

State of the Judiciary  
Chief Justice Rose E. Bird, California Supreme Court  
Message to the California Bar Association Meeting  
September 29, 1985, in San Diego, California

It is a pleasure to be with you today to deliver my eighth state of the judiciary address and to swear in the state bar's new officers.

I have enjoyed working with your outgoing president, Burke Critchfield, during the past year. As Burke returns to whatever may be left of his solo practice, I welcome your new president, David Heilbron, and look forward to continuing the close relationship that the California bench and bar have long enjoyed.

May I also commend the outgoing members of the board of governors on their service to the legal profession during the past three years. They are George W. Couch, Thomas T. Davis, Dixon Q. Dern, Virginia J. Lum, Joon Hee Rho, Philip M. Schafer, and Daniel J. Tobin. It has been my privilege to work with each of you.

Let me begin by remarking on some significant developments of the past year. In November of 1984, the voters of California expressed their approval of Proposition 32, which streamlines the supreme court's procedures for reviewing cases from the courts of appeal. Now, rather than having to follow an archaic process that required decision of all the issues in every case accepted for review, the supreme court can spend its time focusing on only the most important issues and letting the court of appeal's work otherwise remain in effect. This measure brings the California Supreme Court into conformity with the procedures of the United States Supreme Court and the high courts of virtually every other state.

I am pleased to have this opportunity to thank bar associations throughout our state for their support of this measure and their assistance in informing the voters of the need for its enactment.

Another important development of the past year is the historic publication of the California Supreme Court's internal operating procedures. Since 1850, the decisions of the court have been published and preserved. Its internal operating procedures, however, have never before been made public.

In my first state of the judiciary address in 1978, I spoke to you about the need to demystify the appellate decision-making process by disclosing the court's internal procedures. Two years later, after several meetings with the presiding justices of the courts of appeal, I was pleased to announce the publication for the first time of a booklet setting forth the operating rules of each district. I might note that an updated edition of that document will be out soon.

I am most grateful to my colleagues at the supreme court for following suit. Earlier this year publication was approved, and we acted promptly to produce a document that is designed to be of interest to lawyers and citizens alike.

In addition to setting forth the supreme court's procedural guidelines, this 56-page booklet

provides information about the history of the court, its functions and structure, and the way in which a case progresses through the court.

The better our citizens understand how their judicial system operates, the greater will be their confidence in its integrity and their respect for the rule of law. I hope that this unprecedented publication will contribute significantly to that understanding.

Last year at this time, a bill to provide for state funding of California's trial courts was on the governor's desk. Many bar leaders supported that measure, and I greatly appreciate their endorsement of this urgently needed legislation.

Unfortunately, the governor chose to veto that bill. But the legislature, with strong bipartisan support, has passed another state funding bill this year. Once again, the measure is on the governor's desk.

Assembly Bill 19, by Assemblyman Richard Robinson, provides for state funding of the trial courts so that \$340 million of county revenue now expended on those courts can be used to give property taxpayer relief or to pay for property related services such as police and fire protection, schools, and roads. This measure also seeks to ensure that the average citizen's access to justice is not blocked by costly civil filing fees.

It costs millions of dollars a year to operate the state's superior, municipal, and justice courts. These trial courts are conducting the judicial business of the citizens of this state. But the state is only picking up 10% of the cost, and that's simply not fair.

AB 19 will see to it that the state starts to pay its fair share of the cost of running California's trial courts. It will let the counties use their property taxpayers' funds to pay for important services such as hospitals, schools, and law enforcement or to give property tax relief.

The need for this good government bill is eminently clear, the papers carry a new story each day about how counties can't pay for essential services.

You've seen the headlines, in northern California, funding shortages have threatened the layoff of sheriff's deputies. In counties like Sacramento and Los Angeles, district attorneys have been turned down by their boards of supervisors for the funds and personnel they feel they need to prosecute criminal cases effectively.

Again, in Los Angeles, 10 new superior court judgeships were not filled for many months because of county budgetary constraints. A recent survey by the county supervisors association of California concluded that counties throughout the state are facing severe financial problems.

It's time that this reform became law. Every year of delay makes it harder to ensure the average citizen continuing access to our trial courts.

Over the last few years, superior court civil filing fees in metropolitan counties have roughly tripled or quadrupled. This increasing trend toward user-funded courts threatens to price the

average person out of our civil justice system. For example, in Los Angeles County, it now costs nearly \$100 just to ask the court for a temporary restraining order against domestic violence and \$124 to file for a simple, uncontested divorce.

If a proposal currently being considered in Los Angeles is enacted, it could cost a person \$1,000 a day or more to try a case. And if that person were to run out of money during the trial, he or she would be deemed to have waived the right to proceed with trial.

Judge Learned Hand once said, "if we are to keep our democracy, there must be one commandment, 'thou shalt not ration justice.'" What could more clearly ration civil justice for the middle-income litigant than vetoing state funding of the trial courts?

County revenue resources are scarce at this time. However, the establishment of a court system limited to the wealthy is not the solution. State funding with local administrative control is.

AB 19 should be signed into law. It's right for the state. It's good for the counties. It adds no costs to the taxpayers. The sooner this act becomes law, the better all Californians will be served.

Another matter of ongoing importance to both bench and bar is reducing the backlog of civil cases in our trial courts. Each year, over a million new civil proceedings are filed, along with another half-million small claims actions.

These figures are staggering, and they clearly demonstrate the need to keep cases moving as efficiently as possible if existing backlogs are not to increase. But we must do more than just hold the line. The bench and the bar must work as a team to eliminate this backlog if justice is not to be denied by inordinate delays.

Fortunately, there are some effective steps that can be taken which are being implemented in a number of counties to reduce the time between at-issue memorandum and trial and to encourage settlement. Judge Reg Watt of the Butte County Superior Court has been working with the administrative office of the courts for the past several years to bring his caseflow management techniques to trial courts throughout the state.

His methods have produced some remarkable results. In 10 superior courts ranging in size from Sacramento's 28 judges to Humboldt's 3, the number of civil cases at issue for more than a year has been reduced from nearly 4,000 to less than 300. Similarly, the average time from at-issue memorandum to jury trial has gone from almost 28 months down to less than 7.

That is real progress, and there is every indication that these techniques will work in any court, regardless of how big or small it may be. Los Angeles Superior Court, because of its size, remains the most visible example of the problems caused by civil backlog. But even there, some encouraging trends have developed. For example, 72,000 civil cases were awaiting trial in 1980, as contrasted to 35,000 in 1984.

That is a substantial reduction, but the resolution of the problem of court backlog, in Los Angeles and elsewhere, depends upon the perseverance of both judges and lawyers. Recent national and

statewide studies have concluded that local courthouse customs and habits have an enormous impact on how efficiently cases get processed.

If there is a bench-bar consensus that civil backlogs are a problem that demands immediate attention, the likelihood of improvement is great. I would encourage judges and lawyers throughout the state to reach such a consensus so that we can continue to reduce the number of civil cases pending in our trial courts.

Toward that end, representatives of the state bar and the Judicial Council have been serving on a commission that has been exploring how to improve and streamline the civil discovery process. A few years ago, the Judicial Council's economical litigation project led to legislation that simplified discovery in municipal courts.

Now, this new commission is looking into additional means by which to reduce the civil discovery process to its essentials. The goal is to prevent trial by surprise while prohibiting ordeal by paper. The purpose of discovery was never harassment or delay, and the more these elements can be removed from the process, the better our system of civil justice will be.

The commission has just issued a report containing tentative recommendations for legislation, and the state bar plans to solicit comments and hold public hearings. I would encourage all interested attorneys to offer their views on this subject so that civil discovery in California can be as fair and efficient as possible for all litigants.

On the criminal-case side of the ledger, recent statistics indicate that California has extremely high rates of conviction and incarceration. In 1983-84, 90% of all superior court criminal defendants were convicted, and 90% of those convicted were incarcerated. At the appellate level, 90% of the convictions appealed were affirmed.

As of June 30th, California's prison population was 47,075. That represents a 12.4% increase over the previous year and constitutes almost 10% of all American prisoners. A couple of years ago, California was second to Texas in prison population. Today, California surpasses Texas by some 9,000 inmates.

These figures demonstrate graphically how tough our laws and our judges are in California. Despite these facts, a recent poll found that a majority of Californians believe criminal sentences are too lenient. But, as our attorney general noted earlier this month in his report on the disposition of felony arrests in 1984, the truth is that the proportion of arrested felony suspects being sent to prison is growing.

The length of many sentences is also growing, with terms as long as 200 years appearing with some regularity. This reflects "a continuing trend toward more severe dispositions," according to the attorney general. The report also pointed out that "[e]lapsed times from arrest to conviction in superior court have been generally decreasing since 1979." This indicates swift and certain punishment.

The message is clear, crime is not welcome in California, and anyone who thinks otherwise is

simply ignoring the facts.

The tremendous increase in the prison population raises another issue that we should not ignore, and that is overcrowding. California's prison system is approaching twice its capacity, and county jails throughout the state are also filled far beyond their limits. This is a most serious problem, which potentially could have tragic consequences.

The legislature and the governor have taken some tentative steps to alleviate the situation, but these efforts are only a beginning. A realistic assessment of the enormity of the problem is the only approach with a chance to succeed. I hope that the citizens of California will support the efforts of their elected officials to responsibly address this issue in the months ahead.

Statistics about our prison population are not the only numbers in the news recently. A couple of weeks ago, two articles presented some troubling information that impacts our criminal justice system. The first article stated that 39% of the Latino children and 45% of the Black children in this country lived in poverty last year. In all, some 13 million children -- black, white, brown, yellow, and red -- were below the poverty line. That's one-fifth of all the children in the United States, and that's a tragedy.

The other article revealed that California's high school dropout rate has doubled since 1970, to a level that is 25% above the national average, three out of every ten members of the class of 1983 -- or nearly 100,000 students -- did not graduate.

Poverty and ignorance -- two scourges of humanity that the American dream promised to end, two specters from the past back to haunt the present and darken the future, two realities that are hard to understand in a country that prides itself on its wealth and wisdom. But these stark facts remain, and they reverberate throughout our cultural consciousness. They are part of what a social commentator was referring to recently when he remarked that "there are a lot of people feeling like the America they believed in sailed away and left them standing on the dock."

Bruce Springsteen said that, and he was referring to the contrast between "the promise of what this country is supposed to be about" and the reality of unemployment, poverty, and abandoned dreams all around us. We Americans can do something about it if we have the determination, will, and compassion to act.

If you see your role as a lawyer as something more than just a job, you can do something about this increasingly troubling situation. If the law is to be more than just your job, you must also have some feeling for the larger task that you're about for the system of justice of which you are a part. That's right, a system of justice. That is what law is all about in the first place -- justice and the creation and preservation of a just society.

It's very difficult to keep that ideal in mind, however, when the stresses of your work are hard upon you. I would like to talk for a moment about the dangers of being in the competitive, aggressive, and often harsh environment in which lawyers spend most of their working lives -- an environment in which others unceasingly demand as much of you as you demand of yourselves.

I have spoken on this subject to new lawyers, but I am concerned about the demands of the profession on every attorney regardless of how long you have been practicing law. These demands often blind you to the needs of people.

Every day, each of you must strive to balance your professional demands with the need for both a private life and a sense of satisfaction in your work. I once saw a plaque which read 'I have no answer to your question, but I certainly admire the problem.'

There is no one right answer, of course, because we are all individuals whose life experiences differ in countless ways. But there are some approaches that I would like to suggest to you as hard-working, conscientious lawyers.

I am certain that you have found that there are no secrets to happiness in the legal profession any more than there are in life itself, but there are ways to help ensure that your professional and personal growth do not conflict and are part of a harmonious whole.

One important way to do this is to have a feeling for your craft. To care enough about what you do to do it as well as you possibly can, it is a commitment to quality.

The law should be more than just a job; it should be your calling. People perform jobs to make money, but as a lawyer who cares for his or her craft, you must do more than that. You must make a difference.

A calling, in the words of the authors of the book Habits of the Heart, "links a person to the larger community, a whole in which the calling of each is a contribution to the good of all." When you see your work as a lawyer in this broader context, the tasks that you perform take on a value quite apart from the monetary rewards that our society may attach to their performance.

If they are tasks that are worth doing, they are worth doing well, and the skill and care that you bring to those tasks can in turn enhance their worth and merit.

Lawyers weren't invented to divine the meaning of conflicts between the regulations of the IRS and the rulings of the tax courts. Lawyers may perform that task very well, but that's not why they came into existence and that's not why they are essential to the well-being of our society. It is because, at their best, lawyers are peacemakers, order keepers, problem solvers, tension diffusers, and protectors of liberty.

That is why it is so important that you keep your eye on the larger purposes that the law serves. It doesn't matter whether you are a corporate attorney, a poverty lawyer, or a tort law specialist. You still are part of a greater whole, and your understanding of that fact will serve as a continual reminder to you that the law is your calling and not just another job.

There is, however, that matter of balance to which I referred earlier. The law is your profession, but it must not become an obsession. You were, after all, human beings before you became lawyers, and, with any luck, you'll remain human beings long after you retire from the practice of

law.

As lawyers, you work very hard. Whether you're a member of a large firm or a solo practitioner, a lot of people expect a lot from you -- partners, clients, judges, and so forth. Fourteen-hour days, seven-day weeks, unrelenting deadlines, and incessant phone calls -- the pressures are there, and they definitely have the potential to skew your perceptions of the world and distort your development as a human being. When others treat you as an object, there is a strong temptation to do unto them what they are doing unto you.

The dangers of such a response are great, people are reduced to things which can be manipulated to reach a goal. Even in its mildest forms, it robs you of a measure of your own humanity and blinds you to the pain you may be causing others. The competitive aspects of our society only reinforce this tendency to view the practice of law as a form of combat in which feelings are banished from the war zone and only the heartless survive.

You have it within your power to keep that scenario from occurring. To do so, you must seek to maintain a balance in both your public and private lives. You must consciously keep sight of your humanity and nurture those relationships that help keep you whole. Your family and friends can be an enduring source of strength for you, but you must not take them for granted.

There is no better investment in yourself than to reaffirm the values of love and community that can so enrich your private life, but those values can do much to enrich your professional world as well. It may take some creativity, imagination, and even daring to find a way to integrate them into that competitive context. But such a reconciliation of your private and public selves will be more than worth the effort.

To create a just society, we must learn to care about each other. In an aggressive and competitive world, compassion, sensitivity, and kindness toward our fellow human beings are often absent, yet those are the very qualities that make this life worth living.

Thank you.