State of the Judiciary
Chief Justice H. E. Nichols, Georgia Supreme Court
Message to the Georgia State Bar Meeting
June 2, 1977, in Savannah, Georgia

Georgia's judiciary and the judges who head up this vital branch of government continue to play a large and critical role in the lives of our citizens. Despite the trends in technology and the changes in our varied ways of life, courts still stand as the bedrock of civilization in the free world. Our judiciary, as it has throughout the history of our country, remains a vital, basic and indispensable part of our everyday lives.

Unfortunately, there are movements which pose serious threats to the status and position of our courts in Georgia as a separate, equal and independent branch of government. I will expound on these matters in detail in a moment. First, I will direct my remarks to several other matters that are of considerable importance to you and the people of Georgia.

**Crime**

I have been advised by the Georgia Bureau of Investigation that the first quarter of this year may show a slight decrease in some categories of major crimes in the state, whereas last year saw an overall increase in the crime rate over 1975 by some 6%. That is bad news, but there is good news. There was a 7% decrease in violent crime, a 3% decrease in murder, 1% decrease in forcible rape, 14% decrease in robbery, and 4% decrease in aggravated assault. Unfortunately, crimes involving the theft of property jumped 16%. As these figures show, crime continues to be a major concern to our citizens and is one of our more pressing problems.

We have had a valid death penalty statute in Georgia since March 28, 1973. It has been held valid by the United States Supreme Court. Since the General Assembly rewrote our death penalty statute following the Furman decision, the Supreme Court of Georgia, through May 16 of this year, has had to wrestle with 47 cases involving the death penalty. The court affirmed 36 of those cases and of these 36, only two have been reversed - then only as to the sentence - by the United States Supreme Court.

Twenty-five times since our current death penalty statute went into effect, defense lawyers have carried cases affirmed by the Supreme Court of Georgia to the United States Supreme Court. The U.S. Supreme Court declined to hear 21, affirmed one, and reversed the two that I have just referred to, and one case is still pending before that court.

When a death penalty case is reversed by The U.S. Supreme Court, it often makes big headlines. But when a case is affirmed or the court declines to hear a case, that news gets scant, if any, attention. Perhaps that is the way it should be. We, of the judiciary and of the bar, should be so able, intelligent, learned, fair and impartial that few cases are ever reversed and when, by chance one is reversed, it should be so unusual that it does create a big stir in the press. I cannot argue with the way the news is played, but the point is that the people sometimes get a one-sided viewpoint.

As you are aware, the death penalty can only be assessed under aggravating circumstances. Each case is weighed most carefully and compared with other cases of like circumstances. There are those who fear that in cases where the defendant is represented by appointed counsel, he will fare less well than the defendant represented by retained counsel. The figures do not indicate this to be the case. In 11 of the 13 cases reversed by the Georgia Supreme Court, the defendant was represented by appointed counsel. This, too, is a tribute to the dedication of attorneys called on to serve at a much lesser compensation than they could ordinarily muster.

It has been my opinion for many years and continues to be my opinion that the death penalty is a deterrent to the heinous crimes inflicted upon our citizens. I truly believe that the knowledge of a would-be criminal that the death penalty would be enforced is still the most effective deterrent to crime imaginable.

**Trial and Appellate Court Caseloads**

The caseloads carried by our trial court judges and appellate courts continue to be heavy. According to statistics, from July 1, 1975 through June 30, 1976, the average superior court judge disposed of 1,500 cases. The figures also show that 21,510 criminal cases went untried for over six months and that 67,072 civil cases were over six months old and waiting to be tried. Unfortunately, I don't have any figures on how many of these cases were being delayed with the consent of the parties. Nevertheless, these figures on the backlog in our courts are appalling and stress the need to continue our efforts to expedite cases through the courts.

Eight new superior court judgeships, 12 new small claims courts, and 2 magistrate's courts were created by the General Assembly at its last session. This should help to relieve the backlog somewhat, but how much impact these additions will make on the backlog of these cases throughout the state remains to be seen.

In the Supreme Court we had total docketings of 1,430 cases in 1976. The court published 742 opinions. This means that each justice was called on to write 106 opinions in addition to participating in the deliberations of the 636 written opinions and 688 other cases where formal opinions were not rendered.

The story is much the same in the Court of Appeals. That court had 1,593 cases docketed last year and wrote some 1,380 opinions.

Last year at this time I noted that the number of cases docketed in the appellate courts had increased 250% in the last 10 years. Cases coming into the Court of Appeals are running about 100 ahead of last year's rate. Some of this increase is the result of the appeals in criminal cases which a lawyer is required to pursue, but whatever became of the old-time lawyer who lost his case in the trial court and then let well enough alone?

**The Third Branch**

The judiciary is often referred to as the third branch of our government. I mentioned in my opening remarks that there are some movements that pose serious threats to our third branch. Let me expound a little.

Our judiciary is, by weight of our state constitution and general concept, a separate but equal branch of the state government. The Georgia Constitution provides: "The legislative, judicial, and executive powers shall forever remain separate and distinct…"

There is now a threat to that concept that, I believe, if left unchecked, will cause a gradual erosion of the judiciary's equal position. That threat is the lack of appropriations by the legislative branch to provide, among other things, salary adjustments for our superior court and appellate court judges. There has been no salary adjustment in four years, although the total budget for the judiciary amounts to about ½ of 1% of the total state budget.

We are already feeling this financial malnutrition. We are losing too many capable judges to the more lucrative private practice of law, not because of a desire to leave the bench, but in order to maintain a standard of living. This is a disheartening turn of events and one which I hope this bar and all local bar associations, as well as civic organizations, will try to stop.

Many of our citizens apparently believe that when state employees are given a cost of living adjustment, the judges fall right in line and receive such increase. This is not so.

Superior court and appellate court judges must support their families on compensation fixed to 1973 standards. During those intervening four years, inflation has pushed the cost of living up some 33%. This means that the buying power of judges has been severely reduced.

I must warn you that if this trend continues, we will not be able to obtain the high quality of judges that the people are entitled to have, that we have had in the past, and will sorely need in the future to run our courts.

The people of Georgia are entitled to the best legal minds to be found to preside in their courts, but if the trend continues too long, our courts will be manned by the inexperienced, the incompetent, and the very rich who seek only whatever prestige the title of "Judge" might bring. I submit to you, and I think you will agree, that a superior court judge or an appellate court judge ought to be compensated at a rate favorably compared to what a reasonably successful lawyer in private practice can earn.

The legislature fixes our salaries. It has held the purse strings tight as far as the judiciary is concerned for the last four years. It is a very disturbing sign that the balance of power and respect among the three supposedly equal branches of our state government is becoming unbalanced.

There are many instances, other than salaries, in which the General Assembly has failed to appropriate enough money for the judicial branch to carry out its responsibilities in an efficient and effective manner, including inadequate budgets for the Judicial Qualifications Commission and other support services.

Law clerks should be provided by the State for each superior court judge in Georgia. Presently some counties provide law clerks for the judges, and the LEAA has funded some positions, but this should be done by the State for *all* superior court judges.

The United States Supreme Court has said that prisoners without counsel should have access to a law library. How many courthouses in Georgia have an adequate library for the use of superior court judges?

The appropriation for the court reporters board was cut at the last session of the General Assembly. The number of examinations to be given in the next year by this board may have to be reduced at a time when we desperately need more qualified court reporters.

**Expanded News Coverage of Our Courts**

In my "State of the Judiciary" message to the General Assembly and the people of Georgia last February, I outlined a proposal aimed at lifting the so-called veil of secrecy from the proceedings in the Supreme Court and moving the court into the 20th Century. In sum, I proposed allowing our proceedings to be televised, broadcast by radio and photographed by newspaper photographers.

We have moved forward with that program. In March a representative group of journalists, broadcast executives and newscasters, still photographers and attorneys knowledgeable in the news communications field was invited by the court to advise the court on how to best accomplish this goal.

Their formal report was adopted by the court almost in toto, and we will begin allowing the televising, broadcasting and photographing of the proceedings just as soon as some technical details can be worked out.

This does not mean that photographers will be given free rein in the Supreme Court courtroom. Attorneys participating in the oral arguments must give their consent in writing before we will allow any television cameraman, radio broadcaster or photographer to set up shop. They will operate from a fixed position, and no noise making cameras or flashing lights will be permitted.

In connection with this move, the Supreme Court amended the judicial canons to allow superior court judges or the Court of Appeals to permit this expanded news coverage if they so desire and they have filed an acceptable plan for such activity with the Supreme Court in advance.

The courts belong to the people and we of the judiciary are but the servants of the people. The courts do not exist simply for the convenience of judges nor to provide a livelihood for lawyers, but solely for the administration of justice for all the people of Georgia.

Consequently, I think we ought to let the people, when and where possible, have a front row seat to the proceedings in our courts. I think this can be done – it is being done in Alabama – without disturbing the decorum and dignity of the courts. The media has sophisticated and advanced equipment which was not available in years past.

**Character and Fitness Board and Board of Bar Examiners**

We now have in Georgia over 10,000 lawyers and more people trying to become lawyers each year. The Supreme Court has the responsibility and has taken the lead in assuring the character

fitness of those persons who seek to become lawyers in this state. We have recently established a seven-member character and fitness board, composed of both attorneys and laymen, which functions under the Office of Bar Admissions. This board is making in-depth investigations of the character and fitness of each person seeking to stand the bar examination. Now there will be more than a mere certification by two attorneys who may have known the applicant possibly only a short time. It will relieve our already overworked superior court judges from their screening responsibilities.

While all services rendered to the profession by attorneys, whether in the American Bar Association, the State Bar, or the local bar, benefit all our citizens, I know of no service which is more beneficial to the people than that performed by the members of this board and the Board of Bar Examiners. No one who is qualified, both morally and educationally, should be excluded from the practice of law whether the ratio of attorneys to population is one to five or one to five hundred thousand. However, those who are not morally fit, regardless of education, should not be admitted, and regardless of how good a person's moral character may be, if he does not possess minimum competence, he should not be admitted to the practice of law. Beyond this, the number of attorneys who are successful in the practice of law will be determined where it should be, in the marketplace.

In conclusion, I again say thank you for the opportunity to make this report-not as a personal report nor as a Supreme Court report-but a report from the Chief Justice of Georgia, the administrative head of the judiciary of this state, speaking of and for the judiciary.

I assure you that I will continue to do my utmost as long as I am Chief Justice to prevent our third branch of government from ever becoming the forgotten branch.