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Address by

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Chief Justice of California

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STATE OF THE JUDICIARY ADDRESS

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CHIEF JUSTICE OF CALIFORNIA

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Good afternoon. I would like to thank Senate President pro Tem John Burton and Speaker of the Assembly Fabian Nunez for their invitation to speak to you today. This is the ninth consecutive year I have had the privilege of addressing the Legislature. Joining me here today, in addition to my colleagues from the Supreme Court—all but Justice Marvin Baxter, who is out-of-state, and Justice Joyce Kennard who came down with the flu this afternoon—are other representatives of the Judicial Branch, including members of the Judicial Council—the constitutionally-created policy-making body for the courts—chairs of several of the Council’s advisory committees; Anthony Capozzi, President of the State Bar; and members of the Bar staff and the Bench Bar Coalition. Others here include our outstanding Administrative Director of the Courts, Bill Vickrey, and Chief Deputy, Ron Overholt, and members of the excellent staff of the Administrative Office of the Courts—the Judicial Council’s staff arm.

All of you in this chamber are intensely engaged in the all-consuming task of confronting the financial crisis in which California finds itself today. I know that each of you, together with the Governor, is seeking solutions that will strengthen our state and transform this crisis into something the history books will recognize as effective governance that overcame great fiscal difficulties and took action to ensure similar problems would not recur.

What I hope to do today is highlight the vital but fragile position of the Judicial Branch in the basic infrastructure of government, and the crucial role it plays in serving the people of our state. A strong and independent judicial system is not just another government program—nor is it a luxury to be afforded in good economic times and neglected when the state’s revenues are down.

To understand the significance of a strong and independent judicial system, we need look no further than the United States Supreme Court’s decision in *Brown v. Board of Education*, whose 50th anniversary we celebrate this year. How far we have come since that day when the high court unequivocally held that schools officially segregated by race could not be equal! Celebrations are planned and underway nationwide to provide an opportunity to remember what led to the decision, and to consider its continuing impact on our nation. Events in our San Francisco judicial headquarters start on April 27, and statewide court events will culminate in a day-long symposium to be held here in

Sacramento, on May 17. The legacy of the momentous decision in *Brown v. Board of Education* should remind us of what it would be like to have a court system in which basic civil rights issues cannot be decided. That is not unthinkable. If resources are scarce, they first must go to criminal cases, which take precedence, and not enough may remain for courts to process the civil docket.

Drastic reductions in resources require courts to ration their services among those who need them. Some who look to the court system in order to vindicate their rights simply will have to look elsewhere—but for most there will be nowhere else to go. Government without a functioning judicial system is not government as we know it, nor is it the type of government that the public expects and deserves. Our nation and our state were founded on the basic principle of liberty and justice for all. That principle cannot be realized if our courts cannot function and provide fair and accessible justice.

California's court system—the largest in the nation, with more than 1600 judges, several hundred subordinate judicial officers, and about 19,000 court employees—has been working hard to meet its basic obligations to the public and to our sister branches of government. We are continuing to do our part in reducing expenditures wherever possible. Already, however, reductions in court budgets have adversely affected the lives of many Californians and threaten to render the administration of justice uneven and inadequate across our state.

Additional reductions and continued uncertainty about the long-term financial stability of our judicial system will negatively affect public safety. Other consequences will fall with particular weight on many of the most vulnerable members of society. Curtailing the services provided by the courts may be reflected as savings on an account ledger. But such savings will be illusory, because if court services shrink, the financial demands placed on the Legislature and the Executive Branch will expand for funding prisons, health and social services, and business development. In short, cutting the courts now will result in greater costs to government later.

An underfunded judicial system also will impede our state's economic recovery. If civil cases cannot be resolved in a reasonable time, or if court services decline so that public safety and security suffer, business establishments and individuals simply will go elsewhere.

We look to you and to the Executive Branch to provide us with the resources essential to carry out our constitutional responsibilities, just as our sister branches continue to fulfill theirs.

During the past several years, key structural reforms have allowed courts to function far more effectively despite persistent fiscal shortfalls and reductions. These changes have been made possible only through the cooperation and shared commitment of all three branches of government.

First, with your leadership and help, we ended a hybrid structure of mixed county and state funding. It had resulted in reduced court services, courts on the verge of shutting down, and growing inequities in the administration of justice from county to county. Since funding for the courts was made a state responsibility in 1997, reflecting the fundamental obligation of state government to provide equal justice for all, our entire branch has been better able to manage the resources you

provide us. We have been able to plan for the future, equalize the administration of justice statewide, and offer the services needed to meet the basic and critical needs of the public.

Secondly, in 1998, the state's voters adopted a constitutional amendment that permitted our two-tiered trial court system to unify into a single level, merging 220 trial courts into 58—one in each county. This restructuring has provided courts with unprecedented flexibility to make the best use of existing judicial and administrative resources.

Due in large part to the benefits realized from these structural reforms, courts largely have been able to weather the ups and downs in California's economy. Funding for the courts never has reached the level of demonstrated need. Nevertheless, our system has managed to function adequately until recently by coordinating functions, actively engaging in planning, and implementing greater fiscal accountability for the components of our judicial system.

Despite our hard work, and our commitment to retain employees in order to keep our courts open, the strain on our judicial system caused by inadequate resources already has begun to adversely affect public safety, families, and self-represented litigants, as well as the stable court environment needed to create confidence in the business sector.

On the positive side, we have been encouraged by the recent and ongoing supportive actions undertaken by the leadership of both houses of the Legislature and by individual legislators, such as Senators Joe Dunn and Dick Ackerman, who have reached across the aisle to find solutions. They, along with Senators Martha Escutia, Denise Ducheny, and Sheila Kuehl, have been active participants in recent informative, statewide hearings that have highlighted the needs of the courts and the public. In the Assembly, Members Darrell Steinberg and Ellen Corbett have also been at the forefront of the efforts to address our concerns.

Existing and threatened reductions will destroy the powerful momentum that has greatly enhanced the judicial system's ability to provide meaningful access to justice for all Californians. Let me offer a few examples of recent accomplishments. Jury reform has been a major goal, focusing on improving the participation of all who qualify, and making their contributions less onerous and more meaningful. The change to one-day-or-one-trial jury service, as opposed to sitting in the jury assembly room for up to two weeks, has been a great success.

Just last fall, the Judicial Council adopted a two-volume set containing hundreds of plain-English instructions developed over the last several years by the Council's Task Force on Jury Instructions. Used by judges in California's courtrooms to instruct jurors on the law in civil cases, they have been made available free of charge on the judicial branch's website. A set of instructions for criminal trials should be ready in about 2 years.

By the way, this project already has won a national award, the Burton Award for plain English writing. I hasten to stress that this award is not named after the Senate President pro Tem—our jury instructions do not employ the type of plain English that he sometimes favors.

In a parallel effort, the redrafting of the California Rules of Court, the first such comprehensive revision since the 1930's, is well underway—a project led by a committee chaired by my colleague, Justice Joyce Kennard.

Statewide, we continue to work to improve the collection of fines, fees, and penalties imposed by the courts—not merely to increase

revenue to the state, but just as importantly to enhance respect for the rule of law. We are studying current court practices and working with the counties on this matter, in order to develop more consistent and effective approaches. This is part of a national effort I am leading as President of the Conference of Chief Justices.

Last fall, the Center for Families, Children and the Courts, a division of our Administrative Office of the Courts, held the largest-ever statewide conference for individuals engaged in the juvenile court system—judges, attorneys, court staff, social services workers, probation officers, and others. It attracted some 1300 attendees to an unprecedented informational and educational convocation aimed at improving programs, services, and proceedings in the juvenile justice system.

We also continue to better integrate the use of technology in the courts. Resource limitations, however, have slowed down our ability to bring the archaic, incompatible systems scattered across 58 counties at more than 450 courthouse sites up to reasonable performance levels and to enable them to communicate with each other, with the Administrative Office of the Courts, and with other justice-related agencies in state and local government.

This is a time of extraordinary challenges to the administration of justice in California. Our society has undergone vast changes. Today, more than 100 languages are translated in our courtrooms. In many courts, more than 80% of those seeking a divorce do not have an attorney. More than 90% of those seeking domestic violence restraining orders appear in court without legal representation, and the same percentage applies to tenants in landlord-tenant disputes. And cases spanning multiple jurisdictions with classes of hundreds, if not thousands, of parties now are a common sight in our metropolitan courts.

In response to these challenges, positive changes have flourished in courthouses and communities up and down the State of California. Through your appropriations creating the Equal Access Fund, an unprecedented array of resources has become available to assist self-represented litigants. Family law facilitators and legal aid assistance in the courthouses are there to help these individuals cope with the unfamiliar world of legal documents. Self-help kiosks in courthouse hallways provide step-by-step guidance in filling out forms. Workshops led by legal services lawyers and supervised volunteers enable litigants to navigate child support, landlord tenant, guardianship, and small claims matters. And the complex litigation pilot project in six courts has proved very successful.

There have been millions of hits on the court system's website, which offers a wide assortment of resources and information in English and Spanish—with translations of some portions in Chinese, Korean, and Vietnamese—as well as all California appellate opinions dating back to the first days of California's statehood.

In Fresno, where 44 percent of the total population is Hispanic, the superior court created the first self-help center targeted specifically at the Spanish-speaking community. The center provides instructions, document review, and family law clinics using a very successful volunteer interpreter program that has led to the certification of several new court interpreters.

In Yolo County, the Unified Family Court established a guardianship facilitation and outreach program that provides assistance to grandparents and others seeking guardianships. Since 1999, when the program began, petitions for guardianship have increased by 100%. Children and caregivers have been assisted in establishing more permanent relationships, and the county no longer needs to follow through with as many dependency proceedings—proceedings that are very expensive to the system and often traumatic to the children involved.

In Orange County, a partnership between the Superior Court and the Legal Aid Society resulted in I-CAN, the Interactive Community Assistance Network. Web-based legal services and interactive kiosks assist self-represented litigants speaking several languages in creating proper pleadings and completing legal forms. And in Sacramento County, efforts undertaken by the court now enable some 40% of small claims cases to be filed entirely online.

These programs represent only a tiny sampling of the recent innovations undertaken by our courts. For a relatively small investment up front, projects such as these offer tremendous dividends not only in dollars saved in the future, but in bettering the lives of those affected and in strengthening the public's confidence in the rule of law. Nevertheless, although the judicial system persists in efforts to provide meaningful access to the courts, we are finding that many useful programs are being curtailed and are in immediate jeopardy of being eliminated entirely, because of cuts already imposed or reductions proposed for the coming fiscal year.

The consequences of such underfunding also extend to core court functions that directly affect public safety. For example, the Vallejo and Fairfield branches of the Solano Superior Court have a backlog of some 7600 felony and misdemeanor cases that need to be updated in the case management system and reported to the California Department of Justice and the Department of Motor Vehicles. These backlogged cases date back to the first half of 2003. In Monterey County, it is not uncommon to have delays of 4 to 6 months in processing requests by the District Attorney's Office for copies of prior-conviction records needed for making charging decisions under the Three Strikes Law and driving-while-under-the-influence laws.

In fact, courts in every part of the state report delays in processing criminal conviction information and in transmitting reports on convictions, warrants, and warrant clearances to the Department of Justice and D.M.V. As a result, court processing is delayed when a case returns for post-judgment action, such as a probation violation. In Ventura County, arrest warrants are taking twice as long to process, impacting public safety. Prosecutors and defense counsel cannot obtain current information on defendants who are before the court. In short, incorrect or incomplete information increases the danger to the public. And individuals who have cleared outstanding warrants risk being stopped, arrested, and having their vehicles impounded because of stale information.

Courthouse security also has been affected; in Stanislaus County, for example, the armed security force has been reduced by three full-time deputies at a time when the number of trials for violent crimes has increased.

The basic ability of courts to remain open for the people's business is being weakened by chronic underfunding. In Riverside, 3 court locations have been closed. In Los Angeles, 29 courtrooms already have been shut down. "Flexible Fridays," a program instituted in some courts to encourage government attorneys to take off one Friday a month without pay, has saved significant amounts—but as one observer noted, "The workload on Fridays doesn't go away, it just gets pushed off to other days."

To provide you with some context for the crucial role played by the courts in the lives of the public, I note that, according to Presiding Judge Robert Dukes of the Los Angeles Superior Court, out of the twelve million residents of Los Angeles County, one out of every two comes through the doors of at least one of the dozens of courthouses of the Los Angeles County Superior Court every year as a litigant, a lawyer, a witness, a juror, a member of the public seeking information, or an employee. What other public service or facility is used to such an extraordinary degree?

Some courts have shortened the public hours of clerk's offices, making it harder for individuals to file documents or obtain information. Some pressing matters are delayed—including potential life-saving measures such as obtaining a domestic violence or other restraining order—because long waits for service by court users, at times extending for days, have become common. Layoffs and staff furloughs mean fewer people available to respond to inquiries at the desk or by telephone. In some court locations, it has become almost impossible to get through by telephone.

In Riverside County, budget cuts already have doubled the time it takes to obtain a family law mediation appointment—a critical step in resolving custody and other disputes—from 45 days to 90 days following the initial filing. As a result, complaints about service delays and their impact have quadrupled, and the already over-burdened mediation supervisor ironically now must spend almost a quarter of each week dealing with these complaints.

Cut-backs in programs designed to assist self-represented litigants may help courts absorb funding cuts in the short-term, but these reductions result in greater demands on staff and judicial time, because documents are not filled out correctly and litigants do not understand their rights and cannot locate the basic information needed to expeditiously file and process their cases.

In Santa Cruz, night traffic court is being cancelled until the end of the fiscal year. In Monterey, the court attorney specializing in domestic violence cases is unable to process documents in a timely manner because of a reduction in clerical staff—resulting not only in delays, but also in the issuance of conflicting orders concerning children.

In Ventura County, the Superior Court's Self-Help Legal Access Centers have had to cut-back on community outreach services that use their mobile van Self-Help Center, due to the increased cost of fuel, maintenance, and staffing.

Collaborative justice courts, focusing on less serious drug offenses, mental health, domestic violence, and juvenile matters, have been remarkably successful at turning around lives. Fifty-six out of our fifty-eight counties have created some 250 collaborative justice courts that have proved to be a highly effective tool. They change the offender for the better and dramatically reduce the prospects of his or her return

to court on new charges—while protecting society by making communities safer, and reducing expenditures for hospitals, jails, and prisons. The drug court graduations I have attended are invariably inspiring. They feature individuals who have made a new start, forsaking drugs and crime in favor of education, gainful employment, and reunited families. But collaborative justice courts already are being cut back in some counties, and further reductions are expected.

In Riverside County, it is estimated that about 80 percent of the juvenile law matters involve a family in which at least one parent abuses drugs or alcohol. The juvenile dependency and family law drug courts focus on reunifying families. Already, however, there is a 3- to 6-month wait to enter a drug court treatment program. Children who cannot be reunited with substance-abusing parents must be placed in care outside the home—costing approximately \$5,300 a month. That same sum of money would support a parent's participation for an entire year in drug court and related treatment programs. I cannot emphasize too strongly how firmly I believe that further cuts to our courts will not achieve net savings—instead, they will increase the overall costs for our society.

The difference made by this type of program is perhaps best summed up by the young girl who—at a 4th of July party last year—approached a judge in Butte County, who had presided over a collaborative justice court proceeding, to tell him: “Thanks for giving me my mom back.”

The consequences of inadequate funding are there for all to see in many courthouses across the state. Additional cuts will strike at the heart of an effective justice system—not to mention the burden on court operations from increases in costs over which the courts have little or no control, such as courthouse security and employee salaries.

Further slowdowns in processing criminal judgments and warrants create not only confusion—they increase the danger faced by the public. Inadequate funding for drug courts and treatment services will shift costs to the prison and social services systems, as individuals fail to obtain the help they need and they and their families suffer the consequences. Civil litigants—including firms doing business in California—will be confronted with increasingly scarce court services, complicating and delaying the resolution of their disputes.

Courts facing current financial difficulties are contemplating shutting down civil courtrooms for part of each week—if not for part of the year. Some courts already have shortened the end of the court day from 5 p.m. to 4 p.m., or are shutting down entirely for a half day or whole day each week. There will be further delays in the courts as unrepresented litigants struggle to master the legal process without the special programs designed to assist them in vindicating their rights. Already, because of shorter and skipped court days, trials are interrupted and spread over more days and weeks, causing greater inconvenience and cost to jurors, witnesses, lawyers, and litigants—in addition to diminishing the quality of the justice that is rendered.

Courts cannot control the number of cases filed. They cannot reach out to the public at large to collect fees to support their operations. Collecting fees, fines, and penalties cannot be the only answer or even the primary answer. Courts cannot and should not be expected to be financially self-sufficient. Funding contingent upon the imposition and collection of fees, fines, and penalties would place courts in an untenable position—their existence would become dependent upon their willingness to impose and collect financial penalties, and access to

justice would suffer. The cost of a functioning justice system should be paid by everyone, not simply by direct users—all of us benefit from the fair, accessible, and efficient administration of justice.

One measure of a society is its ability to ensure public order and security while protecting the rights of the individual, no matter how weak or powerful. Courts stand at the forefront of this endeavor. If we abandon the goal of accessible justice for all, we surrender not only our court system, but one of the most fundamental compacts of our democratic system of government.

Yours is not an easy task. I know there are many competing demands that you must balance and measure. But together, the legislative and judicial branches have an exemplary track record of achievements that have made a tremendous and beneficial difference in the welfare of our state, in the stability of our government, and in the lives of California's residents. It would truly be tragic—and far more expensive in every sense—if that record of achievements were to be obliterated.

On behalf of our court system, I pledge to continue to work with you in this endeavor, and to vigorously maintain our efforts to serve the public in a responsible, accountable, and effective manner.

And now, I would like to invite you to join me and other leaders of the Judicial Branch at a reception that will begin in a few minutes on the lower level of the Capitol rotunda.

Thank you again for this opportunity to speak with you. I look forward to our mutual efforts on behalf of the administration of justice in the years ahead.

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