STATE OF THE JUDICIARY
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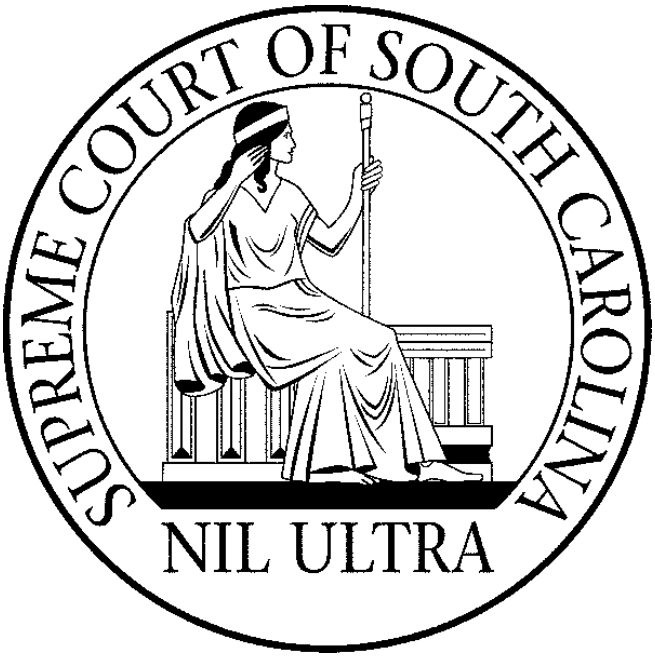

Address of the Honorable Jean Hoefer Toal
Chief Justice of South Carolina

Joint Session of the General Assembly
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Columbia, South Carolina

> *It was the best of times, it was the worst of time, it was the age of wisdom, it was the age of foolishness, it was the epoch of belief, it was the epoch of incredulity, it was the season of Light, it was the season of Darkness, it was the spring of hope, it was the winter of despair, we had everything before us, we had nothing before us, we were all going direct to heaven, we were all going direct the other way— in short, the period was so far like the present period, that some of its noisiest authorities insisted on its being received, for good or for evil, in the superlative degree of comparison only.*

Charles Dickens opened his immortal Tale of Two Cities with these words. From the hindsight of 85 years, he was describing opinions in 1775 France of the state of the world during the French Revolution then occurring.

As we now look in the hindsight of 236 years, we know that there have been many more horrific times and many more glorious time since 1775. Are we again looking at the best and worst of times? I believe that these times of economic crisis present those of us in government with an unparalleled opportunity to rethink the way we do the people's business.

The South Carolina Judicial Branch looks at tough times as a challenge to concentrate on four areas:

1) Management Techniques. How do we manage court business—are there new ideas?
2) Business Models. What are the business models we could use?
3) Processes. Can we modernize our processes?
4) Technology. How can we use technology to effect change?

The results we have targeted are:

1) Development of consistent standards for all 46 counties in which court is conducted and for all levels of court
2) Achievement of greater efficiency in the use of existing resources
3) More logical organization of court structure

New management techniques include a hard look at our trial courts. Declining court resources and exploding court filings have continued to create backlogs in our three largest trial courts in South Carolina. We have determined to examine each of these big dockets in depth. Justice Kaye Hearn will head up our Docket Management Task Force. Each trial division will have a subcommittee examining its current functioning. The Circuit Court Common Pleas, the civil trial docket, will be co-chaired by Court of Appeals Judge Danny Pieper of Berkeley and Richland/Williamsburg Circuit Court Judge Cliff Newman. Circuit Court General Sessions, the criminal trial docket, will be co-chaired by Justice Costa Pleicones of Richland and Spartanburg Circuit Court Judge Roger Couch. The Family Court subcommittee will be co-chaired by Court of Appeals Judge Aphrodite Konduros of Greenville and Richland Family Court Judge Dottie Mobley Jones. Each subcommittee has members from all parts of the South Carolina Court system.

My charge to this Task Force is that nothing is off the table. We want to take an accelerated look at short-term improvements that could quickly be implemented by administrative orders from my office, as well as long term improvements that may entail rules changes and statutory changes.

Among the topics that will be addressed are:

1) Use of court time. How are judges using their time? Does court breakdown because dockets are not effectively managed?

2) Staffing. Are we correctly staffing judges with the traditional structure of administrative assistant, law clerk, and court reporter? Can these personnel positions be redefined to be more effective?
3) Scheduling of cases. In civil and family court, the Clerk of Court and the judges schedule as a team. Are there better and more uniform ways to schedule across the 46 counties? In criminal court, the Solicitors schedule the cases. Now that each circuit solicitor has the state court technology system, can they do a better job of attacking the very large backlog of criminal cases?
4) How do other states and the federal courts manage their court calendars?
5) Can we use the National Center for State Courts' expertise to design a better system for managing our dockets?
6) What ideas do those who use the courts everyday have about what works and what does not work?
7) How can we improve predictability, consistency, uniformity, and effectiveness of the South Carolina courts?

The Task Force, all three subcommittees, met in its first plenary session on February 17, 2011. I have asked for a preliminary report from each subcommittee within four months.

Why is the Docket Management Task Force necessary? South Carolina does more court business with fewer state trial judges than any state or territory in the nation. We have the lowest number of judges per 100,000 of population and the highest case filing per judge. The national average for filing per judge is 1,755 cases per annum. In South Carolina, the average is a crushing 4,842 cases per judge per year. These aren't just the statistics, these are individual cases—criminal, civil, and family—which deeply affect the lives of individual civil litigants,

individual defendants charged with a crime, individual victims, individual children, mothers, fathers, and grandparents.

In better times, we will have to revisit the issue of additional trial judge positions. But, for the present, we at the Judicial Branch are determined to bring the best thinking to bear on the issue of improving management of cases with our current assets.

Our business model is to put the people who come to our courts first and combine modernized processes with the use of technology to get their cases heard and decided quickly. Use of modern technology to automate court processes has been the centerpiece of my administration as your Chief Justice. In South Carolina, the Chief Justice is not just the presiding judge for the Supreme Court. By Constitution, the Chief Justice is also the CEO of the third branch of government. When I was elected Chief Justice twelve years ago, my challenge was to develop a plan for making our largely paper-based system run more effectively. Each of the 46 county Clerks of Court are the gatekeepers for our court system. They are the keepers of all records pertaining to the initiation and the progress of state level cases.

As I became Chief, each Clerk tried to manage the enormous volume of documents, money, time deadlines and notification of all persons involved in a case with their own system – sometimes automated, sometimes completely paper based. There were general guidelines but without a real statewide system, Clerks were left to find vendors, money and system designs strictly on their own.

My first look at state automation convinced me that we could not afford a big mainframe computer system, with expensive hardware, software and maintenance cost.

The Internet was brand new 12 years ago. It was not much used by business or government as a records management tool. But it was cheaper and a lot more user friendly.

Our approach was to use an Internet-based platform as a basis for managing court operations.

Our five (5) fundamentals were

1) Create high-speed connectivity everywhere in South Carolina that the courts do business – all the counties, all magistrates offices
2) Create statewide uniform case management software
3) Create websites for each county Clerk's office and for the state Judicial Branch
4) Create a 24/7 call center providing on-going support for each county
5) Provide a standardized imaging system for putting paper documents into an automated system

It's taken 10 years. We started with nothing in 2000. By 2005, word began to spread nationally about South Carolina's effort to automate the whole state with an Internet-based system. We started to get calls from huge states like California and Massachusetts. By 2010, we are recognized as a national model.

Our biggest challenge for a web-based system was connectivity. Many rural areas of South Carolina didn't even have dial-up Internet service, nor cable TV service when we started. We started with the main courthouse in each county. We cajoled, we begged, we partnered with large telephone companies, cable TV providers, and Mom and Pop telcos. Today, all 46 counties have reliable high-speed Internet connectivity to every courthouse and magistrate office. All have wide area high-speed networks. We have wired and built many of them with

our own personnel. Twenty nine (29) counties, who have limited or no local IT departments, are hosted by the S.C. Judicial Department. We have become their IT for court business, and we maintain their records on our server farm here in Columbia.

As of last Friday, we are now 96 percent deployed. By this summer, Chesterfield, Darlington and Lee counties will come on line and our Statewide Court Case Management System will be 100 percent deployed.

How did we do it with no state money available? I show you this chart to illustrate what the use of federal technology funds accomplished. That blue column illustrates how we funded this project. Over 75 percent of the federal funds we received were spent in the counties providing wiring, expertise, software, hardware, continuing support and maintenance for this system. No single Clerk and no vendor-based system could ever have achieved the quality or efficiency this system has created.

But this raised the question, how can we sustain this system when the federal funds run out in 18 months? We have to replace this funding with a sustainable source, and we know neither the state nor the federal government can provide continuing funding.

Let's pause for a moment to reflect on what a viable, working court system means to economic development in South Carolina.

The business community rallied to the side of the Judicial Branch last year as you seriously debated Judicial funding. Their message was clear. The ability of a state court system to fairly and timely resolve disputes is a highly important consideration in attracting new businesses to South Carolina. When court funding was in peril, Boeing representatives publically stepped forward to emphasize that a stable court system and

such innovations as the business court docket were key considerations in Boeing's decision to make a major investment in South Carolina.

Revenue generation is an important aspect of smooth court functions. The court system is a large revenue generator, providing more than $109 million to state government and more than $26 million to local government. We do more with less than any court system in the nation.

Technology innovation is obviously a key to our continued effectiveness, so how do we provide sustainable funding?

At present, we have made a beginning. We provide the case management software, data conversion and training to set up the system into each county at no cost. They would pay hundreds of thousands of dollars to buy a similar system. After deployment, we provide on-going support 24/7 through our call center. We also provide on-going software support, maintenance and updates to our application.

Because the Judicial Branch owns the system, at present, the counties pay annual fees for software support and hosting to the Judicial Branch. It is a fraction of what they would and were paying as they automated with county-purchased, vendor-owned systems. All these funds are plowed back into our system to maintain and upgrade.

How will we replace the rest of the federal funds? Our business plan is to create a state-owned electronic filing system. It would not be required to electronically file. One could still file just as all do now with paper-based filing. If one wanted to electronically file, an electronic per document fee would be charged. Our model is based on a minimal fee, less than the federal fees or any other state.

We calculate we can build such a system for approximately $5 million. We believe it would generate about $7 million a year when operational.

The Ways and Means Committee will recommend this project to the House floor when the FY 2011-12 Budget is debated. This would sustain the entire technology system and, over time, reduce current county charges, and the court document would be available on computers 24/7.

We use electronic banking, bill paying, shopping and many other processes because they are convenient and because of the integrity of storage of data.

So, summarizing, for the Good of the Order. Your Judicial Branch views the current crisis as an opportunity we may not have for years to come to create a new business model for the courts which will

1) Streamline operations
2) Increase the efficiency and effectiveness of what we do have
3) Look at alternative sustainable funding sources
4) Increase public access to the courts

Our foundational principle is to be good stewards of the public trust and source taxpayer dollars by being innovative leaders.

It takes all of us in state government to rethink how we operate and how we fund the public business. The only business model that really works is collaboration among all three branches – the Executive, the Legislative and the Judicial. Together, we can achieve the vision of a brighter future for our beloved state.

Well, you know, I always conclude with my grandson Patrick. But before I do that – what is the court system doing for the children of South Carolina? I am humbled to announce that your Judicial Branch and your Chief have been awarded the National Center for State Court's Sandra Day O'Connor Award for a state court's advancement of Civics Education.

We are the national pilot for the use of Justice O'Connor's iCivics web-based, interactive civics education program for students; for our Class Action Program, bringing middle and high school student to the Supreme Court to hear oral arguments; for our Case of the Month program providing streaming video of a case argued before our court where students receive and study the briefs before hearing the argument; and for the South Carolina Supreme Court Institute, a summer program for middle and high school Social Studies teachers to demonstrate how to bring the law to life for their students.

This is a wonderful national honor for South Carolina.

And finally, here's my grandson Patrick. He skied with his Big Momma and Pop for three (3) days after Christmas, and we all lived to tell the tale.

This is what we all work for. So I'm pretty clear on whether it is the best of times or the worst of times. You are sacrificing every day to make it the best of times for your fellow South Carolinians. It is the honor of my life to lead your partners – the judges of South Carolina – in achieving greatness for our people.

God Speed.