

State of the Judiciary
Chief Justice W. Carlton Mobley, Georgia Supreme Court
Meeting of the Georgia State Bar Association
June 2, 1972, in Savannah, Georgia

Significant progress has been made in the administration of justice in Georgia since we met here twelve months ago. More improvement is on the way.

There is still much more to do, and we Trial and Appellate Court Judges, District Attorneys, officers of our courts, law enforcement officers and all others engaged in the administration of justice, including jurors, grand and petit, and the public must cooperate to the fullest extent if the challenge facing us is to be met.

Our most pressing problems are, of course, in the administration of the criminal law. The more acute problems exist in metropolitan Atlanta and in our larger cities.

Commission on Judicial Processes

One of the most significant efforts to improve the administration of justice since the meeting of the State Bar last summer is the work of the Commission on Judicial Processes. The Council of Superior Court Judges suggested the creation of a commission to make recommendations for the improvement of our Judicial System, and on June 4, 1971, Governor Carter created the Commission.

The Commission in its report recommended the following, which were adopted by the legislature:

1. A proposed constitutional amendment creating a commission composed of judges, lawyers and laymen with jurisdiction to investigate misconduct or unfitness of judges and to recommend to the Supreme Court the removal, retirement, or discipline of a Justice or Judge. This constitutional amendment will be voted on in the general election this fall. This amendment is needed, as judges who, because of age, ill health, or other reasons, are not able to perform the duties of their office should not remain on the Bench.

Legislative Acts as follows:

2. Authorizes misdemeanors to be tried on accusation in Superior Courts passed. This will expedite trial of misdemeanor cases in the Superior Court.
3. Authorizes employment of secretary by Superior Court Judges and District Attorneys. This was long overdue.
4. Reduces age of majority from 21 to 18.
5. Provides that it is within the discretion of the Trial Judge whether a jury may be dispersed before conclusion of the case in all but capital felonies.
6. Permits electronic surveillance, which conforms Georgia law to the Federal Wire

Tapping Law.

7. Where there are joint defendants in a criminal case, the act allows one set of strikes to them jointly, plus an additional five for each defendant within the discretion of Judge.

The following recommendations have not been acted on or passed by General Assembly:

1. A constitutional amendment providing that all courts of the State shall be a part of one unified Judicial System, and that the administration of the system shall be as provided by law. This passed the Senate, but not the House. A unified Judicial System is needed.
2. A constitutional amendment abolishing provisions on venue and allowing General Assembly to fix venue was passed by Senate, not voted on in House.
3. Abolishing jury sentencing in noncapital cases and providing for an administrative review of sentencing by a committee of Superior Court Judges, who strongly endorse it. This was not reached.
4. Permitting prosecution to appeal certain pre-trial orders, such as motion to suppress, etc. Passed House, no vote in Senate. We need this.
5. Abolishing unsworn statement. Bill did not pass House, but did the Senate. Superior Court Judges strongly urge its passage.
6. Allowing appellate courts to control the question of whether an appeal from an interlocutory order could be taken. Trial Judges, as a rule, approve the request. One of the *great* delays in the trial of cases is trial courts allowing appeals of interlocutory orders, most of which appeals are not successful. This results in two appeals to the appellate court: (1) from the interlocutory order and (2) review of the case on appeal. Passed Senate, not reached in House. Should be adopted-will expedite trial of cases.
7. Authorizing trial judges to consolidate civil cases where there is a common question of law and fact. Trial judges strongly favor this, as it would be in the interest of justice and economy. Passed Senate; not voted on in House.
8. Control of voir dire examination be placed in trial judges discretion. Much opposition to this from lawyers in General Assembly.
9. Proposed Constitutional Amendment authorizing grand and traverse jurors to be drawn from the circuit rather than the one county where the case is being tried. Has merit.

There has been considerable work for a couple of years on preparation of a set of standardized, simplified jury instructions. The Commission has been given an LE.A.A. grant, which will be used in cooperation with the Superior Courts and the State Bar. The suggestion that these be approved by the Supreme Court has been made. If approved, trial judges would be safe in giving them where appropriate to the issue.

The Commission has been given a large LE.A.A. grant to study and make recommendations as to a unified system of Court Administration in Georgia. The project is under way. So much for the work of the Commission.

The Courts

Now let us review the situation in the courts and see what efforts are being made to improve

the administration of justice. I have spot-checked the State Courts for information as to the condition in heavily populated circuits, and in others.

ATLANTA JUDICIAL CIRCUIT

The Atlanta Judicial Circuit Judges are moving forward to meet their problems. Chief Judge Claude Shaw advises that on March 1, 1972, a Court Administrator was appointed, who is setting up a data processing system for the circuit. The system will include civil and criminal cases and will tell the Judges in an instant all of the details concerning those cases. In reference to criminal cases it will show date of indictment, whether the person is in jail or out on bond, nature of the offense, the attorneys, and any motion for continuance or other matters involved in the case. Judges will be able to tell from hour to hour how many prisoners are in jail.

Likewise, in civil cases the Judges will have readily available statistics on every phase of their judicial work.

The Judges are changing from the Master Calendar System to the individual calendar for each of the ten Judges, under which cases will be divided evenly between all the Judges, avoiding unequal work loads.

Lewis Slaton, District Attorney, advises that during the first four months of 1972, the Fulton County Grand Jury indicted 2,202 defendants, charged with felonies. During those four months they disposed of 2,370 defendants. In 1965 they indicted 2,567 defendants and in 1971 6,790 defendants-165 percent increase in five years.

He points out further that in 1967 there were 71 defendants indicted for narcotics, and four years later, in 1971, 1,901 were indicted.

This gives you some idea of the burdens of the District Attorney and the trial courts in criminal cases in Fulton County. It is encouraging that they are moving forward toward significant improvement in the administration of civil and criminal justice.

COBB SUPERIOR COURT - FROM JUDGE LUTHER HAMES

The office of Court Administrator was created in January, 1970. In the civil division the Court was operating under a total voluntary program-attorneys stipulated their cases at their convenience. As of August 31, 1970, there was a backlog of 7,766 *civil cases*. The criminal division was controlled by the District Attorney. As of July 1970, the criminal court had a backlog of 350 active cases which has now been reduced to 125, and the civil division has been reduced from 7,766 to approximately 3,000.

The Cobb Circuit, with two active Judges and a Court Administrator, has done a remarkable job in improving the administration of justice during these two years.

STONE MOUNTAIN CIRCUIT

There has been a tremendous increase in civil and criminal cases in recent years. They report

a time lag in criminal cases of three months and a delay of 15 to 18 months from date of stipulation of a civil case to the trial calendar to its actual trial, and tremendous delays between the date of filing an appeal and the date the record is obtained for hearing the appeal and forwarding it to the appellate court. It is felt that with combined efforts of the additional Judges they will be able to bring their civil calendar to between six months and a year from date of stipulation to date of trial.

SOUTHERN CIRCUIT

Judge Marcus Calhoun reports that the docket is current; average time in civil cases from filing to trial, four to six months, criminal cases generally tried at term indictment is returned. Greatest needs are secretaries for the Judges, which they will get soon, and an additional Court Reporter. "Our two Court Reporters are months behind, which delays appeals and decisions of court where Judge needs to study record."

EASTERN CIRCUIT-CHATHAM

My information on Chatham County Superior Court and the State Court is that the dockets are current to the extent that a lawyer trying a civil case may obtain a trial assignment within four to six months, and criminal cases in both Superior and State Courts without delay. Judge Hester, of the State Court, reviews his dockets regularly, and both civil and criminal are current.

AUGUSTA CIRCUIT

According to Judge Fred Kennedy, the Senior Judge of the Circuit, they "are reasonably current in the disposition of civil and criminal cases, that is not to say that all pending cases have been disposed of, but all cases ready for trial have been tried."

MACON JUDICIAL CIRCUIT

Judge Hal Bell, Senior Judge of Macon Circuit, reports that "a lawyer can file a civil case and have the case tried within two to three months after filing date."

The first four months of 1972: individuals indicted for felonies - 265; total cases deposed of- 511. Total number indicted in 1971 was 801, and cases disposed of, 717. This is an excellent record.

Judge Bell is President of the Superior Court Judges Council for 1971-72 year. He reports that, "Practically all of the recommended changes by the Council on Judicial Processes have been concurred in by Superior Court Judges and in fact the Judges have actively supported these changes." They have in fact proposed many of them.

My information is that most of the circuits of rural counties are having no difficulty in disposing of the cases, civil and criminal, without undue delay.

The principal cause of delay in the completion of cases is delay in getting the record. The addition of more judges will not solve our problem. We must modernize our court system.

The courts should consider using the steno-computerized transcript. It is known "now that it is both scientifically and economically feasible for the court reporter to sit in the courtroom, hit the keys, and in another room a computer will translate electronic impulse into a printed transcript that is available for use immediately. There is no wait."

If you are the least bit discouraged with the State of the Judiciary of Georgia, I can give you encouragement, by comparing our situation with that in Philadelphia, and in many of the other large cities in the United States.

I sat next to a Philadelphia lady, a Trial Court Judge of a court comparable to our Superior Courts, the speaker at a dinner meeting of the Women Lawyers Association recently. She painted a miserable picture of their courts, with delays of five to six years in bringing civil cases to trial and one and a half years for criminal cases.

The Appellate Courts

SUPREME COURT

The following figures represent the work of the Supreme Court for the year 1971 and for the first four months of 1972:

In 1971, 499 cases were filed in the Supreme Court-none of which are now pending. The average time between argument and disposition was 33 days. In addition, the Court in 1971 passed on 153 applications for certiorari, a total of 652 cases.

In the first four months of 1972, 178 cases were filed, of which 16 are now pending. The average time between argument and decision was 36 days. In addition, the Court passed on 64 applications for certiorari - a total of 242 cases.

COURT OF APPEALS

In 1971, 951 cases were filed. At the January term 294 cases were filed; at the April term, 327, and at the September term, 330, with the average time between argument and decision, respectively, 56, 45, and 36 days.

In the January term of 1972, 292 cases were filed, and in the April term, through May 25, 323 cases were filed. The average time of decision was 31 and 30 days, respectively.

I am certain that this is the best record the Court of Appeals has heretofore made in the prompt disposal of its huge volume of cases. They deserve commendation.

State-Federal Judicial Council

Chief Justice Burger, at St. Louis in his first speech to the American Bar Association, urged "that a State-Federal Judicial Council be created in each state to deal with all the sensitive problems of relationship between the two court systems."

We of the Supreme Court have now concluded that a council would afford each of us a better

understanding of the problems of the other and provide the opportunity to correct problems that exist or may arise.

Accordingly, we are pleased to announce that we have created a State-Federal Judicial Council in this State.

Judges Griffin Bell, Sidney Smith, Alex Lawrence and Robert Elliott will represent the Federal Courts in Georgia.

I, as Chief Justice, with Justice Hiram Undercofler, of the Supreme Court; Judges John Sammons Bell and Irwin Stolz of the Court of Appeals; Judges James O'Conner and Paul Painter of the Superior Courts; and Judge Taylor Phillips of the State Courts will represent the State Judiciary.

I feel confident that the Council will be of value to the Judiciary of this State and to the Federal Courts.

The courts of this country are making very little progress in stopping crime. To deter the criminal, punishment must be certain and swift. Unfortunately, punishment is not swift or certain, and therein lies the primary cause of the breakdown in enforcement of criminal law.

An accused is entitled to one prompt, fair trial, then a prompt, thorough review, and there is where it should end. We have just the opposite; there is no end to appeals, and finality of judgment is becoming a myth. Only the Supreme Court of the United States or the Congress can stop these endless appeals. Crime will not be reduced until the law violator is made to suffer for his misdeeds. This we are not doing now.