State of the Judiciary
Chief Justice H. E. Nichols, Georgia Supreme Court
Message to the Georgia State Bar Association Meeting
June 3, 1976, in Savannah, Georgia

The judges of Georgia continue to play a large and increasingly critical role in the daily lives of our citizens. Judicial actions, judicial decisions, the results of judicial deliberations have an awesome impact on the basic fabric of our society. Chief Justice Marshall summed it up quite well over 140 years ago when he said: "The Judicial Department comes home in its effects to every man's fireside; it passes on his property, his reputation, his life, indeed his all."

We of the judiciary are, of course, ever mindful of the fact that we are but servants of the people, even as we judge them; that courts exist, not for the convenience of judges, nor to provide a livelihood for lawyers, but solely for the administration of justice for all, be they litigants, victims of crimes, advocates of freedom or parents concerned with the state and country their children will ultimately inherit. We continue to be believers in the doctrine of separation of powers-of governmental checks and balances, in practice as well as in theory. We believe that each of the three coordinate branches of government, to successfully accomplish its function, must work in harmony with the others, if the good government envisaged by the constitutional creation of three branches-the Legislative, the Executive and the Judicial-is to be achieved.

In my first message delivered to the State Bar one year ago, the structure, functions, work and business of our court system were outlined in detail. I shall avoid, albeit reluctantly, further self-service recitation of the glories of our judicial system and the greatness of its judges. Instead I shall report on several matters which merit the attention of the State Bar and which are of considerable importance to our people.

Crime

Unfortunately, crime continues to be the major concern of the citizenry, and the administration of the criminal laws remain our most pressing problem. One year ago today, I called upon the United States Supreme Court to uphold the Georgia death penalty statute as a deterrent to the heinous crimes being inflicted upon the people. My views have not changed and we are still anxiously awaiting the United States Supreme Court decision. Lest there be any doubt in anyone's mind as to whether the death penalty statute will be fairly and impartially administered, or whether the law falls more heavily upon the indigent, let me give you the statistics on the first thirty-two death cases reviewed by the Supreme Court of Georgia after the adoption of Georgia's new death penalty statute in 1973.

Of the first thirty-two cases reviewed where the death penalty was imposed in the trial court, ten were reversed either as to the guilt or the sentencing phase of the trial. In eight of the ten cases where a reversal was obtained, the defendant was represented by appointed counsel and in only two was the defendant represented by retained counsel.

The knowledge of a would-be criminal that the death penalty statute would be enforced, in my opinion, is still the most effective deterrent to crime imaginable. While certain and swift

punishment is necessary to deter crime, it is also necessary that such punishment be administered fairly and evenhandedly, and it was for this reason that the Sentence Review Panels were established.

The jurisdiction of the Sentence Review Panels was increased at the last session of the legislature by reducing the minimum sentence subject to review from five years to three years. This in and of itself is a manifestation that the creation of the sentence review panels was a progressive and salutary step and that the work of the many judges who have served on the panels has been effective.

Federal Funds

In 1968 Congress enacted the Omnibus Crime Control and Safe Streets Act creating the Law Enforcement Assistance Administration. This agency has distributed funds to beef up law enforcement in the streets, but a very small percentage of the funds has been distributed to the courts. The courts have been short-changed insofar as federal funds are concerned. This has been partly due, perhaps, to a misconception or misdefinition of courts so that in administration of the program amounts used in funding nonjudicial projects have been credited as court funding. However, it has been primarily due to reluctance on the part of the judiciary to seek or accept federal funding because of fear of interference or pressure, political entanglements and erosion of independence. I have certainly held this view myself. Many individuals and organizations have been less than happy with the federal funding program and as a result the American Bar Association, the National Conference of Trial Judges and the Conference of Chief Justices have all adopted resolutions expressing dissatisfaction with the program. These resolutions urge that measures be taken so that the funds will be more equitably distributed and the reasons for the fear of accepting the funds be eliminated. Such a measure has been introduced as Senate Bill 3043 and is now pending in Congress.

Publication of Opinions

During the past two years the appellate courts of Georgia have earned the dubious distinction of publishing more opinions per judge than the appellate courts of any other state. If the Supreme Court had not stopped publishing the opinions in the majority of the habeas corpus cases, this figure would have been exceedingly higher. In order to further reduce the number of volumes of reports that lawyers must purchase in order to keep their libraries current, the court has under consideration the adoption of a policy of publishing only those opinions which establish a new rule of law, alter or modify an existing rule, apply an established rule to a novel fact situation, criticize the existing law or resolve an apparent conflict of authority. Also, we would publish any opinion involving a legal issue of continuing public interest. This policy, if adopted, would be in accord with proposed ABA standards and would substantially reduce the cost of maintaining law libraries.

Of course, the decision to publish or not to publish all opinions will in no way reduce the workload of the appellate courts and as always the parties would continue to receive a written opinion in every case.

Appellate Caseload

In the last ten years the number of appellate cases has increased 250 percent and has doubled since 1972. The General Assembly at its last session defeated a proposed amendment to the constitution which would have permitted realignment of the jurisdiction of the two appellate courts. This interchange or swapping of jurisdiction between the two courts, however, would not actually have reduced the burgeoning caseload carried by each judge.

What is the solution and what can be done about it? As I see it, there are two alternatives. The first would be to limit the right of appeal, an alternative not acceptable to anyone. The other alternative is the creation of a new division of the Court of Appeals which would have jurisdiction of all criminal cases, including habeas corpus cases, except those in which the death penalty was imposed. This would afford immediate relief to both appellate courts and would be considerably less expensive to the taxpayers than the establishment of a separate court of criminal appeals. The creation of a separate court would require a separate administrative staff, library facilities, and an additional series of reports. While I envisage the Supreme Court ultimately becoming a certiorari court, yet to afford the immediate relief necessary, the creation of a criminal division of the Court of Appeals is the only present practical solution.

Currently, excluding those days when oral argument is heard and those days which must be devoted to court conferences, the judges of the Court of Appeals must write one opinion each work day and pass on two opinions prepared by their colleagues. The justices of the Supreme Court must prepare one opinion each work day and review six prepared by the other justices. In order to keep abreast with our present caseload, every judge, of necessity, must utilize most of his evenings and weekends studying his colleagues' cases.

Therefore, I call upon the Governor, the General Assembly and the State Bar to immediately take the necessary steps to insure that at the next session of the General Assembly, legislation will be enacted creating a criminal division in the Court of Appeals with jurisdiction of all criminal and habeas corpus appeals, except where the death penalty has or swapping of jurisdiction between the two courts, however, would not actually have reduced the burgeoning caseload carried by each judge.

What is the solution and what can be done about it? As I see it, been imposed; otherwise, I fear the appellate courts of this state will collapse under the ever expanding caseload. If the appellate courts are not given some immediate relief, the citizenry of Georgia will be the victim.