



2023 Condition of the Judiciary

Susan Larson Christensen
Chief Justice of the Iowa Supreme Court
Wednesday, January 11, 2023

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Madame President, Mr. Speaker, Members of the General Assembly, Governor Reynolds, Lt. Governor Gregg, state officials, colleagues, family, friends and all Iowans.

Thank you for the opportunity to address this joint convention of the 90th General Assembly on the condition of the judiciary.

As introduced, I am Suzy Christensen. I continue to live in Harlan with my husband of 41 years, Jay. He is with me today as well as all five of our children, one of our daughters-in-law and four of our eight grandchildren. And I'm so lucky to have Mom sitting up front, just like she used to do at my band concerts or high school plays.

I may be the face you see or the name you hear when the supreme court is being discussed, but as I've said before, I am only one of seven justices. I would like to introduce the other six members of the Iowa Supreme Court: Justices Tom Waterman, Ed Mansfield, Christopher McDonald, Dana Oxley, Matt McDermott and Dave May. I am so very fortunate to serve with each and every one of these brilliant jurists, and truly honored to be selected as their chief. Thank you, my colleagues, for entrusting me with this extraordinary responsibility.

The theme of my first state of the judiciary was hope. At that point, we were not yet one year into the pandemic. We were just 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 that we remained open for business to ensure continued access to justice.

Last year's theme was peace. While leading the judiciary during a pandemic that was entering its third year, I wanted to assure Iowans that in the midst of all the noise, trouble or hard work brought on by the pandemic, the judicial branch continued to block out all the chaos and stayed laser focused on our commitment to providing Iowans with meaningful access to justice.

This year, my theme is listening. No doubt that word has been a part of our vocabulary since childhood. With my parents, it was often preceded with my first *and middle* name, "Susan Kay—LISTEN." In the school setting, it was often accompanied with the *slap of an eraser* on the chalkboard. For some reason, telling a child to listen just rolls off our tongue. As we mature, those verbal reminders dwindle but the importance of listening grows right along with us.

In the legal profession, it has been said that justice cannot exist without listening. That makes perfect sense. How can we provide litigants an opportunity to be heard if we are not listening to what is being said?

According to an old proverb, "To speak is to sow; to listen is to reap." I may not have been raised on a farm, but for the past three years as chief, I've done a lot of sowing. I've done my best to share the judicial branch's message with key individuals in the executive and legislative branches. And of course, I've spent even more time interacting with attorneys, judges and judicial branch employees.

But for the past few months, in an effort to strengthen the judiciary, I decided it was time to reap. I traveled across the state to hear firsthand from

Iowans who cross paths with the judicial branch, and it's been a bountiful harvest.

Let me summarize just a few of those listening opportunities from 2022.

Listening Opportunities

One of the best ways for me to learn what's going on across the state is to reach out to lawyers and judges from our eight judicial districts. On short notice, I'll simply pick up the phone and call someone from one of the 99 counties. But learning is maximized when I travel to the various courthouses and attend meetings with local lawyers and judges. I was a mouse in the corner and listened to them discuss issues specific to their district, such as scheduling, courthouse security or parking.

I also listened to them discuss statewide issues, rural and urban, that demand our attention. I'd like to share two of the most compelling statewide issues that I heard about over and over.

1. Court Reporter Shortage: The first statewide issue is about court reporters. For those of you who may not have had the opportunity to watch a court reporter in action, you're missing out. It is truly an amazing skill. With a small machine that has very few keys, they softly take down every single word that is uttered during a trial. If one of the parties appeals the court's decision, witnesses don't testify again, and lawyers don't repeat their legal arguments. Instead, the court reporter transcribes her weird-looking notes into the English language and certifies that it is an accurate record. It's like the court reporter watches a "movie" and painstakingly assures each word is put into a "book" for

the appellate court to review. Without this “book,” it would be impossible for me to do my job as an appellate judge, because I no longer have a front row seat at the “movies” like I did as a trial court judge.

For the past few years, the judicial branch has become increasingly concerned about the growing imbalance between the number of court reporters retiring and the fewer number of people pursuing this incredible career. Awareness of this imbalance is creeping beyond our courtroom walls into the general public as shown by a recent news article. A quote in that article by Judge Ian Thornhill from Eastern Iowa was spot on: “This is beyond crisis mode” he said, and every week, cases must be bumped because there’s no court reporter available. Judge Thornhill, you’re right. Bumping cases on a regular basis—civil, criminal or juvenile—is unacceptable.

I want to make a statement to judges, lawyers, court reporters, judicial branch staff and all Iowans who rely on the judicial branch to resolve disputes: The Iowa Supreme Court is listening. We know how the court reporter crisis affects every aspect of the judicial process and we are committed to making it better. I hope to come back next year with proposed solutions to this crisis from the newly formed Court Reporter Utilization Committee made up of judges, court reporters and judicial staff. Stay tuned.

2. Contract Attorney Shortage: The second statewide issue is about our contract attorney shortage. Iowa has two options to fulfill our constitutional duty to provide criminal defense to those who cannot afford counsel: attorneys employed fulltime by the state public defender’s office or private attorneys who

enter into a contract with the state public defender. We call those “contract attorneys.” While the court reporter crisis is having a profound impact on our ability to move cases along and consistently provide certified reporting, the statewide contract attorney shortage is threatening to bring criminal proceedings to a screeching halt.

According to the 6th Amendment of the United States Constitution and Article I, Section 10 of our state constitution, criminal defendants have a right to counsel. This is constitutionally crystal clear. In one of the best known and most important cases from 60 years ago, *Gideon v. Wainwright*, the United States Supreme Court observed that “lawyers in criminal courts are necessities, not luxuries.”

Iowa has nearly 10,000 licensed attorneys in active status. Almost half of those attorneys are engaged in the practice of law full time. And how many of those almost 5,000 full-time, active attorneys represent indigent criminal defendants? Less than 600. That means only 12% percent of the almost 5,000 full-time, active attorneys are representing indigent criminal defendants.

Let me use Shelby County, where I was born and continue to live, to illustrate how the legal profession has changed so dramatically. During my lifetime, Shelby County’s population has hovered between 11,000 to 15,000. In 1974, my dad and grandpa were two of 19 full-time practicing attorneys. When I passed the bar in 1991, I was one of 22 full-time practicing attorneys. Today that number has been cut in half. And of those 11 active status attorneys, only

four are eligible to be contract attorneys because two are judges, one is a magistrate and four are in the office of the Shelby County Attorney.

That's just not enough attorneys to fulfill our constitutional responsibility of providing legal counsel to indigent criminal defendants when the five-year average for criminal case filings per year in Shelby County is about 225. And Shelby County is by no means unique—this is a crisis in nearly every rural and urban county in our state.

So how can we cover our constitutional bases when there are more criminal filings than available attorneys? Historically, we have relied upon local contract attorneys as well as those from other counties who are willing to make the trip. But recently, due to the severe shortage of available attorneys, chief judges across the state have had to lean on private law firms to make some of their attorneys available for appointment. How is this working out? Let me give you a few examples of real-life situations unfolding in Iowa's courts every day.

A judge from western Iowa said:

“As the appointment list gets shorter and shorter, judges have less and less ability to force criminal cases to move. We cannot afford to offend the few remaining court-appointed lawyers by pushing their cases because they can simply quit taking appointments. And they do.

Sadly, this results in our pending docket growing larger and larger over time, turning our motion days into marathons. This is a significant waste of judicial resources.”

You are correct, Judge Daane. And we must do better.

Another district court judge reported that in a three-month period, the public defender and several contract attorneys asked to be removed from appointments due to either case overload or recent changes to the public

defender's office no longer taking certain levels of offenses. Losing six contract attorneys and the public defender delayed justice for the defendants, the victims, and the community. The judge, also, noted that, in one case, an indigent defendant had five different attorneys cycle in and out within that three-month period.

As bad as it is for criminal proceedings, many judges report that the contract attorney crisis is even worse in juvenile court. In those cases, the lack of attorneys is causing delayed hearings which correlates to delayed determinations on very important issues such as a child's placement. Maybe it's time to return a child to her parents? It'll have to wait. Maybe it's time to remove a child from a dangerous situation? That, too, may very well have to wait. Either way, this crisis has a profound impact on Iowa's youth and families when we cannot hold timely hearings due to the unavailability of lawyers.

Another district court judge reported that just last week, she had a contract attorney who traveled 100 miles to her courthouse for a 9:00 hearing which required the attorney to be in person for a case involving attempted murder, first-degree arson and competency. When the hearing concluded at 10:00, she called the next judge in a different county to let him know that the same contract attorney was just leaving and would arrive about 11:30 for his scheduled 9:30 hearing, which also required him to be in person for a Class C felony sentencing. When that hearing concluded, the same contract attorney drove 90 minutes back to a third county for an in-person termination of parental rights hearing starting at 2:30 p.m. Two very serious criminal matters and one

termination of parental rights case in three different counties on the same day, all handled by one attorney.

I want you to know that judges are being proactive in their attempts to recruit contract attorneys. But this has proven to be a daunting task. For example, in Sioux City, many of our attorneys are choosing to enter into contracts with South Dakota or Nebraska instead where they are paid more than Iowa's contract attorneys.

As you can see, our federal and state constitutional obligation to provide indigent counsel is on the verge of snapping. Attorneys, judges and court administration are scrambling to try and cover bases. Something has to give.

I want to make a another statement to judges, attorneys and, most importantly, Iowans who are entitled to court-appointed counsel: The Iowa Supreme Court is listening. We are keenly aware of how the contract attorney shortage delays justice and jeopardizes the constitutional rights of indigent Iowans.

While not part of our budget, the judicial branch supports efforts to increase funding for indigent defense. This bold statement is based upon what attorneys and judges are consistently reporting across the state: One, the hourly rate should be raised if we expect attorneys to forego other work when they have significant student loans and living expenses to pay. And two, if we want attorneys to travel to represent clients in several different counties, they should be reimbursed for their travel time.

We are committed to working with other stakeholders to grow the number of contract attorneys from our base of active status attorneys. Until that day comes, we are taking immediate steps to make it easier for existing contract attorneys to make themselves available in more than one county.

For example, districts are looking into changing court service days to accommodate the scheduling needs of contract attorneys.

In addition, if contract attorneys are willing to take cases in several counties with similar motion days, it would save them a lot of driving time if some of those hearings were held remotely. This is something I heard loud and clear when I visited the different districts. In fact, it was discussed so much that we lined up a dynamic speaker for an all-judge training on the topic of remote proceedings. It was outstanding and extremely well received. If COVID taught us anything, it's that we can and should use remote technology to conduct routine, uncontested matters more than we have in the past.

We decided to put action into those words. In an effort to promote judicial uniformity and provide assurance to attorneys, our court entered a supervisory order on November 4 reminding judges that, unless otherwise provided by law, they should use their discretion on a case-by-case basis in determining whether a judicial proceeding could be held remotely as opposed to in person. We do not want any judges with hard and fast rules about whether proceedings must be held in person or must be held remotely.

Likewise, we don't want one party dictating the status of a hearing if unfair to the other or the type of hearing is deemed to be serious in nature. That

determination should be left up to the discretion of a judge. I have confidence in our judges that they will not abuse this discretion and they will make a good faith effort to hold remote hearings when it makes sense.

Juvenile Justice Task Force: Another Listening opportunity from 2022 was previewed last year. You may remember I ended my speech by announcing the formation of the Juvenile Justice Task Force to review the continuum of care in our juvenile justice system. This year, I'm excited to update you on the progress of the task force, which I co-chaired with Chad Jensen, Iowa's Director of Juvenile Court Services. Our juvenile justice system is decentralized with its:

- Services
- Governance
- Funding, and
- Data Collection

divided among three different entities:

- Judicial branch
- Department of Health and Human Services, and
- Department of Human Rights

Individuals from those three entities were included in the task force along with representatives from the following groups:

- service providers
- law enforcement
- county attorneys
- public defenders
- private attorneys
- youth and family members
- Iowa, Drake, and Creighton law schools and
- some of you in the General Assembly.

I'd like to personally thank Senators Chris Cournoyer and Amanda Ragan, as well as Representatives Gary Mohr and Beth Wessel-Kroeschell for their service on the task force.

Together, the working groups came up with about 60 recommendations to improve various areas within the juvenile justice system. These range from steps to make sure youth receive credit for schooling that they completed while they were in out of home placements to addressing the gender disparities in placement options for female juvenile offenders.

The task force members recently approved their final recommendations which will be submitted to the supreme court and made available to the public by the end of this month. In the best interest of Iowa's children, we hope you, our legislators and policy makers, will listen to the many voices included in the task force's work and consider implementation of their recommendations.

Listening Sessions with HHS Director Garcia: A third listening opportunity from 2022 is actually what helped me formulate this year's theme of listening. Kelly Garcia is the Director of Iowa's Department of Health and Human Services (HHS). She became director and I became chief shortly before COVID began. Our first interactions in 2020 were Zoom meetings to address the profound impact of a pandemic on the child welfare and juvenile justice systems.

Fast forward a year from those initial Zooms, and we were dealing with how to implement the significant legislative changes to Chapter 232, Iowa's child welfare and juvenile justice code. From the judiciary's perspective, this involved a lot of moving parts for our juvenile judges, court staff, and attorneys who

practice in juvenile court. I'm sure HHS was experiencing similar angst. Soon after we worked through the lion's share of those new legislative changes, I remarked to Director Garcia on how much progress she and I had made in understanding each other's roles in Iowa's child welfare/juvenile justice systems. At one point, I said something like, "Can we agree that MY kids are YOUR kids?" To which she paused for a moment and said, "Yes."

That is the conversation that sparked an idea to spend a summer touring this great state together. We came up with a schedule where we would meet in 11 different cities in an effort to encourage our teams to approach things from the perspective that "MY kids are YOUR kids and YOUR kids are MY kids." We wanted to listen to what people think is working well and where we have opportunities to improve.

From my home in Harlan, I drove over 3,700 miles for listening sessions in the following cities:

- Council Bluffs
- Davenport
- Sioux City
- Des Moines
- Dubuque
- Waterloo
- Cedar Rapids
- Webster City
- Storm Lake
- Burlington
- Osceola

Director Garcia and I listened to approximately 700 people from various backgrounds in the child welfare or delinquency arena, including

- Parents
- Grandparents

Foster Families
Parent Partners
CASAs (Court Appointed Special Advocates)
HHS staff
JCOs (Juvenile Court Officers)
Attorneys and
Juvenile Court Judges

I walked away from each meeting with a lot of notes and a little bit wiser about what Iowa's kids need from us.

The director and I met again after we finished our 11 listening sessions to discuss common themes and share information on what we have done to address any issues or develop a plan on how to move forward. Here are a few of those common themes:

1. Juvenile Court Services and the department should regularly meet about the kids who have one foot in the delinquency world and one foot in the child welfare world
2. The department needs to file timely reports with the court
3. Judges need to timely file orders and make a record of the hearings
4. Regarding delinquent girls, we have a lack of services and placement options
5. We are short on attorneys, especially those who will represent parents
6. There is a workforce crisis due to the high turnover in HHS and service provider staff
7. Kids need to be attending court proceedings; and
8. We need more Parent Partners

Director Garcia and I are encouraging open and honest communication between all of the stakeholders in the child welfare and juvenile justice systems because those kids are all of our kids. Our hope is that a version of these listening sessions can continue under local leadership of chief judges, HHS and JCS.

Parent Partners

Parent Partner Program: I want to go back for just a moment to the topic of Parent Partners, which was mentioned as a common theme in our listening session. As a former judge in juvenile court for eight years, I dealt with hundreds and hundreds (perhaps thousands) of parents dealing with substance abuse and/or mental health issues. No matter how many cases on my docket, and no matter how many orders I signed requiring parents to participate in treatment, my impact on effectuating change paled in comparison to the words and wisdom of a Parent Partner.

You may wonder, what is a Parent Partner? Once upon a time, they too were involved in the child welfare system and faced similar barriers and challenges such as drug addiction or domestic abuse leading to removal of their children.

I'd like to tell you about two women I met at our Listening Session in Burlington. Tachelle is an amazing woman who has a story to tell to anyone who will listen. After a 20-year history of substance abuse, she was faced head on with her addiction when HHS removed her children from her care. At that

moment, she was highly motivated to turn her life around. After she achieved sobriety and the return of her children, she started training to become a Parent Partner. And for the past five years, that is exactly what she has done—partnered with struggling parents and encouraged them to do the same.

One of those parents Tachelle helped is Jodi. Jodi is another amazing woman with a story to tell. After a 20-year history of substance abuse, she was at risk of court involvement and having her children removed due to her addiction. As a Parent Partner, Tachelle visited Jodi in jail. In a prior life, they knew each other. *Really well.* Jodi knew at that moment, “I want what you’ve got.” After achieving sobriety and then training, Jodi also became a Parent Partner. For nearly two years, she too has partnered with struggling parents and helped guide them down the road to recovery.

Achieving sobriety and learning to safely parent again is certainly one of the biggest challenges a parent faces when involved in the child welfare system because of substance abuse. But it’s an even bigger challenge to become a Parent Partner. They are perfectly situated to help others because they can say, with sincerity, “Been there, done that.” No matter how many years of experience I had as a juvenile court judge, I could never say that to a struggling parent. And that’s why Parent Partners are so incredibly valuable to the juvenile court system.

I want to thank Tachelle and Jodi, who are here today, for allowing me to share their stories with you. Of course I couldn’t help myself and had to ask,

“How many days of sobriety?” For Tachelle, that number is 2127 (over five years). For Jodi, it’s 890 (over two years).

The shared experiences that Parent Partners bring to the table are something neither HHS nor the court can provide. If you are a parent in the child welfare system, ask your worker if there is a Parent Partner available for you. If you have walked a similar walk as Tachelle and Jodi and want to help other parents, I encourage you to contact HHS and find out how you can become a Parent Partner.

Attorney Wellness

While I am on the topic of addiction, I think we can all agree that the past three years have been difficult and stressful. According to the Governor’s Office of Drug Control Policy, Iowa ranks 2nd in the country for excessive drinking. And deaths due to drug overdose hit a record high in 2021. Attorneys are not exempt from experiencing substance abuse or mental health issues. According to the Iowa Lawyer Assistance Program, lawyers abuse alcohol at a 50-80% higher rate than the general population. And many disciplinary cases involve impaired lawyers. In the most extreme cases, the supreme court may revoke the law license of impaired lawyers.

But what happens when those lawyers successfully address their addiction: Is there a path for them to return to the practice of law? Up until a few years ago, the answer was no. But for the dogged persistence of attorney

Mike Reilly, there would be no path for revoked lawyers to return to the practice of law once they achieved rehabilitation.

Just last month, our court held a reinstatement hearing for Luke Guthrie after his law license was revoked for five years due to misconduct that stemmed in large part from his substance abuse. In the five years since his license to practice law was revoked, Luke moved back to Waterloo, met his wife while he worked as a paralegal, found a great AA support group, became an elder in his church and recommitted to his love of running. Today, he has the support of his wife, their three children, and his parents.

It was a moving experience to have Luke come before our court last month to explain all that he has done to achieve and maintain sobriety, better himself, and ask for reinstatement to practice law. I'm happy to report that we reinstated Luke's law license and he immediately started practicing law again. And he renewed his contract with the State Public Defender—boy, do we need him. When I talked to Luke a few weeks ago, he told me he had spent the day visiting incarcerated clients and sharing his own struggles with them. When asked about his days of recovery, Luke immediately responded that he has 2617 days under his belt (more than seven years).

Luke is here today. Thank you, Luke, for giving me permission to share your story with all of Iowa. It has provided me with a springboard to stand up here and encourage any Iowan, especially lawyers, to seek help for substance abuse or mental health treatment

P.S. Shawn

Like I did last year, I want to add a P.S. to my speech. Remember Shawn and his journey from methamphetamine addiction to sobriety? When I recently checked in with him, I learned that he's engaged to be married. And when I asked him, "How many days of sobriety, Shawn?" As of today, that number is 1,759 (4 years, 8 months). Shawn is here with his son, Rylan. Once again, thank you Shawn, for allowing me to continue sharing your story and how Iowa's judicial branch provided a path for your enduring sobriety. You are an inspiration to many, including me.

Conclusion

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 promise to continue listening to attorneys, judges, other branches of government and, most importantly, the people of this great state in an effort to improve the judicial branch's steadfast commitment to ensure that each and every Iowan has meaningful access to justice.

Thank you.