State of the Judiciary
Chief Justice Harold N. Hill Jr., Georgia Supreme Court
Message to the Georgia State Bar Meeting
June 14, 1985, in Savannah, Georgia

This is the third occasion you have honored me and the judiciary of this state by inviting me to address you on the State of the Judiciary. While I would like to take this opportunity to thank those volunteers who assist the courts in administering the judicial system: the Bar Examiners, the members of the Fitness Board, the Disciplinary Board, and many many others – I will ask them to permit me to address three other matters: One completed, one in progress, and one which needs your attention.

Uniform Rules

First, the one completed, although refinements remain to be made – Uniform Rules. I became Chief Justice on November 1, 1982. That was a Monday. I remember it well, because of the honor, and also because the next day a general election was to be held to vote on, among other things, a proposed new constitution. I was suddenly tempted to vote against it because of its "uniform rules" provision and the turmoil it conceivably could create.

As you know, the proposed constitution declared that there would be five classes of trial courts: superior, state, juvenile, probate and magistrate. And Article 6, Section 9, Paragraph 1 of the proposal stated that "Not more than 24 months after the effective date hereof, and from time to time thereafter by amendment, the Supreme Court shall, with the advice and consent of the council of the affected class or classes of trial courts, by order adopt and publish uniform court rules and record-keeping rules which shall provide for the speedy, efficient, and inexpensive resolution of disputes and prosecutions."

Well, the new constitution was approved by the voters. And the work of drafting uniform trial court rules began in March, 1983. Now, two and a quarter years later, although not everyone is completely happy with them, I am happy to say that my apprehensions were not realized. There has been disagreement but not turmoil.

When I asked the drafting committees to consider not only the constitutionally required horizontal uniformity within each class of trial court, but also as much vertical uniformity between all classes of trial courts as possible, I thought to myself that we would be hard put to achieve even a minimum of horizontal uniformity, and significant vertical uniformity would be unlikely. Happily, I was wrong.

Uniform rules for all five classes of trial courts have been approved by the Supreme Court. All go into effect July first. A great deal of vertical uniformity was achieved by people foregoing personal preference in favor of uniformity. To their great credit, the state court judges adopted the superior court rules almost in toto. Moreover, the rules are not just bare simplistic essentials upon which agreement could be reached. Many compromises were achieved and the rules are comprehensive.

These uniform rules mark the beginning of a new era in trial court practice in Georgia. For the first time in their histories the five classes of trial courts will be operating under uniform rules. The two years allowed by the constitution are almost up – and they have been years marked by the joint efforts of the bench and bar in a significant achievement. The drafting committees particularly deserve our gratitude.

The drafts were circulated extensively. All were distributed to the State Bar and to other interested statewide and local bar organizations. Every effort was made to obtain and consider relevant opinions. This process was not perfunctory. The Bar responded, often with detailed analyses and well-considered suggestions, as did other court officers and concerned individuals. A public hearing was held. All suggestions were considered and many were adopted. And, of course, the process is ongoing. One of the several benefits of rules is that they can be tried and modified.

While much remains to be done, much has been accomplished. The rules will unify the courts of our 159 counties in a manner heretofore not imagined. Attorneys who practice in numerous courts are no longer faced with myriad local rules, some unwritten. Judges who are "borrowed" for service by courts other than their own know the rules of the borrowing court before they arrive. Problem areas can be identified early, and corrected statewide before the problem becomes statewide.

The rules reflect the unstinting work of the drafting committees for each class of trial court. The significance of their effort cannot be overstated. These rules also reflect the work and thought of members of the State Bar and numerous other associations of officials, attorneys and judicial personnel to whom preliminary drafts were circulated for comment. But the greatest credit goes to the trial judges. Up to now each trial judge has had his or her own uniform rules within his or her own jurisdiction, nothing new to learn, and easily amended as the occasion has demanded. It is our trial judges who have made these uniform rules what they are.

The final product is then, to a great extent, a joint product of the judiciary and the bar, which is as it should be, since it will have its greatest impact on those two groups. Their efforts have been successful. Although these rules are just a beginning, they are a fine beginning; one of which I feel we can and will be proud.

Process Review Commission

Now let us turn briefly to the work in progress. The Governor's Judicial Process Review Commission met two weeks ago to receive the reports of its three committees. Numerous significant proposals have been made to the full Commission, which has them under consideration until after public hearings to be held in July.

Among other things, the committees have proposed that all judges be full time and that non-partisan elections be extended to all elected judges, that our trial court structure be reorganized, that court reporting services be improved by automation, that indigent defense be state funded, that less than unanimous verdicts be authorized in civil cases, that circuit wide juries be authorized in felony cases, that the "one day, one trial" concept of jury service be expanded, that de novo appeals be abolished, that the jurisdiction of the Supreme Court be narrowed and the

size of the Court of Appeals be in- creased, and that the number of preemptory jury challenges in criminal cases be reduced. As you can foresee, some of these proposals are not without controversy.

Shortly, the State Bar and other interested organizations will receive copies of the committees' proposals for comments, suggestions and criticism, before the full commission acts upon them. We invite input from the State Bar. And Jule, although the time allowed will be short, we cannot grant motions for extension of time. The Commission itself is under a deadline from the General Assembly and I ask the Board of Governors to be prepared to respond promptly.

Cost and Delay Reduction

As you can tell, the Governor's Commission is recommending some steps to reduce cost and delay in the courts, which brings me to the matter which needs your attention.

But first let me read an article that appeared a few years ago in *the Jerusalem Post* and was reprinted in one of the state bar journals. While the scene is laid in Israel, it illustrates the problem. The article is entitled, "What You Need is a Really Good Lawyer," and reads as follows:

> "Ten years ago I loaned Billitzer 20 pounds. He promised to return it within a day. When he didn't, I phoned him and he asked for a week's grace. After a week I went to see him and demanded my money back. He promised to pay it by Monday noon. He didn't!
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> "So on Thursday evening I consulted a lawyer and he sent Billitzer notice that 'due steps will be taken in default of claim being met within 72 hours after receipt of this communication!' No reply came within a period of two months, after which the lawyer said there was nothing more he could do, as Billitzer refused to pay.
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> "I placed the case in the hands of a better lawyer. We sued Billitzer. The hearing was all set to go five months later, but Billitzer didn't show up be- cause of illness. The hearing was therefore adjourned to a date the next year. It didn't take place then either, because by this time Billitzer had gone abroad.
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> "I waited 18 months and as he hadn't come back, I went to another quite well-known lawyer. He tried to reopen the proceedings, but the judge refused to conduct the case in the absence of the defendant.
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> "We appealed to a higher court. It rejected the case in accordance with the regulation that a court of that level does not handle claims involving less than 50 pounds. So we waited a year for Billitzer to come back from abroad, and when he did I sent him another 30 pounds to raise the debt to around 50. Now the higher court did accept our case and ordered the lower court to conduct the hearing in the defendant's absence. However, since the defendant wasn't *in absentia* because Billitzer had meanwhile returned from abroad, the hearing was adjourned pending clarification.
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> "I then hired an even better known lawyer and we petitioned the Supreme Court for a *decree nisi* calling upon the Minister of Justice to show cause why I shouldn't have my

> money back from Billitzer. The Minister of Justice said I should apply to the courts. Therefore we renewed the proceedings, but they were adjourned because Billitzer asked for an adjournment.
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> "I then went to the biggest lawyer in Israel and told him my story. He listened attentively and suggested I go to Billitzer and beat him up. So I went to Billitzer and beat him up. He gave me my 50 pounds in cash right away.
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> "It sometimes pays to consult a really good lawyer."

We laugh at ourselves, and the public laughs, but for a different reason.

Let me paraphrase some remarks of newsman and lawyer Fred Graham of CBS news in his law day speech a few weeks ago. The legal system has become so complex, time consuming and expensive that the parties cannot afford to vindicate their rights, as illustrated by General Westmoreland's libel case which ended without legal vindication for either party and where the legal fees totaled perhaps eight million dollars.

There is talk in Congress and among legal experts of new statutes to create alternatives to libel suits, with streamlined procedures. This is simply one manifestation of a process that is beginning to happen across the board as, in Mr. Graham's words: "Society chafes under the increasing burden of the cost of settling its disputes." This process is seen in the spread of no-fault auto insurance, products liability legislation, asbestos mediation panels, and mandatory arbitration laws, according to Mr. Graham.

I say to you that what the courts feared when arbitration was first judicially restricted is now coming to pass, and judges and lawyers, admitting that our system cannot cope with the caseload, are now supporting the movement of cases out of the courts. Organized interests are removing their disputes from the court system, rather than joining together to improve that system. Unless something is done, the judicial system will end up being only criminal courts and possibly domestic relations courts. And there is even a movement to relegate domestic relations cases to mediation.

There is no simple solution to the problem of costs and delay. Yet, we must declare war on costs and delay, or the public will declare war on us, and the public has already begun to mobilize its forces.

President Fitzpatrick has appointed a cost and delay committee chaired by past president Bo Bradley. Your incoming president, Jule Felton, has stated he intends to continue to seek solutions to these problems. I urge you to support their efforts. More importantly I urge you to commence your own battle against costs and delay. For example, forego at least one set of interrogatories, one deposition and one motion for continuance this next year. I would ask you to forgo two continuances, but I am going to ask the judges to battle this problem also.

Thank you for your support as we work to save our system, and thank you for allowing me to appear here today.