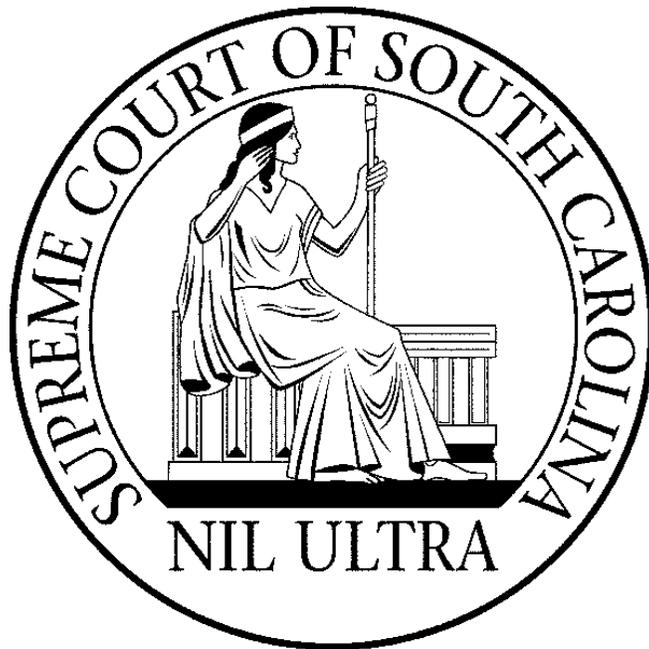


**STATE OF THE JUDICIARY  
2015**



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

*Joint Session of the General Assembly  
February 25, 2015  
Columbia, South Carolina*

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Thank you very much. Thank you very much. Thank you. Thank you very much. Please be seated.

Before I even begin, let me start by introducing the members of my Court and the Court of Appeals who are here in attendance today: Justice Costa Pleicones, Justice Don Beatty, Justice Kaye Hearn, Chief Judge John Few, Judge Paul Short, Judge Bruce Williams, Judge Paula Thomas, Judge Aphrodite Konduros, Judge John Geathers, Judge James Lockemy, and Judge Stephanie McDonald. Judge John Kittredge sends his profound regrets for not being here, he has a terrible flu bug this morning. And I told him I thought you would excuse him and I certainly would excuse him.

Lieutenant Governor McMaster, President Pro Tempore Leatherman, Speaker Lucas, Speaker Pro Tempore Pope, Members of the Joint Assembly, my Brothers and Sisters of the South Carolina Judiciary, Ladies and Gentleman.

## **IN MEMORIAM**

As you know, it is my habit to speak in memoriam as I begin my address. Early last Friday, the South Carolina legal profession lost one of its giants. Two and a half weeks from now, Attorney John Gregg McMaster would have celebrated his 101st birthday. He was the most senior practicing attorney in South Carolina. At the Bar for 75 years until his retirement in 2013, he tried his last case at age 93, and successfully so. Mr. McMaster was the consummate lawyer whether giving wise counsel to his clients or presenting their cases to judge and jury. He epitomized professionalism and civility. His considerable public service included membership in this House representing Richland County, and the South Carolina Code Commission. He held many memberships in state and national legal organizations and historical organizations and was greatly honored all across the country.

John Gregg's *métier* was in the courtroom. Like many young lawyers in Richland County, I would come to the courthouse when John Gregg tried a case. We learned the value of meticulous presentation and marveled at his premier oratorical skills. He served as a model of decent and effective advocacy for generations of South Carolina lawyers.

The legal profession expresses our deep condolences to his six sons, but most especially to his pride and joy, our treasured friend Lieutenant Governor Henry Dargan McMaster.

My address today is a look at milestones and achievements. Today is the 35th anniversary of your annual invitation to the Chief Justice of South Carolina to deliver a State of the Judiciary Address to the Joint Assembly. This milestone is an enduring symbol of the harmony between the Legislative Branch and the Judicial Branch. It was not always so. This harmony was achieved in 1985 with the resolution of a long-standing and bitter dispute between the two branches regarding the court rule making authority. The spirit of respect for each branch's constitutional authority and responsibility has remained the hallmark of our relationship.

### **SOUTH CAROLINA COURTS' REPORT CARD**

As I deliver my 15th and final State of Judiciary Address, it fills me with a great deal of nostalgia to look back 40 years ago when I sat in this very hall of the House as a 31-year-old freshman legislator. Only Senator, and then House member, John Wesley Matthews sitting here on the podium having my back once again remains from the great class of 1975.

When John Matthews and I entered our first session as members of the House, the leading topics for the General Assembly consideration in 1975 included: modernizing the South Carolina Constitution to restructure State government, reform of the Court system, Home Rule for the counties and cities, elimination of legislative authority over local school and county budgets, enactment of the first statewide ethics legislation, revision of the Freedom of Information Act, reform of State financing for schools, reform of property tax valuation, economic development tax incentives, and the strengthening of the Tech schools.

Sound familiar? We continue to revisit these important matters because constant re-examination is the surest path to progress as a people. So don't let the naysayers get away with criticizing the health of our government because you have the courage to constantly re-examine the effectiveness of our institutions. We pass laws which regulate behavior. When those laws are broken, we don't water them down, we strengthen them.

In the 1970s and 1980s, our statewide court system went from a system of 16 Circuit Judges and five Supreme Court Judges and a hodgepodge of local Courts to a standardized system which included a dedicated Family Court -- almost the first in the nation -- an intermediate Appellate Court, and, over time, the creation of additional Circuit Court and Family Court Judges. Our Constitution

was amended to provide for shared responsibility between the General Assembly and the Supreme Court in developing modern Court procedural rules. The Constitution was also amended to create screening for candidates for judicial office.

And upon this firm foundation, the past 15 years have been characterized by significant changes in the way our Court operates. Our report card for the years 2000 to 2015 is characterized by our focus on business models, management techniques and technology to achieve efficiencies and better business organization. So today the Courts enjoy more stable funding. We've increased the number of judges; we've got more uniformity, same justice for everyone no matter where they are in South Carolina, and, obviously, the benefits of technology.

In 2013 you made an historic new commitment to Court stability with the election of nine new trial judges. The creation and election of these judges has already resulted in a more efficient management of the Court's dockets and more access to the people of South Carolina to speedy justice.

Technology will continue to be a priority, making the Courts more accessible, more efficient and easier to navigate by everyone.

## **STABLE COURT FUNDING**

Fifteen years ago the entire Judicial Branch budget of \$46.5 million was funded by general revenue appropriations. You see the history. Today, for the current fiscal year, about a third of our recurring budget is funded by State fines and fees. These fines and fees allocated to the Judicial Branch are generated by all levels of your Court System and by services, primarily Court technology, provided on contract to the counties.

The Court generated revenue allocated to the Judicial Branch represents a very miniscule portion of the revenues generated by the Courts for state and local government. Our 15 year growth in Judicial Branch expenditures for an expanded Court system is now about \$67 million, and it represents one of the most conservative expenditure patterns of any entity in State government.

But effective management is about more than financial efficiencies. We've also taken a new approach to how we manage our book of business -- the people's cases -- to achieve major reductions in the backlog of pending cases. Justice Hearn as Chair and Justices Pleicones and Beatty, and Judges Konduros and Newman as subcommittee chairs have helped implement major changes in how Circuit and Family Court dockets are managed.

Our progress in accelerating case disposition is a combination of new judges plus the increased use of technology and collaboration with all the stakeholders in the system to achieve big improvements for our disposition rates.

Family Court is the biggest success story, and it was in the worst shape just a few years ago. Our goal is to process 80 percent of our Family Court cases in 365 days or less. And every circuit in South Carolina now meets or exceeds this benchmark. That was not so before our task force made its recommendations.

Common Pleas is the civil docket for Circuit Court and we measure the 365-day benchmark there from the time a case goes on the trial roster. And again, there is vast improvement. All circuits are disposing of 70 percent to 80 percent of their civil cases within 365 days of docketing.

General Sessions Court - the criminal case docket for Circuit Court -- has received new attention in the light of *Langford*. Three circuits are now above 80 percent and another seven are at 70 percent or better in disposition in 365 days. Six circuits still need additional management and local funding to have success.

But we can't expect the trial courts to improve their disposition rates without also looking at our appellate courts. We began a detailed concentration on reducing Supreme Court backlog in May of 2014. Our certiorari petitions, which is a legal term for requests to review Court of Appeals decisions, were our big area of focus. And with an all-hands-on-deck approach and some cutback in oral

arguments this Fall, we have now reduced pending cases at the Supreme Court by almost a third. And similar reductions are now being felt at the Court of Appeals.

## **THE IMPORTANCE OF THE INTERNET AND COURT TECHNOLOGY**

Our biggest management tool for the past 15 years has been our use of an Internet platform to build our Court Technology System. The Internet represents innovation, access to information, and a more transparent Court system for the citizens of South Carolina. It represents economic growth and more opportunity than the world has ever known. It's been a game changer for the Courts as well as the citizens of South Carolina; it's a different way of doing business.

In 2000, no major courthouse in South Carolina had Internet access, and Court personnel communicated by telephone, fax machine or surface mail. There was a unified system in principle, but not in practice.

## **TECHNOLOGY: MODEL INTERNET PLATFORM**

Technology is not just a matter of record keeping, it's a matter of justice. An unorganized and inefficient Court system that can't communicate with its various parts leads to breakdown in the administration of justice. Technology allows the Judicial Department to evaluate our caseloads on a statewide basis, to evaluate inequities, and to allocate our resources where they're needed. The recognition of

technology as a key to effective and efficient administration of justice has been the hallmark of my term as your Chief Justice.

Our plan in South Carolina to use high-speed, Internet-based connectivity to improve court operations and enhance public access has become a national model.

### **TECHNOLOGY JOURNEY**

When we began our court technology journey 15 years ago, I knew we had no State resources for this project; we were deep in the throes of the great recession much earlier than much of the nation. We were managing our entire system of courts on individual paper county records. So I cut my budget that year and then used existing fund savings to commission a study of how we could automate. I knew the big mainframe computer systems, which is what everybody used, were too expensive. So after looking at alternatives, we decided to look at an Internet-based system. That was a way-out idea in the year 2000. Neither government nor private business was using a web-based system to store or manage records or communicate in any identifiable way.

So I went to Senator Fritz Hollings and persuaded him to make South Carolina a pilot for the use of an Internet system to manage court records. And he made me promise one thing, to emphasize Internet connectivity for the most rural places in South Carolina. And that's where we started.

Fifteen years later, we are a national success story. And not a week goes by that we don't have calls from the Californias and the Massachusetts and some of the really huge court systems in this country wanting to look at our system to see how it works and how we did it.

The Judicial Department, not a private vendor, owns, redesigns and updates our state case management system. We built websites for most of the county Clerks of Court, they are the keepers of the record. And now all Magistrate, Circuit Court, Court of Appeals and Supreme Court records are accessible on the Internet through the county Clerk of Court's website and through the State Judicial Branch website.

We built the systems almost entirely with federal money, over \$52 million over the course of these years. But we didn't bloat our system by using those federal dollars for recurring expenditures which would have to have been replaced by state recurring expenditures. Rather, we built the systems to be revenue-generating. And those funds go back to the Judicial Branch to operate and improve our technology system. In these past 15 years, the South Carolina Judicial Branch has created a very effective business model for the use of federal funds as capital investment in business efficiencies and revenue generation.

Our technology roadmap shows that 42 of the 46 counties repose their case records right on our servers here in Columbia in the Calhoun Building. The other

four utilize our case management system and repose the records on their own servers.

We back up the entire system for disaster recovery purposes in a very successful partnership with Clemson University. And I'm proud to say other state agencies are joining us now. This is smart use of a state institution for capabilities for which we pay Clemson and not an outside vendor.

Our appellate case management system allows judges to access records and exhibits online. Public access is now available for many of our appellate records.

And beginning this last September we partnered with South Carolina Educational Television to begin live streaming of our arguments. We pay ETV to maintain a small TV studio in our basement at the Supreme Court. ETV and our IT staff live stream our arguments and archive them on our website. This is another example of a State to State partnership which generates value for each partner without outside expense.

The crown jewel will be electronic filing of all trial and appellate court documents in all 46 counties. We will pilot this project in Greenville and Clarendon this year. Once again, we will own the system. And you, by statute passed two years ago, have designated future revenue from e-filing that we are building to operate the Court's Information Technology Department. Using

revenue from a system we own, rather than paying it to a vendor, will operate our court technology well into the future.

But make no mistake, it's much harder to build in-house and own and maintain a system in-house rather than simply paying an outside source for a turnkey job and ongoing administration. But I am convinced that if you hire good managers and stay directly involved shoulder to shoulder with your managers and with their front-line designers, you develop a system that really works. This is been my management style and the results are nationally acclaimed.

### **BUSINESS COURTS**

Our toolbox also includes specialized management of complex business-to-business disputes. We started Business Court with a three-county pilot in Greenville, Richland and Charleston. Now we use a regional approach and have taken this docket statewide.

### **ALTERNATIVES TO USING THE TRIAL**

#### **AS THE PRIMARY METHOD OF RESOLVING DISPUTES**

But even with all the improvements we've made, South Carolina still has more filings per trial judge than any state in the country. Why? Because we still have less judges per 100,000 of population than any state in the country. So we

can't resolve all of our cases on a timely and compassionate basis by simply using the trial as the vehicle.

On the criminal justice side, alternatives to the traditional trial include sentencing alternatives for cases involving nonviolent crimes. We use specialized therapeutic courts to provide sentencing alternatives for non-violent crimes where the defendant has a mental health, substance abuse, or other behavioral issue that may require different management and treatment.

In these alternative or diversionary courts, judges, attorneys, and service providers work together to treat the underlying issue and may track or monitor an individual's progress to achieve the best outcome. And successful completion can reduce or avoid jail time and the expense to the State of housing these inmates.

### **SENTENCING ALTERNATIVES**

In the past 15 years, we have implemented by Administrative Order of the Chief alternative courts in South Carolina: Adult Drug Courts, Juvenile Drug Courts, Adult Mental Health Courts, Truancy Courts, Veterans Courts, and Homeless Courts. All seek to divert non-violent offenders into treatment.

But there's no question that on the criminal justice side, the major breakthroughs you made in sentencing reform five years ago are paying results - 25 percent reduction in penitentiary population already and the closure of several

statewide facilities. You've been wonderful partners in finding alternatives in the criminal justice area.

### **ALTERNATIVE DISPUTE RESOLUTION**

Alternative Dispute Resolution is another means of using something other than a trial. There's a cultural change taking place with regard to resolution of disputes. And it's a realization that some kind of disputes are not best settled through the adversarial process of a trial, but rather through collaborative processes like Alternate Dispute Resolution where a trained mediator guides the parties to an agreed settlement of the case.

The Commission was created in 2002, its mission to assist the Court, practitioners, and the public with arbitration and mediation.

Major accomplishments include a uniform set of rules, Court-Annexed Alternate Dispute Resolution pilots for civil and family courts now in 33 of the 46 counties, Family Court pilot mediation programs for DSS abuse and neglect cases. This could really be a help. DSS is broken. The abuse and neglect system is broken. We've got to think smartly management-wise, the Courts and the Department and this Body, about how to resolve. (Applause)

We also have successful Probate Court mediation, a pilot that began in August of 2012 and is now statewide. And we have pilot Court Mediation

Programs for Magistrates Court in Richland, Lexington, Greenville, Kershaw and Anderson counties. Alternate Dispute Resolution has become a permanent part of the judicial landscape in the last 15 years, mostly through Administrative Orders issued through my office and the creation of an ADR Commission. A lot of management can take place without dollars and cents, but with a different way of doing business.

### **FAST TRACK JURY TRIALS**

Fast track jury trials are yet another Alternate Dispute Resolution vehicle that's been adopted statewide. The goal is a quick resolution of cases that can accommodate a one-day trial. It's voluntary so you don't have to do it, but it's a binding jury trial before a six-person jury. They select a Judge, the Clerk pools the jury. It's been used in Charleston for many years. Trials last no more than a day and involve an abbreviated case presentation. But the parties agree to accept the jury verdict as final, so no appeal, the case is over.

### **COMMISSIONS AS PROBLEM SOLVERS**

We use Commissions as problem solvers. And in the last 15 years, we've used Commissions to tackle some very specific problems of access to the Court and improving the professionalism of attorneys.

## Access to Justice

Almost 10 years ago South Carolina became one of the first wave of access to justice initiatives in the country. And we tackled the challenge of justice for all, not just those who can afford it. But we wanted to design strategies for civil legal assistance to the working poor. Four out of five people in South Carolina of low income do not have basic access to civil legal assistance.

The Access to Justice Commission was created in 2008. Its major accomplishments include development of judicial training so that judges can be sensitive to how to deal with self-represented litigants. They're entitled to be heard, whether they have a lawyer or not.

But what else can we do? We prepared a simple divorce packet that people can use without a lawyer to go to Court for a simple divorce, a child support modification packet so that people who want to bring up child support modification can do it by using the forms without a lawyer, and in Newberry County, we've had a self-help pilot program that's been wonderful. It uses Newberry College students, all kind of different people, to help persons who want to use the self-help program figure out how to use the forms.

We've conducted Pro Bono Summits as well, trying to encourage the lawyers of South Carolina to devote an identifiable number of hours every year to

voluntary, free legal service to those who have civil needs that can't be met because they don't have the money.

### Commission on the Profession

We also established in the year 2000 the Chief Justice's Commission on the Profession. It's chaired by Justice John Kittredge, and it recognizes the need to emphasize professionalism in the practice of law. We promote professionalism from the first day a law student enters law school now until their last day in practice and assists them in retiring, and all manner of issues in between.

This is a highly regarded Commission throughout the country, and its major accomplishments include the adoption of a lawyer and judicial professionalism oath, the creation of new professionalism curriculum to be used at the two state law schools, a mandatory program of mentoring for lawyers so that each lawyer who comes to practice in South Carolina as a newly admitted lawyer has a lawyer as a mentor for a year with a prescribed curriculum of experiences to ease that young lawyer into the practice of law.

We also have mentoring programs, under the Commission's supervision, for Magistrates and Municipal Judges, and they mirror the very successful mentoring program and education program Circuit Court and Family Court Judges have run for new judges for years.

## Office of Disciplinary Counsel

Our Office of Disciplinary Counsel. Eight years ago, we requested the American Bar Association to conduct an in-depth audit of lawyer and judicial discipline in South Carolina. The result was an honest, critical report which made many recommendations for improvement. The Supreme Court embraced each of these recommendations, and we have restructured and strengthened our two Commissions to regulate ethics rules for lawyers and judges, just as you are attempting to look at a new paradigm for how your ethics cases are tried in your ethics legislation this year.

In 2013, the ABA Standing Committee on Judicial Discipline recognized our Office of Disciplinary Counsel's case management software, which we developed in-house with our IT staff, as the national model for how you automate disciplinary process for lawyers and for judges.

In this same year, the ABA also recognized our Disciplinary Counsel Lee Coggiola and her staff as national leaders in lawyer discipline and in the use of technology and in the enforcement of South Carolina's Civility Oath.

## **RECOGNITIONS**

Well, these past 15 years have seen the Judicial Branch recognized many times. We're thought of throughout the country as in the top tier of Court systems

in the United States; we're awfully proud of that. And additionally, the South Carolina Courts have established a variety of civics education programs for teachers and students of our State, including the Supreme Court Summer Institute for Social Studies Teachers, the Class Action Program where students attend our oral arguments every month and interact with the Court, and the Case of the Month where our streamed oral arguments are used in the classroom along with online access to our briefs and records on appeal.

We also received national recognition for the South Carolina Judicial Department's sponsorship of iCivics, Justice O'Connor's web-based interactive civics education program for middle and high schools. We're the best of the bunch in the country at embedding that in social studies curriculum.

### **FOR THE GOOD OF THE ORDER**

It's been the highest honor of my life to have been given the privilege of serving on our Supreme Court for the past 25 years. And for the past 15 years, you've given me the signal opportunity to lead your Court system to new heights. Your Court system is well positioned to meet the challenges of the future.

So it's up to you to create new tools in reducing the scourge of child abuse and neglect and criminal domestic violence. And I'm proud to serve on Governor Haley's Task Force, and we hope we'll be giving some good suggestions to the

General Assembly about this issue. Providing treatment alternatives for the addicted and those challenged by mental health issues, and by supporting our efforts to provide fair access for families, for businesses, for the working poor, for everyone in South Carolina.

Well, you know how the story always ends. And as you look at these concluding pictures from my past addresses, please know that in Senior Active Retired Service, I'll still be willing to help at the pleasure of the Chief Justice.

The motto of our Court is nil ultra - no higher - but be assured that I am guided by the conviction that there is a higher authority. As we prepare this next generation to lead this State, and as we prepare our family life for our children that gives them a wholesome platform for success, I'm reminded of the words of Micah, "What doth thy Lord require of thee, Do justly, Love mercy, Walk humbly with thy God."

Thank you and Godspeed. (Applause)