The Philosophical Society of Texas

PROCEEDINGS

1982

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PROCEEDINGS

OF THE ANNUAL MEETING

AT GALVESTON

DECEMBER 3 and 4, 1982

XLVI

AUSTIN

THE PHILOSOPHICAL SOCIETY OF TEXAS

1983

THE PHILOSOPHICAL SOCIETY OF TEXAS FOR THE COLLECTION AND DIFFUSION OF KNOWLEDGE *was founded December 5, 1837, in the Capitol of the Republic of Texas at Houston, by* MIRABEAU B. LAMAR, ASHBEL SMITH, THOMAS J. RUSK, WILLIAM H. WHARTON, JOSEPH ROWE, ANGUS MCNEILL, AUGUSTUS C. ALLEN, GEORGE W. BONNELL, JOSEPH BAKER, PATRICK C. JACK, W. FAIRFAX GRAY, JOHN A. WHARTON, DAVID S. KAUFMAN, JAMES COLLINSWORTH, ANSON JONES, LITTLETON FOWLER, A. C. HORTON, I. W. BURTON, EDWARD T. BRANCH, HENRY SMITH, HUGH MCLEOD, THOMAS JEFFERSON CHAMBERS, SAM HOUSTON, R. A. IRION, DAVID G. BURNET, *and* JOHN BIRDSALL.

The Society was incorporated as a non-profit, educational institution on January 18, 1936, by George Waverley Briggs, James Quayle Dealey, Herbert Pickens Gambrell, Samuel Wood Geiser, Lucius Mirabeau Lamar III, Umphrey Lee, Charles Shirley Potts, William Alexander Rhea, Ira Kendrick Stephens, and William Embrey Wrather. December 5, 1936, formal reorganization was completed.

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The Philosophical Society of Texas

FOR THE 145TH ANNIVERSARY OF THE SOCIETY'S FOUNDING, members and guests journeyed to Galveston for the annual meeting on December 3 and 4, 1982.

The meeting was held in the Hotel Galvez, and the theme of the program was "Texas Courts and Criminal Justice." A reception and dinner was hosted by Dr. and Mrs. William C. Levin at the Learning Resources Center, University of Texas Medical Branch.

President Abner V. McCall presided at the opening session and announced the election of the following new members:

Paul Gervais Bell — Houston
Lauro F. Cavazos — Lubbock
Henry G. Cisneros — San Antonio
Jon Hugh Fleming — Fort Worth
Robert L. Hardesty — San Marcos
Frank W. R. Hubert — College Station
John Patrick Locke — Dallas
Judy Jones Matthews — Abilene
Herbert H. Reynolds — Waco
Roy B. Shilling, Jr. — Georgetown
John Archibald Wheeler — Austin

During the business meeting the following officers were elected: Leon Jaworski, president; Wayne H. Holtzman, first vice-president; Jenkins Garrett, second vice-president. Dorman Winfrey was re-elected secretary and Mary Joe Carroll treasurer. Deaths recorded included Wilmer Brady Hunt and Henry C. Coke, Jr.

Saturday night those in attendance enjoyed a dinner at the Wentletrap Restaurant on the Strand. Members then had the opportunity to make a tour of "Dickens-Evening-on-the-Strand." Sponsored by the Galveston Historical Foundation, the Strand is "an authentic re-creation of a downtown Victorian street and shop scene of the 1840s - 1870s during the holiday season." Good food, beautiful weather, warm hospitality and an outstanding program provided a meeting of high excellence and great enjoyment.

Attendance at 1982 Annual Meeting

Members attending included: Misses Duff, Hartgraves; Mesdames Armstrong, Carpenter, Hill, III, Johnson, Knepper, Randall, Jr., Scott, Symonds; Messrs. Thomas D. Anderson, Bean, Paul Gervais Bell, Bennett, Beto, Blanton, Blocker, Boyd, Caldwell, Cavazos, Edward Clark, Collie, Cooper, Crim, Daniel, Doty, Dougherty, Doyle, Duncan, Fisher, Durwood Fleming, Jon Hugh Fleming, Garrett, William L. Garwood, Gray, Greenhill, Hall, Hanna, Harbach, Hargrove, Harvin, Heinen, Hershey, Hoffman, Holtzman, Jaworski, Kelsey, Harris L. Kempner, Sr., Harris L. Kempner, Jr., Dan E. Kilgore, William J. Kilgore, Kirkland, Law, Levin, Lindsey, Locke, Lovett, McCall, McCorquodale, Maguire, Margrave, Middleton, Mills, Pressler, Ragan, Edward Randall, III, Risher Randall, Reavley, Richardson, Schachtel, Seybold, Shilling, Shirley, A. Frank Smith, Jr., Frank C. Smith, Jr., Teague, Tritico, Vandiver, A. W. Walker, Jr., Ruel C. Walker, Watkins, Wells, Wheeler, Gail Whitcomb, Winfrey, Worden, Wozencraft, James S. Wright, Zachry.

Guests included: Mrs. Thomas D. Anderson, Tobin Armstrong, Mrs. William B. Bean, Mrs. Paul Gervais Bell, Mrs. J. M. Bennett, Jr., Mrs. Jack S. Blanton, Mrs. Truman G. Blocker, Jr., Mrs. Howard Boyd, Mr. and Mrs. Joe Brooks, Robert Brown, Mrs. John Clifton Caldwell, Mr. and Mrs. Robert Calvert, Virginia Carmichael, Mr. and Mrs. Ron Carson, Mrs. Lauro F. Cavazos, Mrs. Edward Clark, Mrs. Marvin K. Collie, Mrs. John Cooper, Mrs. William Crim, Mrs. Price Daniel, Sr., Mrs. Ezra W. Doty, Mrs. J. Chrys Dougherty, Mrs. Gerry Doyle, Beth Duff, Mrs. Charles W. Duncan, Jr., Mrs. Joe J. Fisher, Mrs. Durwood Fleming, Mrs. Jon Hugh Fleming, Mrs. Jenkins Garrett, Mr. and Mrs. Wilmer Garwood, Mrs. John E. Gray, Mrs. Joe Greenhill, John Hamilton, Mrs. Ralph Hanna, Mrs. James W. Hargrove, Mrs. William C. Harvin, Mrs. Erwin Heinen, Mrs. J. W. Hershey, Mrs. Philip G. Hoffman, Mr. and Mrs. C. M. Hudspeth, Eugenia Hunt, Mr. and Mrs. Ron Jackson, Mrs. Leon Jaworski, Mrs. Mavis P. Kelsey, Mrs. Harris L. Kempner, Sr., Mrs. Harris L. Kempner, Jr., Mrs. Dan E. Kilgore, Mrs. William J. Kilgore, Mrs. Thomas H. Law, Mrs. William C. Levin, Mrs. H. Malcolm Lovett, Elizabeth MacNaughton, Mrs. Abner V. McCall, Mrs. Malcolm McCorquodale, Mary McGinn, Mrs. Jack Maguire, Mrs. John L. Margrave, Mrs. Harry J. Middleton, Mrs. Ballinger Mills, Jr., Mrs. Herman Paul Pressler, Jr., Mrs.

Cooper K. Ragan, Mrs. Risher Randall, Mrs. Thomas M. Reavley, Mrs. Hyman J. Schachtel, Babe Schwartz, Marilyn Schwartz, Mr. and Mrs. Irving Schweppe, Lawrence E. Scott, Mr. and Mrs. Herb Seybold, Mrs. William D. Seybold, Mrs. Gloria Shatto, Mrs. Roy B. Shilling, Jr., Mrs. Preston Shirley, Cullen Smith, Mrs. Frank C. Smith, Jr., Mrs. James U. Teague, Mr. and Mrs. Robert Trotti, Mrs. Frank E. Vandiver, Gary Vodicka, Mrs. A. W. Walker, Jr., Mrs. Ruel C. Walker, Mrs. Edward T. Watkins, Mrs. Peter B. Wells, Mrs. John Archibald Wheeler, Mrs. Gail Whitcomb, Emily Whiteside, Mrs. Dorman H. Winfrey, Mrs. Sam P. Worden, Mrs. Frank M. Wozencraft, Mrs. James S. Wright, Mrs. H. B. Zachry.

The week following the meeting, the membership was shocked and saddened to hear of the death on December 9 of Leon Jaworski, newly elected president. An account of the life of this valued member and notable citizen appears in the Necrology section of this *Proceedings*. A second death marking a great loss to the Society was that of Herbert Pickens Gambrell on December 30. Back in 1936, Dr. Gambrell was one of those who participated in the formal reorganization of the Society, served as secretary for some 40 years, edited the *Proceedings,* and served a term as president. Former Society President William A. Kirkland commented: "From the standpoint of the Society, Herbert Gambrell, through his example, had much to do with the high tone of its purposes and its pursuit of them right up to now." And Dr. Rupert N. Richardson observed: "If it could ever be said that one man made an organization, Herbert Gambrell made the Philosophical Society of Texas." Joseph W. McKnight, Herbert's longtime friend and colleague at Southern Methodist University, has prepared the obituary on Herbert in the Necrology section.

A CRISIS IN THE COURTS AND THE TEXAS CRIMINAL JUSTICE SYSTEM

JOE R. GREENHILL

Our president, Dr. Abner McCall, and his program committee were of the view that one of the most critical problems for the consideration of this Society was that of the crisis in our court system, and particularly in the area of criminal justice.

All of us are aware of the magnitude and pervasiveness of crime in the streets, to our homes and property, and all the rest. We want these offenders caught, tried and off the streets, and without delay.

Yet most crimes go undetected. If there is an arrest, the judicial process is slow and seems endless. Our jails and prisons are grossly unprepared to receive and care for those convicted.

The problems are so enormous and so complex as to cause us to wonder whether our criminal justice system, however improved, can cope adequately with the tidal wave of crime.

As Dr. McCall will discuss tomorrow, the answers to many of our problems do not lie in courts and prisons. There are deeper philosophical problems, rooted in the training and discipline of our homes, our churches and synagogues, and in our schools. Much of society has lost traditional values. Law enforcement can do only so much. Many crimes occur because people do not have proper training in their families.

Our nation's system of criminal justice was founded on the expectation that family and religious discipline would be the backbone of public behavior. The police and courts backed up those disciplines. With the system operating today as it does — in almost a vacuum — it cannot succeed. Citizen involvement in the prevention of crime, as well as its detection, is important.

Yet, the problems of the system must be examined and its mechanics improved. This Society, composed of some of our finest and ablest citizens, is a proper forum in which to expose and examine the problems with the hope that long range solutions may be suggested which will result in meaningful action.

Members of this Society have attacked the problem before. In 1954 Mr. Charles I. Francis headed a group of laymen and lawyers seeking to revise the judiciary article of our Constitution.[1]

In 1963 our beloved member, St. John Garwood, wrote his excellent piece, "Judicial Planned Parenthood." He has long been

the champion for removing the judiciary from politics. We are sorry he could not be here.

In 1972 there were major citizens' conferences in Austin and Houston. The Houston Conference was sponsored by the American Judicature Society and financed by the M. D. Anderson Foundation and Houston Endowment, Inc. It heard from Justice Tom Clark, Bob Calvert and me, and many others. Then they asked us to leave, and the citizens forged their own recommendations. They were sound.[2] Such conferences in the future might be the needed catalyst for action. If we wait for the Legislature to act, we can expect little.

Then there was the Calvert Task Force, which preceded the Constitutional Revision and was headed by Chief Justice Robert W. Calvert in 1972-73. The chairman of the Judiciary Section of that Constitutional Revision Commission was a member of this Society, Leon Jaworski.

All of these valiant efforts operated in a public sentiment of apathy. We heard many times the expression, "If it ain't broke, don't fix it."

If I am any judge of the public sentiment, it seems to me that a large number of people now think that "it *is* broke" and "we *need* to fix it."

We repeatedly hear that our system protects the criminal offender, with little or no thought being given to the victims. Respect for law has suffered.

People are sick and tired of being ripped off. We resent being afraid to go out on the streets even in the daytime in many areas. This means that we are, in a sense, prisoners within our homes.

There are more recent lines from the stirring movie "Network" which are more descriptive of the public attitude. You will remember the cry: "We're mad as hell, and we're not going to take it anymore!"

If enough people feel this way, the Legislature will be moved to act and to propose constitutional amendments which will be needed.

Experience teaches us that it takes major events to excite, or even interest, the people in the criminal justice system, or in the structure and competence of the judiciary. If we needed problems and crises, we have them now.

The war on crime, the overcrowding of prisons and jails, and the cost of the prison systems are now major news stories. If they are not on the front page, they are, at least, in the front section; and the editorial writers for the newspapers are busy.

Even with the inefficient system which we now have, we are convicting more people than we can house, and we are paroling more people than we can supervise.

According to a recent article by Jack Maguire,[3] the Republic of Texas began with swift and certain justice. The first criminal code of the young Republic of Texas, he wrote, was designed to prove that breaking the law could be costly to life and limb. The hangman's noose was almost certain for anyone found guilty of treason, murder, arson or rape. Even grand larceny could bring the death penalty. Judges and juries handed out stiff sentences and took no nonsense from defense attorneys.

Cattle thieves who escaped being hanged could expect a minimum of 39 lashes with a bullwhip on their bare backs. As a permanent keepsake, they were usually branded at such place on the body "as the court may direct."

Stringent though these punishments may seem after a century and a half, they reduced serious crime to a bare minimum, and with a minimum of expensive prison facilities. We have now become more "civilized," but we have lost the deterrent to crime. The death penalty, actually carried out, has become a rarity.

In a recent dissenting opinion in "The Candy Man Case," Judge Tom Gee of the Fifth Circuit wrote that the reversal of that case trivialized State criminal procedure; and he expressed the fear that the public would perceive the real rule as meaning that while death sentences may be imposed, they cannot be carried out.[4]

There must be an end to federal courts forever sitting in judgment on final convictions of our state courts. There is more improvement in this area, and we are grateful for it.

Our present options lie in the use of the prison system. We would want the offenders to be brought swiftly to justice; and second, upon a finding of guilty, we want them locked up — and for a very long time.

To accomplish the first objective, we must greatly improve our judicial system and the quality of those who are our judges. To accomplish the second objective, we must be prepared to pay a very large sum for the expansion and operation of our prison system.

Hearings are now going on in Austin on how to accommodate the explosion of our prison population. There are voices who urge shorter prison sentences and alternatives to incarceration. The prevailing view, as I see it, was expressed by the District Attorney of Harris County, John Holmes.[5] He testified that short term action to relieve prison overcrowding would be unpopular with Harris County citizens, who favor a hard line on crimes and criminals. "The public attitude," he says, "is that offenders should be locked up and kept away from society." That is what we are doing.

We have the most populous prison system in the United States, with about 36,000 inmates. There are 11,000 more inmates in the Texas prison system today than there were when the *Ruiz v. Estelle* trial began two years ago. In recent months, the prison population has grown by more than 200 per week.[6] That is the "good news" for those who demand the hard line.

The "bad news" is the staggering cost. That is now front page news.

Many of you know Louis Austin, chairman of the board of Texas Utilities. He is also chairman of the Texas Department of Corrections. He is a fiscal conservative. He and his department are under great pressure from Federal Judge William Wayne Justice, et al., as you know.

Austin's budget request for the prison system for the next biennium to accommodate the requirements of the federal courts is 1.5 billion dollars. That's 1.5 *billion* dollars for new construction, maintenance and operation. *That* will get your attention, and the attention of the public.

Bill Hobby, a member of this Society who sits with the Legislative Budget Board, thought that was too much money. He is quoted as saying that the continued expansion of our prison system is an "absolutely bottomless pit."

Hobby knows that other areas of government also have need for the dollars the State can appropriate. For example, teachers' salaries and other education; and the many social services which are no longer financed by the federal government.

So, the Legislative Budget Board cut Louis Austin's budget request roughly in half. Austin replied that he would feel compelled to lobby "with everyone I can" to have this 1.5 billion dollar request restored. Austin's concluding remark was pertinent to *this* meeting: "It would help," he said, "if more people in this state realized that if they want people locked up, it's going to cost a lot of money."

This body may wish to consider our alternatives. The following are certainly not all of the alternatives which have merit:

1. We can continue with our present criminal judicial system. That means a painfully slow and frustrating operation in which the accused are turned loose by what many people regard as technicalities, only to repeat their crimes.

Some of these "technicalities" appear to many of us to result from an overly strict interpretation of constitutional and statutory safeguards. These safeguards were adopted, however, to protect the people from the excesses of government. Moreover, many of these

"technicalities" occur because some of our state trial judges are not skillful, or attentive enough, to catch them. Criminal defense lawyers are not required, under the present holdings of the Court of Criminal Appeals, to bring them to the attention of the trial court.

This problem could be greatly improved by a different method of selecting judges, and by initial and continuing judicial education.

2. We can appropriate 1.5 billion dollars for our expanded prisons for the next biennium, and further like sums in the future.

3. We can enact statutory mandatory minimum jail sentences for serious crimes to be sure that offenders are not paroled; and we can urge a hard line on paroles.

As chief justice, I appointed two members and three commissioners of the Board of Pardons and Paroles. I never suggested action as to any individual prisoner; but my appointees did visit with me, from time to time, on the exercise of their offices. A few years ago, they were subject to pressure to "hang tough" on paroles. More recently, in view of the rulings of some federal courts, they are subject to pressure to be liberal in order to reduce prison population.

4. We can strengthen our law enforcement branch and convict the great number of violators who go undetected. This area includes offenders dealing with drugs, rapes, robberies and thefts. I would guess that this step would be greatly desired even if it is expensive and does increase prison population.

To reduce our prison population, we can:

1. Decriminalize some offenses. This would include certain drug-related problems. I would guess that most people would oppose this step.

2. We can enact a statute prescribing uniform sentencing for most offenses, and we could have the judge, rather than the jury, fix the penalties. This has a nice ring of "equal justice for all," and is regarded in some states as leading to shorter sentences, thus reducing prison population.

3. We can attempt to incarcerate, and thus remove from society, mainly persons who can be targeted as *violent* and *repeat* offenders against our *persons*. Offenders against our persons are distinguished from offenders against property. The idea is that we should keep locked up those who rob, assault, murder and rape because they are dangerous to society. On the other hand, those who are guilty of forging, theft by pretext, and certain other crimes among consenting adults, are less of a threat. This is an idea which is being explored by the State of New York, under Chief Justice Lawrence Cooke.[1]

4. We can speed the release of prisoners, not regarded as threats to our persons, to "halfway houses." These are places where offenders are supervised on conditional parole. Texas is trying this now. The project is far from flawless, but it is regarded as an effective tool.[8]

5. We can utilize neighborhood justice centers. These are informal tribunals to which people can go voluntarily, or be sent by a judge, to work out their problems with their neighbors and members of their families *before* there is violence, or after there has been minor violence. A large number of murders occur, as crimes of passion, between members of a family, persons who are neighbors, or persons who at least know each other. Within the last two weeks, a man in Austin was given a life sentence for killing a neighbor over a barking dog.

Many offenses could be obviated, or worked out amicably, if there was a place to go or to be sent. Houston has such a center; and it is probable that many of you contributed to its establishment. They should be publicly financed.

6. And finally, let me mention some of the needed improvements in the judiciary.

The third branch has long suffered from indifference and neglect. In Texas the third branch receives only about one-third of 1 percent of the money appropriated at each legislative session. That is, if the judiciary was given a dollar for each $100 given the other two branches, it would have to give back 65 cents in change.

Chief Justice Burger suggests that people spend more money on peanut butter than is appropriated to the federal judicial system.

As George Beto will tell you tomorrow, crime *does* pay. The odds of apprehension and conviction are small. Even if there is arrest, the time from indictment to prison is disgracefully long; and the odds of reversal of a conviction are pretty good.

7. We can free the federal courts of a large body of their cases, and thus speed their disposition of other cases.

Both the state and federal government have speedy trial laws; i.e., laws which are designed to guarantee a defendant a trial within six months. In the federal system the trial judge *must* give preference to criminal cases. This means that your civil case cannot be reached until the criminal docket is current.

There are so many federal criminal cases, including a mountain of drug cases, that some federal district judges rarely get to civil cases. Meanwhile, interest is running on very large sums being tied up. As to such civil cases, Chief Justice Burger fears that the federal

system could break down before the end of the century.[9] In a recent speech at New York University, he recommended some of the alternatives mentioned here and the removal of civil cases between persons of different states from the federal system. These "diversity" cases could be handled at least as well in the state courts; and the Conference of Chief Justices (of the state supreme courts) expressed a willingness to accept the cases.

This would relieve the federal courts of about one-fourth of its docket; and it would free the federal courts to act more swiftly on its other important cases.

It would also mean that we need to get our state court system in good working order to handle the added cases.

IMPROVEMENTS IN THE TEXAS SYSTEM

The improvement of the Texas judicial system divides itself into three major areas.[10] Much of this will be discussed by our speakers tomorrow; so I will not dwell on them. They are:

1. court organization, with as nearly a unified system as possible;
2. central court administration; and
3. the selection and removal of judges.

UNIFIED JUDICIARY

Texas does not have a unified judiciary. We have many more judges in Texas with about 15 million people than all of England with 60 million people. But our judges are not where the action is.

We began with one district judge in Houston and other district courts throughout Texas. As our population grew, we had *no* consolidation of district courts. We just kept adding new judges and new courts. There has never been a redistricting since 1876. We desperately need one. This should require a constitutional amendment to provide a Judicial Redistricting Board, to act independently of the Legislature.

Our present proliferation of courts is not only a highly inefficient system, it is expensive. Each facility and judge, with his or her retirement benefits, requires a substantial appropriation. Each judge who serves 10 years and draws judicial retirement benefits for 14 years costs the state about $640,000. This fact alone should give impetus to reorganization. The 1972 Houston Citizens Conference recommended a reorganized and unified judiciary.

Our bifurcated system, with a separate Court of Criminal Appeals, is a monstrosity. Except for Oklahoma, and an intermediate court

in Alabama, we are the only state in the English-speaking world which retains it. That system has been the major cause of delay in the disposition of criminal appeals.

The only bright spot is the recent adoption of a constitutional amendment giving Courts of Civil Appeals criminal jurisdiction. Already some Courts of Appeals are current with their criminal docket. In the Houston Courts of Appeals, there are now 800 docket slots open for criminal appeals. The source of the delay is now the court reporter. We must adopt, and perfect, computer aided transcription of court records.

COURT ADMINISTRATION

We are the only populous state with no central court administration. No business could operate with the antiquated system we have, and court business is now big business.

Doctors used to administer hospitals. They found trained administrators to be more efficient, and it freed doctors for medicine and surgery. The same is true for courts judges.

No one has the power to move judges where they are needed in Texas. By contrast, the highest court of New York, through its chief justice, can bring judges into New York City to clean up the docket. Their system is working.

Los Angeles County has only one district court. The judges and cases are assigned as needed.

Allen E. Smith, former dean of the Missouri Law School who also taught at the University of Texas Law School, wrote two articles about the Texas judicial system. One is entitled "Business Without Management."[11] The other is "A Man From Mars Looks at the Texas Judicial System," — in amazement.[12]

Some 80 years ago one of the giants in our field, Roscoe Pound, dean of the Harvard Law School, urged courts to adopt organizational reforms and business-like methods which would reduce the causes of popular dissatisfaction with the administration of justice.

"Our administration of justice," he wrote in 1906, "is not decadent, but it is archaic. It, and our procedures, are simply behind the times. Judicial power is wasted by rigid districts, or courts, or jurisdictions, so that business may be congested in one court while judges in another are idle; . . . and the result is uncertainty and expense."

This is true today in Texas. Our system has no management or guide except that of friendly persuasion from the chief justice, and the modest powers of the nine presiding judges.

Each judge, and there are about 3,000 in Texas, is separately elected, is his or her own boss, and is answerable only to the electorate. It is little wonder that we are so inefficient.

JUDICIAL SELECTION

And finally, our biggest problem is the method of selection of our judges. Judges Calvert and Will Garwood, and Tobin Armstrong, will speak on this tomorrow.

The greatest tragedy is that we are not attracting the best lawyers to the bench. They can do far better in their private practices.

No judicial system will function properly without great or at least good judges. Our success will depend largely on the character, personality and intellectual fidelity of the men and women who preside over our courts.

There are many fine judges in Texas, but there are many who are not. With our blind political elective system, the quality of our judges is certainly not improving. The situation is deteriorating before our eyes and must be changed. We must get the judiciary out of politics.

The nonpartisan election of judges would help, and I will support it. Many states, which have come to merit selection, first went to nonpartisan elections.

Merit selection, with the right of the public to remove the judge, is far preferable. Most states use some form of this method now. Only ten states, mainly in the South, continue to require partisan election of judges.

Samuel Johnson wrote that Sir Thomas More "was the person of the greatest virtue these islands ever produced." A distinguished barrister of Lincoln's Inn, a close friend and companion of Erasmus and a philosopher himself, More was appointed chancellor by Henry VIII. As a jurist he refused "all the customary gifts" and abjured the interference of politics with the course of justice.

But such integrity collided with Henry's ambitions. He had named More to be chancellor, confident of the latter's rulings in accord with his royal political plans. More, however, adhered to the rule of law. Because of his insisting that even the King was under the law, More was forced from the court and ultimately to the Tower and the block, with his head impaled on London Bridge.

A similar encounter between James I of England and Sir Edward Coke resulted in Coke's banishment."

This fierce courage and commitment of an independent and non-political judiciary has stood as a beacon for centuries. Texas has been slow to see the light of that beacon. If I may borrow a phrase of a great American poet, we have "miles to go before we sleep." To which I would add, "and the hour already is late."

CONCLUSION

In summary, a judicial system is effective:

1. When it is fairly administered without delay;
2. By competent judges;
3. Operating in a modern and unitized court system;
4. Under simple and effective rules of procedure, and with good common sense.

On a scale of 1 to 10, Texas would struggle to get a 5 or a 6.

It is my hope that each of you will be interested and will assist in bringing our criminal justice system into the 20th century. Indeed, the thought and leadership are needed to plan for a system for the year 2000.

We are at such a state of crisis that we have the opportunity for public support and should have legislative action. Those who have gone before us, and who have battled gallantly for improvement, did not have the sense of public outrage which we now have. Let us hope that *this* time, or within the foreseeable future, needed reforms may be accomplished.

May God give us the wisdom and the strength.

FOOTNOTES

[1]Francis, "The Judiciary Article Should Be Modernized," 17 *Texas Bar Journal* 691 (1954).

[2]27 *Texas Bar Journal* 299 (1964).

[3]Maguire, "Talk of Texas," *Austin American-Statesman*, November 28, 1982.

[4]*O'Bryan v. Estelle*, (not yet published). Slip opinion 82-2422, Oct. 27, 1982.

[5]*The Houston Post*, November 24, 1982.

[6]*The Dallas Morning News*, November 28, 1982, Article by Richard Fish.

[7]*Criminal Justice System Studies Sentencing Only Worst Offenders* by Tamar Lewin of the *New York Times*, reprinted in *Dallas Morning News*, November 21, 1982.

[8]"Texas Prisons, The Population Problem: Halfway Houses Called Effective Tool," *Dallas Morning News*, November 28, 1982.

[9]See also James Kilpatrick's syndicated column of November 27, 1982, "Burger Sets Forth Immodest Proposals."

[10]Greenhill and Odam, "Judicial Reform of Our Texas Courts—A Re-examination of Three Important Aspects," 23 *Baylor Law Review* 204 (1971).

[11]44 *Texas Law Review* 1142 (1966).

[12]32 *Texas Bar Journal* 19 (1966).

[13]J. Edwin Smith, *The Houston Lawyer*, December, 1982.

SELECTION OF JUDGES

ROBERT E. CALVERT

August 5, 1969 was a red-letter day in Texas history, but it has come and gone each year since without a murmur of celebration. On that day in 1969, the people of Texas went to their polling places and adopted a constitutional amendment repealing 44 outmoded and archaic sections of our 1876 Constitution.

Unfortunately, the drafters of the amendment failed to include a number of other provisions which were equally archaic. For example, there is the provision for election by the counties of Inspectors of Hides and Animals; the provision for county Poor Farms, and the provision authorizing the governor "to call forth the militia to . . . repel invasions, and protect the frontier from hostile incursions by Indians or other predatory bands." Although those provisions are archaic and outmoded, they are also harmless. I know of no county which elects an Inspector of Hides and Animals, and no county which, in this day of food stamps and social security, still has a poor farm for indigents. The last time I remember a governor calling out the militia was 50 years ago to shut down East Texas oil wells.

However, there is another archaic provision in our constitution which is *not* harmless and which, in the opinion of many concerned persons, should be rooted out as soon as possible. It is the provision in sections 3, 4, 6, 7 and 30 of Article 5, requiring popular election of appellate and major trial court justices and judges. For 35 years concerned segments of the judiciary and the legal profession have been starting and stopping, pushing and pulling, puffing and gasping, toward a solution of the problem, all to no avail.

At first, the plan was to abandon altogether the popular election system for selecting appellate court judges. A supreme court justice from Missouri was brought in on July 2, 1948 to explain the "Missouri Plan" of selection to a luncheon group of 450 Texas lawyers and their guests. For the benefit of those present who are not familiar with the plan, it is basically a plan for filling vacancies in judicial office: A commission of lawyers and laymen appointed as may be provided by law, nominates a limited number of persons, usually three, from which nominees the governor selects an appointee who, after a fixed term in office, will have his name appear on a

nonpartisan general election ballot for retention or rejection. If retained, the judge serves another term. If rejected, the vacancy is filled as before. This system has become known in recent years as the "merit system" of selection.

In December 1948, a special State Bar committee of 21 outstanding lawyer members, chaired by former governor Dan Moody, recommended adoption of the merit system for selecting all appellate judges.

Robert G. Storey, president of the State Bar of Texas, wrote in his monthly editorial in the February 1949 *Texas Bar Journal* that one of the most persuasive arguments for the plan was that "it removes the selection of judges of our Appellate Courts from politics," and he quoted from a Massachusetts judge as follows:

> . . . even a politician may make a good judge if he will cease being a politician when he goes on the bench, but it is a great handicap to have a system which *requires* a judge to be a politician to remain a judge.

In 1951 Representative S. J. Isaacs of El Paso introduced a constitutional amendment resolution in the House of Representatives providing for merit selection of all judges. It was endorsed by the Texas Civil Judicial Council, and Supreme Court Justice W. St. John Garwood became its most vocal and active supporter; but it was referred to a subcommittee and never again saw the light of day.

By this time, there had been an awful lot of unrewarded pushing and pulling. Now came a long gasp for breath which lasted until 1963.

In February 1963, some two years after taking office as chief justice of the Texas Supreme Court, and while still recovering from the embarrassment of begging for campaign funds in seeking the office, I wrote an article for the *Bar Journal* advocating adoption of the merit system for selecting all appellate court judges; but, if I thought the Legislature was going to rush to implement my recommendation, I was mistaken. The members of the legal profession who wanted judges to be "accountable" to them on election day were far more effective as lobbyists than the reformers.

There was another long gasp for breath.

In 1969-70 a committee of the Judicial Section of the State Bar approved two proposals, one for the merit system for selecting appellate judges and the other for nonpartisan election of trial judges. Those proposals were all but ignored by the Legislature in spite of the fact that Chief Justice Joe Greenhill, in a speech delivered at Baylor University, had entered the fray for changing to the merit system of selection.

In 1972 fourteen lawyers and judges were invited to participate in a complete revision of the judicial article of the Constitution, and the group adopted the title of Chief Justice's Task Force. By this time we were ready to compromise. The revised article 5 proposed by the Task Force included a provision for nonpartisan election of all judges with an alternative provision for merit selection of appellate judges. A referendum of members of the State Bar resulted in a vote of 42 percent for nonpartisan election, 38 percent for merit selection of appellate judges, and only 20 percent for retaining the present system of partisan election. The proposals died a natural death in the Legislature.

In the meantime, the Legislature created a constitutional revision commission of 37 members. The commission's article on the judiciary provided for the merit system of selecting appellate judges with an alternative for selection on a nonpartisan ballot, and for nonpartisan election of district and county judges. These recommendations were dumped in 1974 by the constitutional convention which was made up of legislators.

Once again the forces for change took a deep breath and went into hibernation for seven years.

Despairing of all hope for the merit system of selecting judges at any level, the Legislative Committee of the Judicial Section proposed to the Regular Session of the 67th Legislature, 1981, that all judges and justices, other than constitutional county judges, justices of the peace and municipal judges, be elected on nonpartisan ballots. The bill was reported favorably by a senate committee but it died on the senate calendar. The Judiciary Committee of the House of Representatives put the bill in a subcommittee where it remained in cold storage and died with the session's ending.

1980 was the year of the locust for sitting judges up for re-election on partisan ballots in Dallas and Harris counties. In Dallas County, down went Democrat Joan Winn, a black woman district judge, and Democrat Joe Bailey Humphreys, a court of appeals justice with a long record of able service as a district and appellate judge, both appointed by Governor Briscoe. And in Harris County, down went Lynn Hughes, a Republican district judge appointed by Governor Clements, and Felix Salazar, Jr., a Democrat judge of the Court of Civil Appeals, appointed by Governor Briscoe. There were several other casualties. (The slaughter of gubernatorial-appointed judges was even greater in 1982 than it was in 1980.)

The *Dallas Morning News* of November 22, 1980 reported that Joan Winn "lost her post . . . to Republican Charles Ben Howell, a six-time candidate with a controversial professional record, including two contempt of court citations and a reprimand from the State Bar of Texas," and the news quoted her as saying that the idea of having judges run under party labels is "ridiculous."

> 'It's a system,' she said, 'whose time is past . . . whatever we do *the time is now.*'

The Republican bloodletting of Democratic judges in Dallas County was so successful, and future bloodletting so threatening, that several life-long Democratic judges suddenly realized that they had been in the wrong political party all the time and became candidates for re-election in 1982 on the Republican ticket. Now, isn't it a sorry comment on our method of selecting judges that survival in judicial office is thought by incumbents to turn on the switching of political parties? And one must ask: What is to be gained by the conscious effort of governors to select representatives of minority groups, or persons with outstanding qualifications for judicial service, if they are later to be rejected and ousted by the electorate on the basis of political party affiliations? And why would they accept?

Perhaps these and other recent traumatic events in the judiciary have brought about an awakening in politically sensitive circles and the creation of a climate for change to a better system than partisan election of judges.

Several agencies and committees have now joined the forces for change to a nonpartisan judicial ballot. Once again the Texas Judicial Council, never wavering, has endorsed merit selection. The Judicial Section's Legislative Committee has reapproved its nonpartisan election bill which found some favor in 1981. A State Bar committee has readied its own nonpartisan bill and plans to submit it to a State Bar referendum before deciding whether to have it introduced in the 68th Legislature in 1983. The Speaker of the House of Representatives has appointed a select committee on Selection of Judges, which is holding hearings on whether a change in the method of selecting judges should be made. The governor has delegated authority to the secretary of state to hold public hearings on a number of current problems, including nonpartisan election of judges, with recommendations for legislative action. Permitting the people to write nonpartisan election into the Constitution has been suggested.

When Democrat Ruby Sondock was sworn in recently as a Justice of the Texas Supreme Court, appointed by Republican Governor Bill Clements, she stated that she hoped her appointment would lend impetus to the movement to eliminate partisan election of Texas judges, and said:

> "Texas has outgrown the boot and saddle image and must outgrow the partisan election of judges."

Perhaps change will come from the Legislature at its regular session in 1983. Let us hope so. Since there is no such thing as Democratic justice or Republican justice, and since justice is blind to the political affiliation of the parties and lawyers, most of us who favor the merit system of selection would gladly settle at this time for nonpartisan election of judges. We will not be content with the settlement, but at least our judges will avoid the experience of the Missouri Democratic judge who, after his defeat by a Republican, is reported to have said that he was elected in 1916 because Woodrow Wilson kept us out of the war and was defeated in 1920 because Wilson got us into the war!

I conclude with this plea: Your help with your legislators is desperately needed to add Texas to the list of 40 other states which have abandoned, or never had, popular election of judges on politically partisan ballots.

NONPARTISAN ELECTION OF JUDGES

WILLIAM L. GARWOOD

It's an honor and a pleasure for me to be able to share some thoughts with this distinguished group, and to be on the panel with Chief Justices Greenhill and Calvert and with Tobin Armstrong, each of whom has made such distinguished contributions to the Texas judicial system.

I couldn't agree more with what Judge Calvert has said. He has been at this a long time, and knows whereof he speaks. If I can add anything at all, it is only by virtue of having been a principal in one of the few really actively contested statewide *partisan* judicial campaigns that we have ever had in Texas.

Now, I don't pretend to be an expert or an experienced hand in electoral politics. I have had my one shot at that. I'm not like that Irishman, Mike, whom former Supreme Court Judge and Attorney General Will Wilson told me about. As you know, Will Wilson held and ran for many statewide offices in Texas. A few years back, as the political season was getting underway, there was speculation that though Will had not recently been politically active he might nevertheless make still another race for high office.

I asked him if this were so. He said, "Well, you know about the Irishmen, Pat and Mike, who were standing at the bar, putting one drink down right after the other. The bartender was absolutely amazed at how much they drank as they stood there. Then, after he had put away about 20 drinks, Mike all of a sudden collapsed to the floor and passed out. Pat turned to the bartender and said, 'Now that's what I like about Mike, he always knows when he's had enough.' " Will said that he had had enough. Well, I think one drink was enough for me.

One of the most pernicious aspects of our present system of electing judges is the partisan feature of the elections.

Now you may say we elect senators, governors, and presidents on a partisan basis. So why not judges? Well, there are several reasons.

In the first place, under our system the functions of the positions are totally dissimilar.

Our entire tradition is that the judicial function is of a completely different kind than the legislative and executive functions. With us, the judicial function is, and has always been, not to make laws or

policy or to give advisory opinions, but rather to settle specific, concrete disputes between private parties, or between the government and a private party, and to settle such disputes according to the general laws in effect when the events in question occurred — not according to laws made up at the time of trial and applicable only to those parties and that case.

That is what we mean by a government of laws, not of men. That is our ideal — actions of individuals are judged against known general standards, not on the basis of rules made up for the particular person and case. And judges apply the law whether they agree with it or not, and regardless of which litigant they like the best or which is the most popular.

Political parties, on the other hand, exist to promote political discipline; that is to say, to require the political actor to follow in as many instances as possible the dictates of the party in preference to what may be his own judgment in that particular instance. And political parties likewise exist to give effect to a general set of policy programs distinct from that of the other party or parties. These concepts, though valuable and necessary in their proper sphere, are wholly at war with the judicial function.

The judge must decide the individual case on its own merits, according to the law applicable to the operative facts, not as the political party thinks the law should be, nor to advance the interests of the political party or its members.

And on a working, operative level, political parties are equally irrelevant to the actual functioning of the judiciary.

Courts are not organized on party lines, like a legislature. In the year I was privileged to serve on the Texas Supreme Court, as its only Republican in a century, not once, not one single time, was anything whatever mentioned about parties, party politics, party positions, or anything of that sort whatever in connection with any of the cases considered. Nor have I ever observed such on the Fifth Circuit. On a more exalted level, the judicial performances of Chief Justice Earl Warren and Justice William Brennan were and are no more "Republican" than those of Chief Justice Fred Vinson and Justice Felix Frankfurter were "Democratic."

There are no party platforms in judicial matters. So, *partisan* judicial election makes no sense.

There is much less reason to have a party-based election system for judicial offices than for the governing bodies of our cities and schools, where the elections are nonpartisan.

The sad paradox is that under our system purely partisan considerations have much *more* to do with judicial elections, where they should have no place at all, than they do with legislative, gubernatorial or presidential elections, where they do have a proper place.

This is because judges usually are not personally widely known, their offices are "low profile," and there are really no "issues" in a judicial election — in this setting, the partisan election system in judicial races puts overwhelming focus on pure party membership, as that is all most voters know about the race.

Let me elaborate a little on this, because I think it is a most important, and frequently overlooked, point.

I think most knowledgeable observers will tell you, and my study of the returns in my own and other races has borne this out, that in a statewide judicial race not more than 25 percent of the voters — when they actually go into the voting booth to cast their ballots — know anything, *anything at all,* about the judicial candidates; not more than 25 percent will even confidently recognize the names of these candidates on the ballot. And most of those 25 percent will have only the most superficial information.

You may say that this is simply because judges don't wage vigorous campaigns, and don't get media exposure. There is some truth in that, but not very much. We have had some right vigorous judicial campaigns, with a good bit of media exposure, and I think this 25 percent maximum still holds true.

There are several reasons for this. Judges simply do not, and indeed generally should not, be making the news all the time, unlike other elected officials. Most any citizen can tell you the name of the governor, the senators, his state representative, the county sheriff and the county judge. *Not one in 1,000 can name the nine judges on the Texas Court of Criminal Appeals.*

This is not unnatural, ninety-eight percent of what judges do directly affects only the individual parties to a particular concrete dispute, while the actions of legislators and governors and other such officials generally have a direct effect on a large portion of their constituents.

Moreover, in deciding individual cases the judge is not, and should not be, influenced by "input" from the electorate, while other officials certainly should be, and therefore receive and solicit such input, thus becoming known to the electorate.

Finally, we have more judges than any other class of elected officials. In any typical general election year in Harris County there

will be 48 judicial positions on which the electorate in that county will vote; in Dallas County the figure is 36. This excludes justices of the peace and municipal judges.

If each of these were a contested race with two candidates, that would be 96 judicial candidates to choose among for the Harris County voter, and 72 for the Dallas County voter. In addition, those voters in any typical election would have about eight other county and other locally elected offices to vote on, some five other statewide offices, and a couple of federal offices. For the voter not connected with the judicial system, it is simply impossible to keep all this in mind, no matter what the level of judicial campaigning is.

Running a statewide judicial campaign — trying to get the attention of the average voter in even the most superficial way — has been aptly described as being something like trying to stir the ocean with a teaspoon.

So, we are back in the voting booth with our typical voters, who are looking at the names Smith and Jones on the ballot for the Texas Supreme Court. At least 75 out of 100 of these voters, as they look at those names, standing there ready to cast their ballots, will have a total, complete, 100 percent blank. A 100 percent blank except for one thing — *political party* which *is* shown on the ballot.

So, these 75,000 out of every 100,000 voters who don't even recognize the names of the statewide judicial candidates when they get in the booth either aren't going to vote at all in that race or their vote is going to be solely on the basis of the only thing they do know — namely, *political party* as shown on the ballot. Now, if such voters don't vote at all, that would be all right; and indeed there is usually a falloff of about 15 percent from the total statewide vote in a presidential race to that in a statewide judicial election conducted at the same time. So, 85,000 out of 100,000 who come to the polls will vote in the judicial race; and of this 85,000, 25,000 at the most will confidently recognize the name of one of the candidates in any given statewide judicial race. But that still leaves at least 60,000 out of every 100,000 voters who step into the booth to vote in the judicial election, purely and simply on the party label alone and not even recognizing the names of the candidates.

Now, if we presume that a judicial candidate gets the votes of as many as two-thirds of that 25 percent of all voters who recognized the name of either candidate, then we are presumably dealing with a candidate who is highly favored by those having at least some knowledge of this judicial race. But if this same candidate

gets only 43 percent of the vote of those 60,000 out of every 100,000 voters who vote in the judicial race solely on the basis of the party affiliation printed on the ballot, then he will still lose the election, despite having been favored 2-to-1 by those who had any knowledge of either candidate. And, a 43/57 party-line type split is by no means unusual.

Now, you may ask why haven't we had worse results in judicial elections if the voters are so ignorant of judges? After all, we have had a pretty good judiciary in Texas, by and large. We have four outstanding examples of that truth here today in Justices Calvert, Greenhill, McCall and Reavley, giants in the business of judging.

The reason is this. Until very recently virtually all of Texas was a one-party state, at least insofar as concerns election to state and local offices. In this situation, the vote of those voters who knew nothing about either candidate tended to split approximately equally in most situations, with the result that the division in the votes of the knowledgeable voters became decisive. Sometimes there was an unusual situation in which the vote of the voters who knew nothing about either candidate did *not* split approximately equally. Then we usually had a disaster. An example of this was the Yarbrough/Barrow race in 1976 for the Texas Supreme Court. Everyone who knew anything about either candidate was for Justice Charles W. Barrow, who waged a vigorous campaign around the state and was endorsed by every newspaper, every Bar Association poll, every civic leader, etc. But enough of the unknowing voters thought that Don Yarbrough — who was later convicted of a felony — was either our distinguished former Senator Ralph Yarborough, though he publicly endorsed Barrow, or the Don Yarborough who had run an effective race for governor. And so the soon-to-be felon was elected to the Texas Supreme Court.

The party label is potentially the same kind of a wild hair that the misidentification of names was in the Yarbrough/Barrow race. But it will happen more often now, for it is built in as we become a two-party state.

Let me give you an example, although it does not involve any questionable individuals such as former Supreme Court Justice Yarbrough. My example merely points up to the utterly random effects of the party label in judicial elections.

The example concerns my friend Judge Jim Brady of the Austin Court of Appeals. The Austin Court of Appeals covers 24 counties in Central Texas. Jim ran for this position in the 1982 Democratic

primary and won handily. Having no Republican opposition, he was elected in November. I had come to know Jim because in 1980 I was running, in the Republican column, to retain my position on the Texas Supreme Court (to which Governor Clements had appointed me) and Jim was likewise running in the Republican column that year for another position on the Texas Supreme Court. Also in 1980 Bob Smith, a respected former district attorney of Travis County, who had been appointed to the Austin Court of Appeals by Governor Clements, was likewise running as a Republican to retain his seat on that court. In 1980 none of us carried the 24-county area of the Austin Court of Appeals, but of the three Republicans running for judicial positions throughout that area, Jim Brady got the fewest votes — only 40 percent of the vote cast in his race in those 24 counties. Yet, less than two years later, this same Jim Brady, no better and no worse, running now as a Democrat, is elected a judge by the same electorate in these same counties.

And let me repeat again that party label, which doesn't belong in judicial races at all, is even more influential for those races than it is in legislative and executive races where it has a proper place.

Even in legislative and executive races there is always a fair amount of voters who prefer to vote for the candidate rather than the party, and even most of the voters who usually favor party-line voting in these races will depart from that pattern in the case of one they think is an especially able, or awful, candidate. As President Kennedy once said, sometimes party loyalty simply asks too much. So, many brass-collar Texas Democrats could not bring themselves to vote for George McGovern, and a good many even voted for their favorite man to hate, Richard Nixon.

But this occasional ticket splitting, which provides the necessary leavening of pure partisanship even in the races where partisanship has a properly prominent place, is unavailable to the vast majority of voters in judicial races, particularly statewide judicial races, because they simply don't have the information available to make such a choice.

So, I think the time has come to change our outmoded system of partisan judicial elections. It is not the system under which the Colonies or the United States of America started. It is not a system under which the Republic of Texas, or the State of Texas when it entered the Union, operated. It came to us first in 1850, was abandoned in 1861, and reinstituted in 1866. We have been able to tolerate it since then only because we have until recently been

essentially a one-party state. Out of the 50 states, only 10 have this system, and most of these, like Texas, are states which have traditionally been one-party.

I would not suggest that there is significant sentiment in this state for a purely appointive, life-tenured judiciary. There is not. The people of this state want to continue to have a voice, at least the ability to get rid of a judge run amok. In 1980 a detailed, scientific poll was done by a highly professional pollster, Lance Tarrance, of voter attitudes in Texas regarding judicial selection. By a 2-to-1 majority in this poll, the people expressed their preference for an elective — over a purely appointive — judicial system. But what is interesting is that the same respondents, again by a 2-to-1 margin, expressed their clear preference for nonpartisan — over partisan — election of judges. By a 2-to-1 margin, they stated they would favor a constitutional amendment to accomplish this, were it necessary. I believe that lawyers as a whole, and indeed a majority in each of the several subgroupings of the lawyers in this state, strongly favor nonpartisan, as opposed to partisan, election. A vast majority of the state's judiciary likewise support this. So do newspaper editors and civic leaders throughout the state.

This is a practically feasible change, and in the real world it can be made now. It has the support of the people and of the opinion leaders. Frankly, its only opposition comes from certain political operatives, in both parties, who feel it is to their political advantage to maintain the judicial partisan election system. So, the change will not come about by itself. It must be pushed. But if it is pushed, it can and will succeed.

The knowledge that you can go into court and have your rights decided on the basis of the facts that actually happened and the then existing law — and not on the basis of whether you are a Democrat or a Republican or whether the law is one which the Democratic or Republican Party likes or dislikes — is a precious right, though it is one we tend to take for granted. We also tend to take for granted that we will have judges competent and independent enough to properly decide our case, should we have to go to court. But competent people of this kind will not accept judicial positions in significant numbers if they face the serious risk of being thrown out of office, no matter how good a job they have done. In a two-party state, it wouldn't be too long before it would be the year of the other party, and they would have to go no matter how

well they served, no matter how incompetent they were, or worse, their opponent.

So, I'll end as I began by echoing Judge Calvert. Your help with the legislators is desperately needed now to rid Texas, at least in its appellant courts and in the trial courts of its major metropolitan counties, of the partisan system of electing judges.

PROBLEMS OF JUDICIAL RECRUITMENT

TOBIN ARMSTRONG

I am particularly pleased to be here to talk to this distinguished group. Anne has been a member of this organization for several years. I attended one of your meetings in Fort Worth, which I remember with a great deal of pleasure, and I look forward to the remainder of these sessions.

I find very little that I can disagree with in what has been said by the speakers who have preceded me today. As a matter of fact, most of my experience in state government in the judicial appointive process leads me to many of the same conclusions that have been drawn by the previous speakers, and I think, as they seem to, that this state very much needs a revision in its system for the selection of the judiciary.

Judge Greenhill asked me to discuss the problems of recruiting for the judiciary, and I will try to clarify those problems for you.

Problems relating to recruiting for the judiciary are relative. They depend entirely on the objectives and goals of the appointing governor. If, on the one hand, the governor is going to use his judicial appointments as a means of rewarding the faithful, there really is no problem since the requirements for service in the judiciary are very nonrestrictive, and there will be many more faithful waiting at the governor's door than there are appointments to pass around.

On the other hand, if the governor recognizes and is sensitive to the serious need to improve the quality of the judiciary and demands that his appointees have the capacity and determination to bring excellence and energy to their offices, the problems that will be created for his recruiting staff are quite formidable.

Shortly after Governor Clements was sworn in, he conferred with Judge Greenhill, Judge McCall, and other members of the Bar in whom he had confidence, and was fully apprised of the status of the judiciary and made aware of the problems. Immediately following these consultations, the governor charged his appointments staff to go for excellence to the extent that it is possible to do so and not to use the appointments as a means of rewarding political supporters.

I want you now to visualize with me all the attorneys in the state who qualify to serve in the judiciary as a reservoir from which the talent must be drawn to fill the judicial appointments.

How do we bring the outstanding judicial talent into the system? First, they must be willing to serve, and at this point I want to comment that there is an extraordinary willingness on the part of people in this state to render public service at subsistence pay levels or for no pay at all. I believe there is a level of public spiritedness and willingness to serve in Texas that is perhaps not matched in any other state in the Union. We should be grateful that this situation exists since most of the direction of government in Texas is contributed by citizens on a "no pay" or "expenses only" basis.

In order to understand the first problem, willingness to serve, one must understand the nature of the Texas judicial system itself. It was conceived in the immediate post-Civil War period. It was a product of Reconstruction and was created more with the objective of warding off scalawags and carpetbaggers than with attracting outstanding legal talent. Because the system requires that participants must be willing to exist in a partisan political arena, a large segment of the reservoir of talent we must draw from to fill appointed positions is not prepared to make the sacrifice, which is entirely understandable. To go into the partisan political arena without the temperamental makeup for it can most assuredly lead to disillusionment and failure, and, therefore, we must remove that segment from the reservoir, greatly reducing its size.

Then we have a significant group of talented lawyers who want to achieve a reasonably high level of affluence in order to provide those things for their families that the system's subsistence pay level will not provide. Their reluctance to serve as judges is also understandable. Judge Calvert said that the pay was a secondary concern to him, and happily there are others who feel that way. But we must recognize that there is a considerable segment of legal talent that is not prepared to make that financial sacrifice.

I'm reminded at this point of the wealthy lawyer who was married to a very lovely young lady. His locker room friends were constantly ribbing him with the suggestion that the lovely lady loved him for his money. The constant ribbing made the fellow miserable and got so much under his skin that he confronted his wife and said, "Laura, dear, if I lost all my money, would you still love me?" And Laura replied, "Bill, of course I would love you; I would always love you — I would *miss* you!"

I think you will agree that this story illustrates why, realistically, we must take a substantial group of talented lawyers out of the reservoir from which we can recruit members of our judiciary.

In addition, we must eliminate that segment of the pool that would not bring credit to the judiciary — the incompetent, the self-serving, the lazy.

We must also eliminate all of those, no matter how talented, who are unable to receive senatorial confirmation by two-thirds of the senate or approval by their constituent senator, who traditionally can block confirmation of any constituent by exercising "senatorial courtesy."

At this point, it is clear that the pool or reservoir of qualified attorneys from which the appointments staff can recruit to make recommendations to the governor has been vastly reduced.

We must then apply the criteria for recruiting judges from what remains of the reservoir we started with.

These criteria in order of importance are, first, professional qualifications. How much does the person bring to the system in scholarship, leadership, judicial temperament and energy? Second, how long will the prospect be able to contribute to the system? If the prospect is unelectable or must retire in the short term, there is little justification for further consideration. The law mandates retirement at age 75 and a substantial reduction in retirement benefits for those who continue to serve after age 71. A judge may retire with benefits at age 65 with 12 years of service in the judiciary.

In four years, Governor Clements made approximately 3,500 appointments to 245 boards, commissions, task forces and agencies, approximately 1,650 of which required senatorial approval. In addition, there are 182 judicial appointments — 30 district attorneys and 152 judges. The process required the gathering of approximately 10,000 files on appointment prospects.

It is interesting to note that only 60 percent of the judicial appointees were Republicans. One hundred and twenty-five of the judicial appointees ran for election in 1982. Of the 78 who ran as Republicans, 44 won and 34 lost. Of the 47 who ran as Democrats, 46 won and one lost.

The governor appointed one supreme court chief justice, who receives $71,900 a year, all taxable, with no perks; three supreme court justices, who receive $71,400; two civil court of appeals chief justices, who receive $60,600 and may receive up to $15,000 in supplemental pay; 38 civil appeals justices, who receive $60,100 and may receive up to $15,000 in supplemental pay; and 97 district judges, who are paid $54,000 and may receive supplemental pay from the counties they serve.

I have related the salaries and the lack of perks to emphasize the problem that compensation creates for the recruiter, and the volume of personnel paper processing involved in the recruiting process creates yet another. The principal problem of judicial recruitment is one of elimination; the problem of reducing the reservoir of eligibles down to what, in South Texas parlance, are called the "hunting dogs" — those dogs which will hunt. These are the candidates who will serve, who can be elected, who will stay long enough to make a real contribution and who will bring judicial scholarship, leadership and temperament to the system, as well as energy, integrity and fairness.

Judge Greenhill, I particularly want to acknowledge and thank you for your continuing cooperation with the Governor's Office in identifying the "hunting dogs" as opposed to the "rabbit runners." You have been a tremendous contributor to the system.

I want to say again how much I have enjoyed this opportunity to speak to the Society and how honored I am to be seated at this very distinguished head table. Thank you.

SUGGESTIONS FOR SPEEDIER JUSTICE

CULLEN SMITH

Americans love to litigate.

Access to our legal system helped assure a "government of law and not of men," but within the past few years, litigation became almost a national pastime.

Theories of recovery were greatly expanded; rights enlarged; matters litigated more complex.

The result: the judicial system is confronted with "too much of a good thing."

In 1960, 59,000 civil suits composed the case load for our federal district court judges. In 1980 the number exceeded 168,000 — a 185 percent increase in 20 years. Presently the case load numbers 205,000. Between 1960 and 1980 the federal appellate docket increased 495 percent. We are told that the average time in state courts from filing to trial is 27 months. In some states, it is five years.

Recent editorials that appeared across the country indicate the timeliness of this topic. Within the last two weeks, the *Wall Street Journal* reported, "It should come as no surprise to anyone that our federal and state courts are swamped in litigation, resulting in hopeless delays and undermining the principle of swift justice." Part of the problem, according to the *Washington Post,* is that America is too litigious and, at least in some areas, "devoted to elaborate judicial procedures rather than other means of resolving disputes fairly."

The *National Law Journal* agrees with Chief Justice Warren Burger about the need to "re-examine the 'mind set' that brought the judicial system to its current state."

Justice Burger, in a speech at New York University, said:

> "The danger does not lie in attacks on the court; attacks on the court have been going on for at least 180 years. The real risk is that the institution will be submerged gradually, by placing on it burdens that cannot adequately be carried."

In analyzing our problem, it is essential to keep in mind that we must have a way to settle disputes and problems. We cannot, must not, solve the dangers of cost, delay, and overuse by taking away our "rights."

Solutions may seem easy. But, remember, parties to a lawsuit seldom arrive there because they like each other. One side often benefits from delay. One side may *want* it to cost the other party more.

Many reasons exist for our courts' overcrowded state. We have more laws; more regulations; more use of the courts to solve everything. Courts make rules for universities, prisons, welfare agencies and public schools. While we may feel that this intervention is excessive at times, a realist, I believe, would conclude that many problems involving people and institutions cannot, or at least will not, be solved alone.

Court reform and efforts to improve the judicial system are not new. Many organizations have worked on the problem for years — the courts, the legal profession, the legislature, court administrators. This is certainly true in Texas. We are adding new judges, changing jurisdictional amounts, adding simplified procedures, codifying rules of evidence, and improving court management. One case in point is Harris County, which is about to embark on a bold, new program of court management, making extensive use of computers.

What are some specific solutions?

1. We can study the effect of all legislation and regulation on the court system *before* enactment.
2. We can take certain types of disputes out of the court system.
3. We can develop other dispute-solving programs, such as neighborhood justice centers mentioned by Chief Justice Greenhill.
4. We can make better use of arbitration and mediation.
5. Within the courts, we can add more judges, equalize dockets, make better use of time. We can increase the use of magistrates, masters, and court administrators. We can simplify court rules, reduce written opinions in length and number published. We can improve jury efficiency.

The American Bar Association created an Action Commission to reduce court costs and delay. The words "court costs" in this title relate not so much to the charges by the court but to the cost of litigation imposed upon the litigants. The Commission, on which I serve, has been studying and experimenting with numerous ideas to determine ways to resolve disputes faster, simpler, and at less cost. We hear a great deal these days about the big, complex case. Actually, those cases are the exception and the Commission is not working in that area. Our concern is the average case. While we have discovered no miracles, the work is nevertheless important. I will review some of the projects briefly:

1. Economical litigation programs involving simplified procedures, limited discovery and strong case management. These programs are presently being implemented in California, Kentucky, Maine and Vermont. In Kentucky the program has reduced pending cases by 11 months.

2. Expedited appeals involving short briefs, or no briefs, extended oral arguments, a limited or no transcript of the trial proceedings.

3. Video techniques, including greater use of videotaped depositions, and videotaping of all of the evidence so that no live witnesses are presented. While the jury selection, opening charge, and final arguments are presented in person by the judge and attorneys, the jury is not delayed due to unavailable witnesses, arguments outside their presence, and unexpected but necessary prolonged interrogation on direct and cross-examination.

4. Computer assisted transcripts of trials to avoid long delays often encountered in some courts due to a court reporter's failure to promptly prepare the transcript.

5. Court annexed arbitration and mediation. In Detroit personal injury litigants appear before a three-lawyer panel consisting of an experienced plaintiff's attorney, defense attorney and a third lawyer who practices outside the area. The well-paid panel hands down an opinion as to the value of the case after conferring with the parties and the attorneys, both together and separately. Many cases are settled on that valuation. The party unwilling to accept that recommendation faces a penalty if the panel's judgment was more correct than the verdict and, after the hearing, a prompt trial is assured.

6. Providing for limited discovery. We are dealing here with the need to know versus abuse and knowing too much.

7. Discovery abuse sanctions.

8. Multiple witness testimony. This involves two or more witnesses testifying at the same time.

9. Increase in jurisdictional amounts of lower courts to at least keep pace with inflation.

10. Special rules for special cases, called "tracking." This involves identifying different types of cases and putting them on different "tracks." We do this to some extent in Texas with criminal trials, condemnation cases, family law matters, and small claims. Proper tracking holds great promise in the metropolitan areas.

11. Telephone conferencing. One of the easiest and most popular programs encouraged by the Commission has been the use of the telephone for conducting preliminary hearings of all kinds. It is not unusual for lawyers to spend hours traveling to and waiting in court-

rooms for hearings which may last five, ten or fifteen minutes. Under telephone conferencing, each attorney can be in his own office and through proper equipment and court aides, court and lawyer time is greatly reduced. Expanded use of telephone conferencing on a regular basis can save millions of dollars annually. Formal programs which take advantage of this option exist in New Jersey, Arizona, Colorado and Virginia.

While not part of the Commission's work, one other interesting development is that of "private judging." Whether good or not, it is a growing trend. Under this plan, the parties agree to settle their dispute outside of the regular court system through the selection of a "private judge." These "judges" have often had experience on a regular bench. Hearings are held at the judge's office, at a corporate headquarters, in a lawyer's office, or at a neutral spot.

When we consider the added burdens imposed upon our judicial system in the last 20 or so years, I believe most people would agree that the judicial branch has done a really amazing job and with an inadequate budget.

What does all this mean to members of the Philosophical Society of Texas? It means a problem really exists — and lawyers, judges and court administrators are trying to solve the problem. But we will never solve it alone. We are part of the problem. We are too close and we don't pass the laws and regulations. We need your help, your support, your involvement, and your understanding.

It has been a pleasure and an honor to be a part of your program.

JUVENILE JUSTICE

RON JACKSON

I sincerely appreciate the opportunity you have provided me to speak on such an interesting but confusing subject as the juvenile justice system. My experience in this system has spanned approximately 30 years, during which time I have been both a recipient and a provider within the system. Many would discount the past nine years of my experience as being cluttered with bureaucracy. However, I have learned that bureaucracy makes changes slowly, and major changes concerning criminal and juvenile justice systems are usually encouraged by judicial intervention.

My purpose today is to outline briefly the juvenile justice system as it now exists in Texas and its underlying philosophy. I would also encourage this audience to consider that perhaps Texas should explore programs designed to prevent delinquency — programs that stress "prevention" rather than "cure."

Key components in the Texas juvenile justice system are the county and district courts, which hear juvenile cases, and the appendages of that system — the intake, detention and probation services funded by county dollars with some State support. Juvenile corrections functions as part of the system at the State level, after the county is unable or unwilling to provide additional resources toward rehabilitation. The State in its executive capacity is charged with rehabilitation and can pursue that objective through institutional or community services. Parole is a supervisory function that exists in the child's hometown, and it has traditionally been the responsibility of the executive branch of government. It differs from probation in that it may be offered after a child has been committed by the courts to the State's custody.

Early American courts punished children the same as adults until reform movements at the turn of the century encouraged the adoption of the *parens patriae* doctrine, which gave to children the protective care of the courts. The theory that children are less responsible for their actions than adults — and that they require protection rather than punishment — has created a dichotomy between juvenile and adult law that still exists today. The juvenile system from its inception has focused on protection and treatment while the adult system addresses retribution and punishment. Encouraging their dichotomy

is the growing sentiment among our citizens to shift our priorities toward punishment and away from rehabilitation, particularly in the case of violent juvenile offenders. This dichotomy, as aggravated by such public sentiment, has fostered a major conflict of roles and identities among the personnel involved with the juvenile justice system to the extent that it handicaps their commitment to a single philosophy: are they law enforcement officers or children's counselors?

The cost of incarceration alone has forced our society and its leadership to consider alternatives to cell blocks and institutions. To place a child in a correctional facility in Texas today costs taxpayers $55-$70 per day, a figure which does not account for new construction. In the current budget of the Texas Youth Council, we are requesting from the Legislature 5.5 million dollars for a small 48-bed facility.

The Texas prison system, currently overcrowded with 35,000 prisoners, has requested from the Legislature a billion-dollar budget for the next biennium. Prison costs throughout the country range from $9,000-$26,000 per inmate per year and $54,000 per cell. Now, at a time when the public is demanding a tougher stance against criminal behavior, our costs are rising higher and our systems are full. One solution is to seek alternatives to maximum security prisons and to provide some of those alternatives at the community level, a policy adopted by the juvenile system years ago. Current working ideas such as intensive probationary supervision, community halfway houses and work release programs have traditionally been a part of the juvenile justice system and are now being suggested as adult programs. Only recently has adult corrections begun to share the kind of conflicts which we in the juvenile system have been enduring for a long time. Its problem, though, is not so much the result of conflicting philosophical purposes as having limited resources during a period of increasing expectations. Our society is demanding better protection at a time when we already incarcerate more citizens than any industrialized nation in the world — second only to the Soviet Union and South Africa. The problem is a complex one, and our leaders are confused and angry that so few solutions seem available.

My experience within the system dictates a long-range, common-sense approach: *prevention*. A tremendous amount of resources are committed today to treat crime after it has occurred, when victims become additional statistics. Some interesting facts are that:

1. Ninety percent of all youth commit crimes but do so infrequently. These children account for only half of all serious or "index" juvenile crimes.
2. A relatively few youth, perhaps four to eight percent, commit crimes more frequently. These children account for the other half of all "index" juvenile crimes.
3. Only three to fifteen percent of all delinquent acts ever result in police contact. The juvenile justice system is strained now even though it deals only with a small part of the overall problem.

According to the foregoing statistics, most of today's children are involved to some extent in delinquent behavior, yet most become productive citizens. According to the Office of Juvenile Justice Delinquency Prevention:

> most professionals now agree that a major reason for the increase in delinquency and violent youthful offenders can be traced to a failure of our social institutions (family, schools, public service employment agencies, community-based organizations) to develop and support law-abiding behavior in young people. Unfortunately, individuals in these institutions tend to identify failure by others as the primary reason for juvenile crime. If the child is unruly, a typical reaction is to get them out of the organization or institutions as rapidly as possible. Delinquency prevention (or social development) happens not because new money or resources are made available to organizations, but because these organizations alter their practices and procedures in dealing with young people. If young people are attached, committed, and bonded to the values of our traditional social institutions, they will be much less likely to engage in delinquent or violent criminal behavior.

Most of us would agree that our lives have been strongly affected by family and school relationships and by our American work ethic. What the researchers are saying is that the greatest impact in the prevention of juvenile delinquency may be made primarily through our families and then the schools in our communities. If children can be bonded to positive relationships at an early age, delinquency may be prevented. If children are allowed to form relationships among peers who are alienated from home and school, the bonding that occurs commits children to negative values that reward violation of the rules. It is through our families and the schools that our children, before they are of high school age, should be influenced

to become positive citizens. Many would say that this simple goal is being accomplished, but I believe not.

In Texas today there is no effort to prevent delinquency at the primary level by means of contact between families and schools with the juvenile justice system. No statewide policy means no strategy for prevention. We continue to allocate our resources to programs involving the child after he has been formally arrested.

Considering the expense of the criminal and the juvenile systems, prevention could be a cost-effective approach to addressing delinquency, if the leaders of our state and our communities would encourage the development of strategy and resources at the community level. Development of strategy and resources can be accomplished by focusing upon conditions which affect the well-being of people and not solely upon treatment of specific problems after they have occurred. Communities can and should develop their own preventative models, taking into consideration their own unique problems and conditions. These models should encourage youth to become involved in activities and decisions that affect their lives. Human service resources should cooperate and coordinate among themselves to provide for more effective delivery of services. Finally, decision makers should have a common understanding of and support for prevention efforts that have been developed by their communities.

The juvenile justice system, from its inception, was created to protect children and to provide rehabilitation rather than punishment. Its purpose was to consider the problem that caused a child's delinquency and to seek a method of treatment to modify his behavior. Although the system is severely criticized for failing to rehabilitate the juvenile offender, it is my impression that with rare exception the professionals who provide services within the system sincerely try to influence the lives of the children for whom they are responsible. Seldom do we recognize their successes, and frequently we are critical of their failures. Our nation has yet to take an affirmative stand toward the prevention of delinquency. We have addressed social problems and found them difficult to solve. Still, as sociologist Robert K. Merton has observed:

> More is learned from the single success than from the multiple failures. A single success proves it can be done . . . Whatever is, is possible.

So far our efforts have been thin, but we have learned that there is almost unlimited potential in our hearts and minds to solve these problems to ensure the future of our children.

THE TEXAS CORRECTIONAL SYSTEM

GEORGE BETO

This presentation will be mercifully brief. It is my hope that the few provocative remarks will evoke questions and comments from you and — above all — stimulate your thinking regarding a serious social problem.

A large part of my adult life has been involved in the criminal justice system either as a practitioner or as a teacher. Those years of involvement with the police, the judiciary, probation and parole functionaries, prison personnel, and thousands of society's deviants have led me to develop some strongly held opinions, opinions which my students occasionally refer to as Beto's biases. In any event, I cannot emphasize too strongly that the positions outlined in this presentation represent one man's opinion; nevertheless opinion based on several decades of involvement in that which we euphemistically call the criminal justice system.

THE CRIMINAL JUSTICE SYSTEM HAS BROKEN DOWN

There was a time when I asserted in speeches before civic clubs and at professional meetings that our criminal justice system was on the verge of breaking down. I have revised that opinion; I now hold that it has broken down. In fact, it is not a system. Theoretically, the process of criminal justice is a continuum or spectrum beginning with the police, continuing through temporary detention, prosecution, adjudication, possible probation or incarceration, imprisonment, and ideally concluding with parole. As presented here, these various segments in the criminal justice continuum superficially appear to be an integrated whole in which there is a high degree of coordination between and among various entities in the system. Exclusive of the cooperation between the courts and probation, the various segments in the continuum are discrete entities, each willfully ignoring the activities of the other. This abject lack of coordination, cooperation, or integration has resulted in a non-system which is inefficient and ineffective.

Colleagues of mine more expert than I am in the use of statistics and in that which is called police science advise me that of all the felonies committed in the United States today approximately three percent will result in arrest and less than half that number in

incarceration. For example, earlier this year *Texas Monthly* carried a well-written and well-documented article entitled "Burglary Is No Longer a Crime in Texas." In reading the article, the harried householder could only conclude that in the event his residence were burglarized, the possibility of arrest of the burglar was remote indeed. The failure to arrest burglars stems from a failure on the part of the police to detect the perpetrator.

The national average for the clearance by police of reported crimes is 20 percent. In other words, in 80 percent of the cases the perpetrator is undetected and unapprehended. In Dallas the percentage is 28 percent; in Austin 20 percent; in Fort Worth 17.5 percent; in Corpus Christi 19 percent; in El Paso 25 percent; in Houston 11 percent; and in San Antonio 17 percent.

Some crime does not result in arrest because of failure to report. Occasionally, the news media sensationally describe a bank robbery. The amount of money, however, stolen by bank robbers is small indeed when compared with that purloined by bank employees, much of which is unreported, especially in smaller communities.

The American citizen, as a result of periodic service on a jury or his viewing a TV melodrama, labors under the wholly false impression that those arrested for the commission of a felony are tried by a jury of their peers. Quite the contrary occurs. In Texas, as well as in the United States generally, over 90 percent of the criminal cases are settled by plea bargaining. Almost invariably, the bargaining results in a conviction for an offense lesser than that actually committed. Trials have come to resemble medieval morality plays: occasionally we conduct a celebrated trial in an effort to show the citizenry that the system is still working, albeit imperfectly.

Above the judge's bench in the Walker County Courthouse, etched in prominent letters, are the words "Equal and Exact Justice." When applied to the total criminal justice system, these words are little more than a hollow mockery.

CRIME PAYS

Most of us were reared in homes and educated in public schools in which the axiom "crime doesn't pay" was impressed upon our young minds. Unfortunately for all of us crime does pay for a significant segment of our population.

Some few years ago I asked the owner of a large chain of Texas convenience stores what his losses from theft were the previous year. His immediate answer was 1.9 million dollars. My next question

was: "Were the thefts primarily internal or external in nature?" He answered, "internal." The cost of preventing thefts by employees by underwriting the security necessary to prevent them would exceed that of writing off the losses or compensating for them by increased prices.

Last month the *Wall Street Journal* carried an article in which the writer asserted that 40 percent of the employees in retail establishments engage in some type of theft in which the perpetrator is usually undetected. The *Texas Monthly* article to which I referred earlier clearly indicated that burglary pays for those people who have chosen burglary as a way of life.

The occasional and well-publicized "busts" made in connection with the narcotics traffic should not delude us into believing that the illicit importation and sale of narcotics does not on balance represent a lucrative endeavor. A recent CBS study revealed that the profits from drug trafficking exceed those of the corporations listed among the Fortune 500.

We could go on by discussing income tax evasion and white collar crime generally, much of which is undetected and the offender unapprehended and unpunished.

Accordingly, what we have in America's bulging penitentiaries is a small segment of the total criminality in our society. The prison, generally speaking, houses for a brief period (an average of 13 months in Indiana to an average of 29 months in Virginia) the flotsam and jetsam of society — the poor, the stupid and the inept. Shortly before my retirement from the Texas Department of Corrections, I asked the Research Division to develop a profile of the prisoner population. The study revealed that of the total population of 16,500, 96 percent were school dropouts; 60 percent (using a strict definition) came from broken homes; 18 percent were illiterate, the average grade level of achievement being the 5th, with an average I.Q. of 80; 20 percent were mentally retarded, almost one percent actively psychotic; 40 percent with no sustained record of prior employment; 50 percent under the age of 25; 42 percent Black, 38 percent Anglo and 20 percent Mexican. We repeat that this group of felons, a segment of that which it is popular today to call America's permanent underclass, represents a small part of the total criminality of Texas, the balance — not being stupid, inept, nor poor — has found criminal behavior relatively profitable.

THE AMERICAN PEOPLE DON'T WANT EFFECTIVE LAW ENFORCEMENT

It is my opinion that the American people at worst don't want effective law enforcement, and at best are willing to tolerate a high degree of lawlessness.

I recall that brief period in the sixties when the Texas statute on the possession and use of marijuana was extremely strict, considered by some to be Draconian in nature. During that period a young black man from Harris County, Lee Otis Johnson, was sent to the penitentiary under a 35-year sentence for the possession of one marijuana cigarette. During that same period of time young men and women from middle and upper class families, young men and women who attended for brief periods Texas institutions of higher learning, began to be processed through the prison's reception center. In fact, so many of them came that the average I.Q. of incoming prisoners in one calendar year increased by 10 points and the average grade level of achievement was raised by one grade. This phenomenon has a high degree of correlation with the subsequent action of the Texas Legislature whereby the penalties for the use of or possession of marijuana were radically reduced. The people obviously did not want even an attempt at effective marijuana control.

Another area indicative of our lack of a desire for effective law enforcement: the United States is the only nation outside the Third World with a completely decentralized and correspondingly ineffective police force. In Texas we have constables, sheriffs, municipal police, a state highway patrol, Texas Rangers, alcohol beverage control officers — all overlaid with a plethora of federal law enforcement agencies ranging from officers of the Alcohol, Tobacco, and Firearms Service to the Federal Bureau of Investigation. During the last Christmas season, when complaints were raised regarding the high rate of crime against person and property in the vicinity of the Harris County Courthouse, those of us who read the Houston papers and view Houston television were treated to the almost ludicrous spectacle of constables' minions, Houston police, and sheriff's deputies on horseback — all patrolling the area.

If we wanted effective policing we would have a unified and professional police force, at least on the state level, rather than the relatively amateur forces we currently tolerate. I know of no nation — there may be one in some benighted area of the globe —

where the pre-service training for police is as brief and as superficial as in the United States.

Another area indicating our tolerance of ineffective law enforcement lies in our refusal to demand an exhaustion of legal remedies. While violations of the principle of exhaustion of remedies are evident in both civil and criminal cases, the most illustrative example is found in the case of the death penalty.

The Fifth Amendment clearly authorized the death penalty when it speaks of "capital or otherwise infamous crimes." Public opinion polls repeatedly reveal that the American people favor the imposition of the death penalty. Month after month in Texas, juries assess the death penalty; yet, there has not been an execution in this state since 1964. Currently, over 150 men and women languish year after year on Death Row. While not advocating the death penalty, I cite these grim figures to illustrate our unwillingness to set limits on the exhaustion of remedies.

Three authors, Gurr, Grabosky and Hula, writing in *The Politics of Crime and Conflict,* state:

> "A modicum of social order (is) rare in complex societies; where it is found, it is more likely to be the result of long-term social engineering, consistently applied, than the workings of natural social forces. The processes of 'social engineering' are manipulative and often oppressive, a circumstance that raises a fundamental question: Are the costs of social disorder more bearable than the costs of order? The question has no empirical answer."

I would submit that the American people have answered this question in the affirmative.

A psychiatrist acquaintance of mine who specializes in the emotional problems of children and adolescents is — with a colleague — currently writing a book, the publication of which I await with eager anticipation.

The burden of the book is an analysis of childhood experiences of adults who have achieved some success in life. His definition of the successful life is broad, not restricted to those who have achieved financial success. While the book is in the formative stages, he nevertheless shared with me some of his tentative findings. The childhood of these people was characterized by a deeply religious atmosphere in the home (although as adults in many instances they did not practice any formal faith); they were reared in households

in which the mother read to them regularly; the family ate at least one meal together each day; the work ethic prevailed; the mother was a strong personality; and there was an exposure to excellence in one form or another.

The conversation with the psychiatrist reinforced a long held belief of mine that strong family solidarity serves to prevent crime. Also, a deeply held religious or moral ideology (not necessarily Christian) which controls individual behavior is a further antidote to crime. A visit to poverty-ridden Cairo to evaluate some programs financed by the United States government persuaded me that Islam as a controlling religious ideology and strong family solidarity accounted for the comparative lack of crime in that densely populated city. Neither the Congress of the United States nor the Texas Legislature can effect either of these conditions by legislation.

Frequently, we are advised that enhancement of criminal sanctions, i.e., longer sentences, restriction of the use of probation, the elimination of parole by the use of fixed, mandatory, or prescriptive sentences, will reduce crime and bring order to our disordered society. Experience and empirical research have indicated clearly the futility of those approaches. I do believe, however, that certainty and swiftness of punishment for infractions of the law will reduce crime. We currently have neither in the enforcement of the law of our land.

I would like to conclude on a positive note.

A couple of congressmen have introduced legislation for some type of national youth service, a concept which has considerable merit. I would suggest that all young men and women at the age of 18 or upon graduation from high school be required to serve either in some branch of the armed forces or in some form of public service for one year. The implementation of that proposal would have a number of beneficial results, not the least of which would be the introduction of our youth to a disciplined existence during an important and formative period of their lives. Too, inasmuch as the bulk of the reported crime in the United States is committed by those between the ages of 14 and 24, such a mandated service would remove from our general population for a year or 18 months a significant segment of that crime-prone group.

CRIMINAL JUSTICE IN TEXAS TODAY

ABNER V. MCCALL

Criminal justice is today one of the great national concerns being discussed by everyone including the President of the United States, the chief justice of the Supreme Court of the United States, the governor of Texas and the distinguished speakers who have preceded me on this program.

Last week I found several feature articles on criminal justice in the two daily newspapers that I read — the *Dallas Morning News* and the *Waco Tribune-Herald.* I learned that according to FBI records the number of crimes in America has tripled in the past 20 years. The number of prisoners in our Texas penitentiaries has more than tripled in the past two decades. Texas now has the most populous prison system in the United States — about 36,000. It is growing at the rate of 200 per week. Our Texas penitentiaries are so crowded that federal judge William Wayne Justice has found that incarceration therein constitutes "cruel and unusual punishment" in violation of the Constitution of the United States. Assistant Director Jack Kyle of the Texas Department of Corrections, which we euphemistically call our penitentiary system, told the governor's blue ribbon commission studying crime and punishment in Texas:

> Unless the Legislature, at the next regular session, changes some of our laws that send, or keep, people in prison, Texas will find itself facing a problem which defies solution, economically or socially.

The State Board of Corrections has asked for 1.5 billion dollars for the Department of Corrections, including $350,000,000 for construction of new prisons. It costs $50,000 to provide cell space for one inmate and $17,000 to keep the inmate in the cell for a year. The Legislative Budget Board at this point has recommended only half the requested amount.

I also learned that we have 400,000 people incarcerated in 880 prisons in the United States, ranking behind only Soviet Russia and South Africa in the percentage of our people in prisons.

Almost everyone who runs for public office, from the President of the United States to constable, promises to reduce crime by being tough on those who commit crimes. The candidate who gets elected

is the one who slams the prison door hardest and loudest on television. Yet our crime rate keeps climbing.

In October 1981, President Ronald Reagan told the annual meeting of the International Association of Police Chiefs:

> There has been a breakdown in the criminal justice system in America. It just plain isn't working. All too often repeat offenders, habitual lawbreakers, career criminals, call them what you will, are robbing, raping, and beating with impunity . . . and quite literally getting away with murder.

Not long ago Chief Justice Warren Burger of the United States Supreme Court declared that the American society was the most litigious on earth. The state and federal courts are swamped with law suits. He declared that unless some major changes are made the whole justice system would collapse. This is not a new complaint for Chief Justice Burger. In 1967 Burger, then a federal judge in Minnesota, said:

> Our system of criminal justice, like our entire political structure, was based on the idea of striking a fair balance between the needs of society and the rights of the individual. To maintain this ordered liberty we must maintain a reasonable balance between the collective need and the individual right, and this requires periodic examination of the balancing process as an engineer checks the pressure gauges on his boilers.

In his speech in 1967 Chief Justice Burger recommended revising and simplifying our criminal justice code.

Another prominent American complained about our criminal justice system:

> Every student of our law enforcement mechanism knows full well . . . that its procedures unduly favor the criminal . . . In our desire to be merciful the pendulum has swung in favor of the prisoner and far away from the protection of society.

That is a quote from President Herbert Hoover in 1929. Twenty years before that, President William Howard Taft in complaining of the failure of the law to bring criminals to justice, observed:

> The trial of the criminal seems like a game of chance with all the chances in favor of the criminal.

At this meeting of our Philosophical Society we have heard of the need for the reorganization of our Texas courts and for a better

method of selecting judges. We have heard of needed reforms in parole, probation and other aspects of our criminal justice system. I am in favor of such changes and believe they will be of some help; however, I do not believe all those recommended changes will come near to solving the problem of increasing crime in Texas or America.

I believe the most pertinent statement on this subject of criminal justice was made long ago by James Madison, who has been called the father of our American Constitution. Madison observed as to the governmental system devised by our founding fathers:

> Ours is a system designed for moral men. It will work for no other.

A large minority of Americans today are no longer moral, self-disciplined, self-governing people who voluntarily obey the law. The system no longer fits the American people. The American people have more liberty than their present level of morality, self-restraint, and self-discipline justifies. As Madison observed, our system was not designed for immoral men.

Almost 40 years ago Walter Davenport, then editor of *Fortune* magazine, wrote a book entitled, *The American Proposition.* He claimed that the basic American political proposition was stated by Thomas Jefferson in the Declaration of Independence:

> We hold these truths to be self-evident, that all men are created equal, and that they are endowed by their Creator with certain inalienable rights that among these are Life, Liberty and the Pursuit of Happiness. That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed.

The new American government was founded on this proposition. It is the fundamental principle of the American Constitution, which was, as declared in its preamble, "ordained and established . . . to secure the Blessings of Liberty to ourselves and our Posterity."

What did Jefferson write? He declared that God created man and endowed him with liberty and that it was God's will that this liberty be inalienable. No government should deprive man of his God-given liberty. As a matter of fact, governments were created to secure this liberty to man. Individual man and his God-given liberty is the supreme value in the American society.

All other governments in the history of the world had been founded on the proposition that man is an economic, social or political animal who had only such rights and liberties as the government

chose to give him. Most of the governments of the world still do not accept Jefferson's self-evident truth and are still based on the proposition that man has only such liberty and rights as governments let him have.

Americans have enjoyed more liberty than any other people in history because most Americans accepted Jefferson's principle. They believed in their own God-given liberty and respected and protected the God-given liberty of their fellowmen. This is a moral attitude. Indeed it is a religious attitude. When a substantial minority of our American citizens no longer respect and defend the God-given liberty of their fellowmen, a high degree of individual liberty and security becomes impossible. That is our situation today in America.

George Washington observed that our government was dependent upon law, law upon morality, and morality upon religion. In his farewell address in 1796 he said:

> Of all the dispositions and habits which lead to political prosperity, religion and morality are indispensable supports. In vain would that man claim the tribute of patriotism who should labor to subvert the great pillars of human happiness — these firmest props of the duties of men and citizens. The mere politician equally with the pious man, ought to respect and cherish them. . . . And let us with caution indulge the supposition that morality can be maintained without religion.
>
> It is substantially true that virtue or morality is a necessary spring of popular government. The rule indeed extends with more or less force to every species of free government.

There is an old book written in 1835. It is called *Democracy in America* and was written by a young Frenchman, Alexis Henri Charles Maurice Clerel, Comte de Toqueville, after he visited America in 1831 on a mission from the French government to inspect the prisons and penitentiaries in America. This book remains today the most profound analysis of the American political system ever written.

In it de Toqueville observed:

> Religion in America takes no direct part in the government of society, but it must be regarded as the first of their political institutions; for if it does not impart a taste for freedom, it facilitates the use of it. . . . Americans . . . hold it to be indispensable to the maintenance of republican institutions.

Again he wrote:

> The Americans combine the notions of Christianity and of liberty so intimately in their minds that it is impossible to make them conceive the one without the other.

Of the Americans he says:

> They brought with them into the New World a form of Christianity which I cannot better describe than by styling it a democratic and republican religion. This contributed powerfully to the establishment of a republic and a democracy in public affairs; and from the beginning, politics and religion contracted an alliance which has never been dissolved.

Free self-government is possible only in a society where an overwhelming majority of the people are able and willing to govern themselves individually. They must voluntarily comply with the law and participate in the processes of self-government. If a substantial minority of the people are not willing to voluntarily comply with the law and are hostile to the government, the government can exist only as a totalitarian state with enough police to compel compliance with the law. This is the situation in the Communist nations of the world. About a tenth of the population in Communist countries are governmental agents, and the people have very little freedom. Where the people discipline themselves, a free society is possible. But it is not enough for each person to discipline himself and obey the law. There will always be a small minority who will fail to govern themselves and obey the law. The majority must not only obey the law themselves, they must also affirmatively participate in the process of enforcement of the law as to the criminal minority.

Historically, the motivation for such self-discipline, self-government, and voluntary compliance with the law comes only from religion. The average American does not commit murder, robbery, theft, arson and other crimes against the law because he fears punishment by the state, but because of his religion — his obligation to his God and his concern and respect for his fellowman. Similarly, for the same reason he supports the law to protect his fellowman. Lessen the influence of religion and we can have law and order only through a police state with a huge law enforcement army of almost unlimited powers. If you seek the reason for the increase in the crime rate, look to the decline in religion and morality in American life.

De Toqueville wrote:

> Religion is the safeguard of morality, and morality is the security of law and the surest pledge of the duration of freedom.

He wrote:

> Thus, while the law permits Americans to do what they please, religion prevents them from conceiving, and forbids them to commit what is rash or unjust.

William Ernest Hocking, the dean of American philosophers who died not many years ago, wrote in his book *The Coming World Civilization* in 1946:

> Democracy is the most difficult and perilous form of government because it calls for unselfishness on the part of officers and voters alike. To sustain this high morality against the tide requires religion, because it is only religion that makes morality a command of the cosmos.

He claimed that a democratic state, such as America:

> . . . depends for its vitality upon a motivation which it cannot by itself command. The power of the state must come from a law higher than itself.

This motivation and this power in America has been and is religion, and our nation as a free society is dependent thereon.

In an article entitled, "What You Don't Know About Criminal Justice," in the magazine *American Heritage* in the June-July 1982 issue, Charles E. Silberman, a former editor of *Fortune,* writes:

> . . . criminal violence is intolerably high . . . the solution lies outside the criminal justice system itself. What seem to be failures of law enforcement, Dean Roscoe Pound of Harvard Law School pointed out more than fifty years ago, are actually manifestations of our tendency to ask more of the criminal justice system than it is capable of delivering. In any society, ours included, the ultimate source of order is not coercion — not the presence of the police or the threat of punishment by the courts — but custom and habit: the habit of voluntary and automatic (and often unconscious) compliance that keeps most people law-abiding most of the time even in situations in which detection or punishment are unlikely. The police are essential; so are the courts and the prisons; but they cannot carry the entire burden of social control. As the criminologist E. H. Sutherland wrote with only partial exaggeration: 'When the mores are adequate, laws are unnecessary; when the mores are inadequate, the laws are ineffective.'

Sutherland observed that today the mores are inadequate.

We need to improve our courts and our criminal justice laws and procedures; but law and order, like liberty, rests in the hearts of men and women. What Judge Learned Hand, possibly the greatest American judge of the 20th century, said in his speech on liberty in New York's Central Park during World War II is pertinent:

> I often wonder whether we do not rest our hopes too much upon constitutions, upon laws and upon courts. These are false hopes; believe me, these are false hopes. Liberty lies in the hearts of men and women; when it dies there, no constitution, no law, no court can even do much to help it. While it lies there, it needs no constitution, no law, no court to save it. And what is this liberty which must lie in the hearts of men and women? It is not the ruthless, the unbridled will; it is not freedom to do as one likes. That is the denial of liberty, and leads straight to its overthrow. A society in which men recognize no check upon their freedom soon becomes a society where freedom is the possession of only a savage few; as we have learned to our sorrow. What then is the spirit of liberty? I cannot define it, I can only tell you my own faith. The spirit of liberty is the spirit which is not too sure it is right; the spirit of liberty is the spirit which seeks to understand the minds of other men and women; the spirit of liberty is the spirit which weighs their interests alongside their own without bias; the spirit of liberty remembers that not even a sparrow falls to earth unheeded; the spirit of liberty is the spirit of Him who, near two thousand years ago, taught mankind that lesson it has never quite forgotten; that there may be a kingdom where the least shall be heard and considered side by side with the greatest.

If we do not restore respect for the liberty and security of others in the hearts of Americans, fundamental changes will have to be made in our criminal justice system, including drastic reductions in the liberty of the individual in America. I suggest that some liberties that we take for granted will have to be substantially modified. The privilege against self-incrimination and the restrictive rules concerning confessions may have to be modified greatly. The protection against unreasonable searches and seizures and the exclusion of illegally obtained evidence may be securities we can no longer afford. Even trial by jury as presently guaranteed may require some modifications. We may be compelled to do more than make some

needed reforms of our criminal justice system. We may have to move in the direction of a police state.

About a century ago some American political observer noted that there were two possible solutions to the American Indian problem — massacre or education. The first was apparently faster and the second was much slower but in the long run more effective. For the first 200 years of our American history our policy was primarily "massacre." Then in 1819 Congress established the Civilization Fund to subsidize mission schools for the Indians, and the educational policy was started. Our criminal justice system today relies primarily upon incarceration and execution. It is high time we establish a "civilization fund" for the entire American society to subsidize "mission schools" so that we become once again a society of moral men worthy of freedoms bequeathed to us by our forefathers.

NECROLOGY

HENRY CORNICK COKE, JR.

1903 - 1982

HENRY CORNICK COKE, JR. OF DALLAS SERVED THE LEGAL PROFESSION for more than 50 years. He was a native Dallasite, born on August 24, 1903. He died on December 5, 1982.

Coke received his higher education at Yale University. After obtaining a bachelor of arts degree, he received a law degree magna cum laude in 1929. While at Yale, he served on the editorial board of the Yale Law Journal, and he held memberships in Order of the Coif, Phi Delta Phi, Delta Kappa Epsilon, and Skull and Bones.

He began a long, dedicated law career in 1929, when he joined the Dallas law firm of Coke & Coke. The firm had been established by his father, Henry Cornick Coke, and his uncle, Alexander S. Coke.

At the outbreak of World War II, Coke applied for enlistment in the U.S. Army. While awaiting word from the Army, he served as an attorney for the Lend-Lease Administration in Washington.

His service with the Army Air Force, beginning in 1942, was concentrated in the China-Burma-India Theatre. Attaining the rank of major, he received the Distinguished Flying Cross, the Bronze Star, two battle stars, and the Air Medal.

Following his discharge from the Army in 1945, Coke returned to the family law firm in Dallas and resumed practice as a senior partner. In 1977 he became of counsel to the firm, and he continued in that capacity until his death.

Coke served as a director of First National Bank in Dallas (now Interfirst Bank Dallas) for many years. He also held director positions for the Otis Engineering Corporation, Halliburton Company, and First International Bancshares, Inc. (now Interfirst Corporation).

Besides his membership in the Philosophical Society, Coke was involved with the Dallas Historical Society (president, 1969-1974) and the Dallas Symphony Society (president, 1941). Professional memberships included the Southwestern Legal Foundation (research fellow and member of the Advisory Board for the Southwestern Law Enforcement Institute), Dallas Bar Association, State Bar of Texas, and the American Bar Association.

Coke continually pursued an avid interest in book collecting, particularly the works of Joseph Conrad and Herman Melville.

He is survived by his wife of 15 years, Kathleen Walker Coke; sons, Henry Cornick Coke, III and Alexander Seton Coke; stepsons, John R. McLean, III and Raymond C. J. Cock; daughter, Nancy Townsend Coke; stepdaughters, Sandra Bacon Jones and Charlotte Cock Novick; and four grandchildren.

WILMER BRADY HUNT

1903 - 1982

WILMER BRADY HUNT, FORMER JUDGE OF THE 133RD DISTRICT COURT in Houston, died March 12, 1982, at the age of 78.

Hunt was born to Wilmer Sperry and Lucy Brady Hunt in Houston on August 25, 1903. After graduating from St. Thomas High School in Houston, he attended Georgetown University and received a Bachelor of Arts degree. In 1928 he received a law degree from the University of Texas at Austin.

Upon his graduation from law school, Hunt practiced law with his father in Houston until his father's death in 1934. He then joined James F. Lawler in a law partnership which continued until 1946. That year, members of the Houston Bar Association elected him special judge of the 80th Judicial District to fill the vacancy of the ailing Judge Roy Campbell.

In 1947 Governor Beauford Jester appointed Hunt judge of the newly created 133rd District Court, a position he held unopposed for 23 years. He resigned in 1970 and moved to Austin.

His career continued in Austin as special assistant to Attorney General Crawford Martin, as counsel to the firm of Hollers & Travis, and as special judge in many Travis County cases.

He formerly served as chairman of the State Bar of Texas Judicial Section, chairman of the board of Riverside General Hospital in Houston, president of the English Speaking Union, chairman of the Houston Chapter of the American Red Cross and regional trustee of Mills College. Other memberships included the American Bar Association, American Judicature Society, Texas Bar Foundation, Texas State Historical Association, Beta Theta Pi and Delta Theta Phi.

In 1969 Hunt was honored by the Houston Chapter of the National Conference of Christians and Jews for his active support,

and in 1973 he was selected Catholic Man of the Year. In Houston he achieved Knight of the Equestrian Order of the Holy Sepulchre, the highest rank of a Catholic layman in the Houston Diocese.

Hunt was married to Eugenia Flewellen Howard Hunt for 50 years. Their children are Wilmer Grainger Hunt of Austin, Sperry Eugene Hunt of Burlington, VT, Nancy Lou Keisling of Portola Valley, CA, and Robin McCorquodale of Houston.

LEON JAWORSKI

1905 - 1982

ON DECEMBER 9, 1982, LEON JAWORSKI, PRESIDENT OF THE Philosophical Society of Texas, died of a heart attack at his ranch near Wimberley. He served as vice-president of the Society during 1982 and had been elected president on December 4, 1982 at the annual meeting in Galveston.

Leon Jaworski was born in Waco on September 19, 1905, the son of immigrant parents, Rev. and Mrs. Joe Jaworski. His father was of Polish extraction; his mother Austrian. For most of Leon Jaworski's childhood, Rev. Jaworski was pastor of a German protestant church in Waco. From his father he derived a profound and unwavering Christian faith which emphasized respect and compassion for all men and a deep and abiding love of America as a nation where the law proclaimed and preserved the rights and liberties of every citizen. These two paternal inheritances shaped the life of service of Leon Jaworski.

Gifted with a brilliant mind, Jaworski graduated from Waco High School at 15 years of age and from the School of Law of Baylor University at 19. In 1925 he became the youngest person ever admitted to the Texas Bar. Before beginning practice he earned a master of laws degree from George Washington University in 1926. While in Washington he served as a secretary to then-Congressman Tom T. Connally.

In 1926 Jaworski returned to Waco and began the practice of law. In the next half century he compiled a record of effective advocacy for his clients which made him the senior partner in Fulbright and Jaworski, one of the nation's largest law firms. The numerous offices of the organized bar to which he was elected

indicate the high esteem in which he was held by his fellow attorneys. He was president of the Houston Bar Association, the Texas Judicial Council, the State Bar of Texas, the American Bar Association and the American College of Trial Lawyers. He was chairman of the board of directors of the American Judicature Society and the Southwestern Legal Foundation and a fellow of the Texas Bar Foundation and the American Bar Association. The above and many other professional offices suggest that probably no other American lawyer of this century has been called upon to serve the profession in more offices of leadership and has so faithfully responded.

Leon Jaworski was called upon by state and federal officials to render professional services in many special offices, committees, commissions and boards. Three such instances indicate the variety and significance of such services.

(1) As Chief of War Crimes Trial Section of the U.S. Army in Europe he prosecuted the first major war crime trials at Nuremberg. He pioneered in establishing the responsibility of Nazi war criminals under international law.

(2) At the request of the U.S. attorney general he served as special prosecutor of Governor Ross Barnett of Mississippi who defied the integration orders of the federal court. In the philosophy of Leon Jaworski the governor of an American state is not above the law.

(3) At the request of President Richard M. Nixon he served as special prosecutor in the Watergate scandal. In *United States v. Nixon,* the Supreme Court of the United States held that not even the President of the United States is above the law. At a time when our American system of law was under greater internal threat than at any time since the Civil War, Leon Jaworski played a leading part in demonstrating that our legal system works under the most strenuous circumstances.

Blake Tartt, State Bar of Texas president-elect and a partner in Fulbright and Jaworski, summed it up well:

> "Leon Jaworski was the quintessential lawyer. He exemplified everything that is good about our profession."

In addition to the above, Jaworski served as an elder of the First Presbyterian Church of Houston, trustee of the National Conference of Christians and Jews, chairman of the Houston Chamber of Commerce, president of the Rotary Club of Houston, president of

the Houston Chapter of the American Red Cross, trustee of Baylor College of Medicine, trustee of M.D. Anderson Foundation, president of the Texas Medical Center, president of Baylor Medical Foundation, and he held offices in numerous other religious, civic, educational and charitable organizations. He also wrote four books and numerous legal articles.

For all the above he was awarded honorary degrees from 15 colleges and universities, and he received scores of special awards and medals.

He was indeed an extraordinary man. He was a nonpareil.

His extraordinary life was shared by his wife of 52 years, Jeannette, and their children Joe, Joanie Moncrief and Claire Draper, who survive him.

—A. V. M.

LOUIS CHARLES PAGE

1909 - 1981

LOUIS CHARLES PAGE, FAIA, SON OF LOUIS CHRISTOPHER AND Erin (O'Brien) Page, was born in Austin on September 16, 1909 and died on November 27, 1981.

An Austin native, Page received his early education in Austin public schools and was later graduated from the University of Texas School of Architecture in 1929. He received his master's degree in architecture from Massachusetts Institute of Technology in 1931, and he held a diploma from the Fontainbleau School of Fine Arts in France. As a registered architect and engineer, he was an instructor of architectural design at the University of Texas during the 1933-34 term.

He was married in Austin on October 20, 1939, to Virginia Nalle. Their three children are Christopher, Susan (Mrs. Ronald Driver) and Sally (Mrs. Joe Kanetsky).

One of the original organizers of the Texas Society of Architects, he served as the society's first secretary-treasurer in 1936.

Page was a founder and principal of the firm of Page Southerland Page, Architects, Engineers, Consultants. With his partners, he developed the firm from its origins in the late 1800s as Page Brothers Architects (his father and uncle) into a fully-rounded

architectural-engineering organization. His father, L. C. Page, Sr., an Austin architect for 30 years, did commercial and school building work throughout the Southwest. From the early years, Page Southerland Page continued in a similar direction.

Some of the early projects of the firm in Austin were the E.R.L. Wroe home, Ward Building for the Austin State Hospital, Brackenridge Hospital, and educational buildings for several school systems in Texas.

The firm designed the first federal slum clearance project in the United States. The housing project, Rosewood, was built in Austin in 1936. They were also architects for monuments built throughout the state in commemoration of the State of Texas 1936 Centennial.

During World War II, after being unable to enlist because of health reasons, Page was the sole director of the firm as co-designers of Bergstrom Field in Austin and a naval hospital in Mexia, in addition to emergency housing for military establishments.

After World War II, the firm developed into one of the largest of its kind in the state. Active in industrial, educational and health care areas, principal works were numerous, including: the Texas Supreme Court Building; St. David's Hospital, Austin; Ambulatory Care Facility, University of Texas Medical Branch, Galveston; Wilford Hall USAF, Lackland AFB, San Antonio; IBM Manufacturing Plant, Austin; American Embassy Building, Mexico City; Engineering Building, Geology Building and others, in the capacity of consulting architects to the University of Texas system.

In 1960 Page was made a Fellow of the American Institute of Architects, an organization in which he held state and local offices. He served for several years as a member and chairman of the Texas Board of Architectural Examiners and in 1962 was appointed to the National Council of Architectural Registration Boards, on which he served as a director.

Other professional activities included membership in the American Hospital Association and participation on the Governor's Task Force on Comprehensive Mental Health Planning in Texas.

—J. S. W.

JACK KENNY WILLIAMS

1920 - 1981

ON SEPTEMBER 28, 1981, TEXAS AND THE WORLD OF LEARNING lost a lifelong friend. Jack Williams could have claimed to have been a Virginian — he was born in Galax, VA, on April 5, 1920 — but he made his mark as a Texan. He took his B.A. degree at Emory and Henry College, his M.A. and Ph.D. degrees in American History from Emory University, and he received various honorary degrees during his educational career.

His service in the educational trenches, as a high school teacher and principal in Virginia, honed his interest in education and young people. His service as an officer in the Fourth Marine Division from 1942 to 1946 honed his own personal courage. In the late 1940s he became an instructor in history at Clemson University and so began a long and distinguished rise through various academic and administrative ranks at that institution. By 1966 he was dean of faculties and vice-president for academic affairs, and his reputation earned him an invitation to become commissioner of the Coordinating Board, Texas College and University System in Austin. Two years of service there led to appointment as vice-president for academic affairs at the University of Tennessee at Knoxville and as chancellor pro tem in the University of Tennessee Medical Units at Memphis.

In 1970 he began a long and remarkably useful career as president of Texas A&M University and the Texas A&M University System. While the world of scholarship will miss him — he was the author of several studies of American rogues, villains and academic administrators — the world of Texas A&M will miss him most. He brought to that institution broad views of a university's purpose and a scholar's concern for faculty nurturing. Previous work done by General Earl Rudder had brought Texas A&M into modern focus, but Jack Williams took the university to the threshold of academic eminence. His concern for faculty recruiting, for research, and for student help and teaching endeared him widely on the campus. When he left in 1977, after a brief stint as chancellor of the Texas A&M University System, sadness was widely felt.

He himself probably needed a change. The strain of the offices he held at Texas A&M engendered several heart attacks, the last of which at A&M he barely survived. From A&M he went to Houston to become executive vice-president and director of the Texas Medical

Center. In this dynamic place he offered unusual leadership skills and quickly entrenched himself in that burgeoning medical community. He was about to be appointed president of his new domain when a heart attack ended his life.

Scholar, distinguished teacher, fine administrator, friend of learning, lifelong student, friend of students, mentor, good husband to Margaret Pierce Williams, good father to daughters Mrs. Leonard Teel of Atlanta and Miss Mary K. Williams of Austin, good man — these qualities were Jack Williams' own. All were admixed with a marvelous chemistry of humor which etches him always in the minds of those who knew him.

—F. E. V.

HERBERT PICKENS GAMBRELL

1898 - 1982

Herbert Gambrell the historian and scholar was often elbowed aside by Herbert the innovator, administrator and raconteur. His was a life of many facets and many interruptions, as well as sturdy professional accomplishments. Among his most notable achievements was the revitalization of this Society which had lain dormant for nearly ninety years before its resuscitation by "fine citizens and fine professors" in Herbert's house in 1936.

Some of Herbert's organizations were very gossamer. In his earlier years he sometimes wrote and spoke of the Martha Sumner University and the Association of American Vice-Presidents as institutions of long-standing. The latter, in Herbert's view, was well on its way to becoming the largest organization in the world. Discussion of the doings within the imaginary university gave Herbert and his like-minded colleagues a means of tolerating the rigorous administration of their university president during the late '20s and early '30s.

None of Herbert's ancestors were quite unsuccessful enough to necessitate a move to Texas prior to 1846. Therefore, their progeny did not qualify as regular members of the Sons and Daughters of the Republic. But they were staunch Democrats and faithful Baptists before and after arrival. Joel Halbert Gambrell had already responded to the call to the Baptist ministry before he married Victoria Pickens. Their son Herbert Pickens Gambrell was born in Tyler on July 15,

1898. A few years later the family moved to Dallas where the elder Gambrell was the editor of *The Baptist Standard.*

After graduation from old Dallas High School at sixteen and full of innovative ideas, Herbert went to work for Sears, Roebuck and Company. By his reckoning, one of his suggestions in running the claims department ultimately saved thousands of dollars toward the betterment of commerce. After a year and a half at Sears he entered Baylor University in 1916. He was elected president of what he taught his classmates to refer to as the Class of 1920, rather than merely as freshmen. As a sophomore he was a party to his first recorded, large-scale, public prank. The president of Baylor had expelled five seniors for capturing the newly elected second president of the Class of 1920 and leaving him at a nearby town to get back to campus as best he could. In response to what they deemed an unjust punishment, Herbert and three of his classmates spent much of the night setting up a mock tombstone to mark the president's burial in front of Old Main Building. Although the prank caused much comment, its perpetrators went undetected. Even so, the discomfort of suspicion may have contributed to Herbert's decision to move to a less rigid environment. The next year he transferred to the new Southern Methodist University where he took the bachelor's degree in 1921.

After a brief stint of teaching history at Temple High School and English at Weatherford College, in June 1923 he accepted the appointment of teaching fellow at Southern Methodist under R. A. Hearon, and he was awarded the Master of Arts in 1924. It was by Baylor's Professor Francis G. Guittard, however, that Herbert said he was first inspired to become a professor of history.

As a man of independent spirit, Gambrell found his efforts on behalf of the university often running afoul of what he and others saw as inappropriate academic policy. Thus, until the early thirties his appointment appears to have been somewhat precarious. But during those years he taught imaginatively and performed the chores expected of a junior faculty member: work with the alumni and their magazine and the first managing editorship of the *Southwest Review.* Except for a summer at the National University of Mexico and eighteen months at the University of Chicago in 1928-29, he attended to much of the day-to-day administration of the Department of History of which H. A. Trexler was chairman, and he began his work as a biographer. His first biographical studies were those of Robert S. Hyer and Henderson Yoakum for the *Dictionary of*

American Biography. In 1932 he and L. W. Newton brought out *A Social and Political History of Texas,* and two years later he published his biography of Mirabeau B. Lamar.

His work on the life of Anson Jones was coming along well when he was called upon to act as director of historical exhibits for the Texas Centennial Exposition of 1936 and the Pan American Exposition the following year. These assignments and their winding up took nearly four years. It was during this time that some of Herbert's most significant work was accomplished. The Philosophical Society of Texas was revitalized, the Texas Institute of Letters was founded, and both were nurtured toward adulthood. The Hall of State, built for the Centennial Exposition, became the museum of the Dallas Historical Society in 1938 when Herbert, who had been its acting curator, was installed as its director. The French took that occasion to honor him as an Officier d'Academie for his work in displaying the French role in Texas history. As in the case of Herbert's other enterprises, the work of the Dallas Historical Society was performed mostly at SMU. Virginia Leddy of Greenville became his archivist at the Hall of State, after having taken her degree in history at the University of Texas. She and Herbert were married in 1940, and thereafter the Gambrells became a dual institution in Texas life.

With Virginia's help, the work for the Ph.D. at the University of Texas was finally completed, and the degree was gained in 1946. Its sequel was the publication of the biography of Anson Jones. The chairmanship of the Department of History followed, and the Collins prize was awarded for the Jones biography in 1948. Herbert's military prowess, gained through his experience as a sergeant major in the Student Army Training Corps at Baylor, was finally rewarded by his appointment as lieutenant colonel on the staff of Governor James V. Allred. In 1951 he was honored by election to a life fellowship in the Royal Society of Arts.

In these years and those that followed, the Gambrell partnership tended all those learned enterprises which Herbert had founded or cared for: the Philosophical Society of Texas, the SMU Press, the Texas Institute of Letters, the Sons of the Republic of Texas, the Critics Club, the Texas State Historical Association and the SMU Department of History. In 1960 the Gambrells produced *A Pictorial History of Texas,* which received the Summerfield G. Roberts award in 1961.

Seen as a piece, Herbert's life falls neatly into three periods. The years of growing up and apprenticeship were full of wit and playfulness and crusading for the right standards and proper academic atmosphere for a fledgling university. Herbert's appointment as director of historical exhibits for the Centennial Exposition of 1936 brought his career to full maturity. The spirit of wit and merriment was not cut off, for it enveloped his being, but it became a subsidiary mode of expression that merely embellished his other activities. Somewhat before his retirement from full academic duties in 1968, Herbert began the tapering off. He could then look upon his creations as robust institutions moving forward under the direction of the second generation.

Herbert himself has related the re-creation of this Society in our 1963 *Proceedings,* and the accomplishments of both Gambrells were celebrated by Willis Tate and Lon Tinkle in our *Proceedings* for 1976. After reading the latter, Herbert said that there was no need for a further obituary. But however redundant Herbert might think it, he would surely see this summing up as appropriate for the annuals of the Society. In retrospect, the rebuilder of this Society stands first an innovative administrator whose forceful but gentle presence brought joy to all around him. Scholarship was part of his life but not the principal part. His major work was the creation of the accoutrements of learning, without which mere scholarship is barren. Nonetheless, when death came on December 30, 1982, he left us scholarly works of biography along with living institutions, the greatest of which is for the betterment and enjoyment of us all.

—J. W. MC K.

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For the Year 1983

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LEON JAWORSKI
(Deceased December 9, 1982)

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THOMAS HART LAW
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PAST PRESIDENTS

*Mirabeau Buonaparte Lamar	1837-59
*Ira Kendrick Stephens	1936
*Charles Shirley Potts	1937
*Edgar Odell Lovett	1938
*George Bannerman Dealey	1939
*George Waverley Briggs	1940
*William James Battle	1941
*George Alfred Hill, Jr.	1942
*Edward Henry Cary	1943
*Edward Randall	1944
*Umphrey Lee	1944
*Eugene Perry Locke	1945
*Louis Herman Hubbard	1946
*Pat Ireland Nixon	1947
*Ima Hogg	1948
*Albert Perley Brogan	1949
*William Lockhart Clayton	1950
*A. Frank Smith	1951
*Ernest Lynn Kurth	1952
*Dudley Kezer Woodward, Jr.	1953
*Burke Baker	1954
*Jesse Andrews	1955
James Pinckney Hart	1956
*Robert Gerald Storey	1957
*Lewis Randolph Bryan, Jr.	1958
W. St. John Garwood	1959
George Crews McGhee	1960
*Harry Huntt Ransom	1961
*Eugene Benjamin Germany	1962
Rupert Norval Richardson	1963
*Mrs. George Alfred Hill, Jr.	1964
*Edward Randall, Jr.	1965
*McGruder Ellis Sadler	1966
William Alexander Kirkland	1967
*Richard Tudor Fleming	1968
*Herbert Pickens Gambrell	1969
Harris Leon Kempner	1970
*Carey Croneis	1971
Willis McDonald Tate	1972
*Dillon Anderson	1973
Logan Wilson	1974
Edward Clark	1975
Thomas Hart Law	1976
Truman G. Blocker, Jr.	1977
Frank E. Vandiver	1978
Price Daniel	1979
Durwood Fleming	1980
Charles A. LeMaistre	1981
Abner V. McCall	1982

**Deceased*

MEMBERS OF THE SOCIETY

(NAME OF SPOUSE APPEARS IN PARENTHESIS)

ALBRITTON, CLAUDE CARROLL, JR. (JANE), Hamilton Professor of geology, emeritus, and senior scientist, The Institute for the Study of Earth and Man . . . . . *Dallas*

ALLBRITTON, JOE LEWIS (BARBARA), lawyer; board chairman, Riggs National Corporation . . . . . *Houston*

ALLEN, WINNIE, retired archivist, University of Texas Library . *Hutchins*

ANDERSON, THOMAS D. (HELEN), lawyer . . . . . *Houston*

ANDERSON, WILLIAM LELAND (ESSEMENA), retired financial vice president of Anderson, Clayton & Co.; former president of Texas Medical Center, Inc.; awarded Navy's Distinguished Civilian Service Medal in 1945 . *Houston*

ANDREWS, MARK EDWIN (LAVONE), president, Ancon Oil and Gas Company; former assistant secretary of the navy . . . *Houston*

ARMSTRONG, ANNE LEGENDRE (MRS. TOBIN), former U. S. ambassador to Great Britain . . . . . *Armstrong*

ARMSTRONG, THOMAS REEVES, Armstrong Ranch; former president, Santa Gertrudis Breeders Association . . . . . *Armstrong*

ASHWORTH, KENNETH H., commissioner of higher education, Texas College and University System . . . . . *Austin*

BAKER, REX G., JR., lawyer . . . . . *Houston*

*BANKS, STANLEY (ANNE), lawyer; member, Texas Library and Archives Commission . . . . . *San Antonio*

BARROW, THOMAS D. (JANICE), vice-chairman, Standard Oil Company (Ohio) . . . . . *Houston*

BEAN, WILLIAM BENNETT (ABIGAIL), Sir William Osler Professor of Medicine, University of Iowa; former director, Institute for Humanities in Medicine and Harris Kempner Professor of Medicine, University of Texas Medical Branch at Galveston . . . . . *Iowa City, IA*

BELL, HENRY M., JR. (NELL), chairman of the board and president, Citizens First National Bank of Tyler . . . . . *Tyler*

BELL, PAUL GERVAIS (SUE), president, Bell Construction Company; president, San Jacinto Museum of History . . . . . *Houston*

BENNETT, JOHN MIRZA, JR. (ELEANOR), member, University of Texas Centennial Commission and Texas Historical Records Advisory Board; director, Texas and Southwestern Cattlemen's Association; Major General, USAFR . . . . . *San Antonio*

BENTSEN, LLOYD, United States senator . . *Houston* and *Washington, DC*

BETO, GEORGE JOHN (MARILYNN), professor of criminology, Sam Houston State University; former director, Texas Department of Corrections; former president, Concordia College . . . *Huntsville*

BLANTON, JACK S. (LAURA LEE), president, Scurlock Oil Company . *Houston*

BLOCKER, TRUMAN G., JR., surgeon; president emeritus, University of Texas Medical Branch at Galveston . . . . . *Galveston*

BOLTON, FRANK C., JR., lawyer; former head of legal department of Mobil Oil Company . . . . . *Houston*

BOYD, HOWARD TANEY (LUCILLE), retired chairman, The El Paso Company; College of Business Administration Council of Texas A&M University; regent emeritus, Georgetown University . . . *Houston*

BRANDT, EDWARD N., JR. (PATRICIA), physician — medical educator, Assistant Secretary for Health, U. S. Department of Health and Human Services . . . . . *Washington, DC*

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BROWN, GEORGE RUFUS (ALICE), retired chairman, Brown and Root, Inc. . . . . *Houston*

BROWN, JOHN R., judge, Fifth Circuit Court of Appeals . . . *Houston*

BUSH, GEORGE (BARBARA), vice president of the United States; former director, Central Intelligence Agency; former ambassador to United Nations; former congressman . . . *Houston* and *Washington, DC*

BUTLER, GEORGE A., lawyer; board chairman, Bank of Texas; trustee, George Washington University, Grand Central Art Galleries, Washington-on-the-Brazos Association . . . . . *Houston*

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