

State of the Judiciary Address
Chief Justice Harold D. Melton, Georgia Supreme Court
Message to the Legislature
February 26, 2020, in Atlanta, Georgia

Lieutenant Governor Duncan, Speaker Ralston, President Pro Tem Miller, Speaker Pro Tem Jones, members of the General Assembly, Constitutional Officers, my fellow judges, ladies and gentlemen:

Each day that I go to work, from whatever angle I approach, I am struck by the majesty of the first state building in Georgia's history dedicated solely to the judiciary.

I enter the new Nathan Deal Judicial Center with awe and humility, mindful that all of us who work here, and all who work in the judicial system statewide, are united in a single purpose – to uphold the rule of law and render impartial justice to all Georgia citizens, regardless of their circumstances.

Once I get to my office, I am struck by the view out my window – a view that appropriately looks upward with respect toward the equally majestic state Capitol building.

Today, I say thank you on behalf of all my colleagues in the judiciary for your support and investment in the judicial branch of government. I thank Governor Brian Kemp and I thank former Governor Deal for their roles in making so many people's dream become a reality.

The Nathan Deal Judicial Center is more than a building. It is a monument to the rule of law, a symbol of justice for all, and a promise to you and the citizens of this great state. I hope you look at this new building that graces Atlanta's landscape with pride and hope for all that is to come, just as I do.

The recent move from our old building on Mitchell Street, just around the corner, was a time to reflect on where we have been and where we are headed, in a building that was constructed to last for 100 years.

We are not where we once were.

When the courtroom we just vacated was dedicated in 1956, a photo captured the court's seven justices standing on the bench where our court has sat since that time. The photo shows them leaning down from that familiar bench and shaking hands with then-Governor Marvin Griffin and former Governor Herman Talmadge. I was struck by that photo because all seven justices were white men, not varying much even in height or weight. Sort of like the Judicial Rockettes.

Our Court is different now.

I also was struck by the speeches of that day. Former Governor Talmadge stated that he took comfort knowing that Georgia had a Supreme Court that he said "refuses to bow supinely before

those who would substitute their own twisted notions of right and wrong for law and precedent.” The speakers praised and urged Georgia’s highest court to stand firm against the usurpation of local authority. They were talking about *Brown v. Board of Education* and the forced desegregation that was being imposed by the United States Supreme Court and federal authorities.

They spoke that day about upholding the rule of law, just as we do here today. So we know from our history that we as judges and lawmakers have not always gotten it right.

That reminder urges us to remain vigilant, realizing that the divisions of the past could easily impede our efforts to move forward together. My friend and colleague on the Supreme Court, Justice Robert Benham, recently said, “We can’t let the evils of yesterday use up our tomorrows. As a people, we have more in common than things that separate us.”

So how will we do in this new building that has been designed to last 100 years? On the last day of oral arguments in our old building on November 7, 2019, I asked the question, how had that building served us since it opened for business in 1956.

I hope that 100 years from now, someone will ask that same question of our new building. My hope and prayer is that the answer will be that the building did well because all who worked there lived up to the highest ideals that the rule of law embodies and our new building inspires.

I am confident we are off to a fine start. I have the privilege of working alongside some of the best legal minds, the most committed public servants, and the finest men and women with whom I have ever worked: Presiding Justice David Nahmias, Justice Robert Benham, Justice Keith Blackwell, Justice Michael Boggs, Justice Nels Peterson, Justice Sarah Warren, Justice Charlie Bethel, and Justice John Ellington.

I am so grateful for them, and for my friends and colleagues on the Court of Appeals, as well as for the many dedicated and hard-working judges all across this great state. Folks, I am proud to say, that we have a professional statewide judiciary.

When Justice Clarence Thomas of the United States Supreme Court came earlier this month to help dedicate the new building, he said that protecting and upholding the rule of law takes great courage and is not for the faint of heart as it often leads to unpopular decisions. I assure you today that Georgia’s judges are men and women of courage and discipline, and together they fill me with a certainty that we can and will do better, both in the immediate and distant future.

As with any endeavor, however, there are challenges ahead for the bar and the judicial system. And we will need your help in meeting them head on.

Access to Justice and Law Libraries

We must continue to do better to ensure that all Georgians – rich and poor – have access to justice. Six years ago, in giving this annual State of the Judiciary address, then-Chief Justice

Hugh Thompson pronounced that Georgia's judicial system was "sound" and "strong," then he added, "for those who can afford a lawyer."

Too many of our citizens cannot afford legal representation in civil matters. Our economy has continued to improve. Georgia's poverty rate has dropped to 14.3 percent, but it remains higher than the United States average, according to the U.S. Census Bureau. Today, more than 1½ million Georgians live below the poverty level, defined as a family of four that earns no more than \$26,200 per year.

But even those of middle income have difficulty affording lawyers. And as Chief Justice Thompson pointed out, they too encounter numerous legal problems.

They include the mom-and-pop grocery store owner with a contract dispute, the father dying from cancer who must finalize guardianships for his young children, our wounded warriors returning from battle who can't access the disability benefits our government has promised, and our elderly citizens, who have numerous legal needs, including the fundamental need to protect their own safety and health.

In the criminal context, citizens are afforded representation regardless of their ability to pay, but in civil matters, such as these, they are not. In the face of these needs, our courts have seen a growing number of people who are representing themselves. Today, the number of self-represented Georgians coming to our courts has reached well over 1 million.

When people represent themselves, their unfamiliarity with the law and court procedures often results in frustration for all involved, rescheduled and protracted hearings, and other inefficiencies that consume valuable state and local resources. Our legal system is an adversarial system; people win and lose. Citizens who represent themselves, more often lose.

I want to tell you today about an exciting evolution that is beginning to take hold in courts around Georgia, and around the nation.

We have a system of law libraries in this state. Historically, law libraries were the place lawyers and judges went to do legal research. For generations, students of the law have sat among rows of legal opinions and writings bound up in books as they learned the intricacies of the law. During my time as a law student and in the early years I practiced law, those books were my constant companions, or at least should have been.

That paradigm has quickly faded, and many law libraries today sit all but abandoned as monuments to legal tomes, void of lawyers. Today, legal professionals do their research at their desks in a digital world where libraries come to life at their fingertips with a keyboard. Today, just about the only people who go to law libraries are non-lawyers.

In 2018, the National Center for State Courts selected the Dougherty County Law Library as a pilot legal self-help project, one of seven states chosen to advance the goal of providing civil justice for all. Under the leadership of Chief Judge Willie Lockette, today, Dougherty County

operates a Law Library/Self-Help Center in Albany, assisting an average of 40 self-represented litigants each day. As a regional project, it has assisted people from more than 91 Georgia counties. A survey of judges familiar with the project showed that 100 percent found that self-represented litigants assisted by the project took up less court time and resources than those who did not receive help.

Within the month, Fulton County Superior Court will unveil its state-of-the art Justice Resource Center. This center – under the leadership of former Chief Judge Robert McBurney and current Chief Judge Christopher Brasher – will offer thousands of self-represented litigants a one-stop shop where they can come and get help to navigate the complex legal process.

The idea for the center came several years ago when court administrators one day noticed a clearly battered woman carrying a baby with some difficulty. They could see she needed help. But they realized that to get it, first she would need to go to the law library and do her own legal research, then go to a separate building to get a temporary protective order. All with a baby in tow.

Now, the Fulton County law library, its Family Law Information Center, and other court services are being relocated together into one room.

As Chief Judge Brasher said, “We don’t want people just casting about in a complex system not knowing what to do.”

Six computers will offer “How To” videos covering topics such as how to file for divorce or respond to an eviction notice. At the Justice Resource Center, they will be able to schedule appointments with attorneys from Atlanta Legal Aid, who are under contract with the county. They will get help filling out forms to petition for legitimation, divorce, child support, and child custody. And those who do not speak English will receive language assistance.

Last year, more than 3,500 citizens filed applications for temporary protective orders in Fulton County; approximately 90 percent of them did so without lawyers. In addition, Chief Judge Brasher said that court officials started noticing that the victims of domestic violence are often followed into court by their abusers. So they created a special protected area in the Justice Resource Center for those victims and their children that can only be accessed by key card. Court administrators envision that victims of elder abuse also will take refuge in this locked space.

The evolution of stagnant law libraries into vital self-help resource centers already has a partial funding base. Law libraries are largely funded through assessed court fees, a portion of which goes into each county’s law library fund. Funds available to larger counties are much greater than those available to Georgia’s smaller, more rural counties. Yet a number of our smaller counties have no lawyers at all, and they too could benefit from regional self-help resource centers. And a self-help video produced in North Georgia can easily be made available, and be just as helpful, to self-represented litigants in South Georgia.

As head of Georgia’s judicial branch, I am asking my colleague, Justice Charlie Bethel, along with Fulton County Superior Court Judge Robert McBurney to lead an ad hoc committee that

will explore and promote best practices for refashioning law libraries across the state to meet today's needs.

Self-help resource centers such as those in Fulton and Dougherty counties have the potential to embody the new role of Georgia's law libraries: a place where citizens will gain greater access to our legal system. Technology can help us ensure access to justice in Georgia. Already it is helping bring efficiency and cost-savings to our courts.

E-filing

Thanks to your legislation, just over a year ago, mandatory electronic filing went into effect statewide in our state and superior courts.

I can report today that the sky did not fall. Other than daily hiccups, we are up and running all across this State without major difficulties. I'm not hearing any huge outcries, and I consider that good. We've made great progress, but we must not rest on our laurels or we could wind up generations behind. Technology changes so fast that we must continue to innovate and improve.

We know that technology holds promise for helping us be more efficient in our work and for helping us better serve underserved communities. But we also know that technology brings new challenges.

Cybersecurity

In the last two years, we have seen a growing number of ransomware attacks on government agencies in Georgia. These attacks have heightened the need for cybersecurity in all three government branches, including the judicial branch.

Ransomware attacks use malware to lock out users generally under a demand for payment. I liken it to having the keys to your car stolen. You still have your car, but you can't get in to drive it. You need an encryption code to unlock the system. But the thieves have that code and they demand money to give it up.

As you know, in March of 2018, the City of Atlanta suffered a massive cyberattack. The Georgia Department of Public Safety also was a target, and there have been others.

Last June, the Georgia Administrative Office of the Courts was the target of a major ransomware attack. Some courts that had their electronic files saved on the AOC server lost access to all of their electronic records – entire case files dating back 20 years or more were gone in an instant. Reconstruction and recovery has been an ongoing effort in many of those courts.

Much of the judiciary survived the attack unscathed, but this is the future operating environment for all of us. I want to thank you for your support thus far in helping the judiciary protect itself against future attacks.

Last fall, I established a committee, chaired by Judge Christian Coomer of the Georgia Court of

Appeals, to identify, mitigate and insure against risks and vulnerabilities in the state's judicial networks.

The cybersecurity committee includes and engages cybersecurity experts, physical security professionals, lawyers who specialize in privacy and data security, judges, and clerks of court. My expectation is that the committee will help produce tools and solutions that will safeguard the vital information Georgians entrust to their judicial branch of government.

Based on its work, our cybersecurity committee will be making specific recommendations in the near future for protecting the judicial branch of government. We will be in touch with you in the next year with how you can help us.

In addition to these systemic problems, another challenge we face in the judiciary is how to respond to individuals who have serious mental health problems.

Mental Health

I want to applaud Governor Kemp and the Georgia legislature for creating the Behavioral Health Innovation and Reform Commission.

We in the judiciary pledge our support and willingness to work diligently with the Governor, with you, and with this commission to reduce the numbers of people with behavioral health issues who wind up in our jails and prisons.

Under House Bill 514, the commission has been given a broad and sweeping mission to conduct a comprehensive review of the behavioral health system in Georgia and make recommendations for reforming it. Among its charges, the commission has been asked to identify the ways behavioral health problems lead to entanglement with the criminal justice system.

Four judges serve on the 24-member commission. Supreme Court Justice Michael Boggs chairs the commission's Subcommittee on Mental Health Courts and Corrections, which is charged with reviewing "the impact behavioral health issues have on the court system and correctional system."

Chief Judge Brian Amero of the Henry County Superior Court chairs the commission's Subcommittee on Involuntary Commitments.

The work of this commission is the next logical step as we strive to work unceasingly to improve our criminal justice system.

We know that people with mental illnesses and co-occurring substance use disorders are overrepresented in our jails. Taking Macon-Bibb County as an example, 18 percent of the jail population is made up of people with a serious mental health diagnosis, compared to 5 percent of the general population. Those with a mental health diagnosis stay in jail nearly twice as long and have nearly three times the recidivism rate.

Our judges have responded.

In just five years, the number of participants served by Georgia's mental health courts has more than doubled from 896 participants in 2014 to 2,112 participants in 2019.

Under our judges' leadership, mental health courts have reduced recidivism and saved taxpayers' dollars. For every one dollar invested in a mental health court in Georgia, there is a savings of six dollars and three cents.

We understand that it is important to address behavioral health problems before they manifest themselves in the criminal justice system. I am confident that this is what the commission will do. As a judge, as a father, and as a leader in Young Life ministries, I believe we must particularly focus on our young people. We have the means to detect when young men and women are on a path toward trouble with the law, whether due to problems at home or at school, mental health issues, or drug addictions. The challenge continues to be whether we will wait until they enter the criminal justice system before we tackle those problems in a wholistic way.

As the State turns its attention to criminal gang activity, I encourage us also to pay attention to identifying juveniles going down this destructive path so we can steer them in a different direction.

In Fulton County, District Attorney Paul Howard and Public Defender Vernon Pitts – typically adversaries in the criminal justice process – are working together with the juvenile court to identify 13-to-16 years old who already have committed three non-violent offenses. They intend to intervene in their lives before they graduate into the adult criminal justice system. So far they have identified about 52 kids who fit their parameters.

The goal is to introduce them to a different life, a different direction, a different path. Called "Level Up," the program is modeled after a similar program operating in Chicago and New York. Once the program is fully operational, their staff will pick up the young people each morning and take them to school. After school, staff will take them to a special center that is funded by the Atlanta Police Foundation, where they will be fed. Tutors will help them with their school work, and they can participate in sports and other activities until 8 or 9 at night when staff will return them to their homes when it is more likely a parent will be there to supervise.

The program's staff will visit the homes to see what is really going on. And about 11 churches have volunteered to provide mentors to spend time with these young people as they navigate life's issues.

Kids who join gangs most often are looking for family, for belonging. In Chicago, where the program has been up and running, the recidivism rate has gone down by 73 percent; in New York, it has dropped by 69 percent.

I believe this type of program can make a difference in our communities, keep kids out of gangs, and put them on a better path toward a life of meaning and purpose.

In addition to dealing with the behavioral health of people coming into our criminal justice system, I am also concerned about the mental health of our judges and lawyers. Our own dirty secret is that the job of dealing with society's problems, in addition to our own, sometimes takes its toll. We are often not healthy ourselves.

I commend the State Bar of Georgia and our law schools for reaching out to lawyers and law students and offering confidential services and counseling to those who need help with depression, stress, alcohol and drug abuse, and psychological issues. Mental health issues affect us all, either directly or indirectly.

In April, our Chief Justice's Commission on Professionalism will convene a Suicide Awareness Program. It will be a state-wide conversation among our entire legal community. Sally Quillian Yates, who lost her father to suicide, will moderate the program. This is an issue we cannot afford to ignore.

We in the appellate courts were hit particularly hard this past year with the loss of one of our own – Judge Stephen Goss of the Court of Appeals, who died from suicide. Ironically, Judge Goss founded the state's first felony mental health court in Dougherty County in 2002.

Judge Goss's death last summer reminds us that we cannot assume we always know what is going on in the personal lives of others. It reminds us how important it is to reach out and care for one another, and learn specific ways we can respond to people we suspect might be considering taking their own lives. It also reminds us that we as a society still struggle to lift the stigma of mental illness that stands as a barrier preventing so many from getting the help they need.

Hopefully, in the next 100 years, we will do better. I am confident we will.

I began today's address by telling you we are not where we were in 1956. We are a different court now than when our court first convened in the building we have left behind. We are a different state.

Justice Benham

It has become customary during addresses such as this, to point to the gallery and recognize someone special who is worthy of recognition. Today, rather than point to someone in the gallery, I point to someone one who is seated right here in front with the rest of my colleagues.

No one personifies Georgia's growth and evolution toward a professional judiciary better than Justice Robert Benham of the Supreme Court of Georgia. As I said at our dedication ceremony earlier this month, he is the father of the modern court – a court that is truly dedicated to the principle that all men and all women are equal, and all stand equal in the eyes of the law.

The day after tomorrow marks the last day Justice Benham will serve as a judge in his beloved Georgia after nearly 36 years on the Court of Appeals and the Georgia Supreme Court. That

means that he has endured 32 State of the Judiciary addresses, having personally inflicted four of them upon the General Assembly during his time as Chief Justice.

Justice Benham grew up in the North Georgia hills of Cartersville, where he still lives. As a boy, he saw his father cry for the first time after the family was turned away from an amusement park called “Storyland” that they had seen advertised on TV. His father hadn’t realized the park was for whites only.

As a young man, Justice Benham first worked in state government as an intern for then-Governor Lester Maddox. We know of Governor Maddox’s segregationist history. But as is his way, the young Robert Benham found a way to build a bridge and grew to be respected by the Governor.

In 1989, then-Governor Joe Frank Harris appointed him as the first African American to sit on the state’s highest court. In Justice Benham’s own words, here is how he described that day: “I thought that moment represented not necessarily a remarkable accomplishment on my part, but a remarkable accomplishment on this state’s part.”

That is typical of Justice Benham. He often endured walking into rooms where people closely assessed whether they should take him seriously. He overcame doubts by employing two primary tools: 1) he was always nice; and 2) he was always bigger than the situation. He took the high road, never giving tit for tat, striving for common ground. He suffered slights gracefully, never lost his temper, never raised his voice, never took things personally. He remained singularly focused on his goal and always moved forward.

Justice Benham is a pillar in our state’s history. One of the highlights of my life has been the privilege of having served with him on this Court.

The last day Justice Benham presided over oral arguments, we later celebrated with staff as an entire Court. His wife, Nell, and their two sons were there; justices and judges were there. Miss Nell said she was very proud of him for all his accomplishments, and she thanked us. But most of all, she wanted us to know what a good husband and father he has always been. He truly is a good man, she said.

Justice Benham, we will never forget you. This state will never forget you. I will never forget you. Your wife is here today, and I ask now that you both stand so we may thank you for your service.

Lastly, Ladies and Gentlemen of the General Assembly: Thank you for the partnership and cooperation we have with you for the cause of justice. It is an honor to serve with each one of you as we work together to hammer out these tough but meaningful issues. God bless you all, and God bless the great state of Georgia.