



**THE STATE OF THE JUDICIARY
MESSAGE**

CHIEF JUSTICE JOHN L. HILL, JR.
Supreme Court of Texas

**DELIVERED TO THE
SIXTY-NINTH LEGISLATURE**

January 22, 1985

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

STATE OF THE JUDICIARY MESSAGE

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

In 1977, the Texas Legislature adopted Article 5429h which directs the Chief Justice of the Supreme Court to present a State of the Judiciary Message to each Regular Session of the Legislature. Your request that brings us here for the fourth time to report on the condition of Texas's Judicial Branch of Government is viewed by us as a high honor and rich privilege. 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 according us this early opportunity to review with you matters of concern to all Texans.

I am pleased to report to you that through the cooperation of the executive, legislative and judicial branches of our Texas Government, significant strides have been taken these past two years toward improving the competency of our lawyers and judges and the quality of justice made available to the citizens of our state. Let me quickly capsule these:

PROGRESS SINCE LAST MESSAGE

- (1) Pursuant to authority granted by the 68th Legislature, the Supreme Court has entered orders

requiring annual mandatory continuing legal education for Texas judges, and has activated a Supreme Court Education Committee to make recommendations to the Court on the programs and the approval of courses. Regional continuing education meetings for most judges are being held, and Justice Raul Gonzalez has been designated as Supreme Court liaison for these important efforts. With your assistance in providing adequate funding, we will continue to upgrade the competency of our state judges.

(2) The Texas Commission on Judicial Conduct which has important responsibilities for enforcing our Texas Code of Judicial Conduct has begun operating under the new constitutional amendment adopted by the voters in November 1984, which expands and improves the mechanisms for maintaining high standards of conduct by our judges. We intend to see that the letter and the spirit of this new amendment is implemented. The ethics of our judges must be beyond reproach.

(3) The widely acclaimed continuing legal education programs conducted by the State Bar for Texas lawyers have been expanded and improved.

Competent lawyers are indispensable to quality justice and with the rapid changes occurring in our system of laws, we all must study harder to keep abreast.

(4) The Supreme Court, upon the recommendation of a referendum of members of the State Bar, recently promulgated new and more stringent rules and procedures for enforcing our Code of Professional Responsibility applicable to all Texas lawyers. This was a significant step in the recognition by the lawyers of Texas that we must deal fairly, effectively and promptly with complaints of lawyer misconduct. We intend to see that the letter and the spirit of these new rules and procedures are implemented. The ethics of our lawyers must be beyond reproach.

(5) The Supreme Court last year promulgated a far-reaching reorganization of the Rules of Civil Procedure pertaining to pre-trial discovery in civil cases. We are now monitoring that part of this reorganization which imposed sanctions for abuse of discovery to determine how well these provisions are working, and we will further strengthen the Rules in this area if necessary.

We are serious about cutting out dilatory trial tactics that unnecessarily slow down the process and help clog our court dockets.

(6) The procedures under which our civil courts try cases have been greatly modernized by adoption of the new Civil Rules of Evidence. We are monitoring the vitality of these rules in actual practice and will further strengthen the rules if necessary. Through adherence to and refinement of these new rules, we are determined to simplify and bring more common sense into the trial of cases.

(7) Unnecessary and resource-wasting interlocutory appeals in venue matters have been abolished by your legislative enactment of the new venue statute in 1983, and we thank you for providing this progressive improvement. This legislative initiative is being widely hailed as a distinct improvement in the administration of justice in Texas.

(8) A special advisory committee has developed a proposal to harmonize the civil and criminal rules of appellate procedure as much as possible. Many of the procedural differences between civil and criminal law practice are confusing to lawyers, judges and especially to our citizens, and simply

serve no reasonable purpose. The Supreme Court and Court of Criminal Appeals are presently examining the work of this advisory committee and will seek your assistance in coordinating and harmonizing needed changes in statutory law with anticipated changes in court rules and to consider granting the Courts of Appeals rule-making authority in this area. This will be still another example of the legislative and judicial branches of Texas government working cooperatively to improve the administration of justice for all our citizens.

(9) For the first time in Texas, time standards for the disposition of civil cases in the trial courts have been adopted, by court rule, similar to those time standards adopted by the Legislature for criminal cases in the Speedy Trial Act. Because you granted us rule-making authority in the civil field, we were able to move and begin to address the serious problems of trial delay. Additional and more detailed rules to put teeth in these time standards are now being promulgated by the Supreme Court and will soon be issued. We are determined to prevent cases from falling into judicial limbo after they are filed. We are totally committed to eliminating unnecessary trial delay.

(10) The State Bar and the Supreme Court have recently adopted an innovative program to fund the delivery of legal services in civil matters to low income Texans through the voluntary utilization of interest earned from lawyers' idle trust funds. We need to build on and expand these important initiatives because the need is substantial.

(11) Thanks to the funding help provided by the last two sessions of the Legislature, more of the appellate courts in Texas are keeping their dockets current than at any time in the past decade. The Court of Criminal Appeals has virtually completed disposition of the appeals left pending when criminal jurisdiction was granted by the Legislature to the Courts of Appeals, and is timely handling the new matters filed in that Court. The 14 Courts of Appeals reduced both their civil and criminal pending caseloads during the state fiscal year 1984. It was the first time since 1973 that the Courts ended a year with fewer civil cases on their dockets than when the year began, and the second consecutive year that they reduced their criminal caseload. I want to acknowledge the fine work of

the judges of the Courts of Appeals. Many of the criminal appeals in this state are being eliminated at that level, and their opinions are adding considerably to the jurisprudence of our state.

The Legislature is to be commended for the support and attention you have given to the Judiciary in the previous sessions and we appreciate it. We know the Legislature fully realizes the importance of the judicial branch of government as a third branch, and you have shown by your support that you are willing to work for the interests of the judicial branch. Speaking personally, I want you to know I like my job. Nobody drafted me. I am where I want to be, and you have my assurance that I will work hard every day to provide leadership to see that our own administrative responsibilities and job obligations are carried out to the fullest -- particularly as they relate to reducing unnecessary court delay in our trial courts.

PROBLEMS IN OUR TRIAL COURTS

Now, let me visit with you about our prime trouble area -- our trial courts. I want to really underscore and emphasize today that our trial courts are ailing and need your help. The trial courts are where the need for your legislative help and our administrative help is now critical. Many of our trial courts are behind in disposing of cases. In some areas, the situation is critical. Believe me -- and I won't bore you with statistics -- the situation is bad and worsening, especially in some of our urban areas.

Just as we asked two years ago for your help for the appellate courts and you responded, we now need your help for the trial courts to deal with the problems of trial court delay. Civil litigation takes too long and costs too much. We must declare war on unnecessary court delay at the trial level. Justice delayed is justice denied. I respectfully ask your help.

In the areas where the Supreme Court has administrative authority and responsibility to deal with trial delay, we are prepared to supplement the present rules, to improve the setting and movement of cases, and to put teeth in the time standards for disposition of cases. We are going to call upon the trial courts as never before to eliminate trial delay. We are getting away from the system of the past. We are prepared to work with the bar and others as never before in cleaning up our trial dockets. We are already at work, but we need your help if we are to be effective in reducing the time cases remain on the trial dockets. If you give us your support, I promise you it will be a new day for the administration of justice in Texas.

We respectfully request that you show confidence in our trial courts by adopting the recommendations of the Judicial Budget Board which put prime focus on the needs of our trial courts. This Board, under the able leadership of Justice Maurice Campbell, deserves your respect and I know you will give serious consideration to its recommendations. As Chief Justice, I have carefully reviewed the recommendations of the Judicial Budget Board and wholeheartedly concur in them, as follows:

- (1) Give local trial judges a qualified individual employee to help them with their administrative work and caseflow management so that the judges can devote maximum attention to the trial of cases and

increase productivity. The Judicial Budget Board recommends that you provide each district court with a support fund of \$27,500, similar to the local support fund you now provide to the district attorneys of the State. This would be a much wiser use of our strained financial resources than continuing the prior practice of adding new courts to meet increased dockets, and assigning retired judges on a continuing basis to try cases. I agree with Governor White that our need is not for new courts, but rather to provide the courts we have with the tools and resources they need to more effectively do their job.

(2) To help keep the good judges we presently have and to continue to attract top men and women to the trial bench, the Judicial Budget Board recommends that the salaries of district judges be adjusted to 85 percent of the salary paid to a justice of the Supreme Court. This is similar to your prior action of adjusting the salary for the judges on the Courts of Appeals to 90 percent of the Supreme Court.

A recent Survey of Judicial Salaries by the National Center for State Courts indicates that Texas ranks 8th among the states in intermediate appellate judge salaries but 24th for district judge salaries. This disparity is not justified and is false economy.

The Legislative Select Committee on the Judiciary has also recommended this 85 percent salary level for district judges and, before you tune me out as being out of step with your budget crunch, let me tell you that we are endorsing a reasonable filing fee increase plan for funding these appropriation requests.

(3) Delay in preparing court records and testimony is a prime culprit in perpetuating clogged dockets. After an extensive survey, the Judicial Budget Board determined that computer-aided transcription systems are the single most important element in reducing this delay. That is why the Board has recommended that the Legislature establish a state-administered revolving fund to provide computer-aided transcription systems and other technology to those courts which have the greatest delay. This also accords with the Select Committee's views. We need to take this beginning step toward modernizing our trial courts' case management capabilities and bringing them state-of-the-art technology. This will be a good investment -- truly money well spent.

Provide these three things for our trial courts -- administrative and caseload management support, fairer compensation for our trial judges, and computer-aided transcription systems and technology -- and we'll bring you a record of progress in those courts two years from now -- just as we have brought you a record of progress in the appellate field. This will be a wise investment and will benefit all of our citizens.

Now as to the details of the funding of these three programs. Senator Caperton has prepared a bill which will provide the funds necessary for them. The bill raises the money by means of a "user tax," through increased filing fees, so that no additional funds would be necessary from the general treasury of the State. By raising the filing fees in civil cases filed in our district courts, the users of the system will pay for these badly needed improvements. At the same time this bill provides that people who are too poor to pay this "user tax" will be exempt from paying and would be assured of continued

access to our courts. Thus we propose to provide an improved judicial system and streamlined court administration without asking you to dip into the greatly-strained general revenue fund. In addition, we are hopeful that the user fees can be increased to provide additional general revenue funds. Our basic civil filing fees are among the lowest in the nation -- to be exact, we are 41st among the states.

On the administrative front, we are challenging our trial courts to take early control of each filed case and maintain steady control until the case is out of the system. The trial court must be aware of incoming cases and accept responsibility for them at the time they are filed. The day of judicial passivity toward the movement of cases is gone. We will no longer depend solely on lawyer diligence for the processing of cases. We cannot allow a case, once filed, to simply fall into judicial limbo. The citizen involved in the litigation has a right to expect the court to accept accountability for the progress of each case in the system.

Nor is it enough to begin control if control is thereafter lost. Responsibility for the movement of each case must always remain in the court. Each trial court must have the necessary administrative assistance and technological support to ensure better productivity in disposing of cases. We are confident you will respond to your legislative responsibilities as we intend to respond to our administrative responsibilities.

The Select Committee on the Judiciary also has recommended the immediate infusion of administration and management and the additional funding necessary at the trial level in essentially the same manner that we are recommending today. Senator Ray Farabee and Representative Bush and their excellent committee and staff are to be highly

commended for their dedicated efforts to improve the administration of justice in this State, and I know you will accord their committee recommendations the serious consideration they deserve.

CRIMINAL DOCKETS

Now, let me turn our attention to the criminal side of our dockets, where my distinguished colleague, the Honorable John F. Onion, Jr., sits as Presiding Judge.

There is a great divergence between civil and criminal rules of evidence in Texas today. A special advisory committee of the Select Committee has developed a code of rules of evidence for criminal trial proceedings, and the Select Committee has recommended that the Court of Criminal Appeals be given the authority to promulgate this code. Its provisions would closely harmonize with those adopted by the Supreme Court for civil cases, and Judge Onion and I hope that you will look favorably on this proposal.

Our appellate criminal courts need the power to amend or review punishment assessed in certain criminal cases. Just recently, the Court of Criminal Appeals reversed a conviction because the jury assessed a term of years and a fine when the statute allowed only the assessment of a term of years. The Court of Criminal Appeals held that the entire case had to be retried because the jury assessed an unauthorized punishment, and the courts had no power to alter the fine assessed by the jury. Judge Onion and I believe the appellate courts should be given such authority in appropriate cases to prevent unnecessary reversals.

Also, we believe that the Code of Criminal Procedure needs to be changed to prevent the jury from impeaching its own verdict. Each year cases are reversed because the jury is allowed to admit after conviction that it discussed parole in the jury room, and it influenced its verdict. Texas stands alone among all states and the Federal system in allowing a jury to admit its discussions on parole and impeach its verdict.

Finally, we believe and so recommend that we implement a method to challenge indictments similar to the bill of particulars in federal court cases or other appropriate means which would prevent problems on appeal concerning the sufficiency of the indictment. In addition to the indictment or information the defendant should have the right to demand of the prosecutor a bill of particulars setting out in plain language the charges against him and the Penal Code sections he is accused of violating. It should, however, be provided that this closes off any later challenge of that indictment or information based upon particularity as to charges.

SUPPLEMENTAL DISPUTE MECHANISMS

Now let me talk with you a few moments about what we can do, working together, to furnish our citizens an opportunity to utilize supplemental mechanisms for the resolution of some of their disputes. The use of supplemental dispute resolution procedures is an idea whose time has come. It is normally to the courts that spouses and children, insurers and injured persons, creditors and debtors, heirs and trustees, the rich and the poor, consumers and businessmen,

corporations and partnerships, all turn for the resolution of their problems and disputes. Millions of Texans pass through our courtrooms every year. This extensive use of our courts denotes confidence in a judicial system that, with all its problems, is still the best ever devised.

Most of these cases were heard and decided. The vast current of cases flowing through the legal stream involves ordinary people who just want an impartial, independent, third party to make an honest decision and resolve their problems. Nothing affects our citizens more. We all have an important stake in preserving and enhancing this system of justice, but we need to supplement it.

The Texas Judicial Council has proposed that legislation be passed to implement the use of mandatory but non-binding arbitration in many types of civil cases, other than in family law matters. This legislation would establish certain parameters for the types of civil cases which could benefit the most from arbitration, including a maximum amount in controversy and the subject matter of the disputes subject to arbitration. While either party could appeal from any award, sanctions would be imposed on a party appealing an arbitration award who is unsuccessful on appeal, such as the payment of the attorney fees of the other party.

The Legislative Select Committee on the Judiciary has proposed that judges be allowed to assign civil suits to non-binding arbitration upon the motion of any party if the judge determines that the amount in controversy, exclusive of attorney fees and court costs, is below \$10,000. I hope you will be supportive of these arbitration proposals.

Also, I hope that you will support another supplemental program -- the authorization of mediation programs to aid in the resolution of certain types of controversies which arise in family law matters, such as child custody and support disputes. Other states have experienced good success with such initiatives.

Since the enactment of enabling legislation during the last legislative session, alternative dispute resolution centers have been established in Dallas, Houston, Fort Worth, San Antonio and Austin, and additional centers are now being planned in other cities. I commit myself to work with the Legislature, the Bar, and the Judiciary in support of the expansion of these neighborhood dispute centers throughout Texas because they are proving themselves as viable supplements to full court resolution of disputes. They can help relieve the pressures on our trial courts without lessening the quality of legal relief available to our citizens.

All of these new supplemental dispute programs -- and more -- should be utilized. We can monitor them and suggest changes from time to time in authorizing legislation to increase their effectiveness. Our times demand innovative and creative approaches to strengthen our present justice system by providing various types of supplemental procedures to make our system more effective, especially among individuals having ongoing relationships.

JURISDICTIONAL PROBLEMS

We are all concerned about the lack of cohesiveness in our judicial system. As you know, our district trial courts have jurisdiction that overlaps that of County Courts and County Courts at

Law. The \$500.00 starting point for district court jurisdiction was fixed by Constitutional provision in 1876, the year that President Grant was in office. Jurisdictions of county courts at law vary from a maximum of \$5,000 to \$50,000. The last session of the Legislature extended the jurisdiction of the El Paso county courts at law to an unlimited amount. Within the same counties, courts of the same level often have varying jurisdictional powers in both subject matter and monetary amounts. We believe that the minimum civil jurisdiction of district courts should be raised to a more realistic level, and that the maximum civil jurisdiction of county courts at law should be made uniform statewide -- all to bring about more cohesiveness in the system.

RESTRUCTURING THE JUDICIAL RETIREMENT SYSTEM

Do not believe that because I have waited until this late point in this report to mention it means that I attach a lack of importance to a solution to the funding problem of the Judicial Retirement System. I assure you that finding such a solution is of the utmost importance and should be addressed by this Legislature.

The Judicial Retirement System should be made actuarially sound and self-financing for all persons becoming judges in the future. However, to keep faith with prior commitments the present system should be retained for all judges, active and retired, who have vested their benefits in the present system.

The state Pension Review Board prepared legislation to accomplish this during the last legislative session. This bill was reported out of the House Retirement and Aging Committee, but was not placed on the

House calendar. Similar legislation has been introduced this session as Senate Bill 105, by Senators Farabee and Caperton. I know it will have your support.

Recently, the Select Committee on the Judiciary has recommended the same type of two-tiered system. The first tier would retain the current retirement plan for all judges in the system on the effective date of the legislation, while the second tier would apply to judges coming into the system after that date and would be a funded system. Adoption of this proposal would result in substantial savings to the state in future years, and we will greatly appreciate your attention to this most vital concern.

SELECTION OF JUDGES

Now, to the tough one.

One matter that is affecting the state of our Texas judiciary that is a big concern to us all is the fact that over the past few years several of our well qualified judges have been turned out of office by the electorate on what appeared to be largely the mechanism of sheer party voting. The possibility of election to judicial office by reasons detached from ability should disturb us all. Were this phenomena to continue from election to election, it would be highly destructive to the morale and stability of our judiciary. It has already taken its toll in this regard, especially in some of our urban areas. Such a situation, focusing as it does more on the fortunes of

political parties and national and other state-wide candidates than on individual qualifications of the judicial candidates, makes it even more difficult to entice qualified lawyers to accept judicial appointment. The Select Committee on the Judiciary has recommended three alternative methods to deal with this problem:

- (1) The plan providing for appointment followed by retention elections;
- (2) Non-partisan elections; and
- (3) Ballot changes to prevent straight-party voting in judicial races.

I am confident that you will make legislative changes as in your wisdom will reflect the most appropriate plan to eliminate the problem. Let us know how, in any appropriate way, we can assist you in your legislative efforts to resolve this important issue.

CAMPAIGN CONTRIBUTIONS

Another election law issue which I hope you will address is that of campaign financing. A reasonable limitation in contributions from any one source is sound. Excessive campaign contributions from single sources can present the appearance of impropriety, and the Legislature should address this issue to ensure that public confidence is retained in all of our elected officers.

CONCLUSION

Under our Constitution, the Judiciary is a separate branch of government, not just another state agency. We consider this courtesy extended to me today by the Legislative branch an affirmation of the committment we all share to the concept of three separate and coequal branches of government.

The duty and corresponding responsibility to see that our judicial affairs are properly administered day to day should be our own and separate from the duties and powers of the executive and legislative branches. With your encouragement and understanding, we will do our best to meet these responsibilities. Likewise, I know you will meet your Legislative responsibility to provide us with the tools and assistance and support we need to do our job. Only you can do that and we respectfully ask your help.

Thank you for your time, your attention, and your interest. Let me leave you with one theme:

Nothing is more important in a free society than a free and independent, and impartial and qualified judicial system. Such a system is indispensable to the maintenance of a free society. Help us and together we will provide Texas with the finest judicial system in America.

JOHN L. HILL
Chief Justice
Texas Supreme Court
January 22, 1985