

State of the Judiciary
Chief Justice Jean H. Toal, South Carolina Supreme Court
Message to the Legislature
March 2, 2005, in Columbia, South Carolina

Lieutenant Governor Bauer, President Pro Tempore McConnell, Speaker Wilkins, Speaker Pro Tempore Smith, members of the joint assembly, my brothers and sisters of the South Carolina judiciary, ladies and gentlemen:

Judicial independence

The uproar over the presidential election in Ukraine split the former Soviet republic of 48 million into two polarized camps and sent cold war era echoes on the world stage, as Russia backed Yanukovich and Europe and America backed Yashchenko.

Yashchenko claimed that the election was marked by numerous violations of law. The central election committee refused to examine his claims. As turmoil deepened in this newly formed democracy, the Ukraine Supreme Court met to consider Yashchenko's election challenge.

On December 4, 2004, the Ukraine Supreme Court overturned the certification of the bitterly disputed election and ordered the central election committee to set a new run-off vote.

On December 26, 2004, before the new year, the chief presiding judge's order was carried out and the Ukraine finally had a democratically elected leader.

How did the Ukraine Supreme Court have the courage and the tools to conduct this important judicial review? Many credit the Ukrainian Supreme Court's strong decision for the rule of law to their training by a team of American judges and lawyers sent on an outreach mission to newly emerging democracies to school their judges in the art of creating and operating an independent court system.

All over the globe, a court system that operates with true judicial independence, applying the constitution and laws without fear or favor, is seen as the very bedrock of a democratic society.

The news from Baghdad yesterday that Baathist terrorists assassinated the Iraqi judge who ordered Sadaam Hussein held in jail for trial after his capture, and the news this morning from Chicago that a United States district judge's husband and mother may have been murdered by a cultist she previously tried and ordered to jail are proof once again of the threat that an independent court system poses to terrorists and criminals here at home and around the globe. This news should renew our resolve as a people to protect our court system.

Just as America is exporting democracy in the form of free elections in Afghanistan, Iraq, Palestine, the Baltics, and perhaps to Egypt, Lebanon, Saudi Arabia and other middle eastern countries, so is the assistance of American lawyers and judges transplanting an independent system of justice to countries around the globe. Many South Carolinians are participating in this

outreach. Thus, the health of our own democratic institutions is important for the political stability of our beloved state and a beacon of light to the world.

What is our governmental mission here at home?

The executive, legislative and judicial branches must have the kind of cooperative relationship that enables us to provide for the safety and security of our citizens.

The health of each of us depends on public acceptance of our authority and public confidence that we are exercising our authority fairly.

Judicial selection continues to be an important way of building public trust and confidence in a just system.

Diversity

In each of my “state of the judiciary” addresses, I have discussed our system of judicial selection. Every national meeting I attend deepens my conviction that South Carolina’s basic system of legislative selection is a vast improvement over the selection methods in most states, which are money driven and influence tainted.

We have had judicial independence in South Carolina, the hallmark of the stability of the rule of law, because of our method of judicial selection by the General Assembly. But no system is perfect, and ours has the flaw that although it reflects, fairly closely, the diversity percentages within South Carolina’s licensed lawyers, it does not represent the diversity of South Carolina’s population.

The chart I am showing illustrates what I’m saying. South Carolina’s population is 51% women and 30% African American. Our lawyer population is 27% women and 5% African American. Judges are 17% women and 6% African American.

This is a problem of educating more minority lawyers as well as an issue of the method of judicial screening and selection. I know each of you will work to ensure that our judicial officers reflect the face of South Carolina.

New judges

It has been 10 years since the South Carolina General Assembly created any new judicial positions at the trial level.

I request that this General Assembly consider legislation which would create 3 new circuit judge and 3 new family court positions. The costs are shown on my chart. I would suggest the positions be created now, to take effect next year with elections, and installation at the beginning of the next fiscal year.

Judges caseload

South Carolina has, per capita, the highest caseload on the trial bench of any state system in the country. More than double the national average.

That said, I proudly report that streamlining with increased use of technology and reengineering our business process has kept case backlog fairly stable.

The loser in our overworked system is the quality of the hearings given to our litigants. Family court is an assembly line. Temporary hearings are generally conducted on paper filings without live testimony. We simply do not have the docket space. Child support, abuse and neglect cases take up an enormous part of our docket. General sessions circuit court dockets continue to rise. South Carolina ranks among the highest in the nation in per capita violent crime and criminal domestic violence.

Our solicitors control the docket in this state and I support the continuation of this system, but I am suggesting that each solicitor work with me to develop a differentiated case management system. The day of managing dockets by roll call must go by the way of the buggy whip. Both defendants out on bond and jailed defendants awaiting trial must have set time frames for disposition of their case. Public safety, victim accountability, and reducing the county costs of jailing defendants awaiting trial demand it.

The solicitors of South Carolina are each completely committed to the differentiated case management system, and I have obtained federal grants to design and deploy an automated case management system for solicitors at no cost to their counties other than maintenance. Bids are in process now.

State salary study

As the business manager of one of the three branches of Government, I am acutely aware that the state has not conducted a comprehensive salary study since I was in the General Assembly, 18 years ago.

Sound business practices and the move to restructuring necessitate a comprehensive study of compensation in all three branches, including constitutional officers, however restructured.

I will work with the leadership of each branch to establish an independent task force funded without state appropriations to conduct such a study and make recommendations to all three branches.

Court funding

I won't hammer you on this issue. I am extremely grateful for the consideration the judicial branch has received from the governor and from this General Assembly.

Our current base in state revenue is \$10 million less than it was five years ago when I became your chief. We have added fees and federal funds to attempt to make up the difference. The

support of former Senator Fritz Hollings and senators Lindsay Graham and Jim DeMint has been crucial in keeping our court system viable.

Technology

The cornerstone of my management plan for our court system has been to utilize high-speed internet based connectivity. The basic building block was to develop web sites for each court's clerk and get all judges from magistrate through the supreme court on reliable high-speed internet access.

The goal has almost been achieved, as these slides will show. The system is now used for court docket management, distribution of forms and law research access. But efforts now go far beyond the courts.

Progress report

South Carolina judicial department technology initiatives have:

1. Promoted other government agencies to start incorporating technologies into their everyday operations to provide better service.
2. Expanded use of technology by other agencies

“Piggybacking” on to SCJD technologies to provide better service.

Rural counties like Marion, Jasper, and Marlboro Counties are now establishing county networks and consolidating telecommunications circuits.

The Department of Probation, Pardon, and Parole (PPP) has a project in which they are equipping their field agents with laptops to use while in the courtroom.

In a recent meeting with the leadership of York County, one of the most progressive and affluent counties in the state, a newspaper reporter asked if the SCJD was going to do for York County as we did for Clarendon County – WOW!

Automation has changed and is significantly influencing the ways we are doing business:

1. Standards, consistency, and uniformity (what and how)
2. Analyzing processes and procedures (why)
3. Management of resources (who and when)
4. Automation has done more than just help us electronically exchange information

Efforts for 2005 and the future

Statewide court case management system (where we are)

1. Completed: Greenville and Pickens counties

2. 2005
 - Richland
 - York
 - Spartanburg
 - Charleston
3. Timeline, priorities, and plan for deployment to all counties will be published by the end of the year.
4. E-filing
5. Improved electronic interfaces with:
 - SLED
 - DMV
 - DPS
 - SCDC
 - PPP
 - Solicitors
 - CJIS

National recognition

Rosalyn Frierson, South Carolina's State Court Administrator, and I are pictured on the website we created for our National Conference of Chief Justices and Conference of State Court Administrators conferences, which will be held in Charleston this summer.

South Carolina is hosting this prestigious national conference for the first time since 1960. We will be telling the South Carolina story of how a rural state has become a national model to all chiefs and court administrators. Rosalyn and I are proud to represent the face of the new South Carolina.

For the good of the order **Tort reform**

This General Assembly is appropriately embarked upon a thoughtful effort to improve the tort system in South Carolina. I support and applaud these efforts. There is no reason for South Carolina courts to be ranked in the 40's in business climate by the U.S. Chamber of Commerce.

The biggest complaint I hear from the business community is about our venue laws. Our recent court decisions limiting punitive damages and modifying venue will do much to level the playing field. I applaud the House of Representatives and the Senate for the serious debate. The progress of our state will be enhanced by passage of balanced tort reform legislation. Tort reform also can be enhanced by a thoughtful examination of the medical malpractice insurance premium structure and the joint underwriting association.

Indigent defense

The appointment of T. Patton Adams as the new director of the Office of Indigent Defense is a positive step forward to more responsible and responsive management of the indigent defense needs of our state.

We can take the next step forward by passage of the bills currently in the house and senate, which merge the office of indigent defense and the office of appellate defense.

The final step that needs some attention is adequate funding for these operations, which support much of the work of the trial and appellate criminal litigation system in our state.

Administrative law reform

For several years, the House and Senate have considered proposals of the State Judicial Council to revise and improve the administrative law system in our state. Currently, the Speaker and Chairman of the House Judiciary Committee have introduced versions of these reform measures, and the Chairman of the Senate Judiciary Committee has expressed support for this issue.

I urge you to let the administrative law division be the final decision maker for contested executive agency cases. Duplicative and costly referrals back to agencies, particularly in environmental cases, create what many litigants in the system perceive as an expensive, agency-dominated process that lacks objectivity and due process.

Sentencing

For many years, Speaker Wilkins labored to establish sentencing guidelines for South Carolina. In the wake of the recent United States Supreme Court decisions calling into question the method of sentencing used in most states and federal courts, it is time for all three branches to conduct a study of corrections and sentencing in South Carolina.

Conclusion

But all the reengineering and technology will never substitute for the hard work of your statewide judiciary.

Now let me introduce the next generation of hard workers. This is my grandson, Patrick, already hard at work on his computer. This is the future for which we all work.

Godspeed and god bless.