

Wallace B. Jefferson  
State of the Judiciary  
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Senator Ogden, Speaker Straus, Representatives and Senators – my colleagues on the great Courts of Texas – I am honored to stand before you today to deliver my fourth address. I have had the great privilege to lead a conference of the nation’s Chief Justices, to see how their states adapt to the current economic climate, to compare our system of justice to theirs. We have good reason to be proud of our state. Texas is a leader in so many ways. We have the best Judicial Commission on Children, Youth, and Families, thanks to the vision of my former colleague, Harriet O’Neill, the leadership of Justice Eva Guzman, and an excellent staff, headed by Tina Amberboy. We have one of the strongest Access to Justice commissions, which provides lawyers to Texans who cannot afford legal representation. We asked Jim Sales to lead that Commission, and now Harry Reasoner, and I have to say, it is rare to see such passion from pure volunteers. Leadership. Vision. Passion. These are essential. Justice also requires action. I have the privilege of addressing, in this room, the great leaders of our state, who have a vision for a better Texas; the passion to move public policy toward that end. Today, I am calling for *action*, on several fronts.

## Juvenile Justice

The Supreme Court of Texas hears only civil matters. But by constitution, custom, and statute, we also have jurisdiction over juvenile cases. Those files cross our desks from time to time. We read the record, apply the law, and move on to the next case. I got a call a few months ago from a judge who said: “Chief, I would like you to see the faces behind those files.” And so I sat in on Judge Jeanne Meurer’s court and observed a day in the lives of families dealing with juvenile offenders. The experience would change you.

I have seen the faces of little girls addicted to methamphetamine, of teenage car thieves, of bullies. I have heard the pleas of frustrated working mothers and desperate public defenders. Sending juveniles away to remote detention centers is sometimes necessary, but it is not the answer to our societal problem. The future of Texas youth depends on rehabilitative services, on psychiatric care, on vocational training. More than 25 percent of Texas children live in poverty.<sup>1</sup> Thirty-three percent of youth referred to juvenile probation have a diagnosed mental illness, and 60 percent of our sons and daughters incarcerated in the Texas Youth Commission need mental health treatment.<sup>2</sup>

Schools are central to this equation. More than 80 percent of Texas adult

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<sup>1</sup> See Justice Nathan L. Hecht, *Legal Aid Groups Need Support*, Houston Chronicle (Sept. 25, 2010), available at <http://www.chron.com/disp/story.mpl/editorial/outlook/7217957.html>.

<sup>2</sup> See TEXAS APPLESEED, TEXAS’ SCHOOL-TO-PRISON PIPELINE: SCHOOL EXPULSION—THE PATH FROM LOCKOUT TO DROPOUT, Executive Summary 6 (April 2010).

prison inmates are school dropouts.<sup>3</sup> Charging kids with criminal offenses for low-level behavioral issues exacerbates the problem. Among those suspended and expelled, minority and special education students are heavily over-represented. Of course, disruptive behavior must be addressed, but criminal records close doors to opportunities that less punitive intervention would keep open. Let us endeavor to give them a chance at life, before setting them on a path into the adult criminal justice system.

So let me announce my first plea for action. This one is easy. Jeanne Meurer is in the trenches, she knows how to reach these kids, she understands the challenges facing our parents and schools. When Jeanne Meurer calls you, and asks for your help, file the bill, appropriate the funds, sign the Act.

### **Access to Justice**

I mentioned access to justice earlier. The increasing inaccessibility of legal services – for the poor, for even the middle class – undermines the rule of law for us all. We are a nation and state that believes the law provides protection for those who are most powerful, for those who are most vulnerable. But today, the courthouse door is closed to many who have lost their jobs, to military veterans who are on the streets, to women who suffer physical abuse.

The combination of increased poverty rates, reduced interest rates on legal

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<sup>3</sup> See TEXAS APPLESEED, TEXAS' SCHOOL-TO-PRISON PIPELINE: SCHOOL EXPULSION—THE PATH FROM LOCKOUT TO DROPOUT, Executive Summary 1 (April 2010).

aid accounts, and a statewide budget crisis threatens to leave Texas' neediest communities without basic access to justice. I commend the State Bar and its President, Terry Tottenham, for creating Texas Lawyers for Texas Veterans, which will provide legal services to those men and women who risked their lives to protect the freedoms we hold dear. How are we, as a state, going to answer the cries of nearly 6 million other Texans eligible for legal aid,<sup>4</sup> but who are turned away because funding is inadequate?

Here, then, is my second call to action. Even in the face of a tremendous budget crisis, I ask the Legislature to duplicate what it courageously did last Session and appropriate \$20 million from general revenue for basic civil legal services. Advance legislation that would add a small fee to case filings, so that money is available to help Texans secure the legal rights that our constitution and laws give them.

### **Indigent Defense**

Our commitment to equal justice does not end with civil justice. Recent efforts to find and rectify wrongful convictions in Texas provide a promising example of how our courts are working to free the innocent. The Court of Criminal Appeals has worked with the Timothy Cole Advisory Panel, established by the Legislature last session, to study the causes of ... and solutions to ...

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<sup>4</sup> See Justice Nathan L. Hecht, *Legal Aid Groups Need Support*, Houston Chronicle (Sept. 25, 2010), available at <http://www.chron.com/disp/story.mpl/editorial/outlook/7217957.html>.

wrongful convictions in our state. In the last 10 years more than 40 Texas prisoners have been exonerated based on DNA evidence. This is not just a Texas problem, but no other state has found an equal number of wrongfully convicted prisoners.<sup>5</sup>

Yet Texas ranks among the lowest of the 50 states how much money it spends per person on indigent defense.<sup>6</sup> Projected cuts to expenditures from the Fair Defense Account, created by the Legislature, would drain the system of resources we need to assure indigent criminal defendants get competent lawyers who make the system fair. We need to fund criminal justice initiatives that will make investigations more accurate, trials more just and DNA evidence more widely available.

We in the judiciary are trying to do our part. The Court of Criminal Appeals' Criminal Justice Integrity Unit organized a two-day Forensic Science Seminar, educating more than 400 attorneys, judges, police officers, legislators, and lab personnel on evidence standards and specific sciences. The judicial Task Force on Indigent Defense recently helped establish the Harris County Public Defender's Office. Up to that time, Harris County was the largest urban jurisdiction *in the country* without a public defender office.

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<sup>5</sup> See Editorial, *Get it right: Houston state senator's agenda: Reduce erroneous convictions*, HOUSTON CHRON., February 7, 2011, <http://www.chron.com/disp/story.mpl/editorial/7417281.html>.

<sup>6</sup> John Reynolds, "Though Underfunded, Indigent Legal Defense Much Improved: State May End Up Cost-Shifting More of the Burden Back to the Counties," Quorum Report (May 13, 2010), available at <http://www.county.org/resources/news/dynContView.asp?cid=438>.

My third call for action is to ask this Legislature to support these efforts to make our criminal justice system fair. I commend Senator Ellis for his work on these issues and I commend those of you in this room who will work to pass the bills, and fund the projects, that will ensure no innocent person languishes in our prisons.

### **Judicial Selection**

All that I have discussed depends on an impartial system of justice overseen by the judicial branch. We lost one of that branch's greatest leaders, Joe Greenhill, less than two weeks ago. He told me once that he regretted that Texas has continued to elect judges on a partisan basis. I regret it, too. A justice system built on some notion of Democratic judging or Republican judging is a system that cannot be trusted. I urge the Legislature to send the people a constitutional amendment that would allow judges to be selected on their merit.

If we do not reform the process completely, judicial elections can at least be changed. And so my final call to action is that we consider common-sense solutions to the problems that plague partisan election of judges. First, I would eliminate straight-ticket voting that allows judges to be swept from the bench ... not for poor work ethic, not for bad temperament, not even for their controversial but courageous decisions – but because of party affiliation. We saw this in Dallas County four years ago and in Harris County in the 1990s, in 2008 and just last

year. Hordes of judges replaced for no good reason.

Let's extend terms for state judges, from four years to six for district court judges, and from six years to eight for appellate court judges. This will avoid some of the overhaul that occurs each election cycle, and drastically slows down the system. And let's bring sense to the process to allow a judge appointed to an unexpired term to serve a full term before having to face the voters. That will give her or him experience and – this is important – a record to run on.

We can do this, if not more.

### **The Past, Present, and Future of the Judiciary in Texas**

Finally, as I reflected on the passing of Joe Greenhill, I wondered what it must have been like on the Supreme Court in 1957, just a few years after *Brown v. Board of Education*. What was Texas like then? What was it like 100 years earlier? If you are curious, as I am, then you will support our effort to preserve the documents of our past, which currently lie rotting in boxes and file cabinets, literally crumbling on courthouse shelves. Faced with this vanishing history, our Supreme Court established, in 2009, the Texas Court Records Preservation Task Force. Led by public officials and private citizens, the Task Force has found documents about Sam Houston, litigation surrounding American Indians, immigration records in Galveston County – some of your families first came to Texas through that port – and about other exciting periods in our history. This

session, the Legislature will be asked to address whether court clerks should retain such historic records. My recommendation is an emphatic yes. These documents are our living history: the parchment of our past. They prove to us, not only that we rose from the severest of circumstances, but that we forged ahead, and became stronger for it.

Why does the past matter? Not only because it tells us who we have been, but also because it reminds us *who we are*, and *what we will become*. As Texans, we have much to be proud of. Our courts struggle to provide the promptest and most efficient resolutions for litigants. And yet, a system that cannot provide equal access to justice, that does not protect the endangered and the vulnerable; a system that permits politics to take precedence over merit; and one that allows the innocent to remain behind bars . . . well, that is the reason you are here. I ask you to take action this Session. Give us the assurance that, at this crucial juncture, we did not turn our backs on the neediest among us, but continued to serve them as the Constitution so strongly demands.