State of the Judiciary
Chief Justice Rose E. Bird, California Supreme Court
Message to the California Bar Association Meeting
September 11, 1983, in Anaheim, California

It is a pleasure to join you once again this year.

I would like to begin my remarks by commending your outgoing president, Tony Murray, for a job well done. It has truly been a privilege to work with him during the past 12 months. No chief justice or judicial system could have asked for a finer state bar leader. In his articulate efforts to better educate our citizens about the role of the courts, he has traveled tirelessly throughout California. With intelligence and dignity, he has represented the state's 80,000 attorneys before a wide variety of groups and organizations. My thanks to you, Tony, for all of your help.

I am also pleased at the prospect of working with Tony's able successor, Dale Hanst. During the coming year, Dale and I have already met to discuss some areas, such as civil discovery, which the Judicial Council and the state bar might wish to mutually explore. I look forward to continuing these discussions.

May I take this opportunity to bid farewell to the members of the bar's board of governors who have completed their terms: Thomas Eres, Pat Greene, Leonard Herr, Gert Hirschberg, Marta Cacias, Leland Selna, and Geoffrey Van Loucksi have enjoyed working with them and sharing their thoughts.

One further acknowledgment is in order, and that is to thank the state bar for the fine members you have appointed to represent you on the Judicial Council. They are Joe Hurley, whose oratorical prowess leaves no issue unaddressed: Bob Morgan, who has our best wishes as he continues his recovery from a serious automobile accident: Kevin Midlam of San Diego: and Bob Raven, your former president. They are a most capable quartet.

1983 marks the sixth occasion on which I have had the honor of addressing the conference of delegates on the state of the California judiciary. It is my pleasure to report to you this year that efforts to modernize and strengthen the appellate courts have reached fruition.

The appellate courts have moved from "antiquated" to "automated" over the course of the last six years. Today, every justice has word processing equipment, every clerk's office has data processing capability, and every court has a computerized legal research terminal. These are changes that improve both the workplace and the work product, and that is progress.

Progress has also been made in increasing the number of people who make use of those machines -- the justices and their staffs, in an effort to respond to the enormous workload generated by a nearly 85% increase in filings during the 1970s. The Judicial Council sponsored a bill which resulted in the courts of appeal growing from 59 to 77 justices. In regard to staff, the associate justices of the Supreme Court have each received a new law clerk, the first such increase in over 25 years, and augmented secretarial assistance.

Perhaps most gratifying is the news that this year's state budget contains an additional law clerk position for each of the justices of the courts of appeal. This happy result marks the culmination of a five-year effort to educate the legislature about the justices' urgent need for a second personal law clerk. With the able assistance of individuals such as justices Gerald Brown and Gordon Cologne, who testified before the legislative budget committees, we finally have succeeded in securing the help the justices must have in order to manage their formidable caseloads.

Now that these improvements have been made at the appellate level, it is time to focus our attention on the needs of the trial courts throughout the state. It is in those 232 courts and before those 1255 judges that the vast majority of the judicial business of the people of California is conducted. It is there that most citizens have their contact with the judicial branch of state government, especially on the civil side.

Every year, over a million civil proceedings are filed, along with an additional 600,000 small claims matters. By any standard, that is an enormous amount of work, and our trial court judges deserve a great deal of credit for the diligence and skill that they have brought to bear on the task of managing this mountain of filings. Many courts have been making significant progress toward eliminating backlogs and shortening the time between at-issue memorandum and trial. In some counties, that period, which previously was measured in years, is now closer to six months.

A large share of the credit for these encouraging results should go to Judge Reg Watt of the Butte County Superior Court. His caseflow management techniques have succeeded in numerous counties of various size, and there is good reason to believe that these successes eventually can be replicated throughout the state. The administrative office of the courts has worked closely with Judge Watt and the local courts in these efforts, and the AOC’s court consultative services unit stands ready to provide technical assistance in a variety of court management areas whenever requested.

For the past several years, the Judicial Council has taken a most active interest in this subject. For example, at its November meeting, the council will be considering the adoption of uniform statewide law and motion rules, which it had directed the AOC to develop to replace the crazy quilt of local rules presently confronting lawyers. In addition, the council will receive a report from its new Caseflow and Calendar Management Committee, headed by Santa Clara County Superior Court Judge Homer Thompson. That committee has been exploring the development of rules of court designed to improve the trial court's ability to handle their caseloads expeditiously. I know that the council intends to continue taking the initiative in this field to ensure that the trial courts have the necessary technical resources and procedural tools at their disposal to deal efficiently with the business before them.

But the support needed by the trial courts does not end there. It costs money to conduct the people's judicial business. The salaries of judges and court personnel must be paid, courthouses must be built, lighted, heated, and maintained, and equipment must be purchased and supplies ordered. In a court system the size of California's, the price tag attached to these needs is a big one. The total annual cost of running the trial court system, excluding prosecutor and defense functions, is presently on the order of $650 million.

Of this total, the state pays less than ten percent. The burden of funding more than half a billion dollars a year falls on the counties. That is a great burden, indeed, and every year it grows heavier as costs continue to rise. Prior to 1978, the impact of this obligation on county budgets was cushioned by budget surpluses at both the state and local levels and by subventions from the state to counties to help offset costs in a variety of budget areas. But with the passage of Proposition 13, that balance changed abruptly, and the boards of supervisors became aware, as never before, of how much it costs to run a court system.

Suddenly, the trial courts found themselves forced into heated competition with other county-funded agencies for a fair share of the shrinking public fisc, and the boards of supervisors found themselves in the no-win situation of having to choose between such items as needed funding for county hospitals and adequate support for trial courts. In an effort to relieve these pressures, many local authorities have seized upon what seems at first blush to be a simple, effective solution that is to continually increase the fees imposed on civil litigants who seek to make use of the trial courts.

The movement toward a user-funded court system is already well-established. Over the last few years, superior court civil filing fees in metropolitan counties throughout California have roughly tripled. The total revenue generated by these fees has increased more than three-fold since the mid-1970s and is now estimated to be in excess of $72 million per year. A number of bills calling for further increases are pending before the legislature, and more will undoubtedly be introduced when the legislative session resumes in December. In fact, it is now almost a foregone conclusion that user funding will be the alternative most vigorously pursued by counties when the possible continuation of court administrative programs formerly supported by state or federal funds is being weighed.

This year’s experience with the mandatory judicial arbitration program is a case in point. In 1978, the legislature passed a bill requiring, in essence, that all at-issue superior court civil actions in which the court determines that the amount in controversy will not exceed $15,000 be submitted to arbitration. That amount has since risen to $25,000 in most cases due to an amendment and the implementation of local rules. From the outset, the legislature provided that a substantial portion of the counties' costs of administering this program would be reimbursed by the state.

Until this year, that funding has continued. But now, despite the fact that most superior courts have reported that judicial arbitration has favorably affected their ability to manage their civil caseloads, state appropriations have been cut in half. The counties have been told that they will have to cover the costs as best they can. As you might expect, the solutions proposed thus far seem to center around increased user fees designed to make the program self-supporting -- a result which the AOC informs me would cost about $300 per arbitrated case to achieve. One of the proposals would impose a $150 surcharge on any party who chooses to exercise the right to a trial de novo after arbitration.

The flaws of such a purported solution are evident. The right to trial should never be conditioned on whether or not the costs of a particular program are being covered by the public treasury.

Further, if mandatory arbitration does indeed help trial courts handle their civil caseloads more efficiently, that is a benefit to the court system as a whole, and its costs should not have to be borne solely by those persons whose cases happen to fall within the ambit of the program. The business of the trial courts is the people's business, and it is the state's obligation to pay for the cost of that judicial business every bit as much as it is the state's obligation to pay for the cost of the public's business conducted by the legislative and executive branches of government.

Ultimately, the concept of a user-funded trial court system is antithetical to the cherished notions of equal justice under the law and equal access to our court system. In effect, it threatens to block access to that system for the vast majority of our population, the middle class. And it is all the more insidious because it does so in an indirect and hidden manner.

In theory, a user-funded system might seem to affect all litigants equally, but in practice that assumption proves false. The poorest litigants do not have to bear the full brunt of increased filing fees because they are quite properly allowed to proceed in considerable part in forma pauperis. For the wealthy, the cost of filing fees or incremental increases in such fees is clearly not of particularly great significance, and whenever those costs can be classified as business expenses, they become tax-deductible and all the more affordable. It is almost like getting a rebate from the government for using the court system.

The middle class, on the other hand, gets the worst of both worlds. These are the citizens who are neither poor enough to qualify for in forma pauperis treatment nor wealthy enough to be able to pay the fees without giving serious thought to whether or not they can afford to do so. The American Bar Association recently estimated that some 70% of our population falls into this category -- neither poor enough to receive legal aid nor wealthy enough to clearly be able to afford to hire counsel. These are the people who, as user fees increase, are being forced to increasingly shoulder the burden of paying for our courts. These are the people who are being increasingly priced out of the judicial system as the trend toward user funding continues.

That's not equal access to our courts. That's not a judicial system open to anyone who seeks to redress a grievance, to enforce a right, or to remedy a wrong. Instead, it's a splendid example of Orwellian logic at its worst. To paraphrase the allegory in animal farm, the concept of user funding says that everyone is created with equal access to the courts, but some are created more equal than others.

And I say that is nonsense that must be stopped before it goes any further. With time, as costs inevitably increase, the problem will only grow worse. Fortunately, however, the solution is as clear as the problem is pernicious. The principle of state funding of the trial courts should be adopted without delay, and the implementation of that principle should be made a part of the state budget as soon as possible.

The state of California should undertake the obligation of funding the cost of adjudicating its citizens' judicial business so that the courthouse doors are never closed to any group of people for want of a filing fee. At the same time, the state should not interfere with the local control of the trial courts that is essential if regional differences are to be most effectively taken into account in ensuring efficient and economical judicial administration. The last thing the trial

courts need is some new state bureaucracy to tell them from afar how to manage their affairs. The combination of state funding and local control is the alternative best suited to ensuring that our trial courts remain places where equal access to justice is a reality rather than a slogan.

I was most encouraged to learn of the Los Angeles County Bar Association 's recent expression of support for state funding and opposition to a user-funded system. It is my hope that the state bar, as well as local bar associations throughout the state, will take a similar position and lend their assistance to the task of convincing the legislature and the governor of the importance and urgency of state funding for the trial courts.

I would now like to turn to another matter of immediate concern. This time at the appellate level, for the past several years, indigent defendants have been represented before the Supreme Court and the courts of appeal by a combination of the state public defender's office and appointed counsel.

For a variety of reasons, many of which have to do with the relatively low hourly fee rate which the appellate courts' budget constraints have dictated, the task of maintaining an adequate list of available private counsel has generally not been an easy one. Now, with this year's reduction of the state public defender's office to half-strength, that task has become much more difficult and all the more essential. The state public defender is currently accepting no new cases in the courts of appeal and no new death penalty appeals in the Supreme Court. In addition, that office is greatly reducing the supervisorial assistance it has been providing to private attorneys.

Thus, the courts are faced with an immediate need for appointed counsel to fill this substantial gap, and in regard to death penalty cases and other similarly complex matters, that means counsel of substantial experience and considerable expertise.

The statewide scope and compelling urgency of this problem led me to conclude that the appellate courts should take a unified approach to its solution. I immediately contacted your president, Tony Murray, to discuss whether the resources of the state bar could be brought into play. Tony acted quickly to call a meeting of individuals from throughout the state who have had experience in developing appointed counsel programs. Based on that discussion, Tony was of the view that the state bar could indeed serve as the focal point for a coordinated effort to compensate for the reduction in the state public defender's office.

I then convened a meeting of the presiding justices of the courts of appeal at which Tony made a presentation, and the justices concurred that a systematic course of action should be pursued. The following day, at a joint meeting of the board of governors and the Judicial Council, the board voted to authorize the development of such a plan. These efforts continue, and a further meeting is scheduled to take place this afternoon. The cooperation between the state bar and the administrative office of the courts has been excellent. I am confident that some positive steps will soon be taken to help the appellate courts properly discharge their constitutional duty to provide indigent defendants with the effective assistance of counsel on appeal.

The state bar's assistance in this vital endeavor is greatly appreciated, but I would also hope that this is a situation in which the appellate courts can count on the help of individual attorneys

throughout the state. It is true that $40 per hour is sometimes not enough even to cover overhead, and I would like to see that amount increased if at all possible. However, in the final analysis, no amount of public funds or foundation grants can substitute for the commitment of attorneys to competently represent every client whose case they accept and their dedication to the ethical and moral obligations of their profession.

Over the course of the past two centuries, the American lawyer has established a proud and laudable tradition of providing quality representation to all those to whom the constitution guarantees the right to counsel. I firmly believe that the attorneys of California will serve that tradition well in this current hour of need.

Sadly, the legal profession's rich heritage of public service has been obscured in recent years by a public image which is, to be charitable, less than becoming. The lyrics of a current top 10 pop song by Jackson Browne, entitled "Lawyers in Love," paint a most unflattering picture of the American lawyer.

In this song, lawyers are portrayed as scheming figures who contrive to hide their machinations from the average citizens. The latter are content simply to dress in designer jeans and eat their dinners in front of televisions spewing forth mind-numbing situation comedies. Protected by the public's apathy, the lawyers are free to pursue their unholy lust for power without regard to the enormous danger that the fulfillment of those desires may pose to national well-being and world peace. As you may have gathered by now, the song is a stinging indictment of the legal profession.

To be sure, lawyers -- whether as individuals or as a class -- are not beyond criticism, and there is some validity to the songwriter's critique. However, the song also serves as the most current illustration of the fact that lawyers have become popular targets in our culture for blanket condemnation.

What such unstinting criticism fails to take into account is the invaluable role lawyers have always played in our society as problem solvers, as peacemakers, and as bulwarks against the erosion and destruction of individual liberties. Time and again, the willingness of lawyers to take on unpopular clients and seemingly hopeless causes has made the difference between rights which exist only on paper and rights which, through their vigorous exercise, are living manifestations of the strength of our constitutional democracy.

A contemporary example of this rich legacy is the state bar's willingness to assist the appellate courts in securing competent representation for indigent defendants. I know that there will be many more examples in the years to come because, at its best, the legal profession has always listened to the voices of the oppressed and the distressed in our society and acted forcefully to ensure that those individuals are heard clearly and treated fairly in the courts of this land.

That is both a heritage to be proud of and a tradition to live up to. I am confident that you, the members of the state bar, intend to do just that. And I wish you well as you continue to honor the spirit, as well as the letter, of the law which you serve.

Thank you.