

State of the Judiciary Address
Chief Justice Carol Hunstein, Georgia Supreme Court
Message to the Legislature
March 16, 2010, in Atlanta, Georgia

Lt. Governor Cagle, Speaker Ralston, President Pro Tem Williams, Speaker Pro Tem Jones, other members of the legislative and executive branches, fellow members of the judicial branch, ladies and gentlemen:

On behalf of the Judicial Branch of Georgia, I am honored as your Chief Justice to come before this distinguished body to deliver the State of the Judiciary Address. Through this annual tradition of inviting the Chief Justice to address you, you show your interest in the well-being of the Judicial Branch. And for that, we are grateful.

I want to acknowledge my friends and colleagues who serve with me on the Georgia Supreme Court: Presiding Justice George Carley, and Justices Robert Benham, Hugh Thompson, Harris Hines, Harold Melton and David Nahmias. I also want to recognize Chief Judge Yvette Miller and other members of the Georgia Court of Appeals. I am particularly grateful to those of you here today who have so generously offered your encouragement and support. I look forward to working with you and to getting to know you better.

The judiciary is the third branch of government. Our founding fathers – in their brilliant concept of balancing powers – created three co-equal branches:

- The legislative branch to make the laws;
- The executive branch to execute the laws;
- And the judicial branch to interpret the laws in strict adherence to the Constitutions of our nation and our state.

Each branch has its own separate function, and each must be independent of the other. Our state and U.S. Constitutions make that clear. The separation of powers is the very bedrock of our nation's democracy.

I have been a judge for 25 years, 17 of them on the Georgia Supreme Court. And I have come to realize through the years that most Georgians have little understanding of what we in the judicial branch actually do. Perhaps we inadvertently allow our robes to separate us from our brothers and sisters in other branches of government, as if we work under a veil. My goal today is to lift that veil and tell you some things about our courts that you might not already know.

The mission of Georgia's judicial system is to impartially interpret the constitutions and laws of the United States and Georgia, and to provide open, just, and timely resolution of all matters before the courts. Georgia's judiciary is critical to this state's public safety and well-being, and I am honored to stand shoulder-to-shoulder with the best judges this country has to offer. You can be sure that every day in Georgia, not only the judges of this state, but also the prosecutors, defense attorneys, probation officers, sheriffs, clerks and countless others who support the courts, provide the utmost in public service by upholding the constitutional rights of our citizens and ensuring that all Georgians – no matter their life's circumstances – receive justice.

Every day, thousands of Georgians around the state enter our courthouses. As I speak to you this morning, an untold number of our citizens are on their way to court. They're the business owner, who's embroiled in a contract dispute; they're the woman, who's seeking a protective order because she's in fear of her husband; they're the middle-aged couple, whose car was stolen from them at gunpoint; they're the 5-year-old boy, who's been living in foster care since he was found wandering alone outside in the cold; and they're the elderly man, who can no longer take care of himself and has no relatives. They go to court, often with fear and trepidation, always in search of justice. They go to court with the promise that regardless of their walk of life, they will be treated with fairness. Our Constitutions demand it.

In Georgia, we have five classes of trial courts: magistrate, probate, juvenile, state and superior courts. In addition, we have 378 municipal courts in towns and cities around the state. We have two appellate-level courts: the Court of Appeals and the Supreme Court.

I know you are familiar with Georgia's municipal courts. These are the courts located in cities and towns across the state. Where they exist, municipal court judges decide cases involving violations of local ordinances, and they conduct preliminary hearings in criminal cases. The majority of their cases are traffic offenses. Although they are locally funded, many of us who travel in and out of Atlanta have perhaps paid a visit or two to Atlanta's traffic court – including me. Indeed, these are the courts people are most likely to have contact with.

I'm sure you have also heard of magistrate courts. I think of them as the entry point into the criminal justice system. The breadth of their work is staggering. Last year, the magistrate courts issued more than 300,000 arrest warrants and nearly 10,000 search warrants. Perhaps you know a magistrate court judge. The late Fulton Superior Court Judge Rowland Barnes started out as one. He was a single dad with a young daughter at the time, and like the other magistrate judges who serve every county of this state, Judge Barnes did not hesitate to bundle up his little girl in the middle of the night and drive her in his Volkswagen bug to go sign time-sensitive warrants. Magistrate courts conduct preliminary hearings on criminal felonies and misdemeanors. Last year they held more than 34,000 warrant application hearings, and more than 184,000 first appearance hearings. But they also dealt with nearly one half million civil cases. In tough economic times, it is no surprise that their caseload is growing.

Few people know all that our probate courts do. Yet they have extraordinary power over the everyday lives of our people. In addition to certifying people's last will and testament and appointing executors to deceased Georgians' estates, our probate courts have the exclusive authority to appoint guardians for the elderly and incapacitated adults, as well as for minors. Our state's probate judges are dedicated and caring people who serve their communities well, but also see our citizens at their worst. These judges must use their authority to commit adult alcoholics, drug addicts, and mentally ill persons to institutions, sometimes against their will. Sadly, during the economic downturn, the number of these cases has also grown.

Juvenile courts are another part of our judicial system where our most vulnerable citizens turn for justice. Our juvenile judges deal with the most tragic of human circumstances. They must possess the wisdom of King Solomon to know when a child is better off in a home of strangers than with his own mother and father or other relatives. They must send children who commit crimes to jail – even knowing that some of those children may have committed those crimes because they were mentally ill, abused at home, or abandoned by adults to raise themselves.

When juvenile judges are not in the courtroom, they're busy searching for resources for families who need them; or to find resources to turn children on the right path before they are damaged beyond repair. As with all judges in all classes of courts, being in the courtroom is only part of the job. We have nearly 150 juvenile judges in Georgia who handle more than 140,000 cases in a given year. *One hundred and forty thousand cases*, all involving our children. We should all be grateful to these judges.

Georgia has 70 state courts, and they are among our busiest, as they handle civil cases and misdemeanor criminal cases, including driving under the influence and traffic offenses. In the last two years, our state courts' caseload has grown by 10 percent, and filings now exceed one million a year.

Other than traffic court, you may be most familiar with this state's superior courts. These are the courts that make the most news because these are the courts from which our most high-profile criminal cases emanate. Our superior courts have exclusive authority over felony crimes. They also try cases involving civil lawsuits and preside over the adoption of children, divorce cases and property disputes. Every one of these cases can be life-changing for the people involved. In the last five years, their caseloads have increased by 20 percent and yet, the appointment of new judges has not kept pace. Recent data indicate that Georgia now has a shortfall of 72 superior court judges. With the elimination of senior judges and the furloughing of judges and staff, our superior courts face serious backlogs.

In addition – thanks in large part to your support – Georgia's DUI, mental health and drug courts remain a model for the rest of the country. These accountability courts save taxpayer dollars, and they save lives, by breaking the cycle of addiction and mental illness that clogs our jails.

When people are not satisfied with decisions made by any of these lower courts, they may ask to appeal to our appellate courts. The Georgia Court of Appeals, with its 12 judges, is one of the busiest, most efficient and well-respected in the country, issuing more than a thousand opinions in a given year. Its timely resolution of many types of appeals – from cases involving the termination of parental rights to those involving wrongful death suits and criminal violations – is critical to the safety and well-being of Georgia citizens.

This state's highest court – the Supreme Court of Georgia – is also one of the busiest, most efficient and most highly regarded in the nation. As you may know, it has been rated the No.1 most productive state Supreme Court in the country. That is thanks to the hard work of the dedicated justices, staff, and attorneys. It is also due in part to our Constitution, which requires both appellate courts to dispose of all direct appeals within two court terms from the time they are filed – or approximately six months. That is a positive time requirement. Even though the Georgia Supreme Court now has fewer staff than it had a decade ago - and death penalty cases alone have increased 68 percent - we face no backlog in cases and we remain committed to delivering timely justice to all who come before us.

Your judicial system does all that I have just outlined for less than 1 percent of the state's annual budget. *Less than 1 percent*. At the same time, your judicial system is a significant source of revenue for the state government and for county governments. Court fees and fines generate approximately \$500 million each year, with nearly \$90 million returned to the state general fund. That revenue will go down if core court functions are reduced more than they already have been.

Ladies and gentlemen, the state of Georgia's judiciary stands at a crossroads. There is no question that we all have to do our fair share to help balance our state's budget. However, it has become increasingly difficult to do our constitutionally mandated duties. And that is due to budget reductions. In 2009, the judicial branch received less than eight-tenths of one percent of the total state appropriations. That represents the judiciary's smallest share of state appropriations in recent history, even as we have watched our state's population and needs grow.

We have not resisted sharing the burden of bad economic times. Our judges have volunteered to take furloughs. We have eliminated positions and laid off people whose livelihoods depended on them. We have stopped hiring and giving salary increases. We have closed down law libraries. At the state's highest court, our operating budget has shrunk so low that we had to return a copy machine that we desperately needed.

Just as Georgia's courts have received national praise, today we are receiving national attention of a different sort. A recent article in the Wall Street Journal began like this: "The wheels of justice in Georgia are grinding more slowly each day."

Cuts in state courts, the article says, have led to a growing backlog of cases, with months-long delays for many civil and domestic cases. Those hit hardest are already our most vulnerable citizens – abused children, battered women, the elderly, and others who turn to us for justice. The consequences of these cuts, though, hit everyone, threatening the basic constitutional rights of civil litigants and criminal defendants as core court functions go by the wayside. And, according to the Wall Street Journal article, while judiciaries are being squeezed nationwide, "Georgia's situation appears particularly severe."

With cuts in county budgets, the crisis is compounded across the state, putting some court systems on the edge of an abyss.

Gwinnett County District Attorney Danny Porter recently said that a 9 percent funding cut his county commission was considering, would require his office to stop prosecuting cases for five weeks this year. He asked: "Which 9 percent of these victims do you want me to tell, 'I can't prosecute your case'?"

The unthinkable has already begun in Hall County, where the courts now close one day a month.

One superior court judge recently told me she had 16 death penalty cases pending. That backup can be blamed in part on the elimination of funding for senior judges. Senior judges were one of the best bargains this state ever had. They helped process cases through the system, and they enabled elected judges to spend time on critical cases.

We cannot talk about our court system without acknowledging the Judicial Council – our policy-making body, which is made up of leaders of every class of court. The Judicial Council includes the Administrative Office of the Courts, which provides critical research, technical and administrative support to our state's courts. In the last five years, the Council's budget has decreased by more than 20 percent.

Our Constitution guarantees the right to a speedy trial in criminal cases. That means that if the demand for a speedy trial is not met, that criminal defendant could go free. Due to the speedy trial requirement in *criminal* cases, some judges have been forced to put *civil* cases on hold. One

judge had to suspend all civil jury trials for six months. In some parts of the state, it now takes up to two months to get a hearing in a temporary child custody case, when it used to take a couple of weeks. The precedence that criminal cases must take threatens the civil justice system – one that is critical to the health of our businesses, which depend on the courts to enforce contracts.

The reality is this: Our state’s largest court system – Fulton County’s – said earlier this year that it could face the surreal prospect of having to shut its doors some days of the month. Right now in Fulton County, there are 183 murder cases waiting to be tried; half are more than a year old. That county’s three domestic judges each get 160 cases a month. Chief Judge Dee Downs put it this way: “This isn’t justice,” she said. “We’re losing the rule of law.”

We cannot afford in Georgia to lose the rule of law.

Aristotle said: “It is in justice that the ordering of society is centered.” The courts are the core of the nation’s legal system, the administrators of justice, the arbiters of right and wrong, guilt and innocence. In Georgia, it is the judicial branch’s allegiance to the letter of the law, our commitment to follow the laws that you write and pass, that safeguard our citizens’ freedom and security. The need for justice does not diminish with a shrinking economy. Indeed as our caseloads attest, it grows. But our citizens suffer when business and personal disputes are not heard and resolved. Our public safety is at risk when crimes are not prosecuted, and criminals are not punished. As the legendary jurist Learned Hand said: “If we are to keep our democracy, there must be one commandment: Thou shalt not ration justice.”

As I have said here today, Georgia’s judiciary is at an historic juncture. But with your help, it will survive.

I am confident that just as we in the judiciary care deeply about the laws you pass and have taken an oath to uphold the rule of law, you care deeply about maintaining our courts and ensuring that they thrive. Although we are three separate co-equal branches of government, we share a common mission: We are all public servants here to serve the people of Georgia. We are all bound to conserve taxpayer dollars. And we are all committed to providing our citizens with the best government possible.

In closing, on behalf of all the state’s judges, I want to invite each of you to spend a morning or a day observing one of the courts in your community. Recently, a group of Cobb County legislators spent a “Day on the Bench” in their county’s state court.

I believe that like them, you would walk away with a better understanding of your judiciary.

And you would walk away proud. Proud of the many men and women who work so hard to administer justice, safeguard the public safety, and uphold the rule of law.

Thank you.