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PLANNING FOR THE FUTURE OF OUR COURTS

The Honorable Dorothy Toth Beasley[†]

You are about to take your wings and fly, and so you are looking ahead, laying aside the pain, agony, and drudgery of study, and the deprivations to which you have subjected yourselves and your families. You are eager to fly into a new tomorrow.

That being the case, I may be the wrong speaker. Judges are geared to looking back—to precedent. When a robe is put on a new judge's shoulders, that person is then turned about face and pointed to the past. In my case, at least, it was back to 1907 with the first decision in Volume One of the Georgia Court of Appeals Reports, then to Volume One of the Reports of the Georgia Supreme Court, which got a head start on our court in 1846, and to Volume One of the United States Supreme Court Reports. Of course, to some degree we must look back to Roman and English law preceding the founding of our country. Look to the earlier

[†] This is the text of a speech given by the Honorable Dorothy Toth Beasley at the Hooding Ceremony for the Georgia State University College of Law on Friday, January 31, 1992. Judge Beasley has served on the Court of Appeals of Georgia since 1984. She received a B.A. degree in 1959 from St. Lawrence University, an LL.B. from the Washington College of Law, American University, Washington, D.C. in 1964, and an LL.M. in the Judicial Process from the University of Virginia School of Law in 1984. Prior to serving on the Court of Appeals Judge Beasley practiced law in Arlington, Virginia and in an Atlanta law firm, served as an Assistant Attorney General of Georgia and as an Assistant United States Attorney, and was a Judge of the State Court of Fulton County for seven and one-half years.

decisions, judges are told, and apply what you see to what is before you to decide.

Dr. Henry Reiff, my history and government professor at St. Lawrence University, spoke of this when he said at the Convocation in 1972: "We must apply what wisdom we have derived from the past . . ." As you who have so devotedly studied the law these past several years well know, the tree of the law grows from the roots which others have caused to take hold, because of the seeds which they have planted.

Well, although you are eager for tomorrow and tomorrow and tomorrow, you are stuck with this precedent-bound judge for a few minutes tonight. But all is not lost. We judges, too, are learning to look ahead.

If you would read the current judicial literature, and perch at some of the judicial seminars, you would find that in many areas judges are learning to become proactive, looking more attentively at the impact of their decisions as they decide cases. Witness the law and economics movement which was spawned by Professor, now Judge, Richard A. Posner,¹ and Professor, now Justice, Antonin Scalia.² This movement encourages judges to balance the benefits of deciding one way against the costs of such a decision, looking out into the future.

In addition, judges are assuming a greater responsibility for making improvements in the judicial system. For example, there is a Georgia Courts Automation Commission, made up primarily of judges, which is engineering the computerization of Georgia courts and in the process is creating a system which will embrace the wider justice system, including corrections, law enforcement agencies, the Pardons and Paroles Board, and the Department of Public Safety. In the future, the judge sitting on the bench will know immediately on his or her computer screen whether the person standing in front of the bench has a record or an outstanding arrest warrant, or even an outstanding garnishment for child support.

Our own state constitution mandates that each class of trial courts adopt rules which "provide for the speedy, efficient, and

1. The Honorable Richard A. Posner is a Circuit Judge on the United States Court of Appeals for the Seventh Circuit—ED.

2. The Honorable Antonin Scalia is an Associate Justice of the United States Supreme Court—ED.

inexpensive resolution of disputes and prosecutions.”³ The appellate courts, in my opinion, must also abide by the spirit of this mandate and foster these objectives. The judiciary must learn to look ahead.

This we are doing. We are joining the bandwagon of government officials in this country who are becoming future-oriented. I do not mean just looking ahead at next year’s budget. I mean looking ahead to the year 2000 or the year 2020. You might call it long-term planning, or strategic planning, or forecasting, or what is termed futures planning—“futures” because there is not one future, but a choice of futures.

For example, earlier this month I was invited to attend a joint House & Senate Appropriations Committee workshop on “Strategic Planning and Foresight,” where legislators learned how to do this. Another example is the Atlanta Community Food Bank, of which I am a board member. The Food Bank recently inaugurated a long-term planning committee into its structure. Even my church has a “2000 and Beyond” task force. Such an effort has not been a strong suit of courts in the past.

However, in May of 1990, a national Conference on the Future and the Courts was sponsored by the State Justice Institute and the American Judicature Society. Six Georgians from or connected to the judicial branch were invited to participate in “looking over the rim” thirty years into the future at courts in the year 2020. We were encouraged to have a bi-focal vision.

The mission of the conference was to help the state courts of the nation better provide effective, fair, and responsive justice to all Americans in a future which is filled with expected, but undefinable, change. The conference was intended to formulate visions of the American judicial system over the next thirty years and beyond; to establish goals for the long-term needs of the state courts; and to identify an agenda for planning, research, and action to achieve those goals.

We learned that we must recognize and pay attention to trends, envision scenarios of what the world might be like in 2020, identify our visions for our court systems, and develop strategies for achieving our visions. We tried these four exercises, and it was a new experience for most of us. One of the futurists who came and acquainted us with the society-wide trends in our

3. GA. CONST. art. VI, § 9, ¶ 1.

country and systems-wide trends in our courts said that in his opinion we looked ahead only about twenty minutes.

All of our social institutions are operating in an ever more rapidly changing environment. As a vital part of that environment, the courts are expected not only to help resolve conflicts, but increasingly to provide leadership as new issues arise, such as in the areas of creating life and controlling death.

The courts must understand these new problems and opportunities, and attempt to project those of the future. Then we can better anticipate and guide appropriate change rather than simply react to events and the decisions of others. As was said in the post-conference report, it is up to us as judges to take a more active role in, "eras[ing] . . . the common picture of an American court as an institution rooted in the past, resistant to change, and resigned to inefficiency."⁴

We six came roaring back to Georgia with all these new ideas and decided that we had a responsibility to acquaint the people in Georgia's justice system with them. After all, we had spent five glorious and invigorating mind-stretching days as guests in San Antonio, Texas. We formed an ad hoc steering committee with the approval of Chief Justice Harold G. Clarke,⁵ who has kept aware of our efforts and has joined and encouraged us.

The ad hoc committee developed a three-part introductory program. First, in May of 1991, the Institute for Continuing Judicial Education held a seminar on "Preparing Court Futures for Georgia," to which were invited judges, court administrators, court clerks, state legislators, the media, and representatives of related government agencies and of organizations such as the Association County Commissioners of Georgia. We introduced the concepts of futures thinking and futures planning, scaling it to Georgia. Chief Justice Clarke gave the keynote address, and we learned about what was going on in other states which have already organized futures planning in their judicial systems. New Hampshire and Virginia shared their projects with us.

To set the stage and start at the beginning, we were enlightened about the trends in Georgia and its changing face in terms of factors such as population, economy, crime, health,

4. STATE JUSTICE INSTITUTE & AMERICAN JUDICATURE SOCIETY, POST-CONFERENCE REPORT, CONFERENCE ON THE FUTURE AND THE COURTS (May 1990).

5. The Honorable Harold G. Clarke is Chief Justice of the Supreme Court of Georgia—ED.

homelessness, transportation, and government spending. We learned, for example, that Georgia is on its way to becoming the eleventh largest state, population-wise, and that between 1990 and 2000 Georgia is projected to add one million more people. As of 1989, Georgia was already the eleventh highest in the nation in the number of cocaine addicts, then estimated at 48,000 to 50,000. It is estimated that by the year 2000, we will have 60,000 inmates (a ratio of 8 inmates per 1000 persons) and 50,000 offenders on parole (a ratio of 6.5 offenders on parole per 1000 persons). One hundred percent of these 110,000 individuals must have a court judgment. We will need a big judicial funnel.

We also learned that the judicial branch is a little behind in this effort at futures planning. The University of Georgia had already prepared for Georgia a public education piece entitled *New Georgia Visions: Shaping Georgia's Future*, which was intended to alert Georgians to the pitfalls and potential of our state's future. The report, together with statistics gathered by the Department of Community Affairs, will help us see where we are going as a state so we can better plan.

We also have the report of the Growth Strategies Commission, headed by Joel Cowan, and the *Georgia 2000* study, with which Representative Larry Walker, House Majority Leader,⁶ and Dr. Tal Duvall acquainted us. In addition, we have the *Blueprint for the 21st Century* for the justice system, which was produced by the 1990 Governor's Conference on Justice in Georgia. It is a good start. One of the interesting things about the *Growth Strategies* and *Georgia 2000* studies is that they did not take into account the impact on the courts. It is up to us, then, to do that.

The second part of the introductory program created by our ad hoc committee was the formation of task forces which are currently meeting to go through the process of envisioning and developing strategies. There is one task force for each of the six levels of lower courts, for alternative dispute resolution, for automation, for judicial education, and for the relationship between the judicial branch and the other two branches of government.

The third part of the introductory program has established that in October 1992 the group will gather again with

6. The Honorable Larry Walker represents District No. 115 in the Georgia House of Representatives—ED.

representatives of the public, users of the court system, and those who impact it to receive the reports of the task forces and determine how best to bring futures planning into the system as a permanent, ongoing function.

I was particularly heartened by the letter I received from one of the leaders of the Younger Lawyers Section of the Georgia State Bar who wrote to me afterwards that he wanted to be part of the court futures "movement." We will not have courts in the twenty-first century which are effective, accessible, and just unless the lawyers help. You, as soon-to-be law graduates and members of the Bar of Georgia, will be part of that court system as officers of the court. We are encouraged by the Georgia bar's interest in joining as a partner in the effort. The privilege to practice in Georgia brings with it the obligation to make the system work and to participate in its improvement. After all, it is the lawyers who drive the courts; we judges just sit and wait for business to come, and we have no control over the amount of business which is filed.

On the procedural side, try the new things, like prelitigation mediation, which might work out a solution agreeable to the parties without even going to court. Also, try appellate settlement conferences, which allow you to have a jury verdict and judgment but thereafter to settle, with the help of a seasoned judge, so that the final outcome is not left to the control of law-bound appellate courts. These are procedural innovations.

On the substantive side, develop state constitutional bases for the assertion of rights and responsibilities. We live under two constitutions, you know, and when you take the oath for admission to Georgia's Court of Appeals and Supreme Court, you will swear first to uphold the Constitution of the State of Georgia. Use it.

In a 1986 decision, the Chief Judge of New York wrote what might be considered a manifesto for state court practice:

The Supreme Court's role in construing the Federal Bill of Rights is to establish minimal standards for individual rights applicable throughout the Nation. The function of the comparable provisions of the State Constitution, if they are not to be considered purely redundant, is to supplement those

rights to meet the needs and expectations of the particular State.⁷

In all of this, and in your total practice of law, trust your mind. Do not be slavish to the surface of the law as it is. Look behind it. Convince by logic. Just tell me, as I am listening to your argument, why you should win. Make sense of your position.

As we look to the future of the practice of law in Georgia, and the operation of the courts, we must be globally aware. Although my jurisdiction is confined to the four corners of our state, and your admission to practice here will authorize your court activities only in Georgia's courts, our law and our system impact international transactions and are in turn impacted by the systems and laws of other nations. It will increasingly be so with respect to the law of the European Community.

I was sent to Albania in November by the American Bar Association and the United States Information Agency, which are working together to provide judges and American lawyers to help the emerging governments in Central and Eastern Europe. My team of three was asked to consult with Albanian government officials on the judicial article of their draft of the Albanian Constitution. This little country, regarded as the poorest and, for over forty-five years and until recently, the most Marxist, needs our help in understanding our adversary system and the place of judges in a democratic society.

They now want independent judges, who are not compelled to follow the party line and answer to the Communist party leadership, but they do not know how to achieve this. Judges still feel that they are subject to threats against themselves or members of their families.

They now want an end to economic and political crimes, such as when people were sent off for long periods for simply expressing an opinion or trying to make a little money, but they do not know what their criminal code should contain. They think they want the adversary system, where the criminal defendant has a separate lawyer instead of the prosecutor representing both him and the state, as had been the practice until 1990.

They now want due process; but what does that mean, they ask, in the myriad of ways in which the citizen interacts with the government on all levels. Do the people as litigants have to sit

7. *People v. Cloud Books, Inc.*, 503 N.E.2d 492, 494 (N.Y. 1986).

interminably day after day in the courthouse, waiting for the assistant judges, who are workers paid by their employers to sit periodically, to decide to come?

You see, what we understand about our own system and why it is this way is of enormous significance to these emerging democracies. We have a lot to share—just like Bill Bolling, Director of the Food Bank, who was called to St. Petersburg, Russia, to set up the first food bank there in December—but we must understand them, too, if we are to help achieve a stable and healthy Europe.

I implore you to lift up your heads. You may close your law school books now and stop listening to tapes of law school lectures you may have missed. Look around the globe, and keep your eyes there.

Some of you may have taken the international banking course which Professor Blasi⁸ teaches. You have had the opportunity to learn from a German law professor, Uwe H. Schneider, and from a justice of the International Court of Justice, Sir Gordon Slynn. This is deliberate, because the college has a vision for you, and it reaches into the twenty-first century and into the international community of which Atlanta and Georgia will be a part. After all, you will not even have been practicing for ten years when we enter that new century; so do be globally aware.

I do not mean for you to drop everything and start running around the world, but you are, in the words of one of my college songs, now “out, out in the wide, wide world.” You can do such things as read the weekly *German Tribune*, which will give you a European perspective on law and other developments.

When I said you could close your law school books, you notice that I confined it to that. This college encourages “the quest for learning,” as memorably put by Dean Marjorie Girth⁹ in the fall issue of the Georgia State College of Law newsletter. To be a good lawyer, this quest must take you beyond the law books and the cases and the statutes and even current events. Read poetry and, as Ralph Waldo Emerson said, “avoid the recession of your soul.”

I recently read in one of our court’s 1976 cases something which distills this thought beautifully: “[a] lawyer without

8. Professor Ronald Blasi is a Professor of Law at Georgia State University—ED.

9. Dean Marjorie Girth is the Dean of the College of Law at Georgia State University—ED.

history or literature is a mechanic, a mere working man; if he possesses some knowledge of these, he may venture to call himself an architect."¹⁰ We need to know where we have come from, if we are to discern where we are going. I think the point was made in Alice in Wonderland.¹¹

We need leaders, and we need leaders in Georgia who are visionaries. Representative Larry Walker decried the lack of visionary leaders in our state when he talked to us at the Court Futures Seminar in Athens, Georgia in May of 1991. Last week he hearkened back to that speech and said he had found a visionary leader, the Governor, Zell Miller.¹² But as the days unfold, we will need you, as educated lawyers who are among the rarely privileged in our society, to take leadership positions in all levels of government, in business, and in community organizations, and to be visionary. Remember what was said in a well-documented warning: "Where there is no vision, the people perish."¹³ The energy that once was used to maintain an unmoving stance must be transformed into productive, constructive, and wisely-expended energy.

See a vision for yourself in 2020. See a vision for Georgia. Then come out and join Georgia 2020, or if that is unimaginable, then even Georgia 2000. "Your dream can be your future,"¹⁴ and ours. You do have a choice about it.

I close with thoughts from three men whom I admire. One is Teji Sahni, an Indian businessman who just inspired the inauguration of the International Club of Atlanta last week to bring together people of different nationalities in our community and learn about and enjoy each other's cultures and social activities. He saw a dream become reality.

The second is former Governor Carl Sanders,¹⁵ who recently told me of a time when the bond limit for Georgia was being set, and what was to them a gigantic amount was chosen as

10. SIR WALTER SCOTT, *GUY MANNERING*, EVERYMAN'S LIBRARY 259 (E.P. Dutton & Co. 1906) (cited in *Hogan v. State*, 140 Ga. App. 716, 717, 231 S.E.2d 802, 803 (1976)).

11. LEWIS CARROLL, *ALICE'S ADVENTURES IN WONDERLAND* (1865).

12. The Honorable Zell Miller is Governor of the State of Georgia—ED.

13. *Proverbs* 29:18.

14. Lang, in a speech to students at PS 121, Harlem, New York.

15. The Honorable Carl Sanders was Governor of the State of Georgia from 1963 to 1967—ED.

representing a point which would never be reached. He said that in recent years, they learned that infinity had become reality.

The third man, a retired judge who now lives in Florida, says to you: "in whatever you do, do it so that you can have the pride of accomplishment."¹⁶

16. The Honorable Stephen Toth, Judge (Ret.), County Court of Bergen County, N.J.