

The STATE OF THE JUDICIARY in Texas



Chief Justice Nathan L. Hecht

An Address to the 86th Texas Legislature

February 6, 2019
Austin, Texas

THE SUPREME COURT OF TEXAS

NATHAN L. HECHT
Chief Justice

Justices

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EVA M. GUZMAN
DEBRA H. LEHRMANN
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THE TEXAS COURT OF CRIMINAL APPEALS

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THE STATE OF THE TEXAS JUDICIARY

AN ADDRESS TO THE 86TH TEXAS LEGISLATURE

The Honorable Nathan L. Hecht
Chief Justice
The Supreme Court of Texas

Chamber of the Texas House of Representatives — February 6, 2019

Lieutenant Governor Patrick, Speaker Bonnen, Members of the 86th Legislature, Members of the Judiciary, distinguished guests, ladies and gentlemen:

As Chief Justice of the Supreme Court of Texas, and its longest-serving Member in Texas history, this is my third occasion to report to you on the state of the Texas Judiciary.

On a Friday afternoon, Pam Heard, Aransas County District Clerk for more than 16 years, worked feverishly with her seven deputies to cover their computers with plastic as Hurricane Harvey bore down on Rockport. That evening, August 25, 2017, when the eye made landfall five miles away, Harvey was a Category 4 storm with 132-mph winds driving rains of two feet a day.

Anticipating the worst, District Judge Janna Whatley, who serves Aransas and four other counties, had worked with other judges to designate essential personnel, but the storm knocked out communication, including most cellular service. On Sunday, when Harvey had moved north and east, Judge Whatley crept through streets littered with downed trees and power lines to see first-hand what she feared: the courthouse, like much of the rest of the town, was gone.

And then it was Houston's turn. Sunday night, the downpour began flooding Justice of the Peace Lincoln Goodwin's northwest Harris County courthouse. At six-foot-five, Judge Goodwin could keep his head above water, even in five feet of rain, and he soldiered out into the neighborhood with Constable Mark Herman's deputies and others to rescue seniors and families from assisted living centers and homes. The photos you have show some of what Judge Goodwin saw.

Monday and Tuesday the deluge continued. The 20-story Harris County Criminal Courts Building flooded, causing sewage pipes to burst. Susan Brown, Presiding Judge for the Criminal District Courts, began doubling up criminal and civil courts in shared courtrooms. By Tuesday, judges were leaving their families behind in flooded homes and navigating streets under water to reach reassigned courtrooms and continue handling criminal cases that could not wait. The Judiciary was back to work.

Justice of the Peace Goodwin handles over 130,000 cases a year—over 500 a day. By number of filings, his is the busiest court in Texas, maybe in the country. Judge Goodwin and his 40 clerks, including Emma Lopez and Luz Hernandez—court family, he calls them—returned to work immediately, though some of their homes had flooded. He and his staff rescued court files and had them dried and restored, saving Harris County thousands of dollars for use elsewhere. “I could not have been prouder of our court team,” he says. His building too damaged to use, he

sought an emergency order from the Supreme Court and Court of Criminal Appeals to share a courtroom in a neighboring precinct.

The High Courts also authorized Judge Whatley to hold court in nearby San Patricio County, which had escaped the worst of the storm. With hard work and determination, she and her colleagues have managed to dig out of their backlogs.

District Clerk Pam Heard and her staff fled inland but returned to work at once. With their plastic-wrapped computers buried in the rubble of the Rockport courthouse, the Office of Court Administration here in Austin rushed laptops to her. She and her deputies, six of whose homes had flooded, set up shop in a damaged building, sitting on the floor to process cases. Her chief deputy, Stephanie Abbott, who had lost everything, worked side-by-side with them. Because of electronic filing, supported by the Legislature and ordered by the Supreme Court and Court of Criminal Appeals, Aransas County lost none of its court records.

Harvey's toll in lives and money ranks it among the costliest natural disasters in history. Many Texans were hit hard. Many are still struggling. The Texas justice system took a staggering blow. Beaten but unbowed, Texas judges, clerks, administrators, and staff carried on, throughout the storm and since, in makeshift space, many at great personal sacrifice. We haven't fully recovered, but we're getting there. In my 38 years on the bench, I have never been prouder of the Texas judiciary.

Harvey made a mess, but it also made many heroes, like those in my story. Aransas County District Clerk, Pam Heard, and her chief deputy, Stephanie Abbott, are here. So are Houston Justice of the Peace Lincoln Goodwin, and two of his clerks, Emma Lopez and Luz Hernandez; as well as District Judge Janna Whatley; and Regional Presiding Judge Susan Brown. Please stand and receive our appreciation for going above and beyond to serve the courts and the public.

Disaster Operations

In 2009, following Hurricane Ike, the Legislature gave the Supreme Court authority to modify or suspend court procedures in a disaster. In Hurricane Harvey, the Court, together with the Court of Criminal Appeals, used that authority, even suspending statutes of limitations in civil cases. The Court also authorized judges to sit outside their statutorily-designated jurisdictions. We've learned that court administration in a disaster requires even more flexibility, and the Texas Judicial Council recommends legislation to provide it, which Senator Judith Zaffirini has sponsored. Give us more tools for the next Harvey. Pass Senate Bill 40.

Access to Justice

For millions of Texans living on the brink with nothing to spare, a catastrophe like Harvey threatens livelihood, housing, survival itself. In Harvey's wake, hundreds of civil legal aid and *pro bono* lawyers rushed to the front lines. They assisted thousands of families with FEMA and insurance claims to obtain promised benefits; worked with tenants and landlords, who were all struggling, to minimize housing disruptions; helped workers who lost everything keep their jobs; got relatives the right to care for their displaced families' children and enroll them in school; and sought protection for victims of domestic violence brought on by the stress.

A young lawyer volunteer assisting Harvey evacuees in Houston overheard a lawyer with Lone Star Legal Aid lamenting that its downtown offices had burned in an electrical fire caused by the storm. She asked her senior partner, could the firm offer its extra space to Lone Star. Yes. Other law firms also offered free space. The Supreme Court, with the State Bar's support, allowed lawyers not licensed in Texas to represent storm victims through bar associations and legal aid providers. With technology, a New York lawyer sitting at the computer in her Manhattan office could counsel disaster victims in Texas.

The Supreme Court and the legal profession are deeply committed to ensuring access to justice, in disasters, and every day. But 5.5 million of our poorest Texans qualify for legal aid. For a decade now, the Legislature has provided critical funding for basic civil legal services. Last year, providers helped 150,000 families, and every year lawyers donate millions of dollars plus two million hours in free legal services. Yet with all that effort, estimates are that only 10% of the need is met.

The Texas Legal Aid for Survivors of Sexual Assault legal aid program—LASSA—is financed by the Legislature's dedicated Sexual Assault Program Fund. In two years, it cleared some 11,000 cases. I urge you to restore last Session's 4% across-the-board cut of that funding.

Last Session, the Legislature continued funding civil legal services for veterans, appropriating \$3 million. Nearly 800 veterans clinics served some 15,000 veterans in a little over two years. The person most responsible for that funding is Lieutenant Governor Dan Patrick. Governor Patrick, on behalf of 15,000 Texas veterans, thank you. Both the House and Senate budget bills continue the \$3 million appropriation, but Governor Abbott's *Front of the Line Veterans Policy* calls for an additional \$3 million. I urge you: respond to that call. When veterans return home to the freedoms they risked their lives to protect, only to be met with financial, employment, housing, and family problems, Texas' civil justice system must not leave one—not even one—behind. In providing access to justice, we must leave no one behind.

Judicial Selection

Historic as was the blow Hurricane Harvey dealt the Texas Judiciary, so was the blow from the November election. Of the 80 intermediate appellate justices, 28—35%—are new. A third of the 254 constitutional county judges are new. A fourth of trial judges—district, county, and justices of the peace—are new. In all, I am told, 443 Texas judges are new to their jobs. On the appellate and district courts alone, the Texas Judiciary in the last election lost seven centuries of judicial experience at a single stroke.

No method of judicial selection is perfect. Federal judicial confirmation hearings are regarded as a national disgrace by senators themselves. States have tried every imaginable alternative. Still, partisan election is among the very worst methods of judicial selection. Voters understandably want accountability, and they should have it, but knowing almost nothing about judicial candidates, they end up throwing out very good judges who happen to be on the wrong side of races higher on the ballot. Merit selection followed by nonpartisan retention elections would be better. At a minimum, judicial qualifications should be raised, as the Judicial Council recommends. I urge you: at least, pass Senate Bill 561 and Senate Joint Resolution 35.

Don't get me wrong. I certainly do not disparage our new judges. I welcome them. I've been in their shoes—though it was awhile ago. My point is that qualifications did not drive their election; partisan politics did. Partisan sweeps—they have gone both ways over the years, and whichever way they went, I protested—partisan sweeps are demoralizing to judges, disruptive to the legal system, and degrading to the administration of justice. Even worse, when partisan politics is the driving force, and the political climate is as harsh as ours has become, judicial elections make judges more political, and judicial independence is the casualty. Make no mistake: a judicial selection system that continues to sow the political wind will reap the whirlwind.

Judicial Compensation

I was appointed to the District Court in 1981, when federal district judges were paid 5% more—\$2,500—than a Dallas County district judge. In the next 20 years, Texas judges received 11 raises; but in the past 18 years, only two. And now, a federal district judge is paid \$50,000—almost 1/3rd—more than a Texas district judge. Texas high court salaries rank 29th in the nation, a third less than our counterparts in other large states.

Judicial service—public service—is just that: service. Judges know that going in. It involves personal sacrifice. But public service should not be public servitude. The people of Texas can be proud that when improvement in the justice system is needed, we're working on it, hard. Texas has not compensated her judges fairly. Adjusting for inflation, Texas judges are paid less than they were in 1991, 28 years ago. Experienced judges are just not encouraged to stay.

The Judicial Compensation Commission has recommended that judicial pay be increased 15%. House Bill 1 includes a 10% increase, which would be very helpful. But Senator Joan Huffman's Senate Bill 387 proposes a different approach that encourages retention of judges. Its essential feature is that judges' compensation will increase every four years they serve, up to 12 years—basically two terms for appellate judges and three for trial judges. The plan thus rewards experience and recognizes the value of continued service. Like most private-sector employees, judges who work hard and do well would make more over time. And raising beginning salaries remains an option. Senate Bill 387 is the best solution I have seen to the problems associated with increasing judicial compensation. I urge you to support it.

Modernizing the Judiciary Using Technology – Data Collection

The Judiciary's single most important need is better technology.

Texas has 3,210 judges—more than any other state—plus associate judges and senior judges. They are very busy. Though Supreme Court filings are increasing, the Court still decides all argued cases by the end of June each year. The Court of Criminal Appeals is the busiest appellate court in the nation. In the 2018 fiscal year: district judges resolved, on average, roughly 1,900 cases per judge; statutory county judges nearly 2,100 per judge; justices of the peace over 2,800 cases per judge; and municipal judges over 3,600 cases per judge. In all, Texas judges handled 8.6 million cases last year. To put that figure in perspective, it's 23 times the number of cases handled by all the federal courts in the country.

Sprawling across 254 counties, some bigger than states, a few very urban, most very rural, Texas courts desperately need better data on cases and dockets to operate efficiently and plan for the future. Case types shift over time. Civil cases are increasing—11% in justice of the peace courts. Debt claims are up 141% over five years. Motor vehicle accident cases are up 44%. Family cases 4%. Felony cases have remained steady, but misdemeanors have fallen to the lowest level since 1993. Forty percent of new criminal cases involve drugs or alcohol.

Knowing how courts are operating requires better case management systems in all 254 counties. The technology is readily available—urban counties have used it for years. But many counties need a strong system. The courts are not the only beneficiaries. Governor Abbott’s *School and Firearm Safety Action Plan* calls for a statewide court case management system to provide magistrates immediate access to critical information and to speed reporting of court records for federal background checks, all to better secure our schools. For all these reasons, I urge you to fully fund the Office of Court Administration’s technology requests for the Judiciary.

Modernizing the Judiciary Using Technology – Electronic Filing & Access

Electronic filing has made Texas courts more accessible. It is required in district and county courts in civil cases and in criminal cases in most counties. In November, a new online court records public access initiative was launched: Re:SearchTX. With a few clicks, users can see electronic filings in any Texas court and download them for a small charge. Sensitive personal identity information is protected by requiring lawyers to redact it before filing, implementing automatic-redaction software, and restricting access to registered users. Re:SearchTX gives Texas courts greater transparency.

Modernizing the Judiciary Using Technology – Civil Cases

In civil courts, technology can be used to screen cases by complexity as they’re filed, improving efficiency. Also, online dispute resolution—ODR for short—allows plaintiffs and defendants to file and respond to claims online and negotiate settlements, assisted by a mediator when needed. Parties need not take off work and drive to the courthouse to wait in line with other cases to see a judge. Access to justice is faster, less expensive, and more predictable. The Office of Court Administration is planning pilot projects in a few Texas jurisdictions to explore civil justice reform and ODR.

Modernizing the Judiciary Using Technology – Criminal Pretrial Release

But the greatest need for technology in justice system reform is in criminal pretrial release—bail. Twenty-five years ago, a third of the jail population was awaiting trial. Now the percentage is three-fourths. Most of those detained are non-violent, unlikely to re-offend, and posing no risk of flight. Many are held because they’re too poor to make bail. Though presumed innocent and no risk to public safety, they remain in jail, losing jobs and families, and emerge more likely to re-offend. The toll on them personally also burdens communities. And on top of that, taxpayers must foot the bill—a staggering \$1 billion per year to jail those who should be released. Besides the costs, detaining someone solely because he’s poor is against the law. It violates fundamental constitutional rights. In 21st-century Texas, it ought to be unthinkable.

So why does it happen? Because judges are denied a readily available tool to make more informed decisions. Historically, bail is set by a predetermined schedule based on one thing: the nature of the offense. Validated risk assessment computer programs, using a few pieces of demographic information, can predict with superior accuracy whether a defendant poses a risk of flight, violence, or recidivism. The program is called “validated” because it’s been tested and proven to work. One program, the Public Safety Assessment, is being used in Harris County and will soon be used in other Texas counties.

Not only are people held who should be released, people are released who should be held. Damon Allen was born in Kentucky and moved to Texas with his family when he was 8. He played football at Mexia High School, and after graduation, chose public service, working at the Mexia State School and then the Texas Department of Criminal Justice. But Damon’s heart was set on law enforcement, so he applied to the Texas Department of Public Safety and in 2002, became a State Trooper. Along the way, he married Kasey, and together they had four children. Damon loved his family, and he loved his job. He was a good husband, a good father, a good Trooper, a good man.

Trooper Damon Allen did not celebrate Thanksgiving Day 2017 with his family, as most of us did with ours. He was on patrol, keeping us safe. At 3:45 p.m., he stopped a 2012 Chevrolet Malibu for speeding. After speaking with the driver, Trooper Allen returned to his cruiser to check the driver’s license. The driver stepped out of his car with a rifle, walked back to where Damon was sitting in the cruiser, and shot him again and again and again. Trooper Damon Allen died on the scene with service weapon still holstered. He was 41.

The shooter was free on money bond that day. Four months earlier, he had led officers on a 105-mph chase, during which he intentionally rammed a deputy sheriff’s vehicle, seriously injuring the deputy. He was charged with evading arrest, aggravated assault of a public servant, and reckless driving. Bail was set at \$15,500. He paid 10% – \$1,550 – and was released. The judge setting bail had no way of knowing that he had previously been convicted of assault for violently beating a deputy sheriff. The killing of Damon Allen was not a fluke. A Judicial Council study shows that individuals released on money bond based on schedules are nine times more likely to commit felonies or other weapons offenses than when bond is based on objective risk factors. Every day that this continues, public safety is compromised unnecessarily.

Last summer, Governor Abbott called for bail reform. Kasey Allen was at his side. This week, Senator John Whitmire and Representative Andy Murr introduced the Damon Allen Act – House Bill 1323 and Senate Bill 628. The Act is not soft on crime; it protects public safety. The Act does not eliminate cash bail; it gives judges more flexibility. Let me be very clear: money bail has its place, but blindly following a one-size-fits-all schedule of offenses and amounts – setting \$15,500 bail for Damon Allen’s shooter – is not informed decision-making. The Act broadens judges’ discretion. It would give judges setting bail more information, and most importantly, more reliable information about a defendant’s criminal history, previous offenses involving peace officers or family violence, and other risk factors. Judges would then be required to consider that information in setting bail. And accompanying the Act is a proposed constitutional amendment giving judges authority, consistent with full due process, to deny bail altogether for offenders who are too great a risk to public safety, something judges cannot do in many cases today.

It is time—actually, it’s past time—to ensure that defendants who pose no risk to the public are not jailed, and that those who do, are. I urge you to pass the Damon Allen Act. So does Kasey. Damon, she says, would want this for his fellow officers. “This change,” she says, “will make it safer and better for them, while they are making society safer and better for us.” Well said. Kasey will do all she can to ensure that her husband’s death was not in vain. But change takes courage, even when the status quo is irrational, even when it’s unlawful. Change takes showing up. So Kasey is here, with her daughter, Madison, and her son, Cameron. Kasey, Madison, Cameron, please stand and receive our gratitude for your courage.

Fines & Fees

In my last address, I reported that hundreds of thousands of defendants ticketed for traffic, parking, and other minor offenses were being jailed for not paying fines and fees, often because they were too poor. Legislation passed last Session on Judicial Council recommendations gives judges more discretion to determine what a defendant can pay and to offer a plan, require community service, or waive some or all of the fines or costs. The Council predicted that judges working with defendants would increase compliance and reduce jail time. It was right. Judges are issuing fewer warrants, imposing more community service, waiving fines and fees for the indigent, and jailing fewer. That alone has saved taxpayers at least \$2.4 million.

The Judicial Council was wrong about one thing. It predicted revenue would stay the same. In fact, state and local revenue per case has increased 4%. The laws passed last Session have benefitted defendants and taxpayers alike. The Texas model is drawing national attention, and we’re working to improve it further.

The Judicial Council recommends that court cost and filing fee structures be simplified to ensure that they are constitutionally applied and collections are directed to a legitimate purpose. Senators Judith Zaffirini and Joan Huffman have filed Senate Bill 346 to do just that. I urge its passage.

Juvenile Justice

Every day, children enter the juvenile delinquency system and child protective services, often at the same time, but with different judges. The Judicial Council recommends that the same judge handle both cases. And the Supreme Court’s Children’s Commission proposes to train the judges and increase collaboration. I urge you to support these efforts with legislation and funding.

Children who commit Class C misdemeanors are in the criminal system, not the juvenile system. A 12-year-old who steals a car from a neighbor is adjudicated as a juvenile in the civil justice system and faces no criminal penalty. Meanwhile, a 12-year-old who steals a \$10 die-cast metal car from a general store is prosecuted in the criminal system for a Class C misdemeanor. It makes no sense. A child who breaks the law must certainly face the consequences, but the reason for the juvenile justice system is to keep children from being treated as criminals. The Judicial Council has worked with representatives of the justice and municipal courts, juvenile prosecutors, and defense attorneys to propose statutory changes that will continue to divert

children from the criminal justice system while keeping them accountable for their actions. I urge you to consider them.

Mental Health

The Supreme Court and the Court of Criminal Appeals have grown increasingly concerned about mental health issues in the courts. A year ago, the two high courts convened together for the first time in history and formed the Judicial Commission on Mental Health. Its purpose, modeled on the highly successful Children's Commission, is to convene outstanding judges, legislators, health care providers, prosecutors, defense lawyers, law enforcement, academics, advocates, and other experienced leaders to develop, through collaboration, solutions to the challenges courts face with persons with mental health issues or intellectual or developmental disabilities. A Commission-sponsored Summit last fall drew more than 300 attendees. The Commission has already produced a Bench Book to help educate and train judges. These are big steps forward, but they are only the beginning. I urge the Legislature to continue to support and fund the Commission's efforts.

Legislation last Session increased mental health assessments at the jail. Rarely done before, more than 21,000 assessments were made last year. That's progress. But the Judicial Council recommends changes in the civil commitment process to facilitate care outside the criminal system. Senator Joan Huffman's Senate Bill 362 contains the Council's proposals, and I urge you to support passage.

Guardianships

Texas leads the way in improving guardianship proceedings and alternatives to guardianship, as well it should. Texas courts have 51,000 open guardianship cases involving \$5 billion, and those numbers will increase as the population ages – by 2030, the number of Texans over age 65 will double, to six million. Courts lack resources to monitor these cases to ensure compliance with statutory protections, leading to neglect, abuse, and exploitation of the wards. Wards like Maria, a woman with a sizable estate, who was placed in a guardianship. Two weeks later, the guardian absconded with \$100,000 from her account, savings that should have been reserved for her care. I saved a chair for her this morning so you could meet her, but Maria is missing, and the court has not been able to compel the guardian to locate her. Others could take her place. Edna's guardian, her child, appears to have stolen \$1 million from her estate. Georgina's guardian, her sister, spent \$25,000 on personal clothing. Teddy had no means to obtain needed medicine when his guardian failed to pay Medicare premiums. The names are fictitious; the cases are not.

Wards can be forgotten in guardianship proceedings, becoming as invisible as my guest in this empty chair. The cases I've mentioned were found only because of the Office of Court Administration's Guardianship Compliance Program. The Judicial Council recommends expanding the program to monitor guardianship cases in all Texas courts. And that's what Senate Bill 31 will do, co-authored by Senators Judith Zaffirini, Eddie Lucio, Jane Nelson, Joan Huffman, Brian Birdwell, Brandon Creighton, Charles Perry, and Bryan Hughes. Representative John Smithee has filed its companion, House Bill 1286. The bills will call the program by its real name: the Guardianship Fraud, Abuse, and Exploitation Deterrence Program. I urge its passage.

Conclusion

In all, the Third Branch is working hard to serve the people of Texas. The Texas Judiciary is committed to upholding the law, to getting every case right, to operating efficiently, to searching out and adopting improvements and reforms, to making all our processes advance the precious cause of justice. In that spirit, we ask your help with judicial qualifications and compensation, better use of technology, and guardianship monitoring, and your continued help with access to justice for the poor and the middle class. We pledge to work with you to reform the bail system, court treatment of those with mental illness, and juvenile justice.

The framers of the Constitution mistrusted the power of government, so they divided it among three Branches, intending them to be competitive. They succeeded. But in Texas, we have proved that the Branches, each in its own sphere, can work together for the people's good. In my 38 years as a Texas judge, the relationship between the Branches has never been better than it is today. I speak for the Third Branch in saying we will do all we can to see that the relationship remains strong.

That is the state of the Texas Judiciary.

God bless you, and may God bless Texas.