State of the Judiciary
Chief Justice H. E. Nichols, Georgia Supreme Court
Message to the Legislature
February 21, 1977, in Atlanta, Georgia

Mr. Speaker, Lieutenant Governor Miller, Honorable members of the Georgia General Assembly, my fellow Justices and Judges, members of the news media, distinguished guests, ladies and gentlemen:

This is the first time, so far as I am able to ascertain, that the Chief Justice of Georgia has been invited to make a State of the Judiciary address to a joint session of the General Assembly. I am profoundly and eternally grateful for this opportunity.

My gratitude is not limited by the conviction that a report such as this ought to be presented to a joint session on an annual basis, and I sincerely hope that this will become a tradition in order that each of you, who has a significant interest in and responsibility for the successful operation of our judicial system, may be fully informed concerning developments in the courts of Georgia.

Such reports have already become an annual tradition among a majority of our sister states and the favorable response from legislators in those states at least suggests the practice, if continued here, would be most beneficial to you and to the public we both serve.

I sincerely thank our distinguished Speaker of the House who initiated the resolution making this historic "first" possible, and I appreciate the courtesy of the Lieutenant Governor and all of you for attending.

You know, our system of checks and balances dictates that we respect each other's role in government, and this mutual respect weighs heavily at times in our decisions regarding each other. For example, all of us hold George Washington in high esteem not only as the father of our country whose birthday we celebrate today but because he stood there and truthfully told his father he had cut down a cherry tree. And, history tells us George's father was so struck by the lad's honesty that he didn't punish George.

Of course, as a jurist trained to analyze these things, I cannot help but wonder if George's father more deeply respected the fact that when George confessed to the deed, he was standing there with a hatchet in his hand!

That's how our own system of checks and balances works. And, we've got our George too! His veto power is just about the biggest hatchet around.

Of course, I understand Speaker Murphy and the Lieutenant Governor use their big mallets. I'm not going to tell you what I've got under this robe!

Getting back to a more serious vein, across the street we do much more than just decide cases. We also have administrative duties as head of the judicial branch of government. I have long recognized that the Supreme Court is charged with providing leadership to the judicial department; otherwise, the judiciary devolves into fragments, each trying to do what it can to

improve the system but not always acting with the sense of purpose and unity that comes from leadership at the top.

In the past, when closer control was not so essential, the Supreme Court delegated many of its duties. But it is now essential that the Supreme Court directly exercise its authority to make our judicial system work and work well, and I assure you we are now fully providing the leadership to accomplish that purpose.

Our court system has become something of a mystery to the citizens of this state, primarily because in the past we have operated under rules which were adopted to preserve the sanctity of the courtroom during legal proceedings from unwarranted intrusion.

These rules limited public exposure to the legal process, in part, because of our continuing commitment and that of this General Assembly to the principles embodied and embedded in our Bill of Rights. . . That every person is entitled to a remedy in the laws for all injuries or wrongs which he may receive to his person, property and character; that he ought to obtain justice freely and without purchase, completely and without delay, compatible with the laws of the land, and when accused in a criminal proceeding, that he is entitled to a speedy and public trial, fairly administered.

Chief Justice Marshall of the United States Supreme Court once summed it up quite well over 140 years ago when he said: "The judicial department comes home in its effect to every man's fireside; it passes on his property, his reputation, his life, indeed his all."

In this report, I will detail several proposals we are considering to lift the veil of mystery from our judicial system; to open court proceedings to the public eye as never before permitted in this state so that our citizens can gain confidence in the rule of law as a means of resolving disputes. We are reviewing every reasonable alternative to move the legal system into the 20th century even as we review and strengthen the rules under which our judges and attorneys conduct themselves.

Speaking of alternatives reminds me of the man who went to see his doctor because he was losing his hearing. When he returned home, he told everybody the doctor had advised him that if he kept on drinking Georgia moonshine, he would lose his hearing entirely. The family asked him what he had decided to do and the old man answered: "Well, I've thought it all over. I've decided that I like what I've been a drinkin' so much better than what I've been a hearin' that I reckon I'll just keep on a-gettin' deef!"

Now I'm certain that no one in this chamber today faces that old man's alternative, but if he does, I'm sure he'll make a better accommodation.

Judges in Georgia continue to play a large and increasingly critical role in the daily lives of our citizens. We have taken several significant steps to evaluate the manner in which our courts serve the public and to determine the needs of the courts as the response demanded by accelerating caseloads continues to climb unabated.

To assure that all judges conform to the highest ethical standards in presiding over litigants, to act impartially and with detachment in maintaining a proper forum in which disputes are heard,

and to assure that they refrain from conduct reflecting badly upon or inappropriate to their offices, we have adopted a new Code of Judicial Conduct.

Under that Code the Supreme Court has publicly reprimanded two judges for improper activity and we have issued private reprimands as required by our rules for infractions of a less serious nature. Any departure from these rules is serious, however, and the Judicial Qualifications Commission is authorized to review all complaints and take appropriate action, subject to review by the Supreme Court.

Of course, those selected to be judges in the first place should be qualified by experience and legal training to don the judge's robe. A Judicial Nominating Commission has been formed by executive order to compile the histories of those nominated to our state and appellate court systems. This commission will assist in assuring the continued high quality of jurists at every level of court activity.

Last year, we also adopted a most comprehensive and tough set of rules for professional conduct to guide our state's 10,000-plus lawyers. These rules strongly emphasize ethical considerations in attorney-client relationships. They are being administered by the State Disciplinary Board, and I can assure each of you and the lawyers of Georgia that this court is actively directing the implementation of these rules with fairness and firmness. Additional changes have now been proposed in the rules of investigation of complaints so that meritorious claims will be disposed of more quickly. Archaic and inefficient procedures with multiple built-in delays are being eliminated.

There is naturally some reluctance by a few lawyers to whole-heartedly accept these changes, but I know they will all appreciate the end result—and increase in public confidence in the bench and bar.

Our recent experience with these rule changes has been much like that of the Boy Scout who came home totally exhausted from doing his good deed for the day. His mother asked him why he was so tuckered out, and he replied he had assisted an old lady across the street. "But, son, that wouldn't wear you out like this," his mother said. The Scout replied: "That's what you think, mother; she didn't want to go!"

We have also closely examined our procedures for certifying potential lawyers for admission to practice law in the state, and have created, effective April 1, a Board to determine fitness of bar applicants as an arm of the Supreme Court. This Board will inquire into the character and fitness of applicants to practice law in Georgia, guided by specific guidelines and procedures set by this Court.

The number of cases filed in the superior courts, the state courts, and the probate courts continues to rise, even though those courts have disposed of a greater number of cases through good administrative practices. However, in certain judicial circuits, there is an immediate need for additional judges, and I would encourage you to give serious consideration to these needs.

Recently the U. S. Supreme Court rendered an opinion which requires action by this General Assembly. This decision voids search warrants issued by the justices of the peace because those justices received a fee for issuing the warrants, but they did not receive this fee if the warrant

requested was denied. The rationale underlying that decision is that the magistrate may not be a disinterested and unbiased magistrate if the fee is dependent upon his decision. This decision could also affect other judicial actions where the decision rendered in any manner controls the judicial officer's compensation. Legislation should be enacted to ensure unbiased judicial officers in all cases.

The caseloads of the Supreme Court and the Court of Appeals have increased 250 percent during the past ten years. Currently, a rough rule of thumb shows the Judges of the Court of Appeals must write one opinion and pass upon two opinions prepared by their colleagues each workday. This excludes those days when oral argument is heard and those days which must be devoted to judicial conferences.

The Justices of the Supreme Court, acting under similar exclusions for oral argument, conferences, and an increasing number of administrative duties performed in connection with bench and bar activities, must prepare one opinion and review six opinions prepared by other Justices each workday.

I feel certain most of you realize these problems exist, and perhaps these figures will further pin-point the real extent of the problem.

Last year this Assembly wisely, I think, refused to propose a constitutional amendment which would have permitted an annual shuffling of the appellate jurisdiction of the Supreme Court and the Court of Appeals. The mere swapping of appellate jurisdiction does not reduce caseloads.

Last June I proposed one answer to the rising caseload per appellate judge in an address to the State Bar of Georgia. I strongly suggested the creation of a three-judge criminal division for the Court of Appeals and the transfer of all criminal appeals and habeas corpus appeals to that court except in those cases where the death penalty has been imposed. This can now be executed by legislative action under the Constitution. This would not only provide more stability in the judicial treatment of criminal cases in Georgia, but would permit the other judges on the Court of Appeals to spend more time on its civil appeals and reduce the number of applications for certiorari which result from conflicting opinions from the different divisions of that court.

Since that time, a committee appointed by Governor Busbee at my request delivered a report on the Georgia Appellate Court System.

Prior to the filing of that report with the Governor, the Lieutenant Governor and the Speaker, the committee met with each court and each court orally agreed with the committee's recommendations.

Bills to carry out the recommendations of the committee have been prepared. I urge your serious consideration of this package of legislation.

One recommendation suggests transferring appellate jurisdiction of divorce, alimony and child custody cases from the Supreme Court to the Court of Appeals. Tied to this recommendation is one requesting four additional judges for that court, so that it would be composed of 13 judges operating in two divisions en banc—six judges per banc with the Chief Judge serving as a seventh judge on both divisions. Under this recommendation, no separate criminal division

would be created within the Court of Appeals. This recommendation is at variance with my original proposal to create a criminal division for the Court of Appeals, consisting of three additional judges and transferring criminal cases other than death cases to that court.

Incidentally, the recommendation for the creation of the additional judgeships included a proviso that this not be done until space could be made available for offices for the new judges in the same or in an adjoining building so that the court would not be separated. This proviso creates no problem, for space can be made available in the Judicial Building.

The report also includes other matters which equally deserve your serious consideration, but I will elaborate on only one of them.

One of the Bills included in the package removes armed robbery from the category of a capital felony as previously understood, while another amends the Act of 1973, enacted following the Furman decision by the U. S. Supreme Court, which provides for a sentence review by the Supreme Court of Georgia of all death penalties imposed in the superior courts.

Under the standards for sentence review provided by the Act of 1973, any conviction for armed robbery alone would not authorize the death penalty because such a sentence would be disproportionate and excessive to sentences imposed in similar cases. Research discloses that since 1932, only six death penalties have been imposed where the only crime charged was armed robbery, although there have been thousands of convictions for such offenses. Under these companion Bills, armed robbery would be an aggravating circumstance so as to authorize a death sentence for murder, but armed robbery alone, which will not authorize the death penalty, would no longer be classified as a capital felony and would carry a maximum sentence of life imprisonment.

These two Bills, while they do not change the substantive law, should be enacted. In one sense of the word, they are housekeeping Bills but since armed robbery alone cannot constitutionally support a death penalty, it will by statute place appellate jurisdiction in the Court of Appeals and hopefully stop some misguided criminal from thinking the penalty is the same whether or not he kills his victim.

Whether you ladies and gentlemen, in your wisdom, adopt my proposal or that of the committee, with reference to additional judges for the Court of Appeals, I strongly urge that one of them or a combination of the plans be adopted. To fail to do so will, I fear, operate to virtually inundate the appellate courts under an ever-expanding caseload.

I want to thank that committee for their diligent work. Chaired by the now Attorney General of the United States, the Honorable Griffin Bell, the committee was composed of Judge Jack Adams of Cornelia, Frank Jones of Macon, Alan Rothschild of Columbus and Oscar Smith of Rome.

Earlier I told you that the Supreme Court is reviewing every reasonable alternative to move the legal system of Georgia into the 20th century. These alternatives are needed to raise the public's appreciation for and understanding of our court system, by letting them see how it works on a regular basis. The court feels they will find it works well even under heavy caseloads.

In addition, the Supreme Court feels the adversary system needs exposure to be understood. With understanding, a better appreciation of the role of attorneys and the courts in the legal system will result.

Therefore, beginning immediately and under circumstances where the parties to the action consent, the court will take the necessary steps to permit, on an experimental basis, broadcasting, televising, recording and the taking of photographs in the Supreme Court of Georgia. The court will ask media representatives to serve on an advisory committee to consult with the court in determining appropriate means of introducing cameras into the courtroom without disturbing the traditional solemnity and dignity of the proceedings.

Colorado has permitted photography during trials since 1956 with good results. Alabama now permits such broadcasting, televising, recording and photographing in their appellate courts. The State of Washington now permits the use of cameras and recording equipment under certain rules.

The court proposes to begin slowly and carefully to evaluate the availability of sophisticated equipment and techniques under procedures which will not degrade the court or interfere with the achievements of a fair trial.

I know there are arguments, pro and con, concerning this matter. Those arguments will be heard in a special hearing to be set at a future date. But a courtroom that is closed to part of the news media limits the opportunity of the public to be informed about court proceedings and is a constant obstacle to good bench, bar and news media relations.

In addition, the active participation of the public in the legal process will be immeasurably extended, permitting many opportunities for building respect for the law, the orders of our courts and the legal system.

No coverage will be permitted in the trial courts for the present time until procedures agreed upon by media representatives and this court have been thoroughly analyzed and tested. Some of the areas the court will ask the media advisory committee to review with us will include advice upon the types of equipment to use; establishing "pool" techniques, for covering trials of unusual public interest; suggestions for setting standards of conduct and dress the media will adopt, in order to maintain the dignity of the proceedings, while not unduly prohibiting media representatives from entering, setting up and leaving court proceedings.

The court is also considering procedures for disseminating opinions immediately following our "en banc" sessions to the media. Many of these opinions have broad application throughout the state. This treatment should improve public awareness of the opinion and increase the accuracy of legal reporting.

Recently we issued an opinion that a governmental agency cannot constitutionally establish regulations which, when violated, constitute a crime and that the authority to issue such regulations may not be delegated to that agency by the General Assembly under our present Constitution.

This opinion was published several weeks following its release by the Supreme Court as one "little noticed" and apparently catching the Game and Fish Department completely unaware, according to their public statements, thus seriously threatening the game and fish resources of this state. An arrest by that department's enforcement agents, under the challenged regulations, initiated this action which was brought to us on appeal. Certainly, that department was kept informed of the legal developments in the case; however, a prompt dissemination of such opinions in the future should clearly set forth the very important constitutional questions involved so that this body can resolve any problems arising through legislative action.

It is suggested that if any agency of government wants to establish regulations, the violations of which will constitute a crime, then that agency must come before this body and ask for them where all the parties interested may thoroughly present their views in support of or in derogation of such proposed rulemaking. The General Assembly is the only body which can establish criminal statutes under our Constitution.

We of the Judiciary are 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 or attorneys 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.

Judicial decisions have an awesome impact upon the fabric of our society as do the actions of the Governor and the General Assembly. That is why it has been so important for me to come here today representing one of the three coordinate branches of government to renew a dialogue with you which time and growth in government at all levels has prevented.

Down the hall from where we sit, you now meet to consider appropriations and other measures in what was once the courtroom for the Supreme Court and the Court of Appeals. In those days, we were under the same roof and were available to you for informal conversation and many assemblymen stopped by en route to their offices or to committee meetings to discuss matters of concern to them. As a government of checks and balances which worked well in practice as well as in theory, we often disagreed, but we knew we had to work together in harmony if the system of government was to work well.

As the only member of the present Supreme Court or Court of Appeals who served when our courtroom was down the hall, I now come to you today in that spirit of harmony which the people of Georgia expect from us. The need for harmony and for direct communication between us has never been greater. This historic event at least, as far as I am concerned, marks a new beginning between our three branches of government.

Because of my unswerving belief that our system of government is the noblest, the grandest and the greatest system of government ever conceived by mind of man and for the great honor you have bestowed upon me in inviting me to come here today and address you in Joint Session and, of course, for your kind attention, I thank you from the depth of my being.