

State of the Judiciary
Chief Justice Jean H. Toal, South Carolina Supreme Court
Message to the Legislature
April 9, 2014, in Columbia, South Carolina

Thank you very much, thank you very much. Mr. President, Mr. Speaker, Mr. President pro tempore, Mr. Speaker pro tempore, members of the Joint Assembly, it is my great honor once more as your Chief Justice to present the State of the Judiciary Address this morning.

Before I begin, let me introduce members of the Supreme Court and the Court of Appeals who are in attendance today. Will you stand please, colleagues, as I recognize you? Justice Costa Pleicones, Justice Don Beatty, Justice John Kittredge, Justice Kaye Hearn, Chief Judge John Few, Judge Paul Short, Judge Bruce Williams, Judge Aphrodite Konduros, Judge John Geathers, and Judge James Lockemy. (Applause)

A Statue To Honor A Civil Rights Hero: Judge J. Waties Waring

I begin this morning with a tribute to Federal Judge J. Waties Waring. As background, on May 17th, we will observe the 60th anniversary of Brown V. Board of Education, the 1954 United States Supreme Court decision which ruled unconstitutional state laws which enforced racial segregation in public education. South Carolina's Briggs v. Elliott was the most important of the four cases known as Brown. It provided the factual basis and legal theory for one of the most important decisions in American history.

It's past time to celebrate the life of South Carolina's most unlikely Civil Rights hero, Federal Judge J. Waties Waring. An eight-generation Charlestonian, with a prestigious Meeting Street address, impeccable social credentials and appropriate ties to segregationist South Carolina politics, Waring served as a U.S. attorney during the Wilson administration and as Charleston Corporation counsel in the '30s and '40s before finally obtaining the coveted federal judgeship. His judicial tenure, however, proved to be anything but predictable.

He was 62 when he took the bench. In the 10 years he served as a federal judge, he ended racial designations on jury lists and segregated seating in his own court. He ruled in favor of equal pay for black and white public school teachers and, in one of his most controversial rulings, he struck down the rules of the South Carolina Democratic Party, which at that time limited membership and participation in the party's primary, really the deciding election at that time, to white voters only. He also encouraged Thurgood Marshall to make a direct assault on the "separate but equal" doctrine in public schools. And when his two fellow jurists on the three-judge court that tried Briggs v. Elliott in Charleston upheld South Carolina's segregated school system, Waring vigorously dissented, and became the first judge in America to rule from the bench that "Segregation is per se inequality."

For those rulings, he was ostracized by Charleston. The KKK burned a cross in his yard, vandals threw bricks through his windows and fired shots in front of his residence. He left Charleston, never to return. But on this Thursday, in Charleston, this bronze statue will be unveiled at the

Federal Courthouse where Judge J. Waties Waring's rulings changed the course of opportunity for our state and for the nation. (Applause) Thank you.

Moving Forward in a New Court System in South Carolina

We're moving forward with a new court system in South Carolina. And your investment in the creation and election of new judges has really made a difference in the more efficient management of our court dockets and our resources. Judges serve important roles as problem solvers as we move forward with this new court system. Our trial and appellate courts have made great progress in increasing diversity on the bench as we continue our commitment to making the judiciary the face of South Carolina.

Progress on Case Disposition

But progress on case disposition is a pretty simple equation in my view: new judges, increased use of technology, increased collaboration of judges, clerks of court and attorneys results in big improvement in case disposition.

Common Pleas Benchmarks

Let's talk about how we measure improvement and success in our trial courts in South Carolina. Our civil trial court for Circuit Court is called Common Pleas, an old-fashioned term. We established aspirational goals for how cases should be disposed of, we call them benchmarks. The benchmark for civil court, Common Pleas Court, in South Carolina is to dispose of 80 percent of the cases filed within a year of filing. We're not hitting those benchmarks yet. But nine circuits are now over 60 percent, and that represents a big step forward. Additional judges in the future may close that gap.

Circuit Court Judges' Caseload

The average caseload per judge in South Carolina is still the highest in the nation with almost 4,500 filings per judge per year.

But judges do a lot more than simply preside over trials. Yes, we have the highest caseload in the country, but we also have motion hearings, drafting and reviewing orders, pre-trial status conferences, and another particular issue that I want to spend a moment with you this morning, and that is bond hearings in Circuit Court.

I'd like to emphasize my deep concern with what judges have to work with as they make decisions about bond reductions in Circuit Court. We often in these hearings do not have the information we need to make a wise decision about the defendant who appears in front of us. Many times a judge does not know that the defendant who stands before the judge is a repeat offender, or has other convictions, even in other states. Trial delays and a backlog cause a lot of defendants to make repetitive motions for bond reductions as they sit in local jail facilities without being tried. But the lack of information our judges have about criminal backgrounds necessitates that we finally complete the interface with SLED so that our judges can have up-to-

date criminal background information as they conduct these bond hearings. Otherwise they make decisions that would have been quite different had they had the real information about the defendant.

Judges as Problems Solvers: Business Courts

Judges are problem solvers, and the Business Court is a very good example of that. We've now expanded this pilot program to include three regions, so it's not just Greenville, Richland and Charleston anymore. The judges who preside now hear cases from any county in the region to which they are assigned Business Court responsibilities. Business Court is a way of managing very complex business matters, generally business to business disputes, and it's a good thing for the resolution of these complex cases.

But it has another implication that's just as important, these big complex cases sometimes suck the air out of a docket in a small or medium-sized county where they have limited terms of court and limited times for ordinary cases to be processed. To move these big Business Court disputes into a special docket frees up time for the many cases where ordinary citizens are having their cases delayed for resolution. Our three presiding Judges, Ned Miller, Cliff Newman and Roger Young are doing a great job. And I've asked the circuit judges to volunteer for more assignments. And we hope to appoint some additional Business Court judges and begin their training this year.

General Sessions Benchmarks

Let's look for a moment then at the criminal courts in South Carolina. We call that the Circuit Court's General Sessions Court. And the measure of success or the benchmark in this court has recently changed. It used to be a very unrealistic "we can resolve 80 percent of the cases in 180 days." That's really not a realistic standard. The solicitors asked that this benchmark be changed, and we moved it to 365 days, which is more realistic.

And that combined with some very recent, new attention on how to manage dockets in South Carolina, a lot of it occasioned by the debate over Langford, has resulted in some astounding improvements in many circuits in South Carolina.

There are 10 circuits that are within shouting distance of 80 percent. A good example is the Greenville/Pickens circuit where differentiated case management has been in existence in that circuit since Billy Wilkins instituted it so many years ago. And Judges Traxler and others, Bob Ariail, and now Judge Wilkins' son Walt Wilkins manage a very sophisticated docket in that County. They've got a lot of money in Greenville and Pickens to make improvements in how the docket is managed. We want to help all circuits achieve what that circuit has achieved.

But the king of the roost is York/Union. Eighty nine percent of their cases are disposed within one year. You can't really expect to do much better than that. It's a great tribute to not only Solicitor Kevin Brackett and Public Defender Harry Dest, but the Clerk of Court and all the others who work in that system.

General Sessions Docket

Why is management of the General Sessions docket so important? Well, it's certainly true that unnecessary delay of these criminal cases is a denial of due process for the defendants, but it's also a denial of justice for the victims and results in some extremely excessive costs for the county. A lot of defendants are held in pre-trial detention instead of moving the cases through the system. The average cost per day is almost \$60.00 to detain someone in a county facility. And some counties have reported that they have spent over \$100,000 on just one defendant because the case was delayed so many years from being tried. That money would be a lot better spend with solicitors and public defenders and clerks of court to help move the dockets.

Judges as Problem Solvers: General Sessions Docket

The General Sessions docket has received a lot of focus. And in January of this year we turned our attention not just to the cases that are a year old, but to the cases that really are old. And we set our sights on anything that was more than a year and a half old and passed an order that required the solicitors to survey their book of business and reconcile their records with the clerk's records and with the public defender's records and come up with a real honest list of everything that's over a year and a half old by case name, by the lawyers involved, by the charges made, so that we could really get a handle on these old cases. We will spend the next few months concentrating very heavily on trying to move out these older cases on South Carolina's criminal dockets.

Collaboration Essential to Efficient Docket Management

But in the end, collaboration is an essential element of docket management. I know you've heard a lot of discussion in the past year about who should control the criminal docket. But the truth of the matter is that control of the criminal docket is really a collaborative effort between the judges, the solicitors, the circuit public defenders, and the clerks of court.

And there are some good success stories that have happened very recently when that kind of collaboration takes place. The 9th Circuit, Berkeley/Charleston, is a good example. Judge Roger Young became the Chief Administrative Judge for General Sessions in January. And he took a very proactive approach to examining everything that was more than a year and a half old. And with the collaboration of Solicitor Scarlett Wilson, Public Defender Ashley Pennington, and Clerk of Court Julie Armstrong, they have reduced the backlog in Charleston/Berkeley by 27 percent. That shows what working together can do.

The 6th Circuit is probably our most endangered circuit in South Carolina, and it's primarily lack of local resources. Only 29 percent of their cases are resolved in a year in Chester, Fairfield and Lancaster. But at the beginning of this year, Judge Brian Gibbons and Solicitor Doug Barfield sat down together and said, "what can we do to change this picture?" And working with the public defender and the clerk of court in Lancaster, they experimented with a system that was part judge controlled, part solicitor controlled. They expect to move 1,000 cases in Lancaster within the next several months. That's a real miracle.

The 2nd Circuit is yet another example. Jack Early, the Resident Judge there, with Solicitor Thurmond and Public Defender De Grant Gibbons and their three clerks of court have set the next four months as a period of intense concentration on those old cases. So a lot can be done simply by moving together and working together. And we hope that the results of the study that's being made now that involves all the stakeholders will underscore this and come up with some model ways of running the dockets in South Carolina.

Family Court Benchmarks

Let's look for a moment then at Family Court and how it has progressed.

This is a huge success story, and it's primarily the result of the implementation of the task force recommendations for Family Court which Kaye Hearn chaired and Judge Konduros guided for the Family Court part of the study. Six circuits in Family Court have 80 percent or better resolution within one year of their Family Court cases. That is an enormous change from the figures I would have shown you last year about Family Court in South Carolina.

Judges as Problem Solvers: Family Court Docket

But here are some good practical examples of what happens when folks work together. In York County, the disposition rate last year was 70 percent within 365 days of filing. That's not the 80 percent benchmark, but it's getting close. But in less than one year of Judge Tony Jones, one of your new Family Court Judges, putting into implementation the management techniques suggested by the task force, York County now tries 90 percent of its Family Court cases within one year.

And in Anderson County where only 41 percent of the Family Court cases were tried in 365 days, Tommy Edwards, the Resident Family Court Judge, working closely with his Clerk, Court Administration and IT to implement these suggested changes, Anderson County now tries 85 percent of its Family Court cases in one year. This is a model. It's getting the right people together to solve a problem.

Judges as Problem Solvers: Alternative Courts

Judges are also problem solvers in an alternative approach to dealing with minor offenders whose main difficulty is substance abuse, mental health or other behavioral issues. We have Alternative Courts on a pilot basis in many counties in South Carolina created with administrative orders from myself. These include Mental Health Courts, Drug Courts, Truancy Courts, and some Veterans Courts. You invested strongly in this idea by making these alternatives to incarceration a part of your Sentencing Reform Bill that passed several years ago. And it's resulted in some reductions in both local jailing and in the Department of Corrections figures.

But these programs need to be institutionalized with legislative action. It's something that is a success story just as a pilot. It gets together treatment professionals with judges to put

defendants through a program to deal with their real issues, which are not generally legal issues, but rather addiction or other kinds of health issues. And if the defendants complete the program of treatment successfully, they can either reduce their sentence, be on probation, or avoid a legal penalty completely with an expungement. We need to institutionalize these programs in South Carolina.

Technology Roadmap

Let me turn now to the technology roadmap. This, of course, has been the signature program of my administration. And as we approach 14 years with E- Filing, and enhanced security is now our main concern, I look back to the year 2000 and think how improbable it was that a government agency, particularly a court system, would use an Internet-based system to manage its court records. That was unheard of back then. We went into it as really trailblazers because it was such a less expensive way than dealing with big mainframe computers and the huge licensing costs that would be entailed. Now we're looked at by courts all over the country and acknowledged as national leaders in this approach to court record management.

Four Court Statewide Software Systems

We now have four statewide court software systems. The basic Court Case Management System, it standardized record-keeping and business process in Circuit Court and in Magistrate Courts for all 46 counties. Forty two of those counties depend on the Judicial Department and our servers here in Columbia to host their records. Four counties, large ones, maintain them on servers at their home base. But all the counties operate on one standardized system, and it's just a really powerful thing in terms of more effectively moving cases.

The Appellate Court Case Management System now manages all the Supreme Court and Court of Appeals records. It circulates opinions. But just as importantly, there's much more public access now to the records and briefs that are filed in the Appellate Courts.

We also developed an Attorney Information System. This is the central repository of up-to-date contact information for 15,000 licensed lawyers in South Carolina. And the public can now access this contact information by going on the Judicial Department website. How did we get them all to get up-to-date information, and how did we get them all to put down an email address so we could easily contact these lawyers? It was the carrot and the stick. The carrot was easy access to the system, the stick was they couldn't pay their Bar dues until they updated their information. It's worked.

Electronic Filing is the crown jewel. And that application is currently under development with an implementation in 2015.

South Carolina owns all four of these software systems. We do not pay an outside vendor. And we have the security that comes with having a system we control, maintain, and do not let anyone breach the firewalls into its security. And I'll talk in a few minutes more about security because it's the biggest issue facing anyone who maintains a data system – corporate, private or public, but particularly for members of the public.

E-Filing Update

Update on E-Filing. We've now revised our Rules of Civil Procedure which have passed muster here. We've revised the business process of clerks of court and integrated these four applications so as to prepare for E-Filing. We'll be training on these programs for all users beginning in 2015.

Security of Personal Data in Court Records

Security of personal data in court records is an enormous responsibility and an enormous concern for all kinds of people who intersect with or use the court system. Your House and Senate Judiciary Committees have approved our new redaction rule, and it will go into effect on April the 15th. Examples of the items that are redacted, that is, shielded from public view by this system, are Social Security numbers – we're one of the only states in the country that shields it all, not just the last four digits. People have very quickly figured out how to figure out more than just those last four digits. We shield it entirely. Financial account numbers, passport numbers, names of minors, date of birth, home addresses of non-parties, minors, sexual assault victims are just some of the items that we are protecting from public view because of privacy concerns.

Court Data Security

Court data security is also a huge concern. And all of South Carolina government has focused in the last two years on data security for the information maintained within their responsibility. Our information security team has worked closely with the new division of technology regarding their statewide information security project. My IT director attends those meetings every month. And I'm proud to tell you that we are acknowledged as a leader in South Carolina government in the security and the employee awareness and training programs that we maintain in the court system. Our employees have security awareness training constantly. All employees are required to go on their computer and take the training. That includes contract employees, non-judicial employees, and all judges. And we have 100 percent participation, and I monitor it like a laser to be sure that continues. The South Carolina Judicial Department is also very focused on data protection, methods of authentication before you enter the system, and data dissemination. And that will continue.

The Importance of the Internet and Court Technology

But we have a very important issue that involves backing up our system. All these court applications are accessed and supported 24/7 for all the courts by the South Carolina Judicial Department. So what happens if the system goes down?

Any disruption in the service provided by these applications would potentially cripple the courts' ability to effectively administer justice for the citizens of South Carolina. We have asked for funding this year for our disaster recovery system to ensure that all 46 counties are able to continue essential functions in any hazardous environment, whether that is a natural disaster, a health pandemic, an accident, or terrorism. We partnered with Clemson University to develop

our disaster recovery or backup center outside of Columbia. And we're very hopeful that we'll be able to begin that project this year.

The Importance of the Internet and Court Technology

I don't think I have to convince anybody of the importance of the Internet in the modern age. In closing, I think we can all agree that the Internet represents innovation, access to information, and a more transparent court system for the citizens of South Carolina. We lead the way in the nation based on the decision we made 14 years ago to use an Internet platform for court records. But the Internet now represents economic growth and more opportunity than the world has ever known. Think about what all you access every day in your personal life from bank account records, to online shopping, to information you need to do your job, to personal contact with the people you want to stay in contact with using the Internet. And technology has certainly been a game changer for South Carolina courts, as well as the citizens of South Carolina. It's a different way of doing business.

What We Are All Working For

We work very hard as public servants to make this state as public servants a place of opportunity and values for those who come behind us, our children and our grandchildren. So you know how I always close. Here's my beloved Patrick, up in the gallery watching his Big Mama be re-elected. He's recently chopped off all that hair because he's playing summer sports. But I figure a boy that makes good grades, serves on the altar every Sunday and plays goalie on the hockey team can wear it anyway he wants to. And there's my little Ruthie, she's just seven months old and will be coming to South Carolina for her first Easter.

It is the honor of my life to once more be allowed to lead your court system as we create together a better life for the future of all South Carolinians. God bless. (Applause)