State of the Judiciary
Chief Justice Ronald M. George, California Supreme Court
Message to the California Legislature
May 15, 1996, in Sacramento, California

Mr. President Pro Tem, Mr. Speaker, distinguished legislators, constitutional officers, colleagues on the Supreme Court, fellow members of the Judicial Council, and special guests. On behalf of the judicial branch of government it is a great pleasure to meet with you today to report on the state of California's judiciary.

This is my first opportunity to address you as chief justice. In fact, this is my first major address since becoming chief justice just two weeks ago. Things have been moving so quickly that I am reminded of the story about Lord Rosebery who dreamt he was giving a speech to the House of Lords - and woke up to find out that he was.

Beginning a Tradition

The invitation from Senator Lockyer and Speaker Pringle stated they anticipated this address would be the beginning of a tradition on that will foster strong relations among California's three branches of government. My desire to take this opportunity so soon after assuming my new role is, I hope, a signal to you that I share this aspiration.

The message I will deliver today is one that focuses on our shared responsibilities as co-equal branches of government, and on the judicial branch's intention to responsibly and effectively fulfill its constitutional obligations. As we all are aware, the formal relationships among our three branches of government are governed by the California Constitution, which explicitly states that "the powers of state government are legislative, executive, and judicial. Persons charged with the exercise of one power may not exercise either of the others except as permitted by this constitution" (article 3, section 3). Thus, the judiciary functions not as one of the many departments of government, but as one of the three separate and co-equal branches of government.

The existence of three branches of government, each with different and defined roles and powers, is intended to ensure that no individual or group of individuals can dominate our governmental process. As so devised, our system of checks and balances protects citizens against the excesses of government power. It may not always seem the most efficient means of governing, and at times it can be downright frustrating. But to paraphrase Winston Churchill, democracy is the worst form of government, except for the alternatives. And I submit the same might be said of our doctrine of separation of powers.

The Meaning of Independence

A strong and independent judiciary is the cornerstone of our society's commitment to the rule of law. But what does the term ‘independent' mean? Well, an independent judiciary is one in which a judge rules on a matier based on the legal merits of the case and not on the popularity of ap articular result or the ramifications of a specific outcome. What the court cannot –indeed must not – do is attempt to anticipate the popularity of its rulings or seek to be responsive to one constituency before any other. Our strict charge, then, is not to make or remake the law,

but only to interpret and apply it fairly.

Alexander Hamilton described the judiciary as the 'weakest' and "least dangerous" branch. (Federalist Paper no. 78.) I suspect some of you at times may not agree with the latter assessment. But in fact, courts operate under significant limitation. They may decide only issues that parties bring to them. And in reaching their decisions, they are bound by the constitution, statutory law, and precedent. A court must render a decision based on the raw material of facts and law created by others. And once it does, it necessarily disappoints at least half the parties. As one experienced judge advised me when I first became a judge 24 years ago, "every time you decide a case, you make one temporary friend and one permanent enemy."

The Role of the Courts

By ensuring the independence of our courts, we ensure that their decisions are based on the requirements of the law, not on who is most powerful or who is most popular. The role of the courts is of course different from the legislative and executive role. You, the legislative and executive branches, are of course responsible for the making and implementation of the law. You are the direct representatives of the people. Our system entrusts to you the enactment of the laws that govern the actions of our courts and the selection of the judges who preside over them.

Nevertheless, the phrases "independence of the judiciary" and "separation of powers" are not absolutes. They must also be viewed in the context of the judicial branch's status as one of three co-equal, yet interdependent branches of government.

With Independence Comes Obligation

In 1952, United States Supreme Court Justice Robert H. Jackson wrote that "while the constitution diffuses power the better to secure liberty, it also contemplates that practice will integrate the dispersed powers into a workable government. It enjoins upon its branches separateness but interdependence, autonomy but reciprocity." (*Youngstown Sheet and Tube company v. Sawyer*.)

The message I bring to you today, then, is, first, that the judicial branch stands firmly committed to the staunch defense of its independence in decision making. But will I independence comes obligation. Our branch is equally committed to taking responsibility and accepting accountability for the administration and governance of its affairs as a branch of government - and to working with you on behalf of the people of our state.

Making Our Branch Less Mysterious

In many ways, I know I am preaching to the choir. In my personal meetings, during the past few years, with many of you and your helpful staff members, as well as members of the executive branch, I have seen again and again evidence of your shared dedication to making government work for those we serve. I have learned a great deal about the legislative process through these meetings. I hope that through activities such as the Judicial Council's annual educational legislative and executive open house, we are making the intricacies of our branch

less mysterious to you as well.

Many of you have taken the time to participate in the "Day on the Bench" program, which brings legislators into the courts to see their day to day operations. And meetings such as one hosted last year by Senator Calderon between the senate judiciary committee and the Judicial Council can help lead to joint solutions to difficult issues. That occasion resulted in reaching consensus between the judiciary and the legislature on a previously intractable and complex issue involving appellate review of public utility commission cases.

But none of us in government these days can comfortably sit back and bask in the glow of a populace radiating with unlimited confidence in our good intentions and hard work. Cynicism about the role of government and those who serve in it is all too prevalent. I have no simple answers to why it often seems that people today look so hard for the negative side. I doubt that there are any easy solutions to this predicament.

For many members of the public, their most personal and direct encounter with the government is through the courts. Whether it is a traffic ticket, a criminal or personal injury case, or a business dispute, the court is the place individuals go to resolve their claims. The critical and strategic position of our court system imposes upon all of us the responsibility to ensure that the judicial branch is capable of handling those demands. After all, the authority of the courts rests in large part on the existence of confidence and trust in those we serve.

We in the judiciary have been very aware of the need to reach out to the public and to be responsive. It is fundamental that in order to fulfill their constitutional role, the courts must be accessible to the people. A judicial system that is – or even simply is perceived to be – distant, inaccessible and unresponsive, threatens the very foundations not only of the courts, but of our government. However, as the public's confidence in the courts increases, so too will confidence in government as a whole.

Finding Solutions

The problem of lack of confidence in government cannot be solved by the judiciary alone. But it is a problem for which we all can work together to find solutions. Over the past few years we in the judiciary have taken a number of steps in that direction – many of them with your assistance. For example, we have undertaken studies to evaluate problems of bias in the justice system based on gender, race, ethnicity or disability. This kind of self-examination sometimes is not the most pleasant exercise. But it offers courts a window into the perceptions and experiences of those who interact with us. Based on those studies, we have adopted and will continue to do so - rules, educational programs and other strategies to help provide an environment in which all individuals can feel that they are playing on a level field.

We also have developed innovative strategies to bring all interested parties together to address solving specific problems. For example, two years ago, the Judicial Council's family and juvenile law committee sponsored a statewide conference on domestic violence. Teams with representatives from the courts, the entire justice system and the public were invited from each county to start developing county-specific response plans. Every single county sent a team, and each team developed a plan responsive to the concerns of its own locality. The results have taken many shapes.

Looking Beyond the Courthouse Door

That is just one instance of courts looking beyond the courtroom door to work with other facets of our justice system and our community to address difficult problems that transcend any one segment of our system. These efforts recognize that conflicts do not bloom full grown on the steps to the courthouse. They have their roots in many causes. By working with other segments of the community and government, courts can better explain the scope and limits of their function while working to develop other effective options.

Other efforts, such as the program initiated right here in Sacramento by Judge Barry Loncke, have explored ways to make judges more available to citizens to answer questions and explain how our system works and to learn from the public.

Judge Veronica McBeth of Los Angeles described to the Judicial Council in March her experiences with community outreach. She worked with a Black women's forum to develop a day-long seminar for members of a largely minority community to explore the impact of three strikes legislation and crime in their community. 700 persons attended and stayed for more than 6 hours. The success of programs such as these make it clear that the public is eager for information and for input about the quality of our justice system. By bringing the courts to the communities, we help ensure that they understand that the courts are there for them.

Other areas affecting access to the courts also require our creative attention. For example, over 60 percent of parties in family courts are not represented by counsel. I will be urging the Judicial Council to join with the state bar in efforts to promote pro bono legal representation for civil litigants.

Inadequate Resources Amid Growing Demand

In addition to looking outward, we in the judicial branch have focused our scrutiny inward to find other improvements we can make in our practices and procedures. The need to do so has been heightened by a crisis in the ability of the courts at every level to meet demands. Last year, for example, California's courts saw in excess of 9 million filings.

The collision of inadequate resources and increasing demand has made reexamination of every aspect of court operations imperative. Funding shortfalls have had a wide-ranging impact, which has fallen unevenly across the courts of our state. Dramatic increases in case filings and workload have affected every level of court.

- For example, court of appeal filings have increased 24 percent since 1987.

- In the Supreme Court, we had 6,300 matters filed in our court in 1995, compared to 3,700 just 20 years ago.

- Filings have jumped by 25 percent during the last 5 years alone.

- And yet, we still have just 7 justices handling the work as we did in 1975 -and for that matter in 1879.

It is only through the support of superb staff that our appellate courts have been able to cope.

Trial courts have, in many instances, suffered even greater consequences. Superior court filings leapt 28 percent in the last decade. The rate at which criminal cases go all the way to trial rather than settling earlier has increased – following enactment of three strikes legislation – from 4 percent in non-strike cases to 45 percent in third strike cases. This has affected civil litigation in an unmistakable way. Notwithstanding very effective delay reduction programs in the late 1980's and early 1990's, the steady influx of criminal trials, which have priority, has pushed civil matters further and further back in line. Despite these developments, no new judgeships at any level have been created in California since 1987. Thus, the improvements we have achieved too often have meant that we have only slowed the rate of rising back-logs rather than made positive inroads in correcting them.

Three Strikes Relief

That is one reason why I so strongly support the proposal before you to establish a three strikes relief team. It would allow us to send teams of experienced and specially-trained judges to heavily affected counties to conduct trials of second and third strike cases. It may require using existing facilities to hold court in the evenings or on weekends, but it is a practical, effective way to help all cases get to court in timely fashion.

Similarly, the pending proposals to add modest numbers of new trial and appellate jurists deserve your support as well.

Judicial Council Administrative Office of the Courts

Before going further, I would like to underscore our efforts to provide a statewide focus to finding solutions to some of the problems affecting the courts. The Judicial Council plays the key role in many of the projects already described - and inconsistently advocating for the interests of our branch. The council is the constitutionally created body with responsibility for coordinating the administration of our courts statewide. It has a variety of assigned responsibilities, including adoption of rules for court administration, practice, and procedure, and improving the administration of justice by presenting recommendations to this body, the governor, and the courts.

A substantial part of my responsibility as chief justice of California flows from my constitutional responsibility to chair the Judicial Council. The council includes jurists from every level of court, state bar members, 2 legislators, and various advisory members. Currently Senator Calderon and Assembly member Morrow actively participate in Judicial Council work. Over 500 judges, court staff, lawyers, and citizens serve on a voluntary basis on the council's standing committees.

The council is staffed by the Administrative Office of the Courts, which provides a wide array of support to the council directly, and to trial and appellate courts in areas such as technology, budget, and administrative services. Among its myriad projects, the council has engaged in planning efforts for the courts, established requirements for court interpreters, and undertaken major initiatives to improve the juvenile court system, to name but a few areas.

The council will be meeting on Friday in Chico and among the topics it will be taking up are reports from its special committees on cameras in the court room and on jury improvements. The council also oversees the budget development and approval process for the budgets of the appellate and trial courts that are submitted to you each year.

Trial Court Coordination

One very basic area in which the council, has played a key role has been enhancing the coordination of administrative and judicial resources in the courts. Building on a 6 year process initially spurred by assembly member Isenberg, in January 1995, the Judicial Council, adopted comprehensive coordination rules. They require superior and municipal courts to eliminate duplication in administrative support services and to develop integrated calendar management systems in order to fully utilize trial judges at each level. Coordination provides greater flexibility and increased efficiency in order to better serve the public. It promotes the establishment of common procedures, integrated information systems, and uniform public responsiveness.

Let me give an example of the program in action. Last January, Bill Vickrey, our very able administrative director of the courts, Senator Calderon, assembly member Ducheny, and I spent several hours visiting the coordinated superior and municipal court located in South Bay-San Diego.

- The two courts now share one administrator and one cleric's window for criminal cases and one for civil.
- Transcript costs have been reduced by 75 percent.
- Two management positions were eliminated.
- A single case number filling system was established.
- Court calendars are now managed in a way to make the best use of all judges.
- The result has been 90 percent more felony cases resolved before preliminary hearing, a substantial reduction in jail bed days, and the ability to keep cases moving even if the judge assigned to the case is unavailable.

The new structure is enthusiastically supported by prosecutors, defense attorneys, the sheriff's office, and the local bar.

Following adoption of the council rules that I have described, courts in Fresno, Marin, Butte, Solano, San Mateo, Sonoma, and Madera have also moved to fully coordinate their judicial and administrative functions. They are following pioneering efforts by Napa, Sacramento, Riverside, San Bernardino, Yow, and other courts.

This movement has not been all sweetness and light. There has been resistance in some courts, and specific difficulties have arisen due to local culture and practices. Where we have seen the most success, we can trace it to strong, public spirited judicial leadership. There are further legislative proposals before you to facilitate additional progress. I hope you will give them careful consideration.

Senate Constitutional Amendment

In a related vein, this year you have before you Senate Constitutional Amendment 4. It would permit unification of our trial courts into a single level system, similar to the structure of the federal courts. I had questions about a previous version which would have mandated immediate unification of all courts at the same time. This new version permits change to take place on a county by county basis, as courts and communities are prepared to make the change. This may be the next step in enhancing the success of the court coordination programs we have seen thus far. I will be requesting the Judicial Council to consider it carefully.

Courts Need Stable, Adequate Funding

The support and direction provided by the other branches of government have been of essential assistance in moving coordination and many other of the council initiatives forward. But all of these developments may well be meaningless if we do not come to grips with the fundamental issue of providing courts with a stable, adequate source of funding. In a 1970 address to the American Bar Association, Chief Justice Warren Burger of the United States Supreme Court expanded on a theme struck by roscoe pound in 1906. Pound had observed that the work of the courts in the 20th century could not be carried on using the tools of the 19th century. Chief Justice Burger noted that "we are still trying to operate the courts with fundamentally the same basic methods, the same procedures, and the same machinery (...) That [Dean Pound) said were not good enough in 1906. In the supermarket age, we are trying to operate the courts with corner grocer methods and equipment - vintage 1900."

Well, as I have described, we have taken many strides to move ahead into the 21st century. But in one critical area, we are still caught in an anachronistic past.

Access Differs from Court to Court

Financial support for the trial courts of our states evolved at the local level, often in piecemeal, inconsistent fashion. The 1991 trial court realignment and efficiency act started the much needed move to a state funding system. But today, responsibility is bifurcated between county and state, leaving no source ultimately responsible. Access to justice - and the quality of justice - often differ significantly from court to court and county to county. Because of these fiscal constraints, the Judicial branch is unable to hold its own segments accountable, nor can the Judiciary as a whole itself be held accountable, for the quality of the administration of justice in this state - even though this rightfully is a matter of statewide concern.

We have courts with staffing ratios 30 percent higher than other courts of similar size and filings. Hundreds of incompatible information systems operate in our courts. We are unable to provide you with accurate information on the number and types of cases filed.

These issues and many others cannot be addressed effectively until California is able to assure not only adequate funding for its courts, but a funding process that will enable us to thoughtfully plan for the future and wisely use resources to provide equal justice across our great state. Only then can courts properly govern their own affairs - and only then can you hold us, as a branch of government, appropriately accountable for our stewardship.

This month you responded by a unanimous vote of both houses to a crisis in our trial courts.

SB 99, authored by senators Kopp, Alquist, and Calderon, and assembly members Bowen and Morrow, and many others, provided emergency funding intended to ensure the maintenance of our basic public safety system and medical processes. On behalf of the judiciary, I want to thank you for your support.

State Funding for the Trial Courts

Nevertheless, trial court funding has eroded over many years, and the lack of a stable, adequate statewide scheme has continued to construct our ability to plan and enforce consistent standards.

This year, you have before you a proposal to consolidate funding for the trial courts at the state level. The counties and the courts are working together to ensure smooth implementation.

Although there are complex logistical issues to be resolved between the counties and the state, I am Confident that answers can be found. There is some apprehension and disagreement about these courts within the court community itself. I recognize that this shift is a major one that some find it difficult to contemplate.

Nevertheless, a trial court task force on court funding, with membership from across the state and from courts of different sizes and needs, unanimously recommended proposals to move forward with this initiative. Stable, adequate state funding is probably the most fundamental ingredient for courts to make a successful transition into the 21st century.

Keeping Judicial Elections Non-Partisan

Other factors also stand out in terms of our ability to move forward. I want to turn now to another issue that causes anxiety for those concerned with preserving California's independent and nonpolitical judiciary. It has to do with a disturbing tenor that has developed in regard to the electoral approval to which judges are subject. As you know, trial judges appear on the ballot if their position is contested. And appellate judges appear on the ballot for confirmation after initial appointment and for a new term.

I mention this because, as I noted earlier, public confidence in the courts is essential to their ability to function. That confidence can be maintained only if the public believes in the neutrality of judges. In the past few years, trends have developed in the electoral process that threaten to compromise the independence of judges and the public's perception of their neutrality. At the trial level, we have seen a marked increase in the injection of partisan politics into the process. The electoral system was designed to ensure accountability of judges in a manner consistent with their constitutional role and the standards of behavior provided for in the canons of ethics. No one appearing in court should fear that the judge hearing the case is concerned about partisan political ramifications rather than the law.

In the appellate area, in the 1994 election, we saw clearly demonstrated that mere wording of a ballot can dramatically affect election results - without any regard to the merits, qualifications, or performance of the individual jurist. Neither the vagaries of a ballot description nor controversy about the bottom line in one decision provides a proper basis for exercising the right to vote on a judge. That is not what our constitution contemplates. We rightfully want

judges to decide cases based not on the judges' individual views but on the law. We therefore must not fault them for decisions that accord with the mandates of the law, even when we disagree with the particular result. The issue in evaluating a judge's performance is not the bottom line - it is, did the judge act judicially and judiciously in arriving there?

A thorough study of the entire judicial election process may be in order. As an initial step, I urge swift passage of AB 1936, dealing with ballot information, to provide interim reform. It responds to the public need for more information by providing relevant information on the background of judges.

Death Penalty Delays

Let me turn now to a subject that is particularly troubling to the Supreme Court. I speak of automatic appeals in death penalty cases. We are currently up-to-date in handling matters that have been briefed and are ready for oral argument. But delay in these cases causes confusion and frustration among Californians and is unfair to everyone – victims and their families, defendants, and the public at large.

Processing of these cases on appeal has been delayed for a number of reasons. One has been the time it takes to certify the record on appeal. Assembly member Morrow has put a tremendous amount of time and thought into efforts to deal with this pressing problem and has introduced ab 195 with this objective in mind. He and assembly member Boland last fall presided over a very informative public hearing on the overall subject of capital case delay. A Judicial Council ad hoc committee has provided some suggestions for inclusion in the bill. This is another defined area in which the legislature, the executive, the Judicial Council, and the Supreme Court, working together, can have a beneficial effect on the administration of justice.

Finding Solutions

A more pressing problem arises from the fact that there are almost 130 defendants on death row awaiting appointment of counsel on appeal. There is presently an approximately three year delay in making such appointments because of the lack of counsel. There have been many efforts made to improve this situation. In 1992, the Supreme Court assumed direct responsibility for the recruitment process and appointed an automatic appeals monitor to actively recruit attorneys. The court has traditionally paid counsel an hourly rate for these cases. It adopted an alternative flat fee option to provide easier processing and predictability for counsel and the court. We have also accelerated payment processing and overseen the creation of a training videotape on death penalty appeal representation prepared by some of California's most knowledgeable and accomplished criminal appellate practitioners.

Last year. You provided the means for us to increase attorney compensation from $75 to $95 per hour in capital cases. That is still approximately $30 less than the rate paid in the federal courts, and much less than the rate charged by private attorneys, but it is nonetheless a significant step in the right direction.

I urge your support for continued efforts to address these difficult problems, and I pledge the judicial branch's support in finding solutions.

Other Projects

As you have probably gleaned by now, there are many problems besetting our court system - and many efforts underway to address them. I could go on about the need to ensure compatible use of technology statewide, or the work of the center for judicial education and research in developing educational programs for judges in areas such as domestic violence, fairness, access, and establishing drug courts. I could discuss in depth my intention to ask the Judicial Council to authorize a study on the feasibility of removing minor traffic offenses from the jurisdiction of our trial courts. In the best of all possible worlds, such a proposal would not be an issue. But in times of limited financial resources, the question arises whether providing a judicial forum for these cases is the best allocation of the resources available to the judicial system. I hope a study will give us balanced and helpful information to decide this issue.

Looking Ahead To Success

But rather than going on with more detail here, I hope I have whetted your appetite for continuing to join with the judicial branch in seeking reasoned, responsible solutions. The solutions we develop will serve not simply as answers to current problems; they can provide direction for tomorrow as well. I am very honored to have been selected as chief justice, and very excited by the tremendous reservoir of talent in the 1udges, administrators, and staff that make up our judicial branch. I have already begun seeking their assistance through outreach meetings that I intend to continue throughout my tenure as chief justice. I have begun by meeting with the different divisions of the administrative office of the courts to get a better idea of their strengths, their challenges, and their place in the overall picture of the council and its duties. I have started similar meetings with the justices of the Supreme Court and their staffs and our central staffs as well. In the near future, I intend to embark on visits to courts in every one of California's 58 counties to listen to the participants in our justice system and to learn.

You in our sister branches time and again have demonstrated your commitment to assisting the courts in providing the highest quality administration of justice possible. Woodrow Wilson once said, "a nation is as great as its courts; no better or worse." Well, ours is a great state. I have described some of the challenges that confront us in the judicial branch. But we are fortunate because of our tremendous strengths. We already have the highest caliber people working within our court system. And in addition, we are the beneficiaries of the willingness of you in the legislative and executive branches, who stand ready to work with us to improve it.

I look forward to our continued cooperation and eagerly anticipate our successes. Together we can ensure a strong and independent judicial branch - one that stands ready to resolve cases for all who need our assistance, one that reaches its decisions without hint of prejudice or passion, and one that accepts responsibility for the management of its own affairs.

I thank you for the opportunity to address you today.