

State of the Judiciary
Chief Justice Ernest A. Finney Jr., South Carolina Supreme Court
Message to the Legislature
February 26, 1997, in Columbia, South Carolina

Thank you, ladies and gentlemen. Mr. President, Mr. Speaker, members of the General Assembly, members of the Judiciary of South Carolina, and honored guests: I want you to know from the very beginning that this is a difficult task to speak to the legislature on behalf of the 3 million odd citizens of the State of South Carolina and to outline for you the needs which we perceive the Judiciary of our State to have. It is even more formidable when you consider how my day began. First, we looked outside and it was raining. I got to the Supreme Court at eight o'clock and pushed the elevator to go up and it went down. Then, I said this day is off to a rugged start and I hope that our luncheon session will be a little easier than the rest of it. Let me tell you, ladies and gentlemen, that the State of the South Carolina Judiciary, like much of the state government, is transitory at the moment, but I can assure you that your Judiciary is on course for the destination charted by the Constitution of this State. On behalf of the Supreme Court and, indeed, on behalf of the entire Judiciary of our State, I wish to express to you our sincere and deep appreciation for the support we have received from the General Assembly in our collective efforts to maintain the constitutional direction we're headed in. As a result of your efforts and our efforts, your judicial system has been able to stay the constitutional course with plans to alleviate the conditions caused by overcrowded dockets, outdated facilities, obsolete equipment, and insufficient personnel. We have several items that I would like to discuss in general terms with you. First of all docket control - with regard to docket control we have taken a shotgun approach and on March 15, 1997, we will begin the second year of a two-year Alternative Dispute Resolution Pilot Project in Florence and Richland counties. If the evaluations conducted at the conclusion of this pilot show that court-ordered arbitration and mediation is feasible for South Carolina, we will structure a program for statewide implementation. On the criminal side some circuits are utilizing differentiated case management and settlement weeks. Dual docketing is also being discussed. Not every proposal has a practical application, but the chronic backlog of cases dictate that we must consider any proposition which we feel might be useful. Adequate physical facilities are a prerequisite to critically needed expansion and restructuring of some judicial branch programs. With your approval and under the auspices of the Budget and Control Board, I am pleased to report to you that portions of the Calhoun Building have been renovated to provide space for the Court of Appeals, for the Office of Disciplinary Counsel, and for administrative offices. Relocation in this project has been completed and, apparently, the improved work environment has boosted staff morale and productivity. Employment of the judges recently elected to the Court of Appeals has taken us to the next phase of our goal for an expedited, deliberative appellate process. To ensure orderliness and to maintain adequate checks and balances, the transfer of operations and accompanying personnel is being conducted in phases. Effective January 1st of this year, South Carolina's former grievance and disciplinary procedures for lawyers and judges has been replaced by a Commission on Lawyer Conduct and a Commission on Judicial Conduct, both under the supervision of the newly created Office of Disciplinary Counsel. I believe that this effort moves us into the forefront of lawyer and judge discipline in the nation. I tell you that the public has expressed support for these changes; and we are optimistic that the best interests of the citizens of this State, the Bench and the Bar will be served by the revised rules and with the staff we have in place. Our use of automated information

systems has been limited. This is due to several factors. Number one, we were late with getting into the automation business. As recently as 1993, Former Chief Justice David W. Harwell expressed to the legislature his consternation with the fact that the Judicial Branch was still operating with pads and pencils. We have been hindered also in this aspect of our development by our inability to employ and retain sufficient skilled technicians due to budgetary constraints, particularly the fact that much of our funding in this area was on a non-recurring basis. But the automation we have acquired has helped us tremendously in the areas of speed and efficiency and, hopefully the help that we will acquire will provide us with an opportunity to provide the necessary data to meet the requirements of reporting which will be placed upon us by various entities of state and federal government. Now, ladies and gentlemen, pursuant to a review of our organizational structure, we have shifted personnel to achieve maximum efficiency. The six new circuit and family court judges who took office in 1996 were assigned to cases and counties with the heaviest backlog. As a result, I am pleased to report that in round figures that for 156,000 cases filed in circuit court in 1996, there were 152,000 dispositions. Last year 94,772 cases were filed in family court. The number disposed of was 99,007 - exactly 4,235 more than were filed. This was what you and I envisioned when I suggested to you last year and you granted last year, the additional judges to enable us to mount a two-pronged attack on docket overcrowding. First, our goal was and is to move the number of cases each year equal to the number filed during that year. Second, and at the same time, we want to reduce the backlog of cases accumulated during previous years. With this aspect we have not yet achieved success. As reflected by the statistics on case filings and dispositions from January 1 - December 31, 1996, the situation has improved. But these findings are incomplete because they do not factor in the cases that were left pending at the end of 1995. January 1, 1996, we began the year with 104,000 old cases on the circuit court calendars. By adding extra terms of court, reducing the time allowed for judges to participate in judicial educational seminars, curtailing vacation time for judges, and with the assistance of three new judges for approximately one-half of the year, we disposed of 152,000 cases; and yet there are approximately 108,000 cases pending in the circuit court dockets as of December 31, 1996. In family court, we began work in 1996 with 37,000 cases. With the addition of three new family court judges, who worked for approximately six months, we disposed of 4,000 more cases than were filed during the year; and at year's end, we still had 33,000 family court cases awaiting disposition. These numbers illustrate the crux of our problem. In part, our fiscal year 1997-98 budget request gives specifications for engineering a solution to that problem. We have requested six new judges (three family, three circuit); the question I am often asked is where shall they come from? My standard response is that that is a political decision left to the wisdom of the General Assembly. You provide us with the judicial manpower and you provide us with sufficient funds and we will put the judges where the cases are. We have additionally requested four court reporters. The need for these is hardly due to the fact that a number of our court reporters are developing carpal tunnel syndrome. We have asked for staff positions, equipment, and technology for the Division of Court Administration. Court Administration and the judicial system, like every other branch of government is required to give data to various entities. In order that we can give data that is accurate and up-to-date, it is absolutely essential that we have the technology to provide these entities with the information they request. We have requested a bailiff for the Court of Appeals and assistants for the Court of Appeals Staff Attorney's Office as we move into the three panels of the Court of Appeals. In addition to that through the leadership we have requested salary adjustments for the judiciary. Hopefully, the documentation which was furnished to the Ways and Means Committee and will be furnished to you upon your request, will justify approving the budget request which we have submitted to you. But, as in the past, we

of the Judiciary stand ready to answer any questions you may have or to provide such additional information as you may desire. We will make ourselves available to talk with you individually or in conference. But I would ask that you indulge us to discuss with you at this time the sense of responsibility which we of the judicial branch feel. Article V of our Constitution provides that the Judicial Power of the State shall be vested in a Unified Judicial System. Broadly stated, this branch has authority to adjudicate all cases in law and equity arising under the laws of the State of South Carolina. Therefore, we are constitutionally mandated to adjudicate cases involving more than 30,000 square miles and more than three million citizens. In addition we are required to adjudicate cases involving some 108,000 business establishments which exist in the State of South Carolina. We must furnish judges and court reporters in each of the counties to meet this caseload. Every cause of action arising within our State that is litigated must be addressed by the 92 trial judges which we have. And whatever the number of these cases are appealed to the state's courts of last resort, must be addressed by the 14 appellate judges which we currently have. Let me tell you that this year I will celebrate 21 years as a member of the Judiciary of the State of South Carolina and under our system of rotation that 21 years means that I have probably spent close to ten years away from home rotating around the State serving the people of this State and I commend the Judiciary of this State for the services they have rendered and urge your consideration of their services and their sacrifices. According to a 1995 report by the National Center for State Courts, South Carolina Circuit Courts had approximately 3,800 cases filed per judge annually. These statistics reflect that South Carolina has approximately one judge for every 100,000 of its citizens. This does not factor in the fact that according to news reports and publicity from the Myrtle Beach Chamber of Commerce, ten million visitors went to Myrtle Beach alone. These are people who become involved in matters and must have their disputes resolved by our judicial system. The general sessions court dockets of certain circuits are beginning to show the effect of enhanced penalty legislation such as the two strikes/three strikes provisions. I predict that it is only a matter of time before dockets throughout the State will stagnate further as a result of decelerated disposition of cases which are subject to the stiffer penalties. For example, under the mandatory sentencing scheme for certain offenses, a defendant who might otherwise enter a guilty plea in a proceeding that would take an hour or less of court time may feel that he has nothing to gain by pleading guilty and will go to trial. Disposing of that same case by trial could consume several days of court time. Likewise, enhanced sentencing considerations such as the increased amount of documentation which judges are required to make on site and expanded victim participation in sentencing proceedings will in all likelihood slow the disposition rate of cases. Family court statistics are even more foreboding; and the numbers, standing alone, do not truly reflect the caseload or time and effort expended by family court judges. Due to the nature of domestic and juvenile actions, cases involving divorce, property settlements, child custody disputes or support matters may be in and out of family court for years; and likewise, matters of abuse and neglect. Under the initially assigned docket number, any action may come before the court on numerous occasions on different aspects of the same case. Therefore, general caseload statistics do not reflect exactly the amount of time devoted to a particular case or the number of controversies actually heard by your judiciary. This brings us to the human side of the judiciary. Despite sentencing parameters - *which allow judges to tailor sentences* - and sentencing guidelines - *which aim for a degree of uniformity* - judges are still required to possess the proverbial Patience of Job and the Wisdom of Solomon. Three years of law school, passage of the bar examination, and a special course designed to bridge the gap between academia and practical experience fulfills the requirement to practice law in South Carolina. But an effective jurist needs far more than these qualifications. At a minimum, judges

need training in psychology in order to render insightful judgments; experience in human resources management to successfully interact with the hundreds of different people; an understanding of public administration to effectively converse with the numerous other professionals and agencies; and a degree in business administration to ethically and efficiently manage his or her operation. In recognition of the growing complexity of litigation filed in our State and the increased sophistication of our society, you of the legislature have promulgated more stringent requirements for judicial candidates, who must now be thirty-two years of age, and who must have been a licensed attorney for at least eight years. After election, new judges must complete a formal orientation course to ease their transition from lawyer to judge. Judges are also required to periodically update their professional training by enrolling in judicial continuing legal education seminars. The profession of a jurist is a prestigious calling. But judges give up personal independence and forfeit the opportunity to earn financial remuneration at a level which is common to the legal profession. Our Constitution provides that judges shall be assigned to the circuits of the State on a rotating basis. It is my humble opinion that the rotation of judges is one of the great strengths of our judicial system. As I told you a moment ago, South Carolina's Court Docket averaged out to 3,800 cases per judge - the highest in the nation. These are some of the major reasons why our budget proposal for fiscal year 1997-98 includes a request for an increase in judicial compensation. During the past ten years the number and complexity of cases have increased dramatically. The workload of state judges has expanded far beyond the responsibilities envisioned when the current salary structure was instituted. Our judges are desperately in need of incentives. When I took office at the end of 1994, I solicited their support and cooperation in fending off the docket crisis that was developing within our court system. They responded with uncommon commitment and dedication. On many occasions when I had to deny their requests for leave because we had scheduled extra terms of court, members of the judiciary exhibited remarkable grace, restraint and professionalism. Judges are indispensable cogs in the wheels of justice and indispensable cogs in the maintenance of our democracy. As in business and the other professions, it is essential that compensation for these public servants be commensurate with their training, experience, responsibility, and the quality of service expected of men and women who, daily, must make far-reaching, life-altering decisions. A 1991 study conducted by the National Center for State Courts used the salary of Supreme Court Justice as the base for computations. According to that study, salaries for the South Carolina Supreme Court Justice in 1985 ranked ninth among the fifty states. By 1995, South Carolina's ranking had dropped nineteen points - to twenty-seventh among the fifty states. This is my third occasion to have an opportunity to speak with the legislature of this State and it is the first occasion when I have had to address the problems of judicial salaries. We have taken other things on as being first priority, but today I feel compelled to let you know that judicial compensation is a matter to which you should give serious consideration. Last year the legislature attempted to narrow the gap between salaries for circuit and family court judges by authorizing, prospectively, an increase for family court judges and for judges of the court of appeals. In order to reestablish a reasonable alignment of all judicial salaries within our unified court system, we have proposed adjusting judicial salaries by 7.8%, for which the cost is estimated at \$1,413,236, and which would bring judicial salaries in South Carolina almost up to the southeastern average. I say almost because in many states in our region judges' salaries are not only based upon the position they hold but the number of years that they have held that position. That provides for some fluctuation. The judicial branch fiscal year 1997-98 budgetary request is for \$4,123,199. Although this branch is one of the three constitutionally designated branches of state government and is responsible for discharging the judicial powers for the entire State, our total budget share is 0.77 - or a little over

3/4 of 1% - of total state spending. Historically, the judicial branch has practiced fiscal austerity, and we pledge to continue the same conservative trend. But escalating crime in an otherwise highly litigious society have exposed deficiencies which our budget proposal is intended to address. A branch personnel review found that non-judicial employees were not being compensated at a level commensurate with personnel performing similar functions in other branches of state government and that there was a need for restructuring the system of compensation. The review also indicated that the employee retention rate was at an unacceptable level. I credit your previous support with our ability to 'hold the line' in these problem areas. But as noted by Mother Teresa, the highly acclaimed missionary: 'to keep the lamp burning, we must keep putting oil in it.' With your support, we will keep the lamp of our judicial branch burning... we will keep the lamp burning for litigants, whose lives languish in the darkness of uncertainty - because they are unable to get their day in court; we will keep the lamp burning for families who cry out for expedited decisions - so that they can begin the process of healing; and with your commitment, we are determined to keep the lamp burning for wayward youngsters to find their way back home. It is your duty as elected representatives of the people, public servants, and state leaders to anticipate future needs and provide the means to protect and promote the best interests of our constituents. As such, you and I share a common goal which, in my opinion, can best be reached by working together. The Constitution assigns each branch of government a separate and distinct function. But the collective mission of the three is to provide the best system of government possible within the available resources. I recognize that the financial resources of the State *are* finite, and that, as in the judicial branch, there are critical needs throughout state government. We have presented our request for necessary funding and also asked that recurring expenses be appropriated on a recurring basis. But I would emphasize to you that the judicial branch is not in competition for funding with any other branch of state government. To relate us to the other branches of state government and their personnel is to be mixing apples and oranges. I feel very strongly that the success of one branch enhances the success of the others and, ultimately, the success of our State. For example, if there is effective collaboration among educational institutions, correctional facilities and social service agencies, I believe our court dockets would dwindle. Therefore, I believe it is essential that we use our ingenuity to find appropriate and adequate resources for each branch of state government to fulfill its mission in a manner that is true to its constitutional mandates and responsive to the dictates of the South Carolina constituency. On cooperating for mutual benefit, Booker T. Washington, educator and author, expressed the view that 'in all things that are purely social, we can be as separate as the fingers, yet one as the hand in all things essential to mutual progress.' I believe very strongly that in the discharge of our respective duties and in the exercise of our diverse authority, each branch of government can be as separate as the fingers on a hand, and yet in all things essential to mutual progress, we can - and must - be as compactly unified as the hand itself. As the sole funding source for the judicial branch, you, individually and collectively, as members of this General Assembly, hold in your hands the fate of the South Carolina Judicial System. It is an awesome responsibility, but the citizens by whom you were elected and the oath upon which you swore, anticipate that you are worthy of this undertaking. But as for me and the members of your Judiciary, we have committed to stand at the helm of the ship of the justice, and we will not abandon our post. My belief in the American System of Justice is resolute and with your help, this branch of government will stay on course with the Constitution. Our system of justice has survived the storms of adversity for more than 200 years. Surely, she shall not be ripped apart by the turbulence of the times in which we live. Whether the Lady Justice is delivered intact with the Ship of State providing escort or whether, for lack of support, Justice will drift to shore on

broken pieces is in your hands. But I assure you, ladies and gentlemen, that justice shall prevail in the State of South Carolina. However, the manner in which justice is delivered to the citizens and litigants whom we are sworn to serve now rests in your worthy hands. I thank you for an opportunity to share with you a handout that will be on each of your desks. It will give budget department requests and where we stand with those requests. It also has at the bottom thereof an indication that I will be available, as will other members of the court, from time to time to answer your collective or individual questions so that we might together build the kind of South Carolina which we all want to live in. Thank you very kindly.

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