

State of the Judiciary
Chief Justice Harold D. Melton, Georgia Supreme Court
Message to the Legislature
March 16, 2021, 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:

Written in big letters above the bench of the Supreme Court of Georgia is the Latin phrase, “Fiat Justitia, Ruat Caelum.” Translated into English, it means, “Let justice be done, though the heavens may fall.”

To me, this motto has always meant that we who are judges must do the right thing and uphold the rule of law regardless of the politics, the public will, or the consequences. Now I have another take. Given this past year, I believe it also means that justice must prevail even when everything around us is falling apart. Truth and justice for all must remain front and center, even if we find ourselves in a historic time of great political upheaval, racial and social unrest, and a worldwide pandemic that has altered our lives.

I thank you for this annual opportunity to report to the Georgia Legislature the state of the judiciary: what the courts have accomplished this past year and where we are headed. And I thank you for your continued support. I am also grateful to Governor Kemp for his help and leadership this past year. I want to give a special greeting to my lovely wife, Kimberly, who adjusted her travel plans at the last minute in order to be here for this moment. This is the kind of love and support she has consistently extended to me. Thank you for being here with me on this special day.

When I stood before you a year ago, I spoke of the pride and hope I had in our Georgia judicial branch of government going forward in 2020. I did not know that less than three weeks later, I would have to declare a Statewide Judicial Emergency in response to the COVID-19 pandemic that had reached Georgia’s borders. I did not know that in the coming months, many of us would lose colleagues, friends, and loved ones to this dangerous disease, or fall victim to it ourselves. I did not know how hard our courts would have to work, pivot, and change in order to uphold justice.

But today, ladies and gentlemen, I can report to you that going forward in 2021, the state of our judiciary is sound, solid, and strong. It is not without its challenges, and I particularly want to thank you for your support this legislative session in helping us to confront some of those challenges.

This past year, I have witnessed first-hand that your judges and courts are remarkably resilient, flexible, creative, and committed in their mission to uphold the law and mete out justice fairly and equitably. It has been my honor – and one of the highlights of my professional career – to work with an amazingly cohesive group of justices, judges, clerks, court administrators, leaders

of the state bar, law school deans, public health officials, sheriffs' offices, and others who have collaborated and cooperated to keep our courts open and the work of the judiciary on track, all while going the extra distance to ensure that people are safe.

Our courts exist to uphold the law. It is what we are. It is who we are. The rule of law is the principle that in our nation and our state, the law is in charge, not a king, not a dictator, but a body of laws. No one stands above the law, and no one is to be treated differently under the law. In a democracy, our laws must be applied equally whether you are weak or powerful, rich or poor, white or of color, young or old, of one religion or another. The rule of law is intended to protect the rights of the people and to prevent tyranny.

Justice and the rule of law cannot wait on a pandemic.

Statewide Judicial Emergency

One year ago – on March 12, 2020 – in an emergency phone call, I told Georgia's judicial leaders that under state law, the chief judge of each judicial circuit had the authority to suspend jury trials and other court operations in response to the COVID-19 virus. The next day, Fulton County Superior Court Chief Judge Christopher Brasher became the first to do so. Others around the state soon followed suit.

Two days later, I declared a Statewide Judicial Emergency, following the lead of Governor Kemp. The order took effect immediately and was due to expire in 30 days, as state law required. At that time, we knew of only one death in Georgia due to COVID-19.

The emergency order signed that day required courts to remain open to address critical or "essential" functions, and give priority to such matters as domestic abuse restraining orders, criminal bond hearings, mental health commitment hearings, and cases where an immediate liberty or safety concern was present. The order suspended a number of judicial deadlines and urged courts to begin using video conferencing where possible as a safer alternative to in-person proceedings.

In the ensuing months, new orders followed every 30 days extending the Statewide Judicial Emergency. At first we thought this pandemic would be over within a few months and we would all go back to "normal." I certainly never envisioned we would still be within its grips one year later. With the help of the Administrative Office of the Courts and Director Cynthia Clanton, we have held emergency virtual meetings almost every week with the Judicial Council. The council is the policy-making body of the state's judicial branch that is made up of judges representing every class of courts in Georgia. In those meetings, we heard questions that needed to be answered, rules and laws that needed to be changed, the steps we needed to take to get courts fully functional during a pandemic. In a normal year, there are four quarterly meetings of the Judicial Council. In this past year, there have been more than 30, and they have been extremely productive.

I want to emphasize that from day one of this emergency, Georgia's courts have remained open. And the work of the courts continues. It just looks different. Along the way, I've told judges, if

you have to stick a bucket inside the front door of the courthouse to accept a filing, and instruct that filer to kick that bucket back and forth across the room in order to operate, then do that. We've adjusted our operations, and there are things that we have not been able to do. But our courts have not closed.

Our judges have taken an oath to uphold the law. And many will tell you they go to bed at night worried about how they can push cases to resolution without endangering the public health of all those who come to our courthouses. You should be proud of the many Georgia judges in superior courts, state courts, juvenile courts, probate courts, magistrate courts, municipal courts, the business court, and the appellate courts – who have stepped up this year and gone beyond their normal duties to keep cases moving as much as possible while keeping people safe.

Loss of People to COVID

In some cases, it has cost them their lives.

Our probate judges have been particularly hard hit by this virus. Probate judges have a host of critically important jobs, including the emergency appointment of guardians and the involuntary hospitalization of incapacitated adults and other dependent individuals. Ensuring care for those who cannot help themselves cannot wait for the end of a pandemic.

Among probate judges we lost this past year from COVID-19 were Judge Karen Batten of Brantley County – described by Probate Council President, Judge Kelli Wolk, as a “genuinely kind soul;” Judge Nancy Stephenson of Dougherty County – a judge who loved and served her community of Albany, which loved her back; and Judge Jon Payne of Chattooga County – a veteran of the U.S. Marines and a former Sheriff’s Deputy who was elected Chattooga County Probate Judge at the age of 25 and remained a probate judge for the next 45 years until he was struck down by the coronavirus.

We lost my dear friend and colleague, former Chief Justice George Carley, to the virus. Another former Chief Justice, Norman Fletcher, lost his beloved wife, Dot. And Superior Court Judge Horace Johnson of Covington – a bright, shining star – left us way too early after collapsing only hours after holding a virtual court hearing from his home. Even though he had tested positive for COVID-19, Judge Johnson continued doing his sworn duty until the end.

In addition, countless judges, court staff, deputies, prosecutors, public defenders, lawyers and others in our court family have contracted – but survived – COVID-19.

I know a number of you have suffered similar losses and may even have had the virus yourself. I thank you for still being here and for showing up to serve the people of this great state.

Supreme Court

In the first month of the emergency, the Supreme Court of Georgia – like other courts – canceled the courtroom sessions that were scheduled in March 2020 for oral arguments. But my colleagues and I – thanks to our first-rate IT staff – quickly adapted to the use of Zoom video

conferencing technology, as did the attorneys who argued before us. And with the exception of March, the state's highest court has not missed a single month of arguments. The cases canceled in March were added to the April calendar, and we have continued to stay on track. Our Court of nine justices continues to meet regularly and virtually to decide cases, and the number of opinions we issued remained about the same in the last two years: We issued 265 opinions from April through December in 2020 compared to 261 opinions during the same months in 2019.

At the beginning of the emergency, one bright spot was the governor's appointment last March of a new justice: Georgia Court of Appeals Judge Carla Wong McMillian who took the seat of the retired Justice Robert Benham. Justice McMillian is the first Asian American ever appointed to the state's highest court, and she has been a welcome addition.

Although the number of cases argued before the Court has slowed down during the pandemic, the work of the Court has increased because of the pandemic. I am so grateful to my colleagues: Presiding Justice David Nahmias, former Justice Keith Blackwell, Justice Michael Boggs, Justice Nels Peterson, and Clerk of Court Tee Barnes, and Chief Deputy Clerk Tia Milton, who formed our internal working group to lead our judicial branch through this crisis.

Among many changes, we amended trial court rules to allow virtual hearings through video conferencing technology in proceedings that normally require the physical presence of the judge and parties.

We also replaced the in-person Georgia Bar Examination with an online bar exam to avoid having hundreds of people sitting for hours in close quarters. This took enormous effort and I am thankful to all those involved: former Justice Blackwell and Justice Peterson, the Board of Bar Examiners, the Office of Bar Admissions under the leadership of Heidi Faenza, and the deans of all five of our law schools. We have successfully administered two remote bar exams – one last October and one last month, testing a total of more than 1800 applicants who now have a path to licensure to practice law.

I also want to thank Governor Kemp and his staff who have helped us in making some of these changes. The governor responded to us immediately last April by issuing an order that now allows notaries to certify documents remotely, rather than in person.

Jury Trials

From the beginning of this pandemic, our greatest challenge in the judiciary has been jury trials. When people think of courts and court business, most think of jury trials – the kind they see on TV. Indeed, jury trials are the hallmark of our American legal system. A fundamental constitutional right in a criminal case to be judged by a jury of your peers.

Early on, we suspended jury trials due to the number of people involved, the length of the trials, and especially due to the number of citizens needed to be summoned for jury selection. The public health risk to all those involved was significant. At that time, we were seeing COVID outbreaks in Georgia and across the nation where large numbers of people gathered inside in close quarters – such as they do for a jury trial. The decision to open jury trials is different from

opening private businesses. Unlike when individuals choose whether to visit a store, or a gym, or a restaurant, when a citizen receives a jury summons, that's not an invitation, it's an order. We compel people to come to court. It has therefore been critical that when we resumed jury trials, we did it right – with the necessary safeguards in place to protect the public health and safety of lawyers, judges, jurors, clerks, bailiffs, sheriff's deputies, court reporters, witnesses, defendants, parties, and all the many people we require to be present for a trial.

But we suspended jury trials at a real cost. And we recognized that we could not suspend them indefinitely, even if the pandemic continued. Unindicted criminal cases have been building, and there are many individuals in jail who have been waiting for more than a year, under the presumption of being innocent until being proven guilty. In addition to criminal trials, many people are awaiting resolution of weighty matters through civil trials, including cases that involve business disputes, personal injuries, divorces, and child custody.

In mid-October, I signed an order lifting the suspension of jury trials. Not too long after we reopened jury trials, however, the number of coronavirus cases spiked. And in December, we had to shut them down again. Since then, our trial courts have been accumulating more cases that are awaiting indictment and trial. The potential backlog in cases is staggering, and we must find a way to reduce the growing pressure. So one week ago today, after the number of coronavirus cases sharply declined, I again signed an order authorizing the resumption of jury trials in Georgia. Under this order, before jury trials may resume, courts must have written plans in place to ensure that jury trials can be conducted safely in conformity with public health guidance.

COVID-19 Task Force

I am so grateful for the leadership of former Fulton County Superior Court Judge Shawn LaGrúa – now Justice LaGrúa, the most recent appointee to the state Supreme Court. She and Chief Judge Russell McClelland of the Forsyth County State Court, together have co-chaired the Judicial Council's COVID- 19 Task Force I appointed last May. Since then, they have been working diligently on the particulars of getting our courts fully (and safely) operational during – and after – the pandemic.

These two leaders have marshalled the resources of all the judges appointed to the task force and divided them into subcommittees to address various concerns. They brought in clerks, civil and criminal lawyers, public health experts, and others as advisors. Among them was Dr. Mark Swancutt, a physician with the Fulton County Board of Health, who has been invaluable in his wise counsel. Together these professionals – all volunteers – have created guidelines for how courts must operate to safely resume in- person proceedings, including jury trials. They started with one question: How do we keep everybody safe?

The plans that courts must have in place prior to resuming jury trials cover everything: where people park, how they walk into the building, how to line up to go through security, ride the elevators, walk through the halls, visit restrooms. On the day of a trial, court will look different than it has in the past. Protocols include pre-screening for health risks of all parties, temperature checks, use of masks, social distancing, plexiglass barriers, touch-free evidence technology, constant surface cleaning, and the reconfiguration of courtrooms and jury spaces to ensure social

distancing.

You may see spectators in one courtroom, and participants in another. All so that we can accommodate social distancing. In some cases, court will be held in a different building altogether. These changes are well underway across the state.

We are of course hopeful that the widespread vaccination of citizens will help end this pandemic. But we are not there yet. Even when that day comes, our courts will face a huge challenge, one for which we will need your help.

Backlog and Speedy trial

We have gone essentially one year without jury trials.

Although judges across the state have worked hard to keep their jail populations down, there still remains a large number of inmates sitting in jail waiting for their cases to be heard. And although we now have lifted the suspension on jury trials, it could take up to two – possibly three – years for us to dig out of this backlog. Not only will we have significantly more cases, but the process of moving them through the system at least initially will go more slowly due to all the safety protocols. As we resume jury trials, if we're only able to move at a third of the pace, we will be relieving some of the pressure, but the backlog will continue to grow.

Fulton County has the largest court system in the state. In a 10-month period, the number of people in jail without being indicted grew from 230 to roughly 1400. At the same time, of the 40 courtrooms normally used by the Fulton County trial courts, only two are large enough to hold an array of prospective jurors, while accounting for social distancing and other public health precautions.

Throughout the pandemic, we have suspended the statutory speedy trial deadlines as part of our Statewide Judicial Emergency. But once the governor ends his Statewide Public Health Emergency, by law the judicial emergency must end soon.

Under Georgia statutory law, if a defendant files a speedy trial demand, the court has only a few terms of court to try that person. And if it fails to meet that deadline, the defendant is automatically acquitted and released. Fulton County and other large counties have terms of court that are only two months long. Imagine what would happen in Fulton County if those 1400 inmates – when indicted – all filed speedy trial demands. The avalanche of demands would overwhelm the court system and a sizable number of defendants would be acquitted and released without trial. We realize the burden of having defendants waiting longer for trial while being held in jail. But we need to have a system that actually determines whether people who have been charged and indicted with a crime are guilty or innocent before allowing them to walk free.

So we need your help to avert this crisis.

We are so very grateful to the Georgia General Assembly for your support thus far of Senate Bill 163. This legislation would allow trial courts in some counties to continue to suspend statutory

speedy trial deadlines until the deadlines reasonably could be met. Constitutional speedy trial rights are not affected, and this legislation has a sunset date. So it is targeted to allow us to get through this backlog. This legislation is of the highest priority to the Judicial Council and Georgia's superior and state courts.

We have proposed other legislation that will help speed up our handling of the backlog. All these legislative proposals are supported by the Judicial Council. We appreciate the amount of consideration you have given to them.

Technology and Videoconferencing

I've mentioned our courts have had to pivot and change, like so many businesses in our society. Probably the biggest change in how the courts operate today has come through the use of technology. And many of our judges have surprised even themselves by how proficient they have become.

In every Judicial Emergency order I have signed, we have encouraged courts to switch from in-person court proceedings to videoconferencing wherever legally and practicably possible. Many of our courts rose to the occasion and seemed able to turn on a dime.

As president of the Council of Superior Court Judges, Chief Judge Brian Amero of Henry County pushed for the immediate acquisition of Webex licenses so superior court judges around the state could increase their use of videoconferencing. Today, 238 licenses are now in use by judges all over Georgia.

Under Chief Judge Brasher, the Fulton County courts have built a huge infrastructure around the county using Zoom. With more than a dozen Zoom stations at the Fulton County Jail, judges can conduct arraignments and plea hearings without having to transport defendants. Pre-COVID, the county was bussing 200 inmates a day to the courthouse, involving an enormous security undertaking. Today, they transport an average of less than 12 a day.

I believe this is one of the types of changes that may become permanent. We have learned a great deal during this pandemic. And we need to continue using some of the things we have learned to make us better and more efficient. There are other types of hearings I believe we will continue to conduct virtually. We've learned that it probably doesn't make sense to require an attorney to drive from Savannah to Atlanta for a 15-minute status conference for a judge to simply ask, "Hey, how are we looking? When will you be ready for trial?" The client shouldn't have to pay for that. That hearing easily could be conducted virtually.

One of the many heroes during this pandemic has been Chief Judge Rob Leonard of the Cobb Judicial Circuit. As chair of the COVID-19 Task Force's Technology Committee, he has led the judiciary on technology matters, and helped many wary judges to become more technologically savvy. Judge Leonard took it upon himself to create a library of video tutorials to help judges learn how to do Zoom and other virtual proceedings. He's made use of the technology understandable and accessible, and we are very grateful to him.

Judges Who Have Stepped Up To Lead

I want to mention a few more judges for their dedication, leadership, and creativity:

- Newton County's Probate Court Judge and Chief Magistrate Judge Melanie Bell, a member of our COVID-19 Task Force, became sick with the virus early in the pandemic – so sick she spent four days in the hospital. But she recovered and has since become a beacon of hope and vigilance for the judiciary, stressing that this crisis has brought Georgia's judges together in collaboration as never before.
- After his son contracted COVID-19, Cobb County Superior Court Judge Tain Kell conducted virtual hearings from a makeshift courtroom in his bedroom, complete with an American flag.
- Under the leadership of Judge Dale "Bubba" Samuels of Monroe and Judge Willie Weaver of Albany, the Council of Municipal Court Judges early on developed Best Practices & Guidelines for operating Municipal Courts to ensure the safety of the public and court staff coming into the courthouse.
- Chief Judge Norman Cuadra of the Suwanee Municipal Court has lost three family members to COVID, yet continues to stand out as a leader on the COVID-19 Task Force in working with interpreters and court reporters.
- Chief Judge Asha Jackson of the DeKalb County Superior Court has been an innovative force on the COVID-19 Task Force and the judiciary as a whole. She recognized early on the importance of improving ventilation in the courtrooms and made that a priority for change.

Mental Health, Drug Abuse, and Suicide

This pandemic has had some unexpected consequences within the criminal justice system, beyond how courts are adapting. One of the effects of the pandemic has been an increase in mental health problems, drug abuse, and suicide – among both those who come before our courts, and those who work in the judiciary.

People with mental illness or substance abuse or both are already considered a vulnerable population. They have needs which are typically unmet and which drive up their risk for criminal activity or suicide. With the pandemic, many therapy and group support meetings have shut down, and the isolation and lack of interaction have contributed to the problems.

Yet in Georgia, our accountability or specialty courts – drug courts, mental health courts, and others – are thriving. The work of the professionals and judges in these courts has been unwavering throughout this past year. I have been amazed at their dedication and perseverance as they have stepped up to go the extra mile. Accountability court team members have maintained critical contact with program participants, by visiting their homes not only to confirm that they are staying away from drugs and alcohol, but also to ask how they're doing and whether there's

anything they need. The courts have helped keep participants connected by setting up treatment groups who can meet virtually and by conducting Zoom status hearings with judges. The participants know that the judges and staff are invested in them because they meet with them virtually every week for a minimum of 18 months.

Some judges have begun returning to in-person group therapy sessions, using masks and alternative sites, including the outdoors when the weather has been good. Superior Court Judge Stephen Kelley of the Brunswick Judicial Circuit has been holding felony drug court in a gymnasium.

Georgia now has 169 accountability courts. That's up from 72 in 2011. Chief Judge Kathlene Gosselin of the Northeastern Judicial Circuit has been a solidifying voice as leader of the Council of Accountability Court Judges in continuing to further the development of Georgia's specialty courts. Even during a pandemic, six new accountability courts are preparing to begin operations in the next year.

Georgia's accountability courts help fuel our economy. Each graduate has a positive economic impact of \$22,129 based on the amount of money saved from avoiding sending that person to prison, as well as other avoided costs. If you take that \$22,129 and apply it to the 1,841 participants who graduated last year, that's more than \$40 million in positive economic impact to the state of Georgia.

We appreciate the support you continue to give these courts.

We have also realized during the last year the psychological impact this virus has had on an already stressful legal profession. In October 2020, we lost an assistant district attorney in Columbus, Georgia to suicide. I don't know what role COVID played in that. But a recent academic study supported an association between several COVID-related experiences and suicidal ideation and attempts. These findings underscored the need for access to mental health services during the pandemic. We know from research that connectedness to others has been identified as an important protective factor in preventing death by suicide. Throughout the pandemic, we in the legal community have been working to foster connectivity among its members and raise the awareness of available services.

On April 30, 2021, the Chief Justice's Commission on Professionalism, under the leadership of Karlise Grier, will hold a Suicide Awareness Program. We want to make the case statewide that death by suicide is preventable. We want to assure members of the legal community that it is OK to ask for help.

The Year of the Call for Justice

I began talking to you today about justice and the rule of law, and I wish to conclude on that topic. In this past year, our world has been rocked by a pandemic. My friend, Chief Judge Ben Studdard of the Henry County State Court, believes history will call 2020, "The Year of the Pandemic." But he also believes 2020 may go down as, "The Year of the Call for Justice." I like to think that we are in a historic time of opportunity and reconciliation. I have often said that at

the bottom of the social unease we are experiencing now is an insistence on the rule of law. That's what we are all asking for. That is the true promise of our judicial system.

Both the pandemic and the social unrest of this past year call for an even greater fidelity to the rule of law. Not less. But more. My friends, I believe that every major growth spurt in our nation's history, moving us closer to the promise of liberty and justice for all, has only come after some degree of strife and turmoil. What gets us to the next level is when people of goodwill do the necessary soul searching, and put in the hard work that it takes.

I believe that a year from now, when my successor delivers the next State of the Judiciary address in this hallowed hall, life will be different. We can only speculate about what will return to the way it was, and what will not. But I am sure of one thing. Regardless of what is in the wind on that day, Georgia's judiciary will remain steady and fully committed to the rule of law. That will not change.

It has been one of the greatest privileges of my life to serve the last 16 years as a justice on the state's highest court. In preparation for my departure from the Court on July 1, last week, my colleagues voted unanimously to name Presiding Justice David Nahmias your next Chief Justice. Justice Michael Boggs will succeed him as Presiding Justice. There are no two more able. Our State is extremely fortunate to have them in those roles.

A reporter recently asked me what I will miss most when I step down from the bench. I did not hesitate to answer: the people – my colleagues, our court staff, the judges I've gotten to know. And I'll miss you – the many legislators whom I've worked with over the years.

It has been such an honor. Thank you for that honor. May God bless you and your families. And may God bless the great state of Georgia.