

State of the Judiciary
Chief Justice Jean H. Toal, South Carolina Supreme Court
Message to the Legislature
February 21, 2001, in Columbia, South Carolina

Lt. Gov. Peeler, 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:

The year is 1819. Out of the Revolution, 13 former British colonies have formed the United States of America, and sustained its creation through re-invasion by the British in the War of 1812. The State of South Carolina is the center of a growing national economy. In 1819, the General Assembly authorizes the extraordinary sum of \$1,000,000 to be spent in part for the state-funded construction of a courthouse and jail in every district in the state. It was the state's first investment in court infrastructure. The State of South Carolina would build a new courthouse and jail in each of the 29 districts into which South Carolina was then subdivided. The state's distinguished architect Robert Mills designed many of these buildings, and some of them remain in use today - symbols of our state's commitment to its judicial system. In the ensuing 180 years, districts have been renamed counties, 17 have been added to the original 29, and the state has struggled to keep up with the volume of activity generated for its court system. But little more has been spent on infrastructure.

In the past decade, while our population has grown approximately 12 1/2 percent, our case filings have exploded a whopping 25 1/2 percent. No county in South Carolina has the technological ability at the present time to even do something so basic as grouping their criminal, civil, family, probate or magistrate filings. A county can't even tell how many cases an individual party has pending. On the criminal side, a defendant may have 16 different charges pending. He can play the system against itself. On the civil side related cases are not routinely grouped. We can't even search to see how many cases a given lawyer has.

Since there is no uniform automation on the county level, you can understand that it is virtually impossible to coordinate cases and dockets or even provide accurate information on a statewide basis.

This past summer, responding to an emergency, the Supreme Court assembled in my kitchen to issue a stay against a video poker operator. But Ladies and Gentlemen, I can't manage your statewide judicial system off the kitchen table.

The last decade was a time of unparalleled economic and population growth for South Carolina. In these 10 years our state population has grown from 3.5 to 4 million. And while that growth has been encouraged and welcomed, it also carries with it a price tag of new schools, new highways, new housing, new services, and all the other many requirements to support 500,000 new people in our midst.

Growth also carries a price tag measured by the exponential increase in the volume of criminal

and civil disputes which come before our courts. Between 1988 and 1997, the total number of cases filed in our state's trial courts rose from 1.3 million to more than 1.75 million. Today our system of justice is slowly unraveling. Unparalleled backlogs in criminal court the general sessions of circuit court exist. In some judicial circuits, more than one-half the criminal cases are twelve months old, and some are 18 and even 24 months old.

The human cost of justice delayed is justice denied for victims and the accused alike. Justice delayed also has another terrible consequence to society. The cost of delay is measured in economic as well as human terms. The counties bear the brunt of the cost of dockets, cost of incarcerating prisoners awaiting trial and the myriad costs of an overloaded criminal justice system. County governments petition me daily about their soaring jail and court costs.

In the past, my predecessors have attempted, with your support, to solve the problem of delayed justice by adding more judges and new courtrooms. Without the judicial reform initiatives of the past 25 years, our court system would be in deep crisis.

But there is a finite limit to how many new judges and new courtrooms can be added, particularly under today's existing budget constraints. The time has come for us to look at how we can use the current judges and existing courtrooms more effectively. Like everyone else in governmental service, the time has come when the court system must find ways in which we can operate smarter.

My own quest began last year, in March... my first week as your Chief Justice. I met with the senior staff of the Budget and Control Board to discuss the creation of a business plan for the management of South Carolina's Court System. My proposed thesis was that the state's court system could be dramatically improved by the use of technology.

Let me walk you through the process which then ensued. The Budget and Control Board staff advised that if I was indeed serious, I should make a detailed and comprehensive assessment of the technology needs of the entire court system, from magistrates and county clerks to the Supreme Court itself. They knew that the General Assembly could and should-- be a stern critic. I know. I sat where you do for almost 14 years, and I understand the importance of stewardship.

I also understood that we are talking about more than simply the resolving of disputes, the conduct of trials, and the speeding up of dockets. We are also talking about the value, which accrues directly to all aspects of our society, and not just to the justice system, itself, of an improved and accelerated flow of information. We are talking about the value to business of gaining quick access to information about case files and all manner of courthouse records. We are talking about the benefit to public safety of networking all agencies and individuals which are impacted by a crime. We are talking about a network of information users who, in other states, support such high technology services and pay for access to this kind of accelerated information.

But before such enterprises can be undertaken, the infrastructure must be in place, and that takes an initial capital investment on our part. It is an investment that will return itself a thousand times. It is an investment that will bring the counties into the process on a much stronger and a much more efficient basis. Many of the public records that businesses need are not at the state

level anyway. They are located in the counties, and the power that you create on behalf of business when you link state and county records through technology is enormous.

I took the word of our Budget and Control Board advisors last year, and solicited the help of firms with expertise in engineering, accounting and technology. Through the competitive bid process, we were able to reach an agreement with the KPMG firm to conduct a study which I financed by cutting my existing budget.

The study has now been completed, and the findings confirmed some of our worst suspicions. The management of our trial court system is severely stressed, not for a lack of good intentions or good legislation. There is a unified court system in principle, but we do not have the uniform tools to manage the system. Management of the court system at the county level has largely functioned without guidance, help or support from the State of South Carolina or its Judicial Department. Automation of case records and processes has been developed individually, county by county, with no state standards.

It was as if the state had mandated each county to have an automobile, but offered no plans, no standards, and no money. We all know the consequences of unfunded mandates, don't we? It's not an unfamiliar term in any of our experiences. And as far as the court system goes the counties have done the very best they could. They went about building the required automobile from scratch in their own backyards, and I can tell you this: it cost a lot more in real dollars and in human capital than if the state had helped out from the beginning.

What I envision taking place in the next five years is the design and specification of a standardized case management system that will be collaboratively developed by the Clerks of Court and funded by the South Carolina Judicial Department. The Department will participate in the design but the design team will be composed primarily of Clerks of Court and Information Technology Directors from the counties. That team is already up and operating, and I believe so strongly in this concept that by June 2001, I will have invested \$1.5 million in existing state court funds to get it underway. In addition, I have begun to provide surplus computer equipment to counties that are in need. For fiscal year 2001-2002, I am asking this General Assembly for an initial investment of \$4.6 million in non recurring funds to begin this task. Two thirds of this money will be spent directly in the counties to begin the process of connectivity and to pilot the case management system.

So what are we talking about specifically? The modernization process begins with two basic steps: first, providing connectivity and usable equipment to all users who need it, and, secondly, designing and implementing a uniform case management system to carry the state forward.

We expect no overnight miracles. We are talking about a five-year process to accomplish the goals I have outlined, but let me assure you that the first steps in this long journey are the critical ones. That's why we have approached this opportunity with a business plan, which outlines our goals, defines our missions, and establishes the potential revenue by which this system can be supported. It's feasible, reasonable, and above all cost effective.

Let me also assure you that South Carolina is not the first state to move in this direction. Most

states, in fact, already have a judicial case management system in place and are already beginning to reap the benefits of such connectivity. In our peer group of 11 states, South Carolina ranks about in the middle in terms of population, but we rank dead last in terms of total dollars, as well as total per capita dollars, spent on the state court system. I say that not as a complaint, but as an indication of just how far we have to go in this area. And I remind you that conversely we benefit from not being the first to rush into judicial technology. We can avoid the mistakes of others, and we can take advantage of the fact that proven technology exists and the cost of hardware decreases every year. In other words, we can accomplish far more for far less.

And if we decide to do nothing? Let me describe what is out there today. We have a technological Tower of Babel across the state. One system does not talk to the other, and every system is outmoded. In fact, I would say that our courts are being held hostage today by the so-called "green screen" a set of systems that are so out-of- date that they take special experts to fix them, and the problems take hours to resolve. That's a lot more costly and a lot less efficient than a call to a "help desk" for a modern system.

And what if we take these steps toward modernization? What will be the payout? We will create with your help, nothing less than a court operation that enhances the day-to-day operations and administration of the entire court system. We will have a unified court system in fact, as well as in name. Segments of the system will interact among themselves, with law enforcement, solicitors, defenders, witnesses, victims, litigants, private attorneys, and ultimately individual citizens and the business community as the active participants and beneficiaries. Call centers will be available for Clerks of Court for technical assistance, and training programs will assist all court personnel in learning how to operate the new system, and make themselves maximally effective.

The general benefits include:

- Access to information seven days a week, 24 hours a day.
- increased accuracy, completeness and timeliness since all data would be captured only once, at the source of its origin;
- More efficient utilization of all judicial resources, including judges, staff and facilities;
- Increased security and integrity of case files by reduced use of paperwork and such variables as post-it notes and bad handwriting;
- Enhanced services and access to information for other state agencies and the public in general through such efficient means as electronic filings, self-service forms and procedures, online payment of fines, fees and restitution. If you do not believe this is a direct and cost efficient payout, think of its reality. In appellate court today, it is required that 15 copies of a case be filed, and in today's world, the smallest such filing would be fifty pages for each copy. We're talking about saving time, money, paper and a lot of trees in this country along the way.

How would the benefit of connectivity and case management work in a specific setting? Imagine that a trial court judge in Clarendon County issues a protective order requiring a violent individual to stay away from his estranged wife. The order is automatically recorded in the case management system and electronically transferred to a central computer at SLED where it is

accessible to all law enforcement across the state. It is an example of how information will move across agency and jurisdictional lines.

The trial judge, by the way, will also benefit from having the ability to use the system for complete, accurate and timely information, while on the bench or in chambers, achieving access to past court records, as well as from other criminal justice systems such as those maintained by SLED, the Department of Corrections, Juvenile Justice and national systems, in making bail determinations. There will be immediate disposition reporting to SLED, and the reporting of sentence data will be reported in a timely manner to the Corrections Department, so they can initiate planning for a new inmate's arrival.

In the meantime, the Clerk of Court records events only once, as they occur, directly submitting dispositions and protective orders to law enforcement. Our violent individual's order is now on the statewide system. Using the same system, by the way, we can produce management statistical reports without any additional manual entry and can generate appeals records without any duplicating and copying of papers and files.

So let's follow our hypothetical violent individual who has been ordered in Clarendon County to stay away from his estranged wife. Wife moves back to her mother's house in Barnwell and months later, law enforcement in Barnwell County responds to a domestic incident to find a man has violently attacked and injured a woman in a violent altercation. The man is arrested. A routine ID check of the new system produces the information that a protective order has been issued against this individual in Clarendon County, and he is also immediately charged with violation of the protective order. The information has crossed agency lines and geographic lines to result in a critical law enforcement action to protect the safety of all involved. A hearing on the violation of the Clarendon County Order is conducted by video conferencing.

Attorneys, solicitors, and public defenders traditionally prepare for trial by reviewing facts of the case and filing documents with the Clerk of Court. All the filing can be done electronically under the new system from the attorneys' or solicitors' desktop to any courthouse in South Carolina. Confirmation of receipt can be filed directly back to them in real time. An attorney in Greenville can file documents in Charleston without ever leaving her chair. The Clerks of Court could still receive paper documents at the "window," but their workload will have been significantly reduced because most of it is now done electronically.

As far as reviewing facts of the case, all parties will have the ability to search and retrieve historical case information online without traveling to the courthouses to search through paper files. Each party will also have the ability to cross reference defendants in different cases in different courts to aid solicitors as well as defense in the process. The new systems will make it possible also for private attorneys to keep up with the changing status of court dockets so that they may go to court just before a case is called, rather than having to wait or sit idly in unproductive time as they wait for a case to come up.

So, let's check on our violent individual in Barnwell. Information has been recorded, papers have been filed, and he comes up for trial on the Barnwell offense. He has already been adjudicated in violation of the protective order while awaiting trial in Barnwell. Court is called to order, and the

sheriff's deputy escorts the defendant to a device where a computer takes his fingerprints. An image of the fingerprint is sent to the computers at SLED headquarters where the offender's identity is confirmed within seconds. The judge and clerk automatically retrieve the case on their computer screens in the courtroom. With just a few keystrokes and mouse clicks, the judge is able to see the entire electronic case folder, organized and searchable in nearly every way needed by the judge: chronologically, by party or by type. With a few clicks, the judge is able to view and open electronic documents from the offender's court record in Clarendon County, including the violation of the Protective Order. Information has crossed agency and geographic boundaries.

In the most efficient possible way, the offender is then given his day in court. Let's assume the defendant is found guilty in Barnwell. The case management system automatically submits a real time message to the criminal history system at SLED, and also automatically alerts Department of Corrections to expect a new inmate.

Information once again crossed agency boundaries.

In addition, all pertinent agencies and individuals can be notified by e-mail or otherwise of the disposition of the case.

So, think about this scenario and mentally imagine how such a case would be handled today. Information may or may not cross county or agency lines. Records may or may not be available, depending on the time available or the priority the case might receive. Identity of the offender could be lost in a communications gap, and justice in this case might be denied for simple logistical reasons.

That, ladies and gentlemen, is the opportunity that awaits us, and the consequences that await our failure to act. Let me now touch briefly other initiatives.

General Sessions Docket. This General Assembly has several measures pending before the House and Senate which deal with the extreme statewide backlog of general sessions cases. After a series of meetings with Solicitors, Public Defenders, Victims Advocates, Clerks of Court and Judges this summer, I created a Task Force to develop recommendations to you and to me for the reorganization of the General Sessions Court in South Carolina. Justice Costa Pleicones and recently retired 12th Circuit Solicitor Dudley Saleeby have agreed to head this effort. All segments of the system are represented and several sessions have already been held. By state statute, the solicitors control the docket and should continue to do so, but we want to partner with them to look at a system, which frankly is on the verge of collapse, and needs some serious attention. Give our task force a chance to bring forward a suggested plan for attacking this complex problem.

Administrative Law Judges and Reform. The Judicial Council of South Carolina, created by this General Assembly 45 years ago, is a standing committee charged with the recommendation of changes in the justice system of our State. It is broadly representative of the legislative, executive and judicial branches and of the private citizenry. I have asked Judicial Council to undertake a comprehensive study of the Administrative Law Judge System. Since the 1977 adoption of the Administrative Procedure Act and the 1994 adoption of the Restructuring Act, administrative

law cases in South Carolina have increased dramatically. The Council will shortly propose comprehensive recommendations in this area for further modernization. Among the items addressed will be the control of the volume of inmate appeals from the Department of Corrections. Minor prisoner disputes should stop at the Department of Corrections.

Rule 608 and Indigent Defense Reform. Constitutional decisions of the United States Supreme Court mandate that indigent criminal defendants and indigent parents charged with child abuse or facing termination of parental rights be provided with representation. The great bulk of this representation is provided by South Carolina lawyers who are appointed without fee by our trial judges. We have attempted in Appellate Court Rule 608 to devise a fair way of spreading this responsibility. We are still refining this rule as the result of comments from the lawyers, the judges and from you. The General Assembly has created an Office of Indigent Defense through which some state funds are made available for death penalty cases and other serious crimes. These funds are needed for public defenders, and some private attorneys. These funds are woefully inadequate. Our appellate and public defenders system does not begin to cover the mandate of the U. S. Supreme Court, and South Carolina lawyers, as part of their duty, serve many of these clients pro bono. Judges regularly appoint these attorneys, and a disproportionate burden often falls to the smaller and poorer bars in the state. What is needed is a reform to spread the work more equitably. Additionally, the state needs to instill greater accountability in the way funds are spent for indigent care.

Court facilities. A major problem has arisen in providing courtroom security as an increasingly large number of emotionally distressed people come to court and pose threats to each other and to others in the court. We need to assist counties in dealing with this problem.

Drug Courts. Therapeutic drug courts are progressive diversionary alternatives to straight jail time for defendants whose primary problems stem from heavy dependence on alcohol or drugs. While you appropriated some funds for these courts last year, the monies were ultimately not available. Most of the current funds have come from federal grants secured by the solicitors. These programs need to be funded and I have gone into the judicial department's budget to provide some funding. I encourage you to provide funding as you can for these courts.

Magistrates System. I am a great believer in and supporter of the lay court system. I do not believe that all wisdom resides in lawyers. I do believe, however, we have a responsibility to ensure that justice in one county is dispensed consistently with the justice in other counties. Last year, the legislature made major steps in Magistrate Court Reform and increased educational requirements for those appointed to the office. Before we go to the next step in increasing jurisdiction of the system, we should increase the requirements for certification, testing and education.

Chief Justice's Commission on the Profession. A special commission headed by South Carolina Bar President Dewey Oxner, and composed of members of the bar, judges and members of the public, has been organized to address issues of professionalism, and we have the utmost confidence that this organization, just getting underway, will produce truly significant outcomes for the people of the state.

We've covered a lot of ground today, and I appreciate your time and attention. An independent court system is the foundation of stability for this country. We are unique among nations in that regard. Our courts solve all manner of conflicts, and if things cannot be resolved otherwise, we are the ultimate tiebreaker.

If you doubt our uniqueness, take a look at the constitutional documents that govern nations like Russia, and you'll see a judiciary that looks very much like ours on paper but is not truly independent. The rule of law is not respected, government approved corruption is rampant and the court system lies at the mercy of political whim and expediency.

Don't take our system for granted. Recognize that a vibrant and independent court system is a precious thing, which underpins the very fabric of our social order and tranquility. If the American public decides that the system for enforcing the rule of law has failed, the very existence of the rule of law is imperiled. With the demise of the rule of law, ordered society disintegrates. This nation's complex system of economic, social and spiritual relationships is in the most fundamental way dependent on the health of the social compact which the Constitution defines and the court system embodies. In the world today, we see bitter and ongoing conflicts between British and Irish, Arab and Israeli, Serb and Bosnian. In America, all those peoples are present in our society, and we live in peace because we have decided that the Rule of Law will be the baseline to deal in a civilized way with each other. It is a precious thing.

Let me close by saying that I came to this chamber in 1974 with 55 new house members, and of that number, only five remain. Larry Koon, Alex Harvin, John Land, John Matthews and Kay Patterson. I cherish your friendship especially, as well as that of all of you. I have left a great deal of my heart and soul in this chamber, and I will always have the deepest respect for you and the greatness of this institution.

In that spirit, I ask that you join me in a collaborative effort, a partnership between legislative and judicial branches, to meet the pressing needs of this uniquely important part of our democracy. Like those South Carolinians of 1819, it is time for us to be bold again, to make an investment in the long-range future of the South Carolina courts. Justice is not a luxury; it is not subject to the ebbs and flows of political fortune or economic success. It demands constant support and attention. Join me in bringing the powers of technology to bear on the needs of the state's court system. Join me in making a commitment to our future. Join me in assuring that justice will be an engine for fairness and equity.