State of the Judiciary
Chief Justice Ernest A. Finney Jr., South Carolina Supreme Court
Message to the Legislature
February 17, 1999, in Columbia, South Carolina

Senator Setzler, Mr. Speaker, Members of the General Assembly, other State Officials, Members of the Judiciary, Honored Guests, Ladies and Gentlemen:

I want to say to you at the very beginning of this presentation that I hope that my reception as I leave will be as warm and cordial as it was when I arrived. I would also like to say something on the behalf of the citizens of the State of South Carolina. I want to express our sincere and deep appreciation for the renovations that you have accomplished on the State House. As I stand here I reflect upon what this building and facility looked like 25 years ago when I was a member of the General Assembly of this State. I commend you because you have done a tremendous job in visualizing and improving the image of the State by the reconstruction and renovations that you have conducted on this facility.

I thank you for the opportunity to present this report on the State of the South Carolina Judiciary; and I deeply appreciate those occasions during the past several weeks when I have been able to discuss matters of mutual concern with individual members and various committees of this legislative body.

Your attentiveness to issues which affect the judiciary is a reflection of your commitment to the ideals of statesmanship in the highest and best tradition of this great republic. Just as the strength of a chain is determined by its weakest link, the sovereignty of this State can be measured in terms of the vulnerability of its least functional branch.

Therefore, the socio-economic stability of South Carolina rests in the hands of government officials who must guarantee that each branch receives the resources and support necessary to adequately perform its mission.

The mission of the Judicial Branch is to provide a just, efficient system of courts for the resolution of legal disputes in civil actions and for the disposition of criminal charges. Every operation within the Judicial Branch exists for the sole purpose of supporting that mission. Our primary goal is to expedite the disposition of our court caseload.

Since 1995, we have acquired new FTE positions for six Family Court judges, six Circuit Court judges, and three judges on the Court of Appeals; along with ancillary staff for each judicial position. The additional judicial personnel, combined with innovative steps to manage court dockets, have yielded time savings and consistency in disposition of pre-trial proceedings.

For example, greater efficiency and trial effectiveness have been achieved by assigning death penalty cases and multiple related or complex civil litigation to a single judge and court reporter. Certain motions and other non- jury matters are now resolved during designated settlement weeks. Masters-in-equity are assigned as special circuit court judges to hear non-jury Common

Pleas matters; and we have expanded the authority of chief judges for administrative purposes. The following numbers provide an objective picture of our criminal and civil caseloads. During Fiscal Year 1996-97, the Court of General Sessions disposed of 110,758 cases. During Fiscal Year 1997-98, that court disposed of 112,123 criminal cases - up by approximately 1400 cases. On the civil side, the Court of Common Pleas disposed of 44,194 cases during Fiscal Year 1996-97; for Fiscal Year 1997-98, the number of dispositions increased to 52,748 cases.

Our Fiscal Year 1999-2000 budget proposal includes a request for $500,000 to expand the pilot Alternate Dispute Resolution Program from Richland and Florence Counties to include the counties of Greenville, Lexington, Horry and Charleston. The initial two-county pilot provides insufficient data upon which to base a final conclusion on the effectiveness of ADR in South Carolina.

The concept is relatively new to this State and will require a period for user acceptance and modifications of procedures and rules. I am persuaded that our investment in the expansion of ADR will be justified by its benefit to litigants and to the system. Foremost, it is an alternative which will operate within the existing framework, since it would not require new judges or additional facilities. Secondarily, the number of civil case dispositions for FY 1997-98 increased by more than 8500 over the preceding fiscal year. We are unable to assess the direct impact of ADR on the improved disposition rate. But, unquestionably, ADR holds the potential for substantially reducing court dockets at a time when every category of litigation is on the rise.

For example, there is expected to be a deluge of litigation arising from the year 2000 challenge as a result of problems encountered by various sectors of society in the arenas of communications and information. The Judicial Branch expects minimal problems because personal service constitutes our primary output. But, for businesses and other entities which provide communications capabilities and information, the courts will become battlegrounds for a new category of disputes which involve financial services, securities, utilities, transportation, health care and education.

On the conventional side, the effects of penalty-enhancement legislation is already apparent in the deceleration of case disposition rates. For instance, the Sexually Violent Predator's Act alone is expected to generate from 200 - 300 additional jury trials per year. So, it is crucial that we explore ADR and every other option which offers a potential for relieving congested dockets.

At the appellate level, the additional three-judge panel on the Court of Appeals has facilitated a redistribution of cases between the two appellate courts. To further enhance the disposition rate of cases on appeal, the Court of Appeals has devised a plan for accelerated disposition of cases. We have requested an additional clerical support person to assist with the increased workload of that court.

Some Supreme Court personnel were transferred to the Court of Appeals to perform docketing functions assumed under the new set-up. We are also requesting FTE positions for one staff attorney and one clerical employee for the Supreme Court. During the early part of this decade, disciplinary enforcement for attorney and judicial misconduct emerged as an issue of grave concern in South Carolina.

On January 1, 1997, rules providing for the Commissions on Lawyer and Judicial Conduct became effective. The additional staff, budgetary resources, and rule revisions have improved the effectiveness of the disciplinary process. The Office of Disciplinary Counsel received 176 judicial grievances and 1,100 complaints against attorneys in Fiscal Year 1996-97. During Fiscal Year 1997-98, the caseload increased to 206 new cases against judges and 1,242 new complaints against attorneys.

Furthermore, when the commissions were instituted, we anticipated that most of the prosecutions would be conducted by the Office of the South Carolina Attorney General. However, there has been an unexpectedly large number of cases from which the Office of the Attorney General had to be recused due to apparent conflicts of interest. We are optimistic that another attorney and one additional support person would enable the Office of Disciplinary Counsel to handle the unforeseen volume of prosecutions.

Budget Priority No. 3 is a request for $450,000 in recurring funding to implement a revolving cycle for replacement of obsolete information technology hardware. We believe that any potential problems inherent in the Y2K transition will be resolved by acquiring the funding and personnel to comply with our initial Long-Range Strategic Plan.

The two areas which are lacking in our technology division are the ability to systematically upgrade computers and office equipment, and acquire experienced technicians. The results of studies conducted by the State Budget and Control Board Office of Human Resources emphasized the need to establish a base-salary formula for our lowest-paid employees. We have heretofore attempted to rectify this situation on a piece-meal basis. But, the effect of the salary dilemma is taking a toll on branch operations; and I believe it is imperative that we provide a salary increase in Fiscal Year 1999-2000 for non-judicial staff. In our view, a 5.00% increase would serve as an incentive for experienced employees to remain with the branch.

Another incentive is the opportunity for upward mobility through continuing education. Moreover, education is a cost-effective means of enhancing staff efficiency. Our budget proposal contains a request for $100,000 to institute a systematic program of staff education to improve productivity, boost morale and aid in attracting and retaining employees.

The Judicial Branch Budgetary Request for Fiscal Year 1999-2000 seeks additional funding of $3,216,057 for seven programs. The budget was developed from a projection of the resources necessary to operate the Judicial Branch and from the standpoint of practicality. For instance, we are not requesting FTE positions for judges this year. While we still have case backlogs and the need for increased judicial resources is clear, there are insufficient facilities and personnel at the county level to accommodate additional concurrent terms of court. For this reason, we must depend upon our current roster of judges to carry a heavier caseload.

We have designated a judicial salary increase of 6.05% as our first budget priority. This request is intended to bring judicial salaries in South Carolina up to the southeastern average for judges. But there are other reasons of paramount importance, such as the underlying cause of the high attrition rate of state court judges and the need to attract and retain judges.

A week ago today in these chambers, this same General Assembly elected nine judges to fill

vacancies in the family and circuit courts, and on the Court of Appeals. I believe there were two vacancies not filled during the election.

To the casual observer, the flurry of judicial elections might indicate that South Carolina has an ample supply of state court judges. However, prior to last Wednesday, there had never been fewer than five judicial vacancies and we have not - in recent times - had a full complement of judges to staff our courts. We have been able to maintain court schedules by curtailing judicial leave. As a rule, judges are understanding of our plight. But, excessive caseloads and the imposition of overly stringent leave guidelines have had an obvious detrimental effect upon morale.

We believe that these men and women who are called upon to decide issues of personal freedom, to determine property rights, and to adjudicate matters of life and death on a daily basis should be compensated at a level which reflects their dedication.

We have scrutinized Judicial Branch operations and requested funding for obvious, critical needs. Each request is for funding to annualize, expand, or maintain an existing program. It would be misleading to imply that increasing the base appropriation of the Judicial Branch by $3,000,000 will position our court system to adequately discharge its constitutionally mandated functions in the next millennium. The sum of our funding request for FY 1999-2000 and our current base budget amounts to less than one percent of the state's budgetary spending. In reality, this is a subsistence budget - a proposal intended to make the best use of available resources to facilitate accessibility to the judicial process.

I have concluded that, if our court system is at risk, calamity is not likely to occur because of a single catastrophic event, such as the stroke of midnight at the onset of year 2000. Conversely, any breakdown experienced by the court system is more likely to result from two diametrically opposed reasons: one external, the other internal.

Externally, insufficient personnel and inadequate facilities are being gradually overburdened by a perpetually escalating number of cases. According to a United States Census Bureau report, as of June 30, 1998, South Carolina's population had reached 3,835,962 - growth of 1.3% since June 30, 1997 - to become the 11th fastest growing state in the nation. The report's significance to the court system is that a higher population generates more criminal defendants, more victims, and more civil litigants.

Consequently, the resources intended for court viability have been diverted to court subsistence. Regrettably, we are constrained to measure progress in terms of whether or not we have fallen any further behind. The goal in our circuit courts is to dispose of criminal cases within 180 days from date of arrest and to adjudicate civil cases within 540 days from the date of filing. As a result, we have been able to chip away at the backlog while we strive to dispose of a number of cases each year which is at least equal to the number of new cases filed. When combined with the caseload projected for new litigation at the start of the next century, it is not an exaggeration to predict that a calamity will be averted only through careful planning and realistic spending.

Ladies and Gentlemen, it is imperative, as the legislature considers new measures which affect the court system, that the Judicial Branch must be involved from the very beginning of the

planning process. We have seen good ideas fall short of the intended result, partly because they were promulgated without the input of persons or entities from all perspectives involved.

Presently pending before this General Assembly are proposals for Drug Treatment Courts in various forms. The consensus is that this is an idea whose time has come. I concur in that consensus - with two caveats. First, I would recommend that every reasonable precaution be taken to ensure the success of any plan adopted. Second, I charge you that the success of any new program should not come at the expense of any other segment of the court system.

A plan which requires the shifting of resources from an established program to the new program, even if successful, would tend to weaken the area deprived of needed resources. For instance, if Drug Treatment Courts require the use of judges from the circuit and family courts, then the docket of non-drug cases will suffer. Even if after-hour sessions are contemplated using existing judges, the disposition of conventional cases will be affected. Like other workers, judges are most effective when they are not over-extended and my reports indicate that our judges are already overworked.

I challenge you to devote the requisite research, planning and resources to bring this promising concept to fruition. In my opinion, the second threat to the stability of our court system is more insidious because the assault originates internally from individuals and coalitions within our system of government.

When the founding fathers framed our constitution, they were specific in providing for separation of powers as between each branch of government. These immigrants bore the scars of victimization by a system of laws which favored the whims of the privileged over justice for the deserving. South Carolina holds the distinction of being one of the initial thirteen colonies - a monument to those courageous men and women who chose a life of hardship on foreign soil over tyranny in their homeland.

I charge you, as gatekeepers of our form of government, to resolve that our system of laws shall not be denigrated on our watch by those who, for praise or power, would compromise the integrity of one of the most sacred possessions claimed by those early settlers over two centuries ago.

Let us renew our commitment to maintain the independence of the judiciary, as embodied in the statute of the Lady Justice, standing blindfolded, with evenly balanced scales in her hands, fair to all, beholden to none; no friends to reward and no enemies to punish. But we serve during a period when this noble concept is being undermined. We see peril adorned as laws which favor special interests. Encroachment is cloaked as exigency demanding hasty decisions for the wrong reasons. The will to manipulate the legal process masquerades as a desire for accountability in order to institute a system under which judges could be subject to coercion and intimidation.

Perhaps the more imminent danger lies in the benign neglect of a court system deprived of its lifeblood by inadequate funding for needed programs. Anemic, ineffectual courts are in and of themselves a threat to good social order and personal freedom. Powerless to implement laws in an impartial manner, the courts become the tool of whomever or whichever faction is in power. Justice becomes a hostage to funding authorities who use the budget as leverage to achieve a

certain end or to exact a desired result.

Addressing our obligation to promote a just system of courts, Edmond Burke, the British statesman, wrote:

Justice is itself the great standing policy of civil society;
and any eminent departure from it,
under any circumstances,
lies under the suspicion of being no policy at all.

The responsibility of maintaining balance in services and programs is a daunting task. But, ladies and gentlemen, we are the individuals chosen by the people to represent them and to safeguard their interests. They have sent us to the seat of government to achieve together objectives which they could not accomplish alone.

I and the other members of the South Carolina Judiciary look forward to working with the members of this 113th General Assembly, as - together - we seek to insure justice, maintain domestic tranquility, and secure the blessings of liberty to ourselves and to our posterity in the coming millennium.

Senator, Mr. Speaker and members of this joint assembly, that concludes my report on the State of the South Carolina Judiciary. I thank you for your attention.