

2021

# Condition of the Judiciary

Susan Larson Christensen  
Chief Justice of the Iowa Supreme Court

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## 2021 STATE OF THE JUDICIARY

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

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

I think we all know this is my first time to give Iowa's condition of the judiciary. Let me start by introducing myself to you. My name is Suzy Christensen. I continue to live in Harlan where I was born and raised. My high school sweetheart and husband, Jay, is with me today. Together we have five children and six grandchildren. Two of our kids are here as well, Nic, Rees and his wife Kara. My other children are Adam and his wife Erin; Sadie and her husband Derek; and our 18-year-old son, Cass. My grandchildren are Logan, Karsyn, Connor, Emily, Jack and Levi.

After high school, I received my legal secretarial diploma from AIB in Des Moines and then got married. I worked a few years as a legal secretary before starting college. I attended four different colleges in four years before returning to Harlan and commuting to Creighton Law School in Omaha. I'm used to people giving me the stink eye when they hear my educational journey—maybe it's not the path recommended by academic advisors or most parents, but it was the right path for me. Each and every decision to move, and therefore change schools, was made for the benefit of my family. That has to be the right decision.

After graduation from law school and for the next 16 years, I was an assistant county attorney and had a private law practice in Harlan. In 2007, I became a District Associate Judge where the lion's share of my work was in juvenile court. In 2015, I was appointed to the district court bench where I remained until my appointment to the Iowa Supreme Court in 2018 by Governor Reynolds.

## **Access to Justice during a Pandemic**

Throughout those years, whether as an attorney or judge, I have seen so many people walk into our courtrooms full of hope. You can see it in their eyes—hear it in their voices. Hoping they will not be convicted. Hoping they will get custody of their child. Hoping someone will listen to their story.

I always enjoyed providing comfort to those individuals by guiding them through our legal system. Perhaps they could see reassurance in my eyes? “When you get inside the courthouse, take the elevator to the third floor and I’ll meet you by the water fountain.” Or, “When it’s time to testify, project your voice and speak clearly so the court reporter can understand you.” Or, “I’ll be right next to you in the courtroom, every step of the way.”

None of that is true during a pandemic. Elevators are limited to one or two people; water fountains are disabled; court reporters are straining to understand people talking behind masks; and lawyers can’t even speak to their clients in hushed, private conversations while in the courtroom.

So exactly what *is* the “state of the judiciary”? It’s been turned on its head for almost a year. We couldn’t just shut the doors and say, “Come back when things are better.” And it’s not like people have a choice to go to court—we tend to send out something called a subpoena or summons when we want someone to show up—not invitations with an R.S.V.P.

Let me share with you how I have responded to previous challenges in my life. Our oldest son, Nic, was born with cerebral palsy. I remember a time in his young life when I was kind of feeling sorry for myself and wondering what the future held for him. I came across an ugly picture with a beautiful saying: “We cannot change the wind, but we can adjust our sails.” It may seem quite simplistic, but it grabbed my aching heart. And it caused an abrupt and permanent change in my mindset.

So if COVID is now the wind of which we cannot change, how can the judicial branch adjust its sails? A small group of individuals convened at the judicial building on Saturday March 14. Everything about that day felt strange and foreign. No one knew what we were doing, but we all agreed that within a few short days or even hours, this virus they call “COVID-19” was going to place a stranglehold on the judiciary. We had to act. And quickly.

By the end of that day, an unimaginable supervisory order was drafted. An emergency phone conference was held with the full court, and our decision was swift and unanimous. Effective that day, no more jury trials. A statement was soon released to the press that said, “Access to justice may look a little different right now, and it may require a bit more patience. But it will not succumb to COVID-19.”

For the past 305 days, we have carefully monitored the pandemic and tried our best to balance the need to keep people safe with our steadfast commitment to conduct business as necessary. And I am proud to report today, that the judicial branch did not succumb to COVID-19.

But it’s not due to that small group of individuals who met on a snowy Saturday in March. It’s because of the hard work, tenacity and sheer guts of each and every judicial branch employee. No one has said, “I won’t do it.” If time permitted, I would utter the name of each and every one of our 1700 employees and allow time for applause—between each name—as a way of showing my appreciation for what they are doing every day to keep Iowa’s judicial branch open in the most trying of times.

Let me briefly touch on some of the many changes our judiciary made to ensure that all Iowans would have continued access to our judicial branch during the pandemic.

Like most everyone else in 2020, much of our judicial branch went virtual. Thank goodness our branch had the foresight nearly 15 years ago to commence planning and implementation of an

electronic filing system so that we could go paperless. And thank goodness for you, our legislature, who has consistently helped us maintain necessary funding for our technological infrastructure.

In order to make the branch virtual, staff quickly learned to use a wide range of technology. With the help of our technology department, we were able to conduct many judicial proceedings and conferences remotely.

There may have been the occasional child talking in the background or glitches with internet service, and of course we've all learned the international sign which means "you're muted." But this technology allowed us to safely provide Iowans with the access to justice they needed during a vulnerable time.

When asked how virtual hearings were going, this is one response I received from a judge. I have to read it to you, because a summary would not suffice:

One of the benefits of virtual hearings are the pets: dogs, cats, fish, one potbellied pig, and an "inside" goat appearing during hearings. Dogs are very interested in court and they want to be heard, barking, whining crying, and they want to be seen sitting on a lap or trying to climb on top of a person. Cats not so much. Cats have no interest in Court. In fact, they have a complete disdain for the process. Usually they're hiding, but occasionally they show their contempt by laying on a keyboard or sitting in front of a webcam.

People on the front lines of our judicial branch—juvenile court officers, court administration, clerks of court, judges, court reporters, just to name a few—helped us brainstorm and imagine what kind of guidelines we must establish to ensure everyone's safety when they entered a courtroom in any of our 100 courthouses.

Upon the recommendation of our newly-formed Jumpstart Jury Trial Task Force, in June, we began making preparations to dip our toes back into the water with a few pilot jury trials. Although jury trials resumed on September 14, we had to shut them down again two months later due to an

uptick in Iowa's infection rates. But the lessons learned were immense and will be helpful when we resume jury trials once again on February 1.

I was honored to have a front-row seat (socially distanced of course) to watch a demonstration of how these Iowa jury trials could safely and efficiently unfold during a pandemic. I was blown away by what I saw. In Davenport, jury selection occurred in a large convention center. The next day, the impaneled jury met at the Scott County Courthouse to start the jury trial. In Waterloo, summoned jurors were sorted into groups for check in and told to remain in their cars until the precise time stated on their notice. And in Rockwell City, the Calhoun County Courthouse was used to pick a jury, start the trial and reach a verdict all within the same day.

All of the pilot trials included courtrooms that were COVID ready. Masks were required upon entry of our court-controlled spaces. Seating for the litigants and public was reduced to comply with social distancing. Plexiglas dividers were utilized when social distancing could not be accomplished. With these accommodations, most of the courtrooms could only hold the judge, court reporter, parties, their attorneys and the jury with other courtrooms made available to the public for remote viewing.

Upon the recommendation of our newly-formed Jump Start Family Law Trial Task Force, and in an effort to keep family law cases moving during the pandemic's stifling hold on our docket, the judicial branch approved new methods to resolve disputes by implementing informal family law trials and mediation.

In addition to our district courts, we embraced the input and assistance from other partners with a common goal of working for Iowans. For example, we worked closely with the Iowa State Association of Counties in creating individual but similar checklists to make sure Iowans were faced with consistency when they entered courthouses for county business or ventured up to another floor to engage in business with the judicial branch.

We also worked closely with the Department of Human Services to protect the health and welfare of children in the court system. When a pandemic prevents people from having contact with each other, everyone has to get creative to ensure children's safety and give families the opportunities to interact in meaningful ways.

In an effort to tap the public's input, we invited Iowans to email my senior law clerk with COVID-related questions. Some of those questions were kind of tough, like how to recalculate statute of limitations when deadlines were changed. Others were pretty easy to answer, like where to pay a parking ticket. Some emails gave us a shot in the arm by simply saying, "Hang in there." To maintain transparency and keep the public informed, we established and regularly updated a dedicated webpage about our COVID-related efforts.

I'd like to briefly tell you about a pilot program coming out of the 1<sup>st</sup> and 4<sup>th</sup> judicial districts that was actually in the works before COVID. It's called the Distributive Work Processing Pilot. The timing of this pilot could not have been more perfect considering the pandemic. Instead of looking at the workload and staffing of one county compared to another, this pilot evaluates the workload and available staff of an entire district and redistributes the work to keep things flowing evenly.

Let me give you an example. In Pottawattamie County, there are not enough employees to handle the work in a timely fashion according to a workload formula. With this pilot, and through technology, the workload of counties in the 4<sup>th</sup> district is evaluated and redistributed so that staff in any one of the other eight counties can chip in and help Pottawattamie. This is radically different than how things have historically been done—Shelby County employees performed only Shelby County work, and the same was true for all of the other counties. For one county to be able to assist another county in need within the same district, whether it's during a pandemic or otherwise, keeps each county relevant—no matter the size. That's a really good thing.

As if the pandemic isn't a big enough challenge for Iowans, on August 10 a derecho ripped across the state. Crops, houses, businesses, courthouses, neighborhoods all suffered unimaginable damage. For days—and for some people, weeks—thousands of Iowans did not have access to electrical power or water. There were even areas of the state where it was impossible for some Iowans to access their courthouse—in person or virtually because many had no internet service.

Our employees in the affected areas worked hard to keep court services available to Iowans who needed them, all while dealing with the terrible storm destruction in their personal lives. I am proud of the resourcefulness of our judges and staff and thankful for the cooperation with local officials that enabled Iowans to access the court services they needed during this difficult time.

### **Expansion of Implicit Bias Training**

During the summer of 2020, in the midst of developing a plan for resuming court operations, another national crisis emerged. As public servants, our task is as simple as it is solemn: provide justice without fear, favor or affection. Long ago, we recognized that justice does not only result from court decisions. Rather, justice is also addressed through procedures, court rules, commissions and task forces. Furthermore, over the past six years, the judicial branch dedicated itself to implementing initiatives that are designed to identify and eliminate discriminatory behaviors which may compound the disparities present in our system of justice as a whole. Chief among these initiatives is providing implicit bias training to all judicial branch employees. This training is designed to expose people to their unconscious biases and provide them with tools to adjust automatic patterns of thinking. The judicial branch remains steadfast in its commitment to becoming better public servants.

Moving into 2021, we are strengthening our efforts and starting a two-year pilot that will engage all employees within the judicial branch with the goal of mitigating implicit bias in the areas of race, gender, and other identified protected classes.

### **Priority 1: Helping Iowa's Children Remain with their Families**

When I first became chief, I was frequently asked, “What are your priorities going to be?” Since that snowy day last March, no one has asked me that question. Everyone knows the answer, and it’s become a dirty word. COVID. But when this virus is no longer my priority—and I believe that is right around the corner—I have an answer for that question.

Child welfare is profoundly important to me. You may not know this, but in my prior life I was the Cookie Judge. It was my way of connecting with children who were experiencing severe neglect, physical abuse, sexual abuse or mental health issues. These cherubs stole my heart. It became absolutely critical for me to help their parents succeed in juvenile court so that they could be safely reunited.

I have two priorities as chief, both of them related to child welfare. FFPSA is a federal funding bill and stands for Family First Prevention Services Act. The supreme court formed a task force in October of 2018 and they refer to this legislation as “Family First.” Prior to Family First, federal funding could be accessed only when a court order had been entered removing a child from his or her home. That’s wrong. Studies show that in many cases, the long-term trauma experienced by children removed from the home and into foster care may, at times, be worse than any trauma associated with staying in the home. With Family First, many Iowa families in crisis will now receive access to services sooner, before a child is removed from the home, rather than after the family is separated.

Two very important pilot projects grew out of the Family First Task Force. The State Public Defender has a pilot project, approved by our legislature that provides funding for parents to have legal representation before a juvenile case is filed. Historically, a parent was entitled to representation only after a child welfare petition was filed which is oftentimes the same time an order is entered to remove a child from his parent’s care. Think of the advice an attorney could provide for a parent to take steps that may very well prevent court involvement or removal?

A second pilot project that came out of the Family First Task Force is called “4 Questions, 7 Judges.” It is the brain child of Judge Bill Owens from Ottumwa and Judge Linnea Nicol from West Union. They asked each other, “How can we avoid removing children from their families?” They came up with 4 magical questions. Five more judges from across the state jumped on board with this pilot. More information on the four questions can be found in our [Annual Report](#) released just today.

Over a 4-month period of time, those seven judges received a combined 83 requests for removal of children. Nearly half of those requests were denied which means those children stayed home. Out of the 44 requests for removal which were granted, over half of those children were placed with either biological family or family friends. Only 15 out of 83 requests went to family foster care.

Therefore, my first priority is to ensure that Iowa stands out among all the other states in implementing Family First.

### **Priority 2: Elevate Family Treatment Courts**

My second priority is to elevate the presence of family treatment courts throughout the state of Iowa.

A modern system of justice cannot be limited to a traditional adversarial model like you see on TV. Some matters, such as child abuse and neglect, are best addressed through efforts targeting the root causes of the family’s crisis. In Iowa, we have 12 family treatment courts scattered across the state. Treatment courts give people the help they need to transition out of the justice system and into a healthier, productive life—this benefits not only the participants but our entire state.

Estimates show that since 2007, our family treatment courts have generated \$17.7 million dollars in cost avoidance for the state while allowing the strong majority of the families involved to safely stay together as the parents received treatment. In addition to keeping families intact, these treatment courts have reduced the number of young adults entering our adult prison systems and

diverted juveniles away from the criminal justice system. The bottom line is that treatment courts work.

So what does a family treatment court look like? There is a program called STEPS in Audubon and Cass Counties that I had the honor of helping get started several years ago. The STEPS team included professionals in the areas of substance abuse, mental health, domestic violence, the Department of Human Services, the county attorney's office and the child's guardian ad litem or attorney. Every other week, we met in the Cass County courthouse. Attendance was taken, phones were gathered, and each name was randomly called out.

The participants would take turns joining me up front and start off with answering the same two questions: "How many days of sobriety?" and "Tell me one thing you did since the last time we were together to be the best mom or dad you can be."

### **Importance of Hope**

I want to end my speech today on the same note as I began: HOPE.

This is the story of Shawn. I first met Shawn in 2015 because his son, Rylan, entered the child welfare system for the first time.

In 2017, Rylan became a part of the child welfare system for a second time. As the judge in Shawn's case, I would not allow Rylan to be in his father's care because he was testing positive for meth and refused to sign a safety plan. Three months later, Shawn agreed to try the STEPS family treatment program.

My first vivid memory of Shawn in STEPS was when I confronted him about yet another positive meth test. His response? "My body makes meth." I probably said something like, "I may have been born at night, but I wasn't born last night, Shawn." We went back and forth—in front of

the other STEPS participants—and I let him know that there was nothing we could do for him if he wasn't going to be honest.

Soon after Shawn started STEPS, he got a job as a machinist in Atlantic. In spite of Shawn mentioning at his interview, "I'm a meth user and trying to get my kid back," he was hired.

During this time, Shawn could not safely provide for his son so he was placed in the family foster home of John and Naomi where he lived for about a year and a half and a special bond remains today as a result of their willingness to say "yes" to being foster parents.

Shawn's mom was also an important part of his life through all this. She helped out with Rylan and provided Shawn with a place to live while he was trying to get sober. Shawn's mom was also his taxi driver for work, court hearings, STEPS meetings or anything else, since Shawn did not have a valid driver's license due to OWIs and outstanding fines.

Slowly but surely, meeting every other Wednesday, Shawn was consistently testing negative on his drug tests. He was actively involved in his local church and committed to his job.

On one particular STEPS day, when Shawn was asked, "Since we were together last time, what have you done for Rylan to be the best dad you can be?" he stood up from his chair, dug his wallet out of his pocket, and loudly announced to the entire courtroom, "For the first time in 10 years, I HAVE A VALID DRIVER'S LICENSE!" The courtroom erupted with hoots and hollers—not having a driver's license in STEPS is typically the rule...not the exception. This was a really big deal.

In January 2019, soon after I transitioned from the district court to the supreme court, Shawn graduated from STEPS. I learned through the grapevine that Rylan's court case was successfully closed out and Rylan remains in his father's care today.

For the past two years, I've often thought about Shawn. Hoping he maintained sobriety. Hoping Rylan was safe in his dad's care.

So what's been going on since that time? Shawn and I recently reconnected. It was such an eye-opening experience for me to speak with Shawn candidly about his meth addiction.

Shawn continues to work as a machinist in Atlantic. The company where he worked joined a big international company and he was soon rehired where he remains as of today.

After reconnecting with Shawn, I asked him my two questions. "Shawn—how many days have you been sober since the last time we were together?" His answer "1,031." And my second question, "Since we were last together, what have you done for Rylan to be the best dad you can be?" His answer, the same "1,031 days of sobriety." That's almost three years.

Shawn is here today with his son, Rylan; his parents, Harvey and Judy; and his two friends, Brandon and Dirk.

I could stop Shawn's story right here, and I think it would be a great story about hope. But there's more.

Two months ago, Shawn went to work like every other day. Everyone was told to meet up because Bob the Boss was coming to town. Shawn assumed he came to deliver Thanksgiving turkeys. Shawn heard Bob say something about an award that was being given out called the "Spirit of Caring Award." Bob started to talk about the recipient who was chosen out of 3,500 global employees. He said the recipient was from Griswold—Shawn's ears perked up. That's *his* hometown. As Bob provided more personal details about the mystery recipient, it dawned on Shawn that it was *him*. According to Bob, "This year's recipient is receiving this award based on the following attributes: constant positive attitude, development of personal relationships with those around him, extremely dependable and flexible." Shawn was awarded \$2500 to be donated to a charity of his choice, and he was given a crystal "Spirit of Caring Award" which he fondly refers to as his "Grammy."

Shawn shared with me that in the thick of his addiction, he truly wanted to be clean. He hoped for a better life. Through his participation in the STEPS family treatment court, he's living that better life.

Thank you, Shawn, for allowing me to share your story of hope and how Iowa's judicial branch provided a path for your outstanding achievements.

It is stories like Shawn's that continue to give me hope for the work of our judicial branch. By adapting to the unprecedented circumstances we've faced this year, we have proven that hope cannot be canceled or kept six feet away. We will continue to provide Iowans with the access to justice they need to turn their hopes into reality.

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. On behalf of the people we serve, I look forward to continuing to ensure that all Iowans have access to justice.

Thank you.