

State of the Judiciary
Chief Justice Julius B. Ness, South Carolina Supreme Court
Message to the Legislature
February 26, 1986, in Columbia, South Carolina

Speaker Emeritus Blatt, Lt. Governor Daniel, Speaker Schwartz, distinguished members of the General Assembly, ladies and gentlemen:

It is a great honor for me to address you today. Never in my wildest imagination did I ever dream that a small town country boy from Bamberg County would have the opportunity to address this august body. I learned several weeks ago that I might have competition for your audience today, since you had also scheduled a reception downstairs at this same time for the Chicago Bears' William 'The Refrigerator' Perry. I understand Mr. Perry's visit was subsequently rescheduled. But while our appearances were still expected to coincide, my good friend Bruce Littlejohn remarked that when he addressed you last year on the state of the Judiciary, you didn't have to invite a football player to attract a crowd. If any of you were expecting to see a football player here today, I am sorry to disappoint you.

This is my first opportunity to address you since you elected me to this office almost one year ago. I want to thank you for your vote of confidence in choosing me to lead our judiciary. The day I was sworn in as Chief Justice was the fulfillment of a lifelong dream. When the celebrations were over, and the additional workload descended upon me, I realized what an awesome responsibility I had undertaken. I have worked very hard in these seven months to maintain the outstanding judiciary I inherited from Bruce Littlejohn. To a large extent, we are still operating under the momentum that Bruce established during his tenure as Chief Justice. Perhaps I haven't been at it long enough to mess things up. But I believe Bruce trained me well enough to successfully do the job you have given me. You have my pledge that I will do my very best to see that the quality of our judicial system and the administration of justice in our state continues to excel.

Bruce Littlejohn advised you last year that the court dockets in our Common Pleas and General Sessions courts were in excellent shape. We have continued to make tremendous progress in reducing the delay that plagued our trial courts for years. In 1985, we held 1,336 weeks of Circuit Court, both civil and criminal, across the state of South Carolina. Our judge power was and is stretched to the absolute limit. We schedule court virtually every week that a judge is available and a courtroom can be found. This week is the first week that we were able to have three courtrooms in Horry County, and we have three judges in Horry County holding court there. We have been greatly assisted by the contributions of a number of our retired judges, who unselfishly agreed to hold court to assist us in keeping the docket current. Last year, our retired judges held 112 weeks of court at minimal cost to the state. Without them, I would have had to ask you for three new circuit judges to handle the work at a cost of approximately \$450,000. At the same time, when state revenues are limited, we attempt, in the Court, to keep our funding requests to a minimum. This year, I did not request a single dime extra of that which you allocated to us last year. As long as our retired judges make themselves available to us, I believe we can postpone the need to increase the size of the judiciary. Because of their help, and the

dedicated work of our active trial court judges, the trial courts in South Carolina are in excellent condition.

I would also like to take this opportunity to commend the lawyers in this state who have responded to our accelerated court schedule with harder work, longer hours and excellent cooperation.

For several years, we have emphasized the reduction of delay at the trial level, and while we are making outstanding progress, very little was being done to improve these problems at the appellate level. With the creation of the Court of Appeals, the General Assembly took the first positive step toward reducing the appellate backlog. However, it soon became apparent that more needed to be done. With your support and at my request, eight months ago six temporary staff attorney positions were added at the Supreme Court. We now have a staff of fourteen attorneys, who assist us in processing the tremendous volume of civil and criminal cases.

The results have been remarkable. One year ago, 821 cases were fully briefed and ready for argument and disposition. Today, there are only 417 cases ready for consideration by the appellate courts. That is a decrease of almost 50 percent in less than a year. During that time, of course, more appeals were being filed and were awaiting docketing in various stages. At this time last year, there were 1,768 cases pending in the appellate court system. Now there are 1,293 pending, reflecting an overall decrease of 26 percent, while there has been an increase in filings. We are indebted to Chairman Rembert Dennis, Vice-Chairmen James Waddell and Jack Lindsay of the Finance Committee, and Chairman Tom Mangum, and sub-committee members Bob McLellan, Crosby Lewis and Larry Blanding of the Ways and Means Committee and all of you for providing us with the increased staff. We are also indebted to Marshall Williams of the Senate Judiciary Committee and Bob Sheheen of the House Judiciary Committee and all of their respective committee members for their many kindnesses they have extended to us. In fact, there is no one in this General Assembly to whom the judiciary of this state is not today indebted.

I am extremely pleased, and proud, of the progress we have made. In 1985, the two appellate courts disposed of 892 cases. Currently, we are hearing oral arguments in civil cases that were docketed approximately 12 to 15 months ago; criminal cases are heard within 6 months of docketing.

I would like to eventually see a six month waiting period for civil appeals, just as we now have for criminal appeals. Realistically, a shorter waiting period than six months would make it difficult for attorneys to prepare for oral argument. I fully expect and fervently hope that by the end of my tenure as Chief Justice we will have a current appellate docket, that is, six months for all cases.

We have heard a great deal in recent years about the so-called 'litigation explosion'. It has been said that we are a litigious society. There is a genuine increase in the number of lawsuits being filed in our country. The so-called 'explosion' may be nothing more than a normal increase in litigation. While there are more lawsuits, there are more people carrying on the business of life and occasionally turning to the courts for dispute resolution.

We have had a number of rather significant changes in the judicial system this past year. Perhaps the most sweeping is the enactment of the South Carolina Rules of Civil Procedure, which went into effect July 1. The new rules effected a major change in procedure for civil cases, and it is quite an undertaking to digest so many rules at once. I recently overheard a lawyer -- a member of this body, in fact -- comment that he was learning to practice law all over again with the new rules. I, too, learn something new almost every day from these new rules. Justice Lee Chandler and his committee did an outstanding job of sifting through the existing rules, keeping what was good in them, and discarding what was bad. It was a tremendous undertaking and the results were well worth the effort and the time involved. We sincerely appreciate the close scrutiny given our proposals by Senator Marshall Williams, Representative Bob Sheheen, and all the Judiciary Committee members of both Houses. Several weeks ago, we submitted a few proposed amendments to these rules which we believe will smooth out the rough edges that may have remained in the original version of the rules. We hope they, too, will meet with your approval.

Similarly, the Family Court Judges Advisory Committee has proposed a revised set of family court rules consistent with the South Carolina Rules of Civil Procedure to supplement those rules for practice in the family courts. If approved, the family court rules will be an appendix to the South Carolina Rules of Civil Procedure and the two sets of rules will be read together for practice in the family courts. Those family court rules are currently being reviewed by the Judicial Council and will be forwarded to the Court soon for review. They will most likely be before you for approval in 1987.

We also have a committee studying and recommending changes to the Supreme Court rules. This Committee is chaired by retired Chief Justice Bruce Littlejohn and is in the preliminary stages of reviewing our appellate rules. Lee Chandler's committee worked for approximately three years before they had a product that was finely tuned enough to submit to the Court. Judge Littlejohn's committee has been operating for just under a year and has already made great progress; however, much more remains to be done. I have said many times that the practice of appellate law is a specialty just like tax law, domestic law and other areas of practice. The rules that govern this area of specialty for both the Supreme Court and the Court of Appeals need a great deal of reflection and polishing before they will be complete. Throughout all the review and revisions, we emphasize to you that procedural rules are 'tools'. They should be fair and reasonable, and they should also be written in clear language which enables the practitioner to confidently rely upon their meaning. Judge Littlejohn, as always, is doing a remarkable job. I have every confidence that the proposed appellate rules will eventually be a welcomed tool in simplifying appellate practice.

I mentioned a moment ago that the Court of Appeals has been a great asset to the judiciary of our state. That, really, is an understatement, but it is difficult to find words to sufficiently describe the tremendously positive effect the Court of Appeals has had on the judicial system. In retrospect, I honestly don't know how we ever did without them. Both quantitatively and qualitatively, the work of the Court of Appeals has far exceeded our expectations. I want to publicly thank Chief Judge Alex Sanders, and Judges Randall Bell, Jasper Cureton, John Gardner, Bert Goolsby, and Curtis Shaw for their hard work and dedication.

I am so pleased that you are arranging to make the Calhoun Office Building available to the

Court of Appeals and other offices within the Judicial Department. The Court of Appeals has had temporary facilities since its inception, and, as I am sure you know, temporary facilities make for a less efficient operation. We are very hopeful that the Calhoun Building can be readied for the Court of Appeals' occupancy by late 1988. We also plan to house our offices of Finance and Personnel, Court Administration and Judicial Standards, which are now in a building down in Five Points in the same building, and that will certainly make our day-to-day operations run more smoothly.

It has been approximately 12 years since I last held Circuit Court in this state, yet I still feel a close kinship with our trial judges, and the tremendous responsibilities placed upon them. In Common Pleas Court, or civil court, the variety of issues that can arise from day to day is infinite. A trial judge is expected to be an expert in products liability, real property, corporate tax and a variety of other areas of civil practice. In General Sessions Court, or criminal court, every criminal case requires the judge to search deep within himself to make a decision that tempers justice and mercy in the face of innumerable competing factors.

No two criminal cases that ever came before me during the sixteen years I served on the circuit bench were the same. Every judge understands the competing interests which accompany the individuals who appear in his courtroom. He must keep in mind his responsibilities to his office and to the public and must insure that whatever sentence he gives is the result of reasoned deliberation. Only the person who sits up on that bench and listens to the advocates on both sides, the defendant, the victim, and the other interested parties can weigh all the relevant factors to arrive at the appropriate sentence. Because the sentence may be criticized does not mean it is an inappropriate sentence. It's very easy to be a critic of a decision made by someone else.

The theory of punishment is something that has plagued mankind for centuries. The responsibility of determining who retains his freedom and who loses it entirely is no easy task. We operate under the adversary system of justice. To decide what is just and what is best is very often a frightening responsibility. It takes a unique individual to accept these awesome burdens and serve our state as a circuit judge. Perhaps the greatest attribute of a judge is that he is a human being. He can think, evaluate, reason and he can judge. As long as criminal cases differ from one another, sentences will also differ from one another. Justice requires nothing less.

More than 2,000 years ago, Socrates said, 'Four things belong to a judge -- to hear courteously; to answer wisely; to consider soberly; and to decide impartially.' The men and women of our judiciary have followed and lived by Socrates' words. You have elected men and women of enormous capability and extreme dedication to our judiciary. The system works well, and I am proud and humbled to have a small part in its future. I believe its strengths far outweigh its frailties.

In closing, I hope you'll forgive me a personal note. I have the distinct pleasure of serving on a court with four men who are the epitome of excellence and professionalism. George Gregory, David Harwell, Lee Chandler and Ernest Finney approach the overwhelming and complex work of the Court with dedication and good humor.

They make my job easier and more rewarding, and I want to publicly thank them for the many

things they do for me.

And, if you'll forgive me, one further note. In the balcony is my wife of forty years. Without her, I could not have carried out my duties for the twenty-eight years I served on the circuit bench. With her, is my son, Richard, who practices law in Bamberg, my daughter, Gail, and their respective spouses, and grandchildren.

It has been a great honor to be with you today. I know so many of you; I served with a great many of you. I sincerely feel I am among friends. There was a time when the short walk across Gervais Street between the Court and the Legislature was rarely undertaken. Bruce Littlejohn, in his artful manner, repaved the path to our renewed friendship. I thank him for opening the door, and thank you for the invitation to pass through. I intend and assure you that during my tenure as Chief Justice our relationship and spirit of cooperation shall continue. I strongly believe in our three branches of government -- legislative, executive and judicial. I also strongly believe that through our mutual cooperation we can have the best state in the nation.

I sincerely love the state of South Carolina and admire its governmental structure and the people who make it the great state it is. Anytime I can be of assistance to any of you, now or in the future, my door is always open to you.

Thank you very much.