

State of the Judiciary  
Chief Justice Jean H. Toal, South Carolina Supreme Court  
Message to the Legislature  
February 21, 2007, 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:

Your generosity in extending to me the privilege of this podium is a mark of respect for the judicial branch and a recognition of our partnership which sends a needed encouragement to the men and women in South Carolina who labor as filing clerks, court reporters, bailiffs, clerks of court, magistrates, and judges. Most notably, it assures us all that the rule of law works and is at work in our beloved state.

Your Supreme Court has served together since March of 2000. Seven years represents the longest tenure of our court without change in modern times.

#### **E.C. Burnett**

At the time of his retirement, Justice E.C. Burnett will have served as a South Carolina judge for 30 years. No member of the judiciary in South Carolina has served in a broader range of judicial responsibilities than Justice Burnett. E.C. began his judicial career as a probate judge, and has also served as a family court judge, circuit court judge, and justice of the Supreme Court. His additional public service includes positions as the clerk of court for Spartanburg County and as a member of the South Carolina House of Representatives. This proud Wofford Terrier, U.S. Army major and Vietnam war veteran, devoted churchman and family man has been a voice of integrity representing the highest caliber of legal scholarship. Much more importantly, he is our dear brother. So whether he is golfing with his grandson, working in the Franklin Graham ministry, or just enjoying a walk on the beach with his sweetheart of 40+ years, Jami, he will be missed.

#### **Bert Goolsby**

The court of appeals loses its last remaining founding member with the retirement of Judge Bert Goolsby. This proud Citadel graduate, Phi Beta Kappa at USC Law, was a dominant influence as a top deputy attorney general for South Carolina before his ascension to the newly created court of appeals 23 years ago. An early user of technology, Bert is an amazing legal scholar and an accomplished published author. We are delighted that he will join Judge Jasper Cureton as an active retired judge at the court of appeals.

#### **Sam Stilwell**

Sam Stilwell also retires this year after 10 years of service on the court of appeals. Sam came to judicial service after a highly successful career as a practicing lawyer, staffer to Strom

Thurmond, and state senator. His distinguished academic record in law school served him well as he devoted his scholarship to the work of the court of appeals. He will be sorely missed as he resumes private practice with his son.

You, the General Assembly, have a host of outstanding candidates for these soon to be vacant seats. Godspeed your endeavors.

### **Court crisis**

The signature of my administration as your Chief Justice has been to develop a new way of doing business for our state court system. I have used technology in years of lean state financial resources to engineer more efficiency in our system. But it is now absolutely critical that we address the spiraling case load in our state by providing new resources for the trial bench.

### **Court statistics**

South Carolina has fewer judges and a heavier case load per judge than any other court system in the nation. At the trial level, South Carolina has the highest number of case filings per judge in the country. Our 4,167 filings per judge is more than 1,000 cases per judge higher than the next closest state, North Carolina. At 1.1 circuit judges per 100,000 of population, we have the fewest number of judges per capita of any state in the union. The national average of filings per judge is 1,754, and South Carolina's filings are more than double this figure. The civil caseload alone has increased 76% in the last 10 years.

### **Circuit court**

The real crisis is in the circuit court criminal and in the family court dockets. South Carolina has one of the highest criminal domestic violence rankings in the country. Violent crimes such as murder, armed robbery, drug related crimes, and gang violence are causing increasing backlogs in our courts. For many years, the national and South Carolina benchmark or standard for case disposition has been 180 days. A three year snapshot of our performance demonstrates that we are falling further behind this benchmark each year.

In circuit court, general sessions handles the criminal part of the docket. In 2004, we had 110,000 cases filed in general sessions and we disposed of 83,608 cases. In 2005, we had a 6,000 case increase in filings, a 10,000 case increase in dispositions, and we fell further behind in our goal to meet the federal and state 180 day benchmark. In 2006, we had another 6,000 case increase in filings, we jumped our disposition rate by 15,000 cases, and despite this improvement, we still fell further behind in our quest to meet these benchmarks.

These same circuit court judges also handle the common pleas court civil docket, where although filings have fallen 2,000 cases in three years, our disposition rate has also fallen behind 4,000 cases over the same period. The gap between filings and dispositions is 13,000 cases a year. Why? Because I am using these judges more and more on the criminal docket. This has been damaging to the court's ability to control the civil docket, where, since the year 2000, filings have increased over 17%, with the largest increase coming in the 2001-2002 fiscal year. This

large increase formed the basis for my prior statements to you that civil filings have grown considerably over this time. More telling is the fact that civil filings in South Carolina have increased over 70% over the last decade, a numeric increase of 31,000 cases per year. In the last three years, no circuit has met the 180 day benchmark for criminal cases, and only three circuits beat this average in civil cases.

### **Family court**

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.

### **New judges**

To help address this crisis, I have again requested that this General Assembly create, elect, and fund three additional circuit court judge positions and three additional family court positions. Every circuit in the state could use additional judges. If you create these positions at large, I can utilize the constitutional mandate to rotate judges and place these judges where they are most needed from week to week.

### **Differentiated case management**

Additional judicial resources are part of the solution for our court crisis, but there are other initiatives we can and must take. Within the past two years, special study committees of the house and senate have looked at our great court system. The house will shortly consider the new judges bill, one product of the house judiciary committee's efforts.

The senate is considering, in its judiciary committee, the report of its criminal justice task force. Each of its recommendations is crucial. I want to emphasize one – differentiated case management for our criminal case docket.

South Carolina is the only state in the country where the prosecuting attorneys have the day to day responsibility for managing the docket. In the old days, those dockets used to be managed by having a roll call at the beginning of each week of court and then deciding which cases to call for trial. When I became chief, I began to work with the solicitors to develop a plan for managing the criminal caseload which would put each case on a schedule with deadlines for assignment of a lawyer, exchange of discovery, offer and acceptance of a plea agreement, setting a trial date, and disposition. Our county jails are overflowing with defendants awaiting trial. The county cost of housing these individuals is yet another cost of crowded dockets. I will meet with the solicitors next Tuesday to develop a proposal for inclusion in the senate's proposed bill which will establish differentiated case management in each circuit.

Many circuits already have such a system. Solicitor Giese piloted the system in the 5th circuit. Solicitor Ariail of Greenville Pickens, the 13th circuit, handles the largest caseload in the state using our system. York County developed a model under Solicitor Pope. Though these systems have characteristics that are unique to each circuit, they are based on the same model, which tracks cases from the time they are brought for indictment and sets benchmarks for the completion of pre-trial matters all the way through disposition. Implementing differentiated case management in each circuit is not a case of micro-managing each circuit's business from Columbia, but is instead an installation of a high-tech tool to aid in the management of court business. This technology is necessary to control the current filing and docket problems South Carolina courts are facing.

### **Hearing officers in family court**

Returning to issues facing the family court, 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.

The family court study which was made two years ago recommended the use of family court volunteer hearing officers and mandatory mediation in family court for custody, visitation, and equitable division. These suggestions would free up family court judges to give more hearing time to contested cases.

Looking specifically at the proposed hearing officers program, 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.

### **Civil appointments**

In the vast majority of criminal cases, post conviction relief cases, abuse and neglect cases, and termination of parental rights cases in South Carolina, we are required by state law or federal court decision to appoint lawyers to represent the defendant. We are making progress in indigent defense which is much enhanced by the reform legislation you passed reorganizing trial and appellate indigent defense.

We have not yet addressed adequately the funding of appointments in the so called civil cases – family court or circuit court. This issue is of paramount importance to both the members of the bar in South Carolina, and to South Carolina's population who relies on the state to provide them with meaningful and competent representation in their times of need in court.

### **Salary commission**

The three branch salary study commission was created by you last year.

The Hay Group is conducting this review of compensation for constitutional officers, the General Assembly, and the judiciary. This is the first time such a study has been conducted since the 1970's. The commission will be making its report shortly. I urge you to give this report your careful and expeditious attention.

### **Technology journey**

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 is being 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.

For the past 20 years, technology for courts has been inward looking, concentrating on caseflow and docket management. South Carolina has led the way in using an internet based system to move data to many other agencies and private entities which interact with the courts. We have developed a system which is served by an enterprise architecture that interacts with our justice agency partners and the public and private sectors. We can no longer develop automation systems in state government in isolation. Duplication of costs is not a tab our state can afford.

What does it mean to have automated court operations in rural South Carolina? It levels the playing field, but it also provides very practical cost savings. To borrow an example from the private business world, financial institutions estimate that each time an individual conducts his banking in person, the cost to the bank (and ultimately the customer) is \$11 per transaction. When the same banking business is conducted online, the cost is less than \$1 per transaction.

Think of the implication this type of automated process will have for costs in clerks of court operations.

### **Case management system**

Our entire state court system now has access to high speed internet service. On this platform, we are now deploying our case management system. We are complete in Greenville, Pickens, Richland, York, Sumter, Beaufort, Jasper, Georgetown, and Horry. Deployment has just begun in Lexington. In the spring we will begin in Oconee and Anderson. By the years end almost half the state caseload will be managed on the new system. We own the system ourselves and last fall our system was successfully benchmarked and tested in Microsoft's performance labs. This system is funded almost entirely by a series of federal grants secured through the sponsorship of former senator Ernest Hollings and the continuing support of senators Lindsey Graham, Jim DeMint, and our congressional delegation.

The counties received this system at no cost other than a maintenance fee which goes, not to a private vendor, but back to the judicial department to reduce the state's costs.

### **Solicitor case management**

As I briefly described earlier, to assist the solicitors in managing the docket, the judicial department and solicitor's staff designed a solicitors case management system which is compatible with the court's system. The judicial department obtained grants to fund this system which is now deployed in 5 circuits, and is underway in 4 more. By the end of this year 60% of the general sessions cases in solicitors offices will be managed by this system.

This system is deployed and installed without cost to the solicitor. The first years of support are also paid for by the grants. The solicitors' costs are to purchase the laptops needed to operate the system.

### **Report card**

So how does our report card look for this year? We have task force initiatives developing recommendations for access to justice for the working poor and privacy issues in access to public records. We have begun an initiative to develop business courts for South Carolina.

Our public outreach includes our very successful law school for new legislators, law school for journalists, high school and middle school educational programs at the supreme court, and a recent summit on children and the courts. Overall, I'd grade us satisfactory as to initiatives, public outreach, and technology. On the "needs attention" part of the report card are: new judges, criminal justice reform legislation, family court, lawyer appointments, and the salary study.

### **Introductions**

I have the honor to present the members of the supreme court: Justice James E. Moore, Justice E.C. Burnett, and Justice Costa Pleicones. Justice Waller is having minor hand surgery today – too many years of signing orders and writing opinions – and sends his best wishes.

I also have the honor to present the members of the court of appeals: Chief Judge Kaye Hearn, Judge Bert Goolsby, Judge Ralph Anderson, Judge Tommy Huff, Judge Sam Stilwell, Judge John Kittredge, Judge Don Beatty, Judge Paul Short, and Judge Bruce Williams.

### **Conclusion**

On the behalf of these judges and on behalf of the men and women who wear the robe, I want to thank you for your unwavering support. The demands on you are constant. We know you will do what you reasonably believe you can do to help the judicial branch and that's all we can ask as we look to the future.

Well, finally, this face of the future of our beloved South Carolina. Patrick and his big mama are building sand castles and front end loaders on the beach at the Isle of Palms. If you look closely at the ocean, you'll see Senator Chip Campsen "catching a wave" at his favorite surfing spot. God bless the decency of our people and the beauty of the earth he has provided for us in the great state of South Carolina.