

State of the Judiciary Address
Chief Justice Norman S. Fletcher, Georgia Supreme Court
Message to the Legislature
February 9, 2005, in Atlanta, Georgia

Lt. Governor Taylor, Speaker Richardson, President Pro Tern Johnson, friends of the legislative branch and executive branch, fellow members of the judicial branch, ladies and gentlemen.

On behalf of the judicial branch, I thank you for the invitation to deliver the State of the Judiciary Address to this joint session of the General Assembly. By inviting the chief justice to address you, just as you invite the governor to give the State of the State Address, you show your interest and concern for the well being of the judicial branch. For this we are most appreciative.

This is my fourth and final opportunity to deliver this address as my term as chief justice expires in June of this year. During my term I have enjoyed getting to know you much better and working closely with you in the creation of the new statewide public defender system, a system which assures that justice will flow down like rivers of water, for not just the wealthy, but for all our people.

In *The Grapes of Wrath*, John Steinbeck, wrote, "It is the nature of man to rise to greatness, if greatness is expected of him." There can be no doubt, greatness is expected of all persons entrusted with leadership positions. The 72 percent of you who were here the last two sessions rose to greatness and, having met most all of your new members, I am confident that all of you will rise to greatness over the next few years as you continue to support the delivery of justice in this state and improve the quality of life for all of our citizens.

Public Defenders

The new statewide public defender system, which you so wisely created during the 2003 session and funded in the FY 2005 budget, is off to a remarkable start. It is being favorably recognized nationally, with many states desiring to emulate our system. You should take great pride and find much satisfaction knowing you so ably fulfilled your constitutional and moral obligations. History will long record that this great legislative body did the right thing at the right time.

The Public Defender Standards Council consists of 11 members who were appointed by the Governor, Lt. Governor, Speaker, Chief Justice, and Chief Judge of the Court of Appeals. For the past 19 months these dedicated Georgians have met often and worked tirelessly. They have sacrificed their personal time and money to insure that the new system is implemented effectively and on schedule. And they have succeeded, for in less than 11 months the staff organized circuit public defender offices throughout the state.

The Council has received much cooperation and acceptance from county governments and local judges. This is evidenced by the strong support of the public defender office which opened last July as a pilot project in the Cordele Circuit, and by the fact that local governments in more than 30 circuits have contracted with the Council to provide services in their courts which are not covered by the legislation.

The good news is 42 circuit public defender offices opened January 1st and are operating full speed at this moment. In last Sunday's AJC Bill Rankin's article headlined, "Defender System Gets Early Praise," reported favorably on its successful beginning and the welcomed relief it is providing. We anticipate 2 more circuit offices will be in operation within 60 days. As both state and local governments observe the success of the new system, I firmly believe the other 5 circuits will opt into the system within a few years.

All I ask of you at this time is to continue your commitment to properly fund the system you so wisely created and that you not tinker with the system or make any additional exceptions to its full coverage; such as that proposed by HB 366. If exceptions become the rule, the system will be destroyed and then the courts will have to fix it. None of us want that. I earnestly request your forbearance. Let the new system operate without interference for the next three years. If shortcomings are discovered during that time, the legislation can then be fine tuned.

Judicial Council/AOC

I'm extremely pleased to report that the Judicial Council has had an outstanding year as representatives of all levels of our courts worked in harmony on many projects designed to improve our judicial system. This harmony has made my last year as Chair of the Council a delightful one, and I am certain it also pleases you to know that your court leaders are working together so well as they seek innovative ways to best fulfill our primary role, to deliver timely, quality justice in an efficient manner.

I am also happy to report that the Administrative Office of the Courts is fulfilling its role and duties better than ever before in its 32 year existence. Throughout this year the leaders of our various levels of courts have expressed their gratitude for the many support services provided them by the AOC staff.

I will mention just a few of those vital services. First, the AOC is assisting the start up of the public defender system by providing payroll services to the Standards Council and circuit Public Defenders' employees and financial services to a number of the local circuit defender offices. The fiscal procedures and business practices now in place are working smoothly.

Next, the AOC established training programs in "sound business practices" for court personnel, judges, clerks, police chiefs, probation officers and others who collect and distribute mandated fines associated with criminal convictions or dispositions of civil cases. The staff developed program, "Court Fees: The Basics," has been presented numerous times around the state. The demand for such training has increased steadily and these and similar efforts will continue in the years to come.

The AOC continues to work diligently to provide the highest quality informational technology services possible to the Georgia courts. Case management software, supplied to local courts through the AOC, is integral to successful processing and tracking of cases. This year, for the first time, our case management software can be modified and updated from centrally located servers that communicate to local courts over the Internet.

And, over the past two years, the AOC, through the Commission on Interpreters, has made a concerted effort to train, test and license qualified foreign language interpreters to assist non English speaking defendants in court proceedings. We now have 255 registered court interpreters and 38 certified court interpreters. As the need for foreign language interpreters continues to grow, the Commission will insure that highly qualified court interpreter services are available.

Problem Solving/Specialty Courts

Problem solving courts have made great strides in this country over the past decade, and we have also made considerable progress in Georgia. The Fulton County Family Court has proved to be very effective. Improving the delivery of services relating to families has been a priority of the Judicial Council, and the Child Placement Project, under the leadership of Justice Hines, has met with great success.

Thirty-four drug court programs are in operation within various courts in 23 judicial circuits around the state. Their successes are most encouraging. These courts are holding participants accountable, saving the state and local governments money, and are changing lives and reuniting families. In 2004 we created a Judicial Council Standing Committee on Drug Courts, chaired by Judge George Kreeger of Cobb Superior Court, to develop policies to insure that our Georgia drug courts remain efficient and effective.

And last, but certainly not least, at the request of the business community and through the diligent efforts of the state bar, we are giving serious consideration to a request for creation of a business court project within Fulton Superior Court.

Court Technology

For a number of years the judicial branch has struggled to improve the availability and proper use of technology in our courts. We recognized the necessity to remedy organizational deficiencies in addressing technology needs. To this end we have undertaken two initiatives. First, the Georgia Courts Automation Commission has adopted sound business strategies which it is adhering to in its decision-making process. This sound business approach has resulted in clear guidelines for project approval, contracts and financial conduct. Additionally, the Commission has developed a strategic plan by which all future technology requests will be measured.

The second and most important initiative is the work of the Supreme Court Committee on Technology which was created in December 2003. As I reported last year, this Committee is composed of 28 members, representing all components of the judicial system and a broad spectrum of interests, including both rural and metropolitan. Members include representatives from the various courts, clerks of court, state bar, Georgia Courts Automation Commission, Georgia Public Defenders Standards Council, Prosecuting Attorneys' Council, court administrators, and court reporters as well as advisory representatives from the offices of the Governor, Lt. Governor, legislative budget office, Superior Court Clerks' Cooperative Authority, and the Georgia Technology Authority. The Committee has worked diligently for a year to complete its study and fulfill its mission of making recommendations on governance structure,

standards and implementation. We have high expectations of the Committee's report which is expected this month. We hope it will have as great a positive impact on court technology as the work of our Commission on Indigent Defense had on our criminal justice system.

Judicial Independence, Elections And Budgets

The judiciary is in the justice business, and justice is not, nor should it ever be, a matter of politics. It is a right guaranteed by the United States and Georgia Constitutions. Learned Hand, one of the greatest American jurists of all time, hit the nail on the head when he said: "If we are to keep our democracy, there must be one commandment - - thou shall not ration justice. "

Our Constitutions created the judiciary as a co-equal branch of government. This separation of powers has played a major role in preventing the rationing of justice in this country. But we must always be on guard to assure that nothing impinges on the ability of the judiciary to make those hard decisions, sometimes unpopular decisions, that keep our democracy alive.

While many things affect our courts, I am convinced that the three with the greatest impact on the delivery of justice are judicial independence, judicial elections and judicial budgets, which are all closely interrelated. And we must see that these influences are molded in such manner as best assures that the rule of law prevails and that equal justice for all will be administered in our courts.

By judicial independence, I am talking about decisional independence; such independence as is necessary to enable judges to impartially resolve cases before them, without fear or favor, based on the law and the facts of the particular case. That's what our citizens want and our judicial system must provide them nothing less. Georgia judges are reminded of this every time they take their oath of office, which requires that justice be handed down without respect to person and that equal rights be assured to the poor and rich alike.

To assure this fairness we must see that judges are insulated from attempts to influence their current decisions or to affect future decisions by inappropriately punishing them, whether by the budgetary process, legislation or otherwise. Because you believe in fairness, impartiality and doing the right thing, I am confident you will continue to provide the insulation necessary to assure that all citizens receive equal justice under the law in the courts of this state.

I turn now to elections. Only 4 states, Alabama, Louisiana, Texas and West Virginia, still select all the trial judges and appellate judges, both initially and for reelection, in contested partisan elections. Following initial appointments, ten other states have partisan elections for either all or part of their judges. Over the past 20 years those states with partisan judicial elections have continued to spend larger and larger sums on judicial races filled with degrading and misleading ads, making them appear, and perhaps rightfully so, to be just as political as other elections. As would be expected, this has caused many citizens to conclude that these judges will not impartially resolve cases before them, that they are obligated to and will treat more favorably those who supported them financially or otherwise. Therefore, in those states there is far less trust and confidence in their courts. No doubt, this is what led Texas Chief Justice Tom Phillips in his 2003 State of the Judiciary Address to state: "Most other states have concluded that the

goals of an independent, qualified and accountable judiciary can better be achieved by treating judicial elections differently."

In 1983 we in Georgia decided to treat them differently by providing for non partisan elections of superior court, state court, and appellate court judges. This system has served us well, and for many years the same was true in the 19 other states with non partisan judicial elections. However, in a few of these states in recent years the political parties have been taking steps which are making their judicial elections appear more and more partisan, and, in a couple, they have effectively converted them into partisan elections, with that same resulting loss of trust and confidence that I mentioned a few moments ago. In 2004 we saw some evidence of this in Georgia judicial elections and we also experienced far more money being spent on judicial races than ever before. I implore you to treat judicial races differently, to allow non partisan races to truly be non partisan, so that our citizens can and will continue to have trust and confidence in our courts.

With that said, for a number of years our probate judges, magistrate judges and district attorneys have sought non partisan elections. I know that our magistrate and probate judges will once more seek such changes in the law as will allow them to be elected on a non partisan basis, and I urge you to favorably respond to their requests.

During the past year I have observed that both the press and others have misconceived many things about the judicial budget. Part of this can be attributed to be fact that there is little knowledge of the process through which that item labeled "judicial budget" comes into being. So I want to take this opportunity to address these issues, particularly the FY 2006 budget requests. It is not my intention to offend anyone; rather, my friends, I hope to provide information which will assist you as you carry out your duty to consider budget requests and fund the judicial branch as adequately as possible.

As you know, the judicial branch is not a state agency. It is a co-equal branch of government that depends on you, the legislative branch, for the resources necessary for operation. A thorough review of the judicial branch appropriations should help to clear up some of the misunderstanding. It will also prove that the judicial branch did not cause Georgia's budget crisis and that its FY 2006 request is not seeking an unreasonable increase.

I turn first to the process. Georgia does not have a unified court system. That is why the applicable statute requires judicial budget requests to be prepared by the chief justice of the Supreme Court, the chief judge of the Court of Appeals and such other judicial officers as are appropriate, and, when it is compiled, it is to be submitted to the director of the budget for inclusion in the governor's overall budget request. This big book entitled, "Judicial Branch FY 2006 Budget Requests" is a compilation of each such judicial officer's or organization's requests. I only have power over the Supreme Court request. The chief judge of the Court of Appeals prepares its request, the superior court judges their request, the district attorneys their request, juvenile judges their request, and so on and on. As you can see, while the judicial budget request is bound in one book, it is composed of the separate request of 9 levels of courts or court related entities plus the request of the Judicial Council which is made on behalf of 15 other court related entities or purposes.

In Georgia, traditionally, two major components of the judicial budget are requests from groups which perform executive branch functions, not judicial functions. They are (1) the district attorneys, whose duty essentially is to represent the state in court proceedings, and (2) the Public Defender Standards Council, which has the duty to provide attorneys to defend those accused of crime who are indigent. I am not suggesting that either of these groups be changed from the judicial budget to the executive branch budget, as that is a policy decision for the legislative and executive branches. I bring this to your attention, however, in order that you and the public can better understand that a major part of what is labeled "Judicial Branch Budget" is not for judicial branch functions.

The FY 2005 budget approved last year allocated to the judicial branch only .00925 percent of total state appropriations. However, excluding that portion provided for district attorneys and public defenders, plus certain worthy flow-through items logically placed in the judicial budget but not directly related to the judiciary, appropriations for judicial branch functions amounted to .0051 percent of the state budget. And that is what constitutes the true judicial branch budget.

Of the FY 2005 supplemental budget requests, 43 percent is to fund the June 30th payroll, something you are facing with the June 30th payrolls of all state agencies, and 50 percent is to fund the public defender system for the remainder of the fiscal year, which, during the last session, you assured would be forthcoming in the supplemental budget.

I turn now to the FY 2006 budget. The request is not a 29 percent increase over the 2005 budget, as reported by the press on December 6th and again on January 12th . In order to accurately determine such increase, it is necessary to first establish the final base line of the FY 2005 budget, which, of necessity, must include the FY 2005 supplemental budget. And, because most, if not all, of the judicial supplemental budget requests previously mentioned were expected and are reasonably necessary, I firmly believe you will approve them. If you do, comparing the final FY 2005 budget with the FY 2006 request, the increase is 16 percent. But that does not accurately reflect the increase, for only when the true judicial budget request is determined can the increase be correctly calculated.

I have no doubt that the 2006 requests of the District Attorneys and the Standards Council are reasonable and based on real needs. But, together they total slightly more than 50 percent of the FY 2006 judicial budget request, and as I previously pointed out, they perform executive branch functions. Therefore, when their requests are excluded together with the flow-throughs, the increase in the true judicial budget request is slightly less than 4.9 percent, and, if fully funded, would amount to about .0054 percent of the FY 2006 state proposed budget of 17.4 billion dollars.

Just as our population continues to rapidly increase, so have our court filings. In calendar year 1999 there were a total of 1,757,863 cases filed in our superior, state, juvenile, probate and magistrate courts. In calendar year 2003, this increased to 2,017,901 case filings. I ask you, can anyone deny that handling such a load with far less than 1 percent of the state budget is quite an accomplishment.

Even though it receives an extremely small part of the total state appropriations, the judicial branch acknowledges its obligation to be a good steward of the public's funds and that our courts should operate as efficiently as possible; mindful, however, that courts are efficient only so long as they can provide timely, quality justice, fairly and impartially, and that no system that rations justice is efficient. So, if there are concerns involving financial accountability from any level of court or any entity under the judicial budget, I feel certain that the leadership of any such level of court or entity, as good public servants, will be amenable to finding a way to address any reasonable concerns. So long as the purpose behind such concerns or inquiries is not an attempt to control the judicial branch or to interfere in any way with decisional independence in our courts, I will fully encourage and support such cooperation.

I would be remiss if I did not mention one last matter affecting the judicial branch and its budget. There is a dire need for additional superior court judges in various parts of our great state. I feel certain that many of you are fully aware of this fact. No new superior court judges have been approved and funded by this body in the past several years. Using the established valid criteria, this year the Judicial Council approved 10 requests for new judgeships. On behalf of the Judicial Council and the Council of Superior Court Judges, I request that you favorably receive the recommendations and requests. Additionally, our Court of Appeals continues to be in dire need of additional judges and office space.

I close on this more personal note. I have been richly blessed with wonderful family and friends, strong faith, good health and the great privilege of serving on your Supreme Court for 15 years plus a few weeks. I am particularly grateful to Governor Joe Frank Harris who made possible my service on the Court. And I deeply treasure the close friendships made with so many members of the General Assembly over these years.

Provided nothing unexpected occurs between now and June 30th I will retire from the Court on that date. My heart and mind assure me that creation of the public defender system was a good, right and just thing. Because the system is alive and well, I am filled with joy, a joy that will be with me for the remainder of my life.

And, when I leave, it will be with full confidence that Governor Perdue will choose an excellent successor, one who loves the law and believes in fairness and equal justice for all God's children, just as much as I do. In the meantime, I look forward to working with you as we seek to remedy wrongs and improve both our justice system and the quality of life of the people of Georgia. I wish you well in this history making session.