the decision-making process. This means adequate personnel, i.e., clerks of court, court attendants, court reporters, judicial clerks and judges, as well as sufficient court facilities, including court buildings, library access and current technology. Staffing and resources also must be sufficient to allow judges adequate time to research and write their decisions.

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A rapidly changing society is placing greater demands on Iowa's courts. This, in turn, means that additional resources are required to continue providing essential services. For its part, the Judicial Branch can and should seek new ways to deliver justice in more efficient ways that maximize judicial resources without compromising its core values. The Judicial Branch should also, whenever feasible, cease providing services not essential to the judicial process.

The Legislature should help relieve the burden on the Judicial Branch by reducing or eliminating some of its responsibilities. The Judicial Branch should assist the Legislature by providing recommendations for the elimina-

tion or change of functions not essential to the judicial process. At the same time, the Executive and Legislative branches must fulfill their responsibility to deliver stable and adequate funding for the courts, including the funding necessary to carry out new responsibilities. Without this commitment, staffing and resources will fall short, the courts will encounter greater difficulty in delivering justice, and all Iowans will suffer.

- **Implementation priority:** Short/medium/long-term
- **Related recommendations:** Funding 2.4, 3.2; Planning and Public Education 1.3, 1.5

3.4 Expand Training and Education — The Judicial Branch should expand training and educational opportunities for judges and other court employees.

Rationale: Budget limitations within the Judicial Branch currently limit the ability of judges and other court personnel to obtain training or continuing education. Aside from limited federal grant funds, there is virtually no opportunity for judges and other court employees to pursue specialized continuing education, and the future of even limited federal grants is uncertain at best. In order for the public to be provided with high-quality performance of the Judicial Branch, all of its employees must be up-to-date on the law, sensitive to the needs of an increasingly diverse population, and adequately trained to commence and perform their duties and responsibilities. Because of their unique role in dealing with the public, district court clerk's office personnel should receive ongoing training and guidance regarding their roles and the unauthorized practice of law.

- **Implementation priority:** Short/medium-term
- **Related recommendations:** Administration 3.3; Planning and Public Education 1.8

3.5 Strengthen Jury Service — The Judicial Branch should work with the Legislature to make jury service as affordable, comfortable and convenient as possible in order to enable all citizens to carry out their constitutional responsibility and right to serve as jurors. This should ensure that juries consist of a representative cross-section of the community.

Rationale: All citizens should be able to fulfill their civic duty to serve as a juror when called upon to do so. The Commission's public opinion survey found that nearly a quarter of all respondents reported having served on a jury. However, a great number of Iowans have not participated in jury service because of the inconvenience and financial hardship it imposes.

Under current law and practices, jurors receive mileage reimbursement and \$10 in compensation for each day of service or attendance. This is not adequate for the time and resources citizens expend on jury service. Jury participation is inconvenient for many citizens, including those employed on a full-time basis, and the inadequate daily compensation makes participation too costly for many, such as the self-employed or those whose employers do not pay them during jury service. Such inconveniences and hardships discourage some citizens from participating, which results in jury panels that do not accurately represent the community from which they have been drawn. It also is important that jurors' experience be as positive as it can be made to be. If the jury experience is strengthened, it will attract a more representative cross-section of the population and allow the jury system to work at its best.

- **Implementation priority:** Short/medium-term
- **Related recommendations:** Administration 2.6; Planning and Public Education 3.3

LEGAL REPRESENTATION

4.1 Support Legal Services for Indigents — The Judicial Branch should encourage increased public and private support to provide legal representation to those who cannot effectively afford legal services.

Rationale: The 1990s have demonstrated that the cost of legal representation for the poor in civil cases will not necessarily be borne entirely by the public. We encourage increased public and private funding of, together with private bar participation in, programs to serve the unmet legal needs of low-income Iowans.

In addition to better pro se (persons representing themselves) litigation programs, the Judicial Branch should cultivate broader and deeper partnerships with the private and the legal aid/poverty law bars to find more and effective ways to ensure that poverty will not be a barrier to equal access to justice. It is vital that the existing network of Legal Aid offices with experienced staff attorneys with knowledge of the legal needs of low-income people be maintained to provide direct service. This network is also critical to the coordination of the referral of cases to volunteer lawyers discussed in recommendation 4.2. There may also be a need to develop a system where the cost of the provision of legal services is made commensurate with the ability to pay. The Supreme Court may look to ways that its Commission on Lawyers Trust Accounts can obtain funding from new sources to fund programs for lawyer representation for the indigent and the working poor.

- **Implementation priority:** Short-term

4.2 Promote Expansion of Volunteer Legal Services — The Judicial Branch should encourage more lawyers to provide volunteer legal services to those who cannot afford to pay an attorney but nonetheless need counsel in order to have access to justice.

Rationale: Provision of no-fee legal services is consistent with the Iowa Code of Professional Responsibility for Attorneys. Iowa already has an excellent start to private bar involvement in pro bono programs through the volunteer

lawyer programs organized by the Legal Services Corporation of Iowa, Iowa State Bar Association and county bar associations. The court system in the 21st Century will have to be more proactive in urging members of the bar to participate in such programs. The court system should consider innovative solutions, such as the current referral system used by federal courts in Iowa, to encourage lawyer participation in providing legal services to low-income persons. Such leadership has proven effective in increasing lawyer involvement, for example, in recent efforts with some county bar associations to prosecute violations of domestic abuse protection orders.

- **Implementation priority:** Short-term

4.3 Facilitate Legal Self-Representation — The Judicial Branch should develop educational programs designed to assist persons not represented by a lawyer, and adopt state-of-the-art systems that facilitate self-representation in appropriate cases.

Rationale: The right of self-representation in legal tribunals is well-established in Iowa, as it is elsewhere. Throughout the country, pro se litigation is on the rise and seems inevitable. For some, financial necessity makes lawyers inaccessible; for others, disposable income is better spent elsewhere. Even those who embrace the right and inevitability of self-representation, however, acknowledge the problems associated with it. Litigants often do a poor job representing themselves, perhaps missing issues or controlling legal authority; they misunderstand the consequences of their lawsuits, such as the tax implications of divorce. Later litigation, at great cost, may be necessary to try to undo the harm caused by the first case.

Pro se litigation can also create burdens on already strained court systems. Pro se litigants require more time and assistance from court staff and judges than do lawyers adept at legal procedure. When court staff provide the help to unrepresented parties that due process may require, the unwary among them may fall into the trap of the unauthorized practice of law. Judges who spend more time with pro se litigants are susceptible to accusations that they have stepped out of their roles as impartial decision-makers.

Pro se litigation is a necessary corollary of a judicial system committed to equal access regardless of ability to pay.

Despite the difficulties associated with pro se litigation, a proactive court system cannot hide its head in the sand. It must anticipate that cases filed by parties representing themselves will only increase, as they have around the country. It must acknowledge that pro se litigation is a necessary corollary of a judicial system committed to equal access regardless of ability to pay. Most importantly, it must take the initiative by devising streamlined pro se programs so that the court, rather than the pro se litigant, controls the process. Such programs and procedures have already been developed to a certain extent in Iowa domestic abuse protection order cases. Model pro se programs in family law (and especially child support modification) are available in other states for Iowa's consideration. The elements of these programs include: a strong education and information component, where parties considering representing themselves in litigation are educated about the risks associated with it; uniform pleadings; neutral assistance completing the forms; and special screening and processing of cases. The court system should work with the bar to identify areas where information is needed to educate the public on pro se litigation and develop informational materials in easy-to-understand language to aid pro se litigants.

- **Implementation priority:** Medium-term
- **Related recommendation:** Technology 3.4

4.4 Define Clerk Role in Legal Self-Representation — The Judicial Branch should clearly define the role of clerks of court in aiding self-help litigants, and support this role with appropriate education and legislation.

Rationale: The Commission's focus groups clearly confirmed the fact that widespread confusion exists among Iowa's clerks of court as to their role, if any, in assisting litigants not represented by a lawyer in such areas as small claims, conservatorship and guardianship matters, collection procedures and other proceedings involving legal self-representation.

Iowa's clerks of court are justifiably concerned and afraid about their potential liability in interacting with "pro se" litigants. Unfortunately, such fear may lead to an air of tentativeness or perceived lack of responsiveness on the part of clerks in servicing the legitimate needs of these court users. The public would be much better served by clerks who are confident of their roles and unafraid of providing non-legal advice or services. Undoubtedly, job satisfaction among Iowa's clerks of court would also increase accordingly.

To this end, the Judicial Branch should clearly define the role and responsibilities of clerks of court in aiding self-help litigants. It should also develop and provide appropriate education and training for clerks as to appropriate guidelines and legal parameters of providing such assistance. Finally, it should support legislation necessary and appropriate to protect clerks of court from any liability arising from the provision of such authorized assistance.

- **Implementation priority:** Short/medium-term



SUMMARY OF TEAM RECOMMENDATIONS

TEAM RECOMMENDATIONS		IMPLEMENTATION PRIORITIES				OTHER TEAMS' RELATED RECOMMENDATIONS
		Ongoing	Short Term (1-2 yrs.)	Medium Term (3-5 yrs.)	Long Term (6+ yrs.)	
1. Multi-Option Justice						
1.1	Administer Delivery of Justice	✓				
1.2	Establish Multi-Option Justice System			✓	✓	Planning 3.2
1.3	Establish Early Assessment System			✓		Planning 3.2
1.4	Set Standards for Dispute Resolution		✓	✓	✓	
2. Access to Justice						
2.1	Provide Access Points in Every County		✓	✓	✓	Administration 2.5; Technology 2.4, 2.5, 3.2, 3.4
2.2	Explore Expanded Venue			✓	✓	Administration 2.5; Technology 2.5
2.3	Eliminate Barriers to Justice		✓	✓	✓	
2.4	Ensure Safety and Security		✓			Technology 3.3
2.5	Promote User Satisfaction		✓	✓	✓	Administration 1.2, 4.1; Planning 1.3, 3.1, 3.3
3. Quality of Justice						
3.1	Retain Merit Selection of Judges	✓				
3.2	Evaluate Judicial Performance			✓		Administration 1.1, 3.4
3.3	Ensure Staffing and Resources		✓	✓	✓	Technology 1.3; Funding 2.5, 3.2; Planning 1.2, 1.4

3.4	Expand Training and Education		✓	✓		Administration 3.3, 3.5, 3.6; Planning 1.7
3.5	Strengthen Jury Participation		✓	✓		Administration 2.6, 4.1; Planning 3.3
4. Legal Representation						
4.1	Support Legal Services for Indigents		✓			
4.2	Promote Expansion of Volunteer Legal Services		✓			
4.3	Facilitate Legal Self-Representation			✓		Technology 2.4, 3.4
4.4	Define Clerk Role in Legal Self-Representation		✓	✓		