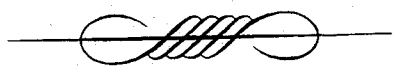


FIRST ANNUAL
STATE OF THE
JUDICIARY
ADDRESS



The Honorable Thomas A. Zlaket
Chief Justice

January 29, 2001



State of The Judiciary
Chief Justice Thomas A. Zlaket

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Mr. Speaker, Mr. President, Members of the Legislature, Distinguished Justices and Judges, and honored guests. Thank you and good morning.

On behalf of the Judicial Branch, I would like to thank the Arizona Legislature, particularly President Gnant and Speaker Weiers, for the opportunity to present this State of The Judiciary message. This is an historic moment. Never before has a Chief Justice been invited into this chamber to report on the workings of the Third Branch of our state government. I am deeply honored to be here. Your gracious invitation is a clear sign that we have entered a time of mutual respect and cooperation -- a time for healthy debate without rancor -- a time in which we can focus on our common goals. Hopefully, we have begun a tradition that will continue.

I am normally in the position of having others stand before me, making their best arguments. As the author Robert Benchley once said, "I do most of my work sitting down. That's where I shine."

Today, the tables are turned. And while I may find it more comfortable sitting on the bench than standing before you, it is appropriate, it is necessary, that I be here to report on the status of the judicial branch. Courts are institutions of the people --- the people you represent. Courts, like all parts of government, must be accountable.

My friends, I am pleased to report to you that the third branch of government in Arizona is sound. Though not without problems and facing many challenges, it is vibrant and healthy. We clearly have one of the finest state judicial systems in the United States, one that you can be proud of, one that is admired and emulated throughout this nation. Our innovations have

been studied and praised across the country. Owing to the hard work of many fine people, we enjoy an enviable reputation both here and abroad.

I have been the Chief Justice since 1997, and as I begin my final year in this office, I would like to take a few minutes to reflect on what it means to be a judge, the role of Arizona's judiciary, our current project to build public trust and confidence, and how we can work together to make "justice for all" a reality.

Role of The Judiciary

Judges deal everyday in life and death, rags and riches, liberty and constraint. The decisions we make affect real people in real ways. We take our jobs very seriously, though hopefully not ourselves.

Except for having to wear robes to work, we are no different than other citizens. We have the same concerns: the same mortgages and monthly bills; the same worries for the safety and well-being of our loved ones; the same affection for our communities, our state and our country. When I walk into the grocery store, no one calls me "Mr. Chief Justice." I am just a customer.

When I have dinner with friends, they don't call me "Judge," just Tom. When I hold one of my grandchildren, I'm just Grandpa.

Like all of you, we live and work in Arizona. We derive our authority from those we serve -- the people of this glorious state. They have every right to know who we are and what we do. I want them, and you, to know that the fine men and women serving on the bench in Arizona -- from the smallest municipal court to the Supreme Court -- are not cold, mechanized legal savants. They are not computers. They are imperfect human beings, making difficult decisions in a functioning, though stressed, justice system -- trying to blend the softer colors of concern, compassion and fairness with the black, white, and occasionally gray shades of meaning found in written statutes, ordinances, rules and regulations. I'll be the first to admit that we don't always get it right — but it's not for lack of desire. Trying hard to do the right thing, even though it may not be the popular thing, is often not easy.

Given the dramatic events that occurred in the final days of the year 2000, many thoughtful people in this country are now talking about American justice, and the institutions and mechanisms for delivering it. We have long proclaimed that our legal system is one of the best in the world, that it stands as the bedrock of our freedoms, our safety, and our democracy. The Constitution comes alive every day in the courtrooms of this nation, where judges try to balance the respective rights and obligations of those whose interests are being litigated. This civilized way of resolving disputes makes America the special place that it is -- and regardless of whether we might agree or disagree with the difficult decisions rendered by judges during those tense 36 days at the end of last year, we must all stand in awe and gratitude at the orderly transition of power that accompanied those decisions, without hostilities, without bloodshed.

Public Trust and Confidence

Amidst all the debate about its good points and bad, one truth is undeniable: the third branch of government relies almost entirely on the trust and confidence of the public for its very survival. Our founding fathers

designed the third branch to be non-political. Judges cannot bestow benefits upon citizens in exchange for their support. We cannot cut taxes. We cannot build roads in neighborhoods, or light streets, or collect garbage or reduce traffic. Most importantly, we cannot cater to any special interest. Our undivided loyalty must be to the truth as best we can know it, and to justice administered according to the rule of law.

Vulnerable to attack -- often unable to defend itself in the public arena because codes of conduct inhibit a strong response -- the Judicial Branch, as Alexander Hamilton told us, possesses neither the Executive's power of the sword nor the Legislature's power of the purse. Thus, it is the weakest and most in need of protection.

We can only earn the public's trust and confidence by providing the very best mechanisms for delivering efficient, impartial and economical justice to each and every one of our citizens. We need your help and support in achieving that goal.

Judicial Independence

When deciding cases, the institutional integrity of our courts is of utmost importance. The independence of judges in the decisional process is fundamental to the survival of our democracy. Outside political or special influences have no place in the courtroom. All people -- rich or poor, mighty or powerless, no matter their race, gender or faith -- deserve to have disputes decided fairly in a neutral arena. It is the miracle of our system that the least among us can stand in dispute against the most powerful and achieve a fair and just result.

Each of the three governmental branches is independent, but no single branch possesses all of the power. The remarkable framework of our Constitution provides a natural tension among us -- one that is healthy when civilized, destructive when vitriolic.

I know that sometimes you disagree with court decisions. That is your

right, and I support it wholeheartedly. We are not perfect, and never will be. But I hope you will never allow yourselves to be convinced that our rulings are based on anything other than an honest attempt to interpret and apply the law as best we see it. Judges try hard to apply the statutes you have enacted in the way that you intended. Unfortunately, that intent is not always clear. I can assure you that we take no offense when you change a law because you believe we got it wrong. Each of us has a job to do.

Almost daily, judges are required to make important decisions under extraordinarily difficult circumstances -- decisions that affect people's lives. Those people are your constituents. Those people are you and I, our friends, our families --- all of us. That is why I believe we need to talk more, not less, about the orderly administration of justice. While our branches should be separate, they should not be isolated. Independence is critical, but none of us operates in a vacuum. We must have a sophisticated interdependence, recognizing that a fair and reasoned dialogue about how courts conduct business -- how they serve the public, how they spend taxpayer money, how they can do better -- is fair and legitimate. It is healthy for the institution.

I sometimes hear the complaint that court officials approach the Legislature to discuss or "lobby" issues affecting the administration of justice, but that you do not feel free to do the same with us. Of course, we are ethically precluded from discussing the merits of cases that are pending before us, because we must do nothing that would taint the appearance of judicial impartiality. But we certainly can and should talk with one another about legislation, regulations or rules that may affect the administration of justice. We are often asked for our input on issues before the Legislature, in order that you can know and study all of the potential implications before passing a bill. We very much appreciate that consideration.

Similarly, we would welcome your input with respect to our administrative activities. The Arizona Judicial Council, and its various committees, serves as the policy advisor to the Supreme Court, which is charged by the Constitution with administrative supervision and control over the Judicial Branch. The Council operates in public session, and would

appreciate receiving the Legislature's comments and suggestions in tackling problems that face the court system in this state. In fact, several former members of this body presently serve on the Judicial Council.

Additionally, our judicial rules process has been open for many years, and any citizen, including any legislator, can propose or comment on changes to the procedural rules of the court. So while judges' decisions in particular cases must remain free from outside influences, I invite your counsel on the many other issues we must constantly confront.

Justice 2002: A Strategic Agenda

"Public trust and confidence" is something we talk about a lot. Getting it is difficult. Keeping it is even harder. With this in mind, we have begun a "construction project," so to speak, in our courts. You have been very supportive of our efforts in this regard, and I would like to briefly touch upon them.

When I became Chief Justice, I traveled to all parts of Arizona asking citizens and court personnel what worked well, and what did not. I wanted to hear what they expected from the court system. I went to service club luncheons and attended community meetings. Surveys were taken. In-depth discussions were held. We conducted Citizens Summits throughout the state at which more than 500 people appeared and offered their views. What they told us led to *Justice 2002*, a plan for Arizona's courts.

Justice 2002, divided into four main goals, is not merely aspirational or philosophical --- it is a strategic agenda that has enjoyed considerable success.

Goal One: Protecting Children, Families and Communities

Our citizens told us they wanted courts to *Protect Children, Families and Communities*, and that is the first goal of *Justice 2002*.

Model Court

Short of execution, the greatest use of government power is the removal a child -- an abused, neglected or dependent child -- from a parent. Whenever such action is warranted, cases need to be handled faster and better. These children have committed no crime. They have done nothing wrong. They deserve our best efforts to ensure that they do not languish in foster care while the courts plod slowly along the path to resolution.

So, in the 1998 legislative session, the Arizona judiciary -- with the support of Sen. Ruth Solomon, Rep. Laura Knaperek, President Gnant, and then-Rep. Freddy Hershberger -- championed legislation that implemented statewide the Model Court Project, a reengineered case processing system that reduces the time abused and neglected children spend in out-of-home placement. With your help, we have now implemented Model Court in every county, and though we still have much to do, the results have been very promising.

For example, in Pima County in 1996, the average time for these cases to go from filing to adjudication was 112 days. Thanks to the leadership of Judge Nanette Warner, it is now 44 days. For a young child whose world is torn apart, who hungers for a stable home, this means two months less in an unfamiliar place. Before Model Court, it took 3.2 years to move a dependent child through the court system. Since Model Court, that has been reduced to 1.6 years. Now, 60 percent of dependent children are placed in the care of relatives within 60 days. Model Court affects these children in a meaningful, positive way.

Detention Centers

When I became Chief Justice, I was taken on a tour of the courts' juvenile detention centers in Arizona. If a society can be judged by how it treats its children, we were then failing miserably. I was truly ashamed by what I saw, and determined to change the deplorable conditions existing in these detention centers. For three consecutive years, I asked for your help.

Legislators like Senators John Verkamp, Tom Smith and Herb Guenther, former Senator John Kaites and Representative Jake Flake led the way, and with special help this past session from Governor Hull, I am happy to report “mission accomplished.”

In a phenomenal partnership between the three branches and the counties, the \$17 million you appropriated over three years was multiplied ten times at the local level. More than \$170 million was assembled in matching bond funds or by other measures approved by local voters. We have since opened eight new detention centers and have others under construction. The final two, in Yuma and (yes, Senator Brown) in Apache counties, will break ground later this year. These centers are safe and functional. They contain classrooms as well as cells. They allow youngsters to be held accountable, but also to remain close to home, where they can best be supervised. Children who don't belong in the Department of Juvenile Corrections now won't have to go there. All of us can take pride in these facilities. With your considerable help and support, we have finished the job.

Elder Law

You funded our Elder Law Hotline that provides free legal assistance and services to any Arizona resident 60 or over. In addition, with the help of Senator Brenda Burns and others, we were able to announce in 1998 a program that we believe was the first of its kind: a groundbreaking set of protections for Arizona's elderly, incapacitated and other vulnerable individuals -- those who through no fault of their own, must deal with private or public fiduciaries.

Family Cases

Now, I am under no delusion that family matters are handled with perfection in our courts. We face many challenges, and this is one of the biggest. We can and must do better -- and we are trying. For example, the Maricopa County Superior Court, flooded with domestic relations cases, is in the early stages of establishing an ombudsman to deal with citizens who have

complaints about family court, something we hope will lead to real improvements in the system. The same court is piloting more unified, rather than piecemeal, methods of handling these sensitive matters, employing a therapeutic approach to problems affecting the complete family unit. It will also soon be setting up a citizen advisory board to assist in the formulation of programs and policies. We are working to improve case processing in this difficult area. Presiding Judge Campbell has recently assigned additional judges to handle the caseload, and an extra hearing officer to deal with matters that involve domestic violence. And by the end of this year we will launch a statewide database that will make orders of protection available anywhere at anytime as a tool to help protect those in need. We are clearly moving in the right direction.

Goal Two: Providing Swift, Fair Justice

When we talked with citizens in Flagstaff and Tucson, in Bisbee and Lake Havasu, in Show Low and Sun City, all around the state, they told us the justice system was too slow. They were correct.

Thus, the second goal of *Justice 2002* is Providing Access to ***Swift, Fair Justice***. We continue our search for adequate resources and better methods of operation in the face of Arizona's phenomenal population growth.

Our "Fill The Gap" initiative began in 1998, when we called attention to the serious lack of resources in the "middle" of the criminal justice system, the pipeline through which criminal cases must flow to conclusion. Let me make one thing clear: this was and is not a trivial, administrative matter. Justice delayed *is* justice denied. It is not fair to victims, defendants or the public. Unlike fine wine, truth does not age well.

During our efforts to remedy this problem, we were gratified by an unprecedented show of unity on the part of judges, legislators, the Attorney General, county attorneys, county clerks, public defenders, victims representatives, and many others -- all of whom came together to find

common, reasonable solutions. This resulted in a legislative appropriation of more than \$12 million for additional resources throughout the justice system, and for reengineering projects to improve criminal case processing.

Our courts responded to your funding by immediately addressing the growing problem of delay. Superior courts throughout Arizona -- Coconino, Yavapai, Pima and Maricopa are good examples -- have reengineered the way they operate, implementing new and better ways to handle cases from beginning to end.

Colorblind Justice?

But justice cannot simply be swift; it must also be fair. It's been said that your view of the play is directly related to your seat in the theater. Some view our justice system as unfair. They believe justice depends on skin color and wealth. Such perceptions strike at the very heart of the system -- and at our promise of equal justice for all. Perception may well be reality, and this reality is one we can ill afford.

I have asked our Commission on Minorities to step up its efforts to find ways to remedy any real or perceived problems related to equal treatment. Among other programs, that Commission -- together with the Governor's Division for Children and the Arizona Juvenile Justice Commission -- will soon be launching a project called "Building Blocks For Youth" to attack minority over-representation in our juvenile justice system

Goal Three: Connecting With The Community

At our Citizens Summits, people told us they wanted courts to better ***Connect With the Community***. That is the third goal of *Justice 2002*. In this regard, I first want to recognize our limited jurisdiction courts. In Fiscal Year 2000, over 2.4 million cases were filed in Arizona courts. More than 2.2 million of those were filed in a justice of the peace or a municipal court. That reinforces what we've known for years -- most citizens who come into contact with courts do so in their own communities, in front of a city

magistrate or justice of the peace. As we are constructing court policy, we should not forget the important work the men and women of these courts do every day -- and the serious responsibilities with which they are charged.

I believe strongly that judges at all levels must be involved in the lives of their communities. Isolation from the citizens we serve, or from the other branches of government with whom we must cooperate, is a formula for disaster. We must be involved whenever possible. We must take the time to listen and learn.

At the Supreme Court, we have been “on the road,” holding oral arguments and town halls in counties around Arizona, hopefully delivering the message that we are the *Arizona* Supreme Court, not the *Phoenix* Supreme Court. These have been wonderful opportunities for us to meet folks from areas that we don’t often have the pleasure to visit, and a chance for them to talk with us about the justice system and how we can make it better.

We have also greatly expanded our presence on the Internet by increasing the amount of information available through our court web sites. Among other things, citizens can now read appellate court decisions on-line. They can peruse dockets and access information about court appearances and jury duty.

In cooperation with the Arizona Bar Foundation, we began the “Law For Kids” website, designed to provide information about juvenile law issues to young people. I am very proud of this site. It currently receives about 40,000 “hits” per month from all over the world.

I mentioned jury duty, which is of particular importance. Every day, thousands of your constituents come into our courts. They’re called “jurors.” They dispense justice, and collectively represent one of our founding fathers’ most important safeguards against the abuse of power.

Arizona’s courts lead the nation in jury reform, putting new and

innovative practices into place that make juror service more meaningful and, as best we can, more convenient. We will continue to lead the way, but I hope you will help us in addressing one serious problem: jurors are paid only \$12 per day. This amount has not changed since at least 1970...and it should. Simply adjusting for inflation since then would raise jury pay to \$53 per day. The current rate does not even cover parking or lunch, much less day-care and lost wages. It is a matter of fairness. \$12 dollars a day is disrespectful to those from whom so much is asked. I hope you will consider this when the bill to raise the cap of \$12 comes before you.

Goal Four: Being Accountable

Being Accountable is the fourth and final goal of *Justice 2002*, one which is of particular interest to you -- and it should be. We share the responsibility to make sure that taxpayer money is spent wisely, that citizens are getting the best bang for their buck. We deserve your scrutiny, and I believe we fare well -- but we can always get better.

I continue to place heavy emphasis on increased enforcement of court-ordered financial sanctions. Many efforts have been made to ensure that these orders of the court are not ignored. Our increase in revenues bears testimony to the success of those efforts.

For example, Yuma County's adult probation collections have increased 61 percent in the last two years. Restitution payments to victims statewide has increased more than 121 percent in the last five years. This continues a dramatic upward trend in total dollars collected, and is also reflected in fines paid and community service hours completed by those offenders placed on probation. Since we established a benchmark of \$70 million in 1988, Arizona's courts have collected more than **\$707 million** over and above that mark. This is important work. If sanctions are not enforced, if financial obligations to victims and others are ignored, than court orders will become nothing more than worthless pieces of paper. We will not allow that to happen.

But accountability is not just about dollars and cents. It is also about self-examination and responsible action.

The Supreme Court regulates the practice of law in Arizona. The vast majority of lawyers do great work and act professionally. Some do not. When we reviewed our lawyer discipline process three years ago, we decided that changes were needed to that system, and we made them. A serious complaint against an attorney used to take an average of 48 months to resolve; now it takes 18.

In 2000, the Commission on Judicial Performance Review, with invaluable assistance from the Legislature and Secretary of State Bayless, made more information available to voters about the performance of appellate court judges, and Superior Court judges in Maricopa and Pima counties, than ever before. The 2000 Voter Publicity Pamphlet included ratings of every judge standing for retention in Arizona in November, and this information was also made available on the Internet and through a toll-free telephone number.

The JPR Commission is comprised mostly of public members, not lawyers or judges, and it includes three former legislators. It does not operate behind closed doors. The process is open to any person wanting to voice an opinion on the performance of a judge. The Commission actively invites the public to participate, and the response is very strong compared to those states that rely on input only from attorneys. In an effort to make the process even better, I have recently asked the Commission to investigate ways of obtaining and disseminating to the voters more objective performance data about our judges.

Volunteers

The many councils, commissions and subcommittees of our Judicial Branch have been enriched by the addition of public members -- non-lawyers and non-judges -- and by our commitment to ethnic, gender and geographic diversity on these bodies. Today, almost 2,000 citizens serve on court

committees, volunteer as Foster Care Review Board members or as Court Appointed Special Advocates for children, serve as hearing officers or judges pro tem. Every court policy-making and advisory committee now has public members. We are grateful for the thousands of hours these folks donate, and we are better because of them.

The last few years have been very productive for our court system, some of our best. But it is a new year, and we can improve in many ways.

Challenges Ahead

This is the part where I ask for your help -- please, don't leave yet. Though we need your assistance, I want you to know that we come not with a hand out, but a hand extended. We can work together. We *must* work together.

The improvements I have mentioned here didn't just happen. The laws you pass aren't automatically implemented. Justice in our courts isn't an accident. Every day, more than 7,000 court employees head to work in Arizona, determined to show once again that this grand experiment -- democracy under the law -- really works.

Employee Compensation

But some of those employees are suffering, particularly those at the state level who are compensated far below what the market demands. We are rapidly losing our best and brightest. I know you have recommended increases for state employees, and I commend you. I only ask that you stretch those recommendations as far as you possibly can, for employees in every salary range, from top-level managers to entry-level positions, so that we don't continue to be cannibalized by other levels of government, as well as by the private sector. Make no mistake: as the board of directors for the State of Arizona, you are in fierce competition for your work force. Cities, counties and even other states are recruiting away our talent.

Probation Officer Salaries

We are \$5.8 million short of being able to make payroll for our probation officers. This is an anomaly that occurred because of a difference between the funding provided by the state and modest raises given by local Boards of Supervisors. I recognize this is a complicated issue, but we have more than 57,000 felons living in our communities today under the supervision of these probation officers, and public safety must not be compromised. I cannot allow our local Chief Probation Officers to lay off staff just to make payroll, and thereby putting the public at risk. I also do not want presiding judges to be thrust into funding conflicts with their local boards of supervisors. I ask for your help to resolve this issue.

Incidentally, this is just one of several areas in which our complicated court funding streams create conflict at the local level. Each year, we have to deal with more than 100 funding bodies throughout Arizona --boards of supervisors, city and town councils, and this legislature -- to make sure our unified court system has the resources it needs. Some have suggested that state funding of all courts is the answer. Maybe it is. Maybe it's not. I don't know. But I think this is a subject we should explore together in future study sessions. In that way we can decide whether to change the system, keep the status quo, or develop something in between. I would welcome this discussion.

I also hope you will take a hard look at the growing success of drug courts in Arizona and across the nation. An overwhelming number of defendants in Superior Court have a substance abuse or alcohol problem. They are repeat customers. They appear in court over and over, and occupy a significant portion of our jail and prison space. They consume vast amounts of our criminal justice resources.

Drug courts work. They combine frequent review by the court, close supervision by probation departments and effective drug treatment services. They offer a glimmer of hope in a dark world that historically costs taxpayers millions of dollars and, more importantly, destroys countless human lives.

Conclusion

When giving a speech, Franklin D. Roosevelt advised, “Be sincere; be brief; be seated.” I am sincere, probably not brief enough, and will soon be seated.

Before I conclude, however, I wish to thank publicly the many judicial employees who work every day in courtrooms, clerks’ offices, probation facilities, juvenile detention centers and elsewhere. They are the unsung heroes of our system who most directly serve the public and spend endless hours making the Constitution real, putting it into practice every day.

I now begin my last year as Chief Justice. Last week, while at a meeting in Maryland with my fellow chief justices, I had the opportunity to attend proceedings in the State Capitol of Annapolis.

I viewed the original chamber where George Washington came to resign his commission as General of the Revolutionary Army; next to the courthouse where a young lawyer named Thurgood Marshall once argued a case of racial discrimination that helped integrate our nation’s schools.

How far we’ve come as a nation. Near me was a woman, Chief Judge Judith Kaye of New York, and an African-American, Chief Judge Robert Bell of Maryland, neither of whom would even have been allowed in the chamber to hear General Washington’s speech.

Being in that special place caused me to reflect how real progress in our society demands the commitment of all three branches of government, working in harmony. We’ve read the words many times: all people are created equal; each endowed by the creator with certain inalienable rights; life, liberty and the pursuit of happiness. It is the responsibility of each of us to keep that dream alive.

Be proud of your court system. It is well respected across the nation.

But never let us stop thinking and talking together about ways to make it better. Thank you very much.