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Address by

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Chief Justice of California

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ADDRESS TO A JOINT SESSION
OF THE CALIFORNIA LEGISLATURE

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CHIEF JUSTICE TANI G. CANTIL-SAKAUYE

Good afternoon, Senate President pro Tem Darrell Steinberg, Assembly Speaker John Pérez. Thank you for inviting me to address the State of the Judiciary.

It's an honor to be in this venerable chamber with members of the Senate and the Assembly; my colleagues from the California Supreme Court, Courts of Appeal, Superior Courts, and the Judicial Council.

It's a pleasure to see attorneys from the State Bar, Bench-Bar Coalition, Open Courts Coalition, and the executives from the Administrative Office of the Courts—the AOC—including our relatively new Administrative Director of the Courts, retired Judge Steven Jahr.

It's a special pleasure for me to have my family here on this happy occasion.

In the next few minutes, I would like to spend time with you and talk to you a little about the judiciary, our challenge, and how we endeavor to fulfill our fiscal and public responsibilities.

Let me start by saying that the judicial branch is as old as statehood, but we were structurally reborn 16 years ago. Sixteen years ago, we transitioned from disparate and unreliable county funding to state trial court funding. We transitioned from over 220 courts to 58 superior courts. We also assumed responsibility for the repair, construction, and maintenance of over 500 facilities.

With your help, and with the help of the executive branch, the judicial branch became a fully functioning branch of state government.

Thus, as California grew, became more populated and more diverse, the branch was institutionally prepared to look at statewide access to justice and equal access to justice.

Today, we are 2,000 judicial officers, 18,000 court employees—the largest judicial branch in the nation—the largest law-trained judiciary in the world.

I think we're best understood as having four component parts: the first—the 58 trial courts—one in each county; second—the six Courts of Appeal; third—the California Supreme Court. We are a confederation of courts, but because we endeavor to provide justice to 38 million Californians, the most populous and diverse state in the country, we have help with a fourth component—and that is our Judicial Council, the statewide policymaking body of the judicial branch.

In 1927, article VI, section 6 was added to the Constitution. It established the Judicial Council and said the purpose of council was to improve the statewide administration of justice. The council consists of legislators, lawyers, judges, justices, and court executive officers. The AOC is our staff arm. We serve the public and the courts.

And the key aspect to understanding the Judicial Council is that in all of the decisions we make, we seek to balance local court control with the need for statewide administration.

Here in the Legislature, with the executive branch, you make statutory law.

In the judicial branch, we make case law. That is, with statutes, prior case law, and the Constitution, we write decisions called case law.

Some case law in the United States is so well-known that it's in the DNA of our country. For example, in education, *Brown v. Board of Education*, the United States Supreme Court held that separate but equal could never be equal.

I'd like to call your attention to another important case that celebrates its 50th anniversary next week: *Gideon v. Wainwright*.

In 1963, as some of you may recall, the United States Supreme Court held that indigent criminal defendants have a fundamental right to be represented by an attorney in court.

Now *Gideon* is not some old, dusty piece of history—it has continuing relevance today because it speaks to us about fairness, about the importance of the courts, and what's necessary for meaningful access to the courts.

Clarence Gideon was a 50-year-old man in Florida. He was arrested for breaking and entering a pool hall and stealing cash. When he went to court, he asked for an attorney. He had an 8th grade education—he was denied. The jury convicted him and he was sentenced to state prison for five years.

From state prison he wrote to the United States Supreme Court, asking them to hear his case. The United States Supreme Court heard him, granted his case. At his retrial, this time with an attorney, the jury deliberated one hour, and Mr. Gideon walked out of that courtroom a free man.

The *Gideon* case has many lessons.

I'd like to highlight two key players: the high court that heard his request, and the local court that provided the forum for justice for Mr. Gideon.

Gideon teaches many lessons, including the importance of attorneys to our justice system.

But *Gideon* also teaches something as fundamental as how necessary a courtroom is as a forum for justice. To have your day in court, you need a courtroom.

And I will say, that what we once counted on—that courts would be open, and ready, and available to deliver prompt justice—is no longer true in California. Because although California has the distinction of being the largest judiciary in the country, we also have the dubious distinction that our state judicial branch budget has been cut greater and deeper than any other in the United States.

The National Center for State Courts tells us that judicial branches funded by state general funds generally receive about 2 percent of the state general fund. Not so in California. In California the judicial branch receives about 1 percent of the General Fund. I'm told that's about one penny for every dollar of General Fund. I submit to you—in the most diverse state in the union, that a penny on the dollar is insufficient to provide justice.

In the last five fiscal years, the judicial branch budget has been cut one billion dollars: a half billion in one-time cuts, and a half-billion-plus in ongoing cuts. We're told that General Fund support for the judicial branch—at one time 56 percent—has dropped to 20 percent.

What we've done in order to stave off catastrophic court closure is two things. We've taken court construction money for our critically needed courts and it's been used to blunt trial court cuts. But this means that courts that are in need of repair—and downright need replacement—remain unsafe.

We've also relied on higher fines and fees out of need. And we're grateful to the attorneys who have helped us in that regard. But all of us worry that the judicial branch may be becoming a user-fee institution. And all of us are concerned that the higher fines and higher penalties are falling on those least able to afford it.

I worry that California is on the wrong side of history in funding justice. And I believe that if we do not reinvest in justice, you will see—or will continue to see—services to the public from the courts are cut, or will be eliminated, or deeply restricted.

You'll see courthouses and courtrooms closed.

In San Bernardino alone, a litigant now has to travel two hours one way to have his or her day in court. That means she has to have (a) transportation; (b) a job that permits her to be free for the day; (c) child care; and (d) has to hope that the court, with the other press of business, will be able to resolve her case in one day.

We're also seeing and will continue to see unconscionable delays in civil cases, cases that have to do with wrongful termination, unlawful discrimination, and family law matters. And we're seeing that California, once a leader in civil rights in social justice, is facing a crisis in civil rights.

Now without reinvestment, what you are seeing is our numbers. Numbers never tell the true story, but our numbers tell a tale of woe.

Since 2010:

- 30 courts have reduced their hours of operation to the public;
- 22 courthouses have closed;
- 114 courtrooms have closed;
- 2,600 people have left branch employment, either through layoffs or attrition.

This year alone we will see:

- Fresno close 7 courthouses;
- San Bernardino will close 3 courthouses;
- Los Angeles will close 67 courtrooms, eliminate 500 positions, and close the largest alternative dispute resolution department in the nation.

In Kings County, the court employees there are on 27 days of furlough, and sadly this year they conducted a “garage sale” to raise money for the court.

I could stand in this chamber and unfortunately tell you, and use all day to chronicle, how the branch is looking at cutting itself in order to live within its budget.

But the point is, the laws that you pass to protect the same public that goes to court—when they go to have their day in court—the courtroom doors are locked, closed, or moved.

And what about the gains we've made in delivering justice? California was once a beacon for restorative justice, and collaborative justice, and problem-solving courts.

These courts cater to the very specialized needs of the most vulnerable in our community. You know these courts as veterans courts, and elder courts, and domestic violence courts and the like.

I know how hard trial courts and communities work to establish these special courts. They're resource- and labor-intensive, but they heal a community, and they prevent recidivism. Well, those courts are closing.

And I worry about the population we serve now that we will no longer serve.

We can never know how many people, due to closures and delays, will not believe justice is for them. We don't know how many people will give up; we don't know how many people will go to court, find a lack of services, an understaffed self-help center, find the law incomprehensible, and walk away from their right to justice.

I come back to Mr. Gideon, who stands for many things, including the duty to provide meaningful access to justice for all.

As I stand before you as Chief Justice of California, it would be unsuitable for me to advocate for branch funding if I didn't look within our own house and find out ways that we could improve and be better. And I have. But before I preface my remarks in this regard, I want to say that no amount of efficiencies that we can implement will ever make up for a billion dollar cut. We will never have a fully functioning judiciary when we are receiving one penny on every dollar of General Fund.

However, like I said earlier, the judicial branch is structurally only 16 years old, and like any adolescent, it needs a check-in. And is doing so with self-assessment and oversight and action—core values that I believe are important to public service.

Like I said, I told you last year when delivering my State of the Judiciary, I talked about the SEC, the Strategic Evaluation Committee. I appointed that committee to tell us and assess the AOC and to recommend improvements. The SEC came back with a report, delivered it to the Judicial Council, council accepted the report, and council turned it into directives. At every Judicial Council meeting, we hear an update on the directives as being implemented. If you care about a particular directive, you can go to our California Courts website and track its progress.

At the same time the SEC was performing its important work, we were still in the process of assessing many things, including our computer system. It was a multi-year-long project that came to fruition in my tenure along with exposed problems of mismanagement, fiscal issues, and other problems.

The issue for the council was to publicly assess whether we could go forward with the computer system. We believed it worked, believed it would save us money in the long run, but ultimately decided that we could not go forward with it.

The takeaway of that project is that we have created a working group to make a business plan to bring the judicial branch into the technology of today.

Thank you Judge Herman, thank you Judge Moss, thank you Justice Bruiniers, thank you Justice Chin—posthaste please.

I also want to point out that the Judicial Council itself is assessing and always evaluating.

The Judicial Council has worked and continues to work more transparently in its duties. The duties of council are enumerated in the Constitution, in the ballot measure, and in statute. It includes “the duty to insure that justice is being properly administered.” It includes “the duty to propose a remedy” whenever there’s a “complaint.”

The ballot measure said the purpose of the Judicial Council was “to organize the courts of the state on a business basis.”

The council takes its duties very, very seriously. When I was elected Chief Justice in 2010 and, under the Constitution, became the chair of the Judicial Council in 2011, the Judicial Council changed. It opened up the opportunity for public comment. It found ways to outreach to courts and to the public about the work we’re doing and the work we need to do. It opened up previously closed meetings. In fact, we’ve had more open meetings in this council than in our history of 90 years. The council has many, many good ideas and they are all organized under Justice Doug Miller.

I also want to point out, that one of our most active working groups—that is the Court Facilities Working Group—a group of attorneys, architects, planners, judges, and justices that I appointed to oversee our construction program—they’ve conducted almost all of their meetings in public. Chaired by Justice Brad Hill, the first thing this group did was hire an expert to audit our construction program. All audit recommendations have been implemented. Also, the second thing this group did was create a cost reduction subcommittee, chaired by Justice Jeffrey Johnson, and they’re looking at ways we can cut the cost of our projects because of the problems we face with our budget.

So you’ve seen that self-assessment, oversight, and action have permeated the AOC, the construction program, the computer program, and now we focus on trial court funding allocation formulas.

If you were to look at the judicial branch pie chart, you would see that 80 percent of the pie appropriately goes to the trial courts. The Courts of Appeal receive approximately 7 percent of the budget pie, the Supreme Court 2 percent, and the AOC/Judicial Council receives 5 percent of the judicial branch pie. But, that 80 percent has never been changed from its original formula from 16 years ago, notwithstanding the demographics of California that have changed so greatly. Last year, the Governor and I appointed a workgroup to study the progress we are making in state trial court funding. Co-chaired by Justice Harry Hull and former Assemblymember Phil Isenberg, we expect the committee to have a report in April that we believe will aid the council in formulating a more equitable formula for distributing that 80 percent to the trial courts.

Self-assessment is an ongoing principle. And soon I hope to be in a position to appoint a Blue Ribbon Commission that will look at how we can proceed in California to provide more efficient justice to California. If the last five years have taught us anything in the judicial branch, it’s taught us of our need to safeguard the justice system while at the same time moving it forward with greater efficiencies for the next generation.

I believe we owe the next generation something else also, something all of us here embrace. And that is a belief that fairness, justice, and change comes from the strength of our Constitution and the power of our democratic institutions.

I believe as government leaders we have a responsibility to engage the next generation of government leaders—they’re in the schools of today.

I think this takes a two-pronged approach. First, we have to work on keeping our kids in school and out of court. To that end, I am proud to announce a summit in December in partnership with the California Department of Education to focus on that issue. That action plan is being headed up by Justice Richard Huffman and Judge Stacy Boulware Eurie. The second prong, I believe, is to stimulate the students of today with knowledge of the world around them; that they understand change comes about through constitutional principles and our democracy. Armed with that information, they can begin to change their world and our world.

The first step for us, formally, was two weeks ago, our Civic Learning Summit called “Making Democracy Work.” Headed by Justice Judy McConnell and retired federal Judge Frank Damrell. We brought together a broad array of leaders in California to talk about civic engagement with students and how best to achieve it. We were fortunate to have retired Justice Sandra Day O’Connor from the United States Supreme Court share her words of wisdom on the importance of civics education. That was the beginning. Over the years, I’ve had a great opportunity to meet students and teachers engaged in civic learning. I’m impressed and inspired by them both.

When students learn about our process and the ability for change, they become inspired and their aspirations should be our aspirations.

Let me finish by telling you the rest of the story of Mr. Gideon. Mr. Gideon walked out of that courtroom a free man. He went on to live nine more years as a law-abiding citizen. However he died at the age 61 from cancer. On his gravestone is a quote from a letter he wrote to his attorney. It says, “Each era finds an improvement in law for the benefit of mankind.” That’s the faith that Mr. Gideon had in government—to provide an improvement for the benefit of mankind.

And so as you, the decision-makers, sort through all the pressing needs of the state, I urge you to reinvest in justice, I urge you to think about the judicial branch and the forum for justice that it provides to interpret and enforce the laws you pass. Think of Mr. Gideon—justice for all.

I thank you for listening.

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