

State of the Judiciary
Chief Justice Jean H. Toal, South Carolina Supreme Court
Message to the Legislature
February 26, 2003, in Columbia, South Carolina

Lieutenant Governor Bauer, 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:

For as long as the mind can ponder, September 11th will be a marker in the course of world history as we search for meaning in the demonic events of a year ago. As the nation works together to heal the wounds of lower Manhattan, we turn anew to the rule of law and its underlying principles of fairness, decency and honesty.

In the wake of the terrible events of September 11th, our President promised the world: “we will bring them to justice.” But as the nation moved forward to make good on the President’s promise, our national resolve has been tested again by the events of this past year. Our economy faces a time of crisis and challenge fueled by corporate accounting scandals, bankruptcies, and the volatility of the stock market. The sniper attacks reminded us again of our vulnerability to acts of terror. Looming war with Iraq further challenges our national resolve.

But in the face of great national turmoil, there was also much to celebrate in 2002. South Carolina and the nation celebrated the long life of public service of America’s first centenarian Senator as our beloved Strom Thurmond attained his 100th birthday while still serving his country as her oldest Senator.

In this time of great national challenge, the American public is increasingly looking to its government for leadership. Here at home, our citizens have passed the torch to a man of vision and quiet confidence, Governor Mark Sanford.

The financial challenges the state currently faces are the most severe I have seen since the 1970s. But the good news is that we don’t approach the task this time under the crushing yoke of spiraling inflation of those times.

Additionally, we have made significant progress towards introducing more rigorous and more accountable management into state government.

Judicial Branch Funding

Every state general assembly in this country is facing a financial crisis as it approaches the task of adopting a general appropriations bill this year. My colleagues in the Judicial Branch yearn for me to spend this time making a strong financial plea to you, and certainly this last year’s cuts have been devastating to our state court system.

Three years ago, the annual appropriation for the Judicial Branch was \$41,775,000, about 4/5 of 1 percent (.0785) of the state's budget. As this fiscal year began, our appropriation was \$38,400,000. And with the across-the-board cuts, we're at \$35,000,000. The budget Ways and Means recommends for our state court system for the next fiscal year is \$32,135,000 of state money, representing less than 3/4 of 1 percent (.0706) of the state's budget. The Judicial Branch has not received this small a portion of the state budget in absolute dollars or percentage in eight years. And yet in the face of this bleak financial picture, I come here today to thank you for what you have done.

Last year, I came to your leadership and explained that I simply could not operate your court system at the level of state funding that was projected. And you responded by the adoption of a motions fee, an increase in court filing fees, and an increase in child support collection fees. We have spent much time this fall with the Clerks of Court, attempting to assure that these fees are correctly remitted to the counties and to the Judicial Branch.

I have made administrative adjustments in the application of the motions fees to address the concerns of practicing lawyers. I thank Representative John Graham Altman for expressing these concerns in the bill he prefiled. I believe my most recent adjustments deal effectively with those concerns. User fees are now crucial to the viability of our state court system.

I have sat in your seat. I have walked in your shoes in making the tough budget choices that a changing economy presents to you. I simply plead with you to stay the course, and I thank you in advance for your continued support. This year will simply be a scramble to survive.

But more long term, permit me to make a few modest suggestions. There is great opportunity in adversity. I urge you to seize this moment to look more deeply at how you encourage and incentivize good public management.

We have a new Governor who has a real commitment to changing the way we manage state government. Every line in the General Appropriations Bill has a constituency that clamors for your attention and support. Our approach sometimes pits groups, agencies and even the three branches against each other in a scramble for scarce state resources. Now I fully understand that you can't change your current process in midstream, and I wouldn't expect you to. But in the interim – before next year – when you are making a more long-term study of state budgeting, consider that effective management should be encouraged and rewarded in state government. Additionally, there is a need to place priority on core constitutional functions – the governor, the general assembly, and the courts. I long to have the financial needs of the Judicial Branch evaluated on how effectively we use sound management practices but also on the essential nature of our constitutional function. You could completely defund the core of the three branches of government – the courts, legislature, and governor's office. You would destabilize our state and not come close to balancing the budget because those core functions take a very small amount of the total state budget. The big financial decisions will have to involve the hard job of setting priorities, but I say, with no apology, that there is a governmental core which both constitutional mandate and ordered liberty require. It includes this body. It includes the governor's office, and it surely includes the courts.

The Judicial Branch received less than \$10 per capita last year. We have the lowest court budget and per capita allocation by a significant percentage than 10 of our sister states with similar population. The next closest state has a court budget nearly 20 percent greater than ours.

But I tell you that we manage our state system with a small state staff and collaboration with our 46 Clerks of Court. Most states our size have a large state and regional administrative team. Additionally, South Carolina has far fewer judges per case than any of our neighboring states. And in the last eight years, our case volume in all courts has continued to grow. Hard times produce an increase in crime, domestic disputes, business disputes, and almost every area of our courts' business. And yet we are achieving great success. You know I'm fond of baseball, so I'll put it to you on the basis of our scorecard, and it would include the following:

Differentiated Case Management

In each of my previous State of the Judiciary addresses, I've emphasized reduction in the backlog of the criminal court – the General Sessions Court of South Carolina – as a top priority. We owe it to the victims, the accused, and the people of this state to dispose of criminal cases quickly and fairly. We haven't added any additional trial judges in South Carolina in seven years, and yet our criminal caseload continues to increase exponentially. We're committed to a two-pronged approach to case management: First, develop more efficient ways of managing the criminal docket. Second, use technology to manage the cases we try.

I strongly support the continued control of the criminal docket by our circuit solicitors. I have developed a very close working relationship with each of them. Together, we are developing new approaches to managing criminal cases in South Carolina.

Special recognition goes to Solicitor Barney Giese of the 5th Circuit who, over the past year, piloted a differentiated case management system for the Richland County criminal docket. The purpose of the program is to reduce backlogs by placing criminal cases on different timeline tracks depending on the severity and complexity of the case.

You can see the chart on the overhead. The bottom line is this: he started the year with 6,800+ cases pending. He added an additional 8,955, and at the end of the year, through a new system of management, Solicitor Giese disposed of 11,450 cases, and came up with 4,847 cases pending at year end. That's almost a third of a reduction in caseload for Richland County without spending any additional state funds or adding any additional personnel. Through more effective management and integration of technology, significant results are being achieved for the citizens of our great state.

This effort involved coordination from the time the warrant for a general sessions case was issued by a magistrate to the time the case is disposed. Much credit goes to Solicitor Giese, Judge Henry Floyd, Justice Costa Pleicones, Clerk Barbara Scott and the magistrates and law enforcement of the County who set deadlines, adhered to them, and pushed the process forward.

Other solicitors are now reviewing these efforts at differentiated case management. Through use of federal grants, I have been able to assign retired Circuit Judge Ed Cottingham to Orangeburg

County to work with Solicitor Walter Bailey to develop a similar program for a county whose general sessions case rate continues to explode.

Appellate Courts Educational Outreach

Two years ago, the Supreme Court and Court of Appeals began to hold terms for the appellate courts around the state. This past March, our Supreme Court sat in Charleston's Historic Courthouse – quite a thrill – in connection with its reopening almost 13 years after the devastation of Hurricane Hugo. The Supreme Court also conducted a term in Greenville in October. And during the past year, the Court of Appeals has held court in Greenville and Conway. In each instance, our courts selected cases involving litigants from the area. Local bar associations mentored grade school, middle school, high school and college students who read briefs, came to the arguments, and had a big question-and-answer session with the Court afterwards. It was a wonderful outreach, well received by the educational and legal communities as well as the public at large in these areas. And our county Clerks of Court and local judges felt a real sense of pride in participating in these special appellate sessions. We'll try to do more of that.

Judicial Branch Internal Reorganization

I've reorganized the existing administrative functions of our state court system under seven directors.

No additional personnel or change in pay has been instituted, simply a reorientation of how we do business.

This directors' team meets monthly. And our internal processes are becoming focused on results using the fundamentals of project management. This means as we identify projects, we set timelines and schedules; we identify deliverables – the results we intend to achieve; we identify, on the front end, the resources by way of personnel, equipment, facilities, supplies and technology necessary to move that project forward.

We strive for tangible business results based on strategic planning and process management. But central to our operation is the concept of servant leadership, which, frankly, I believe is embodied in the Preamble to the Constitution of the United States. "We the people, in order to form a more perfect union" was a bold proclamation that government has only those powers granted it by the people ... not, I might say, a very popular notion in the 18th century, but one we live by today.

Court Automation

Strategic decisions about rebuilding South Carolina's economy are rightly in the hands of this General Assembly and our Governor, but courts, if they are effective, can play a very strong supporting role in building this state's economy.

Indeed, the very creation of the first civil courts some 600 years ago was driven by desire to build commerce. If merchants in Rome wanted to trade with the makers of goods in Nice, they needed a common rule about enforcing contracts. They needed reliable courts where they could seek relief if they did not get paid.

The automaker BMW and our own Milliken Industries are examples of manufacturing firms which chose to locate in our state and provide new jobs for thousands of South Carolinians. These businesses would not locate or remain here unless they could, with confidence, manufacture their goods, ship them elsewhere and know they would be paid by the buyers and have recourse to an effective court to enforce their contracts.

In a time of severe cuts to our recurring budget, greater efficiency is the key to keeping courthouses open in South Carolina.

Our real success story has been to utilize grant monies obtained in partnership with the criminal justice community to continue our efforts to employ technology to provide more timely and accurate information and to streamline our operations. Although courts are robed in tradition, we are leveraging technology to modernize our operations and improve our abilities to serve. The Judicial Branch continues to enhance our web presence, and we are in the midst of instituting a statewide court case management system. These efforts have involved Clerks of Court, county technology directors, and numerous local officials who participated in the design and the award of a contract which will pilot a case management system we hope will be up and running later this year in Greenville, Pickens and Richland.

There are some real heroes in encouraging our beginning efforts at court automation in South Carolina. Federal sources include significant Commerce-Justice-State appropriations secured under the leadership of Senator Ernest Hollings, with the support of Senator Lindsey Graham and the six members of our South Carolina congressional delegation. The collaboration with SLED and the support of the South Carolina Office of Justice Programs have enabled other significant federal grants to be received by the Judicial Branch. It should be noted that these federal funds are available to the Judicial Branch of South Carolina because of our technology initiatives; otherwise, we would not be eligible for them.

The majority of these funds are being used at the local level to introduce and implement technology. In the year 2000, very few judicial personnel, judges or staff used email or had reliable, high-speed internet connectivity. Few of the county courthouses were even equipped to participate in the use of internet technology. Today, through much collaboration with other state agencies and the individual counties, nearly 25 of the 46 county courthouses now have this reliable, high-speed connectivity, and my goal is to assist – which I have been doing with grant monies our department has obtained – and have all 46 counties so equipped before the end of next fiscal year.

South Carolina is one of the few states in the country where every county Clerk of Court's office has its own website. It is the basic management portal or tool. I, myself, now regularly rely on email and our website as my primary communications vehicle. I'm trying to lead by example and provide these tools in all eight levels of court. And I think it's really created what the pundits

call a paradigm shift, a momentum and enthusiasm and a collaboration between state and local governments that is very uncommon in this day and age.

Many counties are now using technology to develop cost savings in their court system. The counties stepping forward are not just the large, progressive counties that everyone expects. They're the rural counties as well: the Bambergs, the Barnwells, the Colletons, and the Hamptons. The Clerks of Court in many counties are now putting their court rosters online, which is saving them precious county funds. The smallest, most rural counties are now able to save at least \$500 a month by using online rosters.

But I know technology itself is not a panacea; it is the proper integration of this new tool into the business processes of our branch of government that I believe produces results. These results are beginning to be recognized nationally and within our own state. The National Center for Digital Government recognized us with their "In the Arena Award," and the South Carolina State Library recognized our website as the best in the state last year.

The Judicial Branch is proud of our accomplishments, but achieving these initial goals has shown us how much we have left to do in order to realize our vision.

Major encouragement for our management approach has also been given by Speaker Wilkins, Ways and Means Chairman Harrell, President Pro Tempore McConnell, and Finance Chairman Leatherman. Times are very difficult financially for our beloved state, but the Speaker, the President, and these Chairmen have treated the Judicial Branch as a coequal branch of government. House subcommittee chair Chip Limehouse, Representatives McGee and Cobb-Hunter, with input from the Speaker Pro Tempore and Representative Annette Young, have developed a unified approach to some additional criminal justice funding which holds much promise. And major thanks also goes to Senate Finance Subcommittee Chairman Senator David Thomas and to Senators Kay Patterson, Maggie Glover, Brad Hutto, and Verne Smith, who have continued to help work with us to finance the court system.

Sealed Settlements

Over the past year our courts and our counterpart federal judges in South Carolina have considered the issue of whether and when public court records and judge ordered settlements should be sealed from public view.

Concern in both our courts has revolved around issues of public health and safety. The heartbreaking scandal of long-time sexual abuse by clergy in the Catholic Church – my own church, the question of whether lives could have been saved by early public disclosure in tire separation cases, and issues involving child and health care malpractice have fueled much public interest in this matter of sealed settlements. The federal courts of South Carolina adopted a local rule which banned all court-ordered or court-approved secret settlements.

Your Supreme Court conducted public hearings on this matter, and we adopted a rule which we believe balances the public's right to access information about cases litigated in the public's courts with the need for privacy which arises particularly in our family courts and in mental

health proceedings in probate court. We have not interfered with any party's right to settlement as a matter of private contract. You privately contract, that's your business. However, if the parties use the power of the judge to evaluate, approve, and enforce a settlement, such matters must be public unless the court finds compelling reasons for privacy that outweigh the public interest. We have presented these rules to the House Judiciary Committee and hope to appear before the Senate Judiciary Committee as well. And we believe public confidence is enhanced by the adoption of these balanced rules.

Judicial Independence

At the midwinter meeting of the Conference of Chief Justices from which I have just returned, the method of selection of state court judges continues to be a major topic of concern. Nationally, the states are almost evenly divided between those which select by popular election and those which use gubernatorial appointment, many with retention elections.

The spending of enormous sums on high-pressure media campaigns has turned many state judicial elections around the country into low, nasty negative campaigns waged in an atmosphere of instant sound bites and big money. Several of my fellow chiefs have described their elections as a disgrace and an outrage.

The public of South Carolina is weary of incivil public debate. Public confidence in government as a whole, and in our judicial branch in particular, is much enhanced by our own measured and merit grounded approach to judicial selection. Our method of selection by a joint assembly of this General Assembly is the envy of the country, and the quality of our bench reflects the high quality of our process and of your deliberation.

I proudly present to you at this time Justices Moore, Waller, Burnett, and Pleicones from my court. Will you stand? Thank you. I also proudly present Chief Judge Hearn of the Court of Appeals and her colleagues: Judges Goolsby, Cureton, Connor, Howard, Stillwell, Huff, Anderson, and Shuler. Will you please stand? Thank you. And I ask that, in the gallery, all who wear the robe and all members of the Judicial Department stand for a moment so that these members of the General Assembly might acknowledge your presence, as I do, and thank you very much for coming today.

When the history of court modernization and the continued vitality of an independent and responsible judiciary in South Carolina are recorded, the names of our Judiciary Committee Chairs Glenn McConnell and Jim Harrison and the names of each member of the General Assembly will be writ large as guardians of our independence and our accountability.

Conclusion

And finally, permit me a point of personal privilege if you would. I came to the floor of this House as a 31-year-old wife and mother. My little three-year-old, Jean, grew up in this chamber as did her younger sister, Lilla. You bought their Girl Scouts cookies. They learned to use computers, and they learned a lot about how to share and how to serve in this chamber. I remember with great affection the many other members' children who visited here during my

time, including several who are now members of this body – Dolly Cooper’s son, Dan; Lucille Whipple’s son, Seth; David Taylor’s son, Adam; and Izzie Lourie’s son, Joel. But now my little three-year-old, Jean Toal Eisen, is the very same age that I was when I came here. So let me introduce you to her first son, our first grandchild, my pride and joy, Patrick Jacob Eisen.

Everyone is motivated by a different cause, but all of us strive to bring and build a better world for our children and grandchildren. Thank you for what you do for South Carolina and Godspeed.