History of the Current Crisis

When the Chief Justice issued his First Judicial Emergency Order on March 13, 2020, an ad hoc committee of myself and some colleagues in Cobb had already been discussing preliminary plans to continue court in the face of the mounting public health crisis. We searched online for pandemic court plans (there were none of substance), called colleagues in other circuits and states and began an online dialogue with our partners (DA, Circuit Defender, local bar, sheriff, clerk and other courts) to think through the myriad potential scenarios.

With no guidance and starting with a blank sheet of paper, within days we had an initial plan for socially-distanced court and began rewriting the centuries-old book on how to conduct a trial court. We guessed at what the CDC's initial guidelines meant and how they applied to the courts. Then we did the best we could to draft short-term and long-term plans in the event that the epidemic continued.

Within three days of the Chief Justice's First Order, emergency hearings were resuming in a limited, socially-distanced environment. Within days we resumed accountability courts virtually so as not to risk losing a vulnerable population of citizens to addictions and mental illnesses.

During what amounted to a state-wide lockdown in those initial days and weeks, our staff made and fielded a million calls and emails on whether and how court would be conducted. Schedules were shuffled and reshuffled. Staff worked from home and transferred office phones to their personal cell phones and forwarded their emails to personal laptops to get the job done.

By April we had scraped together a collection of old laptops and iPads and put together a plan to move jail cases by virtual hearings to lessen the burden in our jail and eliminate the need to transport inmates to/from the courthouse.

Our *one* IT person in Superior Court worked every night and every weekend to get and keep our systems up and running and to install the countless new programs and hardware pieces we required.

We figured out how to conduct a Zoom meeting or a WebEx call in our living rooms and kitchens and reached out to each other and anyone else we could think

of for technical assistance. My teenager was my in-house IT consultant for months.

Most judges purchased Zoom subscriptions out of their own pockets to expedite the ability to conduct hearings.

We educated our staff and the local bar on new procedures and spent endless hours writing and rewriting guidelines and directories for how to conduct court via video. We shared our ideas with other circuits and solicited their input for fresh thoughts and perspectives. We sat through webinars and emergency meetings to find new solutions for unique problems no one had ever even contemplated. And we adapted these new procedures to conform with existing rules and procedures (some of which were written before courtrooms had electricity).

Early on we began discussions of how to conduct jury trials (if it came to that) in a COVID-stricken world. We used media such as podcasts and video seminars to share ideas on how to get courts and hearings up and running.

While still trying our best to attend to emergency hearings in the criminal context, we began holding civil hearings and bench trials by video. We had to educate new sets of attorneys and self-represented litigants on how to manage a hearing remotely.

The phrase "you're on mute" became a part of every transcript of every virtual hearing.

We applied for federal funds to get equipment, PPE, air filters and the like and retro-fitted courtrooms and makeshift spaces to use as courtrooms. We sought the readily-available assistance of the Chief Justice, local health officials, lawyers, IT experts and anyone else we could find to make sure we were exploring all the potential resources to move cases.

By June 2020, our circuit was essentially running at the fullest capacity the public health guidelines would permit and cases continued to move.

In Cobb County alone, over the past ten months, we have held **7,508 civil hearings** and **closed 6,054 civil cases**. In the criminal context, we held **22,733 criminal hearings**- many of those on an emergency basis- and concluded **3,602 criminal**

cases. We also reduced the jail population by 50% in the initial months of the crisis to reduce the risk of COVID spread in the jail.

In September we conducted seven jury trials, five of which reached a verdict and two pled out. This necessitated calling in 321 jurors for service, with 72 actually serving on juries.

While we were doing all these things, people around us were contracting COVID, and we interrupted our "new normal" to quarantine and reschedule matters. My son contracted COVID, and I conducted hearings from a makeshift courtroom in my bedroom complete with American flag (while livestreaming to the courthouse for "open courtroom" compliance).

Like you, our friends in the legislature, we had no option to shut down and wait it out. The judicial branch, like the legislative branch, had to soldier on and had to find a way to carry on business during the crisis.

So where are we now?

We are certainly still in crisis, but we have a game plan and we are moving forward. Most courts are conducting both criminal and civil hearings via a hybrid system of video and in-person hearings. Most jurisdictions are also conducting jury trials at a measured pace, balancing the demands of the burgeoning backlog with the stringent requirements of public health and safety.

In Cobb, we developed a detailed jury trial plan during the time that such trials were prohibited by order of the Chief Justice. As soon as that plan was authorized, we began executing it immediately. Since that time, we have steadily conducted trials in criminal cases, resulting in many cases being tried since April of this year. But until the pandemic eases and the CDC guidelines are reduced or lifted, we have limited ability to "return to normal" much less take steps to reduce the growing backlog.

For example, while the six-foot social distancing restriction continues, though we have ten judges and eleven courtrooms, we can only conduct two simultaneous jury trials in our courthouse due to capacity problems within those courtrooms and our only jury assembly space.

Other jurisdictions have it even worse, with few judges, limited resources and even more limited space, jury trials will continue at a slower pace than pre-pandemic.

What the Solutions Are and What They Are Not

What They Are Not

Reduction of Opportunity for Bond

Bond is a constitutional mandate. Courts are required to issue bonds in *all* misdemeanor cases- yes all. In addition, what most people do not understand is that bond is also required in all felony cases unless four factors exist:

1) Defendant poses no significant risk of fleeing from the jurisdiction of the court or failing to appear in court when required;

2) Defendant poses no significant threat or danger to any person, to the community, or to any property in the community;

3) Defendant poses no significant risk of committing any felony pending trial; and

4) Defendant poses no significant risk of intimidating witnesses or otherwise obstructing the administration of justice.

These four factors are set forth in the Georgia Supreme Court case of *Ayala v. State,* 262 Ga. 704 (1993). They have also been adopted by numerous federal and state precedents and cases and are statutorily embodied in O.C.G.A. §17-6-1(e)(1). Thus, bond is a constitutional requirement.

Mandatory Minimum Sentencing

The era of mandatory minimum sentencing had its heyday in the 1990's and lasted, in Georgia, until the adoption of the Criminal Justice Reform Act of 2011. I believe it was a failed experiment, and I believe that the data upon which the Reform Act was based bears this out.

What They Are

I believe that there are at least four possible judicial solutions to assist in reducing serious violent crime:

1) Accurate/expedited criminal history data for judges
2) Pretrial supervision for those on bond
3) Following the data regarding issuance of bond
4) Increased funding for senior judges

Criminal History Data

Most decisions regarding issuance of bond are made by the judge based upon criminal history data. This related directly to the bond consideration factors number 2 and 3 I discussed with you a moment ago- relating to likelihood of the defendant to commit a crime while out on bond. Most judges make this prediction based upon past criminal history.

We receive our criminal histories from the GBI's Georgia Crime Information Center, or GCIC, database. That information is critical to these decisions. It needs to be as up to date and accurate as possible. This data is entered by the local jurisdiction and verified by the GBI and added to the database. Increased funding to assure sufficient manpower locally and at the GCIC to perform this critical function is vital to the accuracy of the data.

Pretrial Supervision

In my county, unlike most jurisdictions, I have the power to put someone on "pretrial supervision" as a condition of bond. I have this ability only because my county has allocated dollars for a private service to supervise arrestees out on bond. We treat those out on bond much like probationers, often subjecting them to reporting requirements, drug testing or other restrictions supervised by the company. But resources are unavailable in most circuits for this service.

But I know from personal, albeit anecdotal, experience that it does work.

Following the Data Regarding Issuance of Bond

You, as legislators, will be told stories to lead you to believe that the answer to all the issues underlying increases in violent crime is the amount and type of bond. I caution you to consider the source of this anecdotal, so-called "evidence". What does the data actually tell us? I think that an in-depth analysis of the data underlying such an assertion is probably warranted if any measures affecting the amount and type of bond are contemplated. I know of no data out there to support a conclusion that the amount or type of bond serves to limit recidivism.

At the very least, a study of the available data is in order.

Senior Judge Funding

I believe that one of the greatest resources we possess to alleviate the backlog of both criminal and civil cases is our senior judges. While it is not the only proposal, I believe that significant increased funding for the use of senior judges can and will assist jurisdictions in attacking this backlog. In my jurisdiction, for example, senior judges could be employed on an ongoing basis to cover civil hearings. To alleviate the courtroom space considerations, these hearings could be held virtually when courtroom space is at a premium. This strategy could free up trial judges, like me, to try more jury trials.

In fact, though we cannot conduct criminal jury trials virtually due to Confrontation Clause problems, civil jury trials can be- and are being- tried virtually. Senior judges, already trained to handle these cases, could easily try a number of civil matters, freeing up the sitting judges to try criminal cases.

But this takes money.

My father was a football coach. I heard him say many times that he did not pat anyone on the back for doing their job. What we in the judiciary like you in the legislature, have done over the past two years was our job. We kept the courts and General Assembly open. We took our oaths seriously. We upheld the constitution and laws of the State of Georgia and the Constitution of the United States. That is what we will continue to do through the duration of this pandemic and in the face of any other challenge that may come.

We are grateful to every single person who did their job during this time and helped us continue to do ours. And we are grateful to our friends in the legislature and to this committee for your support in helping us continue to do our constitutional duty.