

State of the Justice in Georgia  
Chief Justice Harold G. Clarke, Georgia Supreme Court  
Message to the Legislature  
January 13, 1993, in Atlanta, Georgia

Lt. Gov. Howard, Mr. Speaker Murphy, members of the General Assembly, judicial colleagues and friends --

I thank you for letting me tell you something about your court system. This is the fourth time you have given me this opportunity, and some of you know it ought not to take that long for me to tell you all I know.

I take consolation in the fact that many of you weren't here the other three times. As for the rest of you, I don't flatter myself by believing you remember what I said before anyway. Nevertheless, I want to correct something I said before. I have called this a State of the Judiciary Report. This is not and should not be a state of the judiciary speech. It should be a state of justice speech.

The state of the judiciary has no relevance unless the judiciary protects and improves the state of justice. We have courts because people have problems. The judiciary justifies its existence only when it solves problems. Even then it fails when the problem-solving falls short of justice.

So, justice stands alone as the only product of the courts. It stands alone as the only goal.

The state of justice in Georgia is not perfect or even ideal. It may never be considering the frailties of humankind. Yet I remain convinced that it is better than in the past and continues to improve.

Obstacles do lie ahead. Some of them appear on the handout delivered to you this morning. With the hope that you will study this information, I will not repeat it to you now.

We cannot substantially improve justice by hit or miss corrections. An artist begins with a vision of the final painting. We also need a vision -- a vision of the court structure and operation which can ultimately dispense pure justice. We must have the commitment to make the visions of today, the traditions of tomorrow.

With this kind of thinking, a group of forward-looking judges, lawyers, legislators and lay people worked together for two years on the issue of the futures of the courts in Georgia. I commend their report to you. It will become available soon.

To work in an orderly way to improve justice we need a standard for measurement. You and the people of Georgia gave us that standard - it appears in the constitution of the State of Georgia. It says the courts "shall provide for the speedy, efficient, and inexpensive resolution of disputes and prosecutions."

Those words - speedy, efficient, inexpensive - have meaning. A business person applies them all

the lime. Speedy means it ought not to take too long. Efficient, as used here, means you ought to get the right result. Inexpensive means it ought not to cost too much.

When we apply these words to our search for justice, the subject of our quest becomes more apparent.

To reduce the costs and time and to reach better results, we have to look for additional ways to solve the people's problems. In the superior courts, filings increase at about 10% per year. The magistrates of Georgia handle over one million cases a year, and other classes of courts face similar growth problems. Not all of these cases need traditional trials. Someone said, "If war is the final stage in diplomacy, then trial is the final stage in dispute resolution." Most disputes will get settled before trial anyway -- but when. The constitution says they ought to settle speedily. We can do that by bringing the parties together early-on through alternative dispute resolution procedures. I am talking mainly about mediation and arbitration. Too many cases don't settle until countless hours, days, and even years, grind by in the process of discovery, motions and sometimes needless court hearings.

Bringing the parties together in an attempt to reach agreed results saves time, saves money and contributes to better results.

With the advice and consent of the Council of Superior Court Judges, the Supreme Court of Georgia has adopted a rule which paves the way for the beginnings of this process. The time is late. Other states have traveled this road with success already. Circumstances and the constitution challenge us to take-off in a catch-up mode.

You will have before you a bill which can help get the job done. It simply allows the assessment of not more than an additional \$5.00 to each civil filing fee in counties which want to take part in the program. The money goes for financing part of the local effort.

Even improved methods amount to little in the absence of fairness. The Gender Bias Commission presented a report containing proposals which will lead to the improvement of justice. The Supreme Court has now created a new commission charged with the duty to help the court system implement this report.

We moved recently into another area of vital concern. We created the Commission on Racial and Ethnic Bias. The court charged this body to find where bias exists and recommend ways to correct it. And let me say here that just as public officials must avoid the appearance of impropriety, so must our court system avoid even the appearance of injustice and bias. We expect this to be a wide-ranging study. It will seek tangible results in the interest of all of our people. For the courts to dispense real justice, all the people must have confidence in the courts. The courts can earn this confidence only when they clearly demonstrate a total unwillingness to tolerate bias in the system.

Sometimes we talk about "equal justice," but someone said this is a redundancy. All justice by its definition must be equal because unequal justice is no justice at all. When court proceedings fail the equality test, they fail the justice test.

I know you did not expect me to complete my remarks without making reference to the problem of providing adequate defense of indigent persons accused of crimes. The simple question of justice is also at stake here. Again, we face a constitutional requirement. know that indigent defense carries with it more political baggage than political appeal. But the brightest hour for public servants comes when difficult duties are faced up to and performed. We need also to remember that if the state can deny justice to the poor, it has within its grasp the power to deny justice to anybody. Justice belongs to everybody, or it belongs to nobody at all.

A discussion of improved justice must include thoughts about technical and structural modernization. The Court's Automation Commission continues to make outstanding strides in bringing the court system into the computer age. We thank you for your help on this.

Court structure and organization present a tougher problem. One expert looked at our organizational chart and said he thought it was the plans for the plumbing in the courthouse. We cannot go on forever ignoring the need for streamlining the system. Pride, turf protection, lack of vision and just plain timidity sometimes stand in the way. It is time to brush these impediments aside.

Some of these things cost money. It seems to me that anybody can talk about money except preachers and judges. So let me do my duty by tackling an unpopular subject. We've all been told that the three branches of government - legislative, executive, and judicial - are separate, independent and equal. Judges like to boast of our independence and separation, but we can't take much pride in our equality.

We want to do strong things for a stronger future for justice, but the resources simply are not there. When I was a youngster during the depression there was an old saying, "Brother can you spare a dime?" They even made a song out of it and I think Bing Crosby sang it in a movie. Well, I don't come to you today presuming to ask for a dime. I know that's too much. The judiciary's share of the state budget has remained approximately seven tenths of one percent through the years. So, I simply say to you, "Brothers and sisters, can you spare a penny?" One penny out of a dollar is a pitiful amount to pay for justice. Yet I make that request with full knowledge that it won't happen this year. I make that request as one who looks toward the future beyond my own tenure of office.

For too many years our goal in Georgia has been the national average. That means we set our sights on the embarrassing target of mediocrity. I guess that means about halfway. And that raises a question. Are we willing to put up with halfway justice? To my way of thinking, one-half justice must mean one-half injustice, and one-half injustice is no justice at all.

Georgia wants something better. Georgia deserves something better. Georgia can afford something better. Georgia cannot afford anything less.

I pledge to you the best efforts of the judicial branch to achieve superior, rather than mediocre, justice.

During the Biennial Legislative Institute, the Speaker suggested periodic meetings of a group from the legislative branch and a group from the judicial branch to discuss problems and goals. wholeheartedly endorse that suggestion. After all, we are joint-venturers in the business of caring for the peoples' needs. Together we can reach the goal of speedy, efficient, and inexpensive justice for all.