

State of the Judiciary  
Chief Justice Rose E. Bird, California Supreme Court  
Message to the California Bar Association Meeting  
September 14, 1986, in Monterey, California

It is a pleasure to be with you again on this annual occasion.

Let me begin by remarking that it has been an interesting year for the bench and the bar. Some may view that observation as an understatement, but I'm confident no one will dispute its accuracy.

Your outgoing president, David Heilbron, has acquired a wide range of new skills during the past 12 months, very few of which are to be found in his job description. I wish him well as he departs, and I welcome your incoming president, Jack Armstrong, to his new duties, whatever they may prove to be.

I would also like to commend the outgoing members of the board of governors for their service to the legal profession during the past three years, they are Joe S. Gray, Kenneth W. Larson, Raymond H. Mallel, Marsha M. Clean-Utley, and James F. Pokorny.

My thanks go as well to the state bar's appointees to the judicial council Kevin Midlam, Bob Raven, David Baum, and Joe Cummins for their many contributions to the council's work.

As I mentioned earlier, it has been an interesting year -- a difficult and challenging one for both of our institutions. For example, a survey released last month found that only 12% of Americans would like to see their children become lawyers. And for the first time in memory, a united states supreme court justice has warned that the 14th amendment is in jeopardy -- in jeopardy from the very court on which he serves.

As these examples illustrate, times such as these can be stressful, indeed. But they can also provide us with opportunities to reflect on our role as lawyers and judges. What does it mean to be a good lawyer? What does it mean to be a good judge?

The role of lawyers and judges in our society has never been to be popular or to receive the applause of the crowd. Rather, lawyers and judges must find satisfaction in doing their craft well and with a sense of dignity.

Should the bar see its role as merely pleasing the legislature, for example, or improving its public relations, should the judiciary see itself as a purveyor of popular views, as a mimic of the majority of the moment, then both institutions will have lost something fundamental to their heritage and essential to their preservation.

Both institutions have been under enormous stress and sharp attack for a long time. And these forces, if unrestrained, are bound to etch their corrosive essence into our hearts. So, what do we do?

We try to steer as close as we can to the course the law requires, while recognizing our fallibilities and the need to rethink who and what we are so that we can keep pace with our society as it changes. However, in that process, we must not abandon those principles that have given us the strength to stand firm when that is what following the law requires.

Though lawyers and judges are on different sides of the bench, their roles have much in common. For instance, how different is a lawyer who asserts the rights of an unsympathetic client from a judge who upholds the law in favor of an unpopular litigant? How different is an attorney who must insert reason into what may be a very emotional dispute from a judge who must assert the rule of law in an age of emotion?

The lawyers and judges in these two examples are never going to win popularity contests. They are often going to find themselves misunderstood. It is not easy to keep your head when everyone around you seems to be losing theirs, but that is the time when a clear understanding of your role is most essential.

Periods of societal transition are never easy for any institution, and what emerges may be very different from what went before. During such periods, we must help mold and reshape our institutions so that they do not ossify. At the same time, we must not lose the essence of who we are and what gives our institutions their significance.

In an age of image, of popularity, of emotionalism, it is vital that we help our fellow citizens see how important substance is, how indispensable courage and rationality are, how essential the rule of law remains to a free society.

Every new fascist and totalitarian state gets rid of its lawyers and shackles its judiciary first. That is because we stand in the way of unbridled change, intolerance, inequity -- in short, the rule of those who would substitute their might for the rule of law.

This is not to say that at times we cannot be rigid and inflexible, doctrinaire, and even arrogant. We are, as we know quite well and as others often remind us, human beings after all. But our roots in the law bring us back to the basics and teach us to examine ourselves first, to guard against our own weaknesses and blind spots, and to strive for fairness and justice, because that is really why we are here.

So I wish you well in the tough struggle ahead to define who you are and what your role is in this modern world of change.

Remember, though, that you are not without help. The old map remains a good one. Some of the landmarks may have changed, and the pace of travel may have quickened, but your path can still be guided well by looking back to where you started, to your roots in the law, to the principles of fair play and equality from which those roots are formed.

So it is that we who are privileged to serve as judges must go back to those same roots as well. We must continually dedicate ourselves to ensuring a system of justice that is truly blindfolded, with scales in balance. The journey toward that goal never really ends. It is a process of renewal

that finds its strength in our reaffirmation of faith in its values.

The road ahead will not be easy but, then again, It never has been, and it is not by fearing the future that we have advanced so far.

At times like this, I think of the wonderfully proud heritage of great lawyers and judges with whom this country has been blessed -- from well-known counselors like John Adams and Abraham Lincoln to those attorneys who labor in obscurity. Securing and defending the liberties we cherish, their acts of courage are ringing declarations of the strength of our democracy.

From judicial giants like Marshall, Brandeis, and Warren to other judges whose names we may forget but whose integrity we shall always remember, their sense of justice and fair play has affirmed our belief in the decency of the fundamental principles on which our constitution and bill of rights are based.

We do honor to these great traditions when we care about justice, when we care about ethics and honesty, when we care about our craft and work to improve it, when we care about our fellow citizens and tell them the truth, even when it is a truth they may not want to hear. That is what being a lawyer and a judge is all about.

Lawyers and judges must be at the heart of a continuing dialogue with our citizens about the values of the constitution and the bill of rights. Should we cease to understand those values, they will surely be lost for we will have forgotten how priceless they truly are and how hard we once fought to secure them.

Think of how remarkable a heritage we have. It means that our government, the most powerful on this earth, can be called into court to confess error in how it has treated its citizens and to pay damages for that mistreatment. It means that when someone is put on trial, even if that person is accused of spying against our country, he or she receives the same rights as any other citizen. It means that the rich and the powerful are as accountable before the bar of justice as the poor and the weak.

What an incredible comment these examples are on the strength of our system of justice. At the same time, what striking proof they provide of the difficult role of judges and lawyers.

So let us be about that difficult task. Let us get on with our work but let us not forget that we are human beings first and foremost.

Our humanity informs us and instructs us in what it is to live lives of decency and dignity. As lawyers and judges, we bring a unique perspective to our humanity that, if used wisely and well, can enhance the quality of justice in our society.

That is not a task for tomorrow, it is something we must live every day. And if we live it fully -- with all our intelligence, compassion, and courage -- then we will have truly fulfilled the promise of justice our titles imply.

If we judges and lawyers are not to be popular, let it be because we are standing on the forefront of protecting people's rights during a time of transition. Let it be because we have the courage to represent unsympathetic individuals and make difficult rulings in order to give life and breath to our constitutional guarantees.

Let it be because we have the integrity to do justice, even though such actions may be met with criticism and disapproval. Let it be because we see our role from the perspective of its noble traditions, not from the pressured viewpoint of the moment.

Let it be because we stand up for a just society and stand firm for the rule of law.

Thank you.