

# **SENATE JOURNAL**

**EIGHTIETH LEGISLATURE — REGULAR SESSION**

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**AUSTIN, TEXAS**

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## **PROCEEDINGS**

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### **SIXTEENTH DAY**

(Tuesday, February 20, 2007)

The Senate met at 10:35 a.m. pursuant to adjournment and was called to order by the President.

The roll was called and the following Senators were present: Averitt, Brimer, Carona, Deuell, Duncan, Ellis, Eltife, Estes, Fraser, Harris, Hegar, Hinojosa, Jackson, Janek, Lucio, Nelson, Nichols, Ogden, Patrick, Seliger, Shapiro, Shapleigh, Uresti, Van de Putte, Watson, Wentworth, West, Whitmire, Williams, Zaffirini.

Absent-excused: Gallegos.

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

The Reverend Robert Long, Bastrop Christian Fellowship, Bastrop, offered the invocation as follows:

Lord God in heaven, as I come before You this morning, I come with thanksgiving for the opportunity to live in Texas. I also want to thank You, Lord, for the Texas Senate: Lieutenant Governor Dewhurst, the Senators, and all the staff that support this body. May they all be guided by Your wisdom and have Your grace to make righteous decisions to benefit the citizens of our state. I pray, God, for Your will and purpose to be done in this Chamber today and throughout the entire legislative session. I pray for everyone present to walk in health, prosperity, protection, and peace. Finally, Lord, I pray for all the people of Texas that are represented by these Senators, may You continue to bless them and the great State of Texas. In Your name we pray. 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.

### **LEAVE OF ABSENCE**

On motion of Senator Whitmire, Senator Gallegos was granted leave of absence for today on account of illness.

**CO-AUTHOR OF SENATE BILL 5**

On motion of Senator Deuell, Senator Brimer will be shown as Co-author of **SB 5**.

**CO-AUTHOR OF SENATE BILL 105**

On motion of Senator West, Senator Shapiro will be shown as Co-author of **SB 105**.

**CO-AUTHOR OF SENATE BILL 168**

On motion of Senator Ellis, Senator West will be shown as Co-author of **SB 168**.

**CO-AUTHOR OF SENATE BILL 247**

On motion of Senator Ellis, Senator West will be shown as Co-author of **SB 247**.

**CO-AUTHOR OF SENATE BILL 252**

On motion of Senator Estes, Senator Uresti will be shown as Co-author of **SB 252**.

**CO-AUTHOR OF SENATE RESOLUTION 255**

On motion of Senator Shapiro, Senator Estes will be shown as Co-author of **SR 255**.

**CO-AUTHORS OF SENATE RESOLUTION 263**

On motion of Senator Van de Putte, Senators Hinojosa and Uresti will be shown as Co-authors of **SR 263**.

**PHYSICIAN OF THE DAY**

Senator Shapiro was recognized and presented Dr. Christopher Lawrence of McKinney as the Physician of the Day.

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

**GUESTS PRESENTED**

Senator Brimer was recognized and introduced to the Senate a delegation of citizens from Mansfield representing Mansfield Day at the Capitol.

The Senate welcomed its guests.

**GUESTS PRESENTED**

Senator West was recognized and introduced to the Senate sixth-grade students from Pearl C. Anderson Middle Learning Center in Dallas, accompanied by their teachers and sponsors.

The Senate welcomed its guests.

**MESSAGE FROM THE HOUSE**

HOUSE CHAMBER

Austin, Texas

February 20, 2007

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:**

**SJR 13**, Proposing a constitutional amendment authorizing the legislature to provide for a reduction of the limitation on the total amount of ad valorem taxes that may be imposed for public school purposes on the residence homesteads of the elderly or disabled to reflect any reduction in the rate of those taxes.

(Amended)

Respectfully,

/s/Robert Haney, Chief Clerk  
House of Representatives

**SENATE RESOLUTION 255**

Senator Shapiro offered the following resolution:

WHEREAS, The Senate of the State of Texas is pleased to join the citizens of Collin County in proclaiming Tuesday, February 20, 2007, Collin County Legislative Day; and

WHEREAS, Collin County was created from Fannin County in 1846 and was named for pioneer settler Collin McKinney, a signer of the Texas Declaration of Independence; located in Northeast Texas, the county was once the home of the Caddo Indians; and

WHEREAS, Collin County is famous for its rich, black clay soil and is a well-known producer of wheat, hay, sorghum, and cotton; timber, beef cattle, horses, and the dairy industry are the county's major sources of income; and

WHEREAS, Over the years, in spite of industrial development and population growth, the county has managed to preserve its natural habitats and historical sites; today, this attention to the area's amenities is rewarding to citizens and tourists alike; they can delight in the restored Old Collin County Post Office, a number of historically preserved homes, the McKinney Historical District, and the Heard Natural Science Museum and Wildlife Sanctuary; and

WHEREAS, The county offers first-rate recreational opportunities, such as fishing and water sports at Lake Lavon; in addition, McKinney, the county seat, is home to a trade center, a fashion outlet, museums, the Bolin Wildlife Exhibit, and Wilson Creek Park; and

WHEREAS, The City of Plano is a growing commercial and financial center, as well as the headquarters of a number of manufacturing companies; moreover, it has an award-winning park system, a farmers' market, and a premier 54-hole miniature golf course; the city annually hosts a balloon festival and is known as the "Balloon Capital of Texas"; and

WHEREAS, Collin County is a place of natural beauty and rural charm, as well as an area of fast growing cities and communities, and residents deserve to be proud of their county's many assets; now, therefore, be it

RESOLVED, That the Senate of the State of Texas, 80th Legislature, hereby express appreciation to the people of Collin County for their many contributions to our state and extend best wishes to them on this special day; and, be it further

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

**SR 255** was read and was adopted without objection.

#### **GUESTS PRESENTED**

Senator Shapiro, joined by Senator Estes, was recognized and introduced to the Senate Collin County Judge Keith Self, Collin County Commissioner Jack Hatchell, District Judge Greg Brewer, and Judge Corinne Mason, accompanied by a delegation of citizens from Collin County.

The Senate welcomed its guests.

#### **SENATE CONCURRENT RESOLUTION 15**

The President laid before the Senate the following resolution:

WHEREAS, The Legislature of the State of Texas takes great pride in recognizing Houston native Vincent Paul Young, Jr., of the Tennessee Titans for his outstanding season in the National Football League and in paying tribute to him for winning the Associated Press Offensive Rookie of the Year Award; and

WHEREAS, After leading The University of Texas Longhorns to the 2005 national championship title, Vince Young was the third overall pick in the 2006 National Football League draft; he took over as the Titans' starting quarterback in the fourth week of the season and quickly became the star player of one of the strongest rookie classes in National Football League history; and

WHEREAS, A fearless athlete who is noted for his outstanding talent and tenacity, Vince was the driving force behind the Tennessee Titans' turnaround from an 0-5 record to open the season to an 8-8 final season record, leading the team through a six-game winning streak that included a spectacular overtime victory in his hometown; and

WHEREAS, Famous for his great speed, as well as his accurate arm, Vince became the first rookie quarterback in the Super Bowl era to rush for more than 500 yards in a season; the combination of his spectacular big plays and his single-minded will to win allowed him to become the second quarterback ever to win the Offensive Rookie of the Year Award in the award's 49-year history; and

WHEREAS, A dynamic leader and a champion since his days at Madison High School in Houston, Vince has the ability to rally players around him and inspire their spirit and performance; his outstanding rookie season is certain to be a springboard to even greater success in the future; now, therefore, be it

RESOLVED, That the 80th Legislature of the State of Texas hereby commend Vincent Paul Young, Jr., for his extraordinary achievements and leadership on the football field and extend congratulations to him on winning the Associated Press Offensive Rookie of the Year Award; and, be it further

RESOLVED, That a copy of this resolution be prepared for him as an expression of high regard from the Texas Legislature.

ELLIS

**SCR 15** was again read.

The resolution was previously adopted on Wednesday, February 14, 2007.

#### **GUESTS PRESENTED**

Senator Ellis was recognized and introduced to the Senate Vincent Paul Young, Jr., the Associated Press National Football League Offensive Rookie of the Year, who briefly addressed the Senate, accompanied by Major Adams, Jesse Cooper, Keith Young, and Mike Mu.

The Senate welcomed its guests.

#### **MOTION IN WRITING**

Senator Whitmire offered the following Motion In Writing:

Mr. President:

I move that the President be authorized to appoint a committee of five Members to escort the Chief Justice to the Joint Session.

WHITMIRE

The Motion In Writing was read and was adopted without objection.

Accordingly, the President appointed the following Committee to Escort the Chief Justice: Senators Wentworth, Chair; Duncan, Ellis, Seliger, and Watson.

#### **SENATE RESOLUTION 299**

Senator Hinojosa offered the following resolution:

WHEREAS, The Senate of the State of Texas is pleased to welcome the Texas Association of Fairs and Events delegation to Austin for Texas Fair and Event Day at the Capitol; and

WHEREAS, The Texas Association of Fairs and Events has been serving the fair and special events industry in Texas for more than 80 years and is celebrating its history of service this year with a Fair and Event Day at the Capitol on Tuesday, February 20; and

WHEREAS, For more than 100 years, fairs have annually showcased Texas' finest agricultural products and technology and have provided entertainment, educational, and recreational opportunities for people of all ages; and

WHEREAS, Fairs are held throughout Texas each year to advance and promote the education of Texas youths and life values; they help to develop responsible and informed citizens, particularly those in 4-H, Future Farmers of America, and Future Homemakers of America, by providing healthy competition through an unequalled forum of exhibits in arts, livestock, horticulture, and agriculture; and

WHEREAS, Fairs in Texas contribute millions of dollars annually to Texas youths through scholarships, premiums, and auction proceeds; and

WHEREAS, There are also more than 200 events held in Texas that promote and develop the tourism industry and commerce and provide the public with an environment rich in entertainment choices, educational opportunities, and recreational pursuits; now, therefore, be it

RESOLVED, That the Senate of the State of Texas, 80th Legislature, hereby welcome the members of the Texas Association of Fairs and Events delegation and extend best wishes to them; and, be it further

RESOLVED, That a copy of this Resolution be prepared for the Texas Association of Fairs and Events delegation as a memento of this special occasion.

**SR 299** was read and was adopted without objection.

#### **GUESTS PRESENTED**

Senator Hinojosa was recognized and introduced to the Senate representatives of the Texas Association of Fairs and Events: Steve Poynor, 2nd Vice-president, and Immediate Past President Jana Grisham.

The Senate welcomed its guests.

#### **GUESTS PRESENTED**

Senator Van de Putte was recognized and introduced to the Senate a delegation of students from Saint Mary's University in San Antonio.

The Senate welcomed its guests.

#### **SENATE RESOLUTION 256**

Senator Shapiro offered the following resolution:

WHEREAS, The Senate of the State of Texas is pleased to recognize Jennifer O'Loughlin-Brooks, who has received the 2006 Texas Professor of the Year award from the Carnegie Foundation for the Advancement of Teaching and the Council for the Advancement and Support of Education; and

WHEREAS, Professor O'Loughlin-Brooks joined the Collin County Community College faculty in 1995 and became a full-time professor in 2002; she brings excellence to the classroom and is especially noted for her commitment to research and her leadership in the national psychology honor society, Psi Beta; and

WHEREAS, She created and taught the first honors general psychology course at Collin County Community College and helped create the college's first general psychology service-learning philanthropy course; she received the college's exemplary teaching scholarship four times, and she was named Outstanding Professor for the years 2004 and 2006; and

WHEREAS, She earned a bachelor's degree in psychology and speech communications from Texas Christian University in 1991 and a master's degree in experimental psychology from Emporia State University in 1994; she is an associate editor for the *Journal of Psychological Inquiry*, and her work has been highlighted in the *Monitor* magazine published by the American Psychological Association; and

WHEREAS, Jennifer is a dedicated and gifted teacher whose teaching has inspired a love of learning in her students and has encouraged them to continue pursuing higher education; now, therefore, be it

RESOLVED, That the Senate of the State of Texas, 80th Legislatuare, hereby commend Jennifer O'Loughlin-Brooks for her exemplary teaching skills and congratulate her on earning the 2006 Texas Professor of the Year award; and, be it further

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

**SR 256** was read and was adopted without objection.

#### **GUESTS PRESENTED**

Senator Shapiro was recognized and introduced to the Senate Professor Jennifer O'Loughlin-Brooks, 2006 Texas Professor of the Year; Dr. J. Robert Collins, Chair, Board of Trustees, Collin County Community College District; Trustees, Stacy Arias and Mac Hendricks; and Dr. Cary Israel, President, Collin County Community College District.

The Senate welcomed its guests.

#### **GUESTS PRESENTED**

Senator Averitt was recognized and introduced to the Senate a delegation of citizens representing Leadership Cleburne.

The Senate welcomed its guests.

#### **GUESTS PRESENTED**

Senator Eltife was recognized and introduced to the Senate a delegation of citizens from Panola County.

The Senate welcomed its guests.

#### **SENATE CONCURRENT RESOLUTION 22**

The President laid before the Senate the following resolution:

WHEREAS, The University of Houston System, composed of the University of Houston, the University of Houston-Clear Lake, the University of Houston-Downtown, the University of Houston-Victoria, and its two teaching centers, the University of Houston System at Sugar Land and the University of Houston System at Cinco Ranch, is the provider of higher education services to 57,000 students in Southeast Texas and the Coastal Bend region; and

WHEREAS, The University of Houston System service area is home to a quarter of the state's population and generates almost one third of the state gross product; the system has an economic impact of more than \$3 billion for the region each year; and

WHEREAS, Over 220,000 students have graduated from the four University of Houston System institutions, a great majority of whom stay to live and work in Texas, contributing to the economic and social vitality of the state; and

WHEREAS, Several hundred University of Houston System students, members of the faculty and staff, alumni, and friends are traveling to Austin on February 20, 2007, to visit with members of the Texas Senate and the Texas House of Representatives and to express their support for higher education in Texas; now, therefore, be it

RESOLVED, That the 80th Legislature of the State of Texas hereby congratulate the University of Houston System community and declare February 20, 2007, University of Houston System Day at the Capitol; and, be it further

RESOLVED, That copies of this resolution be prepared for University of Houston System Chancellor and University of Houston President Jay Gogue, University of Houston-Clear Lake President William Staples, University of Houston-Downtown President Max Castillo, and University of Houston-Victoria President Tim Hudson as an expression of high regard from the Texas Legislature.

ELLIS  
WHITMIRE

**SCR 22** was read.

On motion of Senator Ellis and by unanimous consent, the resolution was considered immediately and was adopted by a *viva voce* vote.

All Members are deemed to have voted "Yea" on the adoption of the resolution except as follows:

Absent-excused: Gallegos.

#### **GUESTS PRESENTED**

Senator Ellis, joined by Senator Whitmire, was recognized and introduced to the Senate a delegation representing University of Houston System Day at the Capitol.

The Senate welcomed its guests.

#### **SENATE RESOLUTION 296**

Senator Deuell offered the following resolution:

WHEREAS, The Senate of the State of Texas is pleased to join the citizens of the Town of Sunnyvale in celebrating February 20, 2007, as Sunnyvale Day at the Capitol; and

WHEREAS, Located 15 miles east of downtown Dallas, Sunnyvale is situated on 10,384 acres of rolling plains and offers the amenities of city life and the charm of country life; and

WHEREAS, The town is bordered on the north and west by the suburbs of Mesquite and Garland, where fine restaurants, shops, and entertainment establishments abound; it also borders the sprawling, pastoral land of Kaufman County and the serene waters of Lake Ray Hubbard; and

WHEREAS, Lake Ray Hubbard, a 22,745-acre reservoir, forms a natural boundary to the east, and recreational activities on the lake include sailing and bass fishing; recreational facilities in the town include parks, tennis courts, and a hike and bike trail; and

WHEREAS, The Town of Sunnyvale is a vital community and its residents look forward to a bright future; now, therefore, be it

RESOLVED, That the Senate of the State of Texas, 80th Legislature, hereby commend the citizens of the Town of Sunnyvale for their contributions to our state and extend to them best wishes for an enjoyable Sunnyvale Day at the Capitol; and, be it further

RESOLVED, That a copy of this Resolution be prepared for the citizens of the Town of Sunnyvale as a memento of this occasion.

**SR 296** was read and was adopted without objection.

#### **GUESTS PRESENTED**

Senator Deuell was recognized and introduced to the Senate a delegation of citizens from Sunnyvale representing Sunnyvale Day at the Capitol.

The Senate welcomed its guests.

#### **GUEST PRESENTED**

Senator West was recognized and introduced to the Senate television talk show host Montel Williams.

The Senate welcomed its guest.

#### **MESSAGE FROM THE HOUSE**

HOUSE CHAMBER

Austin, Texas

February 20, 2007

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 84, Welcoming Leadership Kerr County to the State Capitol.**

Respectfully,

/s/Robert Haney, Chief Clerk  
House of Representatives

#### **MOTION TO ADJOURN**

On motion of Senator Whitmire and by unanimous consent, the Senate at 11:31 a.m. agreed to adjourn, upon conclusion of the Joint Session, until 11:00 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 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 11:31 a.m.

The Honorable David Dewhurst, President of the Senate, 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; Duncan, Ellis, Seliger, and Watson on the part of the Senate, and Representatives Hartnett, Chair; Gonzales, Goolsby, Mallory Caraway, and Riddle on the part of the House.

The Honorable David Dewhurst at 11:38 a.m. 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 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 biennial State of the Judiciary Address, one of the unique privileges afforded the Chief Justice of Texas. It provides an occasion for an independent branch of government to speak directly to the legislative and executive branches about ideas for improving the administration of justice in our great state. The presence this morning of Lieutenant Governor Dewhurst, Speaker Craddick, and Governor Perry is testament to the respect that the Legislature and the executive bestow on our judiciary.

The state of our judiciary is strong. It is strong because of the public servants sitting before me, judges who have devoted their lives to ensuring that Texans have a fair and impartial forum to resolve grievances, who insist that the guilty be convicted and the innocent freed. It is strong due to the leadership of the public servants sitting behind me. Last session, the Governor, concerned that our best and brightest judges could no longer afford to serve, called for an increase in judicial compensation. The Speaker and Lieutenant Governor, the House and the Senate, ushered in a judicial pay increase that has extended the tenure of our most talented judges.

In order to maintain the strength of our judicial system in the years and decades to come, we must begin to consider what changes may be required to meet the evolving needs of our state. I urge you, as legislators and policymakers, and you, as citizens and opinion leaders, to take a hard look at every aspect of our judicial system—its structure, its funding, its effectiveness at meeting our citizens' needs—to ensure that our judicial system remains strong and reliable well into the future.

*The Structure of the Judiciary*

What will the structure of the judiciary look like in the next 10 to 20 years? If current trends continue, only a small fraction of the courts' workload will include traditional jury trials. Although the number of civil cases filed in our trial courts has steadily increased in recent years, the number of jury trials has decreased as parties insist on the right to arbitrate their claims. Growing numbers of civil litigants are turning away from the court system to resolve their disputes this way, in private, without judges or jurors. They opt out of our courts because they believe the private sector offers a simplified, streamlined process, a quick resolution of their disputes at an efficient price, and a decision maker with specialized experience.

When citizens flee our judicial system, however, we lose the public component of justice. The courts of Texas are open and accessible. Cases that are litigated in our courts, even those involving private conflicts, often affect public interests: jobs, the environment, technological or medical development, land use, a stable legal environment promoting investment in the Texas market. An open court system ensures that the people of Texas benefit from a full public airing of the issues, and it allows innovations and solutions learned from today's cases to help resolve tomorrow's disputes. A deliberate progression in the law ensures that similar cases are treated similarly and that litigants can count on fair and even-handed justice. And when the law does change, court decisions evolve with that change in a principled and considered manner. Careful application of the law at the trial level and a guaranteed right to appellate review allow the judicial system to avoid arbitrary results.

I have no doubt that private dispute resolution plays a valuable role as an alternative to the traditional justice system, but there are hidden costs. The outcomes in a private system need not be consistent, because there is no public record of the proceedings and therefore no requirement that similar cases yield similar results. When a significant error is committed in a private setting, there is little hope of correcting the resulting injustice because appellate review is virtually nonexistent. And without appellate review, there is no mechanism to resolve varying and contradictory interpretations of the law. Finally, a privately litigated matter may well affect public rights. Its resolution may ultimately harm the public good or, because the decision is secret, impede an innovation to a recurring problem, much to the detriment of Texas citizens.

Of course, litigants will always have the right to seek private dispute resolution, but we should take care to make the court system responsive to people's needs so that we do not lose the benefit of a vibrant public court system, one that can provide justice at a fraction of the private cost and can ensure that the state maintains a principled and public development of the law. I therefore recommend that the Legislature consider ways in which the structure of our judicial system may be modified to incorporate the benefits of private dispute resolution while still maintaining the advantages of our public judicial system.

What would such structural changes look like? It may be time to update the statutory framework for the state's trial courts. Texas' patchwork court system has developed over many decades, resulting in a current structure that has gone from elaborate to Byzantine. Some counties share a multicounty district court, while others have multiple districts within the county. And some counties are a part of more than one district, creating a shifting target for litigants who may not know which court's rules prevail. Overlapping geographical jurisdiction creates confusion for litigants and increases the risk of conflicting rulings in a single area. It is time to consider reapportioning the judicial districts to achieve greater consistency. The Texas Constitution provides a mechanism by which representatives from the three branches of government can work together to address reapportionment. It is time to invoke it.

The Legislature should consider other ways to simplify the current trial court system. For example, it is worth examining whether Texans are best served by the current and often redundant complex system of county courts-at-law, district courts, and statutory probate courts, or whether streamlining some of these trial courts may create a simpler system.

Although civil jury trials have been declining in certain types of cases, this has not been true across the board. Resources previously committed to jury trials in cases overtaken by private dispute resolution could be reallocated to focus on areas where there has been no such decline. The Legislature should consider creating more specialization in the district courts, allowing them to focus exclusively on family law issues, business litigation, mass tort litigation, or criminal trials. Family law cases, for example, have grown steadily throughout the last decade. Concentrating our efforts there will help hasten a child's adoption, assist courts in the quick resolution of custody battles, and place more resources at the hands of court personnel whose mission it is to place children in safe and loving households.

Other types of specialization are also possible. More than a dozen other states have adopted specialized business courts to handle the complex commercial litigation docket. These states have found that adopting a specialized docket creates greater judicial expertise, enhances procedural innovation and consistency, and reduces the burden on nonspecialized courts by removing these time consuming cases from their dockets. The Legislature has already taken the first step by creating multidistrict litigation

procedures. These procedures could be expanded to include other complex litigation. Greater specialization may be one way to ensure that the court system remains responsive to the public's needs, both by concentrating resources where they are most needed and by developing specialized expertise in the public court system that can compete with what is currently offered in the private sector.

These ideas will require further study; in the next biennium, legislative committees may choose to explore these issues in greater depth. I am confident that, together, we can develop a system to serve the needs of each and every litigant.

*Ensuring Justice for our Most Vulnerable Citizens*

Another challenge facing the judicial system is the need to keep justice accessible to all. In the last biennium, the Texas judiciary continued to make strides in reaching out to the state's most vulnerable population: abused and neglected children, persons with mental illness, and the indigent. The Supreme Court appointed a task force to accurately track and analyze child protection cases. The task force has recommended a statewide commission for children and families, and that recommendation has received overwhelming support. Under Justice O'Neill's leadership, and with the collaboration of the best minds and most compassionate hearts in the field, we will soon have a commission that places Texas children first. The judicial branch can play a central role in securing for our children, the future of our great state, a safe and healthy home.

Texas is a national leader in the provision of legal services to the poor. The Supreme Court recently approved a rule that requires lawyers who have accounts generating interest for legal services (known as IOLTA accounts) to place those funds in financial institutions that bear interest rates comparable to other accounts. That one simple change should significantly increase the revenue available for basic civil legal services. In addition, I hope the Legislature will reauthorize the \$65 fee in Senate Bill 168, devoted to legal services, which supports the impressive work of our Access to Justice Commission and Foundation.

There are two crucial areas facing the criminal justice system. One is developing a means to manage the large number of cases involving defendants with mental illness. Estimates show that approximately 15 percent of criminal defendants have been diagnosed with that disease. Although every jail inmate is cross-referenced with the state's mental health database, there currently exists no formal system for jails to notify the courts of a defendant's mental health disorder. As a result of this information gap, a defendant who might be eligible for specialized supervision and treatment may instead be incarcerated. Sharon Keller, Presiding Judge of the Texas Court of Criminal Appeals, has recently created a Mental Health Task Force. I am proud to report that as a result of Judge Keller's and the task force's efforts, the Court of Criminal Appeals has just been selected to participate in a national project to improve our efforts to identify those in

our criminal justice system who are suffering from mental illness and to address, as appropriate to the particular case, the mental health needs of this population.

The second crucial need, one that I also mentioned in my 2005 address, concerns the unfortunate reality that our criminal justice system, on rare occasions, convicts the innocent. I recognize that the convicted often falsely claim to be innocent, but we know, right here in Texas, that some of our inmates have been exonerated by DNA testing. I cannot imagine wasting away in prison for a crime I did not commit. Can you? The Legislature should establish a commission to study ways to free the innocent.

Such a commission would be a strong complement to efforts already underway to ensure that our criminal justice system complies with our constitutional mandate to provide adequate representation for the accused. For that reason, I continue to support funding for public defender programs and the work of Judge Keller's statewide indigent defense program.

#### *Funding the Judiciary*

Funding for indigent defense is part of a larger challenge that the state faces in funding the judiciary as a whole. The state's funding for the entire judicial branch of government is less than four-tenths of one percent of the entire state budget. When considering how much the judicial branch accomplishes and how many people are able to resolve their disputes through our court system each year, it is truly extraordinary how much the court system can accomplish on such limited means. In recent years, however, it has become clear that funding limitations are restricting the court system's ability to dispense justice fairly and efficiently. Ensuring that the judiciary is sufficiently funded would have an insignificant effect on the state's budget overall, but would have a tremendous impact on all the Texas citizens who seek justice through our courts.

Chief Justice John Roberts' annual report on the federal judiciary discussed the importance of judicial compensation at the federal level. He pointed out that a revolving door on the bench can lead to a less effective judiciary. He said: "If judicial appointment ceases to be the capstone of a distinguished career and instead becomes a stepping stone to a lucrative private practice, the framers' goal of a truly independent judiciary will be placed in serious jeopardy."

A revolving-door judiciary is less of a threat to Texas than it was two years ago; the Governor, the Legislature, the business community, and editorial boards all worked together to give the judiciary the first salary increase in several years. That collaborative effort marks the first crucial step toward attracting and retaining experienced judges. It is important that we do not allow the efforts made last session to be eroded in the years to come. Chief Justice Roberts warns of the difficulties that ensue when annual costs rise while salaries remain stagnant for years or even decades. I strongly recommend, therefore, that the Legislature adopt a systematic process for reviewing judicial compensation on a regular basis.

More than half of the states currently benefit from systematic review of judicial salaries. Maryland, for example, established a Judicial Compensation Commission to ensure that highly qualified persons are attracted to the bench and judges may serve without economic hardship. Every four years, the commission reviews judicial salaries and pensions, and submits its recommendations to the Governor and General Assembly. Iowa, Maine, and many other states have similar commissions that make biennial recommendations. Still other states, like New York, recognize the importance of systematic review and are working toward implementing similar programs. We should adopt a similar plan of systematic review that meets the needs of our state. Planning now to systematically address judicial salaries and adjust them as needed to maintain the strength and independence of the judicial branch allows us to avoid operating in crisis mode later. We should take advantage of this opportunity and not allow Texas to be left behind.

*Maintaining Judicial Independence*

Judicial independence is another cornerstone of our democratic system, and in the decades to come, it will be important to maintain a fair and independent court system. Former Chief Justice William H. Rehnquist once said that a judge must be like "a referee in a basketball game who is obliged to call a foul against a member of the home team at a critical moment in the game: he will be soundly booed, but he is nonetheless obliged to call it as he saw it, not as the home crowd wants him to call it." Fair and independent courts rely on that referee instinct. The court system is an integral part of our democratic system and provides an important check and balance in our government. Judges, therefore, have a responsibility to rule fairly, impartially, and in accordance with the law, even if it means calling a foul against the home team.

A proposed constitutional amendment in South Dakota would have turned back the clock more than 400 years to allow aggrieved litigants to sue judges, making judges face civil liability for issuing judgments that are later determined to be incorrect. In Colorado, there was a proposal to impose term limits on judges, and there are other efforts underway in other states and in the nation's capitol that would call into question our founders' vision of a judiciary unaffected by political currents. Had the South Dakota or Colorado proposals been adopted, they would have had a grave impact on the judiciary's ability to perform its essential function as a third, coequal branch of the government. Fortunately, wiser heads prevailed and the proposals were soundly rejected. I am proud that Texas has not seen this level of attack on the judiciary. We must remain vigilant.

Courts have a key role as guardians of individual rights under the Constitution. Maintaining a fair and impartial court system requires an independent judiciary, one that respects the rule of law, and places the rule of law ahead of personal or political considerations. But an independent judiciary is still an accountable judiciary: judges must be accountable to the Constitution, the law, and, in Texas, directly to the people through their

right to vote for judges. Criticism of the judiciary and of particular decisions is an important right, even a responsibility, in our free and democratic system. But unlike constructive criticism, threats of violence and attempts to restructure our government to eliminate or minimize the protections offered by the courts threaten our democracy. We must not allow the rule of law to be subsumed by popular whim, or we will lose the very system that we rely on to protect our constitutional rights.

#### *Conclusion*

The state of the judiciary will remain strong long into the future if we are willing to adapt the current court system to meet the changing needs of Texas. Together the three branches of government can work to ensure that the people of Texas continue to have access to a fair, impartial, accessible, and accountable justice system that resolves disputes, adjudicates guilt, protects our children, and serves the public. Before I conclude, I would ask that all members of the armed forces, past and present, stand. I have spoken a long time this morning, but the reality is that, ultimately, the rule of law, the strength of the judiciary and of our democracy, are secured by these men and women. Let us thank them for their service.

### **HOUSE OF REPRESENTATIVES AT EASE**

Speaker Craddick at 12:06 p.m. stated the purpose for which the Joint Session was held having been completed, the House would stand At Ease pending the departure of its guests.

### **RESOLUTIONS OF RECOGNITION**

The following resolutions were adopted by the Senate:

#### **Welcome and Congratulatory Resolutions**

**SR 234** by Ellis, Commending Partnership for Prescription Assistance for providing patients access to medicines.

**SR 290** by Hinojosa, Congratulating Shirley Reed for being named 2007 Border Texan of the Year.

**SR 292** by Duncan, Recognizing the City of Post on the occasion of its 100th anniversary.

**SR 294** by Hinojosa, Commending all associated with the 31st Annual Hidalgo BorderFest.

**SR 295** by Deuell, Recognizing Kenneth Zuver on the occasion of his retirement from the Mesquite Fire Department.

**SR 297** by Nichols, Recognizing Nacogdoches County and the cities of Athens and Lufkin on their selection as the first Texas Certified Retirement Communities.

**SR 301** by Uresti, Recognizing the Town of Valentine on the occasion of its 125th anniversary.

**SR 302** by Uresti, Recognizing Blue Origin's *New Shepard* spacecraft program and the launch of its first craft, *Goddard*.

**SR 305** by West, Commending the 2006 partners of Amachi Texas and Big Brothers Big Sisters of North Texas for their contributions to young people.

**HCR 84** (Fraser), Welcoming Leadership Kerr County to the State Capitol.

**Official Designation Resolutions**

**SR 280** by Brimer and Harris, Proclaiming February 20, 2007, Mansfield Day at the State Capitol.

**SR 281** by Wentworth, Uresti, Van de Putte, and Zaffirini, Recognizing February 20, 2007, Viva San Antonio Day at the State Capitol.

**SR 304** by Hegar, Recognizing February 28, 2007, as Washington County Day at the State Capitol.

**ADJOURNMENT**

Pursuant to a previously adopted motion, the Senate at 12:06 p.m. adjourned until 11:00 a.m. tomorrow.

