State of the Judiciary
Chief Justice Malcolm M. Lucas, California Supreme Court
Message to the California Legislature
March 4, 1991, in Sacramento, California

Mr. Speaker, president pro tempore, members of the legislature, honored guests and friends. Let me first thank Speaker Brown, President Pro Tempore Roberti, Assemblyman Isenberg, and Senator Lockyer for their invitation to address you today. I am glad to be here once again to speak to you about California's judicial branch and where it is going. The future of the judiciary is entwined with that of the legislature and the executive branch and these occasions help us all to remember that.

This year we celebrate the 200th anniversary of the bill of rights. Just how precious and remarkable those rights and the entire document of which they are a part shows up every time you turn on the television or read a newspaper. Amazing events have unfolded across the globe over the last two years. Students in Tiananmen square, the Black majority in South Africa, the people of the soviet republics all seek to exercise rights we have enjoyed for two centuries. Consider that even in the midst of war, dissenters in our country may express their feelings freely. Debate is expected, and respected as part of the democratic process.

The three branches of our government are co-equal with separate responsibilities -- but we share a common purpose -- defense of the rights and freedoms contained in our laws and in our constitutions. These rights are not merely the courts to protect you share that responsibility and that privilege.

These are difficult times for government and difficult times to govern. An unprecedented fiscal crisis looms at the same time our state is experiencing historical growth.

You have the very difficult task of deciding how best to distribute the money that is available and what sources to tap for additional revenues. I do not envy you the job but I offer some observations as you go about it. In particular, I hope to give you some sense of the needs of the judicial branch, and to report on the steps we are already taking to meet them. At the same time, I will try to explain why we merit carefully structured treatment tailored to our unique role in providing all citizens with access to fair treatment in our courts.

In considering the difficult job of allocating scarce resources, let me pose a fundamental question: why do we have governments? One of the most basic reasons is to provide justice. Men and women have banded together since before recorded time in order to define acceptable conduct, to protect the rights the weak, and to follow each of us to predict the consequences of our actions. In other words, to create a system of justice.

In a government in which a legislature enacts laws, and an executive approve them, but no judicial branch oversees their scope, their implementation or their application, those laws could as well be written on water as on paper, for all the force they would have. The people governed by that incomplete government would have no recourse against injustice, whether it came from their government or their fellow citizens. They would have no common place to go to enforce a

contract, to collect a debt, to protest an unfair accusation, or to have a wrong righted with any assurance of consistency. Justice would be at the mercy of the strongest, the best connected, the most audacious.

Even in countries where the judicial system is basically nothing more than a political arm with no independence, some structure and format for the administration of justice exists. In our country, we define ourselves and our society by our common belief in equality for everyone before the law and the accessibility of the law to all. We may not always achieve perfection, but the goals we seek are constant.

Consider the words of the declaration of independence. "we hold these truths to be self-evident, that all men are created equal." Foremost among the evils and injuries which led the colonists to declare independence were the failure of the crown to enact necessary laws, to provide sufficient means to allow grievances to be heard and answered, and to provide for independent judges.

The preamble to our federal constitution sums up the guiding purpose of our government well -- and justice is listed right after unification: "we the people of the United States, in order to form a more perfect union, establish justice, establish this constitution." I doubt that this placement was a matter of chance.

Justice and its availability to every citizen is integral to our society but remarkably, although the judicial branch provides one third of our government's function, judicial operations receive only 1.8 percent of total state and local government budgets. For that relatively small amount, courts accomplish a great deal. But our entire system is undergoing severe strain and disparities are growing between large and small courts because of differences in local resources.

For example, state funding has yet to realize its promise in the smaller counties. Rather than reaching our goal of equalizing funding across courts, we find funding disparities have widened. A preliminary survey shows that the Brown-Presley trial court funding act has resulted in expenditures ranging from as little as $396,000 per judge per year to as high as $876,000 per judge per year. And the percentage of total trial court costs funded by the state has dropped from 44 percent to 38 percent, heightening the impact of variances between county resources.

The margin on which courts operate is thin. We cannot cut back by refusing to file ten percent of cases or telling litigants to try filing again next year when we may have room for them. We cannot declare that no more family law matters will be heard for the rest of the fiscal year or that only persons who pay for the privilege may appear in court. Nor is it a simple matter of balancing our necessary budget needs against the needs of other state agencies. We are not "another state agency." We are a separate branch of government charged with essential and mandatory responsibilities for all citizens. Fair and equal and timely access to justice must be there for everyone, rich or poor, homeless or in a mansion, white or person of color, man or woman. If we cannot guarantee that, if we dole out justice in incomplete bits and pieces, then none of us can be assured that tomorrow will not find us among the dispossessed.

Demands on courts have not slowed down to accommodate limited resources. Between fiscal year 1986-1987 and fiscal 1989-1990, total filings in our courts, excluding parking matters,

increased by seven percent from 10,500,000 to 11,250,000. From fiscal year 1986-87 to fiscal year 1989-90, only three short years, felony criminal filings in superior courts grew 43.9 percent. In Los Angeles county alone, felony filings jumped 182 per cent over the last decade. Increased criminal filings, which have priority in our courts, also increase delays in processing civil cases.

Courts have not simply proceeded with business as usual. We have adopted firm measures to stretch existing resources as far as we can in a variety of ways. For example, with your much appreciated help, we have taken significant specific steps to increase efficiency and reduce delay in the trial courts by applying effective case management techniques.

As directed by the trial court delay reduction act of 1986, the Judicial Council designated nine superior courts as pilot projects to implement strategies to speed up the handling of civil cases. Another 11 superior courts voluntarily embarked on programs of their own. In 1990, you amended the original delay. Reduction act to extend its provisions to all superior courts beginning on July 1, 1992. The Judicial Council has also now adopted civil and criminal-processing time standards for the municipal and justice courts that became effective on January 1, 1991. At least 20 municipal and justice courts have already begun delay reduction programs directed towards reaching the new standards.

Our most recent statistics on court management programs show they are a highly effective tool for better processing cases with available resources while maintaining the quality of justice dispensed. The basic premise of these efforts is that courts operate best when judges -- not lawyers -- control processing. Active court management· and leadership has decreased disposition time for civil cases in all the existing delay reduction programs.

For example, in Alameda County, the number of general civil cases completed within two years of filing rose from 66 per cent to 94 percent for program cases. San Diego experienced a reduction in the average length of jury trials from 11 days to 4.5 days. In Sacramento, the median age of cases completed has dropped steadily from around 15 months to 9 months for program cases. And in Los Angeles, the average caseload of each of the program judges operating individual caseloads decreased from 946 to 629 between 1988 to 1990 -- an improvement but still an incredibly heavy load.

Active court management can significantly reduce the number of pending cases, the time it takes to get to trial and the time it takes to try a case -- so courts can attend to more cases. Another important aspect of this approach is the ability to set firm trial dates. By doing so, attorneys and litigants need prepare for trial only once -- and they know that the time to reach settlement is no longer seemingly endless.

Case management techniques also extend beyond civil cases. The Judicial Council recently approved three recommendations by its advisory committee on criminal court delay to reduce criminal case congestion. First, the committee recommended that judges attend at least one educational program on conducting voir dire to assist in the jury selection process. Next, courts should try to manage drug cases through early resolution programs -- which may also be applied to other criminal cases. Finally, judges are encouraged to take a leadership role in community efforts to address drug abuse. Implementation of these recommendations and related techniques

is already underway.

Nor are our efforts to make effective use of what we have limited to trial courts. The first district court of appeal in San Francisco has inaugurated its own delay reduction effort and the fourth district in southern California is following suit this year with a case management program of its own. In addition, at an appellate justices' seminar in April, they will be addressing causes and cures for appellate delay. The appellate courts have focused on improving record preparation procedures to lessen a major cause of appellate delay, and thereby reduce the overall time for briefing and deciding appeals.

We at the Supreme Court constantly review and revise our procedures as well. We have been very pleased with the contributions of the court's new civil central staff whose creation you authorized. These attorneys have allowed the justices and their personal staffs more time to spend on the cases that merit full consideration and written opinions. In other action, in cooperation with the state bar, we adopted new rules to streamline review of attorney disciplinary cases. We expect a substantial decrease in the number of state bar matters that will require our full review, giving us more time to decide issues of greater statewide importance.

In the area of death penalty appeals, we have been keeping relatively current with all of the cases that are briefed and ready for our complete attention. But the problem of finding and compensating counsel for all death row inmates is a serious one that deserves mention and attention. We have revised payment guidelines for attorneys in death penalty and other criminal appeals, and we are looking at methods of encouraging more attorneys to participate.

We have learned a great deal about case management by the courts from the many efforts underway. A full report on trial court delay reduction is being prepared by the Administrative Office of the Courts in conjunction with the National Center for State Courts and will be presented to you later this year. I am certain you will be impressed by how effective court efforts to reduce delay have been. You helped by providing a legislative framework -- but shifting to management by the courts required a major change in California's local legal culture. The new approach has gradually been well accepted by most members of the bar, and I know the judiciary believes it has really aided courts in handling matters without sacrificing fairness. Despite the fact that this shift placed substantial new burdens on judges up and down the state, the men and women on the bench have uniformly been willing to accept and fulfill their obligation to manage the courts.

But efficiency can take us only so far in assuring the continued quality of and accessibility to our justice system. As I said, firm trial dates are necessary for effective case management -- but if there are not enough judges and courtrooms to handle cases ready to be heard, the whole process is defeated. We have already seen delay reduction courts unable to meet their end of the bargain because there is no courtroom or judge open on promised trial dates. The longer that situation festers, the deeper the injury done to our efforts, and to our citizens awaiting resolution of their legal problems.

We are not relying on delay reduction alone; it cannot provide the full measure of relief needed. Simple arithmetic tells part of the story: despite the increase in court filings, no new judgeships

have been created since 1987 -- and even the number added at that time was lower than the current statistics indicated were needed. But we are not resigned to a mathematically determined destiny and are actively looking beyond case management at other avenues, such as alternative dispute resolution programs, which can alleviate some of the burden on the courts by providing other modes for the resolution of disputes.

Our quest for solutions has two components -- one is to utilize already available resources to their fullest and most efficient capacity. The other is to seek the best new ways to relieve those pressures on the courts that cannot be met through existing means alone. Funding for such programs must be in addition to that already provided for the courts, or there will be no net benefit.

For example, we need to effectively use technology. Courts must be able to monitor cases to properly manage them. Computerization provides the best way for courts to track cases -- but computers cost money. If funds are cut or inadequate, courts cannot develop or use existing technological advances to manage their work and will fall further behind. Automation projects are underway in the trial and appellate courts, and courts are also experimenting with fax filings and service, electronic bulletin boards to improve public access to court information, the use of audio and video technology to produce verbatim records of court proceedings, and electronic imaging to reduce costs of storing and retrieving documents.

Access to new technology is not a frill; it is a necessity for courts to continue to cope. As presiding judge James Ford of Sacramento's Superior Court remarked about the effect of the reduction in state funding for his court, "what'll happen is we'll just end up probably not being able to attend in the same way to the same number of cases and everything will get slowed down. We'll suffer losses in all the innovative stuff we're trying to do … and (litigation) will just be harder and slower." Over the long run, being able to take advantage of new techniques will save the courts and the state money by allowing us to utilize what we have to the most advantage. Not spending now will not preserve what we have -- it will only allow it to deteriorate.

I don't want to belabor this point. I have stressed it to give you an idea of where we are today and the obstacles that face us in getting to where we need to be tomorrow. We are appreciative of the support you have provided us in the past. Looking forward, we have already begun to try to create a roadmap for the judiciary's future so we can study what lies ahead for our justice system, anticipate change, and plot strategies for the future.

Called 2020 Vision: A Plan for the Future of California's Courts, a newly created futures group will be examining many issues that could affect the future of California's courts we will be trying to project 30 years ahead to see what our courts might be like and what demands may be placed on them. We will also make recommendations to counter any future problems and thus help ensure the continued high quality of our courts.

One major job will be assuring that courts are meaningfully accessible to everyone in our state -- and that will include reaching out to individuals from backgrounds with judicial traditions very different from our own. We must be able address broader problems such as effective education about how our democratic system works as well as answer specific needs for services, such as

the use of court interpreters -- a subject we are already studying in order to develop standards and improve services.

In evaluating the future of our courts, we must also be prepared to look beyond raw numbers to examine the consequences of today's societal problems. For example, how will we deal with the ravages of the drug problem on the coming generation? In a direct way, we know thousands of children have been born affected by drug use by their mothers. It appears many of these children will have difficulty functioning in society. What kind of services and care can be provided now so these children are not destined to become statistics in the criminal justice system -- and what preparation can we make for those whose path will nonetheless lead them there? More indirectly, what will be the consequences of hundreds of thousands of children who are being raised knowing only abuse, neglect, addiction and violence? What will the impact be on our courts -- and on our society as a whole?

I am hopeful that our futures commission will provide useful answers and methods to help us make intelligent decisions about the complex challenges that await us. In a related vein, there is exploration underway to see if we can develop and apply practical methods and standards to forecast the impact of new or amended legislation on all levels of the justice system. If a crime is elevated from a misdemeanor to a felony, or a new mandatory sentencing enhancement is added, what will be the consequences on the administration of justice? If new police and prosecutors are added, to what extent will we need to balance their effect by increasing facilities and personnel elsewhere in the system? If a new cause of action is created, how will it affect clerks' offices and courtroom space. The staff arm of the Judicial Council, the Administrative Office of the Courts, is already working towards providing such analyses in certain areas.

Even as the futures commission begins its work, the Judicial Council continues to act to improve the administration of justice in a number of ways. In November, it accepted the recommendations of the advisory committee on gender bias. Implementation of the recommendations will affect procedures and programs in areas such as family law, domestic violence, criminal and juvenile law and court administration. We hope to substantially increase fairness in our courts through changing procedures and increasing awareness of potential problems. In addition _the advisory committee on racial and ethnic bias has begun by joining the national consortium of task forces and commissions on racial and ethnic bias in the courts and will begin statewide public hearings and circulation of a survey in the future.

The council and the Administrative Office of the Courts have also moved to revise felony sentencing rules and those for changes of venue, adopt new child custody forms and new child support guidelines, and develop new standards for measuring judgeship needs. In addition, we have begun to train judicial and court support personnel statewide in order to improve their competency and effectiveness.

Studies authorized by the council also have recommended practical steps such as making it more attractive for retired judges to come back and serve and creating a corps of circuit judge available on an as needed basis across the state. On any given day there are 200 empty courtrooms out of 1500 due to sick leave, vacation, training and unfilled vacancies. Our assignment. Unit can provide only an average of 55 judges per day, while other courtrooms are occupied by local

lawyers appointed by local presiding judges to serve as temporary judges. We need to find more reliable methods to utilize each courtroom every day it is available.

The phenomenon of private judging remains under review. Whatever one's position on this practice, the very existence of this alternative to our courts is a constant reminder that because we cannot accommodate all those who need our services in timely and adequate fashion, a parallel private system -- available only to those able to pay -- has arisen in our shadow.

Over the last year, the Center for Judicial Education and Research has continued to set the standard for judicial education, assuring California that those on the bench are provided with the best training. The center's programs run the gamut from substantive legal instruction to sensitizing judges to the needs of particular groups in the courts. It serves as an invaluable conduit to transmit important information to those who can make the best use of it and is recognized as the best in the nation.

There are many other efforts underway to keep courts abreast of current needs and to prepare them for the future – too many to mention here. We are proceeding on every possible path to seek practical useful solutions to every level of problem. What I can say is that I cannot overstate my respect and gratitude for the creativity, hard work and of those who serve our system of justice. We in California should be very proud -- but what we have only highlights our obligation to assure that our judicial heritage does not become judicial history.

I stand before you today as the leader of a co-equal branch of government and as an advocate for the branch I serve. A fair, accessible justice process is part of the very definition of our system -- and we must work unceasingly to assure its continuation. I know that as members of the legislative branch you too are subject to demands from many sources and face hard choices on a daily basis. Together we can face the true challenges before us -- assuring that access to justice is there for everyone and that the quality of justice that our citizens expect and deserve is not eroded. I look forward to working with you to guarantee that California courts remain strong and fully able to carry their share of the burden of government.

Thank you again for inviting me here today.