State of the Georgia Judiciary
Chief Justice H.E. Nichols, Georgia Supreme Court
Message to the 12th Annual Meeting of the State Bar of Georgia
June 5, 1975, in Savannah, Georgia

Since 1971 it has been the duty and privilege of the Chief Justice to make an annual report on the "State of the Judiciary" to the State Bar of Georgia in convention assembled. It is my happy privilege to meet here with you on this occasion and make the report for this year.

As the most representative organization and spokesmen for our profession within the State, the State Bar of Georgia has played the major role on behalf of the profession and the courts before the public and the General Assembly.

CRIME

Significant progress continues to be made in the administration of justice in all courts throughout the judicial system since Chief Justice Grice made his report here twelve months ago.

Crime continues to be the major concern of the citizenry, as it has been since Cain murdered Able, and the administration of the criminal laws remains our most pressing problem. The annual report of the State Crime Commission, as compiled by their crime statistics data center, discloses that homicides recorded in Georgia during the calendar year 1974 showed a reduction over the previous year, but still a homicide occurred in every 10 ½ hours in Georgia during that period. One of the most significant changes to be noted is the obvious spread of crime from the densely populated areas to the more sparsely populated suburban and rural areas. Heretofore, the more acute problems have been more or less confined or restricted to the larger metropolitan areas.

While normally we desire that our statistics reflect a reduction in all crimes being committed, yet there is one major crime which I fear will show a statistical reduction which will not actually exist. This crime will probably increase even at a greater rate than in the past but, unfortunately, will go unreported because of the inability of our law enforcement agencies and the courts to adequately protect the victims of rape from the public revelation of their identities.

This same report of the State Crime Commission continues to show an increase in the total of the seven major crimes each and every year as our population grows.

STATE BAR OF GEORGIA

The State Bar, with Cubbedge Snow, Jr. at its helm, continues, as it has in the past under the former distinguished presidents, to provide excellent leadership to Georgia's legal profession.

A report of the activities and accomplishments of the State Bar has been made in detail by President Snow, and I shall not bore you by repeating or duplicating his report. Suffice it to say during the past year the Supreme Court has had numerous meetings with representatives of the

State Bar and the court feels that the rapport developed at these sessions has been most fruitful and will inure to the benefit of the public, the Bench and the Bar of this State.

At this juncture I would be remiss if I did not make mention of the fact that our most competent and beloved executive secretary, Madrid Williams, has, as most of you know, announced her retirement, and I know I speak the sentiment of the courts, and the entire State Bar in wishing for her the best. "Madrid, we all shall miss you."

TRIAL COURTS

A spot check of the courts of Georgia in the metropolitan, as well as the rural areas, shows, as was previously pointed out with reference to criminal cases in this report, a continued increase with respect to civil matters. But of more importance is the fact that the backlog of pending cases is being dramatically reduced in most areas through the efforts of our trial judges. How long they will be able to do this without additional help remains to be seen. In this connection, I would suggest to any of you trial judges whose caseload continues to expand to the point that you cannot keep abreast, that you ask for additional help before the backlog of cases becomes insurmountable.

COURT REPORTERS

In a recent edition of the *Georgia Courts Journal,* I was pleased to note that 14 new court reporters have been certified under the Georgia Court Reporting Act of 1974. This brings the total of certified reporters in Georgia at the present time to 244. That will, I am sure, contribute immeasurably to the expeditious disposition of contested litigation. Of course, we are all looking forward to the time when space age technology advances court reporting to the point where an appeal will never be delayed pending the preparation of a record by the court reporter.

APPELLATE COURTS

The caseload of the Appellate Courts in Georgia obviously has continued to grow in proportion with that of the trial courts. The following figures vividly demonstrate the tremendous increase in the per judge caseload of our appellate courts in the last 20 years.

In 1954, which was my first year of service on the Court of Appeals, each of the six judges was assigned 65 cases in which to prepare opinions for the court. In 1974 each of the nine judges on the Court of Appeals was assigned 135 cases to write.

In 1966, my first year on the Supreme Court, each Justice was assigned 58 cases in which to prepare opinions. In 1974 each Justice was assigned 97 cases to write, and this does not include applications for certiorari nor extraordinary motions.

In order to properly cope with this tremendous increase in litigation, we have of necessity had to add an additional law assistant for each Judge of the Court of Appeals and for each Justice of the Supreme Court.

OFFICE OF THE COURT REPORTER

A direct by-product of the increased caseload on the appellate courts is the increased number of volumes of the Georgia Supreme Court Reports and the Court of Appeals Reports.

Upon taking office as Chief Justice on January 1 this year, I was confronted with a situation with which you are familiar: The appellate courts had gone through a trying period in getting the reported opinions to you promptly and in producing the bound volumes after publication of the advance sheets. This was caused by two factors. First, the long illness and final disability retirement of our former reporter, and second, the sudden and radical increase in the volume of material produced by the courts, which fell upon the reporter's office just as they were struggling to keep up with a skeleton staff. This caused a snowballing or backlog of material, which they are now catching up.

The increase in volume from the three books a year for both courts which applied only a few years ago to the present five or six volumes was caused by things familiar to you all. We have become a commercial, rather than an agrarian society; we are living in an unsettled economic time, with foreclosures, abortive business plans with resultant contract disputes, mergers, etc. And of course, there is always that monster, crime, which seems to grow apace. Most of these things seem to wind up before an appellate court. Hence, more reports.

Recognizing the problem, we proceeded as rapidly as possible to reorganize the reporter's department to take care of the situation. This in itself could not be done overnight. In setting up a reporter's staff, we bad to select people who had the aptitude for this rather exacting work. A bad or an inaccurate report is worse than no report at all.

We believe that the court reporter's office is now in a position to give you the best service on reports we have ever had. In the advance sheets the report goes to the publisher as soon as it is available for publication. Incidentally, let me remind you that the date of decision is not the available date. Under the law we cannot publish a report until time for rehearing has expired or until motion for rehearing has been disposed of by the courts.

The case, as soon as available, goes forward to the publisher. The publisher tells us that he is attempting to shorten the time for setting copy, which is now three weeks - not really a bad figure when these pamphlets frequently run 100 pages or over. The pages are then proofread, corrected by the court reporter's staff, and published the following week.

As to bound volumes, while this backlog has annoyed all of us, the reporter's people say they are running a "Book-of-the-Month" Club. It took some time to get this rolling, since the reporter had to change his priorities and the publisher had considerable difficulty in rearranging schedules, but we have shipped bound volumes in February, March, April and May, and at the time of preparing these remarks three more books were in the publisher's hands.

We have every expectation of continuing to distribute a copy of the reports every 30 days until the backlog is gone. The reporter informs me that he expects to be working on current volumes by July.

At this point I want to commend the reporter, Mr. Wiley Davis. and his excellent staff for the tremendous job they have done. I personally know they have, since January, burned a lot of midnight oil in order to bring this about.

JUDICIAL QUALIFICATIONS COMMISSION REPORT

The Judicial Qualifications Commission made its annual report to the Supreme Court on May 19, and the Commission's chairman, Holcombe Perry, Jr., has spoken to you on yesterday and told you of the Commission's work since its inception. Again, I shall not bore you by repeating or duplicating what he related in his report to you. The one item I would like to reiterate is the plan of the Supreme Court to sponsor seminars around the State, the dates of which will be announced later, so that all judges covered by the Code of Judicial Conduct will have an opportunity to attend one of these seminars and become fully apprised of the Code of Judicial Conduct and all of its implications. I urge each judicial officer to attend one of these seminars.

BOARD OF BAR EXAMINERS

I could not make this report to you without some reference to our State Board of Bar Examiners. Needless to say, theirs is a thankless job, but a more important one either to the administration of justice or to the applicants themselves is inconceivable. Like the courts, the work of the Bar Examiners has multiplied by leaps and bounds, due, of course, to the increased number of applicants taking the examination, which in turn results from the increased enrollments in the law schools and the attractiveness of Georgia as one of the more desirable locations in which to live and practice law. In February of this year there were more applicants for examinations than for the examinations administered in 1970. We also have a larger percentage of applicants passing the examination than ever before. This is not due to a relaxed examination but to better qualified candidates. The Board which serves without any realistic compensation or recognition deserves the undying gratitude of the public as well as the Bench and Bar. And I take this opportunity to publicly recognize and thank them for their dedicated service.

In December, 1974, at the request of the State Bar, and acting under its inherent power, the Supreme Court abolished comity in Georgia. One of the many reasons this action was taken was the number of applicants for admission who were absolutely unprepared to practice law in Georgia, even though they met the minimum qualifications required.

SENTENCE REVIEW PANEL

On July 1, 1974, the State of Georgia furthered its standing in judicial innovation when the Judge Sentencing Act (Georgia Laws, 1974, p. 352) which clarified the law to provide judge sentencing in all cases except capital punishment cases became effective. A companion measure provided for the review of judge-imposed sentences and thereby created the Superior Courts' Sentence Review Panel and granted the Panel the authority to determine if certain sentences imposed by judges were excessively harsh.

Specific criteria were included in the Act delineating eligibility requirements for applicants for sentence reviews. Basically, the law requires that a sentence or sentences exceed a five-year term

in order to be reviewable.

Being one of only four or five states where such systems of review had been enacted, Georgia closely examined the procedures of those other states.

Anxious to effect an entry into this imminent judicial process, long-range preparation for the panel began in April of 1974, when Judge Robert Culpepper, Jr. (then president of the Council of Superior Court Judges) appointed a rules committee to begin the rules groundwork. Subsequently, judge Harold R. Banke (current president of the Council of Superior Court Judges) appointed the first members of the first Sentence Review Panel of Georgia to serve for the period July 1 through September 30, 1974. This first panel (comprised of Judges Luther Alverson, Chairman; Jefferson L. Davis; James B. O'Connor; and Reid Merritt, Supernumery) met on June 29, 1974, with the previously appointed members of the rules committee to adopt appropriate rules and guidelines.

At this organizational meeting, a clerk was appointed and it was determined that the office of the Panel would be housed with the Administrative Office of the Courts. The rules of the Panel were unanimously approved and the Superior Courts Sentence Review Panel of Georgia officially began operation two days later on July 1, 1974. The clerk mailed copies of the rules to all superior court judges and superior court clerks in the State. Copies were also sent to the District Attorneys Association, the State Bar of Georgia, and various other interested agencies.

Overall, the statistics of the Panel at the end of April this year showed that a total of 233 cases have been docketed; 108 cases have been reviewed; 12 sentences have been reduced; and the cumulative reduction rate of the Panel stands at 11.11%.

Preliminary planning cannot eliminate all incidence of problems, but **one of the most disturbing aspects of the Panel's experience has been the number of attorneys in Georgia who are either unaware of the Sentence Review Panel or who do not know the value of pursuing this opportunity for their clients** [emphasis in original]**.** Attorneys who file applications with the Panel are automatically sent a copy of the rules to assist them in pursuing the reviews. The Panel, however, is vitally interested in getting rules into the hands of those attorneys who have no knowledge of the Sentence Review Panel. A copy of the rules can be received by calling Mrs. Tanner, the clerk to the Panel, at (404) 939-7026. The Panel stands ready to provide information and answer any questions which anyone may have.

Because the Act does not permit oral argument before the Panel, all data supplied must be in written form. The attorneys (or defendants, pro se), the district attorneys, and the sentencing judges are urged to submit arguments and/or memoranda supporting reasons either for or against sentence reduction. Sufficient evidence and documentation is of supreme importance when the Panel considers cases for review. Pre-sentence or post-sentence investigations, prior record of the defendants, and any other reports made available to the Panel shed insight into the scope of the cases under consideration. Without sufficient information, the Panel cannot operate effectively.

The Review Panel is not a "rubber stamp" arm of the judiciary, but a diligent, concerned group of judges seeking to eliminate sentencing injustices.

When the Sentence Review Panel completes its first full year of existence on July 1, 1975, it will be apparent that the State of Georgia and the Sentence Review Panel have made a valuable contribution to the progress of judicial reform. It is a credit to Georgia that our Sentence Review Panel is presently being studied by other states as a model toward similar systems.

COURT-RELATED LEGISLATIVE ENACTMENTS

While every Act passed by the General Assembly affects the practice of law, I feel the following Acts enacted this year are of particular interest to the Bench and the Bar.

1. Act No. 502 provides a new procedure for review of interlocutory appeals in those cases where a certificate of immediate review was formerly required.

2. Act No. 628 revises the procedure for the filing of appeals in prisoner habeas corpus cases.

3. Act No. 513 provides that it is no longer necessary for a taxpayer to pay a tax under protest in order to be entitled to a refund when appropriate.

4. Act No. 705 provides six-person jury trials in cases involving less than $5,000 in damages.

5. Act No. 684 provides for the development and operation of prepaid legal services plans.

6. Act No. 689 provides for affidavit of garnishment to be made before a judge, magistrate or justice of the peace and provides for an immediate hearing as an alternative to the present procedure for dissolving the garnishment.

7. Act No. 501 provides for misdemeanor punishment for the unlawful practice of law.

It is regrettable that the alpha and omega of this report is premised on the same unhappy note, yet I feel compelled to emphasize the fact that crime continues to be the number one problem in the courts and country today and as former Chief Justice Mobley said in his annual report two years ago:

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.

The General Assembly at its last session passed a resolution urging our trial judges to impose stiffer sentences, but stiffer sentences alone is not the answer. Equal treatment under the law is even more important, and I am sure that as more of the superior court judges serve on the

Sentence Review Panel provided for by an Act of the General Assembly adopted in 1974, we will have more uniformity in the sentences being imposed around the State; and if the United States Supreme Court would permit the states to restore the death penalty statutes in this country, or at least, as recommended by the Attorney General of the United States recently in a North Carolina death case argued before that Court, leave the matter of the death penalty statutes up to the individual states, we will, in my opinion, see an immediate and dramatic reduction in criminal activity generally and specifically and particularly in capital felonies. The knowledge of a would-be murderer or rapist that the death penalty statute would be enforced, in my opinion, would be the most effective deterrent to crime imaginable.

In our zeal to protect the constitutional rights of all defendants, which should be done, I am, nevertheless, concerned that the courts may be overlooking the corresponding rights of the victims.