

SUPREME COURT STUDY COMMITTEE

Report to the Legislative Council
and the Members of the
First Session of the Sixty-fifth General Assembly

FINAL REPORT
OF THE
SUPREME COURT STUDY COMMITTEE

Senate Concurrent Resolution 105, adopted by the Senate and House of Representatives in the Second Regular Session of the Sixty-fourth General Assembly, requested that the Legislative Council establish a study committee to conduct a study of the structure of the Iowa Supreme Court and the need for changes in the structure or for alternative appeals courts in Iowa. The Legislative Council created a seventeen-member study committee and appointed the following legislative members:

Senator Francis L. Messerly, Temporary Chairman
Senator Lee H. Gaudineer, Jr.
Senator George F. Milligan
Senator Cloyd E. Robinson
Senator Roger J. Shaff
Representative C. Raymond Fisher
Representative Philip B. Hill
Representative Norman Jesse
Representative Richard J. Norpel, Sr.
Representative Nathan Sorg

The Legislative Council appointed the following members of the Iowa Supreme Court:

Justice Mark McCormick
Justice Harvey Uhlenhopp

The Legislative Council appointed the following citizen members:

Mrs. Lynn Chamberlin
Mr. Richard C. Grossman
Mrs. Emery J. Jackson, Jr.
Mrs. W. E. McKee
Mr. Francis Pardoe

Committee meetings were staffed by the Legislative Service Bureau. Mr. Hanson Lawton, Supreme Court Administrator, served as a special assistant to the Committee.

The Committee's organizational meeting was held on June 20, 1972, with Senator Francis L. Messerly serving as temporary chairman. The Committee elected Senator Messerly as permanent Chairman and Representative Philip B. Hill as Vice Chairman.

At the first meeting the Committee met with the Honorable C. Edwin Moore, Chief Justice, Iowa Supreme Court, and Mr. Hanson Lawton, Supreme Court Administrator. The Committee was advised of the nature and causes of the backlog in cases before the Supreme Court and of the court's plans to sit in divisions. The Committee discussed the court sitting in divisions and an alternative of establishing an intermediate court of appeals.

Additional Committee meetings were held on July 26, 1972, August 29, 1972, September 27, 1972 and October 19, 1972. At these meetings the Committee discussed various suggestions and reviewed discussion bill drafts.

During the course of its deliberations the Committee reached the following conclusions:

1. That the Supreme Court as of September 1, 1972 began to sit in two divisions of five judges and that sitting in divisions of five with authorization to sit in divisions of three should be fully pursued to determine its effect on the problem of case backlog prior to establishing an intermediate court of appeals and that an intermediate court of appeals should be considered only as a last resort if sitting in divisions and other administrative alternatives fail to solve the problem of case backlog.
2. That although the Committee found salaries of the Supreme Court judges to be inadequate it determined that consideration of salaries of Supreme Court judges was more properly within the subject matter of another committee.
3. That space now available to the Supreme Court is inadequate in area and quality to meet its needs.
4. That consideration of a hall of justice building was more properly within the subject matter of the Building and Space Needs Study Committee.
5. That the research attorney program funded through the Iowa Crime Commission has been of considerable benefit to the Supreme Court and should be continued and expanded.
6. That salaries of law clerks are not competitive with other available positions.
7. That the state judicial system is in need of continuing study and continued periodic review.
8. That the Supreme Court fees are antiquated and the court should be authorized to set its fees by rule and the rules should take effect in the same manner as Rules of Civil Procedure.
9. That it would take no action on discretionary review by the Supreme Court of misdemeanor and guilty plea convictions.

Based on its deliberations and conclusions the Committee makes the following recommendations which have been divided into administrative and legislative recommendations in order to designate those recommendations which do not require legislation:

A. Administrative Recommendations:

1. That the Supreme Court better utilize the provisions of section 605.25 which authorizes temporary service by retired judges.
2. That the Executive Council do all things necessary and proper to expedite remodeling of available space for the Supreme Court.
3. That the Supreme Court fully utilize the services of the Supreme Court administrator and his staff.

4. That continuing liaison between the judicial and legislative branches of government be established.
5. That the Chief Justice, within twenty days of the convening of the General Assembly, deliver a "state of the judiciary" message to a joint meeting of the Senate and House Judiciary Committees.
6. That the Supreme Court Administrator should prepare a monthly written report containing relevant statistical data of value to the Supreme Court concerning the Supreme Court, district courts, magistrate system or administration of justice and that the report be available on request to the Judiciary Committees and other legislators.
7. That the Supreme Court in its next budget request to the General Assembly include a special section detailing what is needed to place the physical surroundings of each justice into an atmosphere which is pleasant, comfortable, and quiet and which is conducive to long periods of concentration and that the report emphasize that these have been needs for many years.
8. That the Supreme Court immediately obtain an adequate xerox or other duplicating equipment and other modern dictating and transcribing equipment for the use of the justices, research attorneys, and law clerks.

B. Legislative Recommendations:

1. That the Appropriations Committees provide for increased salaries for Supreme Court law clerks to make the position more competitive with other available positions.
2. That a committee be established between legislative sessions to study the entire state judicial system and make recommendations to the General Assembly and that the committee include legislators, lay members, Supreme Court judges and district court judges.
3. That the Supreme Court be authorized to set its fees by rule and the rules should take effect in the same manner as Rules of Civil Procedure.
4. That the Supreme Court be authorized to sit in divisions of three or more judges rather than being limited to two divisions of five judges.
5. That the Supreme Court be authorized to temporarily assign retired supreme court judges to duties on the Supreme Court.
6. That the General Assembly pass legislation to continue and expand the research attorney program now employed by the Supreme Court.

The Legislative Service Bureau was instructed to prepare bill drafts designed to implement the legislative recommendations #3, #4, and #5. Copies of the bill drafts prepared for and approved by the Committee are attached to this Report.

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to supreme court fees.

2 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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1 Section 1. NEW SECTION. The supreme court shall by rule
2 prescribe fees for the services of the court and clerk of
3 the supreme court. The court shall account for fees as
4 provided in section twelve point ten (12.10) of the Code and
5 shall keep account of and report in a like manner all uncol-
6 lected fees.

7 Sec. 2. NEW SECTION. Rules prescribed under section one
8 (1) of this Act shall be reported to the general assembly
9 within twenty days after the commencement of a regular session
10 and shall take effect July first following the adjournment
11 of such session, with such changes, if any, as may have been
12 enacted at such session; and thereafter all laws in conflict
13 therewith shall be of no further force or effect.

14 At adjournment of the general assembly where such report
15 has been filed, an enrolled copy thereof, together with any
16 changes, shall be made in substantially the same manner as
17 Acts are enrolled. The enrolled copy shall be certified as
18 to whether or not any action was taken by the general assembly
19 and if any, what action, and thereupon it shall be filed with
20 the secretary of state and bound with the Acts of the general
21 assembly.

22 Sec. 3. Section six hundred eighty-five point three
23 (685.3), Code 1973, is repealed effective July 1, 1974.

24 EXPLANATION

25 This bill provides that the Supreme Court shall set its
26 fees by rule and the rules become effective in the same man-
27 ner as Rules of Civil Procedure.

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Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to temporary service by retired supreme court
2 judges, quorum, and divisions of the supreme court.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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1 Section 1. Section six hundred five point twenty-five
2 (605.25), Code 1973, is amended to read as follows:

3 605.25 TEMPORARY SERVICE BY RETIRED JUDGES. Judges of
4 the supreme court and district court who are hereafter retired
5 by reason of age, or who are drawing benefits under section
6 605A.6, may with their consent be assigned by the supreme
7 court to temporary judicial duties on any court in the state
8 ~~either-than~~ , however only retired supreme court judges may
9 be assigned to the supreme court and only in the case of
10 temporary absence of a member of the supreme court. No such
11 judge shall engage in the practice of law unless he shall
12 file with the clerk of the supreme court an election to
13 practice law, in which event he shall thereafter be ineligible
14 for assignment to temporary judicial duties at any time.
15 While serving under temporary assignment as herein provided,
16 a retired judge shall receive the compensation and actual
17 expense provided by law for judges on the court to which he
18 is assigned, but shall not receive any annuity payments to
19 which he may be entitled under the judicial retirement system.
20 He may be authorized in the order of assignment to appoint
21 a temporary reporter, who shall receive the compensation and
22 actual expense provided by law for a regular reporter in the
23 court to which the judge is assigned. The order of assignment
24 shall be filed in the offices of the clerks of court at the
25 places where the judge is to serve.

26 Sec. 2. Section six hundred eighty-four point one (684.1),
27 Code 1973, is amended by striking the section and inserting
28 in lieu thereof the following:

29 684.1 JUDGES--QUORUM. The supreme court shall consist
30 of nine judges. A majority of the judges sitting shall consti-
31 tute a quorum but in no case shall a quorum consist of less
32 than three judges.

33 Sec. 3. Section six hundred eighty-four point two (684.2),
34 Code 1973, is amended to read as follows:

35 684.2 ~~DIVISION-INTO-SECTIONS~~ DIVISIONS. The supreme court

1 may be divided into ~~two-sections~~ divisions of three or more
2 judges in such manner as it may by rule prescribe. Said
3 ~~sections~~ divisions may hold open court separately and cases
4 may be submitted to each ~~section~~ division separately, in
5 accordance with such rules as the court may adopt.

6 Sec. 4. Section six hundred eighty-four point three
7 (684.3), Code 1973, is amended to read as follows:

8 684.3 SUBMISSION TO ENTIRE COURT--RULES. The said supreme
9 court shall also adopt rules for the submission of any case
10 or petition for rehearing whenever differences shall arise
11 between members of ~~either-section~~ divisions or whenever the
12 chief justice shall order or direct the submission of said
13 question or petition for rehearing to the whole court. The
14 supreme court shall make all rules and regulations necessary
15 to provide for the submission of cases to the entire bench,
16 or to the separate ~~sections~~ divisions.

17 EXPLANATION

18 This bill provides for retired supreme court judges to
19 be temporarily assigned to the supreme court.

20 It also provides for divisions of three or more judges
21 and reduces the number of judges needed for a quorum in order
22 to allow for three judge divisions.

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M I N O R I T Y R E P O R T

The report of the majority falls far short of properly evaluating the problems of the Supreme Court and making proper recommendations to alleviate these problems.

A. Chief Justice Moore in his opening remarks to the Committee set forth in vivid detail the backlog of cases awaiting the court's attention. These numbered in the hundreds and are increasing each month. The court has taken several steps to increase its capabilities. However, even these steps will not be adequate to meet the present and future needs of the court. The Chief Justice noted that an intermediate court of appeals would probably have to be created at a future date. I recommend:

1. Plans should be made now for implementation of such a court when the future need is apparent, or in the alternative;

2. Plans should be implemented to add one or two more justices to the Iowa Supreme Court. Since the court is now sitting in divisions, its work product can be materially increased by adding one more justice; two if necessary. The rotation upon the divisions can be changed to very effectively utilize these new justices to increase the work product of the court in the same manner as an additional justice increases the work product of the various federal circuit courts of appeal. If this alternative is utilized the probable need for an intermediate court of appeals will no longer exist.

B. The Supreme Court has taken affirmative steps to increase its work product by dividing the court into two divisions. Some members of the court feel that this will reduce the backlog of cases and place the court upon a current status in eighteen months. The backlog of current cases is large. It has developed over the past three years. Each year the number of appeals filed has increased markedly over the number filed the previous year. There is no reason to believe that this trend will not continue in the future. The degree of complexity of legal problems involved in these appeals has increased. They, also, will continue to increase. This increase in number and complexity of appeals cannot adequately be managed by the court simply by reducing the number of justices to five needed to decide a given case. Justice is important. It is equally important that the parties to an appeal believe, win or lose, that their case received individual attention and consideration. Not only must the parties believe this but it must be the fact. If this is not the fact and belief of the parties, confidence in our system of justice will disappear. Without this confidence, justice fails. Divisions of three will be necessary to alliviate the backlog of cases, keep pace with the increased filings, and assure the necessary individual attention and consideration.

Efficiency is important. However, individual attention and consideration of each case is more important. Modern techniques should be utilized to facilitate individual attention and

consideration of each case; not replace it. The Supreme Court must be encouraged to adopt accepted modern techniques of office practice needed to facilitate individual case consideration. The use of screening attorneys and law clerks is a move in this direction. It is directed toward reducing the minutia of detail the justices must accomplish. This is good; however, further reduction is necessary. The number of screening attorneys and law clerks should be increased and their salary raised so that lawyers with above average ability can be more easily attracted to these positions.

Modern business practices recognize that the individual upon whom responsibility is placed, can best discharge that responsibility in an efficient manner if his work environment is one that is conducive to relaxation and concentration. This means physical surroundings that are pleasant, comfortable, and quiet. Also it is an environment that will not subject such an individual to interruption. It is an environment that must be at least as pleasant as that which he experiences at home. He will spend many more waking hours in his work environment than he does in his home environment.

The Supreme Court has for years ignored this fact. The office of the Chief Justice still does not have curtains or drapes. During the cold winter months an electric heater is utilized because the heating system is inadequate. In the summertime, the air conditioning system must be turned off to allow a conversation to be carried on in a normal manner. Many, many more examples could be cited. They may seem small when considered individually, but collectively they are distractions that adversely affect individual concentration which, in turn, minimizes the work product. This has never been brought to the attention of the General Assembly. I recommend:

1. The Supreme Court in its next budget request to the General Assembly include a special section in such request detailing what is needed to place the physical surroundings of each justice into an atmosphere which is pleasant, comfortable, quiet and conducive to long periods of concentration. This section should emphasize that these have been neglected needs for many years.

2. Establish a secretary pool for the efficient transcribing of all dictated matter.

3. The supreme court administrator should be delegated the authority and responsibility for supervising all magistrates in the unified trial court system subject to veto of policies set by him by the court.

4. Each justice is allocated \$4,800 per year for an individual secretary at his place of residence and \$15 per day for expenses while traveling upon business of the court. Many justices do not reside in Des Moines and do not want to, but spend considerable time upon the court's business in Des Moines. It is thus difficult to see how the secretaries are being utilized to the maximum extent possible. It would be better to allow each

justice an expense account of \$7,500 per year and permit him to use that expense account to hire what secretarial help he needs at his residence, travel expenses to and from Des Moines, maintenance of an office at his residence, maintenance of a library at his residence, etc.

5. Justices should not be required to reside in Des Moines upon their appointment to the court. Lawyers of the caliber desired to serve upon the court have strong roots in their home communities. Thus, to require residence in Des Moines would be a deterrent to those lawyers desired for the court, from accepting such an appointment.

C. Upon authorization by the General Assembly the court should go into divisions of three for hearing and deciding of cases.

D. The number of district court judges will be increased to approximately 81 when the unified trial court act is implemented on July 1, 1973. The case load per judge will still vary widely. Permissive legislation allowing the Chief Justice to temporarily assign district court judges to duty with the Supreme Court for the purpose of aiding in the writing of opinions for the court or any division thereof would be a valuable training tool for district court judges and could provide the Supreme Court with valuable expert assistance.

E. The annual salary of law clerks and screening attorneys should be raised to a competitive level paid lawyers who are graduated in the upper 10% of their class. The period of employment should be two years in order to insure that the court receives the maximum benefit from this program.

F. The annual salary of Supreme Court justices is grossly inadequate and should be raised to be at least ten percent more than the annual salaries paid experienced full-time professors at the University of Iowa School of Law. The law professors teach the law made and interpreted by the Supreme Court. Obviously the position of justice of the Iowa Supreme Court is more important than that of law professor. This should be reflected in the annual salary of the justices.

G. Effective court administration is important. It should be a separate function. The present administrator's staff should be increased so that the business of the court will progress, without interruption, in an efficient orderly manner.

LEE H. GAUDINEER, JR.
State Senator