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by Jeffrey O. Bramlett

Less Than One Penny

The Constitution of the state of Georgia—the fundamental contract between the people of our state and their government that endures each political season and every individual elected official—states: “Protection to person and property is the paramount duty of government and shall be impartial and complete. No person shall be denied the equal protection of the laws.”¹

All three branches of state government play a critical role in ensuring compliance with this highest duty of government. Every constitutional officer takes an oath to uphold this Constitution. But make no mistake about it; when it comes to resolving the hard questions of what it means to render “impartial,” “complete” and “equal” protection of the laws governing persons and property with justice and mercy, the rubber meets the road in the courts of Georgia.

Judging the Performance of Georgia’s Judiciary

Georgia’s courts serve the people of Georgia well. The population growth and economic dynamism Georgia has experienced over the past decade is due, in

no small part, to public trust earned by a judiciary that faithfully and predictably upholds the rule of law. Georgia’s judicial system has successfully avoided the pitfalls of partisan politics, unpredictable pendulum swings and unfortunate corruptions that have plagued the judiciaries of our sister states to the west.

Georgia’s courts have improved qualitatively in many dimensions over the past generation. Two examples make the point.

When I was called to the private bar from a federal appellate court clerkship, it was an open secret that meaningful appellate review of capital sentences did not begin until a case progressed to the federal courts on writ of habeas corpus. Some federal judges were prone to express frustration about the fact that their death penalty workloads were heavy because elected state judiciaries left the unpopular task of rigorously scrutinizing the fairness of death penalty trials to the federal judges who enjoyed life tenure. Today, even the harshest critics would have to concede

that Georgia’s courts and juries approach the potential imposition of capital punishment with a gravity, skepticism and rigor that simply did not exist 30 years ago.

Back then, conventional wisdom had it that filing a civil rights enforcement action against the state of Georgia in the state courts of Georgia would constitute legal malpractice. Today, it is not unusual for the state of Georgia, as a civil defendant, to invoke federal court jurisdiction and remove civil rights actions to federal court.

Georgia’s courts have earned an outstanding national reputation for productivity. The Supreme Court of

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Georgia was recently recognized by an independent University of Chicago study as the *most productive* state court of last resort in the United States. The Court of Appeals of Georgia handles one of the largest case loads of any court in the nation.

Our appellate courts achieve these distinctions while operating under the Georgia Constitution's "two term" rule requiring swift, as well as accurate, adjudication. Meanwhile, Georgia's trial judges, juvenile and probate judges work every day in the trenches of the justice system, applying the law to the facts on the ground with an extraordinary degree of professional excellence.

In the private sector, job performance and results like these would typically be addressed and rewarded in the compensation process. Last year, the State Bar joined with the Georgia Chamber of Commerce in advocating a long-overdue pay raise for Georgia's judicial officers. We succeeded in securing passage of judicial pay raise legislation through both houses of the General Assembly. Unfortunately, the legislation suffered a veto.

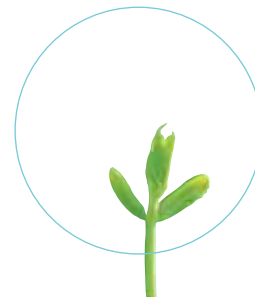
The Current Budget Challenge

The state budget signed into law for the fiscal year commencing July 1, 2008, totals \$21.2 billion. Nearly 70 percent of that total is administered by the Departments of Education, Community Health, Human Resources and the Board of Regents. The Department of Corrections speaks for another \$1.2 billion. We are talking billions with a "B". The entire judicial branch of state government, in contrast, was budgeted to operate on \$169.5 million.

In the second half of calendar year 2008, Gov. Sonny Perdue met his constitutional responsibility to balance the state's budget in the face of declining revenues by imposing across-the-board spending reductions on the judicial branch and most other state government operations. Even before this cut, the entire judicial branch of government was operating on approximately .08 percent of state expenditures: *less than one penny* for each dollar of budgeted state expenditure.

Our courts—like every other agency of state government—are now being asked to do more with even less funding. I have attended the meetings of the Judicial Council of Georgia and I know our judicial officers are working cooperatively with the other branches of government and sharing the sacrifices all Georgians are facing in this adverse economic environment. State funding for work performed by senior judges has evaporated. The Business Court pilot program—a centerpiece of the State Bar's efforts to work with Georgia's business community to keep Georgia's business climate healthy and competitive—is in jeopardy. State funding to improve the efficiency of courts and public records management with electronic filing has evaporated. Our courts are shouldering this across-the-board cut with the only management tools available to them: reducing staff and diminishing training.

On Jan. 12, our General Assembly convened under the dark clouds of economic contraction, revenue short-



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falls and painful political choices. The task ahead is to shape a state budget for the coming fiscal year. At the time this issue of the *Georgia Bar Journal* went to press, the details of the governor's budget proposals for the remainder of the current fiscal year as well as FY 2010 had not been announced.

If the General Assembly and the governor continue down the path of across-the-board funding reductions during the current budgetary process, their decisions will ignore the crucial distinction between many other state government functions—which are matters of discretionary policy—and the judiciary's constitutionally mandated responsibilities to the people of Georgia. Moreover, as the troubled economy continues to produce elevated levels of crime, strife and economic instability for the citizens of Georgia, budget cuts that cripple the ability of Georgia courts to deal promptly with these problems are simply bad public policy.

A number of state-funded programs that drive the efficient delivery of justice in our state are politically vulnerable in this economic climate. In the case of each of these programs, elimination or debilitating cuts in funding invite unpredictable results and greater state expense in the long run. These programs include the following:

The Georgia Appellate Practice and Educational Resource Center provides representation to death-sentenced inmates to ensure these cases advance through state and federal habeas corpus proceedings. Georgia is the only state in the country that does not recognize a right to counsel in habeas corpus proceedings arising over capital sentences. Established by the State Bar in 1988 as part of a multifaceted approach to improve accuracy and reduce delay in post-conviction capital cases, the General Assembly slashed funding for the Resource Center in the most recent budget cycle.

The Resource Center was found by a recent performance audit requested by the Senate Appropriations Committee to use "fewer staff per case and lower expenditures per case than other states." Staff salaries are significantly lower than the salaries in other state departments, including the Attorney General's Office, the Capital Defender's Office and the Public Defenders Standards Council.

Additional funding cuts for the Resource Center, in the short term, pose the risk of expanded federal scrutiny of Georgia capital cases and invite further delay in the processing of capital sentences. Looking to the longer term, the Bar should carefully consider the recommendations of the Georgia Death Penalty Assessment Team convened by the American Bar Association and chaired by Dean Anne Emmanuel of Georgia State's Law School for bringing Georgia into line with all other states that have chosen to enact a death penalty option by providing counsel in habeas proceedings.

Legal Services for Victims of Domestic Violence extend government protection to low-income victims of domestic violence and the children who are products of the homes where this abuse occurs. The State Bar of Georgia successfully urged our legislature to adopt this program a decade ago; pointing out that 80 percent of Georgians favored this use of their tax dollars. Taxpayer support remains strong because the people of Georgia understand that these services often address life-and-death matters for women and children who lack the means to escape and have nowhere to turn. The 2007 Georgia Fatality Report shows that more than 500 victims, their children and others have been killed in the past four years in family violence incidents. This program saves money and lives.

Without stable funding for this effort, victims of domestic violence and the children affected by this scourge will be cut off from access

to the protections available to them in Georgia courts. At best, many of these families will become clients of the overburdened child support recovery office or forced into the child protective services systems. As Linda Klein, the State Bar president who successfully drove this program through the legislature, observes: "I can only imagine the savings to the taxpayer each time a child is not placed into foster care."

Georgia Public Defenders Standards Council provides constitutionally mandated representation to indigent criminal defendants in a cost-effective manner.

Gov. Perdue deserves credit for his leadership in reforming Georgia's indigent defense system. He understands the importance of adequate indigent defense. He worked successfully with the General Assembly to fund systemic improvement and relieve Georgia's counties of the burden of providing constitutionally adequate defense to indigents by creating as a funding source increased fines, fees and forfeitures paid by solvent persons convicted of criminal offenses. Although the General Assembly has yet to appropriate the full amounts of revenue collected by these enhanced fines, fees and forfeitures for the indigent defense mission for which they were enacted, Gov. Perdue has continued to push for higher funding levels than the General Assembly has seen fit to grant. We seek to work together with the governor and the members of the General Assembly during the remainder of this session to secure the funding needed to make Georgia's indigent defense system an example of how our state government lives up to its paramount constitutional duty to all the people of Georgia.

A Call to Action

In the old Soviet Union, judges were not trusted to conduct fair trials or to decide cases based on the law and the evidence. Soviet judges got their paychecks and kept their office by obeying a tyrannical cen-

tral government's instructions. The old Soviet government assumed no responsibility for extending governmental protection to persons or property. In that society, the checks and balances of a fair, impartial and independent judiciary were a fraud.

I am grateful to live in a nation and a state where the judicial branch of government is truly fair, impartial and independent. I am perpetually inspired by how hard jurors—who are summoned to do public service, often at significant personal sacrifice or inconvenience—work to find the truth and to do justice. No human institution is perfect, and our justice system occasionally produces an outcome we find puzzling. On balance, however, the judicial branch of our state government generally delivers on the Georgia Constitution's promise of impartial, complete and equal protection of the laws governing persons and property.


Depriving the judiciary of the resources necessary to do its job well is, as Ben Franklin might have put it, penny-wise and pound-foolish. Lawyers understand these

facts. Therefore, we ought not to stand idly by when further across-the-board cuts from the judicial branch budget saddle the people of Georgia with the cost of delay and the risk of inaccuracy in the administration of justice.

I urge you to magnify the collective voice of the legal profession in Georgia on these and other items of urgent public concern. Reach out to your legislators. Thank them for their public service. Speak your mind on the state government issues that matter to you. Speak up for the judicial branch of Georgia government.

The Bar's Legislative Action Network (LAN) facilitates your involvement. If you choose, the network will keep you informed on emerging legislative issues and abreast of fast-moving developments during the session where your participation can make a real difference. To declare your interest in participating in LAN, send an e-mail to membership@gabar.org with your home and e-mail addresses, or update your member profile on the Bar's

website to include your home and e-mail addresses.

Finally, please understand that the Bar's ability to maintain a strong voice for the profession at the Capitol and an ongoing public education and outreach campaign on television, radio and by other means depends on your individual participation in the Legislative & Public Education Fund.² United as a profession, we can help our state government live up to its paramount duty. 

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Endnotes

1. GA. CONST. art.1, § 1, ¶ 2 (emphasis supplied).
2. www.gabar.org/cornerstones_of_freedom/contribute/

For the latest developments from the 2009 session of the Georgia General Assembly, please visit www.gabar.org/programs/legislative_program/.

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