



2022

Condition of the Judiciary

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Mr. President, Mr. Speaker, Members of the General Assembly, Governor Reynolds, Lt. Governor Gregg, state officials, colleagues, family, friends and all Iowans who are, once again, watching remotely or here in person.

Thank you for the opportunity to address this joint convention of the 89th General Assembly on the condition of the judiciary.

As introduced, I am Suzy Christensen. I continue to live in Harlan with my husband of 40 years, Jay. He is with me today as well as four of our five children and a couple of our grandchildren.

Last year, I gave my first condition of the judiciary. Not only did I mix up naming the two guys behind me...but much to my family's amusement, I messed up naming my own grandchildren. I would like to stop their ruthless teasing and fix that monumental boo boo right now: Logan, Karsyn, Connor, Emily, Jack, Levi (last year's forgotten child) and our newest addition, Grayson.

Emily Dickinson wrote, "HOPE is the thing with feathers." It's like a feathered bird forever perched in the soul of every human. You may remember that I started and ended last year's speech on the theme of HOPE. At that point, we were not yet one year into this pandemic. Emotions were swirling in every direction—frustration, anger and a paralyzing fear just to name a few. We were learning to adapt to unprecedented circumstances, and my intent was to send a positive message—to let the people of Iowa know that the judiciary did not succumb to COVID-19 and we remained open for business to ensure continued access to justice.

This year, I'd like to make PEACE the theme of my Condition of the Judiciary. It's been said that PEACE does not mean to be in a place where there is no noise, trouble or hard work. No. Peace means to be in the midst of those things and still be calm in your heart.

While leading the judiciary during a pandemic that is now entering its third year, acquiring a sense of peace has been absolutely critical for me. I'd like to share with you a story about finding peace amongst the noise, trouble and hard work that comes along with life's challenges.

I've told this story in only a couple quaint settings as a way of showing the importance of stick-to-itiveness. But it seems appropriate today for a larger audience because of the pandemic times we're experiencing and the temptation to say, "I don't want to do this anymore" when there is very important work yet to be done.

As you may know, my oldest son, Nic was diagnosed with cerebral palsy at the age of two. During adolescence, Nic's heart was full of wishes, but hands down—number one was to drive a car. Like every other kid.

So we signed him up for regular driver's ed and took him to Omaha for a special driver's ed that would help him learn to drive with hand controls. On July 13, 1998—his 16th birthday—I took him to a driver's license station outside Shelby County because our hometown office wasn't open for licensing that day.

We took a number and waited. And waited. And waited...while other people came and went. I started to smell a rat. I went to the front desk and asked, "Is there a problem?" at which time I learned they were waiting for someone to take

Nic for a test drive. I called ahead of time and was told he wouldn't have to drive. And we didn't have his car with hand controls. I whispered so Nic wouldn't hear, "May I see your supervisor?" I went into her office alone and asked why she was requiring Nic to drive. She said, "Because we can all see he's handicapped." I knew at that moment I wanted to pounce...like a lawyer. But I was there as Nic's mom. I put on my sunglasses, to hide my tears, and walked out of her office. I headed over to Nic and said, "Come on bud." He said, with his chin quivering, "Am I not getting my license today?" "No buddy, not today."

It was a painfully quiet ride on the way home. Neither one of us said a word. I knew what just happened was BIG and we needed to talk about it. So I pulled over. "Nic, are you okay with what happened back there?" He slowly shook his head no. I told him that if he was my client, I would have said more, but I didn't want to embarrass him. Nic said, "I like it when you fight for me." Okay. I was just hired. And this was the legal advice I gave my new client:

If something like this ever happens to you again, I want you to:

- (1) Say "That's not fair." Everyone knows what that means.
- (2) Ask the person, "What's your name?"
- (3) Call me.

Although Nic was very aware of his own diagnosis, cerebral palsy was *not* something our family ever talked about. It was just a normal part of our lives. But I decided to ask him something I never dared ask before. "Nic, what is the hardest part about having CP?" I made a conscientious effort to keep my mouth shut, to not answer for him. He looked straight ahead and pondered, for maybe

45 or 60 seconds. That's a *really, really* long time when you're waiting for an answer.

During that pause, my mind raced...what will he say? Maybe that he can't walk independently? Or that he talks different than everyone else? Or how about having the driver's license lady literally *crush* his dream right before his eyes? He finally turned to me and said, "I can't think of anything."

He couldn't think of *one thing* that's hard about having CP. And I was ready to fill his head with a bunch of negative things. Up to that day, we tackled one day at a time. Some of those days were unremarkable, others were a nightmare like the day he turned 16 years old. But Nic's response, "I can't think of anything" gave me a sudden and palpable sense of PEACE amidst a storm that continues to rage even today. If I ever had a doubt before—and I had many—for the first time, I *truly* believed, "We are going to get through this, Nic."

You might wonder what my story about Nic has to do with the Condition of the Judiciary. Today, as I look in the judicial branch's 2021 rear view mirror, I sense a similar feeling of PEACE in the midst of ongoing challenges.

COVID has had an abrupt and brutal impact on the judiciary. Last year, we spent most of the year trying to figure out new ways to perform basic fundamental tasks in our quest to provide Iowan's access to justice. Another year has now passed. What's different? Not only did everyone in the judicial branch get really good at handling the daily challenges that once nearly threw us under the bus, but we got stronger. We got better. And you can feel it. We are not on auto pilot, but there is certainly a sense of calmness, a sense of peace.

Each and every one of our judicial branch members has been a profile of what it takes to work effectively in a crisis and move us to this profound sense of peace within our branch. A sense of, “We can get through anything” even in the midst of this COVID storm that continues to rage.

We were also able to accomplish many great things this past year because you, our legislature, provided us with a steadier platform on which to base Iowa’s administration of justice by increasing our funding. On behalf of the entire judiciary, thank you.

Here are just a few highlights of the 2021 judicial branch accomplishments as the pandemic continued to swirl around most every aspect of our lives. These accomplishments helped to ensure all Iowans would have continued access to our judicial branch. A more detailed summary can be found in our Annual Report which was released just today.

You may recall that last year I talked about a distributive work pilot program coming out of the 1st and 4th judicial districts where work from one busier county is shared with judicial branch employees in a less busy county in the same district. Like I said then, for one county to be able to assist another county in need within the same district keeps each county relevant—no matter the size. We expanded those pilots and today, I am excited to report that all eight judicial districts have either begun distributive work processing or are in the final stages of implementing such a plan.

Something else that has had uniform application across the state involves much needed improvements in our courtrooms. When I was a trial judge, one of

the most common complaints made by jurors in virtually every trial was that they could not hear well in the courtroom. They had trouble hearing witnesses testify or lawyers make their closing arguments. The problem wasn't their hearing—it had to do with poor acoustics in big, old courtrooms. It is incredibly concerning if a juror cannot hear every word uttered during a trial.

Something pretty cool happened to address that problem. Through the use of Iowa CARES funding, new technology was installed in nearly every courthouse across the state. This technology does more than allow us to hold virtual hearings with video-conferencing. One of the bells that came with this new technology is a sound system and strategically placed microphones which enhance the ability for jurors to hear clearly. One of the whistles that came along is an evidence presentation capability which allows jurors to clearly view exhibits rather than having hard copies passed through the jury box. The benefits of this technology made available with CARES funding will be utilized by every county and certainly last years beyond COVID.

During the last Condition of the Judiciary, I detailed the steps the judicial branch has taken to ensure that all persons are treated equally before the law. I also assured you that the judicial branch would remain steadfast in its commitment in identifying and implementing tools that will assist us in becoming better public servants. In 2021, that monumental journey continued.

All Iowans should be proud that the judicial branch is taking active steps to become a leader when it comes to research and education on issues related to procedural fairness and access to justice. Given the educational investments

we've already made, the judicial branch is well-positioned to continue our role as a leader in the area of educating judges and court personnel. Of course, leadership requires making sober assessments concerning what needs are not being met.

In 2021, we recognized that in order for us to continue to properly serve the people of this great state, we need to develop a more comprehensive educational curriculum for judges and judicial branch employees. These educational opportunities would embrace a full range of adult learning. Issues related to race and disproportionality will remain critical components of our educational curriculum.

Simply put, expanding the range of educational opportunities for judicial officers and judicial branch staff will help enable the judicial branch to achieve our mission of administering justice under the law equally to all people, whether you live in Polk County or Page County.

Starting in July, and for the first time since becoming chief, I began traveling to our eight judicial districts. I wanted to personally listen to the many voices of our legal profession in this great state. I asked local lawyers and judges, "What are we doing well? What could we do better? What should I take back to Des Moines?" My sojourn took me to Dubuque, Mason City, Sioux City, Council Bluffs, Des Moines, Indianola, Cedar Rapids, Davenport, Ottumwa, Fairfield and Oskaloosa.

Speaking of Oskaloosa, Justice Waterman, Justice Oxley and I were invited to attend the Mahaska County Bar's weekly lunch. With the exception of

Thanksgiving, they have been meeting for lunch every single Thursday...since well before FDR was President of the United States. Garold Heslinga has been a card-carrying member of the Mahaska County Bar since 1948. Interesting little fact for legal nerds like myself...Mr. Heslinga was the prevailing attorney in the spring-gun case of Katko v. Briney...a staple of most every law school tort class.

Each and every town or city I visited was deeply committed to honoring the legal profession and proud to show off their stomping grounds. What I learned through these visits will equip me with a deeper understanding of what Iowan's from every corner of our state need from the judiciary to ensure access to justice.

One of the reasons I wanted to get out to the districts was because the judicial branch was beginning to plan for a post COVID-19 world. We reviewed about 30 formal COVID orders entered by our court and considered the numerous informal policies and practices that had popped up across the state. Did it make sense to simply unwind our orders in an effort to get back to normal? Maybe not. Some of the emergency changes ended up being really good changes that might not have ever happened if the pandemic hadn't forced our hand.

In an effort to evaluate what changes were made in the prior year, the Lessons Learned Task Force was established by the supreme court. I fondly refer to this as the Lemonade Task Force. The task force was made up of representatives such as court reporters, district court and state court administration, trial court and appellate judges, clerks of court, and attorneys in private practice as well as county attorneys and the state public defender's

office. They were tasked with reviewing all of the supervisory orders and making recommendations to the supreme court on rules, policies or practices that should be retained, modified or stopped.

The task force submitted its recommendations to the supreme court. After careful review of the task force's recommendations, public comments and considering the current status of the pandemic, on December 6th we entered one COVID order to replace all of the earlier orders.

This omnibus order recognizes the court system is 100 percent fully operational, but we are continuing some practices adopted on an emergency basis when the pandemic started. These practices not only keep court proceedings moving along but allow people to participate in a meaningful way without jeopardizing health or conflicting with work schedules.

Here are a few examples of what's included in the court's December 6th omnibus order which balances the need for efficiency with the value of doing business in person:

In criminal cases, the defendant does not have to appear at certain pretrial proceedings or depositions, and sentencing can go forward with parties appearing by remote video technology. Juvenile courts may conduct proceedings such as child in need of assistance and termination of parental rights by videoconference. In family law matters, courts may conduct divorce or custody trials by videoconference as needed.

It is clear from a review of the lemonade task force's recommendations that there was a heavy reliance on the significant work being done by the criminal

rules committee already in place pre-pandemic. This month the court is also approving and sending to Legislative Council a comprehensive revision of the rules governing all criminal cases in Iowa. Since the current rules came into effect nearly 44 years ago, they have undergone piecemeal amendments but no comprehensive review. In the words of Justice Mansfield who chaired the task force reviewing our criminal rules, this piecemeal approach resulted in our rules becoming somewhat “wordy, out of date and hodge-podgy.”

The comprehensive revision is the work product of a task force made up of prosecutors, judges, and defense lawyers from around the state as well as representation from Drake and Iowa law schools.

The proposed rules are streamlined and fill in some gaps where the old rules didn’t reflect what is actually being done in court. A few substantive changes are recommended by the committee, but only where there was consensus between prosecution and defense that the change would be an improvement. Many of those substantive changes are the result of lessons learned during COVID and would make permanent some of the language included in the criminal portion of our December 6th supervisory order.

Right about the time our criminal rules task force began winding down its four-year project, we threw other court rules into the hopper for review. In particular, Justice Oxley is chairing a task force charged with reviewing our rules of appellate procedure, and Justice Waterman is chairing a task force charged with reviewing our rules of evidence. I look forward to updating you on the work of those newer task forces when their reviews are completed.

You may remember last year, I announced that juvenile justice is my priority as chief. In particular, I am committed to ensuring that Iowa stands out among all the other states in implementing Family First, a federal funding bill based on the belief that kids do best with their families. I am so thrilled to stand up here today and say...we can start to check that box off.

The 4 Questions, 7 Judges program catapulted from pilot status to statewide implementation based on its proven effectiveness at cutting removals by nearly half. There is now talk about asking specific questions not only at the time of removal but at two other critical points in a child welfare case: (1) after a child is actually removed; and (2) once the family is reunited. An example of what kind of question could be asked at those critical stages came from one of our outstanding colleagues, the late Judge Colin Witt. In his courtroom, Judge Witt began asking, “Why can’t this child go home today?” The Witt Question has begun to spread across the state...perhaps it will become a pilot program of its own?

We’re not the only ones impressed by the 4 Questions program. *Street Roots* is an Oregon publication dedicated to the topic of homelessness and extreme poverty. About two months ago, an article was published called “Foster Care Shuffle.” The focus of this article was Iowa’s 4 Questions, 7 Judges program because it was showing evidence of success in reducing the number of moves for kids in foster care. Other states were encouraged to replicate Iowa’s program. And apparently that’s happening, because we continue to field calls from other states who are attempting to adopt a similar program.

And the judicial branch isn't alone in its mission to keep Iowa's children in the home, with family, whenever it can be done safely. As a part of Family First implementation, the department of human services took the lead on a review of Iowa's juvenile justice legislation found in Iowa Code Chapter 232 and proposing code changes to comply with Family First requirements. I thank DHS for beginning this conversation and I assure you that the Judicial Branch is committed to working with all stakeholders to implement Family First.

I'd like to end my speech by sharing with you something truly exciting that will be happening in the not so distant future. I think it's going to have a profound impact on Iowa's entire juvenile justice system.

In Iowa, our juvenile justice system is made up of two different kinds of judicial proceedings for children. In child welfare cases, it is the court's job to protect the child from the actions of someone else, sadly—that is usually a close family member. You may have heard of a CINA proceeding which is short for Child in Need of Assistance. In those cases, the court relies heavily on the expertise and attention of the Department of Human Services in trying to keep kids in their family home or reunite the family after they have been provided rehabilitative services.

A second kind of juvenile proceeding involves delinquency cases. In those cases, it is the court's job to protect society from the criminal acts of a child. In those types of cases, the court relies heavily on the expertise and attention of juvenile court probation officers in supervising the child and providing rehabilitative services.

Oftentimes, children are living in both of those worlds—CINA and delinquency—where the child’s parents cannot provide a safe home and the child has acted out in a way that has resulted in criminal charges being filed.

It has been almost 30 years since Iowa's juvenile justice system has had a comprehensive, holistic review. Unlike nearly every other state, our juvenile justice system is decentralized with its services, governance, funding and data collection divided among four different entities: (1) the judicial branch; (2) the department of human services; (3) the department of human rights; and (4) the department of public health.

In the past few years, stakeholders implemented various programs intended to improve the juvenile justice system from their perspective. While well intentioned, those individualized improvements oftentimes have unintended ripples throughout the system.

The Iowa Supreme Court recently established a Juvenile Justice Task Force to review the continuum of care in our juvenile justice system and make recommendations to improve services, governance, funding and data collection as well as address the system's racial and gender disparities. Task force members are made up all kinds of experts in the juvenile justice world such as service providers, law enforcement, judges, juvenile court officers, county attorneys, public defenders, private attorneys, youth and family members as well as the four state entities I mentioned earlier. Knowing that the recommendations may very well include revisions to our current laws, we are honored to have legislators on our task force as well. Thank you, Senator Cournoyer, Senator

Ragan, Representative Mohr and Representative Wessel-Kroeschell for agreeing to serve on this very important task force. The work of this task force could not be completed without staff support which is being provided by Creighton, Drake and Iowa law schools.

It is our plan to release a task force report in November of this year, so stay tuned...I'm sure it will be mentioned in next year's Condition of the Judiciary.

I promised this was the end of my speech—sharing the exciting news about the newly formed Juvenile Justice Task Force. But I'd like to add a P.S. Remember Shawn and his journey through family treatment court? In preparation for today's speech, of course I had to check in with him. I learned that he is in the process of buying his first home ever. And of course I asked him, how many days of sobriety? As of today, that number is 1,396 (4 months shy of 4 years). Shawn and his son, Rylan, are here today with Shawn's twin brother, Jason. Once again, thank you, Shawn, for allowing me to share your story of HOPE and how Iowa's judicial branch provided a path for your enduring sobriety.

In closing, I want to thank my colleagues for their commitment to our work and to the legislature for its support of our work and for giving me this opportunity to speak with you today.

As chief, I look forward to providing Iowans with a sense of PEACE that we've got this. The judicial branch will continue to block out all the noise brought on by the pandemic and stay laser focused on our steadfast commitment to ensure that each and every Iowan has meaningful access to justice.