State of the Judiciary
Chief Justice C. Bruce LittleJohn, South Carolina Supreme Court
Message to the Legislature
February 6, 1985, in Columbia, South Carolina

Mr. President of the Senate, Mr. Speaker of the House, ladies and gentlemen of the General Assembly and friends.

After that introduction I was tempted just to stand up and say 'I move we adjourn and go home; enough has been said.' I've never been introduced any more properly except one time. The man who was supposed to introduce me at a campaign meeting did not show up and I had to do it myself. Please don't call upon me to prove any of the nice things Mike said about me.

For many years, I have thought it would be wholesome for the Chief Justice to annually give the General Assembly a report on 'The State of the Judiciary.' Everyone likes to be first. I am complimented that your first invitation was extended to me. It is my hope that this will become an annual affair because it is well for each branch of the government to know what the other is doing.

I consider your invitation a high honor and a rich opportunity to visit with both new and longstanding friends. We Join more than half of the states wherein a forum is provided for the Chief Justice to deliver a report to the elected representatives of the people. It is comparable to that afforded the Governor as Chief Executive.

We of the Judiciary, and we the people of South Carolina, know a great deal about what goes on in the legislative and executive worlds. The media is always anxious to tell the public about the things you are doing. Your work makes big news regularly. The work of the Judiciary is more often mundane and lacking in news value. We have no press agents and, accordingly, people know far less about what goes on in the Judicial department than in the legislative and executive departments.

All of us believe in the separation of powers. We are commanded by Article I, Section 8 of our Constitution '...legislative, executive and judicial powers of the government shall be forever separate and distinct from each other, and no person or persons exercising the functions of one of said departments shall assume or discharge the duties of any other.' I am a firm believer that this basic concept is absolutely necessary to the efficient operation of our government. The primary purpose of this provision is to prevent the concentration of fundamental powers of government in the hands of a single person or small group.

This concept is not new to me. On February 25, 1967, as I assumed the office of Associate Justice on your Supreme Court, I made a statement by which I have attempted to live. I quote from that statement: 'Perhaps the greatest virtue that any modern-day appellate judge can have is judicial restraint. A judge should be content to exercise only those powers allocated to him by the Constitution. It is not always easy to refrain from being the master of all one surveys when there is no authority to reverse a ruling . . . The legislative, executive and Judicial branches all have

important parts to play in our system. Neither should nor is permitted to encroach upon the other.'... 'It will be my endeavor to respect the constitutional authority of the legislative department of government and my prayer today is that Judicial restraint shall be mine.'

Respect for the separation of powers should be the goal of all three departments. I sometimes shudder, and I am sure you must also, at the tremendous amount of authority the people give to both judges and legislators. If we perform those duties allotted to us by the Constitution, we will be fully employed without encroaching upon the authority of others.

The fact that we are by the Constitution directed to act independently of each other does not mean that our tasks need to be approached with less than the greatest spirit of cooperation. After all, we are employed by the same people with one overall purpose to fulfill. We must approach our tasks with mutual respect and understanding, appreciating the fact that it is not always easy to determine where the authority for any governmental entity begins and ends. To some extent, there will always be overlapping.

I welcome this invitation to come here today because there are a lot of good things happening in the judicial world in South Carolina which have not been advertised. It is important that the people know, and especially that the legislature know, what we are doing under the laws you enact and the money you appropriate for our operation.

In 1973, the people amended the Constitution to provide: 'The judicial power shall be vested in a Unified Judicial System' ... 'The Chief Justice of the Supreme Court shall be the administrative head of the Unified Judicial System.' Until that time, the judicial system was like a ship without a rudder. Every judge was somewhat a 'prima donna' in his own right with no real accountability. I rode circuit under the old system for 17 years and was about half employed. There was simply no administrative body directing judges to the places where judicial work was most needed. Judges were accountable only to the legislature, and in truth, legislators knew little about what was going on in the court world.

I am happy to be able to report to you that the Unified Court System is working well. Our system is now similar to that found in the other 49 states. Accordingly, the ship now has a rudder and if the system does not operate properly, everyone knows that the Chief Justice is to blame.

There is no function of government more important than providing a forum wherein disputes can be solved without resorting to violence. Today we are using the Judge power efficiently to accomplish that purpose on both the civil and criminal side of the court.

Within the Unified Court System, there are 5 Supreme Court Justices, 6 Court of Appeals Judges, 31 Circuit Court Judges, 46 Family Court Judges, 46 Probate Judges, 20 Masters-in-Equity, more than 300 Magistrates and about 250 City Recorders. The Unified System provides a means of effectively using all judges in the state under the powers granted to the Chief Justice. We are able to assign judges to better handle the ever expanding dockets.

The job of the Court Administrator is to route the judge power to the county seat where judicial work needs to be performed. In order to accomplish this purpose, we must determine where 31

Circuit Court Judges and 46 Family Court Judges will open court every Monday morning. This we do by gathering statistics from the Clerks of Court. If you will multiply 77 Circuit and Family Court Judges by 52 weeks, you will find that we need to make more than 4,000 assignments in order to keep the system functioning efficiently. The operation of courts is expensive and the intelligent and systematic use of judge power is absolutely essential to a good judicial system.

It has been said that people in the United States are the greatest litigators in the world. They like to sue. Disputes must be solved and a certain percentage of those disputes cannot be solved anywhere except in the courtroom.

Today I wish that I could tell you that the future holds the hope that we may have need of fewer judges and less court activity. However, just the reverse is true. It seems to be more difficult for people to get along with each other. Discord is present everywhere. It is more troublesome for husbands and wives to get along; parents and children have more problems with each other; employers and employees have more disputes; vendors and vendees are often in court; and then crime seems constantly to be on the increase.

Persons in business and free enterprise can control the amount of work they undertake. On the other hand, we of the court system have absolutely no control over the case flow. Article I, Section 9 of our Constitution gives people the right to sue. We must attempt to handle all of the conflicts between individuals on the civil side of the court and all of the conflicts between individuals and society on the criminal side of the court. Courts throughout the country are operating under a strain.

As a member of the Conference of Chief Justices, I attend meetings and get reports relative to the activities of courts in other states. Many of the Chief Justices are amazed that we have been able to process the business of the court so efficiently and that we are as current as we are at the trial level in the handling of cases.

Ours is among the states that have undertaken to establish time guidelines for the disposition of cases at the trial level. We endeavor to try every case in the Court of Common Pleas within one year of the date of filing; we attempt to try every case in the criminal court within 6 months and to try every family court case within the same 6 months period. We are rapidly approaching that goal.

Statistics make a report dull, but I know of no other way to acquaint you with what we are doing than to recite a few for 1984.

In the Criminal Court of General Sessions, there were filed last year 39,600 cases, an increase of 5% over the previous year. While filings were increased, dispositions also increased 7% such that 41,637 cases were disposed of. You may ask: How do you dispose of more cases than are filed? The answer is that we have cut down on the backlog.

At the beginning of 1984, 6,100 indictments were pending. At the end of that year only 4,100 cases were pending. Of the 4,100 cases pending at the end of 1984, 91% were less than 6 months old from the date of arrest. A year earlier, only 52% were 6 months old or less. We are

approaching the end when every criminal case is tried or guilty plea accepted within 6 months of the date of arrest and are making substantial progress.

In 1984 in the Common Pleas Court, 41,200 cases were filed and 41,900 cases were ended. The filings for that year represent an increase of 2% over the previous year. Some 18,000 cases were pending at both the beginning and the end of the year. At any given time, there will always be several thousand cases pending in both the civil and the criminal courts.

At the beginning of 1984, 951 of all the civil cases pending were less than 12 months old from the date of filing. At the end of the year, 98% of the cases pending were less than one year old. In other words, on January 1, 1985, only 2% of the cases had been filed for more than one year. This is probably about as near perfection as we will reach. When I was a circuit judge, it was not unusual for me to be constantly trying cases filed two and three years previously.

It depresses me that 46 Family Court Judges are needed to adjudicate problems within the family, but I can assure you that those 46 judges are busy. In the Family Courts during 1984 the filings and dispositions were almost equal. 61,400 cases were filed and 62,100 cases were ended. The filings for this period indicate an increase of 3% over the previous year. At the end of 1984, 15,000 cases were pending. The good news is that at the end of the year, 91% of those cases were less than 6 months old. Several counties have already achieved the goal with nearly 100% of their cases being disposed of within 6 months from the date of the filing.

Statistical case load information for the Magistrates' and Recorders' Courts is incomplete for last year, but court administration estimates 925,000 cases were filed in those courts during the year. This represents a 1% increase over 1983. These include all traffic court cases made by the Highway Department troopers, city police officers, and others as well as the multitude of claims for money triable at the Magistrate level.

I have indicated to you that 39,000 actions were brought in the Court of Common Pleas and 61,000 cases were brought in the Family Courts. In each of these proceedings there would be involved at least 2 persons such that these 2 courts alone directly touched the lives of 200,000 people. Add to this the 41,000 people involved in criminal court and 925,000 persons involved in the summary courts and we find that the court system has directly affected nearly 1,250,000 people.

Your Court of Appeals has now been in operation approximately 17 months. I am pleased with both the quality and the quantity of that court's work.

During that time, it has heard or ended by settlement 535 cases leaving 172 cases for disposition as of this time. A litigant dissatisfied with that court's ruling may, in an effort to appeal further, petition our court for certiorari review. Comparatively few petitions have been filed and very, very few petitions have been granted. The day must not come when that court is just one more echelon of litigation and delay. Our court is more often in agreement with both the opinions the judges file and the reasons set forth for their decisions.

All appeals from the trial courts all over the state are filed first in the Supreme Court. We must

keep all of the capital cases and a few others. We transfer cases to the Court of Appeals a bit more rapidly than they can be heard such that they are never without cases to decide. At the end of the year 1984, we had pending realistically about 1500 cases. Many of these will be transferred.

The two courts collectively are nibbling away at the backlog but we are somewhat like the man in a leaking boat; he keeps bailing water out but it keeps coming in through a hole in the bottom. We receive about 75 appeals every month. We dream of the day when we can be clear of the backlog and when that day comes, we can, in my opinion, keep current without additional Appellate Judges.

I have recited to you that there is an increase of cases in the Court of Common Pleas, General Sessions, Family Court, Summary Courts and the Supreme Court. There is some comfort in the fact that at the appellate level, we had in 1981, 1035 appeals; in 1982, 971 appeals; in 1983, 900 and in 1984, 890. We hope that the trend toward fewer appeals will continue.

Members of the bar and the judges working together are doing an excellent job of solving disputes which is the main chore of the courts. The favorable statistics which I have been able to present to you are largely a result of the cooperation which the judges and lawyers have given to the Unified Court System.

Disregarding the Magistrates' and Recorders' Courts for the moment, I point out to you that there were filed in the Circuit Courts and the Family Courts 141,000 actions last year. Less than 1% of these were appealed. This means that more than 99% of that litigation began at the county courthouse and ended at the county courthouse. While we abhor the backlog at the appellate level, we take much comfort in the fact that more than 99% of the litigation is being ended expeditiously.

I have referred to the fact that there are approximately 1500 appeals awaiting action in our Court. In an effort to make available an early disposition of some of these cases, the Court has recently issued an order permitting and inviting lawyers and litigants to arbitrate appeals. They may do this by choosing 3 lawyers or 3 retired judges or a combination to hear the appeal. A determination by the arbitrators is required within 15 days. A matter may be arbitrated without the expense of printing the record. In an ordinary case, the appeal may be ended within 6 weeks after the order of the lower court. The determination of the arbitrators is final, but their adjudication is not a matter of precedent and only serves the purpose of putting an end to the dispute. This is truly an experiment. We are hoping that lawyers will become acquainted with this method of disposing of appeals and that our backlog will be lessened appreciably. I point out that this is not a rule of court but merely an order permitting arbitration.

Most of you are familiar with what we referred to last year as the compromise on rule-making authority. Under this new arrangement, the Supreme Court promulgates rules of civil procedure subject to the right of veto by 60% of both the House and Senate. We have recently forwarded to the Chairmen of the House and Senate Judiciary Committees new rules of civil procedure. This is the first overall modernization of the rules made in the last 100 years. The collective thinking of all segments of the bench and bar was involved in their promulgation. The rules have been

drafted by what I refer to as a 'blue ribbon' committee, and were approved by the Judicial Council and by the Supreme Court. I invite your attention to them and solicit your support of them.

People in South Carolina and throughout the United States have become concerned with the fact that punishment in criminal cases can be delayed so long. We have read in recent days much about a defendant who pled guilty to murder in 1977 but was not punished until January of 1985.

Those who believe in capital punishment and those who oppose it have no trouble in agreeing that any court system which permits such delay is in need of repair. In criminal proceedings which are now permitted, a defendant can demand nine adjudications before a sentence is finalized.

There is a trial before a Jury or a guilty plea, an appeal to the Supreme Court of South Carolina, and a petition for writ of certiorari in the United States Supreme Court.

One may then apply for post conviction relief at the state trial level, appeal to the State Supreme Court, and then petition for writ of certiorari in the United States Supreme Court.

One may next apply for post conviction relief in the Federal District Court, appeal to the Circuit Court of Appeals in Richmond, and then apply for writ of certiorari in the United States Supreme Court.

All of this before petition to the Governor for clemency.

Thus, it is seen that there are nine forums of litigation, only four of which are at the state level. Five of the applications are to Federal Courts. It takes a long time for the United States Supreme Court to grant or deny a writ.

In our effort to bring criminal cases to an end within a reasonable time, we have, in the state court system, given priority to criminal cases at all levels. This is true not only in capital cases but in all criminal cases. While we are not current with civil litigation in the Supreme Court, any case filed on the criminal side of the Court is given priority and disposed of as soon as briefs are filed -- usually within 6 months.

I have indicated heretofore that we cannot control the flow of cases in the court system. This is controlled by the people. By a similar token, we have no control over the disposition of cases in the Federal Courts. The delay we abhor is not attributable to South Carolina state judges, nor to trial judges in the Federal Courts.

Occasionally, we are called upon to determine whether Acts of the General Assembly are or are not constitutional. All branches of government get their authority from the Constitution. All of us are sworn to uphold that Constitution. It is not always easy, especially for a layman voting in the Legislature to determine the constitutionality of a proposal. Nearly all of the Acts are clearly constitutional; a few are clearly unconstitutional. Others are borderline. When the constitutionality of an Act comes into contest, someone has to have the final say. That unpleasant task and chore falls to the Court. We of the Court are grateful for the fact that you have always

accepted and honored our rulings understandably. Our rulings are not always popular, but if we are to abide by our oath, all issues must be determined in accordance with the Constitution. Even as we respect your right to legislate, we appreciate the respect which you show the rulings that we must make.

It is likely that you will soon be considering the matter of Sentencing Guidelines. Associate Justice Harwell has chaired a Commission which has been studying the problem for some time.

The Commission and its recommendations approach a problem which has plagued the Court for many years. The fact that there is such disparity in sentences on the part of trial judges has probably brought about more criticism of the bench and bar than any other one problem. It is conducive to judge shopping.

Since our South Carolina Judicial Conference was organized in 1968, we have discussed proper approaches to making sentences more uniform but have until now accomplished little.

The amount of time which a guilty person receives should not depend upon which judge happens to be assigned to the Court the day of the conviction or guilty plea. Every judge will agree with this basic proposition, but each judge says in effect: 'I agree that sentences should be uniform; and if all of the other judges would impose sentences similar to mine, there would be no problem.'

At one of the conferences several years ago, I suggested to the judges that each should look about him and decide if he was among the soft sentencers or the hard sentencers, and suggested that both the soft sentencers and the hard sentencers should move toward the middle. So far as I know, none took my advice and so today we are still nursing disparate sentences which the public does not understand, and which I certainly cannot justify.

It is my observation that the soft sentencing judges and the hard sentencing judges prefer no guidelines. Those middle of the roaders are not too unhappy.

The disparity in sentences has found legislatures throughout the country mandating particular sentences. Usually the mandates are more severe than the average imposed by the judges.

The problem is difficult. Several states, including South Carolina, are attempting a new approach. The Commission is to be commended upon the study it has made. The subject may bring about much debate. I support their concept because I am not content, and I hope you will not be content, to neglect consideration of the problem further. I am disturbed over the unfairness I have observed over the years. Those who oppose guidelines should be prepared to come up with something better or prepared to continue to stomach the inequities which are inescapably with us.

The administration of justice is not simple. It is not inexpensive. It requires the cooperation and efforts of many people -- the legislators, judges, lawyers, clerks, reporters, probation officers, law enforcement officers, jurors, witnesses, and many others. The cooperation of the Legislature is most important. The fact that we can boast of our system is largely attributable to your interest in our work and your support of it. I welcome this opportunity to express to you the gratitude of the judges and that of the people of the State for your efforts.

Please permit me a moment to reminisce. I first appeared as a member in this Chamber, age 23, on January 14, 1937. I never dreamed that 47 years later I would have the privilege of returning to address the Assembly on 'The State of the Judiciary.' No member of the Assembly now serving was here except Speaker Emeritus Blatt. Senator Dennis came two years later and Senator Williams came ten years later. The General Assembly has always been considerate of the Judiciary and especially of me. You have elected me as Circuit Judge or Associate Justice or Chief Justice on 10 occasions. I feel that I am among friends. I thank you for the personal kindnesses shown, and your understanding and support of the Judiciary without which the system would fail. I look forward to working with you during this legislative session and to my retirement which is imminent.