State of the Judiciary
Chief Justice Thomas O. Marshall, Georgia Supreme Court
Message to the Georgia State Bar Meeting
June 18, 1988, in Savannah, Georgia

President Glover, President-elect Elliott, fellow Justices and judges, members of the State Bar of Georgia, distinguished guests, ladies and gentleman:

This is the second time this year that I have been privileged to make a report on the state of the judiciary in Georgia. The first such report was in January to a joint session of the General Assembly. That address resulted from the first invitation extended by the legislative branch to the judicial branch in several years. We hope that it signifies an increased interest by that branch in the affairs of the judiciary, and that annual reports will become a routine but important matter. We further hope that a new spirit of cooperation, as to the professional needs of each branch are evolving.

Last year I reported to you that in my opinion, the state of the judiciary in Georgia was excellent. I have no reason to change my evaluation of it this year; in fact, I think it is continuing to improve, thanks to all of you who have labored to make it one of the very best state judiciaries in the nation.

**Legislative Enactments**

We are grateful to the legislature for several acts that it passed during its last session for the benefit of the judiciary. First, several judgeships were created to help cope with the continuing heavy caseloads in our trial courts.

The General Assembly also has made it possible, with an allocation of $50,000, to go forward with a pre-appeal settlement program in the Court of Appeals which goes into effect next February. Chief Judge Birdsong views this program as needed for several reasons.

The Court of Appeals handles an exceptionally heavy caseload, one of the heaviest of any appellate court in the nation. Filings of direct appeals and applications totaled 2,804 last year. The load is continuing this year.

The purpose of the appellate settlement conference is to resolve, after trial and prior to appeal, the number of cases coming before the Court of Appeals, thereby saving time and money for litigants, while at the same time reducing the caseload and improving the efficiency of that court.

Under the plan, parties considering an appeal of a lower court decision could voluntarily go before a judge assigned by the Court of Appeals in which a settlement would be discussed. Failing a settlement, an attempt would be made to reduce the case to its barest essentials before being docketed. By agreement, lengthy transcripts could be reduced to only the essential parts and some issues could be refined or eliminated.

This system has enabled litigants in a number of sister states to end their disputes more quickly and more economically. It has been a success in those states. And it could possibly aid the

Supreme Court. It follows that no attorney would bring up on certiorari a case that has already been settled.

Another forward-moving enactment by the legislature was the allocation of $150,000 toward establishing the Georgia Appellate Practice and Educational Resource Center. This center is a joint undertaking by the Supreme Court of Georgia, the Georgia State University College of Law, the State Bar and the federal courts in Georgia to provide legal representation in post-conviction actions for indigent, death-sentenced inmates.

Providing representation, however, is not the sole purpose of the center. It will provide training, research and expert advice to counsel. It also will monitor all capital punishment litigation in this state. It will develop continuing legal education programs concerning the litigation of capital cases from trial through post-conviction proceedings, both state and federal.

The resource center is the first of its kind in the United States and will serve as a model for all other states. The judicial council has found that the absence of any system to ensure that indigent, death-sentenced inmates have counsel throughout the appeals process has had a detrimental effect upon the administration of justice in both our state and federal courts. The lack of appellate attorneys in some states has resulted in indefinite stays. Georgia has often been on the leading edge of new and progressive programs and the State Bar has played an important role in this project.

Georgia will not carry the financial burden of this program alone. It is anticipated that federal funding will more than match the state allocation.

Still another enactment by the 1988 session of the General Assembly gave the judiciary two additional Superior Court judges and one State Court judge. This is in addition to the four Superior Court judgeships and three State Court judgeships created in 1987. We lost one state court judgeship for a net gain of nine trial judges in the last two years. The addition has been most helpful in the constant battle to reduce the time it takes for the filing of a lawsuit or the filing of an indictment until final disposition.

Figures compiled by the administrative office of the court show that we are making significant strides in the reduction of open cases in our Superior courts. In 1981 we had a total of 145,951 cases awaiting final disposition. In the calendar year 1986, the last year for which we have a report, the number had been reduced to 92,146.

At the end of the calendar year 1986, the time of disposition of all cases was 5.3 months, a five-month or 48 percent improvement over 1981. Felony cases took four months from indictment to completed trial – a 36 percent improvement – and civil case time lag was reduced by 7.4 months, down to 7.8 months – almost cut in half. The time lag perhaps has been the most dramatic in domestic cases. Those cases now take an average of 4.5 months, a 56 percent improvement.

Our trial court judges are to be congratulated for a superb effort in reducing the time it takes to get a case through court.

Unfortunately, there are some areas in which we need additional legislation. No progress has been made on the unevenness of funding for facilities of courts from circuit to circuit and county

to county. A foundation program for our courts is sorely needed, in my opinion. Many courts must sit in antiquated, undignified facilities, and serve with inadequate clerical and legal help. Full State funding could eliminate this disparity.

Also, the need for State funding of indigent defense is still with us. This is not a popular topic. But a properly established and funded system could save money in the long run by insuring against excessive post-conviction appeals based on lack of proper representation, and a failure of justice due to inadequate counsel.

**Computers**

Our judiciary has made giant steps in the use of computers since I last reported to you. An act setting up a computer system whereby all Superior Court clerks can make inquiries to the Secretary of State's office concerning corporate matters also can be used as a network connecting all 159 of our Superior Court clerks' offices. This network also can be connected to our administrative office of the courts and for the transmission of electronic mail.

A preliminary study by the AOC shows that since 1984, the number of computers used by the court has more than doubled. The use to which this electronic marvel can be put is almost limitless.

**Drug Abuse and Crime**

The judiciary continues to feel the impact of the problems of society. And one of the biggest, unremitting problems is drug abuse. When I speak of drug abuse, I am referring to the whole ambit – the smuggler, the kingpin distributor and his minions, and the user.

There's a lot of money in drug abuse. There's a lot of opportunity for corruption. There's a lot of violence. This problem has become a real scourge. While once an almost exclusive big city problem, drug abuse and its related crimes are now reaching into our small towns and rural areas.

Police authorities now tell us that organized youth gangs, dealing in cocaine and crack, have moved into our state and have begun to terrorize low income housing projects in a number of our cities. Those authorities say the gangs are well armed because they have the money to buy the best of high-powered equipment.

Authorities in Fulton County say that 40 to 50 drug abuse indictments are returned every week. These range from possession of more than an ounce of marijuana to trafficking in cocaine.

Meanwhile, the Department of Justice reports in a Bureau of Justice Statistics Bulletin that one-fourth of the nation's households was touched by crime during 1986, the last year for which statistics are available. The figures break down to show five percent of the households in this nation had a member who was the victim of violence. An additional five percent was burglarized at least once during the year, and 17 percent became victims of completed or attempted thefts during the year.

These are dreadful figures. The concern they generate is reflected in a recent survey, reported in the Justice Department's Sourcebook, showing that 64 percent of those questioned believe we spend *too little* to halt the rising crime rate.

So the public *will* is there. What we need to think about is the public *way* – the way by which we can make demonstrable progress. We need to ask exactly *what* it is that the *judiciary* can do about illegal drugs. Well, we cannot pass laws, or expand police forces, or provide scientific resources for the fight against crime. Those things in here to the other two branches of government. But there is something that *only* we can do – and that is to expedite the trial of all drug cases. Remember, the best enforcement in the world comes to *naught* for want of a speedy trial, and for a want of appropriate punishment for the guilty.

If an accused is innocent, that ought to be established at the earliest possible time. Conversely, if an accused is guilty, *that* accused ought to be *sentenced* – and at the earliest possible time.

To my colleagues on the bench, I say that *this* is what you and I, as judges, can do. We can do it without new laws; without increased appropriations. It requires no one else's permission.

*All it takes is our own resolve.*

I urge you: Call up your drug cases; try your drug cases. Free the innocent. And *sentence the guilty.*

And do this with a sense of urgency. Do it as though our lives depend upon it.

Because *the fact* is just that. *All* of our lives – and those of our families – depend on it!

**Professionalism**

There is a movement underway, although embryonic at present, that the legal profession should embrace wholeheartedly. That movement is the return to the concept of the legal profession as a calling, a return to what we need to understand as more of a way of life rather than just another business.

That movement, I believe, comes from an uneasy sense, shared by many of us in the profession, that we are in danger of becoming highly accomplished money-makers, obsessed with the economic aspects of the law practice, and to the severe detriment of all the great traditions that have guided lawyers in the past ages.

I have reported to you that the state of the judiciary is encouraging – and perhaps as good as it has been for a long time. At the same time, I tell you that, in my opinion, the state of the *profession* is disturbing – with most of the signs pointing the wrong way!

Of course, making money is important. No attorney can long stay in practice without earning enough in fees to pay his overhead and provide a living. No attorney can afford to engage in matters purely for the betterment of humanity unless already established in a practice lucrative enough to warrant substantial work without compensation.

But, somehow, in the unprecedented prosperity that this country has enjoyed in the past decades, the legal profession seems to have drifted into a mindset of dollars and cents rather than a devotion to the calling of the law.

The calling of the law embraces much more than a list of items such as competence, pro bono publico work and the code of professional responsibility.

A calling is a devotion of human energies to higher things than financial reward, or professional recognition, or mere competence.

A calling is important of itself, independent of money to be made and reputation to be won.

I think it is time for us to consider, to review, to formulate just what it means to engage in the calling of law. I think, at the least, that any creed for our calling should include the exhibit of courtesy and civility at all times. It should also include open, honest, and forthright dealings, honest fees, honest payment of debt, a devotion to the truth and unwavering fidelity of word and handshake, and excellence for the sake of excellence.

I am tempted to use the word image. We tell ourselves that we need to improve our image. But that's not right. An image is an optical imitation of the real thing. We need to improve ourselves – the reality of ourselves. Do that, and "image" will take care of itself.

There is a story that goes the rounds about a local joint social of the medical profession and the legal profession. There was a bit of one-upmanship in the exchanges of toasts. The medical toastmaster extolled the accomplishments of his profession and slighted a bit the part of the legal fraternity.

Then came the response: "When your profession was still putting leeches on George Washington, our profession was creating the Constitution of the United States, the greatest legal document of all time."

And since those days when this country was founded, the legal profession has continued to be the expounder and interpreter of this nation of laws.

We have been given the trust to maintain a safe and orderly society, to enforce fair dealings between all of our citizens and justice for all.

We need to keep our place, to continue – each year – to earn, and to merit, our position of trust.