

State of the Judiciary
Chief Justice Ronald M. George, California Supreme Court
Message to the California Legislature
March 15, 2005, in Sacramento, California

Good afternoon. I want to thank Senator Don Perata, President Pro Tem of the Senate, and Speaker of the Assembly Fabian Nunez for inviting me to address you this afternoon. This is the 10th occasion I have had the privilege of addressing a joint session of the Legislature, and I have been increasingly gratified by the support for the judicial branch that you and the executive branch have demonstrated over the recent years. You have played a major role in ensuring that our court system remains strong and independent—and thus able to effectively fulfill its constitutional role in administering justice for the people of our state.

I am pleased that we have with us today most of my colleagues on the Supreme Court; Justice Janice Brown is out of the country and sends her regrets. Also in attendance are members of the Judicial Council, the constitutionally created body charged with setting statewide policy for the courts, chairs of several of the Council's advisory committees, our very able Administrative Director of the Courts, Bill Vickrey, members of his executive staff, and participants in the bench-bar coalition, including State Bar President John Van de Kamp and other leadership of state, local, and specialty bar associations.

The past decade has seen tremendous structural changes in our court system. The transition from county to state funding for the trial courts enacted by the Legislature in 1997 has had the promised effect of providing more stable and secure resources for the courts statewide. That was followed in 1998 by the voters' approval of a constitutional amendment that led to the unification of 220 municipal and superior courts into 58 trial courts, one in each county. This consolidation has proved to be instrumental in providing local courts with the flexibility to use all resources, judicial and administrative, in the most effective and efficient manner.

It has been a difficult year for the judicial branch—as it has been for every part of government—due to the budget crisis affecting our state. But unlike the situation in many past years, it is a pleasure to be here today not in a crisis mode, not having to describe a branch in dire fiscal straits, urgently in need of your help just to keep courts open. The tools that you have provided us, the new funding system and other operational and administrative improvements, have enabled our judicial branch to focus on statewide solutions, equal access, long-term needs and planning, and accountability and responsible administration. As a result, we shall be better able to weather the state's fiscal storms than would have been possible under the previous system. Under consideration this year is the next generation of changes—changes I shall describe to you later in these remarks—that we believe will help us continue to provide essential services and equal access to the public.

Last summer, I concluded my term as President of the Conference of Chief Justices of the 50 states and territories. In that role, and in my continuing participation in the Conference's activities, I have heard first-hand from my peers in other states about the fiscal and political

pressures on the judiciary found in many jurisdictions and the threats posed to the independence of the courts and to their ability to serve the fundamental role of objective arbiters of justice as envisioned in the constitution of every state.

Earlier this year, I was invited to deliver the Brennan Lecture at New York University's School of Law, a forum that each year provides a different perspective on the independence of the judiciary. In my address, I described the progress made in California and the key role that this body, the Legislature, has played in supporting our branch and the rule of law. Time and again, the Legislature has demonstrated a deep commitment to supporting the judicial branch's role as a cornerstone of the critical balance of power so cherished by the Founders of our nation and our state. I can say, without hesitation, that the response of many of my fellow Chief Justices, as well as others in attendance, was that Californians are most fortunate in receiving the principled and farsighted assistance that the three branches of our state government provide to the administration of justice.

Several individual legislators have been essential partners in these efforts over the years. On numerous occasions, Senator Joe Dunn, Chair of Senate Judiciary, and Senator Dick Ackerman, Senate Republican leader, have cooperated to find effective solutions for the courts' problems - problems that are, by definition, the public's problems. Senator Martha Escutia, the author of several important bills that have enhanced our ability to provide fair and accessible justice in recent years, also has been instrumental in those efforts. The united commitment of these and other individuals, including the leadership of both houses, demonstrates that ensuring a strong nonpartisan judicial branch is a goal that transcends party politics. In fact, it is and must be a core value for anyone dedicated to preserving our democratic system of government and the rule of law. The truth of this observation has been reinforced once again by recent events in other parts of the world, particularly in Eastern Europe.

Last month, at the urging of Senators Ackerman and Dunn, I convened a meeting to discuss potential changes to Article VI, the judicial article of our state Constitution. The aim of these modifications is to provide greater stability, accountability, and protection of access to justice for all Californians. Under the senators' guidance, we developed a draft that was presented for discussion purposes at this meeting attended by judicial and bar leaders, legislators—including Senators Dunn and Ackerman, as well as Assembly Member Dave Jones, Chair of the Assembly Judiciary Committee—legislative staff, and Peter Siggins, the Governor's Legal Affairs Secretary.

Article VI has been the subject of frequent study and debate during the last half century, sometimes resulting in change, sometimes not—but each time reflecting the sense that improvements to the Article would enable our branch to better perform its responsibilities and provide additional accountability to our sister branches of government and to the public.

The changes undergone by our branch over the past decade have allowed us to manage the cyclical uncertainty of budget fluctuations with greater assurance. However, we never have lost sight of the circumstance that our branch's ability to operate remains fragile—and that we must

avail ourselves of every opportunity to provide more stable protection for the public's access to its courts.

Thus, we are exploring the possibility of a constitutional amendment to preserve the beneficial changes that already have been made and to incorporate others. Working together, we hope to create a proposal that will further the mutual goal—shared by all three branches—of ensuring fair and accessible justice for future generations of Californians.

The draft amendment presented at the recent meeting included a wide range of ideas gathered from several sources—Senators Dunn and Ackerman, previous studies of the judicial Article, the Judicial Council and its committees—especially the Presiding Judges Committee—the State Bar, and various practices followed in other states. Let me describe some of the key features of this draft.

Under legislation enacted last year, the State Appropriations Limit (or SAL), employed in determining increases in the Legislature's own budget, is now used to calculate increases in the trial court base budget. By placing in the Constitution this methodology of calculating base budget increases year-to-year, the stability of the judicial branch's funding—and its accountability—would be more firmly established. Additional budget increases would have to be justified by the judicial branch before consideration and action by the Legislature and the Governor.

The need for new judgeships would be evaluated under a standardized procedure, with necessary funding for new positions added to the branch's base budget. This provision would allow for the orderly addition of judgeships as required to meet current documented needs. I shall speak later about those needs.

We also are exploring the possibility of having judicial salaries set by a Judicial Salary Commission modeled on the constitutional provision governing the neutral commission that now sets the salaries of California's constitutional officers other than judges. Seven members of the proposed new commission would be appointed by the Governor and the Legislature, and two state bar members by the Chief Justice.

The terms for trial judges would be set at 10 years, increased from the present 6-year terms, and judicial elections would be timed to provide voters with a sufficient record of service upon which to evaluate trial and appellate judges. Our aim in this regard is to keep judicial elections from becoming the focus of partisan attacks that can—and in some other states do—undermine the court system, while preserving accountability to the public.

The authority of the Judicial Council to set policy in administrative matters of statewide concern would be clarified under these proposals, and its membership would be expanded. The Council's goal of having its membership reflect the diversity of our state—a goal presently achieved through rules adopted by the Council—would be set forth in the constitutional provision. Senators Dunn and Ackerman also have suggested that the two legislative members of the Council be made non-voting participants—balancing the constitutionally required separation of

powers among the three branches with the value of legislative contributions to the work of the Judicial Council.

The current Judicial Council selection process emphasizes the importance of having Council membership include individuals from varied backgrounds who bring to the Council their experience in court administration and policy development. California's courts serve huge urban areas and tiny rural counties, and places with large minority populations. In some courts, complex business and other litigation is a daily affair. In many smaller courts, judges sit on a wide range of cases; in larger courts, judges handle calendars dedicated exclusively to family law matters, criminal law, civil trials, probate, or other specialized areas of the law.

The latest proposals would provide for nominations by trial court presiding judges for some of the positions on the Judicial Council. The balance of appointments to the Council would be made from nominations generated statewide.

When new members of the Council are appointed, it is stressed that they are to bring their diverse experience and expertise to bear on the broad problems of improving the administration of justice statewide, and that their role on that body is not to represent a particular court or region or subset of the branch, but to further the interest of the judicial branch as a whole in providing fair and accessible justice. The only constituency of Council members is the public at large, whose views are regularly solicited by the Council and its advisory committees and task forces, made up of hundreds of judges and court commissioners and staff, as well as representatives from the bar and other interested groups. The community outreach engaged in by the courts—including not only the trial courts, but the California Supreme Court and the Courts of Appeal—on both a state and local level, offers a further opportunity for public input into the courts' planning process and operations.

The meeting on Article VI held last month provided invaluable suggestions and information, and we anticipate that, working with Senators Dunn and Ackerman, the leadership of the Senate and the Assembly, and the Governor's Office, we shall continue to refine the drafts to determine which of the proposals to advance in arriving at a proposed constitutional amendment for your consideration. This is still a work in progress. I already have had the opportunity to speak personally with many of you about our efforts. Your ideas, comments, and responses will be very valuable to us as we pursue this unique opportunity to ensure a stable and accessible justice system for future generations of Californians.

In addition to the possible amendment of the judicial Article of the Constitution that I have discussed, there are four statutory measures I hope you will support.

First, the historic Trial Court Facilities Act of 2002, authored by Senator Escutia, put in place a multi-year process for transferring the ownership of California's 451 courthouse facilities from the counties to the state under judicial branch management, financed by filing fees and court-generated revenue. I attended an event in Riverside County last October marking the first transfer of a courthouse to the state under this legislation, and by July 1 of this year we hope that several dozen facilities will have been transferred. As anticipated, a bond to finance the

remainder of the process will be necessary. Senator Escutia has introduced Senate Bill 395 for this purpose. In another bill, some modification of the original legislation also will be sought, to deal with seismic safety issues.

California's courthouses are in a state of serious disrepair and, in some instances, dysfunctionality. More than 80% were constructed prior to the enactment of the 1988 seismic codes. But as recent events have made all too clear, earthquakes are not the only hazard facing the millions of Californians who each year use or work in our courthouse facilities: judges and staff, jurors, lawyers, witnesses, parties having their legal disputes resolved, persons seeking documents or information, or children occupying waiting rooms while parents tend to courthouse business.

Two-thirds of our courthouses lack adequate security. The recent incidents that we all have read about in Illinois and Georgia are far from unthinkable in California's courts. Similar violent and tragic events, involving judges, court employees, lawyers, witnesses and litigants, have occurred in all too many of our state's courthouses in recent years, including courts in San Diego, Los Angeles, San Luis Obispo, Marin, Placer, and Siskiyou Counties. As recently as yesterday, a gang member on trial before a jury for two homicides slashed his attorney with a concealed razor blade in a San Fernando courtroom.

In many of our courthouses, there is no way to separate victims, defendants, witnesses, and spectators, including gang members, who must share space in hallways. In several courthouses, there are no separate facilities for jurors, who must wait in the hall or stairwell, with parties, witnesses, and spectators close at hand.

Many courthouses, built before security was a consideration, have multiple entrances and insufficient resources to screen individuals entering them. Other facilities have no ability to separate in-custody defendants, who must be brought to court through the clerk's office, down a public hallway, or through a corridor outside the judges' chambers.

Such an environment of insecurity and intimidation is unacceptable. Courthouses must be a safe harbor to which members of the public come to resolve disputes that often are volatile. Once courthouses themselves are perceived as dangerous, the integrity and efficacy of the entire judicial process is in jeopardy.

We have been working in strong partnership with the Sheriffs' Offices, which provide court security. But more security alone cannot answer the problem of facilities ill-designed to meet today's needs. Beyond the problems I already have described, there are many others. Some facilities suffer from toxic mold, causing injury to those who work in them or rendering the structure unusable without a sizable investment of funds. Three-fourths of California's court facilities do not comply with the Americans With Disabilities Act. Several courts remain housed in trailers.

The front page news of the past few days is shocking for many reasons. Part of its impact, I suggest, is that it highlights the physical vulnerability of our courts and shatters the public's

expectation that black-robed judges occupying a high bench can dispense justice unthreatened by the dangers of everyday life.

Some of you may have heard me speak of the judge I encountered during one of my continuing visits to California's courts, who had stacked up law books in front of his bench as a make-shift defense against bullets, after his rural court facility had experienced an attempted hostage-taking. We need to make sure that courthouses are safe so that the law books can remain on the shelves where they belong - and not substitute for a bullet-proof shield.

Second, the creation of additional judicial positions is desperately needed. As you are well aware, courts do not control the number of filed cases they must decide—they are expected to handle whatever workload is delivered to them. In the last 20 years, California has experienced a 50% increase in population; yet only 41 new judgeships have been created, bringing us to a total of approximately 1600 judicial positions. In particular, Central Valley and Inland Empire areas have experienced a population growth of 150% or more in a period in which their judicial positions have increased by only 2 or 3%.

Senators Dunn and Ackerman have introduced Senate Bill 56 as a spot bill to address the existing shortage of judicial positions—and I understand they will seek a bipartisan group of co-authors to join them in this endeavor. Although studies show that the addition of more than 350 judicial positions would be justified, we are focusing on the 150 most needed positions, hoping to add 50 positions in each of three consecutive years.

Also included would be a provision to convert a limited number of our subordinate judicial officer positions to judgeships under specified conditions—an inexpensive way to invest one of our most valuable resources more wisely. A study by the National Center for State Courts showed that because of the lag in creating needed judicial positions, increasing numbers of subordinate judicial officer positions were created in California. Between 1989 and 1999, those positions increased by 60%, from 250 to 401. During that same period, judgeships increased a mere 1%, with only 19 new positions added.

Overall, almost one-fourth of superior court judicial positions are occupied by subordinate judicial officers, who are selected by the courts themselves and never stand for election. These individuals are authorized by law to perform judicial duties only upon the stipulation of the parties, but, significantly, in some counties—instead of being used to perform the truly subordinate duties envisioned for these positions—court commissioners are acting as full-service judges because of the insufficient number of regular judicial positions. The vast majority of these individuals perform at the highest levels and are truly dedicated to serving the public, but they should not become substitutes for judges, who can more flexibly be assigned to hear cases and who are subject to appropriate public accountability.

Third, the proliferation of different fees for court users has bred confusion and inequities across the state. At your urging, I appointed a broad-based Court Fees Working Group to study this issue. Upon their unanimous recommendation, we have been working closely with the counties, county law libraries, bar associations, and other groups to develop a method to implement a

uniform fee structure statewide. We anticipate that the results of these efforts will be placed in a budget trailer bill.

And fourth, Senate Bill 538, co-authored by Senators Ackerman and Dunn, was introduced last month to address inequities in the Judicial Retirement System. We have been greatly concerned that changes to the retirement system creating JRS II more than a decade ago have contributed to the loss of experienced judges from the bench by making it more difficult to attract and retain well-qualified candidates.

Having discussed these four areas where we propose statutory changes for your consideration, I would like to conclude by briefly noting some of the recent accomplishments of the judicial branch achieved with the resources you have furnished us.

The primary goal of the Judicial Council has been to improve access to the fair administration of justice for all. By access, we mean far more than simply keeping the courthouse doors physically open. We have focused on providing meaningful access for all those who must turn to the courts to settle disputes, vindicate their rights, and pursue their interests.

During the past decade, the number of individuals appearing without counsel has increased tremendously, particularly in the area of family law. These litigants often are completely unfamiliar with the intricacies of court procedures. We have instituted a wide range of projects to assist them, and the Legislature has been instrumental in ensuring the success of these efforts.

For example, a \$10 million general fund appropriation has been used to create the Equal Access Fund. Ninety percent of this amount, which is distributed through a joint program of the courts and the Foundation of the State Bar, is allocated based on a formula that takes into account county poverty rates statewide, and the remaining 10 percent is allocated based on broader criteria. This program has been supplemented by thousands of hours of pro bono work contributed by individual lawyers, bar associations, and legal services groups.

Other funding provided by the Legislature has led to the creation of child support facilitators in each county to provide assistance at the courthouse. One mechanism that has proved very valuable are the self-help centers that truly make a difference for thousands of Californians. Recently, a report on the Model Self-Help Pilot Programs—for which the Legislature provided funding—was presented to you by a statewide panel that I appointed to study the problem of providing help to self-represented litigants.

Pilot self-help projects have been created in five locations around the state: Fresno, San Francisco, Los Angeles, Contra Costa, and a cross-county model serving Butte, Glenn, and Tehama Counties. These projects demonstrate that the provision of self-help services facilitates the ability of litigants to participate effectively in the legal process, promotes public trust and confidence in the courts, and helps meet the needs of many non-English-speaking litigants, while also improving court efficiency.

In Fresno, the court established a self-help site focused specifically on the needs of Spanish-speaking litigants, and in San Francisco the program attempts to serve a multi-lingual population. The lessons learned from these projects already are being exported to counties across the state to help expand court services to the public. This program is managed by the award-winning Center for Families, Children, and the Courts, a division of the Judicial Council's staff arm, the Administrative Office of the Courts.

Our nationally recognized self-help website continues to receive more than one million hits each month. And technological innovations have made court and case-specific information increasingly available to the public on-line.

We continue to improve the collection of court-ordered fees and fines. The Judicial Council's Court-County Collaborative Working Group on Enhanced Collections has made great progress toward ensuring that every court and county has a collections program and that court orders are enforced. We shall be submitting a report to you later this year that provides comprehensive information on the status of outstanding unpaid court-owed debts and what courts and counties are doing to collect on unpaid accounts. We are making great strides in reducing the delinquency rate and expanding collection. As we attempt to ensure that those able to pay do so, the Judicial Council's Fee Waiver Task Force is considering the best way to see to it that those truly unable to pay will receive fee waivers to ensure their access to the courts.

Another group of vulnerable individuals intersecting with the court system are children in foster care. At the direction of the Judicial Council, the AOC's Center for Families, Children, and the Courts is working to support and implement the recommendations of the national Pew Commission on Children in Foster Care designed to overhaul foster care.

Finally, I want to mention that a few months ago the California Supreme Court held another of its special sessions away from its three traditional sites, as we have done in each of the last few years, this time in San Diego. Once again, the response was phenomenal. The program was broadcast on cable television, with thousands of high school students either attending in person or observing the telecast, studying briefs and other materials, and participating immediately after the broadcast in classroom discussions with the assistance of judges or lawyers serving as classroom mentor. Some students were selected to ask the court questions in the courtroom as we began our morning session. We hope to hold our next special session in Shasta County this October.

These are just a few of the many recent innovations and improvements implemented by the judicial branch. Your assistance has been instrumental in the success of most of these efforts. I invite you to take a look at our website to get a sense of the enormous range of activities actively being pursued under the auspices of the judicial branch.

Courts require the trust and confidence of those they serve in order to be effective. As one of the three fundamental components of state government, the judicial branch has demonstrated its willingness to perform its constitutional responsibilities while standing accountable for the resources you allocate to us for the purpose of enhancing the administration of justice in our

state.

It is fundamental that if we are to provide justice for all, we must have courts that are able to make decisions on the matters before them independently and effectively, free from improper pressures from any quarter. Once we remove—with your help—the uncertainty that arises from the prospect (if not the reality) of inadequate and uncertain resources for the future, courts will be better able to efficiently resolve cases, enhance access to justice, and promote the rule of law.

Together, we have taken great steps toward realizing these defining goals for our judicial branch. Together, there is more to be done. With your assistance and collaboration, I look forward to continuing our work to ensure that the courts in every part of our state provide fair and accessible justice for all Californians.

Thank you once again for inviting me to address you. I hope you will join me and other leaders of the judicial branch and the bar at a reception that will begin shortly in the Capitol Rotunda.