State of the Judiciary
Chief Justice Thomas O. Marshall, Georgia Supreme Court
Message to the Legislature
January 15, 1988, in Atlanta, Georgia

Lieutenant Governor Miller, Mr. Speaker, Honorable Members of The Georgia General Assembly, My Fellow Justices and Judges, Distinguished Guests, Members of the Working Press, Ladies and Gentlemen:

It is a distinct honor that you — our distinguished General Assembly of Georgia — has set aside this time in a busy session to hear a report on our third branch of government — the Judiciary. It is a double honor for me in that I am privileged to represent the Judiciary in making that report.

The Judiciary of Georgia is a viable branch of government, coping always with the challenges of new and innovative developments in the law and seeking ways in which to make justice more speedily available to all of our citizens.

The Judiciary of Georgia is meeting its challenges. I am happy to report that the state of the Judiciary in Georgia is excellent and we have programs underway aimed at making it better.

JUDICIAL STRUCTURE

At the risk of sounding a bit elementary to those of you who are familiar with the Judicial structure of this State, I should like to give a brief description of that structure for the benefit of those of you who may be less familiar with it.

The Constitution of 1983 moved forward toward unifying our third branch of government. That document modified our Judiciary as to classes of courts, leaving our general trial courts much the same as they were, while refining, redefining and creating new classes of courts.

At the present, the State Judiciary of Georgia is made up of two appellate courts, the Supreme Court of Georgia, which is composed of seven justices, and the Court of Appeals, which has nine judges. We have 159 superior courts — one for each county — in 45 circuits. These are our trial courts of general jurisdiction and are presided over by 135 judges, all on a full-time basis.

We have 63 state courts which also are trial courts but of a more limited jurisdiction than that of the superior courts. Those courts are presided over by 85 judges, 48 of which are part time.

There are 159 juvenile courts. Most of those are presided over by superior court judges, but we have 51 that are separate and apart, each with a juvenile court judge presiding. Some juvenile court judges serve on a part-time basis.

Additionally, there are 159 probate courts, each with a judge, and 159 magistrate courts presided over by 285 magistrates and 159 chief magistrates. There are seven other courts authorized by the Constitution in which 12 judges preside. My information is that there are 390 municipal courts set up by city or county ordinance. We have no available figures on the number of judges who preside over those.

Conservatively speaking, there are more than 1,200 men and women wearing judicial robes in this State. Support personnel number more than 2,200.

I give you these figures to provide you with an idea of the size of the third branch. It is widespread with varied jurisdictions, duties and needs.

CASELOADS

One of the major complaints against the Judiciary — one we hear quite often — is the time it takes to get a case tried. We are well aware of this problem at every level and substantial progress is being made to reduce the time lag from the day a lawsuit is filed or an indictment is returned and the final disposition of the matter. And this progress is being made despite the increase in the caseloads which have jumped as much as 25 percent in our superior courts in the last 10 years.

According to figures compiled by the administrative office of the courts, the 45 superior court circuits in this State disposed of 6,505 more cases than were filed during calendar year 1986. This means that the backlogs were considerably reduced.

For that period, 1986, there were 135,570 civil and 65,887 criminal cases filed in the superior courts. A total of 1,850 civil cases and 4,308 criminal cases went before juries.

Over a longer period in which diligent efforts were made to reduce the backlog and get the case through the courtroom — the period from 1977 through 1986 — there has been a 39 percent reduction in the number of pending cases. The time it takes for the average criminal case has been reduced from 6.5 months in 1977 to 4.6 months in 1985, and the time for civil cases has been reduced from 13.8 months to 10.1 months.

We owe a debt of gratitude to you, the General Assembly, for seeing the need to add more trial judges as you have done in the last few years. The need continues, however, for a helping hand as long as there are increases in litigation and criminal activity. We ask that you give careful study to requests for additional judges where the need can be shown.

The magnitude of litigation is not just a state problem, but one of nationwide proportions. According to the results of a survey just released by the National Center for State Courts, more than fourteen million, three hundred thousand new civil cases — including torts, contracts, small claims, and domestic relations cases — were filed in limited and general jurisdiction state courts in the calendar year 1985.

That same survey shows that more than nine million, three hundred thousand new criminal cases were filed during the same period. State appellate courts recorded more than one hundred eight thousand new filings.

I know of no indication that litigation will decrease in the foreseeable future.

THE APPELLATE COURTS

I am happy to report that the relationship between the Supreme Court of Georgia and the Court of Appeals is very cordial and cooperative. Caseloads remain heavy in both appellate courts which have been described from time to time in recent years as among the busiest in the nation in the number of opinions published. Despite the heavy load, because of the two-term rule, both courts have been getting out their cases promptly. In my opinion, there is no other state in the country in which appeals are more promptly finalized than in Georgia.

The Court of Appeals is severely cramped for room and urgently needs additional office space in order that its staff may perform its work in handling a very heavy caseload that reached a total of 2,804 filings of direct appeals and applications in 1987.

Ways and means are also needed to reduce the workload of the able judges of that court. Chief Judge Birdsong has proposed an Appellate Statement Conference System — now employed in some of our sister states — as a means to settling or reducing to the bare essentials the number of appeals going to that court. The proposal was introduced as House Bill 615 in 1987.

Although voluntary, such a pre-appeal system could at the very least eliminate much of the bulky transcripts that have to be prepared and read, thus saving litigants a great deal of money and the court a great deal of time. Some 20 states have adopted Pre-appeal Settlement Conferences in some form. I won't go into detail, but such a plan warrants your study as one means of coping with the appellate caseload.

In the Supreme Court, we have been concerned for a number of years with a misconception that the general public has of appellate courts. We are concerned with the mistaken public belief that we were "turning criminals loose."

I will concede immediately that there are times when the judicial system seems to have broken down. There are seemingly endless appeals, both at the state and federal levels, for criminals convicted of heinous crimes.

But even when a conviction is overturned, it does not mean a criminal is released. Nor does it mean our judges and jury systems are failing.

According to our figures, the Supreme Court of Georgia affirmed 90 percent of the criminal appeals it considered last year — just as they were decided by the judges and juries of this State. That means that no substantial error was found in 90 percent of those cases.

Last year, the court considered 160 criminal appeals. It affirmed both the conviction and sentence in 143 cases, affirmed the conviction but modified the sentence in 4 cases, and reversed the conviction and ordered new trials in 11. It discharged only 2 defendants and those in relatively minor cases in which double jeopardy was involved.

Two of the cases in which new trials were ordered resulted from recent United States Supreme Court decisions involving peremptory jury strikes.

I do not have statistics concerning the outcome of criminal appeals handled in the Court of Appeals. I am confident, however, that its results would closely track the figures of the Supreme Court.

I hope you will spread the word. Our courts do not function to turn criminals loose. Our trial judges and our citizen juries are still functioning and functioning well. The hard facts are that the judgment in only one out of every ten criminal cases brought before the Supreme Court is disturbed in any way.

JUVENILE JUSTICE

Our youth is one of the greatest assets this country has. We should make great efforts to see that our budding men and women are properly educated, properly trained as good citizens and have a healthy respect for the rights of others.

When youth goes astray, problems multiply for our society. We need to know early on the many sources of trouble with our children, the causes of why one may go wrong, while another may not.

It is often the treatment, or mistreatment, of a child that sets the stage for a criminal career. If we can improve the way in which we handle youthful law offenders and protect our children from the corrupting effects of abuse and drugs, we have gained ground.

Comprehensive programs that enlist the juvenile justice leadership and practitioners of this State to plan and build a juvenile justice system for the future have been sketched out. There is a need for further development of a specialized system — separate and distinct from that of adults — for dispensing justice and providing treatment for our youth.

The need for such a continuing and coordinated program is emphasized by the projected population growth figures for Georgia which predicts the State's juvenile population — those of ages 10 to 16 — will soon exceed 800,000 children.

The Council of Juvenile Judges currently is seeking a federal grant to establish programs aimed at the prevention of drug abuse in four Atlanta area juvenile courts. The function of the programs will be to assist the juvenile courts in the identification, assessment, evaluation and treatment of juvenile probationers engaged in drug abuse. Hopefully, such a program would deter juvenile probationers from involvement with illegal and harmful substances and act as a pilot for other programs in other counties.

WORTHWHILE GAINS

If we were to draw up a balance sheet of gains and losses for the judiciary in the last few years, it seems to me that the gains, while not gigantic, have been numerous and the cumulative effect is substantial. You, the General Assembly, can take credit for many of the improvements.

I point to such matters as the unification of the courts under the Constitution of 1983, which consolidated some of our small claims courts and justice of the peace courts into magistrate courts with statewide uniformity.

Progress in the training and continuing education of judges has been very impressive. You passed laws mandating annual training sessions for magistrates and probate judges. The other

classes of courts — Appellate, Superior and State Courts — have each adopted rules requiring a minimum amount of hours of training each year.

Uniform rules of procedure for all the trial courts is another plus in our estimation. These rules are devised by the courts themselves, as mandated by the Constitution of 1983, and I wish to point out anew that the Supreme Court has no intention of usurping the legislature's right to pass substantive law when the court approves court rules as they are presented.

A State-Federal Court Council was established during the term of former Chief Justice Robert H. Jordan and has continued to function. The council's goals are to reduce differences as they may arise between the two judicial systems and to seek greater uniformity in procedural matters that are subject to adjustment.

Other improvements are enactments of domestic violence laws, elimination of juror service exemptions, tort reform and driving under the influence reform.

And last, I should also like to report that the world of computers is fast catching up with the judiciary. Superior Courts are automating locally at an increasing rate. This is both good and bad. The good part is that we are developing a more rapid and efficient means of communication in our courts. The bad part is that no uniform system has been devised so that each court system is compatible with other court systems. To cope with this problem, the Judicial Council just recently completed a study of data needs for reporting electronically to the State agencies, to which Clerks of the Superior Courts are required by law to report and, of course, to communicate with each other.

This study at least furnishes some guidelines on compatible software and equipment and those guidelines are being adopted on a voluntary basis. I cannot say at this time that legislation would be appropriate to insure a uniform system. I can say that it is important that a compatible system develop so that clerks and courts can communicate with one another, with the Administrative Office of the Courts, the Supreme Court and Court of Appeals and with numerous State agencies to whom they must report certain information — such as criminal histories, sentencing information and so forth.

Since 1984, the number of computers used in our courts has more than doubled. Seventy-eight of our 159 Superior Courts report some use of computers at the present time. The potential use of computers in the judicial system is almost unlimited, as we have learned in the Supreme Court. We have been using word processors and a specially tailored system of computerization for several years, and such usage has cut down the number of steps from the first draft of an opinion to the time it is handed down.

PROBLEMS FACING THE JUDICIARY

Just this past year marked the bicentennial of the United States Constitution. Georgia, as one of the 13 original colonies, held a number of events to celebrate that great occasion when our Constitution came into being. A few events are still yet to come in commemoration of that long hot summer in Philadelphia.

The delegates who gathered there came up with a grand plan for the government of these United States. That plan not only divided powers between the federal government and the states, it also divided the powers in the federal branch into the Executive, Legislative and Judicial. That pattern of the separation of powers has been followed by the various states.

Our coming together today symbolizes our mutual recognition that while we have a constitutional responsibility to retain our independence from each other, we also have a constitutional responsibility to each other.

You in the legislative branch carry the responsibility for funding the courts. We in the judiciary have a corresponding responsibility to you to manage the courts efficiently. I think we are doing that. But we do need help.

According to our figures, the judiciary's share of the entire state budget in fiscal 1988 was but 74 hundreds of one percent. Of course, that does not include the money counties put into the system, without which the judiciary would be paralyzed. But the point is the legislature holds the purse strings, and our hope is that you won't hold them so tightly that we cannot attract capable men and women to the bench from the legal profession. Our needs have been made known to the State Compensation Commission, and we hope that you will give them due consideration.

Besides compensation, I could give you a long list of needs in the third branch. However, I should like to list only a few.

One of the big problems that should be faced up to sooner or later — sooner would be better — is the unevenness of funding and facilities from circuit to circuit and county to county.

A 'foundation' program for the courts is as desirable as it is for schools, in my opinion. Many courts must sit in antiquated, undignified facilities with inadequate clerical help. Full State funding could eliminate this disparity.

The House Judiciary Committee requested a study by the Judicial Council on the role the judiciary might play in strengthening child support enforcement. That study has been completed and a number of recommendations have been put forward, including the establishment of a single receiver agency in each circuit. Such a receiver should have access to wage attachment process which would authorize continued collection of child support even after arrearages are collected.

And again, we need to face up to the need for State funding of indigent defense. This is not a popular topic, but it could save money in the long run in that a properly established and funded system could insure against both excessive post-conviction appeals based on lack of proper representation and injustices due to inadequate counsel.

Again, the judiciary and I — speaking for the judiciary — appreciate you asking us to report on the status of the third branch of government. It is our abiding hope that the spirit of cooperation between the two branches continues and grows.