

State of the Judiciary
Chief Justice Willis B. Hunt Jr., Georgia Supreme Court
Message to the Legislature
January 11, 1995, in Atlanta, Georgia

I know my presence here is less an opportunity to disseminate useful information than it is a symbol that the third branch of government indeed exists and that you recognize our role, and we appreciate that. You understand that our engines are fed primarily by your work product. Almost everything you do finds its way to us. Whether your statutory enactments govern the substance and procedure of our tort cases, our divorce cases, or our criminal cases, or whether the laws you pass are simply presented to us for interpretation (because some people, believe it or not, don't know what you mean), the produce of your work is our life blood.

Courts do not make law, but they interpret it everyday, whether in the literal sense of the appellate function or in the practical application of the trial courts – approving or disapproving by their enforcement or rejection of your work product. And, it is that everyday, necessary, even intense, relationship between us, that I will reflect on in response to your kind invitation to be here.

Should I do as my predecessors have done for the last eight years, and that is, should I shower you with statistics that demonstrate the ongoing overload on your state courts and the fact that the courts' share of the state budget has never exceeded one percent – never reached one percent? You may recall Harold Clarke's eloquent plea two years ago reflecting on the song "Buddy, Can You Spare A Dime?" and then asking you, "Buddy, Can You Spare a Penny?" But a penny could not be spared then, and apparently cannot now. We get right at eight-tenths of one percent of the state budget.

I have decided not to dwell on that because everyone knows there is an unmet demand for court time; everyone knows the courts are overloaded, a situation that will not be alleviated by stiffer sentencing laws or the upcoming Olympics. You don't have to be a lawyer or a judge to know that. And everyone knows that there are far more demands for your money than can be met. There are hard choices for you to make. We understand that. Education, for example. You cannot be too generous as to educational needs. And, in fact, the more you address education, the more you fund it, the less will be needed for courts and corrections – at least down the road. Pouring money into education is not a waste; it is an opportunity to attack the source of crime problems rather than the consequences, as has always been done in the past.

No matter what percent of the budget we have gotten, I think you have done as well by us as present circumstances permit. In fact, as far as the Supreme Court goes, you have been generous. Your generosity has permitted us to create and nurture programs we believe essential to the goal of equal justice and effective justice. Those programs include the Committee for Gender Equality, the Commission on Racial and Ethnic Bias, the Office of Dispute Resolution (ADR), Courts Automation, and the new Committee on Substance Abuse and the Courts. Over the past three years you have doubled funding for indigent defense. These are important programs with important goals and we, the judiciary and the legislature, are jointly fulfilling our responsibility to pursue them.

Superior courts

You have fulfilled your responsibility to the superior courts – the principal trial courts of the state. You have agreed to add judges, but your hands are tied by federal voting rights litigation. We pray for a speedy resolution, and a fair resolution as well.

To meet the current demand, our superior courts have absorbed all available senior judges and many, many magistrates, juvenile court judges, and probate court judges. Much of the family law workload in the superior courts has been shifted to magistrates. These are emergency times and this is an emergency measure – but it is troubling.

It is at the heart of dissatisfaction and disenchantment of family court litigants and lawyers. Family law problems go beyond the lack of judge power. We all know that and we, and the members of the State Bar, and a number of you, are working with the State Bar Family Court Commission to address the overall problems and the wisdom, the feasibility of a family court. The citizens have authorized pilot programs in this field and you will consider those. This is not the time under all the attendant circumstances, to alter the discretionary appeals process. Let's not attack the problem piecemeal with a short-term solution, but address the whole problem through the study of the commission, the pilot programs, and the eventual addition of superior court judges. The trial courts desperately need help. What is most needed is more judges, but you cannot address that now.

Appellate courts

I have not overlooked our Court of Appeals, I have saved them for last because they need your help, and you can help them. For every one opinion that I and my colleagues on the Supreme Court write, my colleagues on the Court of Appeals each write five-or is it six? They are basically writing one opinion for each workday, an enormous load – an impossible load. They seek your help in order to provide sufficient staff to keep them afloat and I know you will be responsible and meet their needs. Be generous with them. Don't compromise, be generous. They are the hardest working appellate judges in the county, and they need and deserve your help.

To be honest, they need more than staff. They need, although they may not agree with me, they need the benefit of a restructured appellate court system. They need more judges – either on their court or at least on another appellate tier – but you cannot solve that now, even if we were to agree. how to solve it.

So there you have it. You get a high grade from me. We are grateful for what you do, and I thank you once again for the across-the-board pay raise you gave all judges last year. You were generous – most generous. Decent compensation says a lot about the state of our judiciary and we are grateful that you recognized and met our needs.

Selection of judges

We are also grateful that a decade ago you were wise enough to let the people tell us through their constitution that judges' elections should be nonpartisan. We have thereby avoided the confusion and distress suffered by our neighbors in Alabama, North Carolina, and Texas. The

pressure of party politics and political action committees has cast a dark shadow on the legitimacy of their method of selecting judges.

But our system still deserves scrutiny. The underlying challenges of the voting-rights case must eventually be addressed, regardless of the outcome. And, the wisdom of statewide judicial elections remains in question. In twenty years appellate court incumbents have faced opposition ten times and won nine of those times—a track record that challenges the system. Should a newly appointed member of either of these two courts be required to face election within a few months after taking office? Is that fair to the judge? Is it fair to you and the rest of the voting public? Will we see the same increase in campaign contributions — mainly from interested lawyers — as has occurred in Alabama, North Carolina, and Texas? I hope not, but I am worried about it and you should be too.

Vision

Let me conclude with a vision — my vision of what our court system should be and, yes, it will cost more than a tenth of one percent of the state budget. But you will have plenty of lead time to adjust. It is a vision that no other judge necessarily shares, but you get it from me for the price of admission.

Beyond the probate and magistrate courts which could be joined together, but probably never will, there would be three tiers.

There would be one trial court — the superior court, with a family law division, including juvenile matters, and perhaps a criminal division. All civil and criminal cases would go there and superior court judges could try something besides divorce and felonies. Why have both superior courts and state courts? There is no reason. State trial courts should be funded by state monies.

There would be a well staffed mediation/arbitration office through which most of the civil work would be funneled initially. There would be — as there is now in some states — an appellate division of the superior court. Regionally, perhaps by congressional district (as judicial districts are now divided), there would be a panel of three judges who would hear direct appeals from all civil cases, family law included, and most criminal cases. They would provide for a review of fact and law in these cases, many of which are now discretionary. This appellate division would be a primary court of appeals. Our present Court of Appeals, on the other hand, would be a true intermediate court of appeals. It may well need no more members. It would take capital criminal cases on direct appeal, but others would be largely discretionary. Because of the work of the primary court of appeals, its workload would be greatly reduced. It would be manageable; it would be important. It would be the high error-correcting court.

The Supreme Court then, except for death penalty cases, constitutional issues, tax cases, and claims against the state, would be a true cert court. It would take its cases by writ of certiorari to the Court of Appeals. Unlike now, the Supreme Court and the Court of Appeals would not be doing the same thing — they would not be sharing the error-correcting function. That would primarily rest with the Court of Appeals and the primary appellate division. The Supreme Court could fulfill its principal role, that of molding the common law, that of interpreting the

constitution, and that of overseeing the legal profession – an increasingly important and urgent role. The Supreme Court would speak to broad issues of justice and equality.

The judges of these courts would be fairly selected by a method that would insulate them as far as possible from unwanted political pressure, but would permit the voters to decide, either directly or indirectly, who serves. That method would also insure the selection of judges who look like the people of this state – representation as to gender and to race.

Well, there you have it. Simple, right? It will come, as do all judicial reforms, in increments. But it will come – trust me – I’ve seen the process close up for 24 years and something like my suggestion, similar to my suggestion, will arrive. It is not unlike the product envisioned by Paul Broun, Larry Walker, and Roy Barnes (and myself) in 1984 on the Governor’s Commission on Judicial Processes – Justice 2000. It is a vision that would simplify and immeasurably enhance the administration of justice and you – with responsibility, gratitude, humility and vision-will be proud to fund it.

There is one more word that describes better than any other the journey, the odyssey, the pilgrimage of the courts in our search for justice, and that is persistence. We have a great partnership – our two branches – together we will persist and prevail for the people we serve.