CHIEF JUSTICE MARSHA TERNUS: AN INSIDE LOOK AT THE TENURE OF IOWA’S FORMER CHIEF JUSTICE

Jessie R. Cardinale*

I. INTRODUCTION

Chief Justice Marsha Ternus, the first female chief justice of the Iowa Supreme Court, is one of the nation’s most admired and respected jurists. Although unsuccessful in her state’s recent retention election, Ternus exemplifies what it means to be a chief justice through her platform of reforming Iowa’s child welfare system, updating the court to an electronic records management system, and improving the Iowa judiciary overall.

This paper will examine Ternus’ voting trends during her time as Chief Justice of the Iowa Supreme Court, from September 2006 to December 2010. In Part II, the Chief Justice’s upbringing and career path will be discussed. Part III will provide a brief overview of the history and composition of the Iowa Supreme Court. Then, in Part IV, Ternus’ voting patterns will be studied in two important ways. First, opinions authored by Ternus will be reviewed. Here, split decisions will be scrutinized more closely. Then, the sole dissent authored by Ternus as Chief Justice will be examined. Next, cases regarding child welfare will be evaluated. Additionally, comparisons will be drawn in terms of the number of child welfare cases decided on Ternus’ bench versus those decided on Chief Justice Lavorato’s bench, Ternus’ immediate predecessor. The methodology for each portion will be explained in the footnotes. An emphasis will be placed on cases that most accurately depict areas where the Chief Justice has a particular interest. Finally, Part V will present the findings of the voting analysis.

* Executive Editor for State Constitutional Commentary; J.D., Albany Law School, 2011.
1 See infra Part II.
2 See infra Part III.
3 See infra Part IV.
4 See infra Part V.
Prior to delving into Chief Justice Ternus’ voting patterns, it is helpful to become acquainted with her upbringing and career path. A native of Iowa, Ternus was raised on a farm in northern Benton County and graduated from Vinton High School in 1969.\(^5\) She later earned her bachelor of arts degree at the University of Iowa in 1972 and shortly thereafter, in 1977, received her juris doctor from Drake University.\(^6\) While in law school, Ternus served as the Editor-in-Chief of the *Drake Law Review*.\(^7\)

Following graduation, Ternus worked at the law firm of Bradshaw, Fowler, Proctor & Fairgrave for sixteen years, where her primary practice was civil litigation and insurance law.\(^8\) While in private practice, she held positions on the Board of Governors of the Iowa State Bar Association, the Iowa Jury Instructions Committee, and the Board of Directors of the Polk County Legal Aid Society.\(^9\) She also served as the President of the Polk County Bar Association and on the Drake Law School Board of Counselors.\(^10\)

In 1993, Ternus was appointed to the Iowa Supreme Court by Republican Governor Terry Branstad.\(^11\) She became Chief Justice when her colleagues selected her for the position in 2006.\(^12\) Ternus is the first woman to serve as Chief Justice in the over 170-year history of the Iowa Supreme Court.\(^13\) As Chief Justice, Ternus focused on improving court oversight of child welfare cases.\(^14\) She now chairs the State Children’s Justice Council, which consists of representatives of the judiciary, state agencies, and private entities working together to improve the child welfare system.\(^15\) In 2009, she also served on a planning committee which organized a national


\(^6\) Id.


\(^8\) *Iowa Voter Directory*, supra note 5.

\(^9\) Id.

\(^10\) Id.

\(^11\) Id.

\(^12\) Id.


\(^14\) Id.

\(^15\) *Iowa Voter Directory*, supra note 5.
summit on the protection of children.\textsuperscript{16}

Recently, Chief Justice Ternus made headlines for the retention elections that occurred on November 2, 2010, when she was removed from her position, along with three other Iowa Supreme Court Justices.\textsuperscript{17} This is the first time in Iowa’s history that justices have been removed during a retention election.\textsuperscript{18} The reason for this unfortunate result has been attributed to the Court’s holding in \textit{Varnum v. Brien}, which legalized same-sex marriage.\textsuperscript{19} This unanimous decision, though rendered in a constitutionally sound manner, spurred a campaign to remove those justices up for reelection.\textsuperscript{20}

Following their removal, Ternus along with Justices Baker and Streit stated that they “hope Iowans will continue to support Iowa’s merit selection system . . . [which] helps ensure that judges base their decisions on the law and the Constitution and nothing else.”\textsuperscript{21} Though her career ended prematurely, Ternus certainly left her mark on the Iowa Supreme Court during her time as Chief Justice.

\section*{III. THE IOWA SUPREME COURT}

In order to gain a better perspective of Chief Justice Ternus’ voting pattern, it is helpful to look at her voting record in comparison to the rest of the bench. First, it is important to note Iowa’s rich constitutional history. Prior to statehood, Iowa had a legal system.\textsuperscript{22} At times, this Court rendered decisions that were more than one hundred years ahead of similar rulings by the United States Supreme Court.\textsuperscript{23} Some of these landmark rulings included the prohibition of slavery in 1839, the legalization of inter-racial marriage in 1846, and granting women custody rights in 1867.\textsuperscript{24}

Today, the Iowa Supreme Court continues its tradition of upholding individual rights and liberties. The Court consists of

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seven justices who elect the Chief Justice. The Court under Ternus was composed of Justices Brent R. Appel; David L. Baker; Mark S. Cady; Daryl L. Hecht; Michael J. Streit; and David S. Wiggins. Following the retention election, Justices Streit and Baker were removed from the bench, and Chief Justice Ternus was replaced by Justice Cady, the author of the Varnum v. Brien decision. Upon assuming this position, Justice Cady stated that his “foremost concern will be to do all [he] can to support the work of Iowa’s high caliber court system and to expand the public’s access to justice.”

IV. VOTING ANALYSIS: MAJORITY OPINIONS AUTHORED BY CHIEF JUSTICE TERNUS

A. Majority Opinions Authored from September 2006 to December 2010

From September 2006 to December 2010, Chief Justice Ternus authored 120 decisions. Of these 120 decisions, all were

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25 Id.
28 To research this data, a search was run in Westlaw and LexisNexis to determine what cases have been authored by Chief Justice Ternus. Lawson v. Kurtzhals, No. 08-1766, 2010 Iowa Sup. LEXIS 150, at *1 (Iowa Dec. 30, 2010); State v. Barnes, 791 N.W.2d 817 (Iowa 2010); Broadlawns Med. Ctr. v. Sanders, 792 N.W.2d 302 (Iowa 2010); Langwith v. Am. Nat'l Gen. Ins. Co., 793 N.W.2d 215 (Iowa 2010); Lewis Elec. Co. v. Miller, 791 N.W.2d 691 (Iowa 2010); Sherwin-Williams Co. v. Iowa Dep't of Revenue, 789 N.W.2d 417 (Iowa 2010); Swiss Colony, Inc. v. Deutmeyster, No. 09-0810, 2010 Iowa Sup. LEXIS 103, at *1 (Iowa Oct. 7, 2010); State v. Oberhart, 789 N.W.2d 161 (Iowa 2010); State v. Millbrook, 788 N.W.2d 647 (Iowa 2010); Iowa Supreme Court Att'y Disciplinary Bd. v. Lickiss, 786 N.W.2d 860 (Iowa 2010); Solland v. Second Injury Fund of Iowa, 786 N.W.2d 248 (Iowa 2010); Iowa Supreme Court Att'y Disciplinary Bd. v. Monroe, 784 N.W.2d 784 (Iowa 2010); Renda v. Iowa Civil Rights Comm'n, No. 08-0428, 2010 Iowa Sup. LEXIS 80, at *1 (Iowa July 14, 2010); Waters v. State, No. 08-1258, 2010 Iowa Sup. LEXIS 79, at *1 (Iowa July 14, 2010); Lindstrom v. City of Des Moines, No. 07-1641, 2010 Iowa Sup. LEXIS 78, at *1 (Iowa July 14, 2010); State v. Johnson, 784 N.W.2d 192 (Iowa 2010); NevadaCare, Inc. v. Dep't of Human Servs., No. 08-0952, 2010 Iowa Sup. LEXIS 67, at *1 (Iowa June 22, 2010); Schneider v. State, No. 07-0887, 2010 Iowa Sup. LEXIS 68, at *1 (Iowa June 22, 2010); Zaber v. City of Dubuque, 789 N.W.2d 634 (Iowa 2010); Nationwide Agri-Business Ins. Co. v. Goodwin, 782 N.W.2d 465 (Iowa 2010); Frontier Leasing Corp. v. Links Eng'g, LLC, 781 N.W.2d 772 (Iowa 2010); State v. Lathrop, 781 N.W.2d 288 (Iowa 2010); Iowa Supreme Court Att'y Disciplinary Bd. v. Carpenter, 781 N.W.2d 263 (Iowa 2010); Schutjer v. Algona Manor Care Ctr., No. 06-1748, 2010 Iowa Sup. LEXIS 30, at *1 (Iowa Apr. 14, 2010); State v. Spates, 779 N.W.2d 770 (Iowa 2010); Gaede v. Stansberry, 779 N.W.2d 746 (Iowa 2010); In re A.K.S., 789 N.W.2d 435 (Iowa 2010); Ranes v.
unanimous except for two. Therefore, of the decisions authored by Ternus, the Court was unanimous ninety-eight percent of the time.

**Figure 1. Majority Opinions Authored by Chief Justice Ternus**

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29 State v. Isaac, 756 N.W.2d 817 (Iowa 2008); Iowa Supreme Court Att’y. Disciplinary Bd. v. Borth, 728 N.W.2d 205 (Iowa 2007).
1. Majority Opinions: Ideological Breakdown

Figure 2 below depicts the ideological breakdown of Chief Justice Ternus’ majority opinions. Criminal cases pertain to the rights of a criminal defendant, including such issues as reasonableness of searches and seizures, and the admissibility of evidence. Workers’ Compensation cases involve wage replacement and medical benefits for employees who are injured in the course of employment. Ineffective assistance of counsel cases pertain to legal malpractice suits where an attorney caused harm to his or her client by failing to adequately represent the client.

**Figure 2. Topical Breakdown of Majority Opinions Authored by Chief Justice Ternus**

2. Split Decisions: Ideological Breaks

Although there were only two split decisions, it is important to review these cases to determine on what matters the justices were unable to reach consensus. Coincidentally, both cases involved controversial issues; more specifically, the cases involved indecent exposure and ethical violations under the rules of professional
responsibility.
First, in *State v. Isaac*, the Court reviewed a case in which the district court convicted the defendant of indecent exposure after a police officer caught him masturbating outside a woman’s bedroom window. Here, the Court was asked to decide whether there was sufficient evidence to convict this individual of indecent exposure. To be held liable, Ternus stressed that the defendant not only had to expose himself, but also needed to have a sexual motive. Relying heavily on the statute, the Court held that there was insufficient evidence to support the defendant’s conviction for indecent exposure, as no facts supported the premise that he had exposed his genitals “for the purpose of arousing or satisfying the sexual desires of himself or the officer.” Ternus even states that to interpret the statute in the same manner as the lower court would be tantamount to “ignor[ing] the statutory requirement” at issue entirely.

Justice Streit, dissenting from the majority decision, claimed that the facts of the case are straightforward and clearly illustrate that the defendant’s actions were intended for sexual purposes. Streit also maintained that the defendant should still be held accountable even though the particular person who saw his exposed genitals was a police officer and not the intended victim. Streit concluded his dissent by stating that “it is sometimes necessary to think like a criminal to catch a criminal,” and accused the majority of failing to consider this “commonsense adage” when rendering its decision.

In *Iowa Supreme Court Attorney Disciplinary Board v. Borth*, an attorney was charged with various violations of his ethical duties, such as amending traffic citations and negotiating plea bargains that required defendants to contribute to various charities. Here, Ternus looked first to the Iowa Rules of Professional Conduct to determine the proper sentence. According to Disciplinary Rule 1–102(A)(5), the Court held that the Attorney Disciplinary Board did

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31 *Id.* at 819.
32 *Id.* at 820.
33 *Id.* at 821.
34 *Id.* at 820.
35 *Id.* at 821 (Streit, J., dissenting).
36 *State v. Isaac*, 756 N.W.2d 817, 818, 821 (Iowa 2008) (Streit, J., dissenting).
37 *Id.* at 822.
39 *Id.* at 209–10.
not need to “show the respondent knew his conduct constituted a violation of the ethics rules” as “all individuals are presumed to know the law and cannot use ignorance as a defense.” Moreover, Ternus evaluated the facts in great detail to find that, although the defendant had negotiated deals to benefit charitable organizations, he was still facilitating the imposition of illegal sentences.

Justice Larson concurred and dissented in part to this decision. Though his opinion does not go into much detail, he refers to the dissent he authored in Iowa Supreme Court Attorney Disciplinary Board v. Howe, regarding amending moving-violation charges to nonmoving ones. Larson bases his argument on criminal procedure and the notion that “because probable cause supported the original charges, it necessarily supports the lesser ones.”

Although this idea is only a fraction of the majority decision, Larson dissented to emphasize his belief that prosecutors are permitted to accept a plea to a lesser-related offense.

As there are only two split opinions authored by Ternus, it is difficult to formulate a pattern. However, both cases are of a controversial nature. First, State v. Isaac addresses the sensitive subject of indecent exposure. In this opinion, Streit’s dissent uses inflammatory language to illustrate his distaste of the majority’s opinion. By stating that the majority failed to use commonsense when piecing together the incident, Streit makes it clear that he feels strongly about this particular issue. Next, in Iowa Supreme Court Attorney Disciplinary Board v. Howe, the Court addressed the controversial subject of reprimanding attorneys for misconduct. Here, Larson’s dissent, though not focusing on the main issue of the case, referred to a previously written dissent that strongly supports a prosecutor’s discretion and ability to plea down an offense.

40 Id. at 210 (citing MODEL CODE OF PROF’L RESPONSIBILITY DR 1-102(A)(5) (1983)).
41 Id.
42 Id. at 211.
43 Id. at 212. (Larson, J., concurring in part, dissenting in part).
44 Id.; Iowa Supreme Court Att’y Disciplinary Bd. v. Howe, 706 N.W.2d 360, 366 (Iowa 2005).
45 Howe, at 383.
46 State v. Isaac, 756 N.W.2d 817, 818 (Iowa 2008).
47 Id. at 822 (Streit, J., dissenting).
48 Id.
49 Iowa Supreme Court Att’y Disciplinary Bd. v. Howe, 706 N.W.2d 360, 381 (Iowa 2005).
50 See Iowa Supreme Court Att’y Disciplinary Bd. v. Borth, 728 N.W.2d 205, 212 (Iowa 2007); Howe, 706 N.W.2d at 366.
B. Dissent Authored by Chief Justice Ternus

As Ternus only authored one dissent in her time as Chief Justice, it is important to closely scrutinize this case, as it reveals an issue so significant that it caused her to vote against the majority. Ternus’ sole dissent appears in *State v. Lane*.\(^51\) In this case, the defendant was arrested in an acquaintance’s garage where methamphetamine was found.\(^52\) Police officers then searched the defendant’s residence, with his girlfriend’s permission, and found more drugs.\(^53\) The defendant claimed that the initial search of the garage was unlawful and, therefore, the subsequent search of his residence was tainted.\(^54\) The majority opinion, authored by Justice Cady, affirmed the trial court’s decision that the girlfriend’s consent to search the residence was voluntary, thus making the search legal.\(^55\)

Chief Justice Ternus and Justice Wiggins dissented from the majority’s holding.\(^56\) Ternus based her dissent on the idea that “the drugs found in [the defendant’s] apartment must be suppressed under the fruit-of-the-poisonous-tree doctrine.”\(^57\) She stated that “[a] common sense analysis of the facts”\(^58\) would lead one to believe that the police had used information from an illegal search of the garage to focus on the defendant’s residence, thus the evidence should have been suppressed.\(^59\)

This dissent, the only authored by Ternus in her time as Chief Justice, is only a few sentences long, but touches upon an important concept. Here, she advocates for the criminal defendant against an alleged unlawful search and seizure for drugs by law enforcement. Interestingly, Ternus bases her dissent on what she perceives to be a very clear reading of the facts. This approach differs from other cases, where she focuses primarily on statutory language and individual issues, rather than taking a more global view. Here, Ternus generally views the search as unfair and therefore relies on “common sense”\(^60\) rather than a strict interpretation of the law.

\(^{51}\) State v. Lane, 726 N.W.2d 371, 394 (Iowa 2007) (Ternus, C.J., dissenting).
\(^{52}\) Id. at 376.
\(^{53}\) Id.
\(^{54}\) Id. at 377.
\(^{55}\) Id. at 375.
\(^{56}\) State v. Lane, 726 N.W.2d 371, 394 (Iowa 2007) (Ternus, C.J., dissenting).
\(^{57}\) Id.
\(^{58}\) Id.
\(^{59}\) Id.
\(^{60}\) Id.

when making her decision.

C. Child Welfare Cases

One of Chief Justice Ternus’ biggest projects while on the bench was improving Iowa’s child welfare system. In 2005, Chief Justice Lavorato, the former Chief Justice, asked Ternus to attend a national summit on children on behalf of the Iowa Supreme Court.61 There, Ternus started to learn about child welfare issues and decided it was time to make improvements in the Iowa Court System.62 In her 2008 State of the Judiciary, Ternus focused a large portion of her speech on improving the lives of children in the Courts.63 She discussed those in foster care, young criminals, and success stories of how the court system was able to help these children. She recognized that “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.”64

As child welfare cases are of particular importance to Ternus, it is critical to explore trends related to the Court’s desire to review such cases and the decisions rendered. To determine whether the Ternus Court accepted a greater amount of child welfare cases, the case load was compared to that of the former chief justice—Chief Justice Lavorato.


From 2000 to 2006, the Iowa Supreme Court heard approximately one thousand two hundred and thirty-eight cases. Of these cases, the Court heard twenty-six child welfare cases,65 or approximately

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61 Iowa Journal, supra note 22.
62 Id.
64 Id. at 12.
65 Grant v. Iowa Dep’t of Human Servs., 722 N.W.2d 169 (Iowa 2006); In re M.T., 714 N.W.2d 278 (Iowa 2006); State v. Leckington, 713 N.W.2d 218 (Iowa 2006); In re Marriage of McKenzie, 709 N.W.2d 528 (Iowa 2006); Spiker v. Spiker, 708 N.W.2d 347 (Iowa 2006); State v. Knight, 701 N.W.2d 83 (Iowa 2005); In re R.E.F.K., 698 N.W.2d 147 (Iowa 2005); In re Marriage of Grantham, 698 N.W.2d 140 (Iowa 2005); State v. James, 693 N.W.2d 353 (Iowa 2005); In re Marriage of McCruin, 681 N.W.2d 322 (Iowa 2004); State v. Watkins, 659 N.W.2d 526 (Iowa 2003); In re K.C., 660 N.W.2d 29 (Iowa 2003); In re Marriage of Howard 661 N.W.2d 183 (Iowa 2003); Becker v. Iowa Dep’t of Human Servs., 661 N.W.2d 125 (Iowa 2003); In re D.D., 653 N.W.2d 359 (Iowa 2002); Doe v. Cedar Rapids Cmty. Sch. Dist., 652 N.W.2d 439 (Iowa 2002); In re C.M., 652 N.W.2d 204 (Iowa 2002); Santi v. Santi, 633 N.W.2d 312 (Iowa 2001); In re Jorgensen, 627 N.W.2d 550 (Iowa 2001); In re K.N., 625 N.W.2d 731 (Iowa 2001); In re A.L., 636 N.W.2d 48 (Iowa 2001); State v. Anderson, 636 N.W.2d 26 (Iowa 2001);
two percent of the total cases heard by the Court during this time. Figure 3 below depicts the topical breakdown of child welfare cases decided under Chief Justice Lavorato.

**FIGURE 3. CHILD WELFARE CASES UNDER CHIEF JUSTICE LAVORATO (2000 TO 2006)**

![Pie chart showing the breakdown of child welfare cases under Chief Justice Lavorato.]


Under Chief Justice Ternus, the Court heard approximately five-hundred and thirty-five cases. Of these cases, the Court heard eleven child welfare cases,\(^6\) or approximately two percent of the total cases heard by the Court during this time. Figure 4 below

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\(^6\) Hensler v. City of Davenport, 790 N.W.2d 569 (Iowa 2010); Doe v. Iowa Dept of Human Servs., 768 N.W.2d 853 (Iowa 2010); In re P.L., 778 N.W.2d 33 (Iowa 2010); In re Z.S., 776 N.W.2d 290 (Iowa 2009); Varnum v. Brien, 763 N.W.2d 862 (Iowa 2009); In re N.N.E., 752 N.W.2d 1 (Iowa 2008); In re N.V., 744 N.W.2d 634 (Iowa 2008); In re A.W., 741 N.W.2d 793 (Iowa 2007); In re Nash, 739 N.W.2d 71 (Iowa 2007); State v. Spencer, 737 N.W.2d 124 (Iowa 2007); In re J.E., 723 N.W.2d 793 (Iowa 2006).
depicts the topical breakdown of child welfare cases heard under Chief Justice Ternus.

**Figure 4. Child Welfare Cases Under Chief Justice Ternus**
(2006 to 2010)

Most of the cases from the Ternus Court dealt with issues of terminating parental rights. In these cases, the parent loses all rights to and responsibilities for the child. These rights include the right to decide the child’s form of education, health care, and many others.67 Responsibilities include the duty to provide food, shelter, clothing, and other necessary support for the child.68 Generally, courts are reluctant to terminate such rights unless the parent is deemed unfit.69

One such example is *In re P.L.*70 In this case, the father was deemed to be unable to properly care for the child in regards to his “physical, mental, and emotional . . . needs,” and his parental rights were terminated.71 The Court emphasized how its decision to terminate parental rights was based on statutory language that set

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67 See Hansler v. City of Davenport, 790 N.W.2d 569, 581–82 (Iowa 2010); BLACK’S LAW DICTIONARY 1224 (9th ed. 2009).
69 *Hansler*, 790 N.W.2d at 582.
70 *In re P.L.*, 778 N.W.2d 33 (Iowa 2010).
71 *Id.* at 37, 41.
out factors to be considered, such as safety, long-term growth of the child, and other such needs. Here, the Court recognized the importance of the family unit and allowing parents to raise their children, but balanced this interest with the state’s responsibility “in providing a stable, loving homelife for a child.”

Child welfare cases also involve issues of child abuse. Child abuse includes neglect and physical and emotional harm. In *Doe v. Iowa Department of Human Services*, the Court was asked to determine whether a mother’s name was correctly placed on the child abuse registry. Here, the Iowa Department of Human Services determined that a mother had committed child abuse by failing to provide proper supervision of her child when she repeatedly exposed him to the father’s incidents of domestic abuse against the mother. In this case, the Court also looked closely at the statute, and determined that it did not explicitly cite failure to supervise as a form of child abuse. Therefore, the Court relies heavily on statutory language when making its decisions and is very critical before removing parental rights from individuals.

V. FINDINGS & CONCLUSION

It is difficult to isolate and analyze the voting patterns of Chief Justice Ternus, as the Court often renders unanimous decisions. In this respect, it is nearly impossible to separate and understand each individual justice’s interpretation and analysis of the law. Moreover, Ternus only authored one dissent during her time as chief justice, making it was difficult to chart issues that are of particular importance. It should be noted that it is unusual to find a court that is able to reach so many unanimous decisions.

As a passionate advocate for improvements in the child welfare system, it is interesting to study these types of cases decided by the Ternus Court. It is surprising that approximately two percent of both Lavorato and Ternus Court decisions dealt with child welfare issues. However, it is important to recognize that Ternus was an associate justice when Chief Justice Lavorato was on the bench. Therefore, she likely had some influence in choosing to review and ultimately decide these cases. When rendering decisions under

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72 Id. at 38.
73 Id.
74 Doe v. Iowa Department of Human Services, 786 N.W.2d 853, 854 (Iowa 2010).
75 Id.
76 Id. at 859–60.
Chief Justice Ternus, the Court strictly interpreted statutory law and encountered difficulty, at times, with balancing family autonomy with the need to protect children.

Chief Justice Ternus once described the sound decisionmaking process of the Iowa Supreme Court as “tak[ing] each case and address[ing] it with the most integrity” in order to “carry on a very proud tradition in the Iowa courts.”77 It is quite clear that under Chief Justice Ternus’ strong leadership, the Court did just that.

77 Ternus Interview, supra note 13.