State of the Judiciary
Chief Justice Malcolm M. Lucas, California Supreme Court
Message to the California Bar Association Meeting
September 20, 1987, in Los Angeles, California

Good morning. It’s a pleasure to be here today, and I’m pleased to have this opportunity to deliver my first state of the judiciary address and to swear in the State Bar’s new officers. Your outgoing president, Orville “Jack” Armstrong, has done an excellent job this past year and I wish him well in his future endeavors. I also welcome your new president, Terry Anderlini, and look forward to working with him in the coming year which promises to be an interesting one for both bench and bar.

My colleagues on the Supreme Court and I recently completed our fifth oral argument session together and the recent appointees, Justices Arguelles, Eagleson and Kaufman have adapted well to the extraordinary workload of the court. They've managed to keep their senses of humor intact while burning the midnight oil, and only occasionally can be heard wondering why they left the court of appeal. I am also pleased to report that I'm feeling fit as a fiddle and happy to be back at work at the Supreme Court. My tenure thus far as chief justice has been very rewarding and challenging and I look forward to working with you in the coming years.

Today, I would like to provide a look at the status of our judicial system and to discuss some of the challenges and concerns facing us all, as well as some of the programs already underway or contemplated to deal with those concerns.

I want to begin by recognizing and applauding the cooperation and interest demonstrated by the majority of the members of the bench and bar as we undertake the difficult task of meeting the demands placed on our judicial system. New ideas and programs are emerging almost daily, reflecting a renewed commitment to self-examination and to consultation between the bench and bar and the executive and legislative branches as we seek to maintain the excellent legal standards for which California is known.

California's judicial system is the largest in the country, surpassing even the federal system. Only 20 years ago there were 243 superior court judges and just over 20 court of appeal justices. Currently over 700 superior court and 77 court of appeal positions are authorized and these numbers will be increased by 64 and 11 respectively under SB 709 recently enacted by the legislature and awaiting signature by the governor. Meanwhile the number of attorneys has increased from 17,851 in 1957 to 106,643 at present. Since 1879 the Supreme Court has consisted of seven justices, and when considering the figures I have just recited, I sometimes have a vision of being buried under a paper sea. Obviously, the greatly increased numbers of jurists and attorneys has resulted in an enormous influx of cases. Nonetheless, the judiciary and bar have responded with dedication and intelligence to the problems created by the increase in litigated actions. But the onslaught has not ceased and, accordingly, neither has the need to find solutions that will enable us to provide each case with the attention it deserves without overwhelming the system and the individuals who serve it.

One of my roles as chief justice is to serve as the head of the Judicial Council. I wanted to especially thank four of our members, your colleagues appointed by the state bar, David Heilbron, David Baum, Joseph Cummins and Kenneth Larson, who have made valuable contributions to our work. During the past several months, the council, with the assistance of the administrative office of the courts under the direction of William E. Davis, has been actively soliciting the opinions of the courts and practitioners across the states as we strive to set a course for California's judicial system in the years ahead. The council has been examining our practices to see whether they best serve today's needs and the needs of tomorrow. The focus is on areas that the council itself, through its rule-formulating function, can change, as well as on areas where we must seek or respond to legislation requiring changes in present approaches.

Essentially, the council has attempted to define its role in meeting the needs of our system as one in which the courts take a leadership role in making changes where changes are required rather than reacting to crises or changes imposed by others. This is not to say that innovation for its own sake is a desirable end. Our system has an excellent reputation because most of what it does it does very well. But at the same time, we must be sensitive to shifting needs and demands as well as to new techniques which can improve the way in which we operate.

Looking ahead, the council has adopted a set of priorities to guide its actions for the next two years. In developing those priorities, the members were asked to keep in mind several general principles. First, the reduction of delay in judicial proceedings on each level. Second, improved court funding. Third, encouraging uniformity in practice and simplification of procedures to reduce cost. Fourth, improving public access to and understanding of court operations, and finally, but probably most important, ensuring fair and equal treatment for all those participating in the judicial process. The council's four standing committees concentrate on the appellate, superior, municipal and justice courts, as well as on court management, and its advisory committees are reviewing gender bias in the courts, judicial performance procedures and legal forms. The standing committees were each asked to develop a set of priorities in order to assist in assigning available resources during the next few years.

The highest priority set by the Judicial Council, and one I strongly endorse, is trial court delay reduction. The legislature has provided the judicial branch with direction in this area, by enacting the trial court delay reduction act of 1986, also known as AB 3300. Pursuant to the act, the Judicial Council has adopted standards for timely disposition of cases. Trial courts will be encouraged to develop procedures implementing active court management from the date of filing of each case to ensure timely handling. The act also implements, on a pilot project basis, civil delay reduction programs in 9 superior courts to test the act's calendar management principles. The pilot projects have been greeted with increasing enthusiasm in almost all of the designated courts. Some, such as the Alameda, Sacramento, Kern, and San Diego courts, have taken an active role in developing and implementing plans for their counties and in critiquing the overall program.

In addition to the 9 pilot counties, the 49 remaining superior courts will soon be participating in 4 regional conferences designed to familiarize them with AB 3300 and to assist them in understanding and meeting the act's requirements. Each court will be encouraged to join with the

local county bar to develop a plan for delay reduction in their venue. By adopting its standards, the council has recommended that all courts seek to conform to the guidelines in order to comport with the statutory mandate that delay be reduced statewide.

An essential part of this endeavor is for the courts to solicit the contributions of and listen to the concerns of the bar. Underlying the entire trial delay reduction program is the philosophy that courts must take a strong role in managing cases in order to reduce delay. That goal, however, cannot succeed without the cooperation of lawyers who must be willing to function in partnership with the trial bench to make trial delay reduction a reality.

As members of the bar, you have much to gain as well. Quicker resolution of cases means quicker turnover of your caseload. Quicker resolution of cases may also still much of the criticism heard from the general public. That criticism is taking palpable form in movements for reform in areas such as tort litigation, already reflected in legislation such as MICRA and the tort reform bill passed by the legislature on the night of September 12. The cooperation of every lawyer is vital to assure reasoned change in our judicial system.

In conforming to AB 3300's requirements, the Judicial Council has committed to case-processing guidelines to assist the trial courts in reducing delay. One goal is to begin now to reduce the processing time of civil cases, so that by 1991, 90 percent of general civil cases may be concluded within 12 months of filing. In addition, under the standards adopted, felony case dispositions should occur no more than one year from the first court appearance. I admit these goals are ambitious. They do not, however, represent a fixed limitation, but are intended to be guidelines for management of court workloads. On the other hand, these standards are not mere "pie-in-the-sky" either. Conformance to these time frames has been substantially attained in other states that have undertaken delay reduction programs. I am confident that by aiming for these objectives we can, and will, enhance the quality of justice and restore the confidence of the public in our legal system.

Another priority is the implementation and administration of the trial court funding act of 1985, a goal that has attained some immediacy in view of SB 709, which I have mentioned. Legislation to make state funding a reality has been introduced every year for many years, and the Judicial Council has long been a supporter of state funding to assure equal access to and availability of justice across the state. Under this new scheme, counties will be able to opt into the state funding system and if they do, will receive $470,000 to $480,000 per judicial position per year. We hope that the block grants based on the number of judicial positions will ease some of the stress on overburdened county budgets and assure that the quality of justice in California does not depend on what county you live or practice in. Once funding is in place, the council will work with state fiscal agencies and the local courts to help with administration.

In addition, companion legislation will increase arbitration limits to $50,000, authorize telephone conferencing by litigants beginning in 1989, and set up two pilot projects in Fresno and Santa Cruz counties to implement federal voir dire practices. Each of these innovations should result in substantial time saving.

Efficiency at the trial level also means that the rules for court administration, practice and procedure and official court forms are up-to-date and conform to and implement changing law and policy. The council has recommended a review of local rules and procedures -- beginning with family law -- with a view toward greater statewide uniformity.

The Judicial Council also recently announced plans to improve communications between the council and judges throughout the state. To keep the courts informed of its activities, the council will distribute minutes of its meetings to presiding judges of each trial court. In my capacity as head of the Judicial Council, I plan to conduct meetings with presiding judges statewide. I also intend to hold quarterly meetings with the administrative presiding justices of the courts of appeal. I believe that the foregoing measures will stimulate communication in order to facilitate the important role the Judicial Council plays in the administration of our state court system, while keeping the council aware of the concerns of courts and lawyers across California.

The council's focus is not simply on the trial courts. Our appellate court committee has been working to develop ways to "expedite the decision-making process in the appellate courts," so cases may be resolved in the most efficient manner possible. The committee will be looking at the continuing automation of the appellate courts and the possibility of an issue-tracking system. It is also reviewing the organization and staffing of the appellate courts. Finally, the committee is proposing a study of the rules of appellate procedure.

In our own back yard at the Supreme Court, we have been working to streamline the flow of cases. In particular, we have tried to dispose of most of the cases awaiting re-argument and to that end held a special July calendar to get more cases actively before the court. We have also been reviewing granted cases with an eye to dismissing as improvidently granted cases that may no longer require immediate review because of changes in legislation or the likelihood that the court of appeal decision will be reversed, mootness, or simply because the issue's importance pales when measured against the many other cases we must decide.

In terms of assuring that the Supreme Court, too, is functioning in the most efficient manner, I recently appointed a select committee of distinguished judges and attorneys, chaired by retired Justice Frank K. Richardson, to review the way we operate to determine what new measures, if any, may bring the court's workload within more manageable dimensions. We too may need to consider guidelines for disposing of cases and whether the manner in which we process cases is the best one now that the number of cases reaching our clerk's office has neared 4000 per year.

In addition to the committee, the court last month held a retreat attended by the justices, all staff attorneys and representatives from the clerk's office, secretary's office, reporter of decisions, and the library. The purpose of the day-long retreat was to allow the staff to address, informally, issues pertinent to the smooth operation of the court. We anticipate holding such retreats on a regular basis.

In addition to the projects described above, other areas need assistance from courts and lawyers alike. Increasing demands on the time of every lawyer has made pro bono work more difficult to pursue. Nonetheless, such voluntary activity on the part of members of the bar provides

significant service to the public and cannot and should not be overlooked in the rush to accumulate billable hours.

One area that particularly deserves mention is the California Appellate Project, or "CAP," established by the state bar in 1983 to address the need for representation in capital cases. Since CAP began in 1984, it has successfully recruited lawyers and firms to take appointments in death penalty appeals and to assist them in providing high quality representation. Because the number of such appeals has increased dramatically over the past few years, and the state public defender's office has been unable to provide sufficient representation, there is a gap that needs to be filled. Michael Millman, CAP's executive director, has recently expressed concern over meeting the continuing need for qualified attorneys to take appointments.

The premise of the CAP program is that good lawyers without specific experience in the field can handle death penalty appeals if they are assisted by CAP staff attorneys who have the necessary expertise and provide intensive training to volunteer attorneys. I recognize that the $60 per hour counsel receive is far below an attorney's usual hourly rate, but such volunteer service benefits not only the courts and those who practice before them, but also the entire community. I urge lawyers from across the state to participate.

In a more general vein, I want to solicit the participation of each of you in the planning and implementation of the programs I have mentioned today. There is ample room for your contributions, particularly through your local as well as state bar associations, and I urge you to get involved. This year marks the bicentennial of our constitution. Ours is a participatory democracy, and the opportunity for you to make a mark on the direction our judicial system is taking has probably rarely, if ever, been better.

The ultimate strength of our system lies in our ability to constantly reevaluate the system itself, and our willingness to make changes where changes are necessary. As chief justice, I intend to remain accessible to the bar and to maintain an "open-door" policy that I hope will facilitate the changes I have discussed today, as well as encourage new ideas that will eventually contribute to achieving a stronger judicial process. Naturally, any transformation in our legal system must necessarily be a gradual one, but the task ahead is well-defined and there is no doubt that the winds of change are blowing. It is our responsibility to adapt to the demanding workload we face today and to respond to the challenge of new legislation by developing long-range plans that will help eliminate delays in litigation and improve public access to the courts. We will then be able to preserve California's tradition of providing quality justice to the citizens of our state. Thank you for giving me the opportunity to address you today. I look forward to joining with you in meeting the many challenges that lie ahead.