State of the Judiciary
Chief Justice Joe R. Greenhill, Texas Supreme Court
Message to the Legislature
April 21, 1981, in Austin, Texas

Governor Hobby, Speaker Clayton, Distinguished Members of the Senate and the House, Fellow Members of the Judiciary, ladies and gentlemen:

The Judiciary and I appreciate this opportunity to present this Second State of the Judiciary Message.

Your statute says that "It is the intent of the Legislature that such message promote better understanding between [our] branches, and thereby promote the more efficient administration of justice in Texas." This I will attempt to do.

It is fitting that the address be on San Jacinto Day. Among the urgent reasons for the need for the independence of Texas was the total lack of an effective judiciary.

Our Declaration of Independence, signed March 2nd, 1836, begins with a charge that the existing government "has ceased to protect the lives, liberty and property of the people from whom its legitimate powers are derived.

Under General Sam Houston and his gallant army of 800, our independence was won at San Jacinto on this day, April 21st, of 1836.

All of us join in remembering and honoring those who courageously and successfully risked their lives for our freedom and independence.

It may not come as a surprise that upon our becoming the Republic of Texas, I was President Sam Houston who also came to the aid of the Judiciary, --to which he referred as "one of the three coordinate divisions of the government, and is in equal dignity to either of the others."

The amount of the judges' pay, then $500 a year in gold or silver, was not an issue. The problem was that only one-half of the pay was in cash. The other half was in promissory notes. They had a face value of only twelve cents on the dollar.

Sam Houston sent a message to the Congress of Texas which said, among other things:

"To maintain an able, honest and enlightened Judiciary should be the first object of every free country."

The problem was properly solved.

Crime in the streets and in our homes is a major concern.

It is not a new problem. Some 2560 years ago, the Prophet Ezekiel wrote,

“The land is full of bloody crimes, and the city is full of violence."

Courts cannot stop crime in the street. But when the criminal justice system does not function with dispatch, neither the victims nor the accused get the justice they deserve. The people, with justification, lose confidence in our system; and a major deterrent to crime is lost.

In this session of the Legislature, you have a great opportunity to improve our system. It is not only an opportunity; it is, with due respect, a duty to carry out the provisions of a constitutional amendment adopted by the citizens of Texas last November.

Our major problem for years has been that all criminal appeals go to one court, the Court of Criminal Appeals.

Notwithstanding diligent work by the judges of that court, its backlog is outrageous; and the delay in the administration of criminal justice is shocking.

Even though, by constitutional amendment, that court was enlarged to nine members, the backlog persists and has become even larger. At the end of 1979, there were 3,238 cases on its docket. The number increased to over 4,000 by the end of 1980. The time between conviction and oral argument is almost three years.

We already have fourteen intermediate courts which, with help from this Legislature, car. handle the criminal and civil appellate case load without delay.

In my first State of the Judiciary Message two years ago, I recommended the constitutional amendment to give the intermediate courts criminal, as well as civil jurisdiction.

You responded by proposing the amendment; and it was adopted by the people. I am grateful to many of you, to Governor Clements, and to the news media for editorial support, for recommending its adoption.

So the people have spoken. They have directed that criminal appeals, except for death penalty cases, go to the intermediate courts. And they will go to such courts beginning September 1st of this year. They will have jurisdiction of such appeals, and the Court of Criminal Appeals will except for death penalty cases.

This will result in a great improvement in the speedy disposition of criminal appeals. The time. will be cut from over three years to six to nine months. Even that delay will be caused by the time it takes the court reporters to prepare the record, and for the lawyers to prep re their briefs.

The factual determinations in criminal cases will be final in the Courts of Appeals; i.e., did the defendant do the act or not.

Thereafter, the Court of Criminal Appeals will, or should, have discretionary jurisdiction to hear the case further as to questions of law.

Funding for Courts of Appeals

This major change in our judicial system will take adequate funding from this Legislature.

The Courts of Appeals must be able to dispose of both civil and criminal cases with dispatch. They will need additional judges, support personnel, and equipment for their enlarged duties and case load.

Civil cases also must move with dispatch. They cannot, and should not, be delayed either.

Senate Bill 265 by Senator Farabee, which has already passed the Senate, provides for additional judges for the Courts of Appeal. A companion bill, House Bill 499, by Mr. Maloney, is in a House Committee.

The necessary staff support and equipment will have to be provided in your appropriations bill. I urge you to give the Courts of Appeals the personnel and equipment they need to dispose of civil and criminal cases with dispatch.

When courts are inadequately staffed and equipped because of inadequate funding, there is a "denial" of justice, both criminal and civil, and a delay of justice which is so abhorrent to the people.

Another bill has been introduced which, in my opinion, disregards at least the spirit of the constitutional amendment. It would create four more entirely separate courts of appeals; and in actuality, all criminal appeals would go to those courts.

The people have spoken on this. The amendment adopted provided that the courts of civil appeals would be given criminal jurisdiction; i.e., that the intermediate courts would be integrated and would decide both civil and criminal appeals. That is the way it is done in at least 46 of the other states, in the federal courts, and in England.

I urge you to implement the constitutional amendment as it was intended to be implemented, and to give us the tools and support to make our integrated intermediate court system work. Otherwise we will have substituted a delay in one place for a delay in other places. That, to me, would be unconscionable.

As to the courts in general, all of us need your help.

All of us are conscious that the dollars of the taxpayers should be carefully spent and invested. Giving us the tools with which to make the system work efficiently and swiftly is, in my opinion, a wise investment of public funds.

In my former address to you, I pointed out that less than one-third of one percent of the entire budget of this state was allocated to the Judiciary, the third branch.

Appropriations for the Judiciary are so small that the Texas Research League, a watchdog of public spending, does not even notice them.

While some additional funds have been recommended in the present budget as it went by the Legislative Budget Board and your Appropriations Committees, the fraction allocated to the judiciary has been actually reduced from 31/l00th of one percent to 28/l00th of one percent.

You are about to appropriate, as an emergency matter, many millions of dollars for prisons, -- which causes me to observe that some federal judges get your attention better than we do.

You are allocating for adult probation many times more than is even asked by the Judiciary. And you are, with justification, considering additional sums for juvenile probation.

While these persons who have gone through the judicial system deserve attention, so does the system itself.

The State has the resources to fund adequately the Judiciary of this State. We would urge you to do so.

Judicial Selection

A word about judicial elections.

The quality of the Judiciary can rise no higher than the quality of persons you can attract to, and retain in, the system.

That, in turn, depends not only on judicial compensation, but upon the method of selection of judges.

What is said here is without regard to individuals who were elected last November. It is a matter of principle and not personalities.

Large attention was drawn to partisan judicial elections last November. This was not a new problem.

Many of us have been trying for years to get the Judiciary out of partisan politics. Some of you will remember the efforts of the Constitutional Revision Commission in 1973.

There is a place for party politics in the election of the executive and legislative persons. You, and they, and the parties, have a platform.

There are no meaningful party platforms for the judiciary. The judge cannot favor a person, or his lawyer, because of his party. The judge must administer justice equally without regard to the persons before the bench.

The judge should be elected, or defeated, because of his or her merit, --not because a person of a particular party is elected President. Election of judges' by "the big lever" is, in my opinion, a poor method.

While my personal preference is for Merit Selection, or Missouri Plan types of retention elections, its adoption would require a constitutional amendment. Political reality tells me that this is not possible at this time.

The question here is not whether we will continue to be elected or not, but how we will be elected.

So I urge you to give serious consideration to the non-partisan election of judges, --just as we now elect our mayors and school boards.

It is also our duty to keep you informed of matters which the Supreme court is doing:

Oversight of the State Bar

At about this same time last session, you gave our court oversight of the State Bar and its budget. The State Bar was almost "sunsetted" over the cost of its new building, and the absence of non-lawyers to its Board of Directors.

You added six on-lawyers to the Board; a d they have, in my opinion, been beneficial to the Bar and to our court.

The building, then four million dollars short of funds, has now been fully paid for by the lawyers and judges of Texas without the use of any state funds for the buildings or grounds.

We are presently working with the Bar on lawyer advertising.

Media in the Courtroom

In the case of Estes v. Texas, the U. S. Supreme Court held that T. V. and related media in the courtroom was not constitutionally permissible. The Canons of Judicial Ethics, promulgated by our court, therefore, prohibited such coverage. The Supreme Court has changed its position. As I read its recent Chandler opinion, the regulation of media in the courtroom has been left to the states for regulation.

Our court is, therefore, reconsidering the Canons of Judicial Ethics. Studies, and reports to us, have already been made. We feel that all of the judges of Texas should have the right to be heard on what is desirable, and what is not. You may be sure that we are conscious of the rights of parties and witnesses, as well as the public's right to know.

We have funds for only one judicial meeting a year, and it is set for September in Corpus Christi. After having the benefit of that discussion, our court will, without delay, promulgate new rules for media coverage.

Bar Exams

The expedition and quality of trials, civil and criminal, depend in no small measure on the quality of the lawyers. The client is almost wholly dependent on the lawyer to assert or protect his or her rights.

It is our view that all persons in Texas should be represented by lawyers who know how to try cases. This not only is essential to the rights of clients, it is of great help to our courts. After a legal education at the state's expense, graduates, at least from the state supported schools, should be equipped to represent people in the courts, state and federal.

We will shortly add a new section of the bar exams on civil and criminal procedure and Texas evidence. They should be of sufficient difficulty and depth to cause law students to enroll in these courses in law school. This will be a separate section of the exam, separately graded, which must be passed to obtain a license.

If the student passed the other parts of the exam, such other portions need not be taken again.

To give the law schools time to adjust their curriculum and employ professors as needed, the rule will become effective with the exams in July 1983.

We have no desire to reduce great law schools o mere trade schools. We encourage their continued efforts to teach students to "think like a lawyer," to engage in a theoretical national perspective of the law, and to draw on innovations of other jurisdictions. We encourage them to be schools of national importance and scope. But their graduates who elect to practice in Texas must be able to fulfill properly their duties to their clients and the court.

The offering and teaching of such basic courses as procedure and evidence will not, or should not in our opinion, detract from those other goals.

Rules of Civil Procedure

Under your authority, we promulgate rules for the trial of civil cases. Effective January 1, the court promulgated rules which modernized the discovery practices. Nation-wide criticisms of abuses and delay occasioned by discovery practices prompted his action. We hope that the revised practice will eliminate needless court hearings, expedite trials, and afford sanctions upon those who abuse the practice.

Appellate practice has been streamlined and simplified by the elimination of duplicate jurisdictional steps.

Since you last met, one hundred rules of trial and appellate practice were reviewed and modernized. We are presently working on a rule that will provide a uniform system for dismissal practices throughout the state. This has been a continuing problem which we expect to resolve.

We are also studying the federal rules of evidence to determine whether they should be adopted by us for use in civil cases.

Work on these rules takes a lot of our time, but it is worth it.

The revisions in rules are adopted after study by able committees of lawyers, and after hearings which are open to the public.

Future Directions

It became painfully obvious to me before your appropriations committees that the continuous course and expense of adding new trial judges was a real problem.

Since 1876, there has never been a redistricting of our judicial districts. You have put a patch on here and there, but the dockets of our trial judges are greatly disproportionate.

Some judges preside over areas which do not generate many cases. Those judges, who are characterized by some legislators as persons who do not work very much, result in a dissatisfaction with "trial judges;" and the result is a penalty I the basic compensation of all district judges.

In my opinion, most trial judges work diligently. Some do not, --and some could not dispose of a large number of cases even if they wanted to because their courts are not presented with a sufficient number of cases.

If some judges simply do not work, the answer is political. We all are elected. Bu if they do not work because of a light case load, you can remedy that.

Whether it is desirable to redistrict or to simply continue to add new trial judges is a matter for you to decide. I urged action on your part in my 1979 message, and I urge it again.

It is too late for such action at this session, but it might be an appropriate subject for one of your interim committees.

Neighborhood Dispute Centers

Statistics show that most assault crimes are committed between persons who know each other. They result, for example, from family or neighbor disputes. An opportunity to air these differences may very well satisfy the problems without resorting to violence, even murder.

In a similar vein, there are many small disputes between consumers and merchants. They occur at all economic levels, but occur most often among people who cannot afford litigation.

A Chinese proverb says, "Going to the law is losing a cow for the sake of a cat." And Voltaire once wrote that,

"I was ruined but twice, --once when I gained a lawsuit and once when I lost one."

When it costs a cow to gain a cat, alternative action is appropriate.

In my first address to you in 1979, I called attention to programs of Neighborhood Dispute Centers. One such center is already in action in Houston, and others are contemplated at least in Dallas and San Antonio.

A bill to give official recognition to such dispute centers in counties of 500,000 or more has been passed out of a senate committee; and there is a companion bill in the House. These centers are to be locally funded.

I urge your serious consideration of them. They hold great promise for speedy resolution of disputes without the cost and delay of litigation. Persons dissatisfied may still go to court; but statistics show that a very large percentage of the disputes are resolved at such centers.

Conclusion

I end as I began, --with the importance of the opening words of our Declaration of Independence, the victory at San Jacinto which gave vitality to our government, and a mandate for an efficient judicial system.

All three branches of our government must work, and work efficiently.

We, of the Judiciary, express our willingness, and our desire, to be, --or to become, a branch of the government which will dispatch equal justice, without delay, as our forefathers envisioned; --and as you and the people have the right to expect.

We appreciate your consideration of our problems, and thank you for this opportunity.