State of the Judiciary
Chief Justice Rose E. Bird, California Supreme Court
Message to the California Bar Association Meeting
September 12, 1982, in Sacramento, California

It is a pleasure to join you once again this year for the state of the judiciary address to the conference of delegates. This address, the first of which was delivered five years ago when I Became Chief Justice, has since become an annual occurrence and would like to commend the bar for its ongoing interest in and support of our judicial system.

It is especially worthy of note that this year the bench has been formally invited to be a part of this ceremony. May I congratulate your outgoing president, Sam Williams, and your incoming president, Tony Murray, for their recognition that the bench and the bar must work together.

Also, your board of governors has appointed four fine attorneys to our Judicial Council. Joe Hurley, Janssen, Peter Hughes, and Bob Morgan have made substantial contributions to that rule-making body. And I look Forward to continuing to work closely with them, as well as Tony Murray and Judge Ron George.

After five years as chief justice, this would appear to be a most appropriate time to summarize the many areas of growth, development, and improvement in our state's judicial system. That system is a remarkable one, not only for its size -- nearly 1300 judges -- but also for its diversity, its energy, its competence, and its integrity. It is a system in which I am proud and privileged to serve.

As chief justice and chairperson of the Judicial Council, I Have sought to encourage a judiciary that is both modern and traditional. Modern, in the sense that our courts must keep pace with our complex, high-speed society if they are to continue to serve it well. Traditional, in the sense that our courts must preserve the heritage of the rule of law if our democracy is to endure.

When I came to the Supreme Court in 1977, it was like a trip back in time to the era of green eye shades and the horse and buggy. There was no dictating equipment, the few electric typewriters were more suitable for the museum of science and industry than a modern working office.

The idea of computerization was as futuristic a notion as interplanetary travel, the clerk's office continued to handwrite their ledger entries just as they had done 100 years before. Upon further inquiry, I learned that these same conditions prevailed throughout the courts of appeal.

The situation was nearly unworkable and, with the massive increases in appellate caseload during the 1970s, it was rapidly growing worse. Now in the space of five years, things have changed dramatically. Using funds saved and redirected from our own budget and some federal grants, we have moved to thoroughly modernize the California Appellate Courts.

Throughout the state, each appellate justice's secretary has a complete word processing system. Each clerk's office has its own data processing equipment, and installation of a computerized case-tracking system is underway. Soon those systems will be able to talk to each other

electronically. The courts of appeal and the Supreme Court all have their own lexis legal research terminals. Justices and their law clerks have dictating equipment and correcting electric typewriters, and the Reporter of decisions is preparing the way for the direct publication of opinions from the courts' word-processing floppy discs.

These several changes put the California appellate system on a par with modern law offices and courts throughout the nation, and we do not intend simply to be content with this new status quo. I have asked the administrative office of the courts to continuously monitor the needs of the appellate courts and to propose the acquisition of new equipment as technological advances are made.

The California courts are now modern, and we plan to keep them that way. However, machines are ultimately only an aid to the people who make the appellate courts run, the justices. They must have adequate human resources, legal, clerical, and administrative staff -- if they are to do their job well. In the last five years, we have taken some significant strides in this area as well.

During the decade of the '70s, total filings in the five appellate districts rose by 84% while the number of judges increased by only 23%. As these figures demonstrate, the courts of appeal clearly needed both more justices and more staff to deal competently with this nearly doubled caseload.

However, the attempted solution of the early ‘70s to add a few research attorneys to a central Staff which did not work directly for a justice -- created some disturbing problems of its own. The number of “by the court” opinions, written by central staffs and unsigned by any justice, increased noticeably. The justices, with only one research attorney each on their personal staffs, began to resemble administrators more than judges as they struggled to keep up with the towering stacks of cases on their desks.

Increased caseloads notwithstanding, the decision making power in our courts of appeal must be kept in the justices' hands. We have taken action over the past few years to increase appellate productivity without diluting judicial accountability. For the first time in the history of our Courts of Appeals, the number of research attorneys on many justices' personal staffs has been increased to two.

It has taken some doing to convince the legislature of the urgent need for these new positions during the current fiscal crisis. However, I am hopeful that by this time next year, I will be able to report to you that every court of appeal justice has two law clerks.

Law librarians have been added so that each district has not only a complete library but adequate professional staff to maximize its efficient use.

And, for the first time in over a quarter of a century, the associate justices on the Supreme Court have received additional help in the form of a new law clerk and increased secretarial assistance.

Although essential, an increase in staff alone was not enough to solve the workload problems of the courts of appeal. More justices were needed, and the Judicial Council sponsored a bill in

1981 to create 15 additional judgeships. The legislature and the governor passed the measure that same year. Some legal challenges to the act's funding unfortunately have postponed its implementation. However, I look forward to the resolution of that matter so that the courts of appeal may have the benefit of this much-needed judicial assistance as soon as possible.

Modern equipment and augmented personal staff are two significant steps towards ensuring a judiciary that is able to meet the challenges of an enormous workload competently accountably, and responsibly. The theme of modernizing the courts is common to both of these developments that I have been describing.

That theme is also sounded in a number of other areas in which we have strived to improve the state's judicial system. Many of these improvements would not have been possible without the work of numerous people: members of the Judicial Council, justices of the courts of appeal, Ralph Gampell, Burt Oliver and the staff of the Administrative Office of the Courts, the members of the Board of Bar, governors, and the State Bar. I am pleased to have this opportunity to acknowledge their valuable contributions.

The Judicial Council's procedures have been changed to make its proceedings more often and businesslike. No longer does the council hold its meetings at exclusive resorts hidden away from the public eye. It now meets in state buildings accessible to both our citizens and the press. Rules of court are no longer adopted first and put out for comment thereafter. Now, when proposals for change are suggested, they are circulated for comment to the bench, the bar, and the public so that the Council may have the benefit of all viewpoints before taking action.

Access to the Council has been broadened by utilizing advisory committees composed of judges, lawyers, and members of the press and public. These committees have made recommendations on a wide array of topics which include court congestion in Los Angeles; appellate practices and procedures; publication of appellate Opinions; cameras in the courtroom/ uniform statewide law and motion rules for trial courts/ complex litigation; training for nonjudicial court personnel; audio transcription equipment for municipal and justice courts; the weighted caseload system; superior court appellate department rules; and calendar-case flow management rules.

Other important steps have been taken. For example, accountability for decision-making now rests with the council members instead of with the staff of the administrative office of the courts, agenda materials are distributed well in advance of meetings, and committee sessions are held two weeks before the council meets. In the Administrative Office of the Courts, there has been a concerted effort to bring about modern business practices, the following are but a few examples of the improvements that are underway:

- The old hand-posted, manual system of accounting has been computerized,
- A central stores facility has been created for the ordering and distribution of supplies,
- For the first time, a physical inventory of all equipment and furnishings has been done throughout the appellate courts,
- A business services office has been established to provide professional assistance. For the appellate courts,

- Modern copy machines have been obtained for volume reproduction work,
- A variety of records are being converted to microfilm,
- A new personnel office has been established to assist in judicial recruitment and hiring of personnel,
- All personnel vacancies are now open to the public rather than reserved for a favored few,
- A new employee handbook has been developed. A comprehensive survey of judicial employee classifications is in progress,
- The development of a personnel policy and procedures manual is underway, No longer are Judicial Council employees allowed to
- Accept gratuities from lobbyists and legislators, a telecommunication link has been established between the Sacramento and San Francisco locations of the administrative office of the courts,
- Computers are now being used to improve the quality of statistical reporting from the various courts,

For the first time in its history, the Council itself has come to reflect the diversity of our society through the diversity of its membership.

The council has worked to improve the system in numerous ways. A willingness to experiment with new ideas and concepts is a hallmark of the present council.

For example, for the first time in the. History of this state, still photography and electronic media coverage has been approved on an experimental basis. A carefully monitored review of this process is ongoing to ensure that trials remain fair.

To make the system more understandable and affordable to the litigants, the Council has assisted with the following:

- Advisors are now available to help small claims litigants in every county of this state,
- The council has adopted standards to facilitate complex civil litigation,
- An experimental effort to promote economical litigation, begun in 1978 as a pilot project, has led to passage of recent legislation which will make parts of that program a permanent feature at the municipal and justice court levels.

The Council has adopted uniform standards for testing the competence of court interpreters, new rules on habeas corpus petitions have been adopted in response to a state bar proposal.

In other areas of the law, the Council is developing proposed statewide civil law and motion rules to help eliminate the current crazy quilt of rules that vary from county to county.

The Council is now inviting public comment before it decides whether to adopt rules to govern the display and presentation of videotape depositions in court. If established, this process may result in reduced expense, as well as fewer continuances and more efficient use of court time.

Comments are also being sought concerning standards for the appearance of counsel by telephone at civil pretrial, trial setting, and arbitration conferences, as well as civil law and motion hearings.

For the first time, the Judicial Council has called upon interdisciplinary academic expertise – in this instance, the Stanford Business School -- to aid in a comprehensive review of the weighted caseload system.

The Council has just completed work on a basic in-service training program for clerks in the trial courts of California.

A specialist at the Sacramento office of the administrative office of the courts regularly analyzes bills to assess their fiscal impact on the judicial system. That information is then transmitted to the legislature by the council's representative.

The Council's Mandatory Arbitration Rules Committee has undertaken a massive, in-depth case file study of four bay area superior courts to analyze the practical effect of judicial arbitration proceedings on the administration of justice.

The Judicial Council has taken action on several fronts in the last five years to help reduce trial court congestion throughout the state:

- A committee on calendar and Caseflow Management has been appointed under the leadership of Judge Homer Thompson.
- Working with the court management team of the Administrative Office of the Courts, Judge Reg Watt has brought his backlog elimination techniques to a number of counties with considerable success.
- In an attempt to get at the fundamental problem of large civil backlogs, Joe Hurley and I worked with the president of the Los Angeles County bar, The governor's office, and the legislature to raise post-judgment interest on civil judgments to the constitutional maximum.

In an attempt to aid both trial counsel and the news media, the council is soliciting comments on a proposed rule which would authorize the courtroom use of inconspicuous personal recording devices by attorneys, litigants, and the public.

Over 60 state-of-the-art courtroom recording systems have been purchased with federal grant funds by the administrative office of the courts for municipal and justice courts throughout the state.

A comprehensive review of the rules on appeal from municipal and justice courts to the appellate departments of superior courts is in progress.

In 1981 the Judicial Council adopted forms and rules establishing a uniform procedure for in forma pauperis proceedings.

The rules for the coordination of civil actions have been modified in order to give the trial courts additional control and supervision over these proceedings.

Respect for the jury as an institution must be matched by an equal respect for jurors as individuals. Toward that end, the court management team of the administrative office of the courts is working with courts in several counties to develop techniques which can be used statewide to improve the utilization and treatment of jurors. A booklet of basic information for jurors has been prepared and widely distributed.

For the first time, written guidelines have been established for the conduct of the commission on judicial appointments' public hearings on appellate court appointees.

As chairperson of the Judicial Council, I feel strongly that continuing judicial education is vital to a modern system. Despite the loss of federal grants, we have been able to maintain the funding for this important work. Now, this program is financed with state public funds. This has resulted in an orientation program for new judges, as well as a college for more experienced judges.

In addition to these developments at the Judicial Council and the administrative office of the courts, a number of noteworthy changes have been made at the courts of appeal and the Supreme Court.

The previous use of only a few chosen judges to sit on assignment at the appellate level has been changed so that almost 300 trial judges have now had the opportunity to serve pro tempore on an appellate court. Almost 58 Court of Appeal justices have been assigned to sit with the Supreme Court. Assignments now are rotated to give everyone a chance to serve.

At the trial court level, the assignment process has been decentralized through the extensive use of blanket and reciprocal assignments.

Funds for appointed counsel fees in the courts of appeal have been significantly increased in our budget for the first time in many years. Further, with the assistance of the administrative office of the courts, the first appellate district has launched a program to foster better representation of indigent criminal appellants by appointed counsel.

The Supreme Court has substantially increased appointed counsel's fees to a rate of $40 per hour. These payments are now made on an interim basis.

I meet regularly with the 13 presiding justices of the courts of appeal. These meetings have produced some notable results:

- For the first time, the internal operating procedures of each district have been published and are available to the public.
- Each district has adopted a written policy form limiting outside employment by staff attorneys.
- Recording equipment has been purchased for each district so that oral arguments are now preserved.

At the Supreme Court level, a public address system and more modern recording equipment have been installed in the San Francisco courtroom to enable the public to better follow the proceedings.

For the first time, the Supreme Court will be holding public hearings before acting on proposed amendments to the rules on the publication of appellate opinions.

Through the use of techniques such as the 5-day lists, the Nudger list, and the reordering of cases to give highest priority to the oldest matters, the Supreme Court is now approaching the achievement of a one-year timetable from the granting of petition for hearing to final decision. This has been accomplished despite an unprecedented seven changes in court membership over the past five years.

It also should be noted in passing that the Supreme Court has held special hearings and issued decisions in several urgent matters within a month or two of oral argument.

The Supreme Court now files opinions at two specific times each week to facilitate the efforts of the press to keep the public informed. In addition, the litigants are notified personally when an opinion is to be filed.

The central staff no longer drafts opinions as it did before my tenure, and in the last five years, a number of young minority attorneys have been hired to work for the court.

No longer does the Supreme Court require spectators and counsel to be searched before entering our courtroom for oral argument.

And, finally, I would like to ask for your help with a very important project. I have taken steps to introduce a constitutional amendment before the legislature. The Supreme Court needs to refine its ability to control its own case flow. Senate Constitutional Amendment 52 is a major step in that direction. It would allow the Supreme Court to grant petitions for hearing on specific issues rather than all of the issues presented in a case. Also, it would permit the court to nullify the transfer of a cause to itself as improvidently granted. The last provision of this constitutional amendment would specifically articulate the Supreme Court's power to transfer cases in which written opinions have been filed in the court of appeal back to that court for reconsideration when the law has been misapplied. These refinements should help our court both to keep abreast of its burgeoning caseload and to ensure that the principle of stare decisis is honored.

As these numerous examples indicate, we have taken the initiative in a great many areas over the past five years. All of these efforts have been intended to ensure that California has a modern judicial system that serves our citizens well. However, as I noted at the beginning of my remarks, it is important for our courts to maintain a balance between modern methods and traditional values.

The tradition that lies most deeply at the heart of the judiciary is respect for the rule of law. That is a precious heritage, and the judicial branch, along with the legal profession, has been entrusted

with the responsibility of its preservation.

In that regard, I would like to take a few moments to speak to you about a matter of considerable concern. During the past decade, there have been increasing attacks on the courts and on the legal profession.

I am not talking about the uninhibited comment and candid criticism that are part of the healthy exercise of First Amendment rights. Nor do I have in mind political attacks against individual judges, a phenomenon that is not unique to the present day, as Chief Justice Earl Warren and others before him could attest. Nor am I speaking specifically about California and its judges.

Rather, I refer to outright assaults throughout the country on judicial institutions themselves -- Assaults that display either a complete misunderstanding of, or a reckless disrespect for, the principle of the rule of law and the role of courts in our democratic society.

These institutional attacks are occurring not only in California but across the nation, at both the federal and state levels. For example, a number of bills presently before congress seek to strip the federal courts of jurisdiction over various special interest issues. In New York, gubernatorial rivals have been waging a war of words over who is more critical of that state's high court. Their battle became so heated that the New York Times felt compelled to speak out in an editorial aptly entitled "The Bullies v. the Bench."

My concern is that these attacks reflect a dangerous impatience with the rule of law. Throughout our society, we seem to be searching for instant solutions to increasingly complex social and economic problems. Sadly, the voice of history is being drowned out by the din and clamor of the moment. Bereft of the wisdom and continuity that history provides. We are willing to embrace ideas and proposals with little or no analysis and scant regard for their long-run consequences.

But without a sense of history, how can we begin to appreciate the bitter experiences that led our founding fathers to establish a constitution based on respect for the rule of law and human dignity? How can we hope to understand the need for institutions, like the courts, which are designed to uphold the constitution and maintain the rule of law?

This impatience of which I speak becomes all the more dangerous in an era of special interest politics. Special interests have had a substantial impact on the legislative and executive branches in recent years. And now, special interest politics is trying to move into the judicial branch as well.

At best, the rule of law is an inconvenience to these special interests. At worst, it is an obstacle that must be removed, and the means to that end is the denigration of those institutions that are vital to the rule of law's preservation. A society impatient for instant answers to its problems is particularly susceptible to such an approach. To the extent that respect for and understanding of our courts are eroded, so too are respect for and understanding of the rule of law.

Unrelieved over a period of time, that kind of pressure inevitably must affect the institutions on which it is brought to bear. It bends them, warps them, pulls them out of shape until they can no longer perform the functions for which they were created, and in the process, it cannot help but affect the individuals who are a part of those institutions.

Our founding fathers took great care to protect courts and judges from such pressures, as did the people of California in enacting their state constitution. Judges are non-partisan. They are given longer terms of office than elected officials in the other two branches. They are ethically constrained from engaging in politics.

These distinctions are indicative of the fact that it is not the role of judges to represent a specific constituency or to rule according to the views of whoever happens to have political power at any given moment.

However, once special interest politics begins to undermine the rule of law, it is not hard to imagine a system where judges put their moistened fingers to the wind, decide what is perceived to be the prevailing view, and rule accordingly. Such a system would as surely be the end of the rule of law as would the destruction of our constitution itself.

The rule of law is more important than an individual judge or a particular judicial body, this is so because it is the very foundation on which our democracy was built and by which it is supported.

If we, as a people, wish to change that foundation, we should not do so by allowing the structure on which our system is built to erode. Inattention and neglect are the unwitting allies of such destruction. Rather, we should recognize what is happening and make a conscious decision about whether we are willing to pay the very high social costs that the loss of the rule of law will exact. The time for discussion is now, and I urge lawyers and judges to give this matter their most serious consideration.

After five years as chief justice and many years before that as a trial and appellate lawyer, I think the choice is clear. We have a judicial system that has steadfastly upheld the rule of law. It is a strong system and, as I noted earlier, a system that we are constantly seeking to improve.

Thanks to the cooperation of the bench and the bar, we have been able to achieve many positive changes for the benefit of all our citizens. Through the continued efforts of the bench and bar, we can work together to foster understanding and respect for the rule of law, that enduring principle which has made it possible for our country to become one of the oldest democracies on this earth.

Thank you.