

2008

State of the Judiciary

Marsha Ternus

*Chief Justice of the
Iowa Supreme Court*

January 16, 2008



Iowa Supreme Court

Marsha Ternus
Jerry L. Larson
Mark S. Cady
Michael J. Streit

David S. Wiggins
Daryl L. Hecht
Brent R. Appel

Iowa Court of Appeals

Rosemary S. Sackett
Terry L. Huitink
Gayle N. Vogel

Robert E. Mahan
Van D. Zimmer
John C. Miller

Anuradha Vaitheswaran
Larry Eisenhauer
David L. Baker

Chief Judges, Judicial Districts

District 1 - Alan L. Pearson
District 2 - Kurt L. Wilke
District 3 - Duane E. Hoffmeyer
District 4 - Charles L. Smith, III

District 5 - Arthur E. Gamble
District 6 - David M. Remley
District 7 - Bobbi M. Alpers
District 8 - James Q. Blomgren

State Court Administrator, David K. Boyd



Introduction

Good morning. I appreciate the warm reception and the kind invitation to once again speak with you about the state of Iowa's judiciary.

We're gathered here because by constitutional design all three branches of government contribute to the administration of justice in our great state. The role of the judicial branch is evident: to administer justice according to law, equally to all people. Your role is different, but equally important: to marshal the resources we need to fulfill this important responsibility. My annual report serves not only to inform you of our present ability to fulfill our constitutional mandate, but also to advise you of specific strategies required to meet the ever-changing needs of the people we serve.

I am pleased to say that the judicial branch is ably fulfilling its constitutional mission to the people of Iowa. This positive assessment is due in part to the resources you provide us. It is also due to the efforts of our capable judges and court employees who enable our branch of government to resolve thousands upon thousands of cases that cover the gamut of legal issues and social problems.

While I am proud of our solid performance, I am not here to take comfort in the current state of affairs. I have come here to talk about the future, in particular, two challenges that have a tremendous bearing on the future of Iowa. First, I will address the challenge of ensuring equal justice to all people. Then, I will discuss the challenge presented by the special needs of children who are in our care.

I. Equal Justice to All

The premise of equal justice to all people involves two principles: access to justice and impartial justice. Ensuring access to justice is, perhaps, one of the greatest challenges facing the future of our court system. As Iowa's population and economy change, as demands for court services grow, the courts must also change and grow to ensure that Iowans continue to have equal access to justice. There are many steps we can take to provide and facilitate access to the courts. Today, I want to discuss four issues that we, as a state, should address if we are to continue to provide meaningful access to the courts: adequate high-caliber judicial resources, electronic filing, pro se forms and language interpreters.

Judicial Resources

Judges are the driving force of our court system. Consequently, the first step in ensuring access to justice is to provide an adequate number of judicial officers who have the required intelligence and character and who have the resources and tools to perform their important role as efficiently as possible.

Part-time Magistrates

I want to first focus on our part-time county magistrates. Part-time magistrates handle procedures that require urgent judicial attention such as search and arrest warrants and emergency hospitalization matters. They also resolve thousands of everyday lawsuits such as small claims and landlord-tenant cases, and they preside over misdemeanor and traffic offenses. In many counties, the part-time magistrate is the only resident judge.

Our part-time magistrate system has remained relatively unchanged since the mid-1970s, yet during this same time our state has changed dramatically. Rising demands for mental health services, population migration, increasing numbers of drug crimes and incidents of domestic violence, more appearances by self-represented litigants, shifts in our economy, and a more diverse population are some of the changes that have affected our communities and placed different and greater demands on our courts.

We think it is time to step back and ask whether the present magistrate framework is meeting the needs of local communities for equally accessible justice and, most importantly, what improvements are required to meet these needs. The Iowa Supreme Court has assembled a broadly based task force to answer these questions. One of your former colleagues, Cedar Falls attorney Donald Redfern, has graciously agreed to lead this group. The task force also includes four legislators: Senator Keith Kreiman, Senator Larry McKibben, Representative Rick Olson and Representative Richard Anderson, as well as representatives from the judiciary, the legal community, law enforcement, and local government. In my speech to you next year, I hope to share some of the task force's recommendations for improvement of our magistrate system.

Ensuring a High-Caliber Judiciary

As I stated earlier, an important element of ensuring equal justice is a high-caliber judiciary. Thanks to the foresight of our grandparents and parents, Iowa has a judicial merit-selection system that ensures our judges are as fair and impartial as possible.

Since becoming chief justice, I have talked with many chief justices from other states who hold Iowa's judiciary in high regard. They view our bench as being one of the most capable, ethical and impartial in the nation. This good reputation is absolutely due to Iowa's merit selection system for appointing judges, which emphasizes professional qualifications above all else—and most especially, above politics. Merit selection ensures that our judges possess integrity, legal excellence, diligence and prudence—the attributes most valued in judicial officers. As a result, Iowans can be assured that their judges are highly capable and make decisions based upon legal principles, not political considerations.

All the same, the quality of our judiciary hinges on Iowa's continued ability to attract experienced and skillful lawyers to the bench, a goal that may become increasingly difficult if lawyers perceive that the pressures and demands on judges outweigh the benefits of judicial service. If this happens, the quality of justice in Iowa will surely suffer. And, over time, the consequences will expand beyond the judicial branch. At the annual meeting of the Conference of Chief Justices last summer, a top attorney for a multinational corporation spoke to the chiefs and stated that when searching for a suitable new location for offices and

plants, corporations consider, among other things, the quality of a state's court system in making this business decision. So we all have an interest in a high-caliber judiciary.

For two reasons, I am very concerned that we are at a critical juncture. As I mentioned earlier, Iowa is changing and so is the work of the judiciary. Today, the work of judges is much more stressful, demanding and complicated than it was just a decade ago. We also anticipate a large number of judges retiring over the next few years. The quality of their successors will affect the quality of justice in Iowa for the next twenty years or more. There is, however, something you can do to ensure that well-qualified attorneys continue to apply for judicial service. It is imperative that judicial compensation reflect the vital and increasingly difficult role judges play in our society. We believe the salary recommendations of the Iowa State Bar Association's Judicial Compensation Task Force achieve this important goal. You have already implemented the first and second phases of the task force recommendation. I urge you to follow through this year with the third and final phase.

Paperless Courts: Electronic Filing and Document Management

Now I want to discuss electronic filing and document management, a case-processing tool that will make judges and court employees more efficient and productive and a technology that will improve access to court records. With this technology in place, judges and court staff will be able to retrieve a full court file electronically and simultaneously review the same court file from different locations, judges will be able to review a court file from their home or office, and lawyers and litigants will be able to file and view their court files 24/7 from any location in the state.

Last year, I told you we would test this technology in two pilot counties by the end of 2007. Well, things did not turn out exactly as I had predicted. We have selected two counties, Plymouth and Story, as our pilot sites for testing this ambitious undertaking. However, we are running behind schedule due to contract negotiations with vendors. We are not concerned by this delay. Our primary goal is the construction of a system that is affordable and functional—not rigid adherence to a timetable. At this point, we hope to begin testing the system in the pilot counties later this year.

Now that we are on the verge of beginning this long-awaited change, the prospect of wide open Internet access to court records has given us pause. While broad Internet access to court records will shine even more light on the work of Iowa's courts, which we welcome and support, it will also make sensitive information about countless Iowans available to the merely curious, and worse, to identity thieves—an unwelcome by-product of the Internet that we cannot ignore and should not facilitate. Since I last spoke with you about this project a year ago, the court has received and reviewed public comments made in response to our proposed rules regulating the use of this system. The most troubling concern expressed was the potential chilling effect that unfettered public access would have on citizens using the courts. Unconstrained exposure of the details of one's personal problems that are chronicled in court records would surely discourage Iowans from using the courts, or at the very least affect what allegations are made and what evidence is introduced into the record. We cannot allow a system designed to improve the delivery of justice to operate in such a manner as to discourage access to the courts or to undermine confidence in the fairness and reliability of the court process.

For these reasons, we have scaled back our plans for remote public access to electronic court records. We intend to provide full public access to nonconfidential electronic court records only through public access terminals located in clerk of court offices. In addition, we plan to provide limited, remote online access to certain registered users who need such records to conduct their court business such as litigants and attorneys, and to government officials who need certain court records to fulfill their statutory and constitutional functions. We believe these new parameters will strike a balance between our goal of providing convenient and open access to court records and our responsibility to promote public safety and to ensure full access to the courts.

Self-Represented Litigants

Now I want to tell you of our efforts to address the needs of litigants who represent themselves in family law cases—another topic I mentioned to you last year. These efforts are quite important because they will enhance court access for thousands of Iowans who cannot afford an attorney to represent them in these often life-altering cases.

Last summer we released our first set of self-help forms, which are for use by a divorcing couple who does not have any minor or dependent children. The public's response was positive and immediate. In addition to the countless sets printed from our website, over 1000 paper sets were gone in the first month. Soon, we will make available forms for another type of family law case—forms for parents who seek to change or resist changes to their child support orders. After that our committee will tackle forms for parents who seek to change or resist changes in child custody orders. We know that these last two categories of forms are of great concern to many of your constituents, and we hope these forms will meet their need for access to the courts.

Over time we intend to offer Iowans self-help forms for a wide variety of court procedures. However, we have learned that producing an easy-to-understand legal form is not so easy. It is painstaking and time-consuming work—even for the committee of talented judges and lawyers who are developing our forms. We now realize that we need a staff lawyer who can support this monumental endeavor. This lawyer would also assist with the development and promulgation of our court rules in general. Can you imagine how your work would proceed without the aid of your talented service bureau attorneys? We hope that the relatively modest cost of a staff lawyer will meet with your approval. In this way, we will have the resources to address the growing demands of pro se and other court users.

Interpreters

In addition to the challenge posed by self-represented litigants, Iowa's courts are significantly affected by the increasing diversity of Iowa's population. A recent analysis of our statewide use of Language Line, a service to access interpreters over the telephone, identified twenty-eight foreign languages, from Albanian to Vietnamese, spoken in Iowa's courts in a recent twelve-month period. The demand for Spanish language interpreters in Polk County is high enough to justify employing a full-time Spanish interpreter just for that county! The courts have an obligation to ensure equal access for everyone before us, including those who speak and understand little or no English. Consequently, communication through the use of interpreters is an essential element of equal access to the courts.

As a general proposition, the state covers the cost of interpreters for criminal and juvenile court proceedings. But the Code does not address how, if, or by whom interpreters for litigants in most other types of cases will be paid. When these litigants do not have the financial means to pay for their own interpreter—and most do not—we pay the interpreters and absorb the expense. If we do not, the case would be delayed indefinitely. Although we tax these expenses as costs, litigants are rarely able to reimburse the state, so we end up diverting court resources from other priorities. Our district court administrators say this problem is growing. We believe an appropriation specifically for this purpose will improve the process for all concerned. Because other state offices are likely facing the same challenge, you may want to consider developing a comprehensive solution.

II. Improving the Lives of Children in the Courts

I've discussed many of the challenges we must address so we can continue to ensure equal justice to all people. Now I turn to the challenges presented by the special needs of children who are in our care—children who are abused and neglected and children who commit delinquent acts. Like you, we regard our work with children as one of the most important things we do.

Children in Foster Care

In my remarks to you last year, I talked about the plight of Iowa's most vulnerable children—children in foster care. I described our efforts to strengthen court oversight of child welfare cases so we can expeditiously find permanent, loving homes for these children. Today, I thank you for heeding our concerns, joining our efforts, and making these children one of your top priorities. You should be so proud of what you did for these children during last year's session. By working together, all three branches of government made great strides to improve results for children in foster care. Time does not permit me to list

everything we have accomplished, but among other things,

- we added and assigned more judges to preside over juvenile cases so each child has the same judge throughout the child’s involvement with juvenile court,
- the CASA program was expanded to all 99 counties, and
- we have built a strong collaborative effort that serves as a catalyst for continuous reform.

The details of our progress are included in material we will provide to you following my remarks.

These successes demonstrate our collective power to promote change and ensure a bright future for a new generation of Iowans. President Franklin D. Roosevelt once said, “We cannot always build the future for our youth, but we can build our youth for the future.” While we have accomplished a great deal towards that goal, our work on behalf of children in juvenile court has just begun.

Iowa’s Young Offenders

It is now time to focus our attention on the young people who end up in Iowa’s juvenile justice system. Unlike the violent youths who are often the subject of national news stories, most young Iowans who are referred to juvenile court services are accused of nonviolent property offenses such as shoplifting and vandalism. The good news is that the majority of these young people are one-time offenders, who are handled without intensive supervision or treatment. Nevertheless, many young people present more difficult cases. Youths who commit serious offenses and have serious problems have a greater chance for continued unlawful behavior that may eventually land them in our adult criminal justice system. And if, in the future, they end up incarcerated, their children will be more likely to end up in the same way. But thankfully, we can stop this destructive cycle for many.

Juvenile Court Services: Restorative Justice Model

Using a restorative justice model, the people who work in Iowa’s juvenile justice system help hundreds of troubled young Iowans confront their problems, change their negative behavior and forge better lives for themselves.

What is restorative justice?

Restorative justice has three goals:

- To ensure community safety
- To hold young offenders accountable, and
- To teach them how to make better decisions in the future.

To achieve these goals, Iowa's juvenile court services (JCS) uses an evidence-based, risk assessment tool that enables juvenile court officers to distinguish between youths who have a low, moderate or high risk of committing more delinquent acts. Risk factors include drug use, family conflict, truancy, poor academic performance, and a history of delinquent acts. In addition to the risk assessment, JCS assesses the underlying problems and needs of each youth.

Armed with this information, JCS provides supervision, treatment and services tailored to address the needs of a particular child. For example, we treat their drug and alcohol addiction, teach them problem solving and communication skills, treat their mental health problems, teach them how to manage their anger, and provide educational assistance. If their bad behavior is linked to family problems, we work with the parents to address their problems, improve their parenting skills, and improve their relationships with their children. At the same time, JCS emphasizes victim restitution. Restitution helps young offenders understand how their behavior affected their victims and impresses upon them the importance of making amends.

Why invest our time, resources, and energy in these young people?

As research shows—and as most parents know—teenagers have immature thought processes. Because young brains are still developing, juveniles tend to be impulsive, emotionally volatile and highly vulnerable to peer pressure. They overlook alternative courses of action and underestimate the long-range consequences of their behavior. But the same immature brains that make juveniles susceptible to misbehavior also make them good candidates for reform. The key to successful reform is finding the right response.

Now, let me be clear: Public safety always comes first. I'm not talking about using a soft glove approach on hardened juvenile delinquents, including those who end up in adult court. That said, there are many juvenile offenders who have the potential to become responsible, productive citizens if they receive the right kind of direction, structure and treatment.

In fact, studies show that using risk assessments and community-based programs reduce delinquency and help young people become law abiding citizens. Let me give you two examples of young people who overcame their problems with the help of JCS. To preserve confidentiality, I have changed their names.

Juvenile Court Success Stories

When referred to JCS, fourteen-year-old Brittany was using drugs, doing poorly in school, and regularly running away from home. After attempting to distribute prescription medication at school, the juvenile court adjudicated her as a delinquent, placed her on formal supervision, and ordered her to participate in several programs, including treatment for depression and drug and alcohol abuse. A case worker helped Brittany and her parents improve their relationship. Once Brittany's family relationships improved, other positive changes followed. Today, after many months of treatment and services, Brittany is a straight-A student, involved in extracurricular activities at school, and setting her sights on college.

Michael was an even more difficult case. He came to the attention of JCS for an assault complaint at the age of eight and, over time, gained quite a reputation as a bully and troublemaker. By the time he was seventeen, he had been referred to JCS for seventeen more complaints and had been through an array of programs. Nothing seemed to work, but JCS did not give up. Michael was placed in a 90-day highly structured group foster care program, and he finally started to make changes. When Michael eventually returned home, he began to make good decisions for himself. He stayed out of trouble, excelled academically, and participated in extracurricular activities at school. His relationships with his schoolmates improved so well that they named him homecoming king. Now Michael is working part-time and attending college.

These stories repeat themselves across Iowa, and involve young people in all economic brackets; with only a single parent or both parents at home; from suburban cul-de-sacs or inner-city neighborhoods. While preparing for my remarks, I learned of many young people who turned their lives around. I wish there was time to tell you about all of them and their achievements.

There's a common thread running through many of our success stories that I have not yet mentioned. Most of the young people who have come to my attention attribute their turn around, in large part, to one or two caring adults they encountered in the juvenile justice system. Iowa's juvenile court officers and staff, school liaisons, trackers, and other juvenile justice professionals believe in the untapped potential of these young people and in their own capacity to make a difference for most. Words cannot express the thanks we owe all the selfless men and women who work with these youths day and night. I wish it were possible today to personally recognize each and every one of them. I do want to recognize our eight chief juvenile court officers, all of whom are here today and will be available after my remarks if you wish to speak with them. Would our juvenile court officers please stand?

Of course, we do not have all the answers. Many young people don't achieve the success of Brittany and Michael, but their examples illustrate the kind of change we can help bring about with restorative justice. With your support, we can help more youths overcome their problems, realize their potential, and become productive citizens who will contribute to their communities.

Legislative Action

First, we urgently need more juvenile court officers and support staff to strengthen our oversight of troubled youths. As most of you know, our juvenile court staff is central to our successful work with these young people. They routinely meet with the youths under their supervision, attend court hearings, meet with families, work with law enforcement and school officials, and visit youths who are placed out of home. Due to a new federal law, juvenile court officers must increase the frequency of their visits with youths in out-of-home

placements and with their parents. This practice is a good one that we will follow, but realistically we must have more staff to fulfill this federal mandate.

In addition to more juvenile court officers and staff, we also need two more judges—one of whom will be used exclusively in juvenile court and another who will handle a variety of cases, including juvenile court cases. These judges will help sustain our one judge/one child policy, which is a crucial component of work with juvenile offenders, as well as with abused and neglected children.

We also urge you to provide even more funds for children who are waiting for treatment for mental health problems. I spoke to you last year about the large number of children waiting for this treatment, and you responded generously by providing funds to treat nearly 300 more children. You should feel so good about what you did for these children. I must tell you, however, that the number of children in need of mental health treatment continues to grow. Our chief juvenile court officers say that many of these children, who they describe as low-risk, high-needs children, end up in the juvenile justice system. We can change this result by treating their problems early on before they get into trouble with the law. Based upon your positive response last year, I know you share our concerns and will do what needs to be done to fund mental health treatment for our children in need.

As another improvement, we suggest a simple statutory change that would increase the potential term of a juvenile consent decree from one year to two years. A consent decree is a procedure frequently used for low-risk youths. It is analogous to a deferred judgment for adults. If a youth complies with all of the conditions of a consent decree, the court will dismiss the delinquency action, allowing the youth to avoid a delinquency adjudication. But the current one-year term for this decree is too short for youths to complete treatment for mental health problems or substance abuse. So the judgment of our juvenile court judges and officers is that our reformed youth would be greatly benefited if consent decrees could be used for two years rather than only one.

Although the judicial branch can accomplish a great deal to improve the lives and prospects of the young people who come under the umbrella of the juvenile court, we can accomplish

a great deal more with your support. I ask you to keep these young people in mind as you set your priorities this year.

Now I would like to mention one other endeavor that is making a difference for children, families and communities.

Drug Courts

Alcohol abuse and drug addiction are frequently the underlying cause of juvenile delinquency. They are also often the underlying cause of adult criminal behavior, child abuse and neglect, and many other problems that hurt families, and ultimately, communities. We know because we struggle with these problems in our courts every day.

When we deal with addicted, nonviolent offenders in the conventional way, by imposing punitive measures without motivating them to end their addiction, we are guaranteed to see them in court again and again and again. According to District Judge Thomas Bower, “The charge may be burglary, but the cause is drug addiction.” To get to the root of the problem, the judicial branch is working with others to expand the use of drug courts.

Drug courts employ a problem-solving approach that emphasizes treatment and integrates social services with consequences for noncompliance. Drug court judges retain their sanctioning role, but also actively direct and monitor an offender’s progress. Drug courts help offenders develop problem-solving skills, help motivate them to change, and help improve their compliance with probation. Experience shows that when compared with offenders handled in the traditional way, drug court participants are more inclined to follow through with their treatment. And successful treatment is the key. It reduces recidivism and improves the lives of offenders, which ultimately improves the lives of their families.

As Judge Bower, who presides over the drug court in Black Hawk County, observes, “Many of the individuals in the drug court program have victimized their family members and friends through theft and deceit. So, in addition to helping individuals end their addiction, the program helps reclaim relationships and reunite families.”

Iowa presently has ten drug courts. Most of our drug courts are designed to work with adult offenders; a few are designed to work with juveniles. I'm pleased to report that we're adding two more drug courts for adult offenders in the 6th and 8th judicial districts. We are also adding three new family drug courts and expanding two existing family drug courts with the aid of a sizable five-year federal grant. These judge-led family drug courts will emphasize treatment for meth-addicted parents with the overarching goal of helping these parents keep their families together.

Most judges who preside in our drug courts volunteered for this tough assignment. It's tough for several reasons. First, these cases are much more time-consuming than most conventional court procedures. Second, because there's less emphasis on purely legal problems and more emphasis on complex social problems, judges are required to use skills and knowledge not taught in law school. What's more, these cases are often emotionally draining. I am very grateful for the leadership and dedication of the judges who make our drug courts possible. Some of those judges are here today, and they too will be available for conversation after my remarks. Would our drug court judges please stand so we can recognize you?

Conclusion

Today, I have talked about two important challenges: ensuring equal justice for all people and addressing the special needs of children in our care. Although both primarily involve the work of the courts, their impact extends far beyond the walls of Iowa's courthouses and well into the future. Why? Because many of the problems that our courts struggle with every day affect the well-being of our communities as well as the well-being of future generations of Iowans. Naturally, other institutions deal with these matters, often before we do, but when all else fails, these problems land in the courts for us to resolve. So the work of the courts has a tremendous bearing on the future of Iowa.

This morning, I have outlined a number of steps we can take to ensure our capacity to meet both challenges. We have a court system of which all Iowans can be proud, but we must be vigilant to maintain it. Ensuring that all citizens have equal access requires the constant attention and commitment of all three branches of government. I urge you to do your part.

There is also much we can do together to address the problems of abused and neglected children and young offenders. We intend to expand the reach of our successful juvenile justice programs and drug courts and to strengthen court oversight of child dependency cases so more children, families, and communities can benefit from them. Your support of these efforts is essential.

Before I end my remarks, I want to emphasize the importance of doing all we can in this legislative session to address the special needs of children who are in our care because the work we do now will in many ways affect their future, and ultimately, the future of our communities. Let's help all our children become responsible, productive adults so future generations can build schools, not prisons.

If my words have not persuaded you, listen to the words of a real-life father, whose teenage daughter was struggling with serious problems. She was uncontrollable and defiant, abusing alcohol, stealing from a sibling, and continually running away from home. Her distressed parents eventually turned to DHS and the juvenile court for help. Last month, the father wrote to one of our judges. He says,

“[My daughter] was running away. We were putting ads in the paper asking her to call us and tell us she was okay...We think she would have committed suicide before she reached the age of 18 if we had not made contact with the [county] DHS...”

His letter goes on:

“She is now married ...with three children and doing nicely with her husband ...

This all could have ended up much differently and terrible if we hadn't followed the recommendations of [DHS] and your Court Room. [My wife] and I will always say that this is what made the difference from a tragedy to the eventual triumph.

Thanks for listening. I just wanted to go on record because though this has been more than 20 years ago, her mother and I have never forgotten that you started the action that got our family straightened out.”

The words of this father convey the importance of our work far better than I can. It is enough to say that childhood is brief and so is the window of opportunity to help these children. Consequently, the future of these children depends a great deal on what we do now—so please, let’s do all we can.