

State of the Judiciary
Chief Justice Jean H. Toal, South Carolina Supreme Court
Message to the Legislature
February 8, 2012, in Columbia, South Carolina

What a grand honor it is for the twelfth time to address you as your Chief Justice and report on the state of the South Carolina Judiciary. I attempt to do two things with this address: (1) to give you a ground level look at where our system stands and what might be done by means of improving on the considerable progress that we have made over the last twelve years, and (2) to travel up to about thirty thousand feet and look at court systems in the states and relate that to where we are in the global market economy and how the courts fit into the progress we want to make best.

Let me begin with a tribute to a legend, a giant in South Carolina, who has gone, Matthew Perry. He began his life in an atmosphere where opportunities were very limited for much of our population and with a brilliant mind, a backbone of steel, a melodious voice, and a gentle and decent approach to one and all, he achieved great personal greatness. He brought South Carolina just as firmly into the twenty-first century as if he had led every hand. We will miss him.

South Carolina courts had as a core mission to provide a fair, efficient forum for the resolution of disputes. That is the business that we are in, but economic development is impacted by the ability of the Judicial Branch to fairly and timely resolve disputes. It is a highly important factor in economic development, as I am learning more and more as I interact with South Carolina and American business leaders, on the importance of the courts here and abroad.

Here in South Carolina, the South Carolina Business Courts have been an important dimension of indicating to the business community that business to business disputes that involve the protection of disputes about intellectual property, copy rights, trademarks, contracts, and other things that are the baseline of the ability to develop in an atmosphere of stability, of products and marketing them; which was a significant consideration to the influx of businesses such as Amazon, BMW, Boeing, Bridgestone, Firestone, Continental Tires, Michelin and the many others who are now looking with new eyes to make an investment in South Carolina. Your court system as I have come to understand, through many contacts of pre-location, is a very important investment for you to make in the stability of South Carolina. Our approach in the South Carolina Judicial Department focuses on technology, business models, and processes and management techniques to achieve the results of efficiencies, consistencies, and better organization. But our system is in trouble. Our circuit caseload, which is a benchmark of where we sit in our ability to hear cases in South Carolina, is now in the bottom of national ranking. This means that the national average of judges per 100,000 is 3.1. We are at 1.0 and the national average of filings per general level trial judge in the United States' state court systems is seventeen hundred and ninety-one. This year we passed the 5,000 mark per judge. When I first became your Chief Justice, we were in the 3,000 mark. So despite the many efficiencies that we have put in place to try to move cases and eliminate backlogs in both circuit and family court, the filings are continuing to increase. We must now look at new investment in Judicial personnel for South Carolina.

At quick look at our funding sources, when I became Chief of Justice in 2000, that year it took about forty-six million dollars plus to run the Judicial Department, and almost all was general revenue money. Today, it takes about sixty-three million dollars to run the Judicial Department and of that amount, about sixty percent is general appropriation money, with the rest being state fees and a short wedge of federal funds which will be dissipating shortly. As I have explained last year and you responded, I have a plan as to how to sustainably replace the fund without tapping into general revenue funds.

But the budget request, this year on the recurring funds side, is to replace what is known as the Burnie Maybank aggressive enforcement of taxation, one time money, with permanent recurring funding of our travel; that is the ability to take the few judges we have and put them where they are needed around the State. Our annual technology equipment replacement and licensing fund. We have not asked to recur this before, but as we run short of federal monies for the next two years, we are going to be asking for recurring funds here to be sure the system that has been built is sustainable.

And finally, General Services does not have the money to repair the Calhoun Building adequately and I have provided some of that money from savings of the Judicial Department because we occupy that building entirely now, including our data center, which serves all of the counties of South Carolina with our case management. The center piece of what I am suggesting to you this year is new judges, three new circuit court judges and six family court judges. This is my proposal. I realize that you may not be able to do that and I understand there is very constructive conversation taking place in Ways and Means about how this could be done. Family Court is a huge priority, as people are hurting and desperate in our family court system because of the huge volume of cases and their inability to get their disputes heard. One out of every five days, a family court is taken up collecting child support, most of which does not go to the custodial parents--but goes to the Department of Social Services as a refund for the plaintiff money that is provided to indigent custodial parents. I am doing a lot with our Family Court system to collect for the Department of Social Services. Real people who need help suffer because we don't have the Family Court time for them.

On the non-recurring side would be some startup costs for our new judges and staff and the completion of our technology by centralizing our courts statistics, which is really the key to being able to manage where the cases are and how to keep them moving. Case management hosting of municipalities is the only part of this grassroots court system that is not completely automated. An upgraded architecture for other trial court applications is needed as we become more sophisticated about how we manage these cases.

The new dimension, though, is electronic filing. You may recall that last year, this General Assembly invested five million dollars to begin to develop electronic filing which would mean that every court in the State could file papers, pleadings, and other things electronically, and be accessed by everybody on our internet base system. This would be an enormous savings to people who use the courts. We had to develop a stable database in the attorney community. I took that program from the South Carolina Bar Association and used Judicial Department resources, and from our technology folks developed this system, now in place. That is the platform we will begin shortly to build the electronic system. You will still be able to file on

paper. I guarantee that most people find electronic filing allows them 24/7 access with the court system and in a form a lot less expensive in the final analysis than the old paper and delivery method.

When completed, this e-filing system will also be a funding source for our technology. It will replace that column of federal money that I talked to you about with monies generated, not from general revenue funds, but from electronic filing. Here is the reason why, ordinarily states simply pick a vendor and build an electronic filing system. The vendor is paid the fees that it takes to file, and that is how they make their money. Our technology group on staff will build this system and we will own it. Fees generated will go right back into the technology system and that is how I proposed last year, when I spoke to Ways and Means and to Finance, to fund the absence of technology federal funds. We believe that we have a sustainable project and technology is certainly the key to not spending any more than you have to in terms of new judicial personnel. The technology road map is and has been the hallmark, and I have talked about this issue a lot as I have come before you every year. I am proud to announce that as of June of this year, every county in South Carolina is now live on the case management system and it is not owned by some software company out there or communicated with by its users of Peggy through Alaska. This program is owned by us, a South Carolina created and owned case management system that we run, staff, and support 24/7 with call centers and the like. Of the forty-six counties, thirty-two are hosted here in Columbia and are not hosted on their county servers. Counties were suspicious of that at first, but now see the South Carolina Court system as the gold standard for a system transparent, maintained, and from which they can get the kind of service they never got from the vendors when they all had to get their own systems. My guess is that before it is all over, most of the remaining counties will probably be hosted by the Judicial Department. This is a true statewide system that I would put up against any other automation project that you have ever talked about for any other aspect of state government.

We are very proud of how this project has proceeded. The crown of this project is to automate our appellate system, which we are doing now. It is way into development and we will begin to roll it out in April and the entire appellate system will be automated by November with public access to briefs, records, and everything that goes on in the appellate system. I think this will be an enormous benefit, not just for judges, lawyers, and public officials, but for the many average South Carolinians that want to see what goes on with these cases and understand how it affects their disputes in court.

LT Court Tech has been a great partner, a company that is the most recognized in the country for appellate case management, and I played off a very successful program in Oregon, Washington, and other states to design the one that we have in the Judicial Department. Docket management is another key thing that we have to look at and see how we can be more effective about managing the dockets. Kay Hearn has headed up this past year, a project to look at court operations in our three big statewide trial dockets: Family Courts, Circuit Court, Common Pleas (civil) and Circuit Court General Sessions (criminal). We are going to have a lot of recommendations in task forces headed by Costa Pleicones for General Sessions, Daniel Pieper for Common Pleas and Aphrodite Konduros for Family Court. Among those, of course, will be additional judges and staff. We also want to develop some additional programs to fast track jury trials and to try to redesign how General Sessions operates. For twelve years, I have begged the

solicitors of this State to bring a more standardized and effective management of General Session cases. We are still very behind on all of these dockets, and we are the only State in the Union where the solicitors manage the docket. I don't wish to pick a fight with anybody, but the day has come and gone when we can have a horse and buggy way. Violent crimes go unprosecuted, county jails fill up with people who have not been tried, and justice is simply not served by the enormous backlogs on the General Session side. So, as a court and I as your Chief, some strong consideration to a different approach as to how to manage General Session cases. You may yourselves be involved in what the final rules of the road may be, and we cannot tolerate any more of the backlogs in this part of the system.

We certainly want to use backup case docking so that if a case breaks down, you have one that files right behind it. This takes some standardized management, and we are committed to making this happen with a lot of good advice from clerks of courts, lawyers, judges, law enforcement, social service agencies and have a broad group of people involved in seeing how we can redesign the way that we do business in these big dockets.

Mandatory mediation is something that we need to look at very seriously, and it needs to begin in Family Court. Families are broken. The adverse nature of custody and visitation decisions create a battle between two different sides. Mediation would bring some peace to these kinds of desperate family difficulties without having the adversarial process. We need to allot great time for complex cases that are a part of this jammed up docket that are complicated cases don't have their due in the system.

The Business Court Pilot has now been extended. I am using it in Charleston, Greenville, and Richland with three great Circuit Court judges who have taken special training to try these business to business disputes. It gets them out of the regular docket, leaving more time on that docket for cases. It also gives beginning to end management. We hope that our business court will begin to look like the ones that are so acclaimed like the Delaware Chancery Court and the North Carolina Business Court. These are the models which we are focusing on.

We have concentrated on self help for *pro se* litigates. This terrible economic time has deprived a lot of good hardworking South Carolinians who hold regular jobs, but cannot afford to pay for legal representation which has forced them into going to court and trying to represent themselves. This is a tough, tough proposition for many of them, and legal aid money is simply not there. So we are experimenting in Newberry, as we set up this self help center in July, and have already served over 50 clients. The vast majority has income levels of \$21,000 or less. You can imagine how little there is in the budget for private representation. We are not taking the bread out of anybody's mouth, and I can assure you we are providing lawyers who are volunteers and college students, to help these folks with model pleadings and forms to navigate in self-represented fashion with the complexity of the court system.

Civics education continues to be a very important part of what we have a duty to do as the court system of South Carolina. I frankly think that the absence of mandatory civics education in South Carolina's school-age curriculum is a terrible, terrible blow to the ability of citizens to understand what their government is and participate in it. I am proud to tell you that South Carolina was ranked as an "A" rating when it comes to teaching students "American History". Our courts'

involvement has helped to strengthen that considerably. Most states are rated mediocre to awful and South Carolina's rating is something that we can all be very proud of. Our court-initiated programs included a class-action program where students study our cases and come to the Supreme Court. Graphic novels, which target 7th and 8th graders, use the graphic novel format which is so popular with children now. Formerly known as Superman and other comic books are today known as graphic novels. But we have developed some that have the stories of real life cases and how they are perceived through the Court System. It is a great teaching tool and, in fact, I am asking myself why we limit this to children. Therefore, we have added them to our self-help centers, plan to distribute around to public areas, and teach them about the court system. Our civics, the wonderful partnership with Justice Sandra Day O'Connor, uses an interactive video game media developed by George Lucas and Steven Spielberg to teach and primarily target middle and high school students to teach them through a game format. They now have nine games that use court themes, legislative themes, and executive themes. These children get points for interacting based on what they know, learn about how government operates, and it is a wonderful teaching tool. Our summer Supreme Court Institute teaches teachers how to use this new media, which is for more than just civics in the Sandra Day O'Connor Project. This is also an outreach to the teaching community to participate in teaching new media to others who are teaching our children. It is an absolute, tremendous honor for Sandra Day O'Connor to have personally presented me, on the behalf of the State, with the Sandra Day O'Connor Civics Education Award.

I would like to now introduce you to a real South Carolina hero, Rosalyn Frierson. She began her career in these halls as a budget analyst at the South Carolina House of Representatives Ways and Means Committee after receiving a distinguished business and accounting degree from the University of South Carolina. Now Rosalyn has become our Director of Court Administration. This year, she is President of the National Conference of State Court Administrators and Vice Chair of the Board of Directors of the National Center for State Courts. She has just finished a two-year executive leadership program at Harvard University. Her thesis will be published shortly. She sets the gold standard nationally and is recognized. I am very proud to recognize this great court director, Rosalyn Frierson.

Now if I might, let me take us up to that mythical 40,000 feet for a minute. I would argue that the United States commitment to the rule of law be compared with nations taking steps toward democracy, whether it is in the middle east, the former Soviet Union, or the nations of this hemisphere. I would project that our commitment to the rule of law most heavily influences the role of the court systems around the world. Our commitment to the rule of law, particularly the liberties enshrined in our Constitution is exceptional even when compared with our democratic friends and allies like Great Britain, which has much title restrictions on the release of government information or other nations of Western Europe that are still struggling with their economy. More than any other country on the planet, the United States upholds basic liberties because they are etched in our founding documents and stitched in to the fabric of our national tapestry. Because of our faith in the market place of ideas, in the common sense of our fellow citizens, our commitment to the rule of law and basic liberties does not just improve the quality of our lives. I would submit it enhances our capacity to grow and prosper economically. Those nations that are still in transition will come to learn that until they have a rule of law, businesses cannot be sure that they can enforce their contracts. Until their intellectual property is protected,

its citizens are not free to speak their minds, and those nations will never reach their full potential. Russia, for example, is a great case in point. Twenty years after the fall of the Soviet Union, Russia is in the midst of pursuing its stated aspiration of becoming a prosperous democracy that has integrated into the West. It continues to struggle in following their so called Parliamentary Elections and the reluctance of a lot of companies to invest in their economy. A similar concern of high tech industries is to invest in their economy. Pragmatic business women and men want to invest where they can expect a reasonable return and an absolute assurance that the legal system in the country that they are investing in will provide "due process". Businesses that consider investing in a country with a poor record of internet freedom, protection of the property of the corporations, they are not any different than the Somali pirates, in terms of their attractiveness to investment. This is one of the many reasons why a recent report from Boston Consulting Group concluded that by sometime around 2015, many goods destined for North American consumers and manufactured in some parts of the United States will be just as economical as goods manufactured in China.

When I attended the Conference of Chief Justices a week and a half ago, top leaders from DuPont, Ford, Intel, Masterlock and others spoke to us about the importance of State Courts. Ellen Kullman, the current CEO of DuPont Corporation, put it best by saying, "...We are insourcing now. We are coming back because global economy, jobs, and progress through the free market depends on consistent and stable Court Systems." Outsourcing has now become insourcing. The protection of property that is needed whether you are a pharmaceutical company or DuPont, folks who have thought a less than expensive way to create manufactured goods and value are now realizing that the stability of the American market place and its court systems are major reasons to come back home. So an American Court System and its fair and consistent enforcement of the rule of law are the bedrock of the American economy progress. You cannot make a better investment as a General Assembly than to support our fine Court System here in South Carolina. Nationally recognized, we continue to be your partner in making South Carolina achieve its real goals.

So now I will finish with Patrick, as I always do. There he is living the dream as a ball kid for his father's alma mater, the George Washington Colonials. He is the young man that we are all working for in order to create the kind of world in which he and others can thrive, prosper, and make the next inventions for the betterment of progress and humankind of which we can only dream. I am honored beyond what I can say to be your partner as we move South Carolina forward. God Bless.