

State of the Judiciary  
Chief Justice Ernest A. Finney, South Carolina Supreme Court  
Message to the Legislature  
March 1, 2000, in Columbia, South Carolina

Mr. President, Mr. Speaker, other members of this 113th General Assembly, other state officials, members of the Judiciary, honored guests, ladies and gentlemen:

In retrospect, it may have been a bit premature to announce my retirement fifteen months in advance of my departure. Since that time, I have been called upon to give several "final" reports on the State of the South Carolina Judiciary. I believe it is safe to say that today you will hear the last of the "final" reports.

After one such message in late January, headlines in newspapers from Charleston to Greenville reported my assessment of the Judicial System as being "the more things change, the more they remain the same." Not wanting to appear ungrateful, I have eagerly looked forward to this opportunity to finally address you concerning what has changed and to elaborate on those conditions which remain the same. So I thank you for the invitation.

From my vantage point, the Judiciary has experienced significant changes for the better since midway through FY 1994-95.

Let us look first at what has occurred in the realm of state appropriations for the Judiciary. At the time I was sworn in as Chief Justice in 1994, the courts were overextended, understaffed and overwhelmed by the sheer volume of the caseload, and the Judicial Branch was severely underfunded.

For example, the Judicial Branch share of the \$2.25 billion state budget for FY 1984-85 was .82%. By FY 1994-95, a decade later, the state budget had increased to almost \$4 billion. But over the same ten-year period, our share of the state budget pie had decreased to .72%. Moreover, the FY 1994-95 allocation for judicial travel was actually 25% less than it was for FY 1986-87. During this period, a sizeable portion of our appropriations for continuing expenses was in non-recurring funds.

From FY 1994-95 to FY 1999-00, the dollar amount appropriated for the Judicial Branch has increased by roughly 70.6%. Reflecting the rise in cost for goods and services, the amount of the state budget has increased to almost \$5 billion. Ironically, the current budget share for the Judicial Branch of state government is eighty-two one-hundredths (.82) of 1% - the same level as fifteen years ago - a substantial amount of which is still in non-recurring funds.

Therefore, the Judicial Branch budget request for FY 2000-01 reflects a need for increased appropriations and for allocations for annual expenses in recurring funds. Funding is channeled into four interrelated components, each of which is vital to the functions of the Judiciary as mandated by the Constitution. These components are human resources, programs, information technology and operations.

With regard to human resources, during the five-year period inclusive of the current fiscal year, we have obtained legislative authorization for 95 new FTE positions - an 18.5 % increase. Of this number, 15 were for judges and 8 for court reporters. Despite the additional personnel, our court dockets remain too congested. However, reports on case filings and dispositions indicate that without these new positions, our court system would now be on the brink of a crisis.

In 1996, the three new judges for the Court of Appeals created a third panel and facilitated restructuring of the appellate caseload. Reorganization has been completed, and certain docketing functions and classes of cases have been transferred from the Supreme Court to the Court of Appeals. The Supreme Court currently considers petitions for writs of certiorari, certified questions of law, actions and extraordinary writs, and the five classes of cases reserved by statute for Supreme Court review.

Another area which has been and continues to be of concern is the extremely high turnover rate at all levels of the workforce. We found that our entry-level salaries were not competitive. Furthermore, experienced employees could command higher compensation with other government employers or in the private sector.

The salary structure became an issue where salaries paid to staff members performing similar functions differed appreciably from person to person within the Judicial Branch and, generally, was less than compensation for their counterparts in other branches of state government.

Since 1995, the effort to attract and retain experienced employees has involved ongoing reviews, upgrading job descriptions, reorganizing division structures, providing pay incentives where possible, and increasing the opportunity for upward mobility within the branch. The budget request currently under consideration contains proposals for salary increases and employee continuing education and training.

We believe these items are crucial to the resolution of the hiring, motivation, and retention dilemma which still plagues the branch despite noticeable success in addressing these personnel issues.

Obviously, an experienced, highly motivated work force is a prerequisite to the successful operation of our courts. During calendar year 1994, every state court at all levels of the system experienced record activity and corresponding case backlogs. In my first State of the Judiciary Message in 1995, I referenced the projection that this trend was expected to become more pronounced with the implementation of new legislation which enhanced penalties, provided for additional court hearings, and generated more appellate court proceedings. These projections have materialized.

In addition to attacking the existing backlog of cases, the Judiciary was confronted with an influx of new cases in quadruplet; first, traditional civil and criminal matters; second, mushrooming dockets generated by rapid population growth; third, spiraling family court and general sessions cases reflecting troubled families and the alarming number of potential general sessions offenses committed by juveniles; and fourth, a new class of cases which have their genesis in recent

technology, economic expansion and environmental law.

The new judges and court reporters have been augmented by various docket management strategies to facilitate the disposition of cases. Some of these innovations have been accomplished by redirecting resources in association with other components of the South Carolina Justice System such as the bar and solicitors. Others require state appropriations.

With legislative funding, pilot Alternative Dispute Resolutions programs have been implemented in six counties in different judicial circuits. You have under consideration our request for appropriations to expand the ADR pilot to include four additional judicial circuits. Early reports indicate that ADR may be a potent and cost-effective measure for reducing trial dockets.

Drug Treatment Courts is another program which, in addition to its value in terms of human rehabilitation and crime reduction, offers a promising alternative for the disposition of drug-related offenses, which now occupy a disproportionate portion of our trial court dockets. Apparently there is a consensus among the three branches of state government that we shall have a uniform statewide system of Drug Treatment Courts. But the devil is in the details.

I ask your indulgence to offer the following cautionary note to the program planners, budget writers and those individuals charged with the responsibility of implementing and operating this vital program. To achieve maximum effectiveness and to reap the several benefits inherent in this undertaking, the enabling legislation should comport, to the letter, with the program's denomination as a court.

This means that Drug Treatment Courts would be autonomous and that they would function on the order of a court with the exception that there would be a guarantee of the opportunity for treatment and rehabilitation. Furthermore, the job descriptions for persons who serve the court as professionals and staff should provide for a rate of compensation and require a level of training which anticipate minimum compliance which is competent and in accord with the spirit of the Drug Treatment Court concept.

If this program fulfills its potential, I believe Drug Treatment Courts could rival ADR for effectiveness in immediately relieving congested dockets and speeding up the disposition of cases. We have been unable to address the docket backlogs and simultaneously keep up with the proliferation of new cases. For example, in comparing the number of cases filed during FY 1996-97 with the number for FY 1997-98, general sessions case filings rose by over 112,000 (112,333), and common pleas filings by over 50,000 (50,208) cases. Your recent enactment of the Magistrate Court Reform Act, which expands the jurisdiction of magistrates, is expected to have the long-term effect of reducing the circuit court dockets.

Additional personnel, reorganization of the appellate process and focusing on docket control have increased the number of dispositions and the speed at which cases move through the courts. Nevertheless, the Judiciary has no control over the number or nature of cases thrust upon the courts. Once cases are filed, they proceed on a course prescribed by the Constitution where the judge, the prosecution and the defense each have interrelated but absolutely distinct functions, which may or may not serve the goal of expediency.

The Judiciary is acutely aware of the need for accountability in the discharge of its duties, and we have addressed this issue in the following manner.

In 1997, the Commission on Judicial Conduct and the Commission on Lawyer Conduct became effective under amended rules which provide for more disclosure and greater efficiency in judicial and attorney disciplinary enforcement. Facilities in the Calhoun Building have been upgraded to provide accommodations for the two commissions.

More intensive orientation and judicial continuing legal education have been implemented for family and circuit court judges. Magistrates are required to participate in orientation.

We have continued the integration of information technology into branch operations and converted from a calendar year to a fiscal year method of accounting. These measures facilitate compliance with state and federal reporting requirements and also brings the Judicial Branch into alignment with the Executive and Legislative Branches of state government.

In my first State of the Judiciary message in 1995, I appealed for courageous, insightful and bipartisan leadership from this body in allocating funds and crafting legislation to enable the Judicial Branch to fulfill both the spirit and the letter of its constitutional mandates.

In a cooperative effort worthy of commendation, the legislature has made available the resources which enabled these positive changes. I thank you for the spirit of cooperation and the opportunity to be heard at each step of the process.

But, let me hasten to say that the advances which have occurred over the past five years have only permitted the court system to remain viable. Furthermore, the success of our efforts is not to be gauged nor is our progress measured by the usual standards.

In addition to the inability to control the generation of cases, other factors and entities enter into the process of adjudication.

The Executive Branch is charged with the responsibility of prosecuting offenses. The Legislative Branch appropriates funding for court operations. The counties furnish facilities and support personnel for the courts. Only in the case of a unified effort on the part of all segments can the state court system operate in a fair, effective and efficient manner.

We count the past five years as successful in that, together, the three branches of state government have initiated the changes necessary to keep our state courts functioning in accordance with our roles as enunciated in our Constitution. Hence, I believe that we have discharged our respective responsibilities appropriately.

Personally, I trust that the record will reflect and history will verify that in the year 2000, I left the Judiciary of South Carolina in better condition than when I came into office.

As for my tenure, I would like to think that I followed the advice of President Theodore

Roosevelt who admonished, "Do what you can with what you have where you are." With regard to any legacy which may be attributed to me, I would like for it to be no more nor any less than the personal assessment of his own career by the late United States Supreme Court Justice Thurgood Marshall who simply said, "I did the best I could with what I had."

Mr. President, Mr. Speaker and members of this Joint Assembly, thank you for your warm spirit of cooperation always and for your kind attention today.