State of the Judiciary
Chief Justice Benning M. Grice, Georgia Supreme Court
Message to the Georgia State Bar Meeting
June 6, 1974, in Savannah, Georgia

The subject assigned to me, "The State of the Georgia Judiciary," is a very broad one. In approaching it, I am mindful that we are living in a world of changes and that many significant ones have taken place recently insofar as the courts of this state are concerned.

First, let us consider the method of judicial selection. As you know, vacancies which are to be filled by the Governor are now being handled by a Judicial Nominating Commission. In the past, while appointments were sometimes made by the Governor from a list of names submitted, this was not the general practice.

The present practice began by Governor Jimmy Carter's using the Executive Committee of the State Bar to evaluate persons being considered for judicial vacancies. Later he created the Appellate Judicial Selection Commission which functioned from January, 1972, until June, 1973. By executive order on June 18, 1973, he reduced the size of the Commission to ten members, five appointed by the Governor and five from the State Bar of Georgia as ex officio members.

The order under which the Commission operates begins with this recital: "The quality of justice in the State of Georgia is best maintained through the appointment or selection of qualified persons to the judiciary." Whenever a vacancy exists the Commission affords an opportunity for submission of names of persons to be considered. Those persons are sent a detailed questionnaire and are invited to attend a meeting of the Commission. The Commission members then evaluate each person as "well qualified," "qualified," or "not qualified." From those deemed "well qualified" or "qualified" by a majority of the Commission members, a list of the five considered best qualified is sent to the Governor. He, without exception, has made his appointments from those names so submitted.

Governor Carter has thereby appointed four justices to the Supreme Court, three judges to the Court of Appeals and more than one-fourth of the superior court judges.

I firmly believe that the services which this Commission and the Governor are now rendering will redound to the benefit of the state in providing the high caliber of judges who serve on our courts.

Two developments relating to performance of duties by judges should be noted here, the adoption of "The Code of Judicial Conduct" and the creation of "The Judicial Qualifications Commission." The Code of Judicial Conduct emerged from a request in February of 1973 by the Supreme Court that the State Bar of Georgia appoint a committee to study a code of judicial conduct as proposed by the American Bar Association. Thereupon, a committee, with G. Conley Ingram and Harry S. Baxter as co-chairmen, was appointed and it made considerable study of codes in other jurisdictions. After thorough consideration, the present Code of Judicial Conduct, as prepared by the State Bar Committee and as approved by its Board of Governors at the November 1973 meeting, was unanimously adopted by the Supreme Court to become effective

on January 1, 1974. It updated the Canons of Judicial Ethics adopted on January 18, 1965 by the Supreme Court. The code has been published in 231 Ga. A-1 A-29. The new rules promulgated should serve as a guide for judicial conduct.

The other development in this category, The Judicial Qualifications Commission, was created by a constitutional amendment adopted in 1972. Its primary purpose is to "provide for removal, discipline or involuntary retirement of judges or justices of any court of this state." As pointed out by its chairman, H. H. Perry, Jr., "The Commission is interested in and has power to act only with respect to cases of disability, willful misconduct in office, willful and persistent failure, of a judge to perform his duty, habitual intemperance, and conduct prejudicial to administration of justice that brings the judicial office into disrepute."

Another recent development is the establishment of the Judicial Council of Georgia created by the 1973 General Assembly. It is composed of nine judicial members appointed by the Governor and two ex officio members, the president and immediate past president of the State Bar. The duties of the Council are specified in the Act. They call for the creation of the Administrative Office of the Courts and many duties intended for the improvement of the state's judicial system.

Perhaps the most important legislative change by the 1974 General Assembly, insofar as the improvement of the administration of criminal justice is concerned, is an Act which provides for the trial judges, rather than the jury, to impose sentences in noncapital felony cases. It also provides for a review panel which shall determine whether the sentence is excessive in cases in which the sentence or sentences total five or more years. The panel shall have the authority to reduce the original sentence but not to suspend it or substitute probation for the sentence.

President Adams has related that the State Bar proposed several changes in its disciplinary rules to make the procedure more efficient and more credible, that the Supreme Court approved these and added two more amendments on its own motion. One of the amendments proposed by the State Bar was to include three nonlawyer members to the disciplinary board. This has been done in a goodly number of other jurisdictions and has resulted favorably there.

One of the amendments added by the Supreme Court authorizes the State Bar to conduct investigations upon the request of the legislative and executive branches of our state government and to make such reports. This is to fill a gap in our disciplinary rules which was brought to our attention during the so-called "parole mill" investigation when the officers and staff of the State Bar were prohibited by our existing rules from giving the Governor progress reports of the investigation being conducted at his request.

The other amendment added by the Supreme Court provides that "after a finding of probable cause by a grievance tribunal or the Board, all evidentiary hearings and subsequent proceedings of grievance tribunals and the Board shall be open to the public, and all decisions or reports rendered therein shall be public documents." It should be pointed out that the evidentiary hearing is not reached until after the complaint has been through four "screening" procedures. For example, before reaching the evidentiary hearing the complaint has been first carefully read and analyzed by the General Counsel. Only those complaints which appear to have possible merit (if proven true) are accepted by the General Counsel.

Secondly, the General Counsel sends the complaints accepted by him to the Board member for the congressional District in which the lawyer complained against resides. This is the second evaluation of the merit of the complaint.

Thirdly, at the next meeting of the full State Disciplinary Board the aforementioned Board member is called upon to report on every complaint which has been referred to him for investigation. If the Board is satisfied with the adequacy of the evidence before it, a vote is taken and the complaint is either dismissed or referred to a grievance tribunal.

Fourthly, if the complaint is referred to a grievance tribunal, this tribunal conducts a preliminary investigation to determine whether probable cause exists for the lodging of a formal complaint. If it is decided that probable cause does not exist, the grievance tribunal recommends to the State Disciplinary Board that the complaint be dismissed. If the grievance tribunal finds that probable cause does exist, the complaint then proceeds to an evidentiary hearing, where under our new rule the proceedings become public for *the first time.*

The Supreme Court feels that these four "screening" steps are sufficient to protect members of the bar from being embarrassed by unjustified or frivolous complaints and are at least equivalent to requiring that a citizen be indicted by a grand jury before being put on trial.

We further are of the firm belief that this new "open" disciplinary procedure is in the best interests of the legal profession. It should serve to meet the charges of secrecy and protectivism which have been leveled at the so-called "learned professions."

My next observation relates to a situation which is not favorable, the case loads confronting our courts and the resulting backlogs. Many causes have been attributed to this, including the population explosion, economic conditions favorable to litigation, statutory provisions for intermediate appeals before final judgment, and new fields of law opened up by statutes and court decisions. I do not believe that it would serve any useful purpose to attempt the recounting and the analysis of the statistical data and observations relating to this situation as to the volume of cases on file and time of disposition. Situations vary from circuit to circuit and statewide figures are not available. I have concluded that appellate data will be sufficient.

Insofar as the Supreme Court is concerned, in 1971 there were 499 appeals docketed and 153 applications for certiorari, making a total of 652 cases; in 1972 there were 543 cases docketed and 154 applications for certiorari totaling 697 cases; and in 1973, 711 cases were docketed and 205 applications for certiorari, totaling 916 cases; and in the Court of Appeals there were 951 cases docketed in 1971; in 1972 there were 928 cases and in 1973 there were 1134. These figures are indicative as to the trial courts.

In spite of this increase, our trial judges are doing their best to cope with the situation. The creation of an additional ten superior court judgeships since June 1972 has had some favorable effects. However, a recurring delay is in completing transcripts of proceedings and evidence, which results from heavy caseloads. The problem is still with us and will continue until some rather drastic measures are taken.

One of the firmest impressions that I have in looking back over the recent past relates to legislation as to procedural and substantive law. I don't believe that we have realized how

profound and sweeping this has been. To me it appears to exceed any other ten-year period in the history of our state. Reference is made here to only a few.

-At the outset, the lawyers are now required to be members of a State Bar which became effective in 1964 and which vitally affected their relationships with courts in many respects.

-In administrative law we have the Georgia Administrative Procedure Act.

-In criminal law there is the Criminal Code of Georgia. The traditional defendant's unsworn statement has been abolished, and as already pointed out, sentences in noncapital felonies are to be by the judge.

-In domestic relations a new ground has been added, Number 13, "The marriage is irretrievably broken."

In evidence the federal rules of civil procedure as to discovery have been adopted.

-In juvenile law a Juvenile Court Code has been enacted.

-In practice and procedure vital and comprehensive changes have occurred in the passage of the Appellate Practice Act. No longer are there bills of exceptions or plaintiffs in error or defendants in error. Furthermore, the Civil Practice Act has completely revamped our trial practice and procedure. Demurrers have gone with the wind. No longer is there a petition which must be construed most strongly against the pleader.

-The age of legal majority has been lowered from 21 to 18, affecting several areas of the law substantially.

-In the area of public law many new environmental acts have been passed, such as those controlling the use and quality of water, pesticides, air purity, litter, surface mining and coastal marshlands.

-Jail standards have been raised; the Drug Abuse and Education Act provides for therapeutic rehabilitation rather than jail sentences; intoxication is no longer a crime; marijuana has been removed from coverage as a "narcotic"; and a new Health Code has been enacted.

-In business law a new Corporation Code, the Professional Corporation Act and the Securities Act of 1973 providing for mandatory registration of securities dealers and salesmen have gone into effect. The Unfair Trade Practices Act has been extensively revamped to expand the scope of the Insurance Commissioner's disciplinary powers by extending the range of unfair trade practices, increasing penalties and introducing new forms of relief.

-Insofar as local government is concerned, the Municipal Home Rule Act of 1965 authorizes municipal governments to adopt ordinances relating to "property, affairs and local government."

-In the fields of federal law there have been many innovations, including civil rights legislation. The Civil Rights Act of 1964 has affected many areas of public and private employment and opened up charges of discrimination because of race, color, religion, national origin and sex. The

Truth in Lending Laws have complicated the closing of loans. The most recent change in the wagehour law will have considerable impact because coverage is extended to employees of state and local governments and to domestics.

These are some of the more obvious and vital changes in legislation. There are many more which you may find interesting and informing.

I would like to think that all of these changes which I have mentioned, administrative and legislative, represent times of progress. They were, I feel sure, intended for the improvement of the administration of justice and for the benefit of the Bench and Bar and all concerned. I would like to believe that they have had a beneficial effect upon the prompt, efficient and just determination of issues.

In all events, they provide responsibilities and responses which both the Bench and Bar must meet. In my view, they have brought about an excellent performance by the Bench and Bar in adjusting to them. It is only natural that there have been some difficulties insofar as interpretation is concerned since there is no chart or compass by way of precedents from any large body of decisional law. But the law will continue to grow in these areas. I am certain that all of these changes will continue to be interesting and challenging to the Bench and Bar. This calls for much pioneering on many new frontiers.

In conclusion, it is my judgment that the State of the Georgia Judiciary is good. With full support by the Bar it should continue to be so.