State of the Judiciary
Chief Justice Thomas O. Marshall, Georgia Supreme Court
Message to the Georgia State Bar Meeting
June 13, 1986, in Savannah, Georgia

Today marks the 16th consecutive year that this forum has asked the Chief Justice of the Supreme Court of Georgia to report on the state of the judiciary. When I was here last year I did not expect to be making the report to you today. Nor did I have any idea my initial report would fall upon a Friday the 13th. Let us hope that the date does not carry with it any ominous significance.

Former Chief Justice Harold Hill reported to you last year. As most of you know, he has left the Court to return to private practice. I wish to acknowledge and recognize him for his outstanding leadership and accomplishments in the three and one half years he headed the Court and the judiciary of Georgia.

It is in large measure the tireless work that Chief Justice Hill performed during his tenure that permits me to report to you today on the excellent state of the judiciary in Georgia. This is not meant to say that the judiciary has now become the perfect third branch of government. We still have some distances to travel, some hills to climb.

But it should be said that Chief Justice Hill has carried the judiciary forward with the considerable energy he expended on the numerous projects designed to improve the judiciary – on such projects as the Governor's Judicial Process Review Commission, the work with the Judicial Council and the councils of the various courts, with the bar examiners and bar fitness boards and with various projects in the bar itself.

I also at this time thank all of the many volunteers who have helped move the judiciary and legal profession forward during the past few years. Without that dedicated help we could not have made the progress we have achieved.

It is an honor and a privilege to bring you this report, which, by necessity, must be curtailed to include only the highlights.

Uniform Rules

I would venture that no other subject has caused more attention among our trial judges and litigation attorneys in the last year or so than the uniform rules, which, for the first time, seek to bring some degree of uniformity in procedure among our various classes of courts.

Under the authority of the Constitution of 1983, the uniform rules went into effect for the Superior and State Courts on July 1, 1985, and subsequently for the Probate Courts, Juvenile Courts and the newly created Magistrate Courts.

Under the Constitution's authority, found in Sec. IX of Art. VI, the Supreme Court, with the advice and consent of the council of affected classes of courts, shall – "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. Each council shall be comprised of all of the judges of the courts of that class."

It is hoped that by now most who are affected by the uniform rules – lawyers, judges, clerks and all of our support personnel – understand the nature of the uniform rules.

These rules do not presume to alter any substantive laws governing procedures such as the Civil Practice Act or the various statutory enactments or constitutional safeguards.

The Supreme Court earlier this year proposed an insertion into the preamble to the Uniform Rules of the Superior Courts to read – "It is not the intention, nor shall it be the effect of the rules to conflict with the Constitution or substantive law, either per se or in individual actions, and these rules shall be so construed and in case of conflict shall yield to substantive law."

It also shall be pointed out that the rules, as adopted, do provide for some flexibility in dealing with local problems as they may arise. So far there have been no changes in the Superior or State Court rules as they went into effect last July.

There have been some changes in the Probate Court rules to conform with legislation. Those changes deal with the form of petitions in probating wills in solemn form, letters of administration, orders declaring no administration necessary and applications for 12 months support. Those changes were proposed by the Council of Probate Judges and will be effective on July 1 of this year.

As the report of the Governor's Judicial Process Review Commission has pointed out, many of the routine things done in courts have resulted from tradition, the way it was always done. There is always some reluctance to move from the known and comfortable and into the unknown. But, as time passes, we think all of you will agree that the adoption of the uniform rules has become a really significant and worthwhile move. I am confident that we will all profit from this uniformity.

Governor's Judicial Process Review Commission

At this forum three years ago, Chief Justice Hill proposed that a Governor's Judicial Process Review Commission be created to help guide improvements for the judiciary for the years to come. That Commission was created by Governor Joe Frank Harris and in November of last year issued its report called "Justice 2000."

This is an important document to the judiciary and to the bar and I recommend that you study the recommendations that have been proposed. It is a comprehensive report in preparation for the rest of this century but especially aimed at long range improvements taking the judiciary into the 21st Century.

I shall not attempt to go into great detail about this report but here are some of its salient recommendations.

The Commission has recommended that all vacancies on the Supreme Court, Court of Appeals, the Superior Courts and State Courts be filled by appointment of the governor. These vacancies

include those arising when an incumbent chooses not to stand for re-election as well as judicial positions opening by the creation of new judgeships.

It recommends that the status of the Judicial Nomination Commission, selected in the same manner that prevails at present, be confirmed by constitutional amendment.

Provisions for non-partisan elections should be extended to include the elections of all judges and ultimately there should be no part-time judges or prosecutors in the courts of Georgia. We realize the objective of full time judges and prosecutors is a long-range aim. In the short term, the General Assembly should require and fully fund ample training for those judges who must serve on a part-time basis.

There are sections on court administration and court procedures, criminal justice, court-community relations, on funding, liability insurance of judges, solicitors and clerks and a stated position that the state's judiciaries should take advantage of the various federal programs that have a potential for funding additional court improvements.

Some of the Commission's recommendations already have been implemented by enactments of the General Assembly. House Bill 1185 makes a change in the dismissal by a plaintiff after he has rested his case. House Bill 1367 provides that probate judges in counties over 150,000 in population follow the general rules of practice, pleadings, procedures and evidence. It also provides for jury trials and direct appeals from the probate court to the appellate courts. Certain appeals will no longer be a de novo investigation, thereby eliminating what has sometimes been termed as "two bites at the apple."

Two Senate bills also were passed as a result of the Commission's recommendations. Senate Bill 457 revises the law governing relief from judgments in civil action. It prohibits the use of a complaint in equity to set aside a judgment. The grounds formerly sufficient for a complaint in equity to set aside a judgment must be asserted through a motion to set aside in the court which rendered the judgment. Senate Bill 442, provides that a judge may not sentence a defendant as a first offender or discharge such a defendant upon completion of the sentence unless the court has reviewed the defendant's criminal record through the Georgia Crime Information Center.

Case Load Studies

It is not my intention to engage in any national debate about a litigation explosion in this country. The fact is, however, that case loads continue to run heavy in all of the courts in Georgia – the trial courts as well as the appellate courts.

For instance, the Court of Appeals had 2,587 appeals docketed for the calendar year of 1985. This is slightly less than the year before, but current figures point to another increase this year. From Jan. 1to June 1 this year, 1,443 cases had been docketed in the Court of Appeals.

For the statistical year 1985 in the Supreme Court, we had 1,667 matters docketed, a small increase over the year before. That figure includes all matters – direct appeals, applications for writ of certiorari, motions, habeas corpus applications, interlocutory applications and so forth.

The Superior Courts had 59,769 cases filed and disposed of 59,337 cases during the fiscal year 1985. Our state courts had filings of 88,653 cases and 79,092 cases disposed of.

I submit that these figures represent a staggering work load. I endorse Chief Justice Hill's public comments that the men and women who preside over our trial courts are performing heroic tasks.

Child Abuse

In response to a Senate resolution, the Judicial Council last year named a committee to consider methods of encouraging development of local child abuse protocols for all of the counties in Georgia.

It fell upon me to chair this committee, possibly because of the long time interest I have had in improving our ability to cope with the problems of our abused and troubled children. Judge Edward D. Wheeler of the Juvenile Court of DeKalb County headed up a subcommittee given the task of preparing a guide aimed at establishing local child abuse protocols. Members of the subcommittee were drawn from counties which had already developed written policies and designated task forces to investigate, prosecute and provide treatment for those involved in reported cases of child abuse.

Judge Wheeler's subcommittee has made its report which, in my opinion, can serve as the guide we were seeking and for legislation in this important field.

In the words of the subcommittee, responding to the needs and rights of the abused child is a profound challenge to our legal, social services and mental health communities. Our primary goal should be always to protect the child from a reoccurrence of the abuse, with the secondary goal of preserving and strengthening the family.

I shall not go into detail concerning the report. However, there are several points that I think the bar and the judiciary should support.

First, we need legislation adopting the protocols as statutory guides for procedures in handling child abuse in all of our counties. We need uniformity as nearly as it can be achieved in dealing with these problems.

Second, we need legislation tightening-up procedures in the reporting of suspected child abuse cases to the Division of Family and Children Services and to police authorities and to our district attorneys. This is necessary to insure proper agency coordination in investigations. Reporting through organizational channels, as is now done in many areas rather than directly to the Department of Children and Family Services, unnecessarily slows down the reports and in some instances may actually prevent the report from ever reaching the proper persons.

Third, we need to adopt the very best procedures possible in the interviewing of our abused children. The subcommittee's report suggests that the child's story be videotaped for later court use, when needed, to avoid subjecting the child to repetitions and traumatic examinations. The child should only have to tell his story once.

I publicly wish to thank Judge Wheeler and his subcommittee for this report and to thank those who served on the committee as a whole.

Computer Age Comes to the Judiciary

The age of technical and electronic marvels has been with us for some time and the judiciary has been caught up in scientific advancements as has any other segment of our society. In recent years, we in the Supreme Court have had to decide cases involving split broadcast signals beamed down from satellites zooming around in outer space and who has the right to sell satellite dishes.

The Supreme Court has become pretty well computerized. We have had to learn a little bit about chips and floppy disks.

Rapid advances in technology during the last decade have made computer applications in the courts affordable and practical. Some individual trial courts have made great strides in using computers to perform routine court functions such as jury selection and notification, cost and fee accounting, docketing criminal and civil cases, calendaring, and issuing summons and subpoenas.

Unfortunately, we have not had a comprehensive plan for harnessing these new capabilities. Unplanned and unchanneled growth in computer applications will not achieve maximum use of computers. Indeed, decisions made without a comprehensive plan may later create additional expenses for local courts, since data required both for full trial court operations and for generating reports required by law to be made by the courts to state and local agencies may be initially omitted. Further, many varying types of computer hardware may be purchased which courts will later discover cannot communicate their data to the state agencies requiring reports and to each other.

Because of the recent rapid growth in the use of computers in the courts and because of these particular problems, I have appointed an Electronic Data Processing Committee of the Judicial Council, composed of judges, clerks, and court administrators, to plan for and advise the Judicial Branch on all matters related to electronic data processing. I have asked Judge Curtis V. Tillman, Chief Judge of the Stone Mountain Judicial Circuit, to serve as Chairman of this committee and have asked this committee, as its first order of business, to (1) identify all information which is essential to measure workload in the superior courts and the format in which it should be stored electronically; (2) identify all information (and formats required for such information) required by law to be furnished to state agencies by the superior courts; and (3) to insure that all such information is included in computer systems used by the superior courts.

Alternate Methods of Dispute Resolution

Alternate methods of dispute resolution are being developed and implemented in several states in an effort to reduce heavy and increasing caseloads involving civil litigation. The Supreme Court has approved a local rule submitted by the Superior Court of the Atlanta Judicial Circuit which provides for a pilot program for arbitration of certain civil cases in Fulton Superior Court. The program will begin in 1987.

Mandatory Continuing Judicial Education

All classes of courts now require *mandatory* continuing *judicial* education. Statutes require mandatory CJE for Probate, Juvenile and Magistrate Courts, and the Supreme Court, Court of Appeals, Council of Superior Court Judges, and Council of State Court Judges have adopted mandatory CJE.

Bicentennial of the United States Constitution

Next year the nation will commemorate the 200th anniversary of the adoption of The United States Constitution on September 17, 1787. British Prime Minister Gladstone, a century ago, described "The American Constitution... the most wonderful work [of government] ever struck off at a given time by the brain and purpose of man." Georgia, of course, was one of the original 13 states. Governor Harris has asked me to serve as Chairman of The Georgia Commission on the Bicentennial Celebration of The United States Constitution, although I have not been formally appointed. I ask all lawyers and judges in Georgia to support the efforts of the Commission, specifically to volunteer to address civic groups, public school assemblies and other meetings.

In closing, I appeal to each of you and to all lawyers and judges in Georgia to join together to improve the State Judiciary to the end that it becomes second to none in this nation.