

**THIRD ANNUAL
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**The Honorable Charles E. Jones
Chief Justice**

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Introduction

Madam President, Mr. Speaker, fellow government officials:

Good evening and thank you for the opportunity to speak on the state of the Judicial Branch of government in Arizona. I want to thank particularly the Valley Citizens League, the League of Women Voters, the State Bar, and the Maricopa County Bar Association for hosting this forum.

Before I begin, let me introduce my judicial colleagues: Vice Chief Justice Ruth McGregor, Justices Rebecca Berch, Michael Ryan and the most recent addition to the court, Justice Andy Hurwitz. At the conclusion of my remarks, the members of the court will entertain your questions.

My Background

I care deeply about our great state. My roots are here. My paternal grandparents came from the southeastern United States in the 1870s during Reconstruction following the Civil War. They settled in Prescott where my father was born and where he received his schooling during the latter part of the 19th century.

My wife, Ann, who is here this evening, was born and raised in the Gila River Valley, the small farming community of Safford. We raised our children in Arizona. They all attended the public schools. They are now grown, educated, settled, and to our good fortune, all are currently employed.

Case and Revenue Data in the Courts

Let me begin with some statistics as to the current involvement of the courts in everyday Arizona life. During 2002, nearly 2.4 million cases were filed in the courts of this state and more than \$200 million were generated in fines, fees and restitution payments. These revenues flow into general and special governmental funds at the state, county and municipal levels. Last year, revenues increased by more than 8.6 percent while case filings remained approximately flat. Increases in collections came about largely as the result of significant adjustments and better planning at the administrative level of our superior courts and our courts of limited jurisdiction.

In addition, restitution payments collected by the courts on behalf of the victims of crime increased a dramatic 67 percent. We have accomplished this even though it is not normally accepted that courts become collectors of the general revenues of the state.

Nevertheless, it is important that we do so, if for no other reason than to bolster public trust and confidence in government generally, and in the courts specifically. This means that court orders must be enforced. Yet, in many instances, courts are not equipped to enforce their own orders without the aid of the other branches of government. While most individuals voluntarily pay court-ordered fines and penalties, others ignore them. It is a simple fact that most court orders have money attached: a fine, a fee, victim resti-

tution, child support payments or some other obligation.

In 1990, the Judiciary began an effort to improve the enforcement of court orders and to increase revenues. At that time collections totaled \$70 million per year. Since then, we have tracked increases in collections over the \$70 million baseline. I am pleased to report that the aggregate increase in judicial collections since 1990 now totals roughly one billion dollars.

With the help of the other branches of government, there is more that we can do. We have proposed to the Governor and to the Legislature that we embark on a penalty enforcement program as a way to help the current budget crisis. Our analysis suggests that we can increase revenues statewide over the next year or so by something between \$50 million on the low end and \$114 million on the high end. We have taken the first step, requiring all courts to participate in the Tax Refund Intercept Program which interacts with the Arizona Department of Revenue to intercept tax refunds from those who owe court-ordered fines, fees, and penalties.

Our improvements are paying off. By the end of last year we had collected \$2.5 million, as of today, we have already intercepted more than \$4 million.

Another step involves work with members of the Arizona congressional delegation to secure a change in federal law by adding court-ordered debt in the 50 state court systems to the existing list of eligible categories for which the internal revenue service can intercept federal tax refunds. Federal tax refund intercept is done for various purposes and should be allowed for court-ordered debt as well.

Improving Case Processing

Notwithstanding what I have said, courts are not about statistics and dollars. Every case addressed by every court is a reflection of real people with real problems. For them, the disputes and the issues are critical. Judges emphasize the serious nature of court proceedings, and strive constantly to improve the manner in which we manage cases and deal with children, crime victims, criminal defendants, civil litigants, and others, all of whom are entitled to due process of the law as guaranteed by the constitutions of the United States and the state of Arizona.

For example, several years ago, we discovered an acute need to change methods of case management in the criminal courts of Maricopa County. People charged with crimes but not yet brought to trial were allowed to languish in the Maricopa County Jail Complex for as many as 800 or 900 days, some even up to as many as 1500 days. We became aware that a federal civil rights suit against Maricopa County was in the planning stage by reason of Federal Constitutional provisions requiring speedy trial. We therefore undertook major steps largely under the direction of my predecessor, Chief Justice Tom Zlaket, to bring about dramatic reductions in pre-trial delays. Resistance by some was substantial, but improvement had to occur, and it did. Now 90 percent of criminal cases are completed in 180 days.

In addition, we recently established a separate pilot program of three divisions of the Superior Court in Maricopa County to deal with cases certified as "complex civil litigation." This will allow other judges to handle the more routine cases without being bottled up with management of complex litigation. Programs of this nature are currently used in other states as well. I should add, that the Maricopa County Superior Court is now the fifth largest in the nation, with ninety-

one (91) separate divisions – meaning 91 superior court judges plus court commissioners and hearing officers. The Honorable Colin Campbell, whom I believe is here this evening, presides over that court. I would ask Judge Campbell and any other members of the superior court to stand and be recognized at this time.

Other Successful Projects

We have made particular progress with the concept of the Model Court Program in all 15 counties of the state for dependent, neglected, and abused children. In the past, each county developed its own program. These are cases of children having real needs, who are in their predicament through no fault of their own. Approximately three years ago, working with the Legislature, we obtained necessary legislation and funding to take the Model Court Program statewide and adopted a new set of uniform rules to govern.

Instead of having kids under court-ordered foster care, at times lasting months and years, the period for many young people has been cut to days and weeks, such that our children can now anticipate more rapid placement in permanent families where they can be properly nurtured. Because of the budget cuts to programs providing services that have kept many children out of trouble, we are concerned to see the numbers of children in foster care now rising dramatically.

Family Court Pilots

Unfortunately, in today's world, too many of our children and families (that is, where there are families) find themselves ministered to by the courts, hardly a satisfactory solution. Simply by reason of abuse, neglect, divorce, and delinquency, much of it brought about by family disintegration, juveniles are now in the court system by

the tens of thousands. At the end of the day, the courts can do only so much. Families must take some responsibility for themselves. To our great misfortune, too many of us turn too often to the courts to solve problems that even the best courts are not equipped to address.

Last session, the Legislature enacted SB 1088. This came after hard work by a study committee consisting of both legislators and judges on the "Integrated Family Court Project" whose report was issued this past winter.

Based on that report, we announce the creation of family court programs in three pilot counties: Maricopa, Coconino, and Pinal. They will test new, perhaps non-adversarial ways of handling these cases. We will then determine what works and what does not, and will attempt to take the best of the results statewide just as with the Model Court Program of three years ago.

Domestic Violence Order Database

On a related subject, violence plagues too many families in Arizona. Last year, more than 49,000 individuals came to our courts seeking protection from another person. We were not able, on a timely basis, to provide knowledge of these court orders to law enforcement officers called to the scene of a domestic disturbance. We now enter these orders electronically into a statewide database which, when completed, will make the orders available to officers in the field. If we could end violence simply by issuing court orders things would improve dramatically, but we cannot. Nevertheless, when an order of protection is issued, we want to make it available to law enforcement personnel at the time it is needed. We will be able to do this when all courts are integrated under one automated database.

The Arizona Fiduciary Program

Courts have a particular responsibility to protect families and children. We deal with thousands of cases every year involving individuals who are disabled or otherwise incapacitated. Many require the appointment of a state fiduciary to handle personal affairs. Fiduciaries are authorized to handle money and property for these individuals. To our continuing dismay, we learn of fiduciaries who have taken advantage of this trust by misappropriating large sums of money belonging to the individual they were appointed to protect.

We requested and obtained legislation for the licensing, oversight, and auditing of all persons involved as fiduciaries in the state program. We have already seen much improvement. Several of the errant fiduciaries are in prison and fortunately most of the losses are bonded.

Lawyer Discipline

In addition, we have taken steps this past year to provide citizens with better access to the State Bar lawyer disciplinary system. The commission hears cases in which lawyers have taken advantage of their clients, misappropriated client funds or delivered grossly inadequate representation. Some are complex cases requiring time to investigate and resolve. Even with complex cases, we are now disposing of 90 percent of citizen complaints in less than six months and are striving to have 98 percent of all cases completed in 22 months.

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The Supreme Court has also taken steps to curb certain elements of the unauthorized practice of law. Many people are being harmed daily by per-

sons not trained, not licensed and not informed as to the consequences of flawed legal representation. New rules adopted by the court will help remedy these abuses and provide people a wider choice by which to obtain competent legal services, for example, legal document preparers are now authorized but will have to be certified by the Court's regulatory licensing arm.

The Courts and the Legislature

H.G. Wells once said, "Human history is, in essence, a history of ideas." Another wise person said, "When I was young I relied on analysis. Now that I am old, I rely on experience." The men and women of the Arizona Legislature, now in session, are faced with the daunting task of molding ideas into good public policy, using both analysis and experience, and relying on history in the process.

Governor Napolitano made the following statement just a few days ago, "The manner in which we address and resolve the fiscal crisis today, will largely determine what this state will look like ten, twenty, and thirty years from today." It is thus vital that every Arizonan become informed as to what is happening in state government and to advise legislators what vision each holds for the future of the state.

Now, as to the courts, the Arizona Constitution vests administrative responsibility for the entire state court system in the Supreme Court, and particularly with the Chief Justice. I and Vice Chief Justice McGregor and other members of the Court have met individually this session with many members of the Legislature to discuss the operating budget of the Judicial Branch. Statewide, the Judicial Branch employs some 11,000 persons and oversees the administration and management of the superior court in each of

the fifteen counties, the justice of the peace courts, the city magistrate courts, the court of appeals, and, of course, the Supreme Court itself. In its entirety our Judicial system is comprised of more than 400 judges who preside in an equal number of courtrooms statewide. Court operations are funded partly by the state and partly by the counties and cities.

The Judiciary was constitutionally established as a separate branch in a tripartite government. In the Philadelphia debates of 1787, the founding fathers established three independent, coequal branches of government, each vested with powers unique to its own mission. The "separation of powers" principle with a built-in system of checks and balances and was intended to prevent the excessive use of power by any one branch, or by any one person. At the same time, the powers vested would ensure that no branch of government could be positioned to destroy another. Moreover, government, as conceived by the framers, could not function unless all three branches were maintained in proper balance. We were all taught that lesson when then Chief Justice John Marshall handed down his landmark decision in *Marbury v. Madison* declaring an act of Congress unconstitutional. Marshall's cousin, Thomas Jefferson, was furious. Yet *Marbury* was destined to become the fountainhead of American constitutional law.

I and my colleagues on the Court fully recognize that in difficult years, courts must take their fair share of reductions and must cooperate to that end. However, a few legislators have expressed dissatisfaction with court decisions, and on that basis advocate cutting the budget to "control" the courts. I submit it is not appropriate to reduce the budget by reason of disagreement with judicial decisions. My hope is that the Legislature will allow us to work with them to find a proper combination of reductions and at the same time

maintain our justice system in healthy operating condition.

Because of similar problems, courts in other states have begun to stop processing certain cases and have been forced to cut hours of operation. It is important that we state for the record, given the size of the deficit facing this state in fiscal year 2004, if the judicial budget were to be cut as proposed by JLBC, Arizona will face similar prospects.

Through fiscal 2003, we have been cut by \$26.1 million, reflecting a reduction in excess of 13 percent of our total general fund budget. We have been forced to eliminate over 200 positions, mostly among probation officers. The JLBC proposal for 2004, seeking to cut or shift an additional \$38.3 million, is so destructive that, if adopted, would undermine the ability of the courts to perform essential constitutional duties. Perhaps most importantly, it will undermine the ability of courts to maintain a criminal justice system with the capacity to deal with the broad range of public safety and law enforcement issues affecting every person, every family and every neighborhood in this state.

In making this statement, I am constrained to point out, as a word of caution, that if one branch of government fails, government itself fails. The founders knew that, and with more than 200 years of experience, it should be abundantly clear today.

Speaking personally, it is clear to me that the budget impasse in this state cannot be solved unless the community and business leaders of Arizona step forward, letting their feelings be known as to what our government should be and what Arizona should look like as a state 20 years from now. I believe Arizona's future hangs in the balance. Leaders, with their profound influence,

cannot afford to turn away and assume a "business as usual" posture.

Justice of the Peace Courts

Let me say just a word about reforms in Arizona's justice of the peace courts. These are important courts. Attempts to upgrade their operations have been attempted several times during the last quarter century. The first effort was led by then majority leader of the Arizona Senate, Sandra Day O'Connor. Other efforts have followed, each time without success. The legal community is all too aware that the system cries out for improvement in the 21st century. Too many of these courts still cling to the notion that they are political institutions representing political constituencies, instead of functioning as courts of law.

Last year I made a decision that drew negative reaction from some legislators and from several justices of the peace. The constitution requires that any time a temporary judge, commonly known as a judge "pro tem," is appointed to sit on an Arizona court, that judge must be a member of the Bar. Article 6, Section 31. As of last summer, we had some number of pro tem JPs serving in these positions who did not satisfy the requirement. It was a decision I did not make without considerable legal analysis. But, in the end, the words of the constitution are clear and plain in their meaning. It was the right thing to do. A constitutional requirement cannot yield to inconvenience.

A number of JPs have been working with the Administrative Office of the Courts to help upgrade the justice court system. A proposed amendment increasing qualifications training is pending in the Legislature. These efforts have the Court's approval, and we hope they succeed.

You would be interested to learn that 94 percent of all cases filed in all courts of Arizona each year are filed in the limited jurisdiction courts. It is thus important that justice dispensed in these courts be consistent, and most importantly, that the judgments adhere to the rule of law.

In addition to the pro tem correction, we have implemented a more comprehensive education and training curriculum for new judges, and have added a testing component that was used in January and early March for the first time this year. It was successful. Class members took their studies seriously. Everyone worked and the results showed. My goal is to provide every new judge, law trained or not, with the ability to succeed.

We have not recommended that elected justices of the peace be lawyers. But we are insisting that when citizens come to one of these courts, they have a judge who knows and understands the law applicable to the particular problem. The parties deserve no less. We expect litigants, victims, lawyers and others to be treated with respect. We expect that a dignified courtroom be provided in which to plead a case. Judges in all courts must be trained to understand the requirements of due process within our system of American jurisprudence.

Rule of Law

The rule of law is vital. We conduct business thinking little of it, but, like the air we breathe, it is all around us. The rule of law, applicable in our courts, is the principle that holds together our national economy, our institutions, our schools, our churches, our very nation.

Interestingly, big business is not willing to invest in a state where the rule of law is not consistently followed. Human experience has taught that

where there is no rule of law, behavior becomes unpredictable. That is precisely why teams of people came to these shores during the 17th, 18th, and 19th centuries, fleeing areas of the world that operated under kings and despots. On a whim, a person could lose his property, his family, or even his life.

At the creation of the American Nation, the founders understood keenly the importance of the rule of law. They understood that people with power sometimes engage in acts that exceed that power. The founders created a government of limited powers, with three branches, each operating in its own sphere, each functioning as a check and balance on the others.

The correctness of John Marshall's decision in *Marbury* was foretold by such founders as Franklin, Adams, Hamilton, Madison, and Jay, all of whom understood well the principle by which a court of law could invalidate an act of the Legislature that had strayed beyond constitutional limits. In *Federalist No. 78*, Alexander Hamilton stated, "The courts were designed to be an intermediate body between the people and the Legislature, in order, among other things, to keep the latter within the limits assigned to their authority. When the will of the Legislature, declared in its statutes, stands in opposition to that of the people, declared in the Constitution, the judges ought to be governed by the latter rather than the former."

There are unique differences between the legislative process on one hand, and the judicial process on the other. Legislators operate in a decidedly majoritarian atmosphere where decisions are made by majority rule. The judicial process is vastly different. Courts operate largely under the bill of rights on precise analysis and application of constitutional and statutory language. Legislators ask this question, "What is

good policy?" In contrast, judges ask the question, "what is the law?" Courts do not operate in a majoritarian atmosphere. They do not represent a political constituency, and their decisions cannot be driven by politics. Legislatures are designed to pursue majority interests. Courts are designed to protect legal interests. Occasionally these interests clash.

In recent news coverage, I noted statements by legislators critical of certain Arizona Supreme Court decisions: a tax refund case, the public school finance case, the very recent clean elections decision. All too often, criticism of Court decisions normally arises from a strictly political perspective, attempting to interpret the decision in light of partisan politics. We understand that approach for those who represent a political constituency. A court decision, however, should be viewed from a judicial perspective on the basis of rational analysis of the language of the law. The two approaches are remarkably different.

When the Legislature disagrees with our interpretation of a statute, a majority of the Legislature can change the statute. We are never offended when that happens. We must take the law as it exists, not as some would like it to be. I do not suggest that the courts get it right 100 percent of the time, but I do confirm here and now that the decisions of your Supreme Court are not driven by today's news, and they should not. Even so, we continue to hear statements by some in the Legislative Branch that courts "must have their hands slapped" or that "the court needs to be punished," or that "the Legislature must take control of the court." Such thinking is misguided and undermines important constitutional principles intended by the founding fathers as a foundation stone of government.

In all my years of experience, I am aware that at times people say things they really don't mean,

particularly in a moment of frustration. I am also aware that times are difficult, and frustrations are high.

Our nation was founded on the concept that the people are entitled to anticipate what the rule of law is. Though taken for granted, experience teaches that if we erode the rule of law, no matter how well intentioned the motives, our precious institutions, both public and private, will suffer similar erosion. As the nation today wages war against a dictator who has ruled an entire nation by his own vile means, the significance of the law and the constitutional protections citizens in America enjoy become more meaningful every day.

I thank you for your time and attention, and in particular the invitation to address this audience of leading citizens this evening.