

State of the Judiciary
Chief Justice Jean H. Toal, South Carolina Supreme Court
Message to the Legislature
March 1, 2006 , in Columbia, South Carolina

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

Marc Westbrook

This fall, our court family's heart was broken by the tragic death – while on duty – of Circuit Judge Marc Westbrook and his law clerk Randall Davis. Marc was a seminary student who became a lawyer. He loved his lord, his family, the law, Lexington County and the Gamecocks.

He was the youngest person ever to chair Lexington County Council. He then served in this House for six years, as a family court judge for nine years and as a circuit court judge for 11 years.

He was my right hand man in promoting court technology, alternate dispute resolution, judicial training and drug courts. He served many assignments as an acting justice of the South Carolina Supreme Court. Marc was at the top of his game. His future might have included a seat on the Supreme Court or a return to elective politics. At the time of his death, he was active in numerous community and music ministry endeavors and was enrolled in classes at Lutheran seminary.

When the judicial history of South Carolina is recorded, the name of Marc H. Westbrook will be writ large as one of South Carolina's greatest judges. Marc's life was, simply put, a life well and decently lived.

He is survived by his college sweetheart and life partner, Linda, his sons Thad and Richard, and his beloved granddaughter, Abby. It is fitting that the Lexington County Courthouse will be renamed the Westbrook Judicial Center in his honor. (*Recognize Thad Westbrook*)

Judicial independence in America highlighted by the process of federal judicial selection

The retirement of Justice Sandra day O'Connor and the death of Chief Justice William Rehnquist, in the midst of the confirmation process for Justice O'Connor's replacement, gave Americans a rare opportunity to glimpse into the very soul of the institutions of American justice.

Twice in recent months, in an ornate hearing room in Washington, D.C. – The space occupied by the United States Senate Judiciary Committee – the lights, the cameras, and the sharply focused

questions presented a drama to be observed by the nation and a grueling experience to be endured by our 17th chief justice, John Roberts and by Associate Justice Samuel Alito.

The hearings captured the attention of a nation that has been battered by natural disasters and the violence inflicted by insurgents and terrorists.

Citizens kept vigil at the committee hearing room, civics classrooms engaged in debate inspired by the proceedings, commuters scanned radio dials, office workers watched the uniquely American process on the internet.

Indeed some questions posed to the nominees proved the speculation: Judge Roberts and Judge Alito would be asked to answer questions that have not in the past, and should not now, be answered. But something else was occurring in the hearing room.

The cameras captured a broader picture of the American judiciary – exploring the appropriate role of the judiciary in a constitutional democracy, the balance of power among the three branches of government, the role of precedent in the creation of common law, judicial codes of conduct, the role of courts in protecting the liberties announced in the bill of rights, and judicial temperament.

The senate hearing room was a national classroom. In some sense, all of us were in that senate hearing room. The fundamental questions posed by senators, the truly appropriate questions, are answered every day in courtrooms across this country.

And the level of attention to the hearings indicated that America's citizens continue to believe the courts are the preferred forum for settling their disputes.

South Carolinians were enormously proud of the leadership role of our senior senator Lindsey Graham, a member of the Senate Judiciary Committee, who observed, "most people get it. They do not want to take their case to a judge who is perceived as liberal or conservative." Senator Graham urged that Americans want someone who is right and fair. Here is how Senator Graham described the ideal American court in an address to the American Bar Association just before the Roberts confirmation hearings began:

"(It) doesn't matter who you are, how much money you make, whether you're popular or not, it is a place where you can have your day and politics would never give you your day. It's a place where the unpopular can be heard, whether they be shut out in the political process. It's a place where the weak can take on the strong. And whatever political differences we have ... need to be parked at the courthouse door."

The selection of Chief Justice Roberts and Justice Alito demonstrated that our federal judicial selection system works to produce the best of the best.

The political stability of our democracy is a beacon of light to the world.

Now 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 our branches 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.

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.

Diversity

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 now 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 about 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.

Circuit realignment: new judges

It has been 11 years since the South Carolina General Assembly created any new judicial positions at the trial level.

I urge this General Assembly to pass legislation now in each body which would create 3 new circuit judge and 3 new family court judge 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 following 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, but I fear for the future as civil filings for the last three years have increased by almost 20 percent.

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 and the criminal dockets in circuit court continue to rise. South Carolina ranks among the highest in the nation in per capita violent crime and criminal domestic violence.

Court funding

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

Our current base in state appropriations 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 Senator Lindsey Graham has been crucial in keeping our court system viable.

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, 19 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, funded without state appropriations, to conduct such a study and make recommendations to all three branches.

Family court reform

This fall, Senator Jim Ritchie chaired a Senate Judiciary Committee task force charged with making the first comprehensive study of the family court since its creation in the late 1970s. Hearings were conducted in Columbia and throughout the state. Litigants, lawyers, social services agencies, advocacy groups, judges and citizens were heard for many months.

The committee has come forward with a variety of recommendations which are being considered in the Senate now. I want to focus on two proposals which I believe have great potential.

Hearing officers

When the South Carolina statewide family court was created in 1977, it was a model for the nation – a court specialized in divorce, alimony, equitable division of marital property, child custody and visitation and adjudication of criminal offenses committed by juveniles. Today, family court is so inundated with cases that judges have on average 20 minutes per case to make decisions which have permanent impact on a child, on a parent, on a family. The child support enforcement cases alone take up a day of every five available for court hearings.

The vast majority of child support cases involve actions brought by DSS. The support ordered goes to DSS to offset its TANF (temporary assistance for needy families) payments to custodial parents on public assistance. Federal funding requirements mandate that DSS bring these collection actions or lose federal dollars.

Our family court system is drowning in these cases and in DSS abuse and neglect cases. Some of the biggest complaints about family court come from individuals involved in divorce, child custody and visitation and alimony cases who cannot get an adequate or timely hearing.

I proposed, and the Ritchie commission recommended, creation of a pilot program to use volunteer lawyers as hearing officers. These volunteer lawyers would work, pro bono, for free. They would be assigned the more routine matters – such as DSS child support enforcement cases.

I would like to be authorized to experiment with this idea for two years. If it works, you can consider a more permanent solution.

Mandatory mediation

Many matters in family court are **not** only not resolved by the adversary court process, they are made worse. Mediation is a way of trying, on the front end, with a trained dispute resolution specialist mediator, to resolve some or all of these issues. Mediation is particularly useful in child custody and visitation matters. All parties would be required to go through mediation. If they could not come to agreement, the case would go back on the trial roster. Some funding would be needed, but I believe the returns in time saved and in human anguish alleviated would be enormous.

Sentencing

Sentencing in the United States is a national disgrace. In his address to the American Bar Association two years ago, U.S. Supreme Court Justice Anthony Kennedy issued the call for sentencing reform. Former speaker David Wilkins advocated sentencing reform for our state throughout his career. The prison population in our country has increased six fold from 1970-2000. This is a huge drain on state and local resources.

In the mid 1990s, our sister state of North Carolina took a long, hard look at its sentencing structure. It looked at truth in sentencing. Sometimes with good time credit, parole eligibility and the like, only the prisoners themselves understand what a sentence really means. North Carolina took four years to revamp their system. The result: violent prisoners are sentenced, and serving,

longer time. Non violent are serving shorter time. Total prison population and total state and local costs in North Carolina are decreasing.

I will be asking you and the executive branch to join in a policy summit to examine this issue.

Technology

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

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

Our statewide technology initiatives for this year are:

- 1) to establish high-speed connectivity for every county court system. We are focusing on developing county wide area networks in the most rural counties in South Carolina.
- 2) to streamline and standardize court processes such as expungement and pre-trial intervention
- 3) to continue to deploy our case management system

Results to date:

The statewide court case management system is completed in Greenville, Pickens, Richland and York. We are in process of installing in Beaufort, Jasper and Sumter. We will move this summer to Charleston and Horry. We could be 45 percent complete by the end of this year and totally deployed by 2008. This project has been funded almost entirely by federal money and is recognized as a national model.

Our court case management also involves modernizing the way the 16 circuit solicitors – our state prosecutors – function. Our solicitors control the docket in this state and I support the continuation of this system, but 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 which we used to design and deploy an automated case management system for solicitors at no cost to their counties other than maintenance. This system is completed in Greenville, Pickens, York and Union.

We are now in the process of installing the solicitors system in Charleston, Berkeley, Anderson, and Oconee. We will move next to Lexington, Edgefield, McCormick and Saluda and then to

Greenwood, Laurens, Newberry and Abbeville. We also hope to complete installation of this system by 2008.

Courtroom security

The tragedies of the Atlanta courthouse murders and Hurricane Katrina have resulted in a national focus on security in our courtrooms and disaster recovery.

My response has been to work with SLED chief Robert Stewart in assembling a state courthouse security task force. We have surveyed security in every location in South Carolina where court is held from magistrates and city court to the county courthouse. We are now developing a series of standard operating procedures for counties to use as a guideline in developing a local court security plan.

Costs are being identified to provide minimum security needs in the courtrooms of South Carolina.

I'd like to highlight South Carolina courts and lawyers who make a national impact

Our beloved state has an amazing impact nationally in the legal arena.

This past July, for the first time since the 1960's, South Carolina hosted the national annual meeting of the Conference of Chief Justices and the Conference of State Court Administrators in Charleston. Rosalyn Frierson and I, as the top court officials of our state, told the South Carolina story – of how a small, rural state with scarce resources is leading the nation in developing an internet based platform for managing court business. We showcased the proficiency of clerks, magistrates, judges, law enforcement and others from the smallest to the largest venues in our state. We changed a lot of assumptions about our courts and our people.

Our former speaker, David Wilkins, a proud South Carolina lawyer, is representing the united states in the most important post of Ambassador to Canada. Reggie Lloyd who made South Carolina history 2 years ago as the youngest circuit court judge ever, is making history again as the first ever African American U.S. Attorney for South Carolina. Kaye Hearn, chief of our court of appeals, is the national president of the Council of Chief Judges of Courts of Appeal. Attorney I.S. Leevy Johnson is president of the American Bar Endowment. Attorney Pamela Roberts chairs the ABA Commission on Women in the Profession. Attorney Ken Suggs is president of the American Trial Lawyers Association. Attorney David Dukes is president of the Defense Research Institute for defense trial lawyers.

Quite an outstanding record of American legal leadership from our state.

So let me quickly recap the proposals I've made to you today:

Funding – for this year, I entreat you not to make any cuts in the modest judicial department requests now pending before the House Ways and Means Subcommittee and the Senate Finance Committee. Even if all our requests are granted, the third branch of government will receive less

than 1 percent of state revenues. For long term, I hope we can find a more stable way of funding our court system.

New judges – I urgently request that you pass the bill creating 3 new circuit judges and 3 new family court judges, and that you screen and elect them by the close of the next legislative session.

Family court reform – our family court dockets are in crisis. I urge you to allow me to use experienced lawyers as pro bono volunteer special hearing officers, to relieve the backlog. I also ask you to approve and fund mandatory mediation in family court.

State salary study – I request you to join with me in creating a judicial, legislative, and executive salary study.

Sentencing – I will ask you to participate in a broad policy summit on sentencing in South Carolina so that we can begin the conversation on this issue.

Courtroom security – when chief Stewart and I complete our courtroom security inventory we will be asking for your help in providing safe courtrooms in South Carolina and sensible plans for emergency preparedness and disaster recovery for our courts.

Conclusion

The judicial selection system for South Carolina will continue to be strengthened and improved, but you can rest assured that your votes for judges have created a judiciary whose integrity and work ethic are nationally acclaimed.

By any yardstick, my brothers and sisters who wear the robe and all who work for the courts of South Carolina are the finest in America.

May I present the South Carolina Supreme Court: Justice Jim Moore, Justice E. C. Burnett, Justice Costa Pleiones. We rejoice that Justice Waller will return to us next week after successful completion of major knee surgery.

May I present the South Carolina Court of Appeals: Chief Judge Kaye Hearn, Judge Bert Goolsby, Judge Sam Stillwell, Judge Tommy Huff, Judge Ralph Anderson, Judge Don Beatty, Judge John Kittredge, Judge Paul Short, Judge Bruce Williams, and Senior Judge Jasper Cureton.

Will all judges and court staff present please stand and receive the joint assembly's recognition?

I always close by reminding myself and you of the bright South Carolina future we all work so hard to promote.

Here's my family's future: my grandson Patrick and his big mama are plotting an Olympic bobsled run.

Thank you for your generous attention and god bless the great state of South Carolina.