

State of the Judiciary
Chief Justice Tani G. Cantil-Sakauye, California Supreme Court
Message to the California Legislature
March 8, 2016, in Sacramento, California

Good afternoon. Speaker Rendon, let me add my congratulations to your historic speakership, and of course, Senate President de León. Thank you for inviting me to address a joint session of the Legislature on the State of the Judiciary.

I'm honored to be here with my fellow justices from the California Supreme Court. It's a pleasure to see my colleagues from the Courts of Appeal, the Superior Courts, and the Judicial Council. And I'm happy to see the attorneys from the State Bar, the Bench-Bar Coalition and the Open Courts Coalition, executives from the Judicial Council, my chambers staff, and my externs.

And once again I must acknowledge my supportive husband who brought one of our daughters here today, Clare, as well as the rest of my family who are here in support. Let me also say that I am particularly pleased that my 84-year-old mother is here tonight. Mom?

Here's why. I grew up in a home in an alley not too far from the Capitol, and my brothers and sister and cousins and I would come to the Capitol all the time. But we were too afraid to actually come in, so we spent a lot of time on the lawn with the squirrels. That was until redevelopment came along and took our family home and took our grandmother's home. And my mother, Mary, with her high school education, went to court to fight the action as a self-represented litigant. She lost of course, but worse than that, she felt totally disrespected by the system.

That was my path to the law. So here we are today, many, many decades later, and I'm in my 6th year as Chief Justice and halfway through my first term. I am very proud speak to you today on International Women's Day, which is the day about gender equality and equal pay. I'm also proud to talk to you about the judicial branch and how, with the aid of the legislative and executive branches, we promote the social good and public well-being through our duties in the Constitution and through our relationships built on civility and respect.

The California judiciary is unique not only because of its tremendous size and the seven and a half million cases that are filed annually in it, but also because we serve the most diverse population in the United States, if not the world.

The judiciary upholds the rule of law in every one of those seven and a half million cases, and we interpret and apply the law and also ensure that it's available and applicable to all. We do that through our three courts: through the 58 Superior Courts with 1,800 judges; through the 6 Courts of Appeal with 105 justices; through the Supreme Court with 7 justices.

We are guided by a constitutional body called the Judicial Council. The Judicial Council is our rulemaking and policymaking body of the judicial branch. By virtue of the Constitution, I have many roles, including chairing the Judicial Council.

The Judicial Council itself has many goals, but we share one with you. And that is, we serve the people of California. We not only serve the same people, the Judicial Council has many structural similarities with the Legislature. Our membership on council consists of justices and judges, court professionals, lawyers appointed by the State Bar, and also two members of the Legislature, one from each house appointed by your leaders.

And like you, Judicial Council members serve on committees. We also have over 30-plus advisory committees, with more than 400 jurists, lawyers, subject matter experts, and justice stakeholders who contribute and volunteer their time and expertise to access to justice. When I say volunteer, I mean it, because every council member and every committee member has a robust day job. So I truly thank them for their work in access to justice.

Although the judicial branch has been around since statehood, and the Judicial Council has been around since 1926, this structure that I just described to you is only 17 years young. It's what I call Judicial Branch 1.0. Professionally speaking, I, and many of us on the Supreme Court and the Court of Appeal, grew up during Judicial Branch 1.0.

It was a time where we lived—I was 14 years as a Superior Court judge here in Sacramento—through the most turbulent times of unification and state court funding revolution and evolution.

Now those are polite words to describe a bitter battle that raged between courts and judges over these changes. Of course, without e-mail and social media back then, few can attest to the heat of those days. But some of us can. Let me also say that change has been difficult; it can be contentious. But if it's for the public good, then it's necessary and it's right.

Let me say also that in the meantime, we have transitioned into what I call the judicial branch of today. I call it Judicial Branch 2.0. We are a branch now made leaner by the greatest recession in California's history. We've endured, and we've changed for the better.

We have publicly met the heat of unprecedented budget cuts and we have downsized in all levels of the judiciary with these goals in mind: to serve the people and to ensure justice and fairness.

We focused on these goals: of self-assessment, transparency, accountability, and reengineering. I'll give you an example of reengineering. Two years ago in the 58 Superior Courts, we had more than 40-plus old case management systems. These case management systems couldn't communicate in their own court, let alone with each other.

But thanks to reinvestment dollars by you and the Governor, we now have only a handful of case management systems, and over 40 courts are in the process of updating their old computer systems. What we know is, from this trend toward more uniformity and use of the same case management systems, we will see more efficiency, better access, and usable data upon which we can make smart choices going forward for the public.

We've reengineered, but we've also adapted, we've also reformed, and we've never relinquished our commitment to access, fairness, and diversity. I'm proud to say in the most trying of economic times that we have done several things: We have increased collaborative courts. We've

created a comprehensive Language Access Plan. And thanks to my colleague Justice Tino Cuéllar, we are actually implementing it. We have created an open meetings rule for the Judicial Council. We have created a new traffic rule more responsive to the needs of the people. And borrowing a page from your playbook, we now live web-stream our Judicial Council meetings. And I'm excited to say that soon we will live stream our oral arguments at the Supreme Court.

We are enthusiastic about the Governor's proposal for an innovation grant fund in the Judicial Council, because I believe that it will energize courts to do even more by expanding proven programs or creating new programs to improve access to justice. We still have much work to do in Judicial Branch 2.0. It will take the work of all of us together in the three branches to resolve those issues, but I'd like to highlight four areas that I think will occupy us for some time in the future.

The first is fines and fees. We have a system of fines and fees that has morphed from a system of accountability to a system that raises revenue for essential government services. For example, we raise approximately 1.7 billion dollars in fines, fees, and assessments. More than 60 percent of that money goes to fund programs and services at the local and state level. The rest goes to the court system.

This is an inequity when we have taken a fines, fees, and assessment accountability system and turned it into a revenue-generating system for government services. But we have made progress. With the three branches of government, last year, you passed a traffic amnesty bill, and we are now restoring licenses to thousands of Californians.

We also at Judicial Council swiftly passed what is a traffic rule that now allows those who have moving violations to appear in court without having to pay bail first. We still have much to do for fines, fees, and assessments, but this is a start.

I also want to talk about bail. I think it's time for us to really ask the question whether or not bail effectively serves its purpose, or does it in fact penalize the poor. Bail—does it really ensure public safety? Does it in fact assure people's appearance in court, or would a more effective risk assessment tool be as effective for some cases?

The good news is that all three branches have already begun work in this area. Two years ago, you gave the Judicial Council funds, and we created, administered, and led 12 court pretrial release programs. And we've seen improvements in those waiting for trial. There are interesting studies, and the takeaways from the studies are that in some cases pretrial detention actually increases recidivism. And in other types of offenders we found that supervised release is actually as effective as money bail.

So those takeaways are worth studying. And we need to create—like other states—more pretrial release programs. Because we must not penalize the poor for being poor.

I want to say how proud I am that last month I was able to name our Administrative Director Martin Hoshino to be the California representative on the national task force studying fines, fees, and bail. Martin will share the good work that's done here in California nationally and he'll bring

back ideas from other states that are proven that can be shared and used here in California.

Another area of concern I want to raise is what I call our court children. We have approximately 80,000 children in the court system. The need to adequately fund dependency counsel for this most vulnerable group of people cannot be overstated, and we are in dire need. We have a 155,000 children and families in the court system, and they need specially trained attorneys. Let me say that we understand the estimate for dependency counsel caseloads is 225 people per caseload. That can't be fair to children, to families, to the attorneys, and to the judges who oversee these matters.

The next area I want to highlight is what's called implicit bias. Certainly, implicit bias is a factor in the national discussion about race and justice. Scientists tell us that unconscious stereotypes affect beliefs, attitudes, and actions and that implicit bias has been found in children as young as 6 years of age.

But the good news is that these attitudes are malleable and changeable, and that's where implicit bias education and training comes in. A few months ago, I joined a national board for community engagement in the courts. The task of this board is to develop effective tools and resources so court leaders are able to reach out and engage marginalized and disenfranchised communities, and to ensure access to justice for those who need it most.

I'm proud to say that one of the tools recommended by this advisory board is in fact implicit bias education and training. In California, in our judicial branch, we are ahead of that curve, because we already teach implicit bias education and training to all judges in our ethics training.

We have much to do in Judicial Branch 2.0. But I know and you know that as leaders we must always look to the future. We must plan to be fair ahead of time in an uncertain future. And that's why I created the Futures Commission.

The Futures Commission is looking to prepare us for an uncertain future but to make sure that we're aware of what we're walking into. And so that's why I asked my colleague Justice Carol Corrigan to chair and Justice Bill McGuinness to co-chair the Futures Commission.

Right now, they're gathering public input and ideas that are new and not-so-new, about how to serve that future generation. How to meet the demand of the rising need and number of self-represented litigants, to assist children and families, to create capacity in our court system for civil rights litigation, and the list goes on and on.

Justice Corrigan recently said at a public meeting, "We know that change is hard and it can be scary. Especially when you're in the middle of it."

And this reference to the understandable fear that comes with change—especially bold change—was addressed by three leaders at a national conference of state chief justices we recently held in California last month. U.S. Supreme Court Justice Anthony Kennedy, a Sacramento native, and like me a proud alum of McClatchy High School, spoke to us. Also, Mr. Leon Panetta, who has served in prominent roles in the Obama and Clinton administrations and a former Congressman

spoke to us about leadership. And Mr. Panetta said that “Leadership by crisis is no way to run a country or deal with the world.” He said, “If you’re going to lead, you have to take risks.”

We also had Bryan Stevenson. He’s head of the Equal Justice Initiative, he’s a criminal defense attorney, and he’s the author of the book, *Just Mercy*. In his book he wrote that the true measure of our commitment to justice, fairness, the rule of law, equality cannot be measured by how we treat the rich, the powerful, the privileged, the respected amongst us. He said that the true measure of our commitment to justice is how we treat the poor, the disfavored, the accused, the incarcerated, and the condemned. At our conference, he said that justice prevails when people do uncomfortable things.

Right now, the Futures Commission is talking about uncomfortable things. But they’re doing so in order to be ahead of the crisis and to be prepared to lead. I thank them for their work.

In the end, I want to say a few remarks about the importance of teaching and modeling civics. I believe our sense of justice and our sense of fairness, frankly, come from our understanding of how our government works, why it works, and what it does for us. And also because there’s a belief that justice is in fact for all of us.

I still remember my last day in that house in the alley. And what I remember are the feelings of tension and fear, about being ordered to move by a faceless government. And I have seen that same bewilderment in the eyes of many people who come to court, both represented and unrepresented. That same look and that same feeling that my mother must have had [many] years ago when she went to court over our house.

And that’s why I’ve spent my spare time as a trial judge, appellate justice, and Supreme Court justice talking to children and to adults about how our government works. Why I work for them and with them and their future role in it.

I will say to you that when I became Chief Justice in 2011, I finally had the opportunity to work with like-minded jurists, and lawyers, and teachers, and school administrators, and also government leaders, like our Secretary of State, Mr. Padilla, on civics; on raising the awareness of civics, on teaching it to a future generation so that they may take our place.

Thanks to these people, and this group, we have significantly raised the awareness about civic engagement, civic education, voting, representative government, and in a fair and impartial jury.

After all, I do believe that our public’s faith in our democratic institutions depends on their understanding and awareness of those institutions. Justice Kennedy said that democracy must be learned in each generation. It has to be taught.

And so we are committed to civics. I believe our commitment to civics is a reflection of our commitment to a functioning democracy and the fairness and justice that springs from that.

So this year as we go ahead and talk about trying to make our system more fair and more prepared in the future, let us be guided by fairness and justice—not only to each other—but to

the people who appear in court today and tomorrow. And let us together deliver on the promise of justice and fairness.

Thank you.