

TWENTY-SECOND DAY

WEDNESDAY, FEBRUARY 23, 2005

PROCEEDINGS

The Senate met at 10:00 a.m. pursuant to adjournment and was called to order by the President.

The roll was called and the following Senators were present: Armbrister, Averitt, Barrientos, Brimer, Carona, Deuell, Duncan, Ellis, Eltife, Estes, Fraser, Gallegos, Harris, Hinojosa, Jackson, Janek, Lindsay, Lucio, Madla, Nelson, Ogden, Seliger, Shapiro, Shapleigh, Staples, Van de Putte, Wentworth, West, Whitmire, Williams, Zaffirini.

The President announced that a quorum of the Senate was present.

Rabbi Alan Freedman, Temple Beth Shalom, Austin, offered the invocation as follows:

A parable is told about Moses, our teacher. It states that when Moses was tending the flock of his father-in-law, Jethro, a lamb scampered off until it approached a shelter under a rock. As the lamb reached the shelter, it stopped at a pool of water to drink. When Moses arrived he said, "I did not know that you ran away because you were thirsty, now you must be tired." So Moses hoisted the lamb on his shoulders and returned the lamb to the flock. The Holy One then said, "Because you showed such compassion in tending this flock of sheep, you shall become shepherd of the flock that is mine."

This day, dear God, we pray that You bestow upon us not only wisdom but a sense of compassion as we see to the needs of our flock, the citizens of the great State of Texas. Inspire us to follow the example of Moses, bringing a sense of Your care and concern for each of our citizens to the many issues that confront us. In this way, then, the work of our hands shall truly reflect Your will for us and for the people that we are privileged and blessed to serve. *Baruch atah Adonai, eloheinu melch ha-olam, asher natan l'sechvei venah l'havchen bein yom o'vein laila.* Blessed are you, *Adonai*, ruler of the universe, who gives the capacity for wisdom and compassion to every human being. Amen.

Senator Whitmire moved that the reading of the Journal of the proceedings of yesterday be dispensed with and the Journal be approved as printed.

The motion prevailed without objection.

CO-AUTHOR OF SENATE BILL 59

On motion of Senator Averitt, Senator Eltife will be shown as Co-author of **SB 59**.

CO-AUTHOR OF SENATE BILL 477

On motion of Senator Wentworth, Senator Van de Putte will be shown as Co-author of **SB 477**.

PHYSICIAN OF THE DAY

Senator Estes was recognized and presented Dr. Enrique Muyschondt of Sherman as the Physician of the Day.

The Senate welcomed Dr. Muyschondt and thanked him for his participation in the Physician of the Day program sponsored by the Texas Academy of Family Physicians.

GUESTS PRESENTED

Senator Ogden was recognized and introduced to the Senate a delegation of citizens and officials from the Bryan/College Station Chamber of Commerce.

The Senate welcomed its guests.

SENATE RESOLUTION 226

Senator Wentworth offered the following resolution:

WHEREAS, The Senate of the State of Texas is pleased to recognize Philip A. Berkebile, who retired from his position as executive vice president of the Texas Daily Newspaper Association at the end of 2004, bringing to a close an exceptional career in the newspaper industry that spanned more than four decades; and

WHEREAS, Throughout his 20-year tenure with the association, Mr. Berkebile made significant contributions to the organization; under his leadership, there was an improvement and expansion of the association's service to Texas daily newspapers in all areas of operation, the implementation of an array of programs that resulted in voluntary newsprint recycling, the use of online reporting training, and the continued enhancement of journalism education in the state; in addition, the association remained instrumental in upholding freedom of information by supporting the preservation of the state's open meetings and open records laws; and

WHEREAS, The son of a former Kansas daily newspaper publisher, Mr. Berkebile began his professional career in 1960 at the *Abilene Reflector-Chronicle*, where he worked as a reporter and photographer; in 1967, he became the manager of the Dodge City, Kansas, Chamber of Commerce, and two years later, he began his tenure as executive vice president of the chamber of commerce in Hastings, Nebraska; before joining the Texas Daily Newspaper Association in 1985, Mr. Berkebile served for 11 years as general manager of the Nebraska Press Association in Lincoln; and

WHEREAS, Throughout his career, Mr. Berkebile was active in a host of organizations and efforts, both civic and professional, including the National Newspaper Association, the Society of Professional Journalists/Sigma Delta Chi, the Hitchcock Foundation, Kiwanis International, the United Fund campaign, the Sabin

Oral Vaccine campaign, and the United States Savings Bond campaign; moreover, he demonstrated his dedication to the future of the news industry through his involvement with the University of Nebraska School of Journalism and the Texas Tech University School of Mass Communications, where he is a founding member of the board of directors; and

WHEREAS, Phil Berkebile set high standards of excellence and professionalism to which all may aspire; although his leadership will be sincerely missed, he leaves behind an important legacy of service and achievement, benefiting not only the state's daily newspapers but ultimately all the people of Texas who read them; now, therefore, be it

RESOLVED, That the Senate of the State of Texas, 79th Legislature, hereby congratulate Philip A. Berkebile on his retirement as executive vice president of the Texas Daily Newspaper Association and extend to him sincere best wishes for continued success and happiness; and, be it further

RESOLVED, That a copy of this Resolution be prepared for Mr. Berkebile as an expression of high regard from the Texas Senate.

SR 226 was read and was adopted without objection.

GUESTS PRESENTED

Senator Wentworth was recognized and introduced to the Senate Philip A. Berkebile and his wife, Judy.

The Senate welcomed its guests.

SENATE RESOLUTION 175

Senator Shapleigh offered the following resolution:

WHEREAS, The Senate of the State of Texas is pleased to recognize February 23 and 24, 2005, as El Paso Days at the State Capitol; and

WHEREAS, Located in the westernmost tip of the state, the City of El Paso combines a modern metropolis with the charm born of its Spanish origins; the area was named El Paso by the Spanish conquistador, Don Juan de Oñate, because of the shallow place in the river where the colonists crossed en route to Santa Fe, New Mexico; and

WHEREAS, The arrival of the railroads in 1881 ushered in an era of prosperity, and El Paso became a flourishing frontier community that has developed into a significant industrial, commercial, and transportation city; and

WHEREAS, Today, semitrailers, trains, and planes transport manufactured goods through the border cities at the Pass, just as Spanish traders did in the 16th century when they guided ox-drawn carts along the Camino Real from Mexico City to Santa Fe; and

WHEREAS, With a population of over a half million people, El Paso is the state's fifth largest city and the nation's 23rd largest; the largest American city on the 2,000-mile United States-Mexico border, it lies across the Rio Grande north of Ciudad Juarez, Mexico's fifth largest city, with a population of over a million people; and

WHEREAS, Nearby Fort Bliss, which celebrated its 150th anniversary in 1998, is home to the United States Army's air defense training center and plays a significant role in the community; and

WHEREAS, El Paso is a vibrant, bilingual community, and many of its residents are fluent in Spanish; its residents enjoy a thriving fine arts community, exemplary educational institutions, and many cultural and historical resources and museums; and

WHEREAS, El Paso Days at the State Capitol provide an opportunity for friends and families to honor El Paso and its rich heritage, which today is enjoyed by residents and vacationers of all ages; now, therefore, be it

RESOLVED, That the Senate of the State of Texas, 79th Legislature, hereby recognize February 23 and 24, 2005, as El Paso Days at the State Capitol and join citizens of this historical and vibrant region in paying tribute to this wonderful city; and, be it further

RESOLVED, That a copy of this Resolution be prepared as a memento of this special occasion.

SR 175 was read and was adopted without objection.

GUESTS PRESENTED

Senator Shapleigh was recognized and introduced to the Senate El Paso Mayor Joe Wardy and James Valenti, Chief Executive Officer of Thomason Hospital, and Betti Flores, El Paso County Commissioner, accompanied by a delegation of citizens from El Paso representing El Paso Days at the State Capitol.

The Senate welcomed its guests.

GUESTS PRESENTED

Senator Estes was recognized and introduced to the Senate a delegation representing the Children's Advocacy Centers in Senate District 30.

The Senate welcomed its guests.

MESSAGE FROM THE HOUSE

HOUSE CHAMBER

Austin, Texas

February 23, 2005

The Honorable President of the Senate

Senate Chamber

Austin, Texas

Mr. President:

I am directed by the House to inform the Senate that the House has taken the following action:

THE HOUSE HAS PASSED THE FOLLOWING MEASURES:

HCR 28, Honoring Philip A. Berkebile on his retirement from the Texas Daily Newspaper Association.

Respectfully,

/s/Robert Haney, Chief Clerk
House of Representatives

SENATE RESOLUTION 206

Senator Zaffirini offered the following resolution:

WHEREAS, The Senate of the State of Texas is pleased to welcome the American Cancer Society on the occasion of American Cancer Society Legislative Day at the Capitol on Wednesday, February 23, 2005; and

WHEREAS, The American Cancer Society is dedicated to eliminating cancer and improving the quality of life for those facing the disease through a multifaceted approach based on research, education, advocacy and service; and

WHEREAS, Since 1946, the society has invested \$2.5 billion and funded the early research of 38 Nobel Prize winners in its quest to determine the causes of cancer and support efforts to prevent and cure the disease; and

WHEREAS, With more than two million volunteers throughout the nation in over 3,400 local chapters, the American Cancer Society is one of the oldest and largest voluntary health organizations in the United States; and

WHEREAS, This critically important organization and its dedicated volunteers form the backbone of the service and support systems for cancer victims and their families, and they are truly deserving of recognition and gratitude; now, therefore, be it

RESOLVED, That the Senate of the State of Texas, 79th Legislature, hereby commend and honor the American Cancer Society and extend to them best wishes for a successful American Cancer Society Legislative Day; and, be it further

RESOLVED, That a copy of this Resolution be prepared for the society as a token of esteem from the Texas Senate.

SR 206 was read and was adopted without objection.

GUESTS PRESENTED

Senator Zaffirini was recognized and introduced to the Senate Katy Brymer of George West; Ana Rivera-Soto, Pedro Soto, and Daniel de la Miyar of Laredo; and Jo Lynn Gisler of Three Rivers; accompanied by representatives of the American Cancer Society.

The Senate welcomed its guests.

GUESTS PRESENTED

Senator Eltife was recognized and introduced to the Senate a group of students representing independent colleges and universities in Texas.

The Senate welcomed its guests.

SENATE RESOLUTION 200

Senator Gallegos offered the following resolution:

WHEREAS, The Senate of the State of Texas is pleased to recognize the battleship *Texas* on the 60th anniversary of the raising of the United States flag at the battle of Iwo Jima on February 23, 1945; and

WHEREAS, The battleship *Texas* was commissioned in 1914 and saw action during both World Wars, providing essential support in the Atlantic and Pacific Theaters; 60 years ago, the ship played a key role in the landings on Iwo Jima and Okinawa; and

WHEREAS, The *Texas* was decommissioned in 1948 and docked at the San Jacinto Battleground State Historic Site in La Porte; and

WHEREAS, Designated a National Historic Museum, the battleship *Texas* is under the care of the Texas Parks and Wildlife Department and the Battleship Texas Foundation, which raises funds to restore the ship and promote its historical significance and educational value; and

WHEREAS, The battleship *Texas* has played an important role in the history of our nation, and the Battleship Texas Foundation's mission of preserving this historical treasure is truly a worthy undertaking; now, therefore, be it

RESOLVED, That the Senate of the State of Texas, 79th Legislature, hereby commend the Battleship Texas Foundation for its preservation and restoration efforts and honor the battleship *Texas* on the 60th anniversary of the raising of the United States flag at Iwo Jima; and, be it further

RESOLVED, That a copy of this Resolution be prepared for the foundation as an expression of esteem from the Texas Senate.

SR 200 was read and was adopted without objection.

GUESTS PRESENTED

Senator Gallegos was recognized and introduced to the Senate representatives of the Battleship Texas Foundation: Travis Legrone, Executive Director; Captain Charles Alcorn, Chair; Penny Butler, Trustee; and Patricia McCall, Trustee.

The Senate welcomed its guests.

GUESTS PRESENTED

Senator Estes was recognized and introduced to the Senate Wise County officials and citizens representing Wise County Day at the Capitol.

The Senate welcomed its guests.

SENATE RESOLUTION 227

Senator Zaffirini offered the following resolution:

WHEREAS, The Senate of the State of Texas is pleased to join the citizens of Atascosa County in celebrating February 23, 2005, as Atascosa County Day at the Capitol; and

WHEREAS, Situated astride the famous Camino Real, Atascosa County has benefited throughout its history from its location on major transportation arteries that link the Gulf Coast region, the Rio Grande Valley and Mexico; and

WHEREAS, Atascosa County was founded in 1856 when a courthouse was built at Navatasco on land donated by Jose Antonio Navarro; two years later, the county seat was relocated to Pleasanton until an election in 1910 moved it to Jourdanton, where it remains today; and

WHEREAS, Atascosa County is blessed with fertile farmland and a productive range; every April, the Poteet Strawberry Festival celebrates the annual strawberry harvest, and the Longhorn Museum in Pleasanton offers natural science and local history exhibits; and

WHEREAS, Each year, the citizens of Atascosa County enjoy the Frenchie Burke Festival in Lytle during May and the Cowboy Homecoming Celebration in Pleasanton at the end of August; Saint Ignatius Catholic Church holds its annual picnic celebration during the Labor Day weekend; this year, the Charlotte High School Band will be the only Texas school band to march in the Memorial Day Parade in Washington, D. C.; and

WHEREAS, In 2006, Atascosa County will celebrate its 150th birthday with a gala sesquicentennial celebration; the county's residents should be justly proud of their heritage and the traditions and achievements encompassed in it; and

WHEREAS, Atascosa County citizens have enriched our state for over a century; this special day is an appropriate occasion to recognize them; now, therefore, be it

RESOLVED, That the Senate of the State of Texas, 79th Legislature, hereby recognize Atascosa County and commend its citizens for their contributions to our state; and, be it further

RESOLVED, That a copy of this Resolution be prepared as an expression of esteem from the Texas Senate.

SR 227 was read and was adopted without objection.

GUESTS PRESENTED

Senator Zaffirini was recognized and introduced to the Senate Tammy Clark, Mayor of Jourdan; Bill Carroll, Mayor of Pleasanton; Atascosa County Judge Diana Bautista; Franklin Wanjura, Jr., President, Lytle State Bank, and President, Atascosa County Economic Development Corporation; and Jerry Davidson, Executive Director, Atascosa County Economic Development Corporation; accompanied by a delegation of citizens from Atascosa County.

The Senate welcomed its guests.

SENATE RESOLUTION 195

Senator Wentworth offered the following resolution:

WHEREAS, Members of the Tax Assessor-Collectors Association of Texas (TACA) are observing their Legislative Day at the State Capitol on February 23, 2005, and this occasion provides a fitting opportunity to pay tribute to this outstanding group; and

WHEREAS, Organized in 1934, TACA was created through the unification of two separate organizations, the Tax Assessors Association and the Tax Collectors Association; and

WHEREAS, The group held its first meeting on May 21, 1935, in Lubbock, with the goals of securing the benefits of an organized effort, exchanging ideas and discussing mutual problems, and establishing an annual conference; and

WHEREAS, Albert Turner of Jasper County was elected as the association's first president, and Paul Williams was elected as secretary-treasurer, a position he held for nearly a decade; C. R. "Roy" Law also served as secretary-treasurer for many years, and his exceptional leadership is credited with providing solid direction for the association; and

WHEREAS, Since its inception, TACA has worked diligently in behalf of the tax assessors and collectors across Texas, and its efforts include support for four-year terms of office and a retirement system for county officials; in addition, attendance at the annual conference has continued to increase, and today, members come from most of the state's 254 counties; and

WHEREAS, TACA has truly been an asset to our citizenry through the years, and it is a pleasure to recognize the contributions of its members as they participate in Tax Assessor-Collectors Association of Texas Legislative Day; now, therefore, be it

RESOLVED, That the Senate of the 79th Texas Legislature hereby honor the Tax Assessor-Collectors Association of Texas and extend to its members best wishes for a memorable visit to the State Capitol.

SR 195 was read and was adopted without objection.

GUESTS PRESENTED

Senator Wentworth was recognized and introduced to the Senate members of the Tax Assessor-Collectors Association of Texas.

The Senate welcomed its guests.

SENATE RESOLUTION 213

Senator Staples offered the following resolution:

WHEREAS, Many proud residents of Athens are gathering at the State Capitol to celebrate Athens Day on February 23, 2005; and

WHEREAS, The county seat of Henderson County, the city of Athens began its steady development when it was reincorporated in 1901; since then, this charming East Texas town has experienced significant growth and the emergence of a dynamic citizenry; and

WHEREAS, The area's fertile terrain and temperate climate have helped to make Athens a thriving agribusiness center; in addition, the city is an outdoor enthusiast's dream, providing opportunities for scuba diving, fishing, and many other recreational activities; and

WHEREAS, Dubbed the Black-Eyed Pea Capital of the World, this unique town was once known for its extensive black-eyed pea production and pays tribute to the legume each October with the Black-Eyed Pea Fall Harvest; other exciting annual events include the Athens Fiddlers' Contest and Reunion, the Chamber of Commerce PRCA Stampede Rodeo, the Athens Triathlon, the Smith MDA Benefit Rodeo, the Uncle Fletch Davis Hamburger Cook-off, and the Chamber of Commerce Business Exposition; and

WHEREAS, The home of Trinity Valley Community College, Athens boasts a number of cultural centers and tourist attractions, such as the East Texas Arboretum, the Henderson County Historical Museum, the Murchison Galleries, the Henderson

County Performing Arts Center, the Cain Center, the Henderson County Fairpark Complex, and the Texas Freshwater Fisheries Center, which features 300,000 gallons of aquarium exhibits and every major species of freshwater fish found in Texas; and

WHEREAS, This lovely city continues to be one of the Lone Star State's great assets, and it is indeed appropriate that the citizens of Athens be given special recognition at this time; now, therefore, be it

RESOLVED, That the Senate of the 79th Texas Legislature hereby recognize February 23, 2005, as Athens Day at the State Capitol and extend to all visitors from that fine city a warm welcome.

SR 213 was read and was adopted without objection.

GUESTS PRESENTED

Senator Staples was recognized and introduced to the Senate Athens Mayor Jerry King, accompanied by a delegation of citizens from Athens.

The Senate welcomed its guests.

SENATE RESOLUTION 191

Senator Ellis offered the following resolution:

WHEREAS, The Senate of the State of Texas is pleased to recognize February 23, 2005, as TEXAS Grant Day at the Capitol; and

WHEREAS, Legislation for the TEXAS Grant Program was enacted in 1999 with the goal of providing thousands of Texas high school students the opportunity to attend college, thus helping them to better meet the challenges of the 21st century; and

WHEREAS, This program helps to do for Texas what such historic legislation as the GI Bill has done for the nation; a HOPE Scholarship program, it is helping to create a highly educated and skilled generation of young people who may not otherwise have attended college due to financial limitations; and

WHEREAS, Producing more college graduates has become a necessity, as a college education has become a vital ingredient for professional and economic success in our society; and

WHEREAS, The TEXAS Grant Program has already contributed to the betterment of our state by aiding 115,000 of its students with funds approaching \$500 million for their education and enrichment; now, therefore, be it

RESOLVED, That the Senate of the State of Texas, 79th Legislature, hereby express appreciation for the creation of this innovative program; and, be it further

RESOLVED, That a copy of this Resolution be prepared in honor of the TEXAS Grant Program.

SR 191 was again read.

The resolution was previously adopted on Monday, February 21, 2005.

SENATE RESOLUTION 205

Senator Zaffirini offered the following resolution:

WHEREAS, The Senate of the State of Texas is pleased to honor the members of Texas Immunization Partners who have come to the State Capitol today to bring attention to the need for better vaccination programs in our state and for public awareness of the important role vaccines play in the health of our citizens; and

WHEREAS, For a decade, the State of Texas has had some of the lowest immunization rates in the nation, and the state currently ranks 41st in the country in its vaccine coverage for children younger than three years of age; and

WHEREAS, Texas Immunization Partners is a network of organizations and physicians and other individuals working together to ensure the good health and well-being of our youngest Texans by educating the public about debilitating and deadly diseases and the vaccines that prevent them; and

WHEREAS, Vaccinations protect infants, children and teens; thus vaccine delivery in Texas must meet the needs of large urban areas and sparsely populated rural areas, and the public must be educated about their availability and benefits; now, therefore, be it

RESOLVED, That the Senate of the State of Texas, 79th Legislature, hereby commend members of Texas Immunization Partners for their efforts to ensure that our children are adequately protected with the appropriate vaccines and recognize February 23, 2005, as a special day to honor their outstanding work; and, be it further

RESOLVED, That a copy of this Resolution be prepared for this organization as an expression of high regard from the Texas Senate.

SR 205 was read and was adopted without objection.

GUESTS PRESENTED

Senator Zaffirini was recognized and introduced to the Senate Frankie Milley, State Director of Texas Immunization Partners; Rodney Throgmorton; Linda Ott; Leslie Meigs; and Harley Beaty; accompanied by members of Texas Immunization Partners.

The Senate welcomed its guests.

GUESTS PRESENTED

Senator Seliger was recognized and introduced to the Senate a group of students from Amarillo College and West Texas A&M University in Canyon.

The Senate welcomed its guests.

GUESTS PRESENTED

Senator Barrientos was recognized and introduced to the Senate Eagle Scouts from Troop 339 in Austin, accompanied by their scoutmaster and sponsors.

The Senate welcomed its guests.

MOTION TO ADJOURN

On motion of Senator Whitmire and by unanimous consent, the Senate at 11:08 a.m. agreed to adjourn, in memory of the life of Keith Wells of Abilene, upon conclusion of the Joint Session for the State of the Judiciary Address, until 10:00 a.m. tomorrow.

JOINT SESSION

(To hear the State of the Judiciary Address by the Honorable Wallace B. Jefferson, Chief Justice, Supreme Court of Texas)

The President announced the time had arrived for the Joint Session pursuant to the provisions of **HCR 33**.

The President of the Senate and the Senators present, escorted by the Secretary of the Senate and the Sergeant-at-Arms, proceeded to the Hall of the House of Representatives at 11:00 a.m.

The Honorable David Dewhurst was announced and, on invitation of the Speaker, occupied a seat at the Speaker's Rostrum.

The Senators were announced and were admitted and escorted to seats prepared for them along the aisle.

The Honorable Wallace B. Jefferson was announced and was escorted to the Speaker's Rostrum by Senators Wentworth, Chair; Gallegos, Averitt, Duncan, Harris, Hinojosa, and West on the part of the Senate and Representatives Hartnett, Chair; Hughes, Gonzales, Riddle, Frost, Veasey, and P. King on the part of the House.

The Honorable David Dewhurst, President of the Senate, called the Senate to order and announced a quorum of the Senate present.

The Honorable Tom Craddick, Speaker of the House of Representatives, called the House to order, announced a quorum of the House present, and stated the purpose of the Joint Session.

The interpretation for the deaf of the State of the Judiciary Address was provided by Delia Mott Merritt of Communication By Hand.

The President introduced the Honorable Wallace B. Jefferson, who addressed the Joint Session as follows:

Governor Perry, Lieutenant Governor Dewhurst, Speaker Craddick, distinguished Members of the Senate and the House of Representatives, ladies and gentlemen: I am honored to appear before you for my inaugural State of the Judiciary Address, one of the unique privileges afforded to me as Chief Justice. As you know, I was appointed by Governor Rick Perry to fill the vacancy left when Chief Justice Tom Phillips retired. Tom Phillips devoted his life to the court and to the judiciary and has received much-deserved praise for his service to Texas. I am sure I have the authority to order yet another plaque for this giant Texan. I choose instead to honor his example by speaking passionately about how the judiciary can best meet its responsibility to the people of Texas, to litigants in our courts, and to all who expect our halls of justice to be fair and impartial.

The state of our judiciary is strong; made strong by those, like Chief Justice Phillips, who have dedicated their lives to the great public enterprise of preserving our state and national constitutions and to protecting and defending laws that ensure we remain a government of the people. Some would say that the judiciary, lacking the power of the purse or the means of enforcement, is the weakest governmental branch. I disagree, because our Legislature understands that a law construed erroneously threatens lawmaking. Our Governor knows that an edict ignored is lawlessness. And I need not remind this audience, who knows of the Treaty Oak, that a weak branch often signals trouble in the roots.

While strong, the judiciary currently faces a challenge that calls for legislative and executive action. The challenge is to fund the judiciary at a level sufficient to retain our most capable and experienced judges. Texas is losing judges at all levels of the judiciary due, at least in part, to salaries that have not kept pace with the times. Ask Judge Harvey Brown, Justice Murry Cohen, and my former colleague Craig Enoch if inadequate compensation played a role in their departures from the bench. And let us admit to ourselves that the judiciary suffers from the loss of their expertise, integrity, and experience. Teddy Roosevelt once said, "It is not befitting the dignity of the nation that its most honored public servants should be paid sums so small compared to what they would earn in private life that the performance of public service by them implies an exceedingly heavy pecuniary sacrifice." Those words are as true today as they were in 1908. Texans deserve to walk into a Texas courtroom knowing that their cases will be heard by women and men of talent and experience, judges who have been recruited from among the most capable and successful lawyers. I want all Texans in every area of the state and all litigants from outside the state who are properly before Texas courts to have access to a judiciary that includes the most capable, the most dedicated, and the most knowledgeable and experienced.

All too often our brightest and most experienced judges are leaving the bench, moving on to other opportunities outside the judiciary. It is no secret that judges double or triple their salaries by returning to the private sector. Even judges who choose some other form of public service—those who teach in our public law schools or who are honored with an appointment to the federal bench—increase their salary by 40 percent or more.

Our most distinguished jurists accept the call to judicial service not for monetary compensation but out of devotion to the rule of law. Judges in our state willingly accept a degree of personal financial sacrifice in exchange for that privilege. But if we ask judges to sacrifice too much, Texas will be left without the experienced judiciary that it surely deserves. Today, we are asking too much. I have not been alone in noting the emergence of a developing trend. Our most experienced judges are leaving the bench, replaced by others who, although dedicated and intelligent, are not equipped to handle those cases as efficiently as their experienced predecessors. Of

course, we benefit from the recruitment of new judges, who add energy and innovation to the judiciary, but a large-scale replacement leads inevitably to uncertainty and inefficiency.

A transitory judiciary is inevitable, I am sad to say, if a judge can serve only as long as his or her savings permit. We do not want a judiciary in which judges serve with a view toward how their rulings will advance or detract from resumes they prepare in contemplation of a short tenure in office. This, I think, is what is meant by judicial independence, the conviction to rule courageously without regard to such personal considerations.

Today, the salary of our state judges is less than even that of a first-year associate at a large firm and pales in comparison with other states. In the 1980s, Texas ranked 5th among the 50 states for judicial compensation at the courts of last resort. Today, Texas ranks 39th. Texas' intermediate court salaries rank 34th and trial court salaries rank 28th.

An inexperienced judiciary takes a toll on the citizens of the state. It delays justice by prolonging child custody decisions, slowing criminal trials, and necessitating new trials. It also takes an economic toll. Business leaders have reported, in survey after survey, that they are more likely to invest in states whose courts can offer judicial efficiency and consistency. In 2004, for example, a United States Chamber of Commerce national survey listed business leaders' top concerns about the legal environment. They were most concerned about punitive damages, an area recently addressed by the Texas Legislature. Close behind, however, were concerns about "judicial competence" and "timeliness of decisions." These issues even outranked concerns about workers' compensation, product liability, and reform of the jury system. Because businesses invest in states with a strong judiciary, state support of the judiciary is an economically sound decision even in these days of tight budgets. A study performed by the Perryman Group, an economic research firm, reports that a relatively modest investment in judicial salaries will more than pay for itself through increased business activity and increased state revenues.

The goal of an efficient, effective judiciary was recognized from the earliest days of our nation and of our beloved Texas. Indeed, in his message to the Sixth Congress of the Republic of Texas, President Sam Houston said, "To maintain an able, honest, and enlightened judiciary should be the first object of every people." The framers of the United States Constitution also understood the importance of an efficient, experienced judiciary; they wrote into the Constitution a provision forbidding any reduction in federal judges' salaries. Early on, the United States Supreme Court recognized that this constitutional provision was enacted, in its words, "Not to benefit the judges, but . . . to attract good and competent [judges] to the bench and to promote that independence of action and judgment which is essential to the maintenance of the guaranties, limitations and pervading principles of the Constitution and to the administration of justice without respect to persons and with equal concern for the poor and the rich."

John Marshall, a Revolutionary War hero and former Chief Justice of the United States, aptly noted that "[t]he Judicial Department comes home in its effects to every man's fireside; it passes on his property, his reputation, his life, his all." Two centuries later, the statement still rings true. The judiciary handles child custody cases, criminal prosecutions, contract matters, and much more. There is not a citizen in Texas whose life has not, in some way, been touched by the judicial system.

I must pause here to recognize the progress on judicial compensation made during this legislative session. In fact, even before the session began, and before my appointment as Chief, Governor Perry expressed his concern that the current compensation structure for judges impedes his ability to recruit men and women of obvious merit when vacancies arise. The Governor's concern has recently been reflected in his proposed state budget, which urges restoration of adequate funding for appellate courts and an increase in judicial compensation "to maintain the quality of our judicial system" and "to attract and retain qualified judges." Likewise, in her comprehensive analysis of judicial pay, Comptroller Carole Keeton Strayhorn recognized that "Texas should ensure that its judiciary is qualified, experienced, stable and justly compensated." And leaders in the Legislature have begun the difficult task of crafting legislation designed with one goal: to assure that justice remains in capable hands. As is so often the case, Senator Duncan has taken a leading role, for which all Texans are indebted. His counterparts in the House, Representatives Dutton, Goodman, Luna and many others have similarly toiled to maintain the promise of justice in our constitutional structure.

There is work to be done reconciling various proposals for reform, but Texans do not shirk from hard work. We have had remarkable success in attracting good and competent men and women to the bench, and, with your support, will continue to do so long into the future.

Our citizens need more than good judges. They also need open, accessible courts that make the most cost-effective use of tax dollars. In this regard, the judiciary has harnessed the power of technology to operate the court system more efficiently and to ensure that the courts are open to people all over Texas. Our court, for example, has placed legal briefs online and made them accessible on the Web. Last fall, we also began making audio recordings of oral arguments available online on the very day of argument. There was a time, in a former era, when our citizens had no choice but to travel to Austin to view the court's proceedings. But today our schoolchildren, the media, our public can listen to actual courtroom dialogue and decide for themselves the merits of opposing arguments on issues of great statewide import. In the next biennium, we would like to take another step forward and provide real-time video webcasting of oral arguments, just as these proceedings are, right now, streaming across some computer screen in the hinterlands. Such a step would cost very little, but would have a huge benefit in ensuring that court proceedings are open and visible to all who are interested, wherever they may live.

The judicial branch has worked to ensure that technology doesn't just help people view court proceedings, it also helps them participate. In 2004, the Judicial Committee on Information Technology worked with TexasOnline to implement electronic court filing in Texas. Eight counties—Bexar, Dallas, El Paso, Fort Bend, Guadalupe, Hidalgo, Tarrant, and Upton—successfully implemented e-filing by the end of fiscal year 2004. More than 40 other counties are preparing to join the e-filing system. E-filing allows parties to file pleadings with courts more quickly and easily. The reduction in paperwork also leads to a reduction in costs, which allows the courts to efficiently focus resources where they are most needed.

Electronic access to court records advances our state's goal of maintaining open government. We must be careful, however, to ensure that our citizens' right to privacy remains protected. Case-file documents, unless sealed or otherwise restricted by statute or court rule, are available under a common-law right of access at courthouses for public inspection and copying. But with the advent of the Internet and other advanced technologies, case records with sensitive or personal information—financial documents, medical records, personnel files, and children's names—may be easily accessed, duplicated, and disseminated, potentially putting our citizens at risk of identity theft. The Texas Judicial Council has recommended an administrative rule that would increase access to court information while still protecting the privacy interests of those appearing before the courts. The court's rules advisory committee is currently studying the mechanics of the proposed rule, and hopes to implement a rule within the year's end.

A third challenge facing the judiciary, and, indeed, confronting all three branches of government, is the need to continue the progress we have made in the criminal justice system. Texas has increasingly recognized victims' rights, ensuring that crime victims have a voice in the criminal justice system. Of course, it is vital not only that we convict the guilty but that we acquit the innocent. Error, unfortunately, is a human affliction. The advance of science, in particular DNA testing, confirms that frailty but also promises a method to correct our mistakes. Judge Barbara Hervey and the Court of Criminal Appeals have worked hard to encourage the investigation of innocence claims; these projects are worthy of our support, and, during the upcoming biennium, I expect that the three branches will continue to cooperate to ensure that those who are truly innocent will be freed. Any wrongful conviction is a tragedy, because it leaves the guilty unpunished and condemns the innocent to prison, or death.

In addition, the Task Force on Indigent Defense, under the inspired leadership of Presiding Judge Sharon Keller, has worked diligently to increase meaningful interaction between state and local governments in providing representation to indigent defendants and to meet and exceed the mandates of the Texas Fair Defense Act. Statewide data shows that since the

Legislature adopted the Act in 2001, nearly 100,000 more persons are receiving court-appointed counsel, which represents an increase of almost 40 percent.

Last year, the task force administered grant programs totaling \$12 million, benefiting 244 counties. This year the task force has awarded over \$13 million in grants. The highlights of this grant cycle include awards to Dallas and Limestone counties for mental health defender services and Bexar and Hidalgo counties to establish public defender offices. The creation of these public defender offices mark the first large scale offices established in Texas since the late 1980s.

Finally, a fourth challenge facing our judiciary is the need to ensure that all of our citizens, rich and poor, have access to our courts. Even in the face of our human imperfections, we should aspire to the imperative of Amos to "let justice flow down as the waters and righteousness as a mighty stream." In that spirit, we will continue the progress made in the last decade to support the Texas Access to Justice Commission that, along with the Equal Access to Justice Foundation, has been recognized nationally as premier examples of the legal system's capacity to provide legal services to the poor. The court has found a real hero in the exceptional leadership of James B. Sales, who heads the commission, and a true heroine in my colleague, Justice Harriet O'Neill, who serves as the commission's liaison. The commission is not a provider of service but rather assists the work of the various legal services provided to develop strategic alliances across the state. It recently launched an ambitious five-year strategic plan, which includes creating an endowment fund, increasing corporate support for legal aid programs, formulating programs to expand pro bono legal services, and engaging law schools in the disbursement of legal aid to the poor. In addition, after finding that poor individuals in rural areas are chronically underserved by legal services programs, the Supreme Court, at the commission's request, recently created the Task Force to Expand Legal Services Delivery. The task force is charged with developing recommendations to facilitate coordination with existing legal service providers and to provide a basis for increased pro bono service in those underserved areas of the state.

The court has created a Protective Order Task Force in response to studies showing that access to the judicial system by victims of domestic abuse is often limited. The task force, under the leadership of Stewart Gagnon of Houston, developed a protective order kit for use by Texans who cannot afford a lawyer or who may not otherwise have access to the courts. The court intends to launch the kit in April, during National Crime Victims' Rights Week, with the help of First Lady Anita Perry and Attorney General Greg Abbott.

Let me close with a vision for the judiciary. I believe we can achieve a fully funded judicial branch of government, one that reflects the wisdom and experience of those who have chosen to serve. I want a strong relationship with the Legislature, one that respects the Legislature's

prerogative to set policy but entrusts the judiciary with responsibility to construe legislation fairly and impartially. I see our wood-paneled courthouses transformed into virtual courtrooms with unlimited seating and accountability. I am confident that, with your help, the ability to seek justice, in a criminal or civil case, for the rich or the poor, will be preserved as a cornerstone of our jurisprudence.

CONCLUSION OF JOINT SESSION

The President announced that the purpose for which the Joint Session was called had been completed.

RESOLUTIONS OF RECOGNITION

The following resolutions were adopted by the Senate:

Congratulatory Resolutions

SR 220 by Averitt, Recognizing Tommie Rita Pilgrim Coward Borroum on the occasion of her 80th birthday.

SR 221 by Williams, Recognizing Jerry M. and Barbara Green on the occasion of their 50th wedding anniversary.

SR 222 by Janek, Congratulating Hud Hopkins for his selection as Airport Manager of the Year.

SR 225 by Barrientos, Recognizing Dorothy Evans Sutton on the occasion of her retirement.

HCR 28 (Wentworth), Honoring Philip A. Berkebile on his retirement from the Texas Daily Newspaper Association.

Official Designation Resolutions

SR 197 by Deuell, Recognizing February 23, 2005, as Fannin County Day at the State Capitol.

SR 202 by Estes, Proclaiming February 23, 2005, Wise County Day.

ADJOURNMENT

Pursuant to a previously adopted motion, the Senate at 11:43 a.m. adjourned, in memory of the life of Keith Wells of Abilene, until 10:00 a.m. tomorrow.

