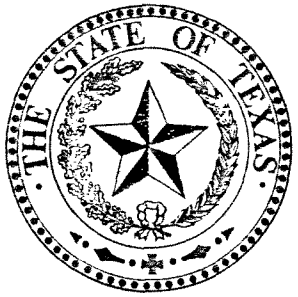

THE STATE OF THE JUDICIARY MESSAGE

Delivered by
CHIEF JUSTICE JACK POPE
SUPREME COURT OF TEXAS

To The
SIXTY EIGHTH LEGISLATURE
January 17, 1983

Pursuant to the provisions of Article 5429h V.T.C.S.

THE STATE OF THE JUDICIARY MESSAGE

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Some years ago, Warren Burger, Chief Justice of the United States Supreme Court, initiated the practice of making State of the Judiciary speeches. In 1977, the 65th Texas Legislature adopted the practice in Texas. I am here to speak about some of the matters that concern the third constitutional branch of our government. That branch includes more than 760 municipal judges, 962 justices of the peace, judges of 254 constitutional county courts, 120 judges of county courts at law, 347 judges of district courts and 97 appellate judges.

On behalf of all those judges I thank Lt. Governor Hobby and the Texas Senate and Speaker Lewis and the House of Representatives for according the third branch of government this early opportunity to review with you matters of concern to all of us.

I will not discuss all of the material in the text that has been delivered to you, nor will I present this in the form of a budget request. I shall briefly discuss three broad subjects. First, I will give you an appraisal of the good and the bad in recent events

affecting the judiciary. Second, I will mention some specific reforms that are urgent and capable of improving our system at no cost or slight cost. Finally, I will lay out some areas both you and we need to study now, so we will be prepared to handle the onslaught of massive dockets that we will confront by the end of this century.

REPORT ON STATUS OF THE COURTS OF APPEALS

The last session of the Legislature implemented the constitutional amendment that conferred criminal jurisdiction on the fourteen courts of appeals, which previously had only civil jurisdiction. That was the most significant change in the jurisdictional structure of the Texas courts in nearly a century. It was designed to dislodge the crunch of cases that had accumulated in the Court of Criminal Appeals. That court, while writing more opinions than any court in the country, was unable to stay apace the flow of appeals, and was about three years behind. The merger afforded some help at the intermediate level.

The restructured criminal appellate system has eased the backlog in the Court of Criminal Appeals. The Honorable Tommy Lowe, Clerk of the Court of Criminal Appeals reports that on September 1, 1981, that court had 3,066 pending cases, including death penalty cases. On January 1, 1982, that number was reduced to 2,470 pending cases and on January 1, 1983, it was again reduced to 1,237 cases. The Court of Criminal Appeals disposed of a total 4,141 cases during 1982.

The fourteen courts of appeals, beginning with many judges who had not previously worked in the criminal law area, disposed of a total of 6,838 appeals, 2,442 civil and 4,396 criminal, during 1982. Of the 1,637 old cases that the Court of Criminal Appeals had transferred to the courts of appeals, 1,511 (92%) have been decided. At the end of 1982 those courts had a total of 4,463 cases pending.

Presiding Judge Onion reports that, while 1,641 cases were transferred to the courts of appeals, 3,066 cases were retained by the nine judges on the Court of Criminal Appeals, including all death penalty cases. All of those have been disposed of except 1,237 cases. Judge Onion reports disappointment that a part of the backlog still exists, but indicates that a sizeable number of appeals are now terminated at the first level of appeal, that is, the courts of appeals. He also reports that it appears the time of pendency from filing in the courts of appeals to disposition by the courts of appeals has been ten months or less. This is a marked improvement. But Judge Onion states further:

> "The bad news concerns the 1,135 cases remaining out of the backlog left with the Court of Criminal Appeals on September 1, 1981 by S.B. 265. Most of these cases had taken some time in reaching the Court because of the preparation of the appellate record, filing of briefs, etc. Most had been pending in the Court of Criminal Appeals for some time on September 1, 1981, and now 16 months later are still pending because of the still overwhelming workload of the

> Court of Criminal Appeals. . . Some of the backlog cases that are now being disposed of reflect the lapse of four or five years between the time of offense and final disposition on appeal. Thus delay continues to be one of the outstanding characteristics of a criminal case on appeal.

Judge Onion suggests two remedies to attack the remaining backlog - the appointment of two commissioners and another equalization of the criminal dockets.

On the downside, I report an unexpected growth in the number of criminal appeals. Both the Legislature and we made predictions two years ago of new filings upon the basis of experience during the previous four years. Three thousand, one hundred criminal appeals were predicted; there were in fact 5,653 or sixty-three percent more than anticipated. Then an additional 1,637 cases were transferred to the courts of appeals, so those courts faced 8,023 cases, 150% more than projected. We believe, however, that this phenomenon is not a long-range situation, because almost half of the large number of appealed criminal cases (2,943) were filed during the three months immediately after September 1, 1981, the effective date of the merger. By the end of the year, the filings had leveled out, but they were still 43% more than was projected in 1980.

During this same period, the filings of civil appeals has remained constant, but the early necessary attention of the judges to the old

criminal docket is beginning to slow down the progress of appeals in civil causes in the courts of appeals. Those courts have more cases on their dockets today than they had two years ago because of the increased criminal appeals.

Minds are numbed by figures, but sound legislation cannot ignore them. It is my duty to report to you a bumper crop of actions filed in Texas. About 1.9 million cases have been added to the trial court dockets of the district and county courts in Texas since the last State of the Judiciary Address two years ago. That is almost a million filings a year. The equivalent of one person in fifteen in a two year period went to court. The fact that so many people rely upon the courthouse may well be the highest recommendation of the judiciary and the courts as the institution and the place that they have placed their confidence. Presently, 250 cases are on the docket of the Supreme Court.

This is the report on what has happened since the Constitutional merger of the criminal and civil jurisdictions in the intermediate courts. It is not too bad for the first year, but it needs to improve.

MOVING DOCKETS

I find that all of us talk about the disposition of cases. We address the out-put of courts. There is an equally important and wholly neglected consideration that we should address. That factor is

the in-put to the court dockets. Let us now address the in-put of cases and some ways to make the cases flow more swiftly.

Impact: We are familiar with the terms "fiscal impact" and "environmental impact." Courts cannot and were never intended to resolve all of the problems of mankind. Society has a way of casting problems with which they are weary, upon the courts by creating a new crime or action. Courts often become our culture's wastebasket. Every legislative session generates new causes of actions, remedies, and crimes. A stack of worthy bills is neither self-enacting nor self enforcing. Some judge must eyeball every person who violates the new law.

Legislation impacts the need for more courtrooms, judges, bailiffs, court reporters, and appellate judges. Legislative impact costs money and when costs are created we do no service to the public by failing to tell you of our increased needs. You do yourselves no service by refusing to support the implementation of what you have created.

When you enacted, for example, the Deceptive Trade Practices Act, we obtained a new law that cut across existing contract, fraud, insurance, and warranty law. It simplified and modernized these fields of law. It also created new remedies that have dynamically impacted the law. I could give you scores of other examples.

I examined the first list of 108 pre-filed bills. Many of them will not succeed, but if all of them would be enacted, 57 of them

would directly affect the workload of our courts. These docket influences are really hidden. Legislation impacts already overtaxed courts and hits the courts as surprise assignments. That is why we sometimes return to you and ask for new courts and increased support. Would it be feasible to attach to each bill a note about "Judicial Impact"?

Venue: Our venue laws are an extravagant waste of money for the state and litigants. In venue, the simple question is, where shall the case be tried? Archaic statutes require that the entire case be tried in a preliminary trial, which may and often is appealed to one and perhaps two levels. That first trial settles only the place of the trial on the merits. In other words, the entire case is tried twice - once to decide where it will be tried and once to decide who wins. This waste of time of judges, court reporters, lawyers, jurors, and litigants is also costly in dollars. Texas generates more appeals on venue and writes more appellate decisions on that subject than all the other forty-nine states combined. It is almost impossible to try a multi-party action without dividing a case needlessly into multiple wasteful lawsuits. It surely should not take three court trials and two appeals just to determine whether part or all of a unified cause should be tried in Corpus Christi or forty miles away in Kingsville.

Legislation ought to embody two simple principles for courts to follow in determining venue:

1. Does the lawsuit have a rational relation to the place where the case is to be tried?

2. Is there some factor connecting the defendant to the county in which he is to be sued?

In 1975, Representative Pike Powers introduced House Bill 771 in the 64th Legislature to simplify our venue statute. While this proposal passed the House of Representatives, it never came to a vote in the Senate. Limited efforts were made in the 1977 and 1979 sessions to amend portions of the venue statute. Prior to the 1981 regular session, the House Judiciary Committee, under the Chairmanship of Representative Ben Z. Grant, studied venue reform and recommended that the venue statute be amended along the lines of the earlier Powers bill.

Last session, both Representative Bush and Senator Oscar Mauzy introduced bills to accomplish this purpose. The Senate bill was reported from committee but failed for lack of the necessary two-thirds vote.

The House Judiciary Committee has continued its study of venue and, I understand, has recommended House Bill 45 to you. It has been introduced in this session by Representative Bush and is similar to his House Bill 909 of the last session. The Texas Judicial Council voted its approval of these efforts several times in 1981 and 1982.

An alternate approach would be the adoption of House Concurrent Resolution 10 by Representative Bush. This would create a special interim committee composed of members of both houses of the Legislature to work with the State Bar and the Supreme Court in drafting rules of venue. A similar approach worked well in drafting

the Rules of Evidence recently adopted by the Supreme Court.

A second alternative would be for the Legislature to repeal Article 1995, the venue statute, effective at some future date, conditioned upon the adoption by the Texas Supreme Court of proper rules for venue as authorized by Article 1731a, the Rule Making Act.

This change would save money, not cost money. It would clean up trial and appellate dockets.

Tort Reparations: Many lawyers and judges are very concerned about the confusion that has developed in the trial of tort cases. At one time negligence cases clogged our dockets because the charge to the jury was extremely complex. That has been rectified, but we have fallen into a system in which negligence, products liability, and implied warranty cases when joined in a single action require different rules of statutory and substantive law for each theory. The actions inconsistently require variances about the kind of proof of fault, the kind of causation, the nature of defenses, whether defenses are proportionate or total, and whether contribution is on percentage of fault or prorated by number of parties. Present statutes compel this complexity, which could be simplified by a comparative fault act.

There is conflict between the provisions of Article 2212a, the comparative negligence statute, and Article 2212, the contributions statute. This conflict needs to be eliminated.

Court Reporter Delay: The Fifth Court of Appeals in Dallas recently studied its records to locate the causes of delays in the

system. Their independent study confirmed that in felony cases the primary delay on appeal is the preparation of the record. The cause is the inability of court reporters to be two places at one time. Court reporters cannot prepare records for appeal when they are in court taking the records.

Court reporters are paid from county budgets and many counties do not provide sufficient numbers of reporters. The solution to the problem is technology. Technological court reporting methods are now available to complete the work within a week of the close of the trial. However, this comes at an expense that the individual counties cannot afford. At this point we recommend pilot programs in metropolitan counties to develop an efficient and reliable reporting system using the latest technology. When the system is proved effective, county funds could be attracted to a method that would be more economical than hiring more personnel to maintain the old system.

Better Use of Retired Judges: We have in Texas about 23 retired appellate judges who cannot now be used to work in appellate courts due to the lack of funding for such a program. Article 1812 authorizes the Chief Justice to assign active or retired justices to sit temporarily on any court of appeals. No funds have ever been appropriated for this service. Implementation of this plan would reduce the need to transfer many cases from one court to another, it would speed the disposition of several hundred cases annually, and it would save money by reducing the need for new judgeships and the accompanying liability for judicial retirement.

We ask that Article 1812 be implemented so appellate judges may serve in the way retired judges now serve as trial judges. This has been recommended by the Texas Judicial Council.

Presiding Judge Onion recommends that the Legislature provide funds for that court to appoint two commissioners who could attack the remaining backlog of old criminal cases on the docket. Article 1811e already empowers the court to make the appointments. The Legislative Budget Board has also recommended appropriations for this purpose.

PREPARING FOR THE END OF THE CENTURY

The Texas Code of Evidence: Senate Resolution 565 of the 67th Legislature established an interim committee to work "with the Supreme Court of Texas, the Texas Judicial Council, and the Committee on Administration of Justice of the State Bar of Texas to study codification of the Texas rules of evidence." In compliance with that Resolution, Lieutenant Governor Hobby appointed Senators Kent Caperton (Chairman), Senator Oscar Mauzy (Vice Chairman), and Bob Glasgow. Chief Justice Joe Greenhill designated Justice Jim Wallace as the Supreme Court's member. Judicial Council President Ben Z. Grant appointed three members of the Texas Judicial Council, and past State Bar President Franklin Jones, Jr., appointed twenty members of the State Bar. The Committee consisted of the named senators, judges, professors and practicing lawyers.

The Committee was enlarged by State Bar President Wayne Fisher to include fifteen practitioners at the criminal bar.

It was soon determined that there were some necessary variances between the Code provisions for civil evidence and criminal evidence and that legislative authority had not been granted the Court of Criminal Appeals to promulgate rules of evidence.

On November 23, 1982, the Texas Supreme Court promulgated the Model Code of Evidence for civil trials. The Code has been transmitted to each of you. We regard the Code as an excellent product that will simplify the trial of cases.

It is recommended that a suitable Code applicable to criminal practice should also be promulgated. Much of the work has been done. The interim committee recommended that the Legislature empower the Court of Criminal Appeals to promulgate rules of evidence applicable to criminal cases. Presiding Judge Onion expresses the view that rule making power concerning evidence would avoid many reversals and retrials.

Texas Rules of Civil Procedure: Pursuant to authorization by the Texas Legislature, the Texas Supreme Court with the advice and assistance of the Committee on Administration of Justice has revised, clarified and simplified all of the discovery practices. The Court has met with the Supreme Court Advisory Committee and this product is now under final study by the Court. All of the other rules have also been combed, corrected, and simplified. The Supreme Court has those rules under final study. When this is completed, most of the rules originally promulgated in 1941 will have been revised and simplified.

Jurisdiction of Trial Courts: As we prepare for the end of the century, we need to re-examine the monetary jurisdictional requirements for all of our courts. We need to gather up the disparate statutes and to state uniform limits for all of the courts.

The Texas Municipal Courts Association suggests that the $200.00 limit on jurisdiction of municipal courts was a substantial sum in 1899 when the courts were created. Now the maximum fines of $200.00 no longer deter violations of significant city ordinances. Municipal courts hear theft and criminal mischief cases in which the property loss does not exceed five dollars. This is no longer realistic. We should examine the need for making municipal courts into small claims court as are justices of the peace courts.

Justices of the Peace Courts have jurisdiction up to $500.00 in some places while the same courts have jurisdiction up to $1,000 in others.

Small Claims Courts in 1953 were given concurrent jurisdiction in cases involving sums up to $150.00 in some cases but up to $200.00 in others. Thirty years of inflation have robbed the courts of jurisdiction they once had.

County Courts and County Courts at Law confront strange anomalies in the patchwork of statutes. Jurisdictions vary from $200.00 to $5,000.00 with upper limits varying from $5,000.00 to $50,000.00. Within the same counties, the same kinds of courts have varying jurisdictional powers both in subject matter and amount.

District Courts have jurisdiction that overlaps that of County Courts and County Courts at Law. This defeats the intended relief of the district court dockets. The $500.00 starting point for district court jurisdiction was fixed by the Constitutional provision in 1876, the year that President Grant was in office.

This whole subject of jurisdiction for trial courts needs some serious study. Piecemeal legislation and even piecemeal correction leaves too much confusion.

Judicial Redistricting: To my knowledge there has been no statewide judicial redistricting since the adoption of our present judiciary article in 1891. No doubt, the growth of our State will continue to require the addition of some new district courts periodically for some areas of the State. The mobility of the population in our State has left a few trial judges in geographic areas which do not generate many cases. If the Legislature chooses not to enter these waters, it may wish to consider a proposal made by the Texas Judicial Council almost twenty years ago and which I understand is now proposed by one committee of the State Bar. This proposal would establish a Judicial District Board which would act like the Legislative Redistrict Board now does if the Legislature fails to redistrict.

The Judicial District Board envisioned in this proposal would have an advantage over the Legislature in reapportioning judicial districts in that the board would have a continuing power to act, and could act at any time in the intervals between regular sessions of the Legislature. The board could take into account matters that

arise from time to time, such as the anticipated retirement of particular district judges or the decisions of particular district judges not to seek re-election, and could reapportion such judicial districts with a minimum of harm to existing judges. The board could designate different effective dates for different reapportionments on a piecemeal basis over a number of years, because it would not be necessary for all of the reapportionment to take effect at once. Through a continuing study of and attention to the problem, the board could reapportion the State on a step-by-step basis -- a much needed improvement to our judicial system.

Alternatives to Judicial Decision Making: Chief Justice Warren Burger in his recent State of the Judiciary Address expressed concern that our courts could become inundated and rendered useless unless we now make plans for the future. We need to glue the system together rather than gum it up. I propose some alternatives to formal court trials that need study as we get ready for the end of this century.

We should de-law matters that should never have been thrust upon the courts. We are moving, however, in the opposite direction. Courts have become the repository for all kinds of non-legal problems--traffic--juvenile--family--neighborhood disputes. Every session of the Legislature creates and casts more new crimes and causes upon the courts for resolution. This also impacts the need for more judges, courts, support staff, law libraries, and clerks.

Neighborhood Dispute Centers are said to be the nation's newest "growth industry." 69 AMERICAN BAR JOURNAL 19 (Jan. 1983). The

theory of the movement is to match the process with the dispute. We often provide a more elaborate process than the nature of the dispute demands. Complexity of process is often used as a substitute for thinking. An example is the waste of time and money in discovery proceedings. Houston is in its third year of development of this idea. I am informed by Chief Justice Frank Evans that the Dispute Center in Houston resolved 5,000 problems last year at no cost to the State.

We need to remove the incentive for delay. Some states have enacted laws that take the profit motive from delay of a case. The practice was that a knowingly liable party would estimate the amount of liability, place the amount in a reserve fund, and invest it to earn from twelve to seventeen percent compounded interest up to the date of judgment. Since the law denied pre-judgment interest, it was an advantage to the liable party to delay the cause and receive as many interest payments as possible, all at the cost of the party who earns no interest until final judgment. The practice subsidized and invited extensive discovery or other delaying tactics.

A clogged docket invites delay and discourages settlements. Sanctions and penalties should cope with such use of the court system.

FUNDS NEEDED BY JUDICIARY

The Texas Judicial Council was created by Article 2328a, for the purpose of making a continuous study of the courts, their procedures

and methods. It is the Legislature's source of ongoing study. It has been very active since the adjournment of the 67th Legislature. Senator Farabee, Senator Mauzy, and Representative Bush are members of the Council. Honorable Ben Grant became a member as a Representative and as Chairman of the Judiciary Committee. It has submitted many proposals including (1) merit selection of judges, or (2) alternatively, a nonpartisan election, or (3) alternatively, separate ballot columns for judicial races, (4) limitations on time to raise campaign funds, (5) amendments of Article 1812 to permit assignment of justices to courts of appeals, (6) increase of filing fees in courts of appeals, (7) increase the interest rate on judgments, (8) simplify the venue statutes, (9) grant power to Court of Criminal Appeals to adopt Model Code of Evidence in criminal cases, (10) amend Article 35.17 concerning voir dire examination of jurors in criminal cases, (11) provide for support personnel for district judges, (12) the preservation and disposition of records of courts of appeals, (13) revise the proceedings of the Commission on Judicial Conduct concerning disclosure, (14) adopt a percentage relationship between judicial salaries, (15) statewide reapportionment of judicial districts, (16) revise the monetary limits of trial courts, (17) add additional members to the Judicial Council.

Some of the recommendations were also developed in detail by the Interim House Select Committee on Judicial Selection, which disagreed with the Council on several matters including the first three listed above.

Administrative Support - The state Office of Court Administration was established in 1977 to provide administrative support to the courts of this State and especially to the Supreme Court in discharging its many administrative duties. It serves as the secretariat to the Texas Judicial Council and to the Texas Court Reporters Committee and in so doing provides considerable savings over that which would be required if these two state agencies had their own separate administrative staffs.

During the past two years this office has concentrated on providing aid to the fourteen courts of appeals in their transitional period from being specialized civil appellate courts to general intermediate appellate courts handling both civil and criminal cases. During this period it has aided these courts in obtaining automated word and data processing equipment, and trained the personnel of these courts in the use of this equipment. It has developed separate automated case management, budget and accounting, and payroll systems for these courts. It has developed the software programs for these courts and thus save the taxpayers an estimated several hundred thousands of dollars which would have been spent if each court would have had to purchase this type of software programs independently.

I urge you to provide this office with appropriations sufficient to allow it to continue the invaluable support to our appellate courts and also to allow it to begin to provide this same type of assistance to the trial courts of our State.

Judicial Education: Elections, retirements and promotional appointments produce annual changes in the judiciary. New judges are usually willing and very industrious, but the management of all kinds of cases from the bench requires an entirely new set of skills. A Canadian Justice recently said, "A judge who is ignorant and industrious . . . is an unqualified disaster."

The Texas Center for the Judiciary provides continuous educational training in a variety of areas for more than 1,200 Texas judges and court personnel. An in-depth curriculum at regional seminars is presented by lecturers and jurists who provide supporting papers for daily use as bench books. The Center has conferences scheduled in February and running almost monthly thereafter, for the training of judges, court administrators, briefing attorneys, and appellate clerks. The Center's week-long Texas College for New Judges trains new judges. It has provided instruction for more than 275 new judges. The Center provides a variety of scholarly court manuals on procedure and substantive law.

The Texas Center was founded in 1974 with Law Enforcement Assistance Administration funds granted to the State of Texas through the Governor's Criminal Justice Division. When those funds were discontinued the Texas Center became a non-profit, tax-deductible corporation and is now operated by a grant from the Criminal Justice Division of the Governor's Office. The funds for this grant were made possible by passage of S.B. 127 at the last session of the Legislature. The requested budget for judicial education is $647,000

and it is hoped the Legislature will ensure that the courts get a fair share of the grant monies available. While the Center is considered a state agency by the Criminal Justice Division, it is actually serving the local needs of the judiciary. Every trainee judge goes back to his or her district to serve the local community.

The Justice of the Peace Training Center conducts mandatory training courses for non-lawyer justices of the peace.

Municipal Court judges, by authority of Article 1200f, enacted in 1977, also have a training program on paper. No funding has ever been provided for the program. The Municipal Courts generate fifty-eight percent of the funds for the Criminal Justice Planning Fund. While their grant applications have been approved, no funds have ever been made available for their training. Over 700 cities and towns have municipal courts. Less than forty-five percent of our municipal judges are attorneys, and it is to those courts that more than 6 million people were summoned in 1981. The Municipal Courts Association will seek legislation from this Legislature to fund training for Municipal Court personnel. I urge its passage.

Access to the Courts: The proposed Effective Assistance of Counsel Act is urgently needed if we in Texas are going to comply with the constitutional mandate of the right to counsel.

For several years now the bench and the bar have generally recognized that there are serious deficiencies in provisions for

representation of the indigent accused. This is, of course, a matter of constitutional dimension. At the last session, the Legislature adopted remedial measures contained in House Bill 1143, only to see it vetoed. During the past year a special committee of the State Bar of Texas went back to work on the problems. It produced and the State Bar has approved a comprehensive set of proposals to improve assistance of counsel to the poor in criminal cases.

Noteworthy provisions call for a public defender system in every county that locally opts to have one - to supplement the court appointed counsel program, a more definitive formulation for compensation of appointed counsel, and creation of an indigent defense fund from slightly increased court costs in criminal cases.

Unemployment has increased the number of people who exist on a subsistence income. The denial of their legal rights is frightening when it relates to employment, health care, housing, and family abuse. In the transition to increased state responsibility for human needs through block grants, the Legislature should ensure that decision-making is open and fair and that all persons involved in the process receive due process.

The new idea this nation contributed to government is that the law is enthroned and should rule all of us equally. This does not happen when the law is not even available to large segments of our communities. Low income Texans must have equal access to the courts, but we are not yet providing that access.

The Legal Services budget was reduced in Texas from $25 million to $17 million in 1982. Programs throughout Texas had to close offices. Destitute Texans are truly destitute when they have rights that they cannot assert. The Judiciary, the bar, and the Legal Services programs have joined forces to develop several innovative programs, one of which is Texas Lawyers' Care. It encourages pro bono or volunteer lawyer programs. Successful programs exist in Austin, Houston, Laredo, San Antonio, Dallas, Corpus Christi, Fort Worth, and El Paso. A volunteer program cannot, however compensate for the loss of federal funding.

The crisis can be met by adoption of the Texas Equal Access to Justice Act. This innovative civil legal assistance program for the poor would require no additional tax, would cost the State nothing, and would not necessitate calling on Washington for help. It would be funded by interest earned on lawyer trust accounts. The program is now operating in about ten states. This legislation should be enacted.

The Needs of District Judges: The State pays the salaries of district judges, but the county pays the salaries of the bailiffs, court reporters, clerks and secretaries. A district judge in Texas has nobody who can type a letter for him. Judges must rely upon the court reporter or must perform these secretarial and clerical duties themselves. When the court reporter becomes the uncompensated secretary for the judge, we are delaying the preparation of records for appeal. This system also diverts the judge from his tasks of trying

cases and making decisions. Judges should be free to do what they are elected to do--to try cases, resolve disputes, make justice available to everyone, and to do so quickly. We save no money when we keep judges absorbed in administrative and clerical duties writing letters by hand and doing non-judicial functions.

A support personnel allowance for each district judge to use as needed would expedite the disposition of cases.

The Needs of the Courts of Appeals: The Texas Legislature on the last day of the 1981 session adopted the extensive legislation that merged criminal and civil jurisdiction in the fourteen courts of appeals. Twenty-eight new judgeships were added to the courts of appeals. Appropriations were made to cover the salaries of the added justices and some of the more urgent needs.

The lateness in the session prevented an estimate of the other needs of those courts, so the House adopted H.R. No. 29, which requested the Office of Court Administration of the Texas Judicial System in cooperation with the House Judicial Affairs Committee to study the personnel and equipment needs of the courts of appeals.

The courts of appeals during the past two years have been able to identify the specific needs occasioned by the change of jurisdiction and the flood of new cases on their dockets. They know, as all of us know, that staff and modern equipment are the most economical way to defeat the accretion of new backlogs of appellate cases. This is not

a budget presentation, but a summary of those things that the last session knew it had not but must supply.

The study now made shows that the prevention of a new glut in the appellate dockets requires (1) two briefing attorneys for each judge, (2) a central staff attorney for each three judges of each court, (3) automated word and data processing equipment, (4) additional secretarial help in each court.

Correlation of Judicial Salaries: The 1981 Legislature began the practice of correlating the salaries of different levels of judges instead of setting salaries independently. This is sound. Section 76 of S.B. 265 of the last regular session made statutory the policy that salaries of courts of appeals justices would be set at ten percent less than that of Supreme Court and Court of Criminal Appeals judges.

Proposed Legislation would extend this policy to district court judges. The proposal is that courts of appeals justices would receive five percent and district judges would receive ten percent less than that of Supreme Court justices and Court of Criminal Appeals judges.

This concludes, for now, my remarks about our needs. Judicial matters that require funds cannot be handled without funds. The judiciary does not need a large slice of the budget dollar. If the total State budget were reduced to a symbolic $100.00, the total cost of the entire third branch of government would account for only twenty-eight

cents. Chief Justice Burger has said that Americans spend more money for peanut butter than the total cost of the judicial system. I do not know where the figures came from, however, my predecessor expressed it by saying that Texans spend more money painting white lines down the center of highways than they do for their judiciary. I now add my own comparison: if every budget request sought by the judiciary were granted, it would be less than the utility and maintenance bill of the University of Texas at Austin.

CONCLUDING REMARKS

Law and the administration of justice touch every facet of our complex society and lives. What happens in our court rooms constitutes the thin line in all of our communities between peace and anarchy. Judges need no armies or navies to enforce their judgments, because our judgments have been self-enforced by the consent of the governed. So long as the governed and those whose causes are adjudicated can see courts that fairly, equally, conscientiously, and diligently administer the common law, the laws you legislate, and the Constitutions, that thin line will be safe.

I paraphrase today on behalf of this third branch of government, what Oliver Wendall Homes said sixty years ago:

> Law is the business to which our lives are devoted, and we should show less than devotion if we did not do what

in us lies to improve it, and, when we perceive what seems to us the ideal of its future, if we hesitate to point it out and to press toward it with all our heart.