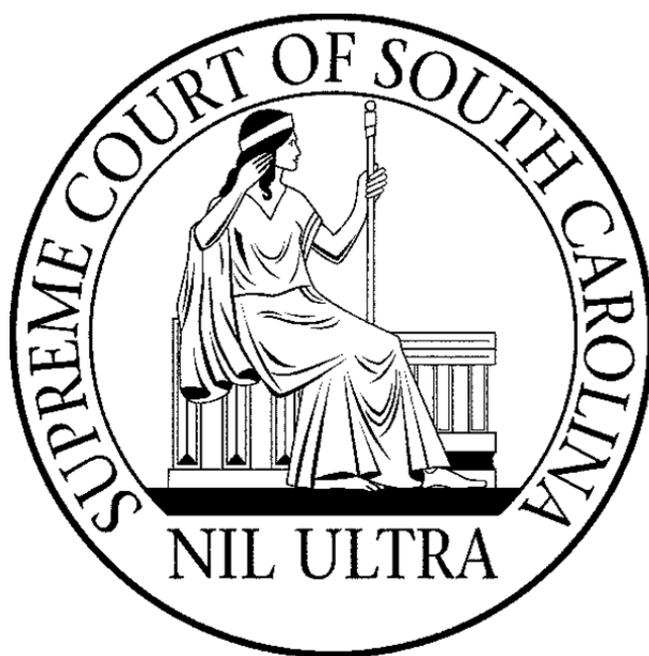


STATE OF THE JUDICIARY 2013



**Address of the Honorable Jean Hofer Toal
Chief Justice of South Carolina**

*Joint Session of the General Assembly
February 20, 2013
Columbia, South Carolina*

Thank you very much, thank you very much.

Mr. President, Mr. Speaker, Members of the Joint Assembly:

I'm always filled with such a feeling of nostalgia for this chamber where I spent so many of my first years in state government. And with the awe and the honor I always felt every time I walked in here, no matter how many years I served. And that continues today. Your invitation over the years to myself and my predecessors represents a commitment to equality and shared responsibility among the three branches for which I continue to be very deeply grateful.

In Memoriam - Chief Justice A. Lee Chandler

As is my custom, I begin in memoriam. We lost a giant of the legal profession in A. Lee Chandler this past year. He was a leader of the central automobile insurance reforms as a member of this House of Representatives from Darlington County. He was a highly respected member of the Circuit Court, later the Supreme Court, and as our Chief. And after a distinguished legal career, he went to seminary and had a productive second career as an Episcopal priest. What a life. What a man. He will be missed.

In Memoriam - Judge Billy A. Tunstall, Jr.

We also remember today Billy Tunstall from Laurens. This wonderful Family Court Judge lost a long-term battle with cancer last year, a profile in courage who served for many years despite his illness.

Historic New Commitment to Court Stability

Let me begin with grateful acknowledgment on behalf of the people of South Carolina for the historic new commitment to court stability this General Assembly has made by honoring the long requested creation of new Family Court and Circuit Court positions. As I sat in the gallery January the 30th and reflected on the decency of the process and the incredible election of a diverse group of leaders in the profession to judgeships, I offered my congratulation and my gratitude. Keith Kelly, Maite Murphy, Don Hocker on the Circuit Court bench, and Michelle Hurley, Joe Smithdeal, Kelly Pope, Tony Jones, Jim McGee, Monet Pincus, Randy McGee and David Phillips on the Family Bench are generational leaders who will bring new energy and much-needed relief to the court systems of South Carolina. You have done exceedingly well. (Applause)

SCJD Expenditures by Funding Source for Recent Years

Running the South Carolina court system is a business process. This chart is offered to give you the history of revenue and expenditures

over the years that I have been Chief. The important figures to look at are the beginning and what the system looked like a short 13 years ago, and where we stand today with a strong new commitment to general revenue funding and with heavy reliance on state fines and fees. But an interesting column is the federal funds which have entirely been devoted to creating an automated record system for the entire state of South Carolina's court system beginning with magistrates and moving on up. This is a wonderful example of effective use, with your oversight, of federal funds. We used the federal funding over the years to build a court information system that allows all in the system and the general public to more easily access their court documents. But you made the commitment two years ago to find another way to fund our technology, and at the same time put the crown on the effectiveness of public access. And that is when you funded the electronic filing system about which I'll speak more in a moment.

The revenue generated from that system will replace federal funds. A great model: use federal funds to build but not to bloat and rely on. Then use what you've created with federal funds to generate additional revenues for state government for the operation of a particular function.

South Carolina Circuit Court Caseload

As we stand here today this chart, very familiar to you, shows that we remain last in the number of judges per case load and per population.

But with your new commitment to nine additional judges, the future for the South Carolina court system is bright. And I look forward very much to beginning to report, maybe even as early as next year, our move away from dead last in this situation.

SCJD Technology Roadmap

As you know, technology and its use in changing the way we do business in the courts systems of South Carolina has been my hallmark as your Chief Justice for the last 13 years. But this effort is not just a shift away from paper to automated records. It's an integration of technology with court business process. And it changes the way we do business to have a system that makes us more efficiently and effectively manage every court employee from the clerks right on up through the judges themselves. I believe we've achieved a lot with this new system, and much better days are yet to come.

SCJD Security

Cyber security has certainly become intensely scrutinized in South Carolina in light of recent successful security attacks on our system. But be assured and aware that cyber security for the court system has been an integral part of our design of your system for 13 years. And it continues to be. We have a security administrator who leads the technology security team. One person doesn't do it. You need an

integrated system of making security and its operation a part of the way everyone uses the system and operates in any kind of entity that relies on technology.

We're currently reviewing our security processes to be sure that we take into account the Office of Inspector General's report, and certainly increasing our attention to employee security awareness. Continued training is foundational to long-term prevention of security breaches in any large, government information system. And we are committed to that.

Statewide Court CMS for Circuit and Magistrate Courts

The statewide court case management system for Circuit and Magistrates Court handles 100% of the criminal and civil caseload, excluding Family Court. And we are one of only a handful of state systems that handle the breadth of court records. Many states cherry pick the larger communities, and the rural communities never get the benefit of automation. Our system handles it all and started at the ground level in the most rural parts of South Carolina. We are nationally recognized.

Another thing to observe about this slide is that all those counties that have an "H" are counties that are hosted by the South Carolina court system in our data center at the Calhoun Building with our disaster recovery backup provided by Clemson University off-site. What the

hosted counties particularly get is support 24/7 and real-time updating of their processing. Certainly larger counties have their own servers and may prefer that process. But for many, many counties in South Carolina who really don't have the funds to have any kind of IT program or security, this hosted environment has been a Godsend to keeping their systems up to date and functioning.

Appellate Court Case Management System

Let me highlight another application that has now come online. It's the crown jewel. It's the automation of case management in the Court of Appeals and the Supreme Court. We started live case processing on this system in April of this year, opinion circulation in September, and statistical reporting in November. Manual functions are now automated for the scanning of court documents for opinion circulation and statistical reporting. Our next big goal is to put all of these records online. But I'll discuss in a moment there are some considerations that need to be made as we move to online access to all these documents.

E-Courts: Our Next Step

E-Courts is our next step, and it will be an electronic court system where you can file, serve, and view documents. This includes anybody, members of the general public. No special password needed as is the case in the federal system. No money to be paid to view the documents

as it is in the federal system. This will be for everyone in South Carolina. Our foundation was the Attorney Information System. We've created a database with accurate attorney contact information, updated real-time, including the email address which all lawyers are now required to have. That's the platform for allowing for an electronic environment for the filing of documents.

Our next step is the strategic plan for e-filing. I'll tell you how we develop that in a moment. But also, we've got to pay bigger attention to public access to information because you've got to balance security of personal information and privacy of personal information with public access. We're working very hard on that. But we are committed to having a system by next year for the appellate case management part of it that will allow you to access records and documents. Family Court records are our biggest challenge. That is where a lot of the privacy issues become very acute. But we are committed to having South Carolinians access to this very important view into the court systems of the state.

Important Benefits of E-Filing

The benefits of e-filing, of course, are that you can access documents 24/7. I started my practice 45 short years ago when even going to a courthouse couldn't guarantee you that you'd be able to see public documents. And of course, the efficiencies of paper handling for

attorneys, for clerks' offices is another enormous benefit of e-filing. And particularly for smaller offices where personnel are so strapped and counties are strapped to fund them, electronic filing will be a Godsend.

E-Filing Committee

The e-filing committee was composed of people from all over the system. It was chaired by Pat Ellis who came to our court with 40 years of experience in state government. She's one of only five certified project managers in the state. She's managing the e-filing project along with my counsel, Stephanie Nye. They have already developed a group which has made the detailed recommendations you see on the screen that deal with how a request for proposal is formulated to develop the software for this system. The proposal went out on the street last week. I'm proud to say that within 18 months we'll be in pilot, and within 24 months I think the entire system will be in place all over the state. That will put us light years ahead of the development of e-filing and its ownership by the state of any state in the country. (Applause)

Docket Management Task Force

But we can't be satisfied to try to improve court efficiency and operations just by looking at automation. Docket management is a huge part of that where we look internally at our work ethic and how we process cases as a system. Justice Kaye Hearn chaired the Docket

Management Task Force. And nothing was off the table. They reviewed court operations, consistency, effectiveness, court resources. The task force was divided between the three big trial dockets in South Carolina - Family Court, Criminal Circuit and Civil Circuit.

Docket Management Task Force -- Common Pleas Subcommittee

The final reports are in and here are some highlights from those three task forces. On the Common Pleas side, that's your Civil Court/Circuit Court, statewide implementation of fast-track jury trials using the Charleston model. This is a very effective way to take smaller cases, try them in less than a day, give young lawyers experience in the courtroom in an environment in which some settlement has been discussed beforehand and the trials are streamlined. We hope to get out of pilot and put this in all over the state of South Carolina.

We want to reform the post-conviction relief process. It's broken. These dockets are essentially second bites at the apple for criminal defendants. These cases need to move along.

Mediation and a short notice docket, or rocket docket, are among the other proposals that will be implemented. And making more efficient use of judges' chambers weeks and Friday afternoons is something I am absolutely committed to and will make happen.

Docket Management Task Force -- Family Court Subcommittee

Family Court subcommittee: its recommendations include a new method of docket management that schedules cases back-to-back for all circuits. The bigger circuits, some of the most sophisticated circuits, manage on an A, B, C docket. That needs to be the case all over the state. Family Court time is too precious not to maximize its use and eliminate downtime. Mandatory mediation, a simpler way of filing financial declarations for those involved in child support disputes, and scheduling temporary hearings more quickly are among the recommendations.

Docket Management Task Force -- General Sessions Subcommittee

And on the General Sessions side, the recommendations include a uniform docket management system - and I will talk about that more in a moment - expanding nonjury terms so that motions for these criminal cases can move along more quickly, and finally, increased use of alternative sentencing proposals like those recommended by your Sentencing Reform Commission several years ago. Justice Don Beatty is the Court's voice for an increased look at sentencing reform.

Alternatives to jail for nonviolent offenders makes sense, saves money, and may save a life.

General Sessions Docket

General Sessions docket, let's get right to this for a moment. You've heard a lot of conversation already this session about the State v. Langford decision in which our Court held that one side can no longer control the calling of cases on a criminal roster in South Carolina. For years I have discussed with you what we can do to organize criminal court dockets in South Carolina on a more business-like basis.

In your own life when you get a book of business in, you set deadlines for the completion of tasks and move them on to conclusion. We have a fancy term for that, Differentiated Case Management. But the concept has been around forever. Several years ago every Solicitor in the state signed an agreement, a consent order, agreeing to manage on this kind of basis. And still we have enormous backlogs, tens of thousands of cases, some by circuit, some that are two years old and more. We've got to drain the swamp of those cases first. We've got to get a handle on these old cases and dispose them.

I recently sent a judge to hear a 15-year-old incest case, indicted and 15 years, and not disposed. This isn't South Carolina. The public of South Carolina will not tolerate this. And frankly, most of the folks involved in the system would do anything not to have this be the case. And there are a lot of complex reasons why we have big backlogs. The Solicitors need more financial support, so does the Public Defender system, so do Clerks of Court. But we have got to have a business

process for looking this in the eye and starting to make a dent in what we've got. (Applause)

Next week I will announce the appointment of a Stakeholders Committee to develop collaborative management of the criminal docket. But I can already tell you that two people who did it right while they were Solicitors, who really reinvented the term of Differentiated Case Management, I will ask Representative Pope and Senator Hembree to serve with other members of the judicial profession and members of the public on this very important committee to take a look at how we must move forward, and finally to determine how to keep the docket moving after we deal with the problem of backlog.

This isn't a judge run situation, no judge can run these dockets. It is a joint cooperative partnership between Clerks of Court, Solicitors, Public Defenders, defense attorneys, and all others involved in the system. And I believe we can make progress without it having to be a "me against you" and an "us against them" situation. We don't operate like that in South Carolina. And I am bound and determined that we are not going to solve this problem by doing an "us and them" approach to something this important to the safety and security of South Carolina. (Applause)

Business Courts

Business courts is a really wonderful success story in South Carolina. We are now into several years of experience with our pilots in Charleston, Greenville and Richland with three able experienced judges leading this effort - Roger Young in Charleston, Ned Miller in Greenville, and Cliff Newman in Richland. We are now on the cusp of expanding this program statewide. These are complex business to business disputes that one judge manages from beginning to end. And I can tell you that the reception in the larger legal community and in the business community is extremely positive for this effort to provide for sensible and early dispute resolution in these very important matters.

First Annual South Carolina Pro Bono Summit

We had our first annual Pro Bono Summit this past year. This is an effort to get volunteer lawyers to help by giving free legal services to the working poor - to the people who don't qualify for legal aid but who can't navigate the system, and particularly if the matter is complex. This is the fifth anniversary of our Access to Justice Commission, also very much devoted to the task of helping those who cannot afford access to our legal system. The Summit's goal was to increase this voluntary effort by lawyers. And we will hold this Summit annually. Governor Haley was an active participant and issued a Governor's Proclamation and sent members of her staff to assist with this effort.

2012 Woman of Achievement Award

What great pride the State of South Carolina recognized Kaye Hearn as the 2012 recipient of the Woman of Achievement award presented to her by Governor Haley this past fall. Kaye was chosen as a woman whose work and life has made a significant impact on the quality of life for other women and for all citizens of South Carolina.

(Applause)

Office of Disciplinary Counsel

In our disciplinary realm, the Office of Disciplinary Counsel has been nationally recognized in an article in the American Bar Journal in January for our commitment to lawyers' civility and the use of technology. A feature story was done on Lee Coggiola, our very able Disciplinary Counsel. In addition, the American Bar Association's Standing Committee on Judicial Discipline recently recognized our case management software developed in-house by our IT staff as a model for other states.

Exciting Developments: Mentoring

We have exciting new developments continuing in mentoring our beginning lawyers. In this economy, young lawyers more and more go out on their own as they graduate from law school without any benefit of assistance and help by wiser heads who can help them navigate the

business process. We now have lawyer mentors, seasoned experienced lawyers, for each and every new admittee to the South Carolina Bar. And thanks to the work of Justice Kittredge and the Commission on the Profession, we are reemphasizing professionalism in the practice of law.

For the Good of the Order

For the good of the order, you've made a major step forward to reforming the people's access to their courts with the creation of these new judgeships. And we will use them wisely and well. With our appellate court case management system, with e-filing and e-courts, we intend to make our system all the more accessible and easier to navigate by citizens, by you, by the attorneys, and by all who use the court system. And the General Sessions docket will be top priority for this coming year. And with the help of people who care, I believe we'll be able to make a real move forward on this issue.

Please allow me to introduce the Appellate Court Judges who've come with me today. Supreme Court: Costa Pleicones, Don Beatty, John Kittredge, Kaye Hearn. And the Court of Appeals: Chief Judge John Few, Tommy Huff, Paul Short, Bruce Williams, Paula Thomas, Danny Pieper, Aphrodite Konduros, John Geathers and James Lockemy. You won't find better representatives of all that is good and decent about our court system than these judges who sit in the back of your chambers at this time.

They don't just make a difference here in South Carolina, each one of them is recognized far beyond the borders of this state for the contribution to justice that they each make. I'm just as proud as anything to stand shoulder to shoulder with these judges and the state judiciary in South Carolina. (Applause)

Bright Smiles for a Bright Future

And finally, you know how this story ends. There's my grandson Patrick. He's 10 years old now. But this was the trip of a lifetime. Patrick is marching the ramparts of the ancient city of old Jerusalem where our family went on a two week trip at Easter and Passover last year. We walked where He walked. And we discovered the miracle of unfolding history in this Israel, which is so much at the heart of everything we believe and work for. That's a bright smile for the future. Thank you and God bless. (Applause)