

State of the Judiciary  
Chief Justice David E. Nahmias, Georgia Supreme Court  
Message to the Legislature  
February 8, 2022, 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 colleagues here with me today: Presiding Justice Boggs, Chief Judge Rickman, and Vice-Chief Judge Mercier; our fellow Justices and judges who are watching; and my fellow Georgians:

Thank you for this opportunity to present to this gathering of the people's representatives my report as Chief Justice on the state of Georgia's judiciary. In past years, these reports have often discussed a variety of accomplishments of the judiciary in the preceding year, along with an assortment of priorities for the coming year. But I will focus on only one topic – the challenges to our judicial system created by the COVID pandemic – because while we do have other accomplishments and priorities, dealing with the pandemic's consequences is consuming the attention of Georgia's judges at all levels, and it will for the foreseeable future.

I will lead off, as good lawyers always should, with the most important point: the resolve of Georgia's judges to uphold the rule of law and provide equal justice for all is as strong as ever, in spite of the difficulties created by the COVID pandemic for almost two years now.

We must never lose sight of the importance of our courts. Citizens and businesses rely on courts to resolve their disputes fairly and peaceably, through decisions by impartial judges and juries, rather than by whoever has better weapons, more money, or the most political power. Our judicial system is critical to the rule of law that forms the very foundation of this State and this Nation. My parents came to this country from colonial Egypt and Nazi Germany, and I've heard and studied what it's like to live under the rule of tyrants rather than of laws. We are truly blessed to live in a state with a fair and effective justice system.

### **KEEPING COURTS AS OPEN AS POSSIBLE**

But as with all areas of our society, the COVID pandemic has created enormous challenges for our judicial system. And like most Georgians, we're frustrated that every time we take a couple of steps forward, a new wave of COVID cases comes and knocks us a step back. What we still call COVID-19 has now been with us in 2020, 2021, and into 2022. Yet through it all, Georgia's judges, lawyers, and other participants in our justice system have demonstrated remarkable perseverance, creativity, and resolve to keep our courts operating, even in areas with very limited resources and facilities.

Even at the start of the pandemic, when much of our society shut down and people were told to stay home, our courts always remained open for matters essential to the protection of life, liberty, and property, like criminal warrants and bond hearings, domestic abuse protective orders, and child removal matters. Last July 1, the statewide judicial emergency order ended, along with the Governor's statewide Public Health Emergency. As Chief Justice, and in consultation with the

Judicial Council of Georgia, which I chair, I continue to provide advice and guidance to judges around the State on how to respond to changing COVID conditions. And our Judicial COVID Task Force, led by my colleague, Justice Shawn Ellen LaGrua, and Chief Judge Russell McClelland of the Forsyth County State Court, also continues to provide advice and guidance to courts and lawyers on COVID response.

But it is advice and guidance, not orders. As we've learned more about dealing with the ever-changing COVID challenges, we've realized that the best approach at this point is not broad, statewide directives, but rather more tailored responses at the local level. In this regard, I want to recognize and thank the leaders of our local judicial systems, the Chief Superior Court Judges of our 50 judicial circuits, who have taken on the primary responsibility for addressing COVID as it affects the courts in their areas.

We've learned that if there's a COVID outbreak in a particular type of court or a particular area of a courthouse, it's not necessary to declare a lengthy local judicial emergency for all the courts in the county. A good example of this occurred during the week between Christmas and New Year's, as the omicron wave passed over Waycross and infected or exposed several judges and staff members in the Ware County Magistrate Court, who then needed to isolate or quarantine. Chief Superior Court Judge Dwayne Gillis, working in consultation with the Chief Magistrate Judge, did not issue a local judicial emergency order affecting the entire Waycross Circuit or even the entire Ware County Courthouse for a full 30 days, as the judicial emergency statute would allow. Instead, Judge Gillis issued an order tolling deadlines in just the Magistrate Court, for just 15 days, with provisions to ensure that the court was never closed – court documents could still be filed using a drop box in front of the courthouse, and essential hearings could still be conducted by scheduled appointment. This sort of targeted and limited response to COVID outbreaks and risks is critical to keeping our judicial system as operational as possible.

## **REMOTE PROCEEDINGS**

Another important response to COVID has been technological – particularly the use of remote, videoconference proceedings to keep cases moving. Judges tend to be set in their ways; we're not usually early adopters of new technology. But the pandemic forced us to adapt, and in two years we've probably made as much technological progress as we would have made in two decades otherwise. I want to recognize the extraordinary work done by the IT personnel in the judicial branch, like Bob McAteer and his team at the Supreme Court, to support this technological transformation.

Almost all courts in Georgia have used videoconference technology – Zoom, Webex, Teams, and other platforms – to conduct proceedings virtually and therefore safely even when COVID conditions have been at their worst. When Cobb County Superior Court Judge Tain Kell's son had COVID early in the pandemic, Judge Kell was able to continue to conduct hearings virtually from a makeshift courtroom he set up in his bedroom, complete with an American flag that he swiped from his front porch. While his whole family quarantined, Judge Kell livestreamed to his open courtroom in the Cobb County courthouse so the public would continue to have access to the proceedings.

As COVID conditions ebb and flow, so too can the use of remote proceedings. My Court, for example, would prefer to hold our oral argument sessions in person in the beautiful new Supreme Court courtroom at the Nathan Deal Judicial Center. But remote arguments work fairly well, and we quickly started using that technology after the pandemic hit, as did the Court of Appeals. Since last summer, we've gone back and forth between in-person and remote argument sessions. As the omicron wave peaked last month, we decided to shift back to remote arguments. That enabled me to participate in and preside over the oral argument sessions even though I actually had COVID at the time and was isolating at home. There's no way I could have done that in January of 2020.

Virtual proceedings are one of the lessons learned during the pandemic that will be used long after it dissipates. We've found that for many proceedings with few participants and limited evidentiary disputes, Zoom hearings can be as effective, and far more efficient, than traditional proceedings with everyone in a courtroom.

For example, many lawyers prefer calendar calls and status conferences conducted on-line, which they can participate in from their offices rather than having to drive from courthouse to courthouse, find parking, schlep through security, and wait in the courtroom until their case is called. It saves money for clients too. Most courts have also moved to using videoconferences for initial appearances and bond hearings in criminal cases, reducing the time, cost, and security risks involved in transporting defendants between detention facilities and courthouses for these usually short and straightforward pretrial hearings.

As another example, Chief Judge Bobby Reeves of the Middle Judicial Circuit in southeast Georgia reports that it's not unusual now for his court to deal with multiple habeas corpus petitions in a single day, sometimes as many as five or six cases. These hearings involve prisoners challenging their convictions after appeal. In the past, the judge in that five-county circuit had to travel to the courthouse in the county where the prison is located; the inmate needed to be securely transported to and held at the courthouse; the lawyer representing the State had to travel from Atlanta or Augusta; witnesses also had to travel; and the schedules of all of these participants had to be coordinated.

Now, the hearings are usually conducted by videoconference with the consent of the parties. Judge Reeves presides from his home courthouse in Emanuel County; the prisoner participates from his prison, usually in Washington County; the State's attorney from his or her office; and the witnesses from their homes or offices. And with all the travel eliminated, there are many fewer schedule conflicts, and lower costs for all involved.

We recognize that some participants in court cases do not have good access to the internet, including many self-represented litigants in magistrate and other courts. Judges have been creative in providing electronic devices and secure spaces in courthouses, or even devices with hotspots that can be used in vehicles outside the courthouse, to ensure access to these proceedings

Many of these virtual proceedings can and should be part of our judicial system's "new normal" when COVID becomes just a memory. Looking forward, I also have hope that the technological lessons we've been learning can help with longstanding concerns about poor and lower-income

Georgians who need legal advice when dealing with issues affecting their families, health, homes, and jobs.

One of the biggest challenges for access to justice in this State is that most of Georgia's lawyers are in metro Atlanta and other larger cities, while much of the need for free, pro bono, or low-cost legal services is in areas of the State with few lawyers. Now that we've learned that judges, lawyers, and litigants don't always have to be in the same physical location to participate in court proceedings, perhaps we can find ways to bridge this gap. My newest colleague on the Supreme Court, Justice Verda Colvin, is chairing the Judicial Council's Access to Justice Committee. She's an energetic proponent for ensuring that all Georgians have the ability to get the legal advice they need.

## **IN-PERSON PROCEEDINGS**

But many judicial proceedings cannot be done effectively, or even lawfully, by videoconference. These proceedings require the participants to be live and in-person in a courtroom, and they often require a significant number of participants. It's important to keep in mind that most of the people who come to courtrooms are not there by choice. Georgians can decide what level of COVID risk they're comfortable with before choosing to go to a grocery store or a Braves game. But litigants and lawyers may need to come to courtrooms to get their cases resolved; witnesses often are compelled to be there by subpoena; and jurors are there because they were summoned and would be subject to contempt if they failed to appear. Because we require these people to come to court, we have an obligation to ensure that the conditions there are safe for them.

So judges across the State have triaged cases to determine which ones need in-person proceedings, and in what priority. To limit the number of people in courthouse hallways and courtrooms at any one time, judges have split up case calendars and spread them throughout the day, with some courts using procedures for participants to wait in their cars until being notified that it's their time to enter the building. Many court clerks have set up secure drop boxes outside the courthouse door to reduce contact between people filing papers and staff.

All of these innovations are helpful, but the number of courtroom participants is largest for jury trials, which are also the ultimate proceeding in our judicial system. All Georgians have a constitutionally guaranteed right to have their criminal cases and many of their civil disputes resolved by a jury of their fellow citizens. Jury trials require a lot of people: the judge, courtroom clerk, and court reporter; bailiffs for security; the litigants and their lawyers; witnesses; the jurors and usually a few alternates; and at the start of the trial, dozens and sometimes hundreds of prospective jurors from which the trial jury will be selected. Plus family members, victims, media representatives, and members of the public who want to watch the trial, as is their constitutional right.

Now think about the Georgia trial courtrooms that you've seen on TV or been in yourself. They're usually not large to start with. Before COVID, we squeezed the jurors together on one side in what we call the jury "box," with the witness stand, judge's bench, clerk's desk, and tables for litigants and lawyers all close at hand, because all the participants need to see and hear the proceedings. And during breaks and final deliberations, we sent jurors to sit together in an

even smaller room. We had all these folks sit in tight spaces for hours a day, and days and sometimes weeks on end. That way of doing things is a recipe for the spread of a dangerous respiratory virus like COVID.

So when COVID rates are skyrocketing – as they were in the spring of 2020, and the winter of 2021, and again with the delta variant last fall and with omicron recently – there may be no way to conduct jury trials in a way that adequately protects the health of those involved. When rates are more moderate, however, our judges have figured out ways to safely conduct jury trials, even high-profile trials that last for several weeks. They’ve done so by requiring masks and improving ventilation and sanitation. They’ve reconfigured courtrooms to socially distance jurors and other participants – or, where courtrooms just weren’t big enough to accommodate jury trials and jury selection, they’ve borrowed or rented larger facilities where possible.

In Douglas County, for example, Chief State Court Judge Eddie Parker explains that the judges modified their two courtrooms by moving benches and desks to allow socially distanced trials for misdemeanor crimes, which use six-person juries. But there just wasn’t enough room for civil trials that require 12 jurors, so the court approached the Douglas County Commission to obtain use of the Citizens Hall, where several jury trials have since been held safely.

Working with court administrators, sheriffs, and other stakeholders, courts have also used the Classic Center in Athens, the James Brown Arena in Augusta, the Ice Rink in the Columbus Civic Center, and other alternate facilities for trials or jury selection. Acoustics and sound systems can be a particular problem in these larger spaces, requiring creative solutions – like the wireless headsets that the superior court in Augusta obtained for prospective jurors, parties, and lawyers to be able to clearly hear the questioning in that huge facility. There’s often a major challenge with holding criminal trials involving detained defendants in these alternate spaces, because they usually don’t have secure holding cells, meaning that many more sheriff’s personnel are required at a time when most sheriff departments are stretched thin.

Technology can again help, to some extent. Fulton County Chief Judge Christopher Brasher and his fellow superior and state court judges have developed a method for selecting jurors remotely in civil cases. Judge Brasher estimates that since last April, more than 75 juries have been selected for civil trials using Zoom.

The Fulton County courts are seating more than half of the potential jurors summoned this way, which is a notably higher rate than when jury summonses were in-person only. While some lawyers have been hesitant about the process, Judge Brasher notes that many prospective jurors seem to open up and respond more to questions when they’re alone in their home or another known setting, instead of sitting in a courtroom surrounded by dozens of strangers. Judge Brasher also reports that the reaction of the prospective jurors has been overwhelmingly positive. Other courts in Georgia are starting to use this remote jury selection method, and it’s another of the innovations that should outlast the pandemic.

## **CASE BACKLOGS**

But remote jury selection is used only for civil trials. And even with all of this creativity, as long

as social distancing and other health measures are required, the number of jury trials will be below what it was before the pandemic. For example, Judge Kell says that the Cobb County Superior Court would often conduct seven to eight jury trials a week, civil and criminal, prior to the pandemic. The most they can conduct with social distancing and other precautions is three, less than half the pre-pandemic rate.

Judge Wade Padgett also notes that while he and other superior court judges in the Augusta area have worked hard to resolve cases that were likely to result in guilty pleas or civil settlements, what's left now are the hardest and most complex cases that are more likely destined for trial. And keep in mind that a civil settlement can be completed entirely on paper, and a guilty plea hearing may take 30 minutes, but a trial often lasts for several days or even weeks.

So even when not halted entirely, our judicial system's capacity to conduct jury trials, and other proceedings that need to be done in-person, is significantly lower because of COVID. This has led to significant backlogs, particularly of the serious criminal cases are the most likely to go to trial and to have long and complicated trials, including many gang-related and other trials with multiple defendants, which can multiply the number of participants involved. Dougherty County, for example, has at least five pending serious violent felony cases with eight or more defendants. But there are also backlogs in domestic cases, personal injury cases, business cases, and all sorts of other cases in all of our classes of trial courts: superior courts, state courts, juvenile courts, probate courts, magistrate courts, and municipal courts.

Judges are acutely aware that all of these cases are important to the litigants and the community. We must always remember that court cases are about real people, our fellow Georgians: defendants accused of crimes and detained in jails without bond, waiting for trials to determine their guilt or innocence; crime victims waiting for some justice; children in limbo as divorce and child custody disputes languish; injured plaintiffs struggling to survive until they can be awarded compensation; business owners trying to operate under the cloud of pending litigation.

We're working hard, and we're working together, to try to restore and expand the capacity of the judicial system to resolve cases, especially those needing trials. You provided the courts with some much-needed statutory tools in your last session. You authorized judges to extend statutory speedy trial deadlines at the local level for a time even after formal judicial emergencies end, so that criminal defendants are not required to just be released without ever having a trial. You allowed more criminal cases to get started with a prosecutor's accusation instead of by grand jury indictment, and more cases to be tried by judges rather than juries where the defendant consents. And you made it easier to use alternate facilities for court proceedings.

## **ARPA FUNDING**

And in November, Governor Kemp allocated to the judicial system \$110 million in funds that the State received under ARPA — the federal American Rescue Plan Act. These funds cannot be used to supplant normal operating budgets that let courts handle the ongoing flow of new cases being filed. The ARPA funds may be used only to obtain temporary space and pay for temporary personnel to address case backlogs, with a priority on the backlogs of serious violent felony cases like murder, armed robbery, and aggravated sex crimes. The goal is to add more

capacity with proportional funding for senior and temporary judges as well as additional prosecutors and public defenders, court clerks, court reporters, bailiffs, etc.

The Judicial Council, through a committee chaired by Presiding Justice Michael Boggs and staffed by the Administrative Office of the Courts, worked diligently to establish an application process and award initial grants totaling nearly \$25 million to 26 judicial circuits in late December, so those funds have already started to be used. The second round of grants will be awarded later this month; a total of 42 of our 50 judicial circuits have now applied. This has been a complicated task, but Presiding Justice Boggs, his committee, the AOC, and the judicial circuits have worked very hard, and we all greatly appreciate this financial support.

But note that this ARPA funding is targeted and restricted, both by federal rules and additional limitations established by OBP. Funding for most courts in Georgia has traditionally been a shared responsibility of the State and the counties, and we need more counties to step up and contribute some of the ARPA funds that they're receiving to address the backlogs of cases in their county's courts. This year, every single Georgia county will receive another portion of federal COVID relief funds; many individual counties will receive more than the \$110 million that the judicial branch was allocated for use in all 159 counties. The federal guidelines expressly authorize counties to use their COVID relief funding to address backlogs of cases in their courts.

Fulton County has dedicated \$75 million of its ARPA funds to assist its judicial system to clear out backlogs. Fulton is our largest county, and it has the largest backlogs, but other counties need to assist their courts as well if we're going to get back on track. We've been working with ACCG to help communicate the urgency of this issue to county leadership.

## **THE CHALLENGE IS BACKLOGS AND NEW CASES**

Because the issue is not just the backlogs of cases that have built up over the past two years. New cases keep getting filed in all of our courts, sometimes at higher rates than before the pandemic where crime rates have increased. So let's assume – let's pray – that we'll soon see COVID risks reduced to the point that we could end social distancing and other health precautions and get our jury trial rates back to what they were before the pandemic, back to 100% of what we considered "normal" capacity. Well, in many counties, the judicial system operated at maximum capacity before the pandemic, barely able to handle the number of jury trials required based on new cases coming into the courts each year. This is demonstrated by the fact that a pre-pandemic caseload analysis by the Judicial Workload Assessment Committee identified the need for eight new superior court judges in circuits around the state.

All of these newly filed cases still need to be handled, and now add on top of them all the cases that have not been able to be resolved in the normal way over the past two years. Let me offer a way to think about what our courts are facing.

The Atlanta Braves canceled 102 games during the 2020 baseball season due to COVID. Those games were just canceled forever, not postponed to be resolved later like court cases have to be. What if those games eventually had to be played, and the Braves had to postpone another 102 games last season. They would be looking at an upcoming season with the usual 162 games, plus

102 games from 2020 and another 102 games from 2021. That's a 366 game season, and I'm not sure even our World Series champs could handle that. This is the situation some of our courts are facing right now with their overall caseloads.

Let me give you a few specific examples from around the State: We have a rural judicial circuit on the coast that has four prisons. It has more than 200 serious violent felony cases pending, 33 coming from the prison system alone. A northeast Georgia rural circuit has a total pending caseload two-thirds higher than what it was before the pandemic, including 53 serious violent felony cases. The six-county Southwestern Circuit had 377 open felony cases in 2019; now it has more than 900. Muscogee County in west Georgia has almost 300 serious violent felony cases pending, including more than 100 detained defendants charged with murder. And these are just the indicted serious violent felony cases; they don't include cases in which the defendants have been arrested but not yet indicted, or all the other sorts of criminal cases, much less all the civil cases.

So this will be the main issue that the judicial system in Georgia will be dealing with, not only until the rest of our society returns to more normal conditions, but for several years to come. I can pledge to you the continuing diligence and creativity of Georgia's judges at all levels. But we will need support and patience from you, and from the public, as we struggle to keep up with new cases while also resolving the cases backlogged due to COVID.

## **MENTAL HEALTH AND ACCOUNTABILITY COURTS**

I want to mention one last pandemic-related issue. Studies have shown that people with mental illnesses are more likely to be incarcerated than hospitalized. Our jails have become our de facto mental hospitals, and our criminal justice system has struggled for many years with how to deal with offenders who have unaddressed behavioral health issues. The pandemic has significantly magnified these challenges. I know that improving our mental health system across the board is a priority for Speaker Ralston and for many of you. Presiding Justice Boggs and Judges Brian Amero and Sarah Harris served on the Behavioral Health Reform and Innovation Commission, and Georgia's judges support these efforts and stand ready to assist.

One effective method of dealing with non-violent offenders who have behavioral health issues is our accountability courts, which the General Assembly and the Governor have been so supportive of in recent years. These courts, including mental health courts, veterans' courts, drug courts, and DUI courts, deal with criminal defendants with much greater frequency and depth than traditional courts, as they address the behavioral health and other issues that often lead non-violent individuals into the criminal justice system.

Our accountability courts have had to be particularly creative during the pandemic in balancing remote and in-person check-ins, group meetings, and treatment sessions. But they have continued to be successful in reducing recidivism rates, saving the State money by allowing offenders to re-enter society and the workforce rather than being incarcerated, and, most importantly, saving lost souls.

But beyond accountability courts, communities across Georgia need more resources to serve our



fellow citizens with mental health issues. Addressing this problem is not just good for our justice system and our economy; it's a moral imperative.

## **CLOSING**

I'd like to end on a positive note. In December, the Supreme Court of Georgia celebrated its 175th anniversary with a two-day history seminar. I want to thank the Georgia Legal History Foundation, which organized the event along with my colleague Justice Carla Wong McMillian.

In listening to the speakers at that event, I was struck by how much our Supreme Court has changed over the years. We've grown from three Justices in 1846, who traveled around the state by horse and buggy to hear cases, to nine Justices with chambers in the state's first building dedicated to the judiciary, who can hear cases by videoconference when necessary. There are only three former female Justices, but we now have four women serving as Justices at the same time. Yet some things don't change. We remain one of the busiest high courts in the nation. We disposed of nearly 1,400 cases in 2021, including issuing 239 full opinions – more than three times as many opinions as the United States Supreme Court issued in its last term.

Most importantly, our fundamental mission has never changed. Like all courts in Georgia, we remain focused on providing an independent and impartial forum in which disputes are resolved through a fair and efficient process, in accordance with the law, and with equal justice for all. That mission has been challenged in many ways over the centuries, and the COVID pandemic has certainly been a significant new challenge. But Georgia's judges and the staff that support us are resilient and resourceful. We are weathering this storm, and we will emerge better than we were before. You are valued allies in our mission, and we appreciate everything that you do for our State and for the citizens that we serve together.

Thank you again for the opportunity to report to you today on the state of our judiciary. May God continue to bless these United States and the great State of Georgia.