

State of the Judiciary Address
Chief Justice Pascal F. Calogero, Louisiana Supreme Court
Message to the Louisiana Legislature
April 8, 2008, in Baton Rouge, Louisiana

MR. PRESIDENT, MR. SPEAKER, MEMBERS OF THE SENATE AND THE HOUSE OF REPRESENTATIVES, COLLEAGUES, DISTINGUISHED GUESTS, LADIES AND GENTLEMEN:

Good Afternoon,

On behalf of the Louisiana Supreme Court, thank you for this opportunity to speak to you again on the State of the Judiciary. With me today for this address are Justice Kitty Kimball of New Roads, Justice Chet D. Traylor of Winnsboro, Justice Jeannette Theriot Knoll of Marksville, and Justice John L. Weimer from Thibodaux. Unfortunately, Justice Bernette Johnson of New Orleans and Justice Jeffrey Victory of Shreveport are unable to be here today.

It is an honor to appear before you again. I sincerely appreciate the courtesies shown me by the President, the Speaker, and all of you for scheduling this address and for being here this afternoon.

As you may know, it has been my practice as Chief Justice to present this State of the Judiciary address every two years. This occasion gives us the opportunity to visit, and to demonstrate our mutual respect for our respective branches of government. I had the pleasure of speaking to you last year. However, I wanted to visit with you again this year for two main reasons. First, on behalf of the Louisiana Supreme Court, I wanted to personally welcome the new legislators, and to congratulate you on undertaking the awesome responsibility of serving your constituents in the August body of the Louisiana State Legislature. You join the ranks of one of the most dedicated and hard-working state legislatures in the country. The citizens of Louisiana are depending upon you, and the brightness of our future is dependent, in large measure, on the work you do here. Judging from the results of the first two extraordinary sessions earlier this year, I believe our future is indeed bright.

Second, in addition to a sincere welcome, my address today is also a heartfelt farewell. After 36 years on the bench and after 18 years as Chief Justice, I will be retiring at the end of this year. When I reflect back on my time on the Court, especially as Chief Justice since April of 1990, I am proud of what the Justices have accomplished. I would like to review a sampling of those accomplishments for the benefit of the new legislators so that you are better acquainted with some of the initiatives of the Louisiana Supreme Court.

First and foremost, I am proud to say that throughout the past 34 years, the Supreme Court has successfully maintained a consistently current docket, notwithstanding that during this time the volume of cases has more than tripled.

We have implemented meaningful reforms in judicial administration, many in partnership with you, the state legislature. For example, significant reforms have been made in Louisiana's juvenile justice system. In my 2001 State of the Judiciary Address, I spoke about the need to reform the juvenile justice system of Louisiana, and I asked you to create a joint commission to

develop the vision and plan for reform. You responded in an inter-branch effort that resulted eventually in your passing an omnibus law and a companion omnibus resolution requiring or recommending major changes in the state's system of juvenile justice. These changes included, among others, the closure of a juvenile prison which had been operating under deplorable and substandard conditions, the empowerment of the Children's Cabinet as the chief vehicle for reform, and the establishment of an implementation commission. Because of your foresight several years ago, and the collaboration of the three branches of government, much improvement has been made, but there is still work to be done. I urge you to continue your commitment to the youth of our state and improving Louisiana's system of juvenile justice and to proceed full-steam ahead with the reform measures that you previously approved and that are ongoing.

I am also proud of the progress we have made together in the area of indigent defense, a vital part of a working criminal justice system. Our work began in 1993 with an inter-branch initiative to create and fund a statewide indigent defender board. Prior to this initiative, indigent defender programs in Louisiana were fragmented, poorly managed, and seriously underfunded. The Supreme Court established by its own rule a statewide indigent defender board, designed to operate temporarily, and which later became the Louisiana Indigent Defense Assistance Board. After a few years, operation and management of the Board was transferred to the executive branch as had been contemplated from the start.

Over the next several years, the issue of adequate funding was constantly being raised, and in 2005, in my State of the Judiciary address I asked you to provide for a workable and adequately funded indigent defense system. You took action by creating the Louisiana Indigent Defense Services Task Force, which was charged with studying the indigent defense crisis and making recommendations to improve the public defender system, which is used in perhaps 80-90% of all criminal cases in Louisiana. You acted again last year by passing the Louisiana Public Defender Act, which called for comprehensive, state-wide reforms and increased authority for the Louisiana Public Defender Board. Most importantly, you significantly increased funding for the delivery of public defense services. I urge you to continue to be responsive to the call for insuring a viable public defender system. We owe it to our citizens, especially to the victims of crime, to do what we can to insure that appropriate convictions are obtained and will survive the appellate process and constitutional challenge.

Thanks to you and state appropriations, and after two decades of effort, the restoration of the Louisiana Supreme Court building was completed, and now houses the Louisiana Supreme Court, the Fourth Circuit Court of Appeal, the Louisiana Law Library, and the Office of the Judicial Administrator, among other offices. In recent years, some of your Committees have held hearings in the building, and we stand ready to accommodate future hearings. Post-Katrina we also hosted several U.S. Congressional field hearings.

Over the last two decades, one of our Court's top priorities has been Louisiana's judicial discipline system. In its constitutional role of superintendence of the state judiciary, the Supreme Court reformed the judicial discipline system, including the creation of the Office of Special Counsel and the hiring of an aggressive prosecutor, separate from the Judicial Administrator, to fill that position, as well as increasing available funding and staffing, thanks to you. Also hired was a legal counsel for the Judiciary Commission itself. These efforts, combined with dedicated volunteer judges, and volunteer attorney and lay members of the Commission, have resulted in an increase in the number, as well as improvements in the adjudication, of judicial discipline

cases. Since 2002, we have removed six judges and two justices of the peace from the bench, and issued a suspension or other discipline in 31 instances. We also acted to address a growing concern about the increasingly negative tenor of judicial campaigns, as well as possible unethical conduct, by creating a “Judicial Campaign Oversight Committee.” That Committee has had positive results. And just recently, we adopted procedures whereby selected retired and active judges will serve as Hearing Officers on certain Judiciary Commission complaints to help speed up the process and avoid the build-up of a backlog, as well as reduce delay in proceedings against judges, whose misconduct, if left unaddressed for any length of time, may well result in continuing harm to the public.

We are most serious about our constitutional responsibility concerning oversight of state judges, and we will continue to take steps to strengthen the judicial discipline process.

We also addressed head-on increasing concerns regarding lawyer misconduct and the need for reasonable and adequate attorney discipline. Louisiana’s lawyer discipline system was the first based on the ABA’s Model Code to be instituted in the United States. Over the years, while not the most popular move, the Court has acted several times to increase the disciplinary fee assessed to all practicing lawyers to adequately fund the system. For the last fifteen years, the system has worked extremely well, thanks to the efforts of the Disciplinary Board Hearing Committees, the Louisiana Attorney Disciplinary Board, and the Office of Disciplinary Counsel. The Hearing Committees and Disciplinary Board are composed of volunteers, all of whom expend a substantial amount of time and effort, without pay, to make the attorney discipline process work at very little expense to the public.

The number of prosecutions of attorney misconduct has steadily increased over the last decade. Just since 2003, in a mere five years, we have ordered that an attorney be disbarred in 104 cases, of which in 66, the disbarment was made permanent, a sanction we recently codified by amendment to court rules, and which is reserved for the most gross misconduct, criminal and otherwise. Additional reforms implemented in the area of attorney discipline, among others, include requiring character and background investigations by the National Conference of Bar Examiners as a prerequisite for taking the bar exam; and mandatory trust account overdraft notification by banks.

Some other major judicial administrative initiatives that have been undertaken over the past two decades include the establishment of CMIS, the Case Management Information System Department, within our Judicial Administrator’s Office for the purpose of developing a master plan for a statewide, computerized court information system linking the courts with each other and with state and federal law enforcement agencies; the creation of the Children and Families division of the Office of the Judicial Administrator, which administers three programs: the Court Improvement Program, the CASA (“Court Appointed Special Advocates”) Assistance Program, and the FINS (“Families in Need of Services”) Assistance Program; and the Louisiana Protective Order Registry (LPOR), which is a centralized computer repository for the collection of civil and criminal protective orders--stay away orders which provide relief from abusive or harassing behavior in domestic violence incidents.

Louisiana’s drug court program also continues to grow and show positive results. Since the establishment of Louisiana’s first drug court in 1997, the number of programs has grown to 45, with three currently in the planning stages. There are nearly 60 judges overseeing drug court dockets and managing the delivery of intensive treatment, drug testing and community

supervision to over 2,900 participants. The Legislature's faithful support of our local drug court programs has had a significant positive impact on the lives of the many clients and families that have been served and on the communities in which they live.

Much significant work of the Louisiana Supreme Court is accomplished through its arm, the Louisiana Judicial Council. Over the past few years, you have passed several "request and urge" resolutions asking the Judicial Council to take action, and the Court and the Council have responded in all instances. For the benefit of the new legislators, the Judicial Council was created by a Supreme Court Rule in 1950 to assist the Chief Justice and the Court in the administration of justice. Since its creation, the Council has made studies and recommendations regarding the justice system. For example, the Council has studied court finance, issues relating to court reporting, delay reduction, pro se litigation, and many other topics.

Since 1981, the Council has also been involved in developing formal procedures and criteria for evaluating requests for new judgeships, which were extended by the legislature through the enactment of R.S. 13:61 several years ago. Since the enactment of another statute, R.S. 13:62, the Council has also assisted the legislature by evaluating and making recommendations regarding bills that would impose or increase court costs and fees. Last year, the legislature asked the Court, in conjunction with the Council, to continue to develop criteria for evaluating the need for judgeships throughout the state pursuant to Senate Concurrent Resolution No. 91. The report of the Council was submitted to the leadership of your respective bodies on March 14th of this year. The information produced by these criteria can be used by the legislature for the possible reduction of unneeded judgeships.

Throughout my tenure, this Court and its Judicial Council have enjoyed a good working relationship with the legislature and I am certain that this will continue. However, as I depart, I would like to make some suggestions for improving that relationship. First, I would recommend that, if you wish to have the Judicial Council study a matter of legislative concern, you address the request to the Court and not the Council. This would allow the Court the opportunity to review the request to determine if the Judicial Council is its proper agency to address the matter, and if not, to determine the appropriate response to your request. And second, I would hope that we could find ways for the three branches to work together on studies and projects of this type, perhaps following the course we took in collaborating on juvenile justice reform.

One of the most significant reforms, I believe, has just recently been implemented, and that is requiring financial disclosure by state judges. We have also revised Canon 6 of our Code of Judicial Conduct relative to the receipt and reporting of gifts by state judges to incorporate several recommendations of the ABA Model Code of Judicial Conduct, as well as some provisions of existing state law applicable to other public officials. You are to be commended for respecting the principles of separation of powers as is established in our state constitution. While it may not have been popular with some of your constituents to exclude judges from your recent financial disclosure legislation, I believe it was the only legal and constitutional thing to do, and I hope that the Court's expeditious action helped to assure you that the Louisiana Supreme Court, like your distinguished body, stands ready and is fully capable of complying with its constitutional responsibility in the exercise of its constitutional authority.

You may be interested to know that the Court has a standing Advisory Committee to the Supreme Court for Revision of the Code of Judicial Conduct, which is currently chaired by retired Justice Harry Lemmon. This Committee reviews the Louisiana Code of Judicial Conduct,

generally, and the American Bar Association Model Code in particular, and makes recommendations to our Supreme Court for improvements to the Louisiana Code. Present topics undergoing review include the provisions of the Code governing recusal of judges, as well as political and campaign conduct of judges.

I am concerned about what is perhaps a declining confidence in the judiciary, for it contradicts what I have observed in the way of judicial performance over my many years on the Court. During the past 36 years, I have had the opportunity to work with some of the most talented, dedicated judges in the United States, right here in Louisiana. The ranks of Louisiana judges are filled, for the most part, with hard-working, competent, ethical, honest jurists who take their constitutional responsibilities very seriously, as do you Legislators. They are dedicated public servants who routinely act without selfish motives. Yes, it is true that there are occasional occurrences of judicial misconduct, sometimes of a serious sort, and we are aggressively weeding out these errant judges. Do I believe that there might be corruption within the state judiciary? Indeed, as in any profession, there are some who would seek to benefit personally in an improper way, but I believe that our judicial discipline system is working to strip these judges of their offices. I also believe that the tightening of our ethical rules should discourage judicial aspirants with improper motives from seeking a judicial career.

My experience has been that the electorate, for the most part, has made wise and deliberate choices of those who are elected to serve in the state judiciary. Some have questioned whether our system of selecting judges by election is the optimal system, and it has been suggested that perhaps our elective system should be replaced with an appointive system. Of course, I am a product of the elective system, having faced the electorate on four separate occasions, including my first election in 1972.

Nonetheless, I welcome this debate. However, such debate should be open, fair and straightforward. We owe our citizens that much.

It has been said that an appointive system promotes judicial independence, whereas an elective system insures judicial accountability. Both systems have their advantages and disadvantages. My chief observation, however, is that if the right of the public to cast votes for their judges is to be taken away, then the decision to do so should be made based on facts, rather than rumor or innuendo, and the debate should be deliberate and considered. I am also concerned that replacing an elective system with a “selection” or appointive system only takes away the choice from the people and places it in the hands of a few; it does not in any way remove the politics from the process, as some have argued.

Notwithstanding these views, I do not take the position that our system is perfect, and I do believe there is a need for constant review and improvement. I might mention, however, that we already have in place strict limits on the amount of individual contributions to a judge’s campaign, a prohibition on personal solicitation by judges of campaign contributions, limits on the level of campaign contributions that can be retained following an election, and stringent reporting requirements. And of course, the public has access to the list of contributors and contributions made to a judge’s campaign committee.

As I am in the twilight of my tenure, I hope you will indulge me for several more moments as I share a few of my personal opinions with you on another subject. These comments are my views developed after years of involvement in the judicial system. They are my personal observations

and are not necessarily expressions on behalf of any other justice of the Louisiana Supreme Court.

Many of the problems impairing judicial performance -- some of them problems revealed during the hurricanes and their aftermaths -- are deeply rooted in the confusing manner in which the judicial system is structured, governed, and financed. The present set of fragmented arrangements includes more than 750 elected judges and justices of the peace spread over five layers of courts, as well as countless district attorneys, clerks of court, sheriffs, coroners, and other court officials, all of whom exercise discrete, independent authority and are funded through differing financing mechanisms. The present system is further complicated by the fact that trial court judges, especially those on the district courts, are almost totally dependent upon other elected officers for the delivery of most essential court functions.

The existing governance structure of the trial courts is, in my opinion, a major problem for the proper administration of a court system because it requires, for its proper functioning, a complex system of coordination among the branches and offices of state and local government. In addition, the current complex structure makes it very difficult for the public to understand and access the system of justice. I would hope that, in the future, we could simplify the structure of the justice system.

We also need to find a way to control the number of judgeships in the state. We currently have a very good system for determining the need for new judgeships. We need an equally good system for eliminating unneeded judgeships. Unfortunately, a bill introduced by former Senator Lentini which proposed reducing unneeded judgeships by attrition -- an approach, by the way, recommended in concept by the Judicial Council -- failed to pass the legislature last year. I am hopeful that this legislature will address that subject again as soon as possible.

I would also hope to see in the future a restructuring of the financing of the justice system. The current set of financial arrangements is bewildering and problematic. As part of these arrangements, local governments are required to carry the heavy burden of funding a large part of the operations of the courts, the district attorneys, and the coroners -- all of which are state constitutional functions. Citizens are also required to pay rather high fees, fines, court costs and assessments to also help pay for the costs of judicial branch functions. These arrangements create a condition of "rich" offices and "poor" offices, and force agencies that should work together, rather, to fight one another for limited resources, as well as to try to build up cash fund balances for a "rainy day." Furthermore, the present funding arrangements prevent uniformity and consistency in judicial services, and threaten judicial impartiality by making judicial functions too dependent on local governments and user-generated income. In addition, the current financing arrangements make it impossible for citizens and the legislature to understand the total amount of financing being provided to each agency, thus making public accountability very difficult.

The current system of financing is not the product of any planned public policy analysis or rational overall decision-making. Rather, it is the aggregation of all of the arrangements made by financially strapped units of government over many decades. This patchwork of financing creates numerous problems that impede the state's efforts to combat crime, maintain public accountability, preserve judicial independence, and reduce the number and level of mandated expenses on local governments.

I would hope that, in the future, the state would move toward bearing the entire burden of financing the court system. Perhaps this could be accomplished by a combination of user-fee funding and general appropriations. In any case, the issue of financing the court system is one that warrants attention in the future.

As I close my final State of the Judiciary address, I want to express again my gratitude to you, the legislators of today, as well as the legislators who preceded you and whom I have had the honor of knowing and working with these past 35 years. Thank you for your assistance to the state judiciary, for giving due consideration to our annual appropriations requests, for generally respecting our views on matters of judicial administration when we have been called upon, and, for the respect and the courtesies you have demonstrated throughout the years. I also would like to thank your outstanding legislative staff which has provided immeasurable assistance to the judiciary over these many years.

I would also like to publicly thank my present colleagues on the bench - Justice Kimball, Justice Johnson, Justice Victory, Justice Traylor, Justice Knoll and Justice Weimer. It has been an honor and a privilege to serve with you, and I admire each of you for your dedication to your position and to improving the administration of justice in our state.

I owe a special thanks to the Justice who will succeed me as Chief, - Justice Kitty Kimball. Justice Kimball has been invaluable in assisting me on the Court in the handling of myriad court administrative duties in the past few years. She has proven herself to be an effective, courageous, and hard-working leader. The City of New Orleans, as well as the state, is in her debt for her successful efforts post-Katrina to encourage and foster communication and problem-solving among the entities in the Orleans Parish criminal justice system. I know Justice Kimball will excel as the next Chief Justice of the Louisiana Supreme Court. She has my every confidence.

In closing, thank you President Chaisson, Speaker Tucker, and all of you, the dedicated members of our state Legislature, for opening your chamber to us today, and for your unfailing devotion to the people you serve, the citizens of Louisiana. I greatly appreciate your attention to this, my final State of the Judiciary address. It has truly been an honor to serve you and the citizens of Louisiana as your Chief Justice.

Thank you.