State of the Judiciary
Chief Justice David W. Harwell, South Carolina Supreme Court
Message to the Legislature, Columbia, South Carolina
February 17, 1993

Thank you, you know when you go back as far as Nick Theodore and I go back, you are always a little apprehensive at how he is going to introduce you. Mr. President, Mr. Speaker, Members of the SC General Assembly, Fellow Justices and Judges, Honored Guests and Friends... I appreciate this opportunity to discuss with you the state of your judiciary. My first year as chief justice has been bittersweet. With your help, we were able to obtain the financial resources desperately needed to ensure our citizens have access to our courts. However, with budget reductions, the ground we gained in obtaining adequate rotation funds, evaporated due to over enthusiastic projections of state revenues. Because of the budget cut, the judicial branch of government was forced to discontinue the systematic rotation of our circuit and family court judges. I am extremely pleased and very proud of how the members of the judiciary responded when they heard we would restrict rotation. Realizing that sixteen counties would be without the services of criminal or civil court and eleven counties would go without family court and knowing full well the State may not be able to compensate them as required by law, a large majority of the members of your judiciary came forward and volunteered to provide relief. This spirit, in my opinion, speaks volumes not only about the quality and dedication of these judges, but also about the court reporters and law clerks who also offered their service to do what needed to be done. I know there are very few, if any, other state employees who are traveling at their own expense to carry on the state's business. Our circuit judges, as you know, handle more cases per judge than any other state in the southeast. They spend weeks at a time away from family. No one would blame them if they had stayed home. I'm very proud of what they have done. However, I hasten to tell you that this volunteerism is like sandbagging for a flood. We cannot control the rising tide of cases without full use of every judge. Although I am left with few options, limiting rotation funds is a poor way to try to save money. The court's inability to hold criminal court means the cost of holding prisoners in county jails goes up which drains your county budget, business can't resolve disputes which tie up capital and citizens needing the court to resolve both civil and family matters suffer intolerable delay. Ladies and gentlemen, I hate to say the obvious, but maybe I'm not saying the obvious enough to get our message heard, we are challenged with the administration of justice. We, you and I, have a responsibility to see that all people in South Carolina have an opportunity to resolve their disputes in a timely fashion. The failure to timely resolve business matters, governmental disputes, criminal cases and bad family disputes does great harm to your constituents and to the growth of our State. The disputes don't go away -- they snowball and the costs go up and create chaos in all areas of our life and stifle the economic growth of our State. You and I must realize that we live in a very free, democratic and permissive society and this society is the origin of our disputes -- just as you as legislators respond to the needs of society, we, in the judicial branch, the co-equal branch of government, must respond and our response must be to provide an appropriate forum to resolve these conflicts. The judicial branch, whether we like it or not, remains a final arbiter for many of our societies' disputes. The legislature may pass the law, the executive branch may attempt to enforce the law, but it remains up to the court to ensure legislative intent and executive enforcement have meaning. The constitution of our State requires that we systematically rotate our judiciary and speedy trials, both by our Constitution and the United States Constitution requires that we

provide speedy trials to those whose liberty is at risk. Ladies and Gentlemen, I report to you today, that these fundamental rights are being threatened in SC. Until recently, I thought that we could address the problems contributing to the increase in the number and age of our criminal, civil, and family court dockets. However, I again report to you that the backlogs will now increase due to the lack of rotation. For now our situation is this. During 1992, 254,000 cases were filed in our circuit and family courts. That's 13,000 more than were filed in 1990. This works out to just over 1,000 more per month. The good news is our civil filing rate is not much higher than last year, so maybe things are leveling off in the civil area. For 1992, our circuit court received 162,000 new cases which work out, as I told you earlier that our judges carry a heavier caseload than any judges in the southeast, and those that might say our judges don't work don't know what they are talking about and they haven't looked at the statistics and that works out to 4,050 per judge. Ninety-one thousand new cases were filed in family court which translates into 1,978 per judge. On December 31, 1992, there were 68,000 pending criminal cases, 30,500 pending civil cases and 30,700 pending family court cases. At the appellate level, things have not leveled off. In 1992, the number of docketed cases increased by 20% and motions increased by 18.5%. Since 1985, we have experienced an overall increase of approximately 77%. At the end of 1992, over fifteen hundred appeals were pending. Now, what must be done? I have started several new initiatives. First, I formed a bench/bar committee made up of judges from every level of court, Magistrate Court, Probate Court, Family Court, Circuit Court, Supreme Court, Appeals Court, and attorneys from different types of legal practice and regions of the State. Operating like a quality management team, we meet periodically to discuss how the day-to- day operation of the court may be improved. This committee, in my opinion, streamlines the communication process and reduces the delay between problem identification and implementing a solution. Additionally, we introduced regional rotation and beginning-to-end case handling. Regional rotation allows me to keep judges in one of four regions of our State for longer periods. Another initiative -- beginning-to-end case handling, allows one judge to hear complex litigation from start to finish. This saves time and money for the taxpayer and litigant. The courts need to move forward. We must retool and use new managerial techniques if we are to address the demands of the 1990's and in the next century. Over the next few years, the following must be, and I emphasize this, must be provided and to state the obvious once again-- we must have adequate funding to do our job. We are dead last, 50th, in the amount of money appropriated to operate your third, and sometimes I wonder, co-equal branch of government. Now, first and foremost, the 1.1 million requested in our budget for judicial rotation must be provided. Without this funding, our trial courts will start next year with less than two weeks of travel funds. Second, the automation process initiated during 1992 needs to be completed. A statewide operation handling nearly a quarter of a million cases a year cannot be effective using procedures designed for a much slower pace. Managing information, manpower, and resources to put judges where they are needed are key ingredients for effective operation of our judicial system. We cannot afford to continue to use a system that shuffles reams of paper and requires days to get information from one place to another. To state the obvious, the yellow pad and pencil era must come to an end. We must complete automation if you expect your judicial branch of government to operate efficiently. At the appellate level, we are experiencing a rapid rise in cases. With trial courts booming, it is an inevitable part of the process that more and more cases will be appealed. To address this matter, an additional three-judge panel of appellate court judges is needed. To delay this request only creates a bottleneck in your judicial process and impedes the delivery of justice. It is not right to have to wait three or four years before your dispute is resolved. Other retooling items are requested, but realizing the financial problems that we are

experiencing in SC, I am only emphasizing rotation funds, automation funds and court of appeals panel are absolutely essential. These items will go a long way to prepare our courts to meet the caseload demands of the 1990's and beyond. There are several other items which, if adopted, would greatly benefit our citizens and reduce the cost of handling cases. I would like to take a few moments to mention those. You and I know that money isn't the answer for every problem. I want the General Assembly to join with me in rethinking how we use our court system. During times when resources are low and demands are high as they are today, we must be innovative and make the best use of what we already have to get the job done. In the courts, we must improve our productivity, but we must ensure we maintain the highest quality of judicial service; again, this states the obvious. In this business, we are not dealing with the making of some product but with peoples' lives, their property, and their fundamental rights. There are several ways with your help we can improve upon the current system and do more with less. First, I invite you to pass legislation dealing with our magistrate court. Our magistrate courts have jurisdiction primarily limited to two hundred dollars or thirty days in jail in criminal matters and up to only twenty-five hundred dollars in civil matters. Magistrates are individuals who often come to us without a great deal of legal training. They also represent an extremely valuable part of our judicial system, one which could be better utilized. We need passage of legislation requiring magistrates to be certified after attending required training. This certification would ensure they have the skills and knowledge required to handle criminal and civil litigation. After implementing a certification requirement, we should seek to raise their criminal and civil jurisdiction. This would allow us to shift matters away from our circuit courts reducing trial court delay and the overall cost to taxpayers for disposing of minor disputes. Along those same lines, we should move forward to allow for arbitration and mediation in some civil and family court matters. Where a settlement is possible, arbitration and/or mediation of disputes can help the courts reduce their caseloads and reduce the time and costs in resolving disputes, both to the litigants and the taxpayer. I hope to begin on an experimental basis this year. The matter of adequately funding the defense of indigents also needs your attention. The State should take a dominant role in providing the funds rather than relying on the counties. In this State of the judiciary, I've tried to advise you of the judiciary's major needs--funds for rotation, automation and a court of appeals panel. I'm stating to you that we need innovative approaches, like more utilization out of our magistrates after they have been trained and arbitration and mediation to divert cases from our trial courts. I've told you of new managerial approaches I started in the past year, like the bench/bar committee to stay informed, regional rotation and beginning-to-end case handling to lower cost. In the past, I've expressed the need for the State to rethink how it uses our scarce criminal justice resources. I've advocated setting priorities based on establishing a comprehensive criminal classification bill which would give our system some structure. Criminal justice agencies could plan and target whole groups of offenders and working together generate new programs that in the long run would save South Carolina millions of dollars. I've advocated advisory guidelines to help reduce disparity and to guide judges toward utilizing more creative sentencing alternatives. Unless we become more creative, the State will continue to build prisons. From what Commissioner Evatt is saying, we have reached a point where the State can't afford to staff and operate the last two prisons that were built, so they just sit. Representative Rogers and others are experimenting with a project in Richland County referred to as a Comprehensive Community Control System. It builds upon the basic idea of having a comprehensive classification bill and advisory guidelines. Criminals are evaluated on the bases of their crime, prior record, and other factors which help in determining the likelihood of successfully completing a probationary sentence. A new form of presentence investigation is

compiled, then an advisory recommendation is offered to the court. There are a number of community sanctions available. This approach helps match persons who may otherwise have gotten a short but expensive prison sentence to an appropriate form of community punishment. The concept has merit. It provides advice and alternatives but leaves the final decision with the court. If you can divert nonviolent offenders away from short but expensive prison terms, you will surely save money. If this pilot project is translated into a legislative proposal, it deserves your attention. I remain true to my belief that if possible, we should have a criminal classification bill and try to identify those that don't need to be in high dollar prisons--a dollar invested in probation will save you more than a dollar spent on prisons. And by the same measure, a dollar spent on our troubled youth will save more than dollars spent on our adult criminal system. The tremendous increase in violent juvenile crime in South Carolina and the federal lawsuit challenging overcrowding at the Department of Youth Services has brought South Carolina's juvenile justice system to a crossroads. We cannot continue to try to build our way out of this problem. That expensive approach didn't work with adults and won't work with juveniles. The South Carolina Juvenile Justice Task Force, chaired by Justice Jean Toal, is developing comprehensive recommendations for the adjudication, detention, and treatment of all juvenile offenders. I wholeheartedly support this effort. As with adult offenders, we must develop the proper mix of diversion, community-based treatment, and secure confinement for those who pose a threat to public safety. Before you enact further criminal penalty legislation in this area, I urge you to allow the task force to complete its work and make its recommendations to you. We must protect our citizens from violent and habitual offenders, but we must try to punish the nonviolent offender and those that are not a threat to society in less costly and more productive ways. We cannot let our correctional system bankrupt the State. Our court dockets are being flooded with new criminal cases and we need to join together and ask ourselves why? We need funding, but putting your dollars into new prisons and more judges is not the long-term answer. If you want to improve the state of our judiciary, you must first improve the state of our families, the state of our schools, the state of job opportunities, our citizens' ability to work and serve as law abiding citizens. You and I know who will be standing before a judge ten years from now. Go into any third grade class and see who cannot read. Nearly one-half of our young people are considered at risk, because they come from single parent homes, admit to use of alcohol or drugs, or are the product of a teenage birth, then it should come as no surprise when ten years from now another Chief Justice will stand before you and tell you that he too needs more judges and more money to deal with the court's workload. Ladies and gentlemen, we need your help. Thank you so much for allowing me to speak to you today.

Compiler's note: Long paragraph present in source material.