STATE OF THE JUDICIARY MESSAGE

Chief Justice John L. Hill, Jr.

February 9, 1987

Governor Hobby, Speaker Lewis, Senators, Representatives, State Officers, Justices and Judges, and fellow Texans:

On behalf of the almost 3,000 judges of the Third Constitutional Branch of Government, I express my appreciation to Lieutenant Governor Hobby and the Texas Senate and to Speaker Lewis and the House of Representatives for this early opportunity to review with you the state of the Texas judiciary today.

In my view, the state of the Texas judiciary needs to be improved. Certainly its image is not excellent among our citizens today--and excellence should be our goal. In a recent poll commissioned by the Committee of 100 for the Merit Selection of Judges and conducted by the nationally known firm of Tarrance-Hill-Newport & Ryan, the following question was asked to 600 likely voters from varying geographic distributions across the state:

> And how would you rate the performance of the Texas state judicial court system--excellent, good, only fair, or poor?

Excellent	2%
Good	33%
Only Fair	43%
Poor	18%
Don't Know/No Answer	5%

It would be an act of folly for us to ignore these findings. Absent contrary evidence, we have no choice but to accept the findings as a valid indication that the majority of Texans--right or wrong--rate our Texas judiciary as only fair or poor. Remember, we are dealing here with a branch of government which depends strongly on public confidence for its strength, making these findings of special importance. Indeed, without public confidence in our courts, our free society and our free enterprise system cannot be long sustained. It is critical then that we address this perception problem. What are the steps we should take to enhance public confidence in our courts?

The first fact to be focused on is that the partisan, contested election system which we continue to employ in Texas to select our judges places Texas outside the mainstream in America on this issue. In my view, this is a major part of our problem. The majority of states rely on either an appointive/retention/rejection election, commonly referred to as the merit system, or a non-partisan election system for the selection of judges. The appointive/retention/rejection election plan is the most used. I think we owe the people of Texas during this legislative session a serious examination of these processes used by other states. We need to take the time now to determine exactly how those processes work and to develop a consensus Texas plan for selecting and electing judges that will serve our people better than the present partisan system. If we do so, I believe we will improve our Texas judiciary and enhance public confidence.

Reputable polling continues to reveal repeatedly and consistently that Texas lawyers and Texas citizens want to change our present system of partisan elections of judges.

How many more polls do we need before we act to bring about change? If these polls show anything clearly, it is that beyond a shadow of a doubt approximately 80 percent of the people of Texas want a change.

In my humble opinion, the voters of Texas are entitled to be heard on this issue through a constitutional amendment vote such as, for example, will take place in Ohio this November. Why should we deny our people that right of expression?

Even if the voters of Texas adopt a Texas Plan for merit selection, it will not be a panacea for guaranteeing an excellent judiciary, but it will be a better system than the one we have now. Other Justices on our Court have spoken out on this subject and stated their preference for a change to non-partisan elections. Some may oppose any change. The non-partisan alternative may be worthy of consideration, but in my opinion it will not be as effective in dealing with our problems as the Texas Plan for merit selection which is in the hopper and which enjoys the support of Lt. Governor Hobby and Speaker Lewis. Additionally, it's important to note that the sponsors of this legislation are some of the finest legislative leaders currently serving our state--Senators Ray Farabee, Kent Caperton, and Bob McFarland, and Representatives Bruce Gibson and Terral Smith.

Everyone who has seriously looked into this issue, regardless of their own preferences, usually concedes that an appointive/retention/rejection election--or merit selection system--would be the best for curing the problem of "big bucks" contributions that has so invaded our partisan judicial election process. It is unconscionable for a judicial race to cost a million dollars, as is sometimes the case today. That alone is enough to commend this legislation.

In addition, under our present system, both large contributions and partisan politics can create the appearance that judges serve a constituency. Certainly, we can all agree that judges should not have constituencies.

I would not ask you to support a plan that takes away the peoples' right to vote. Today, I am asking you to allow the people to vote on this method of judicial selection. Please let this issue get to the citizens of our state for a vote. More and more the public is very interested in this matter and in order to keep them better informed I am confident you will hold full and orderly committee hearings on this Texas Plan for merit selection and other alternatives, and bring to the floor a Texas Plan to remove partisanship from our Texas judicial election process. Speaking purely for myself, I hope you will do just that, and that your decision will be to allow the voters of Texas to decide in November whether to approve or disapprove the Texas Plan for Merit Selection as developed by the Committee of 100. I have never claimed that I speak for the entire judiciary on this matter, but I do speak and will continue to speak freely and without reservation my strongly held views on this vital subject.

The next fact that we must face is that the average tenure of a Texas judge today is only 6 years. Resignations of judges are on the upswing and our pool of available qualified persons willing to serve as a Texas judge is diminishing. Statistics are readily available to prove these sad facts. Part of the problem here is the one to which I have previously alluded--I'll call it the "political hassle" element.

Too many good lawyers who would like to consider becoming a judge, shy away because they don't want to be "politically hassled" in a big-bucks partisan contest.

The other part of the problem is our inadequate compensation for Texas judges. That brings me to another sad fact. Today, Texas trial judges rank 37th nationally in salary, and our intermediate appellate judges rank 18th.

APPROPRIATIONS REQUESTS

This year, the total Texas judicial budget constitutes less than one-third of one percent of the total state budget. While our budget requests are always modest in terms of overall dollars, they are nonetheless critical to the proper discharge of our constitutional responsibilities to Texas citizens whose disputes come before the courts for resolution. We must remember that the responsibilities of the Texas judiciary are constitutionally and statutorily mandated. The judiciary cannot reduce services. It can only delay or postpone its services.

The judges and other personnel of all our courts have lived without a cost of living pay raise as have all other employees of our state. We have reduced our operating expenses and foregone the purchase of needed equipment, to help shoulder our share of the burden our state faces in these times. But we, as others, can do only so much on the expenditure side. Solutions must be found and choices must be made, and I urge you to take a responsible approach to finding equitable sources of revenue to keep our courts on track and operating. We will begin losing the "brightest and best" people from our benches and from our support staffs if further sacrifices must be

made. This would be short-sighted and take years from which to recover.

We need, and you deserve, to have the very best people sitting on our benches, making the crucial decisions which affect all of our lives. We cannot settle for merely competent judges--we must have, and you and our citizens deserve, the very best. Only in this way will the public's confidence in their courts be maintained.

Today, as I have said, the state salary paid to our district judges ranks us 37th nationally. This is unconscionable--it is shockingly unfair and unjust. A few years ago, you enacted into law a bill establishing the pay of the Courts of Appeals justices at 90% of that paid by the state to the Supreme Court and the Court of Criminal Appeals. Now, we ask you to extend this same fair treatment to the trial courts of our state. Senator Glasgow has introduced Senate Bill 150 which would establish the state salary of the district judges at 90% of that provided to the Supreme Court and that of the Courts of Appeals justices at 95% of that same amount. I urge you to support this legislation. The Judicial Section of the State Bar and the State Bar leadership has made this a primary goal. Other legislation will address this issue for the judges of the statutory county courts at law. As you approach this matter, I hope that you will give it your earnest consideration. For too long the level of state paid salaries for the different levels of courts have diverted our attention from the more substantive issues which we should be addressing. Having a formula of this type will correct this situation once and for all and allow us to get on with the important work of the judiciary.

The Judicial Budget Board, under the able chairmanship of Justice Robert Campbell of our Court, after arduous work and detailed study,

has submitted its recommendations for the adequate funding of our judicial system. I urge you to support its recommendations. We are not asking for more judges. We are asking for adequate personnel and equipment so that we can bring our courts into the computer age--a process you began in 1981 with the appellate courts. These requests are reasonable in light of our current financial crisis and absolutely necessary if our courts are going to operate properly.

But lest I overly dwell on our deficiences and problems, I want to share with you some of our accomplishments.

JUDICIAL REDISTRICTING

One of the greatest stumbling blocks to the effective use of courts is the inequities in judicial districts. You in the Legislature last session, and we of the judiciary in the interim, have begun to tackle the problem of judicial redistricting. Last session, you proposed a constitutional amendment, which the voters approved, to establish a Judicial Districts Board. This created a vehicle for the continuing study and review of district court districts. Further, you directed the Texas Judicial Council and the Supreme Court, jointly, to prepare a redistricting plan for the fourteen Courts of Appeals.

These redistricting responsibilities have been met. The Judicial Districts Board, the Texas Judicial Council, and the Supreme Court, have met and studied the inequities of caseload and geographic areas in our present districts, both those of the district courts and the courts of appeals. Caseload activity was exhaustively reviewed, maps were drawn and re-drawn, and court activity studied and re-studied. The reports from these two separate efforts have been completed and were filed with your presiding officers prior to the beginning of this

session. I hope you will give our recomendations your thoughtful consideration.

JUDICIAL EDUCATION

In the last regular session, to your everlasting credit, you produced much needed funding for continuing legal education of judges. Responding to your mandate, the Supreme Court entered orders requiring annual mandatory continuing legal education for all Texas judges, including retired judges sitting on assignment. Advisory committees from each level of judge affected insure the adoption of consistent course requirements. During the past year, 33 courses for all levels of judges were held in all parts of the state. Over 2,600 judges and 700 court personnel attended these courses and received up-to-date training on their duties and the ever changing status of the law in our state.

CODE OF JUDICIAL CONDUCT

Thanks to your initiative, Texas adopted a constitutional amendment in 1984 which strengthened the disciplinary procedures relating to the conduct of judges. Three additional forms of improper judicial conduct were adopted:

willful violation of the Code of Judicial Conduct;

willful or persistent violation of the rules promulgated by the Supreme Court; and

incompetence in performing the duties of office.

Thus, the provisions of the Code of Judicial Conduct became incorporated into the law of our state as mandatory.

Because the Code had not been written with this purpose in mind originally, we asked a committee chaired by former Chief Justice Jack Pope of the Supreme Court to carefully examine its provisions in light

of this new status. The Committee held a series of meetings and hearings at which members of the judiciary and citizens were invited to express their views. The Committee recommended many carefully thought out revisions which were adopted by the Supreme Court in a recent order.

This new Code of Judicial Conduct establishes a rational and fair set of standards for the proper conduct of our judges. It specifies what activities are and are not proper. It gives us the necessary, and much needed, enforcement procedures to ensure that the conduct of all judges is in accordance with this new Code.

CHILD SUPPORT GUIDELINES

During the last session, you directed us to adopt child support guidelines to be used by our trial judges in setting the amount of child support. With the help of a large and broad based committee representing all viewpoints in this area, which was chaired by Justice C. L. Ray, we adopted a set of guidelines which we feel:

(1) are fair to all parties in these kinds of cases;

(2) provide some predictability for attorneys and persons facing a change in their family relationships; and

(3) preserve flexibility and a degree of judicial discretion for those situations which cannot be anticipated in the future and for which special circumstances require deviation from a set formula.

We will carefully monitor these new guidelines in practice to evaluate any needed changes.

CHILD SUPPORT ENFORCEMENT

Our society faces a tremendous problem with divorced parents who fail to provide adequate child support for their children. Thousands

of child support cases and modification orders come before our courts each year.

Recent enactments by the United States Congress have put the Attorney General of Texas into the Child Support Enforcement business, and mandate that our courts adopt expedited procedures to handle cases involving the enforcement of child support orders. Thankfully, the federal government is providing some of the money necessary for these programs, but the administration and the "nuts-and-bolts" procedures necessary to make them work are our responsibility.

Legislation you passed last summer gave the Presiding Judges of the nine Administrative Judicial Regions additional responsibilities to ensure that child support matters are promptly handled and masters are appointed in those courts where necessary to meet federal standards.

We are working closely with the Attorney General and the Presiding Judges to implement the child support guidelines and to provide adequate collection facilities and methods for unpaid child support. We respectfully request your continued support for these efforts.

IOLTA

The State Bar and the Supreme Court are seeing gratifying results from the innovative program known as IOLTA, which provides for the delivery of legal services in civil matters to low income Texans. The money to fund this voluntary program comes from the voluntary utilization of interest earned from lawyers' idle trust funds.

This fund has now edged past the half million dollar mark in IOLTA remittances and is bringing in approximately $45,000 per month.

Over 180 financial institutions are participating in IOLTA. Approximately 4,500 lawyers representing some 200 law firms and 105 sole practitioners are on board.

It is one of the Bar's most successful programs and I express my appreciation to these financial institutions and to the lawyers who are making it work.

ALTERNATIVE DISPUTE RESOLUTION MECHANISMS

Dispute resolution services first became available to the citizens of Texas in 1980 with the opening of the dispute resolution centers in Harris County. In 1983, the Legislature authorized local funding for the eight dispute resolution programs currently existing in the state. These centers assisted some 25,000 citizens through referral and scheduled an additional 7,000 mediation hearings in 1986. Each program provides our citizens with an effective alternative to a formal trial without sacrificing the quality of adjudication, and provides services which assist in alleviating the overburdened conditions of our justice system.

The need for expansion of this type of program is readily apparent. Dispute resolution programs can provide a forum for Texans to resolve their own disputes with reduced personal cost and without judicial intervention. I urge your continued support for this movement.

RULES OF ADMINISTRATION

As most of you remember, in the closing days of the last session, you mandated the Supreme Court to adopt rules for effective administration of our court system. I read your directive as being unequivocal.

We have responded to your directive and have promulgated statewide rules of administration. To aid us in this task, we appointed a select group of lawyers and judges who had vast experience in the Texas court system. Chaired by Justice Jim Wallace, this Task Force heard from all segments of the Bar. While many may have preferred faster action, this area is just too important to be rushed. Personally, I had hoped that the Court would have adopted more detailed rules--rules which I feel the Legislature mandated us to promulgate. But, the administrative rules which we have adopted will, when properly implemented, give each of our trial courts the responsibility, authority, and directives to manage its own docket and will ensure that all citizens have equal access to their courts. In addition, we have taken significant steps to strengthen the time standards for the disposition of civil cases.

We will continue our efforts--but this can come about only with your help. In some areas it will be difficult, if not impossible, for us to meet this challenge unless you provide our trial courts with administrative help and computer software and hardware. We desperately need to move our Texas courts into the computer age. Our state Office of Court Administration is now working on the development of computer software programs to give the trial judges the management tools they need to handle their own dockets in a more efficient manner. But it has no funds to aid these trial courts in the implementation of these programs. A small investment in this area will pay tremendous dividends to our entire judicial system. Please help us in this regard.

REGIONAL AND LOCAL ADMINISTRATION

Other major steps have been taken to implement the Court Administration Act of 1985. The nine Presiding Judges have taken more direct responsibility for the expeditious management of the trial courts within their respective regions. Local administrative judges for each county have been elected and are working. Meetings of judges within each Region are held and assignments of visiting judges are made to ensure the prompt disposition of cases in the trial courts.

CONDITION OF THE DOCKETS

For the first time in twenty years, our district courts reduced the number of cases pending on their dockets. A careful examination of the court activity shows that it is the increased attention to administrative techniques, as a result of your passage of the Court Administration Act, which caused this gratifying effect on the condition of the dockets. But it still takes too long to get a case to trial and our workload is not decreasing. The population and economic development of our great state continues, and so does the filing of new cases in our courts. There is no end in sight to this increase, so we best prepare for it.

CRIMINAL JUSTICE

Our criminal justice system is under stress from all directions and at all levels. You have your work cut out for you in the broad area of criminal justice improvements, and we stand ready to help in every appropriate way.

We all know that part of the answer to prison overcrowding lies in the increased and innovative use of probation and we ask your

support for our work with that component of our judicial branch--the hard-working Adult and Juvenile Probation Commissions.

Also, let me note that we have a good crime victims compensation program in operation, and you must assure that it is properly funded.

Last session, the Legislature took a historic step in the advancement of justice in Texas, a step for which the members of the Legislature should be commended. For the first time, you gave to the Court of Criminal Appeals rule-making authority to adopt rules of criminal evidence and certain rules for post-trial, appellate and review procedure. These rules were promulgated by the Court of Criminal Appeals on December 18, 1985, and became effective September 1, 1986. The Supreme Court and Court of Criminal Appeals have worked closely together so that rules of evidence and appellate procedure in both civil and criminal cases would be as much the same as possible. Lawyers and judges of Texas now need to learn and apply, in essence, only one body of rules as to evidence and only one body of rules as to appellate procedure. While many individuals are responsible for this noble improvement of our judicial system, special mention must be made of Senator Bob Glasgow without whose last minute efforts the statute would never have been enacted in the last session.

Over the years, as our population has grown and the criminal caseload has dramatically increased, we find that most of our felony cases are disposed of by guilty pleas--almost 90 percent. In many of our courts, in order to move the heavy docket, the use of "live" testimony to meet the requirements of law has been abandoned, and brief stipulations or only a simple "written judicial confession" are used even though overwhelming evidence is available. In taking

shortcuts, sometimes mistakes are made. Now, too frequently, defendants appeal their guilty pleas complaining sufficient evidence was not introduced to support their guilty plea, and claiming they should be acquitted because the state had one bite of the apple and it would be double jeopardy under the federal constitution to try them again.

In fact, in the case of Thorton v. State, it was held by a majority of the Texas Court of Criminal Appeals, following the rationale of two earlier United States Supreme Court cases, that if the state fails to introduce sufficient evidence to support the guilty plea as required by Article 1.15 of the Code of Criminal Procedure, the defendant is entitled to an acquittal of the offense to which he has pleaded guilty.

This article needs to be amended to prevent this sort of miscarriage of justice. It should be amended to provide as in Rule 11 of the Federal Rules of Criminal Procedure that the guilty or nolo contendere plea may be accepted by the court after the court has made such inquiry as shall satisfy the court that there is a factual basis for the guilty or nolo contendere plea.

Under current law, if there is a jury trial on both the issues of guilt/innocence and punishment under our bifurcated system, and reversible error occurs only at the penalty stage of such trial, there must be an entirely new trial. A finding of guilty must again be made in any new trial. Senate Bill Nos. 14 and 43 by Senators Brown and Farabee would amend Article 44.29, Code of Criminal Procedure, and limit a new trial only to the issue of punishment with a new jury impaneled if necessary. Much time and money would be saved on the

local level, and hopefully the administration of justice will be improved. These changes are necessary and these bills are recommended.

CONCLUSION

Before I close I want to acknowledge the presence of the members of the Supreme Court, Presiding Judge Onion and the Judges of the Court of Criminal Appeals, the Chief Justices and Justices of the Courts of Appeals, the Presiding Judges of the Administrative Judicial Regions, and the many other judges from throughout the state who are here with us today. These are the people who are on the front lines of our Texas judiciary. They are dedicated to this task and deserve to be recognized for their yeomanship efforts.

Today we all must endure the pain and tension of our state's severe financial crisis. We, in the judiciary, want to be helpful to you as you struggle through this Session to solve this disagreeable task.

But kindly remember as you deliberate--Justice is not a limited resource that can or should be rationed depending upon external factors. The citizens of Texas are entitled to a judicial system that not only is in fact fair and impartial, but also is perceived by all as fair and impartial; that is readily available to all, without fear or favor; and which is superbly well-qualified and owes its sole allegiance to the Rule of Law.

With renewed dedication on our part toward those goals and with your help and cooperation, we will make progress in bringing about an improved Texas judiciary.

I am confident we will succeed in developing a state judiciary second to none. That we do so is of primary importance to every Texan.

Thank you for this opportunity to discuss with you the State of the Judiciary. I wish you well in your important deliberations during this Session of the Legislature.