

State of the Judiciary
Chief Justice David W. Harwell, South Carolina Supreme Court
Message to the Legislature
April 20, 1994, in Columbia, South Carolina

Thank you very much Lt. Governor... Before I begin my formal remarks, I would like to take this opportunity to thank you for your thoughts and prayers during my recent illness. I am happy to tell you that I have made a good recovery and I look forward now to many more active years. Mr. President, Mr. Speaker, Members of the General Assembly, Justices, Judges and friends... Today is the third and final time I will stand before this Joint Assembly. It has been an honor to serve South Carolina, and a privilege I will long remember. I have given much but have received far more. Everywhere I go, I'm proud to say I'm a South Carolinian and especially proud to have been a part of your legislative and judicial branches of government. Go where you will, regardless of what some newspaper and editors might think or say; search throughout all fifty states and you will not find a better judicial system. The quality of our judiciary, the unique ability to rotate judges where they are needed makes our court system the finest any chief justice could have the pleasure of leading. However, from my vantage point, I see things about our judicial system that may not be visible to the casual observer. I see things, that if left unattended, may erode our citizens' faith in our criminal justice system. Crime and public safety have always been important issues. Today, we are constantly reminded through polls that our citizens are demanding action be taken to ensure that their homes, schools and neighborhoods are safe. Too often, we take the short-term view and pass legislation that simply increases the penalty for a particular crime in hopes it will deter crime and pacify public outcry. Instead, we need to do two things, first, look long-term and second, work on comprehensive solutions instead of piecemeal quick fixes. The General Assembly sets out what is important. The state's priorities are established through the budget. The items you consider important are funded; the others are not. The courts, prosecution, indigent defense and law enforcement have not done well in the budget over the past several years. The General Assembly has addressed several major criminal justice issues this year. Your committees have worked to put together major Bills that are now under consideration. This experience has helped to focus attention on the complexity and necessity of dealing with crime and punishment in a comprehensive fashion. This State needs a comprehensive policy to guide our thinking in how we can best utilize our limited tax dollars and criminal justice resources. I submit to you that if this General Assembly is really interested in addressing public safety issues, and how we can have the different parts of our criminal justice system function in harmony with each other, you will adequately staff and fund the Sentencing Guidelines Commission chaired by Representative David Wilkins. Let them prepare a blueprint on how the system should work. Wilkins' commission has the criminal justice leadership as members. It has judges, legislators, attorneys and others who help shape and carry out criminal justice policy. They can comprehensively address issues involving prison overcrowding, alternative sanctions, truth in sentencing, sentencing guidelines and how our total criminal justice budget might be more effectively utilized. A few dollars invested in this commission will pay off handsomely in savings over the years. If our criminal justice system operated the way it should, it would look something like this. On the criminal side, cases would be disposed of within 180 days. SLED would have funds for their lab to process evidence; prosecution and particularly indigent defense would have adequate staff to handle the increase in criminal cases, and finally we would have funds to rotate judges where they are needed. The county jails would not back-up

and defendants would be quickly processed because we have the evidence, staff and adequate terms of court. Judges would have guidance on what alternative programs are best suited for a particular type of criminal. Similar sentences would be given for similar crimes and a sentence would mean what it says. Our prisons would contain criminals who commit serious crimes or have a history of criminal activity. Non-violent offenders and those convicted of minor crimes would be placed in less costly alternative programs. All of this is within our grasp if we do a little comprehensive planning. Instead of costing money, we will probably find out the improvements in effectiveness actually save money. The savings generated by using our system wisely could be reallocated toward programs involving our at-risk youth, their families, job training, summer programs, adult literacy, teenage pregnancy and alcohol or drug treatment program. These are things that reduce crime and give us the prison space we need to put serious criminals away for long periods of time. If we were to run our system like it should be, then it would begin with getting the most out of what we have and working hard to make sure in the future we have fewer of our citizens at risk, not more. Knee jerk reactions to crime issues may satisfy election year rhetoric, but they are expensive and will not reduce crime or ensure public safety. The youths of today are our future. We now spend \$27,000 per child to incarcerate and \$3,000 per child to educate. It is cheaper to train than to chain. We need solutions to help educate. I draw your attention to the report of the Juvenile Justice Task Force chaired by Justice Toal. Within this report you will see the problems and numerous solutions that could help turn the tide and prevent our troubled youth from becoming our trouble adult criminals. I hope you will give this report your careful attention as you continue to deal with juvenile justice issues. During the years I served as Chief Justice, our State faced a severe recession. Funds were scarce. The recession reminded us that during difficult times you must be innovative and willing to rethink how the system should work. Someone once said, the only difference between a rut and a grave is the length of the hole. If anything good can be said about the recession, it is that we were forced to get out of the rut. I'm pleased with what is taking place. I have established a bench/bar committee made up of judges from all levels and attorneys from different backgrounds and regions. This committee has been an excellent sounding board on how new programs would work in courts throughout our State. It also serves as a good communication link for gathering information on how the system is working. Small problems are resolved while they are still fresh and easily handled. I would like to publicly thank them for their voluntary assistance in helping me run the judicial branch of government. Last year, we sought the General Assembly's help in passing legislation which required every magistrate to take and pass a certification exam. One half of our magistrates will be certified in 1994 and the other half by the end of 1995. These exams will help ensure every magistrate has a fundamental understanding of the information needed to render fair and just decisions within their courts. Building upon this educational process in the not too distant future, I believe we can increase a magistrate's criminal and civil jurisdiction so cases can be moved from the circuit to the magistrates court. Moving cases out of circuit court will help unclog the dockets and since you will have nearly 300 magistrates working on cases now handled by 40 circuit judges, the disposition of these cases should speed up. Magistrates are a valuable part of our judicial system. Most of them are not lawyers. If given the training, they can and should play an expanded role in dealing with the state's rising caseload. This summer other new initiatives will be started to help dispose of cases more efficiently. Arbitration and mediation are programs designed to give litigants an opportunity to seek a non-court option to resolve their dispute. Trained arbitrators and mediators will be at work to help alleviate crowded court dockets. Using carefully crafted guidelines, many types of civil and

family court matters can be dealt with outside of the courtroom saving scarce and expensive court time. Studies show that 80 to 90 percent of the cases which go through the arbitration/mediation process do not end up in court. I list arbitration/mediation and magistrate training as three of our most important accomplishments. They cost very little and have the potential of saving the taxpayer and litigants time and money. The shortage of rotation funds required that I rethink how we utilized our judicial workforce. I put into place two new managerial approaches. The first was regional rotation, which meant the State was divided into four regions and judges served longer within their region. They move around less and for shorter distances. This help cut cost and helped morale by reducing burnout. Long periods of travel coupled with staggering caseloads take their toll. Our judiciary is relatively young and regional rotation allows more time with families and less travel also saves money. Regional rotation also allows me to assign one judge to handle complex litigation from beginning to end. This beginning to end case handling helps to reduce the time and cost to litigants, county and the State. One judge becomes familiar with all parts of the case and remains available throughout the case's journey from filing to disposition. The program which received the most attention in the media was cameras in the courtroom. In 1961 cameras were banned from South Carolina courtrooms, but today our citizens can have a closer look at matters that involve their community. My goal was to allow our citizens to see into our courtroom and to learn more about how the judicial system works. I believe the more our citizens understand about how our government works the better our government will work. Cameras in the courtroom allow people to see the courtroom in action and I have been pleased with the response. From the comments we have received, I know people are learning more about the events in their community and more about how the judicial branch of government operates. I noticed with interest that a federal judge in South Carolina was quoted as saying he feels it is time for cameras to be allowed in federal courts. When I took office, my goals were not to make a short-term improvement in the number or age of our pending cases, our usual bench mark of success. Instead, I wanted to begin retooling the judicial system so it would be able to meet the needs of tomorrow. Although we put into place a bench/bar committee, magistrate training, arbitration, mediation, regional rotation, and beginning to end case handling and allowed cameras into the courtroom there are still several areas that need attention. When I became chief justice, the courts did not even have a fax machine. We now have them and their use has noticeably speeded up communications. You gave us some funds to begin my effort to computerize the courts but this process is not complete. Automating the courts will have profound implications for our future. Innovations in this field will have effects that you and I cannot even begin to imagine. But there are things that I know can and should happen. With automation, county and state offices will communicate faster and process more with the same staff. We will more effectively handle our court scheduling responsibilities and place better information in the hands of judges so they spend less time preparing for court and more time in court. There will also be improvements in information sharing between the courts and those who need court information. We will cut down on paperwork and increase the accuracy and speed by which information is shared. The system put in place will be the roadbed on which the criminal justice information highway will be built. The courts need to be fully automated and your efforts are still needed to supply the funds necessary to finish what was started. Finishing the automation network, will bring the court out of the yellow pad and pencil era and into the twenty first century. To improve the state of our judiciary, two other matters need attention. First, funds to rotate judges and second, another three-judge panel for the Court of Appeals. Rotation gives us a management tool that is unique. We move

judges where they are needed. We can accomplish more with fewer judges because we have this flexibility. The recession has taken its toll on our rotation account and I hope the Senate will build upon what the House has given and put this account back where it was in 1986. The innovations we put in place will help hold down cost but we cannot operate effectively on a budget that is really half what it was in 1986. Our system deals with over a quarter million cases a year. As the trial court's workload increases, so will the appellate court's workload. The bottleneck will soon be in the appellate court area. Prudence tells us to plan ahead. I'm sure the chief justice who follows me will request funds for a new panel on the Court of Appeals, and I urge you to give this request careful consideration. One appeal can have repercussions on dozens of cases. A delay at the appellate level backs up the entire system and may unnecessarily cause cases to be retried. With the recession ending, we are all working our way back. Many of you have worked very hard and are helping the courts. I greatly appreciate your help. We cannot have a strong judiciary without your support. It is my hope the added funding will ensure criminals are brought to court quickly and our citizens will have their disputes resolved without undue delay. With my first State of the Judiciary speech, I said I would depart from the usual format of highlighting with statistics the status of our court dockets. Instead, in my State of the Judiciary message, I have chosen to share with you my views on what needs to be done, what I've done about it and what we still need to do. I view my time as chief justice not as a caretaker but as a rebuildier. Using what resources were available, my job was to help reshape the system so it would be ready to face the challenges of today and tomorrow. I have been blessed with an opportunity to serve and to have been surrounded by friends who have supported my efforts. No one accomplishes anything alone and I express to you, my fellow judges, the members of the House and Senate and the public my sincere appreciation for your support and friendship over these many years. Although I am retiring as Chief Justice, I will remain active in my profession and in the business community. I look forward to our continued fellowship. I assure you I will continue as a private citizen to do what I can to help my South Carolina and her people. Thank you.

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