

State of the Judiciary  
Chief Justice Thomas O. Marshall, Georgia Supreme Court  
Message to the Georgia State Bar and Bench  
June 16, 1989, in Savannah, Georgia

In the three previous years that I have had the privilege of addressing this distinguished gathering, I reported each time that the state of the judiciary of Georgia is excellent. I repeat that assessment with a great deal of enthusiasm, and the outlook is optimistic as we approach the final decade of this century.

The picture of the judiciary that I wish to paint today has not always been as bright.

Indeed, the early years of this century, the judiciary – both state and federal – was perceived as being heavily weighted in favor of the rich and powerful and against the interests of ordinary citizens. So strong was this criticism that president Theodore Roosevelt once promoted the idea of a citizens' recall of unpopular decisions. If citizens didn't like a particular decision, they could just call an election and reverse it by vote. Fortunately, the movement never gained very much support.

The judiciary today is still subject to criticism just as it has been in the past and just as it will be in the future. But it's not favoritism or corruption in our courts that is the focal point. It is not the direction in which we are going anymore, but how fast we are getting there.

And I say, with the use of computers, an analytical approach to our problems, innovations in appellate procedures and most important the hard work of the fine men and women on our benches and the fine men and women who make up their supporting staff, we are getting there.

Since 1973 when the judicial council came into being with its operational administrative office of the courts, we have fought to reduce the staggering caseloads in our courts.

This program has called for the creation of additional judgeships if we are not to burn out those in the front lines of our third branch of government.

Those battles are being won. A five-year trend – from 1983 through 1987 – shows that the number of cases disposed of in our superior courts is virtually equal to the number of cases filed. In fact, in one year, 1986, dispositions outnumbered filings.

I will not recite numbers for the trial courts in this report and I have a caveat to make in a moment. However, the filings and disposition figures are available in the excellent fifteenth annual report on the work of the Georgia courts for fiscal year 1988, for you to study this trend in detail.

The legislature, to which we are quite grateful, gave us an additional six superior court judges during its 1989 session. This is in addition to the two created in 1988. Come January first, 1990, we will have 143 judges presiding over our 159 superior courts.

I hasten to say that although we are thankful that the legislature is mindful of our workloads and our financial needs, the third branch of government in Georgia has not become a big spendthrift.

The judiciary's share of the state budget for fiscal year 1989 is zero point seventy-one percent of the general appropriation. It is even less for fiscal year 1990.

There is need to adjust compensation for our trial court judges, and although the federal court system is outside the scope of the state judicial system and this report, it is only fair and proper to say that federal judges should be compensated in a more adequate manner, also.

The caseloads of both of our appellate courts remain heavy. Docket entries in the Supreme Court totaled one thousand six hundred and forty nine for 1987, and have continued heavy through 1988 and this year. The court of appeals had a total of two thousand eight hundred and four in 1987.

Both courts have managed to stay current with their work.

On the subject of crime and punishment, I have often heard the criticism that our governments spend taxpayers' money to hire policemen and prosecutors to catch and put criminals in jail. Taxpayers' money is used to build and maintain jails. Taxpayers' money is used to build and maintain courthouses and pay judges to hear those criminal cases. Then, so goes the argument, why must we turn right around and spend taxpayers' money to pay for lawyers to keep them out?

We are bound by a long line of United States Supreme Court decisions that held that everyone charged with a crime should have his or her day in court, whether the accused can pay a lawyer or not. Every citizen has constitutional rights.

Of course, all of you know that and most of you can appreciate that we have tried to follow this concept of fairness. Our counties have had to bear most of this financial burden of providing lawyers for indigents, even to near bankruptcy for some of them in trying to meet mandated constitutional standards.

I am happy to report that, thanks to the General Assembly's partial funding of the Georgia Indigent Defense Act, we now have the *beginning* of a statewide indigent defense program. This will bring some uniformity to the way these problems are handled. It is a step that we should all endorse. The Georgia indigent defense council is preparing guidelines for operation of local systems which will soon be circulated.

Last year I reported to you on the plans for a Georgia appellate practice and educational resource center. It 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 this state.

The purpose of such a center is to provide representation in post conviction actions for indigent, death sentenced inmates. It will also provide training, research and expert advice to counsel. This center is the first of its kind in the United States and will serve as a model for all other states.

I am happy to report that this center is in place and in business. We have already seen some of its work in appeals filed with the Supreme Court.

Georgia is also participating in a movement to eliminate gender bias in our courtrooms.

A 25-member commission on gender bias held its organizational meeting in March, and less than two weeks ago, began exploring ways of eliminating bias against women attorneys practicing in our courts, as well as women jurors, witnesses, parties and others when they become involved with our judicial system.

The national conference of chief justices of the United States has made the elimination of gender bias a top priority and so should we. The commission is headed by Superior Court Judge Carol W. Hunstein of DeKalb County, and Judge Hunstein has a distinguished commission with which to work.

In several reports to this group, I have stressed the need to advance the judiciary into the age of technology. We are making progress in this area. We will have a computer in each superior court clerk's office in the state by September first which will be operating on a statewide network.

In the Supreme Court, we have started docketing on computer. You will soon see such case numbers as – S 89 C 0033 instead of the old forty-five thousand numbers. When you see that type of numbering, you will know that computer docketing is here at last. The Court of Appeals has been on the computer for several months and has a similar numbering system.

My colleague, presiding Justice Harold G. Clarke, will preside over a seminar this afternoon on professionalism. This presentation provides for CLE credits and for that reason – if no other – we hope it will be well attended.

As many of you know, the State Bar and the Court launched a move last fall to enhance the meaning of professionalism in the profession of law. At that time, we restored language in the oath that all of us took when we began our careers.

That program has been well received, and we offer our congratulations to the judges and bar members who have participated in adopting this new oath. Many bar groups used the occasion as a public avowal of the interest in promoting high standards in our profession.

Earlier in this address, I offered a caveat to the report that we are moving our caseloads better than at any time since we started tracking such numbers.

We have made great progress in this area. But the problem of crime – specifically, the problem of drugs and the collateral crimes that the drug traffic generates – is posing one of the greatest threats to our country and to the judiciary.

The problem of reducing crime is essentially one for the legislature and the executive branches of government. They pass our laws, prosecute violators, and build our prisons and, thankfully, more of our citizens are beginning to understand that.

But the drug traffic is threatening to paralyze our court system by the sheer number of cases that come into courts.

Drug related indictments are soaring in Fulton County, in DeKalb County, and in a number of other counties across Georgia. At the same time, the state has had to release hundreds of defendants early, simply because there have been no cells in which to hold them.

This is causing a gridlock that is getting progressively worse. Since criminal defendants know that they may not have to spend the time behind bars for which they will be sentenced, they find a reduced risk in going to trial, rather than plea bargaining with prosecutors.

With the trend toward an increase in demands for jury trials and in the growing number of indictments handed down, our courts are facing a real dilemma. Such a situation provides a temptation, born of judicial economy, to reduce sentences or to slacken up on prosecutions.

Now is not the time to ease off on drug-related criminal prosecutions. We must face up to our duty to help keep criminals off the street.

If down the road we must curtail our civil calendars to cope with our increasing criminal calendars, then that is what we must do to protect our society from this menace.

A report on the number of police officers killed in the line of duty in the United States during the past year – more than 150 – states that most were slain as a result of drug-related crimes. Additionally, innocent citizens are cut down in fights over turf in drug traffic wars.

With this continuing threat, no trial judge should have to worry for one second over whether the felon he is about to sentence will be properly incarcerated.

I also should have offered a caveat to the statement earlier that we are gaining additional superior court judges.

I don't like to comment on pending litigation, but what I am referring to is the lawsuit in federal court in Brunswick, which attacks the method by which our superior court judges are elected. As a consequence, it is possible that there could be a delay in filling the judgeships already created by the general assembly.

My hope is that a solution will be found soon which is fair to all concerned.

At the outset, I mentioned that we are making progress in the third branch of government. The fact that I have listed some trouble areas does not reduce my belief that the judiciary in Georgia is in excellent condition.

This is the fourth time that I have had the honor to report to you on the state of the judiciary. It will be my last. My colleagues elected me to a four-year term which will end on the first day of April next year.

Next year at this time, there will be a new chief justice to give his view of how the third branch of government is performing.

In closing, permit me to express my gratitude to the members of the State Bar – both Lawyers and Judges – for the many courtesies extended to me while I have served as Chief Justice of the Supreme Court of Georgia.