

State of the Judiciary
Chief Justice Harold G. Clarke, Georgia Supreme Court
Meeting of the Georgia state Bar Association
June 1992

Most state of the judiciary speeches begin with this statement, "The state of the judiciary is excellent."

Frankly that falls somewhere between a falsehood and an exaggeration. To be accurate, say today the state of the Georgia judiciary is pretty good considering the limitations and burdens borne by the courts. I outline some of those burdens and limitations:

From 1986 to 1990, total case filings in the superior courts of Georgia increased more than 41%. Felony filings rose 65%. During that same period, state funds appropriated to the superior courts increased in real terms, adjusted for inflation, by only 15%. The seriousness of this situation is dramatized when you consider the appropriation to the other two branches of government during that period. In real terms, it increased by almost 23%, more than 50% faster than the appropriations to the superior courts.

Taking this into account, the judiciary has to follow the advice I once heard: "You have to maximize the utilization of the resources available to you." He really meant: "We've got to do the best we can with what we've got to do it with."

Part of what the judicial branch has is the dedication, ability, ingenuity and "wisdom of its people. In the exercise of those qualities, the courts look hard for new ways to do new and better things.

The Court Futures Study delves into the basic question of where the courts should be in the year 2010 and the very practical question of how to get there.

The Gender Bias Commission made its report and the Supreme Court is in the process of devising means to implement that report in the interest of equal justice for all. At the same time, the Supreme Court plans to establish a similar commission on the subject of racial bias. We need to improve the system, but system improvement alone is not enough. We also need improvement in personal attitudes and sensitivity of our people. I truly hope the work of these commissions will lead to mutual respect between all of our people. The settlement of Brooks cases shows this is possible.

The Georgia Courts Automation Commission has quietly, and I might say almost painlessly, grabbed the judicial system by the nap of the neck to drag it into the 21st century. Some other areas of need don't send clear signals of optimism. Inadequate funding of indigent defense continues to plague the system and stands as a barrier to the fulfillment of the Georgia government's constitutional duty.

I commend you lawyers for your willingness to do your part. The Atlanta One Thousand Lawyers for Justice project serves notice that lawyers are willing to sacrifice to see that the

obligation which really rests with all the people of Georgia is met. Interest on lawyers trust accounts provides twice as much for indigent defense as is appropriated by the Georgia Legislature. So the problem now is to awaken the entire Georgia public to its obligation to do what the constitution and human decency require of it.

We have another constitutional obligation. The Georgia Constitution says that the judicial system must be administered so as to provide speedy, inexpensive and efficient resolution of disputes. Simply said, this means we ought to settle fusses quickly, without spending too much money and with the right result. The overcrowding of the court dockets with cases that ought not to be there and the unnecessary dragging out of cases make no contribution to the constitutional mandate.

I have often said that the judicial branch is truly the people's branch because it is the only one of the three to which the people have a constitutional right of access. I believe that deeply. But you and I know that the constitution does not grant the right to abuse the system. The constitution does not construct an obstacle to finding better ways to do necessary things. Not every dispute needs the exact same treatment. Not every dispute needs a trial in the traditional sense. I suggest we have reached the point where we cannot afford for time and repetition to give credibility to practices which can and must be improved. We all hallow our traditional system of justice with its jury trials and intricate proceedings. They contribute much to the discovery of the truth and the delivery of justice. Yet those very traditions face severe risks if we fail to protect them. We can best protect the traditional aspects of the system by not overloading them with disputes that need to be otherwise resolved.

These truths caused the Supreme Court to create the Joint Commission on Alternative Dispute Resolution. That commission has accumulated and studied thousands of pages of information. It has observed courts in others states. It has assisted in the beginnings of pilot projects in mediation, arbitration and early neutral evaluation. It has now circulated for review and comment a working draft of a plan for a comprehensive alternative dispute resolution program in Georgia. This program will operate a part of the court. Trial judges will continue to exercise control. I urge you to review that draft. I urge you to give the commission your comments. I urge you to give the commission your support.

The time is late. If judges, as officers of the judicial branch, and lawyers, as officers of the court, don't do something about it soon, it may be too late. I agree with the warning that public tolerance for "business as usual" in the legal world will not continue forever. The ADR plan opens the door to a new way of doing business without sacrificing the rights of litigants or diminishing the character of the law practice. It will not limit the people's rights. It will not damage the lawyer's role in society.

If lawyers and judges can lead the parties through mediation to a settlement of their differences, why should we not do so. After all, we only justify our existence by acting as problem solvers.

Time will not permit me to detail the contents of the recommendations of the ADR Commission. Copies of the plan are included in the agenda for the Board of Governors meeting Saturday. They are also available at this meeting so that each of you can review it.

To meet the needs I have outlined, the court system needs help. Judges and court personnel alone cannot do the job. We must look to all of the lawyers. recently read a speech made by a Georgia lawyer. A portion of it bears repeating:

Lawyers have not been in the forefront in recent years. We have given up our jobs as lawmakers, public opinion makers, and decision makers. Lawyers comprise only about 20% of the legislators. The most serious effect of our abdicating our leadership positions has been felt by the judicial branch.

The lawyer said more:

We must get out there on the front line again. We must take the positions, make the sacrifices and do the work that is needed to restore equality to the judicial branch in Georgia. If we fail to do so, we stand to lose both as people and lawyers. The time to turn this disastrous process around is now. The expertise and dedication to do it are right here in this room.

The speech continued:

I challenge each of you to join together now to help yourselves and help the people of Georgia get the judicial system we all deserve. Justice is everybody's business!

The lawyer who made that speech was Harold Clarke. The time was June, 1977. The occasion was my report as the outgoing president of the State Bar of Georgia. The plea was appropriate then. The plea is imperative now.