State of the Judiciary
Chief Justice H. E. Nichols, Georgia Supreme Court
Message to the Annual Meeting of the State Bar of Georgia
June 7, 1979, in Savannah, Georgia

Crime

When I spoke with you last year, I reported that crime continued to be one of the gravest problems facing the nation. Unhappily, the situation has not changed in the intervening 12 months.

Permit me to mention briefly a few statistics concerning the growth of crime, one of the root causes of the burden on our judicial system.

According to figures from the Federal Bureau of Investigation, a theft took place somewhere in America during the time that it took me to utter this sentence. One happens every five seconds. Every 10 seconds a burglary takes place. Every 33 seconds an automobile is stolen. Every 78 seconds a robbery is committed. A homicide occurs every 27 minutes.

Those are the figures for the entire country. The figures are equally depressing for the State of Georgia. A murder is committed every 14.8 hours in Georgia. A woman is raped every 5.6 hours. There is a robbery every 72 minutes and an aggravated assault every 41 minutes. There is a simple theft every five minutes in Georgia and a burglary every seven minutes. A thief steals an automobile every half-hour in this state.

The figures point to a startling fact that a crime of some sort takes place every two and one-half minutes in our fair State, and a crime of violence takes place every 24 minutes.

Our citizens, our law enforcement agencies, and our courts are concerned with crime in Georgia. A recent survey conducted for the State Crime Commission by the Institute of Government at the University of Georgia showed that 44 percent of the citizens polled said they are afraid of becoming victims of crime. This concern is real because one in every 23 Georgians *will* become the victim of a crime this year.

One of the concerns of our citizens arises from the perception that our courts are unable to deal effectively with crime. Because of the seemingly endless appeals that are available to those convicted of serious crimes - at least 11 different appeal procedures for those convicted of murder - our citizens perceive that our criminal justice system simply is unable to put a stamp of finality on a jury's verdict. The end result is a lowering of confidence that our citizens have in our system of justice.

United Appeal Procedures

Last year I outlined to this bench and bar convention a unified appeal procedure, which, in my opinion, would go far in reducing the six or eight years of appeal procedures that are now

available, without depriving any defendant of his rights under the laws and constitutions of Georgia and the United States.

We are making progress in this area. In fact, now we have a national audience. The Conference of Chief Justices of the United States has adopted a resolution supporting our proposed unified appeal procedure and has called for an in-depth study of its feasibility. A report on that study is to be made late this summer. Additionally, members of the United States Senate have expressed interest in such a procedure, possibly toward studying its adaptability in the federal judiciary.

At the mid-winter meeting of the Conference of Chief Justices, we presented a complete set of proposed rules for such a procedure. I shall make no attempt at a comprehensive report on these proposed rules. They are patterned after the outline presented to you last year. But briefly stated, the unified appeal procedure calls for a post-trial hearing within a few days after a jury's guilty verdict. At that hearing the trial judge would explore every known issue that now is being used as the basis for piecemeal habeas corpus appeals that follow a conviction for months and years on end.

A record would be made of that hearing which would be included in one package with the trial transcript and record that would reach the appellate court. Thus, we would be able to review in the original appeal issues that now come up long after the original appeal has been reviewed by the Supreme Court of Georgia and the United States Supreme Court.

We have said many times, and I repeat it again now, that we are not attempting to do away with the writ of habeas corpus. What we hope to do is to reduce the grounds for many of the habeas corpus appeals by dealing with those issues at the onset.

This procedure will benefit the defendant as well as society since a defendant who is entitled to have his conviction reversed or set aside will be able to receive that relief promptly.

With a thorough and complete search of all collateral issues, in addition to the painstaking review of the transcript and original record we now make, we believe that the federal judiciary, mindful of the exhaustive review in the state courts, will be less inclined to review those issues. We also believe that the unified appeal procedure will go a long way in resolving the number of appeals that now clog our courts, as well as restoring and enhancing the confidence of our citizens.

Trial Transcription

In all of our efforts to improve our judiciary and our system of justice, there must be a corresponding effort to expedite the movement of trial court transcripts and records to the appellate courts. Without such an improvement, other efforts toward increasing the efficiency of our judicial system will have diminishing effects.

In my opinion, 60 days is ample time for a transcript to be completed in *all cases.*

In this enlightened period, we must all agree that it is ridiculous that in several cases in recent

years, it has taken 18 months to four years after the end of all trial court proceedings before the records reached the appellate courts for review.

Such a time lag is inexcusable. In all candor, the Supreme Court must share in the blame for such laxity. However, it should be explained that once the record is completed in the Supreme Court, there have been no unusual delays in issuing opinions. The median time in those cases argued before the Supreme Court has been 50 days from the date the case was scheduled for argument to the written opinion. The median time has been even shorter for those cases submitted on briefs only.

The Court now has taken positive steps to get the records to the Supreme Court. Under Rule 38 of the new practice rules adopted by the Court in early May, the Supreme Court will be monitoring all appeal cases designated to reach the Supreme Court. This will be done simply by having a copy of the notice of appeal, and the notice of cross-appeal, if there is one, filed with the clerk of the Supreme Court at the same time the original notice is filed in the trial court.

Many of our circuits, blessed with diligent judicial overview and top-flight court reporters, have experienced no difficulty in getting the records to the appellate courts. Other circuits, where experienced court reporters are in short supply, should be aware of new methods of transcribing trial proceedings to overcome these handicaps.

Permit me to say, and I want to be understood thoroughly, that we have no preference to any accepted method of court transcription, whether it be by short-hand, stenotype, stenomask, or by electronic device. Our sole interest lies in the end result that is, in getting the record on appeal transcribed within the 60- day time frame. We owe this to our citizens, our judges, our attorneys, our defendants, and our litigants.

However, for those circuits that have difficulty in processing their appeal records, there are methods that they may wish to explore. I have had the opportunity to attend seminars recently in which demonstrations were made of four-track tape recording devices designed especially for courtroom use. They have been installed in the courts of other states and have proven to be quite effective. At least four trial judges in Georgia are experimenting with this method.

Recently a trial judge in Georgia wrote a report that outlined simple procedures in trial transcription that could save considerable time and money and yet make a tremendous improvement. It mentions this report briefly, not in any way as an endorsement, but for its thought-provoking value.

This particular trial judge began with the basic problem - that is, the greatest part of all court transcription is meaningless. I suppose that not many of us on the bench or the trial lawyers among you had given much thought to the truth of that statement before now. Except in the more serious of criminal cases, it is a great truth. Most of all court transcription is meaningless. The final result of a full trial transcript is a bulky document which the trial judge described in his report as a carload of gold ore-- useless in bulk and valuable only to the tiny fraction of its mass.

The trial judge's suggested answer would be to tape record all proceedings, using the new four-track machines. When the trial is concluded, each side would be given a set of the tapes with the original tape kept by the court. Then the parties could transcribe only as much of the proceedings as each deems necessary to present issues on appeal. Such a procedure could eliminate a great bulk of unneeded transcription.

As I noted earlier, such a procedure would not work in those cases in which a full transcript is mandated. It could work well in other cases, however.

I want to repeat that while we have been impressed considerably by the performances of these new electronic machines, we are not wedded to any particular system of court reporting. What we must have is a shorter time lag in getting the records before the appellate courts. A 60-day time frame is reasonable. If that deadline can be met, it doesn't matter whether the transcription is done by four-track, stenotype, stenomask, or short-hand.

During my early legal career, I myself served as an official court reporter, using both short-hand and stenotype. I am fully aware that there is no magic in getting out a transcript. It is hard, tedious work. But I know that deadlines can be met.

New Rules

On May 1, as I mentioned earlier, the Supreme Court adopted a set of new rules governing practice in our Court. In addition to the provision which will allow the Court to monitor the movement of all appeals coming to the Court, several other important changes have been made.

Included among these changes is one that will allow the Court to affirm without opinion many of the cases it is asked to review. This will happen when one or more of the following circumstances exists: (1) when the evidence supports the judgment; (2) when no error of law appears and an opinion would have no precedential value; and (3) when the judgment of the lower court adequately explains the decision.

Also we have changed the rule as to oral arguments. That rule specifies that all direct appeals involving the death penalty will be placed on the calendar automatically as they are now. Granted certioraris also will be placed on the calendar automatically unless disposed of summarily by the Court.

Domestic relations cases, including contempt, landline disputes, and habeas corpus cases will not be placed on the calendar except upon motion and at the direction of the Court. Other cases will be placed on the calendar upon the request of either party within 20 days from the date the case is docketed in the Supreme Court. Such requests shall certify that the opposite party has been notified of the intention to argue the case orally and that inquiry has been made of his opponent whether he intends also to argue orally.

The rules also trim the size of briefs both in length and paper size. Briefs of all parties shall be limited to 30 pages except by special permission of the Court. The paper size has been reduced to

letter size, 8 1/2 inches by 11 inches. The briefs must be typed or printed and at least double-spaced.

The new rules are printed in the bound volume of 242 Georgia Reports and will be available also at the clerk's office. They are effective as of August 1, 1979. You should know that the Court at any time will entertain suggestions for further improvement.

The Supreme Court and the Court of Appeals are working together to coordinate the practice rules of the two courts. I might add that, to my personal knowledge, the relationship between the two courts is more harmonious today than it ever has been.

One of the purposes of the new rules is to help deal with the ever-increasing appellate caseload. The Supreme Court remains near the top as the busiest state court of last resort in the nation. In the judicial year ending last September 1, the Court issued 760 formal opinions on 1,530 matters that required the Court's judicial attention. As a matter of pardonable pride, I would like to add that in the 483 opinions which affirmed the trial courts, 87 percent were by unanimous judgments.

Statistics compiled by the Judicial Council show that for the fiscal year 1978, the percentages of cases disposed of by our superior courts have increased. Rounding out the figures, there were more than 110,000 civil cases filed in the superior courts in 1978. More than 103,000 were disposed of, giving those courts a 93 percent disposition rate for the year, compared to an 86 per-cent disposition rate for 1977.

There were more than 74,000 criminal counts arising in our superior courts for the year with more than 70,000 disposed of, for a disposition rate of 95 percent, compared to 92 percent for 1977. Civil case filings increased by six percent, and criminal counts increased by seven percent for the year.

Because of the carry-over of cases on the dockets, a true balancing out of the disposition in any fiscal year of the cases that come into the courts during the same year can never be attained. Nevertheless, statistics do show that our superior courts have been effective in dealing with an ever increasing caseload.

I offer my congratulations to our trial court judges for an enviable record, not only in the correctness of their rulings exhibited in the low reversal rate shown by Supreme Court statistics, but also in the number of cases they are bringing to a conclusion.

Television in the Courtroom

The beginning of the upcoming September term will mark the start of the third year in which television and radio news coverage has been permitted in the Supreme Court of Georgia and in those trial courts of this state in which plans have been approved. This project has proceeded smoothly. Georgia was the fifth state in the nation to let down the barriers to the electronic media. According to a survey by the National Center for State Courts, now there are 22 states

that have adopted various plans and procedures for permitting electronic news coverage of court proceedings.

On April 12 of this year, the Supreme Court of Florida issued a decision, making that state the first in the nation to allow television, radio and news photography on a permanent basis into virtually all courtrooms without the prior consent of attorneys and parties. The electronic media in Florida operates under strict standards designed to protect the rights of all persons involved and to insure the dignity and decor- um of the court.

We plan to continue our project under the same rules that we adopted on September 1, 1977. We have learned that the television news crews don't turn out just for the novelty of being in the courtroom. But when an important case is being argued, they are there. For instance, when oral arguments were held in the Supreme Court last winter on the constitutional challenge the one percent local option sales tax, not only did the commercial television and radio broadcasters turn out, but the Georgia educational network carried the full debate to households all over Georgia.

We began the experiment on the theory that we should permit the use of all media tools, where practicable, in efforts to keep our citizens informed about proceedings in their courts.

Last August the Conference of Chief Justices of the United States overwhelmingly adopted a resolution favoring electronic news coverage in state courts. We believe that such news coverage soon will be commonplace in all of the state courts of this nation.

Conclusion

I should like to conclude this report on a high note of optimism. The state of the judiciary is good. The judiciary is functioning, and it is functioning well. However, it could function better.

We have made much progress worthy of review. The Judicial Qualifications Commission was created and charged with the disciplining of the judiciary. Programs of judicial education have been developed.

The Judicial Council came into being and has provided direction and planning for solving many of the administrative problems facing the courts.

A character fitness board was created to examine closely the integrity of those seeking to become attorneys in this state. Improvements also have been made in the educational requirements for our aspiring attorneys through newly approved rules in the operation of our law schools.

A sentence review panel has been established to provide for additional review by trial court judges of sentences in excess of five years in an effort to make sentences more equitable and to preserve the fairness of our judicial system.

Yet there is much progress to be made. Our judicial system is still laboring under archaic structures. We have too many courts with overlapping jurisdictions. We must look now for ways of meeting our responsibilities of the future.

Georgia's population growth has been tremendous during this decade as the result of the migration of those who have discovered the potentials of the Sun Belt. A projection by the State Data Center of the Office of Planning and Budget to the year 2010 puts our population estimate at nearly 10 million persons. A recent report shows that only Florida, California, Texas, Arizona and Virginia outgrew Georgia during the first three-quarters of this decade.

This growth in humanity, coupled with the explosion of litigation, puts increasing burdens upon our judiciary. These burdens must be met.

The need for a revision of our state constitution containing a new judicial article to attain the maximum efficiency of our courts has been acknowledged by our governor in his address last month to the Governor's Conference on Criminal Justice. As most of you are aware, a commission has been established for that purpose. Agreement has been reached on many aspects of a new judicial system, but much work remains.

To draw up and implement a new judicial article that improves our judicial system and insures its independence as a viable, third branch of government will entail a high degree of cooperation between you of the bench and bar and those of the General Assembly, cognizant of the needs of our judiciary. I feel confident that we can meet this challenge. I also feel confident that we can and will remold our judicial system to meet the demands of a growing and noncomplacent society.

President Woodrow Wilson once said that a society is as good as its courts - no better and no worse. It is important then to strive for an improvement in our judiciary if society truly reflects the efficiency and integrity of our courts. We must make the effort.

I leave you with this bit of philosophy expressed by Oliver Wendell Holmes: "The great thing in this world is not so much where we stand, as in what direction we are moving. To reach the port of heaven, we must sail sometimes with the wind and sometimes against it. But sail, we must, and not drift, nor lie at anchor."

Let us not drift, nor lie at anchor.