State of the Judiciary
Chief Justice Malcolm M. Lucas, California Supreme Court
Message to the California Bar Association Meeting
September 25, 1988, in Monterey, California

Good morning. It's a pleasure to be here. I first want to congratulate the new members of your board of governors and your new president, Colin W. Wied. I look forward to working with them in the year ahead. Terry Anderlini, and the outgoing members of the board have done an excellent job over this past year and I applaud their fine efforts on behalf of not only the bar but also the entire system of justice in California.

Last year I spoke of some of the projects that the Judicial Council had undertaken and of the important changes in our judicial system mandated by legislation such as the trial court delay reduction act and state funding of the trial courts. I want to spend some time today reviewing the progress in these areas and what still remains to be done. I have a definite feeling that over the next few years you will be hearing me speak rather frequently on delay reduction in particular. The advancement of a workable delay reduction program in California is, in my view, fundamental to the continued vitality of our judicial system. The cooperation and contributions of the bar are necessary to its success.

Historically, much of the impetus for delay reduction in California has come from the bar. General interest in the subject is reflected in the American Bar Association's development of delay reduction standards and the fact that as of late July, 23 states had adopted statewide goals for the time required to process cases, and b additional states were developing programs for their courts.

In California, time goals for disposition of cases apply statewide. We have also undertaken detailed experimental delay reduction projects in nine designated pilot counties and six additional counties have voluntarily implemented their own plans. We are just beginning to accumulate the data necessary to evaluate the success of these programs, but some preliminary comments can be made.

Before I get into details, however, I want to dispel the notion advanced by some that the proliferation of different program rules in different, sometimes contiguous, counties, is a Judicial Council plot designed to confuse practitioners. Or, more seriously, that the programs create unreasonable inconsistency from county-to-county and existing projects fail to meet reasonable needs of litigators and clients by inflexibly insisting on adherence to guidelines. Without taking into account problems in particular types of cases.

The nine mandated county plans are called "pilot" projects for good reason. Such projects are defined in the American Heritage Dictionary as "serving as a tentative model for future experiment or development." they act as laboratories for the future, not as inflexible models of what inexorably will be implemented statewide. The purpose of the present diversity among the various counties is not to confuse, but to inform. Caseflow management is here to stay, and experimentation is necessary to develop the best possible final plan. Your input is an extremely

valued and vital part of the overall program -- and it is not being ignored. In the coming year, in addition to local efforts by attorneys in developing effective trial delay programs, the state bar will be appointing a Blue Ribbon panel of lawyers to work with the Judicial Council in reviewing and implementing delay reduction projects on a statewide basis, and we look forward to its contribution.

The flexibility of programs already in place has been demonstrated in counties where the cooperation of bench and bar has led to changed procedures when the initial model has proved unworkable or problematic. For example, in San Diego County, which began the earliest trial delay reduction project in January 1987, weekly bench and bar committee meetings have resulted in modifications to the original rules. The court has expanded settlement conferences and recognized exceptions to the rules in complex cases and other fact situations in which the rules operate unfairly.

On a more general level, judges and administrators in all of the delay reduction counties regularly meet to resolve issues of common concern. Recently, for example, those counties responded to the recurring complaint that cases involving uninsured motorists, where the applicable insurance contract provided for arbitration, were inappropriately subject to accelerated deadlines. Each pilot court amended its rules or policies to allow such cases to be put on hold pending arbitration. Similarly, the courts and Judicial Council are aware of objections to fast track processing in personal injury cases where injuries have not yet stabilized, or the client has come in so late that there is little or no time for investigation and preparation before the complaint must be filed, attorney input on a local level will be important in generating consistent and workable standards for establishing "good cause" for continuances or for a modified time schedule.

I want to stress that once the programs got underway, in most counties the bench and bar have worked together to smooth out rough spots and develop workable plans that implement the basic goals of delay reduction. The overall cooperation of the bar has been exemplary and I wish to thank all of those who have participated and encourage more of you to join in this effort. I recognize that there are those who are not enamored of the program and whose participation has been less than enthusiastic. This is true of members of the bench as well as the bar. But there is a greenhouse effect developing in the public's perception of the administration of the law, and before the legal climate gets too hot to handle, we must adapt and adopt necessary changes to preserve the excellence of our judicial system.

We are beginning to develop statistics that show the early stages of delay reduction are having a positive impact. In terms of backlog reduction, all superior courts have been urged to eliminate from their inventory 25 percent more cases than the number filed between July 1, 1987 and December 31, 1988. These special efforts have been very effective. In Los Angeles, for example, in the first three months of this year, 20,744 cases were filed and 24,225 cases were disposed of. In San Francisco, in March and April, 1,549 cases were filed and 3,260 disposed of, the smaller counties have also made progress. During a two-month period in February and march, lake county filed 50 cases and disposed of 220 in its backlog. Overall, by resolving older cases at an increased rate and eliminating inactive cases, courts can plan for processing "live" cases within a reasonable time given their judicial resources.

Monthly statistics can also help these counties to examine the fallout effect of the programs. For example, San Diego discovered that more cases were going into arbitration and accordingly adapted their arbitration program to meet the new demands.

Statewide, Assembly Bill 3830, signed this week by the governor, will require counties not yet participating in either a pilot project or an existing voluntary program, but interested in instituting a delay reduction program, to conform to uniform rules to be drafted by the Judicial Council. This will enable interested counties to start delay reduction programs while at the same time minimizing the number of different rules that attorneys must conform to statewide. New legislation also expressly authorizes counties to shorten time periods otherwise specified by statute in order to avoid conflicting requirements.

To sum up, delay reduction programs and standards are not going to go away. Nor can we afford to or should we wish for the good old days. Trial court delay reduction is apple pie and motherhood. It addresses one of the biggest and most appropriate complaints uttered about our justice system. The image of lawyers will be greatly -- and justly enhanced by lawyers' efforts to ensure speedier disposition of their clients' cases.

Lawyers must actively manage their own office caseloads and judges must manage the flow of cases in their courts. Both bench and bar must continue to work together to find solutions while not losing sight of the underlying goals of the delay reduction program. Horse drawn carriages may have seemed more than adequate before the automobile was invented, but I see very few lawyers arriving at the courthouse driving a coach and four.

Turning to state funding of the courts, which also promises to have a substantial impact on the trial courts, legislation enacted in the waning days of the last legislative session and signed by the governor provides necessary money and guidelines for implementation. Under the scheme adopted, counties opting into the state funding plan will receive a net grant from the state. They will not be required to give up the fees, fines and penalties they have collected, but they must establish a base contribution to each judicial position which will increase by fixed amounts in the coming years. Opting into the state funding program will also be required of counties that wish to start a delay reduction program under the new Judicial Council rules. We hope that the new funding structure will help counties meet their judicial needs adequately in order to deal with the ever increasing flow of cases.

In addition to these far-reaching programs, methods to assist in the more effective delivery of legal services are being developed in diverse areas. The legislature has appropriated $1 million for the six months beginning in January 1989 to start a trial court improvement fund. The money will be disbursed to counties participating in the state funding program through grants administered by the Judicial Council. The grants will be used "to improve court management and efficiency, case processing and speedy trials."

Telephone conferencing is now a reality. Attorneys and courts may confer by telephone on motions and other matters. Studies comparing our generally longer trial time in California to that in other states underscores the importance of an ongoing project on voir dire. The Judicial

Council's committee on gender bias is actively seeking information from both bench and bar to determine what problems may exist in our courts and I encourage you each to participate. Assuring that every person who appears before our courts gets fair and equal treatment is a job for all of us.

Significant changes are afoot in the appellate courts as well. Delay reduction is a subject not confined to the trial courts. As those courts expedite the processing of matters, the inevitable consequence is that cases will arrive more quickly before the appellate courts. Both the court of appeal and the supreme court are undertaking programs to reduce the time it takes to handle matters coming before us.

To date, there have been several discussions between members of the Judicial Council and appellate attorneys and others interested in achieving delay reduction in the court of appeal. The first district has already been moving to implement delay reduction strategies. Its efforts in this regard have been recognized by the American Bar Association which has included the court in a nationwide study of five appellate courts designed to implement and monitor delay reduction plans.

At this point, the court of appeal districts are doing well in keeping up with their caseloads. For example, districts one and two are generally current. I'm pleased to report that a fine spirit of cooperation exists among the appellate districts and current districts have voluntarily come to the aid of the more congested ones by accepting transfers of cases to afford speedier dispositions.

Nor are we at the supreme court remaining static in our approach to handling our workload. Our total filings have remained fairly constant over the last three years for which we have statistics. We still have a significant backlog of cases, but we are working hard to diminish it, and I think our production in recent months reflects that we are having substantial success. But we also recognize that the workload of the court is unlikely to diminish while our primary resources remain finite.

As you know, in fall 1987 I appointed a select committee to study the Supreme Court's internal procedures for processing cases. Under the able stewardship of retired associate Justice Frank Richardson, the committee provided us with a thoughtful and useful list of suggestions in February of this year. We have adopted many of its recommendations or modified versions thereof and we anticipate that these changes will help us meet the challenges we face. For example, we have obtained funding for an expanded central staff to draft memoranda for our weekly conferences in civil as well as criminal matters. The funding is for seven attorneys, about half our request to the legislature. Recruitment is underway and we will be reporting to the legislature on the impact of the new staff.

Most importantly, we have undertaken some significant revisions in how we handle matters in which hearing has been granted. The court has adopted a plan under which we will issue our opinions within 90 days following oral argument or the filing of the last brief. This approach formally will apply to cases argued after January 1, 1989. Submission may be vacated for good cause, but that exception will be used very sparingly; press of business or similar reasons will not be enough. We are aiming to conform to the new time standards and to get cases out in timely

fashion.

What this means is that some of the work the court traditionally has done after oral argument now will be done before. The justices will focus on each case before it is calendared, discussing matters in regular preargument conferences and working to iron out differences and discover where they cannot be ironed out before a case is placed on the calendar for argument. One justice will still have responsibility for preparing the calendar memorandum but we anticipate that other justices may in some instances circulate supplemental memoranda.

We do not expect that our new procedures will diminish the importance of oral argument. Our preargument positions will be tentative and subject to change after counsel make their oral presentation. Before counsel argue, each justice will have an even greater in-depth grasp of the facts, issues and arguments, and will have devoted more time to considering the various positions than was possible under the previous system.

I will not predict whether this new approach will ultimately shorten the overall time from the date review is granted until a case is disposed of, but I believe there is a real possibility it may do so. Presently, a case moves sequentially from the chambers of one justice to another. Under the new procedures, however, a justice may no longer wait until the box containing the case record and any proposed opinions reaches his chambers before fully considering the case. He must instead join in unison with his colleagues to focus on particular matters as they become ripe for the court's attention. Thus, the new process requires substantial simultaneous consideration of cases rather than sequential consideration of opinions. As a result, cases may well proceed more quickly while being given the same, if not more, attention by each individual justice. There can be no question that counsel and the public will benefit from knowing that once a case has been argued, the decision will be issued within 90 days.

Our oral argument calendar may look lighter than usual for a while, but that will reflect both implementation of the new system as well as clean up of cases argued under the previous one.

The death penalty cases continue to play a significant role in our workload. Since last September, we have filed a total of 52 decisions in automatic appeals, as compared with 18 during the same period in 1985-1986 and 15 the year before. During the last year, 37 new automatic appeals have been received in the court. Although we have over 180 capital cases pending, only 39 fully briefed automatic appeals are presently awaiting argument, I can confidently say that we are making progress in dealing with those cases which are ready for our consideration. Many of the more difficult questions raised generically in automatic appeal cases have now been decided. We hope that in the future each case will take less time to decide because many of the difficult legal issues have been resolved. One way in which the bar plays an extremely important role in helping the court deal with automatic appeals is by meeting the need for competent and dedicated attorneys willing to handle these appeals; that need is a continuing one.

Finally, in terms of improving our physical setting, we now have a budget for a move planned for no later than the end of 1989. We will return to the state building in San Francisco once it has been renovated. Our offices not only are insufficient to accommodate our present and anticipated staff and other needs, but a recent study of the building revealed that it is significantly deficient

under current earthquake standards. A late spring earthquake only reinforced the general feeling at the court that we would all prefer to make a voluntary move before nature takes the initiative.

I have touched on some of the major programs and changes facing those of us in the legal system today. The basic issue for us all is to assure that California continues its long tradition of excellence in its legal system and its devotion to fair and equal justice for all our citizens. Those are the underlying goals that must inform each of the decisions we make in the coming years. California leads the nation in everything from expansion in major business to venture capital spending. We are looked to as leaders in agriculture and technology. Our economy is the seventh largest in the world, and our court system is larger than the entire federal judiciary. We are faced with problems common to courts and states across the nation, but these problems often arise in a magnitude unparalleled anywhere else. At the same time we have the resources of an excellent bar and bench whose creativity, dedication, and devotion to the cause of justice is unsurpassed. At every level of the judicial system, we must work together to meet the exciting and difficult challenges that await us. I am confident that with your assistance and participation, we can continue to serve as leaders in the law as well. I look forward to joining you in these efforts.