

*Michael A. Wolff, chief justice of the Supreme Court of Missouri,  
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**2006 STATE OF THE JUDICIARY ADDRESS**  
**CHIEF JUSTICE MICHAEL A. WOLFF**

Thank you for that warm welcome. I'm truly grateful to be here.

President Kinder, Speaker Jetton, honorable statewide elected officials, colleagues of the Supreme Court, honorable members of the cabinet, honorable members of this General Assembly and fellow citizens:

Thank you for this opportunity to speak with you today. Before I begin, I would like for us to remember Judge Theodore McMillian, who died last week. Judge McMillian was our state's first black circuit judge, state appeals judge and, for the past 27 years, a distinguished member of the United States Court of Appeals in St. Louis. He was a historic figure, an inspiration to those of us who were privileged to know him, and a generous mentor. Through his talents, persistence, civility and sense of humor, Judge McMillian opened doors that had previously been closed to men and women of his race. Let us pause for a moment of silence to honor him. Thank you.

This annual speech reminds us of our shared bond: our common oath to uphold the constitution and laws of this great state and nation. This shared promise binds us to a common goal, expressed by our state's motto: "The welfare of the people shall be the

supreme law.” We are, as my colleague Judge Mary Russell says, “constitutional partners.”

Although members of the executive, legislative and judicial branches may not often think of themselves as partners, I believe the term fits. Each of us has a distinct and equally important role. The basic policies of our state are embodied in the constitution that the people themselves have enacted. In partnership with each other and with the people we serve – who retain for themselves the right to change the Constitution that we uphold and the laws that you write – we forge the body of law that governs all of us.

## **IMPORTANCE OF THE RULE OF LAW**

More so than any other nation on Earth, we are a nation first and foremost of law. We have no common national origin or ethnicity that now forms our shared identity as Americans. Instead, our identity has been shaped by the rule of law and by our common experience that faithfulness to the law guarantees individual liberties, equality of opportunity and a functioning society. As constitutional partners, we *all* are given the task of protecting the long-standing rule of law. Its roots date back at least to the Magna Carta – some 800 years ago. In our state constitution, the people repeat the Magna Carta’s command that “justice shall be administered without sale, denial or delay.”

Our partnership preserves certain long-standing principles of the rule of law that set us apart from the many societies where the people yearn to overcome the rule of “might makes right” or that perversion of the golden rule that “he who has the gold makes the rules.”

Each of us may, from our varying perspectives and decidedly different constitutional roles, have a different view of what exactly the “rule of law” means. You in the General Assembly are commissioned broadly to carry out the preferences of your constituents – the majority of those who elected you. At times you may ask yourselves the age-old question: Am I elected merely to follow the *will* of my constituents, or do I use my own best judgment to achieve the *welfare* of all the people?

Courts, by contrast, work from texts – the words of the constitution, the common-law precepts expressed in judicial decisions, and the words that you write in statutes and that executive agencies write in regulations. We in the judicial branch labor over these words, and we strive to be faithful to their meaning.

The courts’ work is dedicated to the application and enforcement of the constitution and laws. The vast majority of our work involves the lives of ordinary citizens. Very little of what our courts do makes news: the thousands of cases where businesses, large and small, enforce their contracts; where marital disputes are resolved; where property is conveyed; where wealth is transmitted through probate; where children, victims of domestic violence and other vulnerable people are protected; and where those accused of crime are tried.

Courts provide stable and rational resolution of disputes, protect property and economic interests, and, when needed, protect people from the overreaching of government. Courts cannot make everyone happy, but I do hope that the litigants and the public will respect the integrity of our processes and of our decision-makers, both judges and juries.

The courts' challenge is to be fair and impartial, professionally competent and prompt. We can do so only with your help and your support and our citizens' belief that the rule of law protects all of us even when we might disagree with particular decisions.

## **IDEALS OF EFFECTIVE COURTS**

The rule of law is simple in theory, yet how can we maintain it in practice? One way is to compare ourselves to those nations in the process of creating a functioning rule of law. Many countries do not have a strong tradition embodying the rule of law and still resolve their disputes in the streets. People in these countries often look to the United States of America as a model, for they respect the integrity of our courts and the constitutional processes as they watch cases unfold here.

American lawyers and judges, at the request of our federal government, offer guidance to many countries about how to establish effective judiciaries. Under the auspices of the U.S. Agency for International Development, American lawyers and the National Center for State Courts have helped implement rule-of-law programs in former Eastern bloc countries and in developing nations around the world. While we in America occasionally complain about the outcomes of particular cases, it is that process of peaceably resolving disputes that is one of our greatest exports and surely one of our most lasting legacies to the world. This simple concept of a rule of law – grounded in our constitutions, fashioned in our legislatures, administered by an executive branch and enforced in the courts – ensures civic order rather than civic chaos.

The rule of law is the foundation of a democratic government, of a strong economic system and of civic order. The rule of law ensures, in Lincoln's words, government of the people, by the people and for the people.

What do we tell the world are the criteria for courts under a rule of law? There are three key measures: independence, accountability and adequate resources. By examining how independent, accountable and adequately supported a nation's judiciary is, one can determine if that nation adheres to the rule of law or is still suffering from tyranny, lawlessness and corruption. By looking to a nation's respect for the rule of law we can discern the integrity of its governmental process, the progress of civil society, and the robustness and stability of its economic development.

## **JUDICIAL PRINCIPLES APPLIED TO MISSOURI**

So let us ask: how does our Missouri Judiciary stack up to the same three measures – independence, accountability and resources? What really *is* the “State of the Judiciary” in our great state?

To answer these questions, we must first understand what these terms – independence, accountability and resources – mean. I will touch briefly on the first two, which my predecessors have discussed with you in recent years, and then spend a bit more time on the third.

“Independence,” quite frankly, is both overused and misunderstood. It should not be interpreted, either by the public or by any judge, to mean that a judge is free to do as he or she sees fit. Such behavior runs counter to our oaths to uphold the law, and any

attempt to put personal beliefs ahead of the law undercuts the effectiveness of the Judiciary as a whole. Better stated, “independence” refers to the need for courts that are fair and impartial when reviewing cases and rendering decisions. By necessity, it also requires freedom from undue outside influence or political intimidation, both in considering cases and in seeking the office of judge. Courts are not established to follow opinion polls or to try to discern the will of the people at any given time but rather are to uphold the law.

The people rely on courts to protect their access to justice and to protect their legal rights. For the sake of the people, then, judicial independence must always be coupled with the second stated measure – accountability.

In recent months we have seen two men nominated to the Supreme Court of the United States face intense questioning of their views by members of the United States Senate. I believe these hearings offered an important lesson about the difference between judges and the legislators who questioned them.

The important lesson taught by Chief Justice John Roberts Jr. and Judge Samuel Alito is that they resisted demands to take positions on particular controversies that might come before the Court. They, in effect, refused to make campaign promises. Campaign promises are inconsistent with judging. After all, you don’t want a referee in a football game to announce which side he will penalize before the game begins! If judges are to be faithful to the law, they must be prepared to consider written and oral arguments with an open mind. And this open-mindedness is what we ask of our fellow citizens – and you – who serve as jurors in courtrooms throughout this state – to not pre-judge the outcome

before they can consider all the evidence and arguments. Judges as well as jurors must make decisions that are faithful to the law, regardless of the will of the people and even where, on occasion, they personally might prefer to decide otherwise. That is the essence of judging, and it is quite unlike the legislative role.

In our state, judicial accountability occurs on two broad levels. First, just like you, we are accountable to our fellow citizens through the election and retention systems. Unlike federal judges, who enjoy lifetime tenure, judges in Missouri have a direct connection to the voters. The people of Missouri have crafted a system that balances independence and accountability. In smaller counties, where voters can get to know their judicial candidates, there are elections. In some urban trial courts and the appellate courts, judges are selected under the nonpartisan court plan and periodically face the voters in retention elections. This system balances various competing interests and avoids the problems seen in other states where the integrity of the judicial process, even at the highest levels, increasingly has been brought into question.

Many of us who spend time in the eastern part of our state could not avoid seeing on television the kind of election that can result when millions of dollars are raised and spent on a judicial campaign. In the 2004 race for one district seat on the Illinois Supreme Court, most of the money spent was assuredly special interest money – business interests on the one side, trial lawyers on the other side – with charges and counter-charges that detracted seriously from the public's trust and confidence in the integrity and the impartiality of the judiciary. Missouri's system keeps courts

accountable to the people while avoiding the kinds of campaigns that can diminish respect for judicial office.

Second, judges in Missouri are, above all, accountable to the law and the constitution through our sworn oaths. We are also accountable through the judicial disciplinary system established by our constitution. For nonpartisan judges subject to retention, The Missouri Bar is seeking to improve accountability by giving voters better evaluations of judicial performance. This fall, voters in some areas will have available to them not only the traditional evaluations by lawyers who are acquainted with the judges' work but also evaluations by jurors of the judges who preside over the cases on which they serve.

Citizens view the courts as an important part of democracy that provides essential balance in our form of government. As a result, we conduct the courts' business as openly as possible consistent with the rights of individuals. We strive for predictability of outcomes for those who seek judgments in our courts as enshrined in the principle of *stare decisis*, constant professionalism, and fundamental fairness of procedure. The citizens of this great state expect – and deserve – no less.

## **FUNDING AN EFFICIENT AND PROFESSIONAL JUDICIARY**

To ensure that Missouri's courts can give the level of performance required by these principles, we must have sufficient resources. On this third measure – resources – we are most reliant on our constitutional partners – both in the General Assembly and the



executive branch. We rely on you to provide a budget that is sufficient to allow us to fulfill our constitutional responsibilities.

We share your hope that we are now emerging from the difficult fiscal times that have been so challenging for the past five years. During this time, we have tried to manage our resources well. Today, the judicial branch receives about 1.6 percent of the state's budget – less than the percentage of the state's budget that we received 20 years ago. During that same period, however, our responsibilities have increased; for instance, juvenile officers have been added to our budget to relieve county governments of some of the burden of supporting local courts. In the past 10 years, as our workforce has decreased, our trial court case filings have increased 23 percent, largely in civil cases involving breach of contract claims filed by businesses, landlord-tenant disputes and domestic relations. The other major area of increase was in felony criminal cases, due largely to new drug laws.

In light of these facts, it is clear that maintaining effective courts requires a renewed commitment of financial resources to the Missouri Judiciary. The amounts we need are quite small in comparison to the overall state budget, but they are essential.

When you and your constituents visit the courthouses in your district, you see the effects that our recent budget restrictions have had on our deputy clerks, who are the frontline personnel and the true face of our court system. Turnover in their ranks has reached an alarming rate, particularly in urban and suburban areas where the annual turnover rate is as high as 17 percent. Even in rural areas, where salaries are still more competitive, we experience significant turnover. Throughout the state – in both rural and

urban courts – we have seen an actual decrease in the worth of salaries as wages fail to keep pace with the cost of living. Through these tough times, the many good people who have remained in our system despite layoffs and a lack of increasing salaries – like a lot of others in public service – have soldiered on.

We continue to improve court technology, consolidate local court functions and make other efforts to be efficient. But we need to retain our well-trained clerk staff, which we increasingly are unable to do. Often, after developing their skills and becoming proficient in working in the court system, they are marketable and move on to higher paying jobs with their new skills. While we can never stop some flow of workers out of public service, we hope that adopting the Governor's proposed 4-percent cost-of-living increase will assist us in retaining many of these frontline employees who are so important to the effectiveness of the Judiciary.

We appreciate your support, and the Governor's recent proposed increase, for our drug courts, which now operate in 35 of our 45 judicial circuits. It is in the interests of all of us, and the communities that we serve, to work together on measures such as drug courts and the sentencing advisory commission that can prevent repeat offenses so that our most expensive correctional resources – prisons – are reserved for violent offenders.

There is, of course, one other group on whom the budgetary constraints of recent years are taking a toll: our state's judges, who now face their sixth year without any pay increase or cost-of-living adjustment. The state of judicial salaries is having a negative impact on our ability to attract the state's best lawyers to judicial service to provide the best service to our citizens – and your constituents. I realize it may seem politically

unpopular to some of you to consider a pay increase or cost-of-living adjustment for public servants who are paid better than most state employees. None of us, however, has the power to repeal the economic laws of the marketplace. Consider for a moment a few facts:

There now are Missouri attorneys fresh out of law school who are paid more in their very first legal jobs than some state trial judges before whom they may appear. For Missouri lawyers older than 36 years of age, the *average* salary is as much as one and a half times that of a state Supreme Court judge. While our state has attracted and retained – through increased compensation – many fine state-paid law professors, university administrators and other similarly talented public sector professionals, we have seen the opposite in the Judiciary. In recent years, some of our best jurists – including some from the Supreme Court – have moved on to much more lucrative jobs in the private sector, and the number of lawyers applying for judicial vacancies has decreased substantially.

I appreciate the fact that many in this great chamber make substantial financial sacrifices to serve here. Judges do so as well, but they also give up the opportunity for any supplement to their state salaries through the practice of law for which they are trained.

We all know that the calling to public service involves financial sacrifice. As with our clerk staff, we will never completely stop talented people from leaving public service. But when the gap between the private sector and public service gets too large, good people will not sacrifice their families' financial interests to answer the call. My greatest

fear is that we will lose the ability to attract enough of the state's finest lawyers to public service in the Judiciary.

I have one other request affecting the judicial branch that I make sincerely and respectfully: Let us consider the needs of the Judiciary and the state as a whole when evaluating local requests for additional resources. We in the judicial branch are aided in developing a statewide approach for the allocation of resources by judges from around the state who serve on our circuit court budget committee. I know that some of you have ideas for improving the use of our resources even beyond the efforts that we have made to assign judges to areas of critical need and to enlist the good work of senior judges in meeting those needs. We stand ready and willing to work with you, as constitutional partners, to improve the rational allocation of our resources.

## **OTHER PARTNERSHIPS THAT HELP THE STATE**

Judicial effectiveness clearly does not rest on financial resources alone, nor is it solely the product of courts' efforts. It relies heavily on how we work with our other partners in this system of justice: law enforcement officers, prosecutors, public defenders and other attorneys. Members of The Missouri Bar contribute greatly to the cause of justice, not only as officers of the court but also through their volunteer efforts as *pro bono* attorneys, as members of Bar committees, and in other types of public service and civic leadership.

The public service of our law enforcement community is sometimes heroic and well known, but it is in their everyday efforts that they serve as frontline defenders of the

rule of law. We continue to seek ways in which we can better cooperate and communicate with law enforcement, particularly through our ongoing commitment to court technology. The demands of recent legislation such as the sex offender registry, as well as the impending federal mandate to communicate commercial driver license revocations to other states, require us to be administrative partners in new and innovative ways with law enforcement. We seek your cooperation and support in these important efforts.

Likewise, we look to both prosecutors and public defenders on matters of mutual importance to the administration of justice. In this current session, we in the judicial branch pledge to work with these groups toward resolving some of the issues relating to administration of trials and other matters of mutual interest. We further pledge to work with the public defender system in whatever way possible toward the attraction and retention of employees and toward the alleviation of its ever-increasing caseload. When I spoke earlier of the challenge of attracting and retaining good public servants, those words echo all too loudly in light of the crisis facing our public defender system. Often the test of a system of justice is not how it treats our best citizens, but how it treats those who appear to be our worst. No system of justice can be effective without adequate legal representation for criminal defendants. It is in the interests of all of us – even if it were not a constitutional requirement – that those whom the state deprives of liberty or life are guilty in fact and law of the crimes they are charged with committing. This goes to the legitimacy of the rule of law.

## **THE RULE OF LAW: A LIVING PRINCIPLE**

So, are we there yet? Can Missouri be said to have a fully independent, accountable and adequately supported Judiciary? Well, we may not be there yet, but we know the way.

A recent national survey shows that most Americans want strong courts that will protect their individual rights, that will offer equal access to justice for all people, that are accountable to the constitution and the law, and that are free from the influence of politicians and special interest groups. If we are to be responsive to those ideals and to the values of our citizens – fundamental principles of this nation – then it is most important to strive for these goals above all else.

The ideals and values of the people are not expressed only in surveys. They are in our souls as Americans. From the beginning of the American Revolution, our people have understood the consequences of failing to have a judicial branch that is independent, accountable and adequately supported. The signers of the Declaration of Independence certainly understood what oppression could be inflicted by those in power when those values are ignored. The signers understood that it was necessary to have a stable justice system to protect the people from tyranny. We all remember “Life, Liberty, and the Pursuit of Happiness” enshrined in the Declaration of Independence. But consider, to be specific, some of the grievances in the Declaration against King George III, who deprived us “in many cases, of the benefits of trial by jury” and transported us “beyond seas, to be tried for pretended offenses. ... [H]e has obstructed the administration of justice, by refusing his assent to laws for establishing judiciary powers.”

As Americans in the 21st century, we intuitively value the checks and balances that are the hallmarks of our democratic republic, the protection of the rights of individuals, and the fundamental sense of fairness embodied in what the constitution calls due process of law. Our ideals and our goals are worthy of our constant efforts, individually and with you, our constitutional partners.

Today, in Missouri, we are responsible for administering justice in the highest sense of which we are capable ... to be fair and impartial; to be free of undue influence; to be accountable to the law and not to the popular will; and to be effective and consistent in the exercise of proper judgment.

We pray that we are up to the challenge of providing a forum where the people peaceably can resolve their disputes and their legitimate constitutional grievances against their government. It is a challenge that we approach humbly and in full recognition of the limitations of the judicial role.

I offer you our cooperation, and I ask for your support as we continue our ongoing, mutual pursuit of a Judiciary that lives up to the ideals expressed in our state's motto. Thank you very much.