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First Annual Chief Justice Ronald M. George Distinguished Lecture: Access to Justice in Times of Fiscal Crisis

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CALIFORNIA CHIEF JUSTICE
RONALD M. GEORGE

“Access to Justice in Times of Fiscal Crisis”

The Inaugural Ronald M. George Distinguished Lecture

Delivered by The Honorable Ronald M. George
Chief Justice of the Supreme Court of California

Golden Gate University School of Law
October 20, 2009



The Honorable Ronald M. George

MESSAGE FROM DEAN DRUCILLA STENDER RAMEY

I am extremely pleased to share with you this reprint of the inaugural presentation of the Golden Gate University School of Law Chief Justice Ronald M. George Distinguished Lecture, which was delivered on our campus on October 20, 2009, by The Honorable Ronald M. George, Chief Justice of the Supreme Court of California.

This new Lectureship has been established in Chief Justice George's name to bring to Golden Gate jurists who are among the leading judicial thinkers and innovators of our day and to shine a spotlight on the transcendent importance of the work of our nation's state courts. And who better to so graciously lend his name and enormous stature to this effort than Chief Justice George himself, who since 1996 has served as the 27th Chief Justice of California.

Named by former Attorney General Bill Lockyer and many others as "the best Chief Justice in California history," and leader of the largest judiciary in the world, Chief Justice George has been a champion of ensuring access to justice for all Californians and improving efficiency and effectiveness in the state's judicial system. In his very first year in office, Chief Justice George visited the courts of all the state's 58 counties, determined to make our state's courts more user-friendly and fully accessible and declaring them to exist for the benefit of the people, not merely for the lawyers and the judges.

He has succeeded in promoting greater independence for California's judiciary, consolidating the courts into one statewide system, defending judges against political attacks, and greatly expanding public access to the courts.

As Chief Justice, he chairs the Judicial Council of California and the Commission on Judicial Appointments and co-chairs the California-Federal Judicial Council. His many other powerful positions have included President of the Conference of Chief Justices and Chair of the Board of Directors of the National Center for State Courts. His countless awards have included the American Bar Association John Marshall Award, American College of Trial Lawyers Samuel E. Gates Award, American Judicature Society Opperman and Herbert Harley Awards, and National Center for State Courts William H. Rehnquist Award for Judicial Excellence.

Golden Gate University School of Law is honored to share his commentary with you in the pages that follow.

Sincerely,



Drucilla Stender Ramey
Dean, School of Law

“ACCESS TO JUSTICE IN TIMES OF FISCAL CRISIS”

I am deeply honored by the decision of Golden Gate University, President Angel, and the School of Law to establish a lecture series in my name — happily pre-mortem, rather than post-mortem — and am delighted to be here for the inaugural address in the series. I was last at Golden Gate a few years ago for a ribbon-cutting ceremony for some of your facilities. I am very pleased to see so many supporters and friends of Golden Gate in attendance, including a large number of colleagues from the bench and bar as well as Bill Vickrey, California’s very able Administrative Director of the Courts.

Golden Gate is extremely fortunate to have Drucilla Stender Ramey as the new Dean of the Law School. Those working at or supporting this fine institution will — as I have over the many years of our friendship — find Dru to be a dynamic individual whose experience and abilities encompass the wide range of talents — academic, administrative, and fundraising — desired in a law school dean. In addition to having close ties to the Bay Area and its leaders, she is a delight and an inspiration to work with.

If you have not yet heard it said that “it is impossible to say no to Dru Ramey,” you soon will. I believe that the ink was not yet dry on her employment contract with Golden Gate before she had me lined up — months before the official start of her deanship — to give this afternoon’s lecture. In fact, she even succeeded in persuading me to join as a member of the National Association of Women Judges when she served as its Executive Director!



I believe that we all would have preferred that my topic, “Access to Justice in Times of Fiscal Crisis,” might instead be “Access to Justice in Times of Unbridled Prosperity.”

But those expansive talks will have to wait for another day. The realities of a shrinking economy and a fiscal crisis in California for which there are no immediate solutions compel me to instead share with you some thoughts about the state of our courts and what this means for the people we serve.

Cyclical ups and downs are a constant feature of California’s economic climate. But the depth and extent of the challenges we face today, and the

lack of certainty about what lies ahead, must give us pause as we consider the demands placed upon our state judicial system.

Ours is the largest court system in the nation, about double the size of the federal Article III judiciary nationally, and serving one of the most diverse populations found anywhere on the planet. We maintain 451 court locations around the state in communities as unique as Alpine County, with 1,200 residents served by 2 judges, to Los Angeles, with more than 10 million residents and a bench of almost 600.

Among my responsibilities as Chief Justice is to serve as Chair of the Judicial Council of California, the constitutionally created governing body for the state court system. The mission of the council is to ensure the consistent, independent, impartial, and accessible administration of justice for the residents of small counties like Alpine, Inyo, and Del Norte, as well as for the residents of heavily populated areas such as Los Angeles, San Francisco, and San Diego. Indeed, our considerable task is to ensure access to justice for approximately 38 million people in California's 58 counties — and to do so as we face ever-growing caseloads over which we have no control, an insufficient number of judges and staff, and crowded and unsafe courthouse facilities.

Despite the many difficulties we face, I harbor no doubt that California's court system now is in a far stronger position to weather the challenges ahead than it was when I became Chief Justice 13 years ago. The reason is clear.

In 1996, the state was undergoing one of its periodic fiscal crises, although one not as severe as today's. Within one year of assuming my new position, I twice had to go to the Legislature to seek emergency bailout funding for the trial courts.

During my first year as Chief Justice I embarked on visits to each of the 58 county court systems to better understand the operations of California's court system throughout the state. It soon became evident that courts in counties large and small desperately needed additional resources to avoid substantial closures and cutbacks in courtrooms and clerk's offices and widespread employee layoffs.

Funding for basic services such as court interpreters and dependency counsel often was scarce. Courts were beginning to experience a surge in the number of self-represented litigants but had insufficient means to meet their needs. Public access to court information too often was limited.

Inadequate facilities were falling into disrepair or could not accommodate new demands. In one rural court that I visited, the judge had stacked law books in front of his bench. After complimenting him on his apparent scholarship, he disclosed that these stacks served as a makeshift shield against bullets after an attempted hostage-taking in his court facility. I was happy to see that at least these tomes contained the reported decisions of federal courts rather than those of the California Supreme Court!

In one urban court, I encountered a commissioner who was working out of a converted storeroom and who himself had built a bench, jury box, and counsel tables in his home workshop at his own expense. Prospective jurors in many courts congregated in stairwells, halls, and even on sidewalks for two weeks — this was before we instituted one-day-or-one-trial jury service. Prisoners often had to be escorted through public hallways to reach courtrooms. In facility after facility, unsatisfactory security arrangements put judges, lawyers, litigants, jurors, court staff, witnesses, and visitors at risk.

In 1996, the trial courts were supported principally by county funding provided by the Board of Supervisors in each county. Financial support for trial court operations varied tremendously across the state, depending not only on the ability and willingness of individual counties to adequately fund the courts situated in the county, in the face of competing demands, but also on factors such as the relationship (good or bad) of the Presiding Judge with the current Board of Supervisors.

There are persons who claim memory of halcyon days when open coffers of money for the courts were only a walk-across-the-mall away. Those “good old days” — like most—never existed or, if they ever did, they preceded my appointment to the bench by Governor Reagan in 1972. For many years, it has been increasingly clear that counties, beset by competing demands for police, fire, health, recreational, and other services, were finding it more and more difficult to meet the various needs of the trial courts.

It was anticipated that the switch from county funding to state funding of California's judicial system would raise the level of services provided across the state to an effective baseline, provide courts with a stable and predictable level of funding, and allow the judicial system to engage in productive planning for the challenges ahead. Those expectations have been met.

And yet, providing fair and accessible justice was and remains one of the most important functions of government. Meanwhile, effective statewide advocacy for judicial branch needs was limited, in part because of the dearth of statewide information concerning trial court finances.

At the end of its session in 1997, the Legislature adopted a long-sought system for state funding of the trial courts. In the ensuing years, a comprehensive budgeting system was developed that enables the judicial branch as a whole to seek funding from our sister branches — funding that is then distributed by the Judicial Council to the individual courts.

This statewide approach not only has resulted in ensuring more uniform access to justice statewide, but also has enabled the court system to concentrate funding in programs that have vastly improved access to justice for millions of Californians — services such as court interpreters, self-help centers, and specialty courts.

After the change to state funding, the second major structural change in the court system occurred in 1998, when the electorate, by a two-thirds majority, approved our proposal to amend the constitution to permit the unification of the 220 superior and municipal courts into 58 trial courts — one in each county. By 2001, the judges in all courts had voted to unify, vastly reducing the inefficiencies that had been so apparent during my 13,000-mile journey to the courts in 1996 and 1997.

Unification has allowed greater flexibility in the use of judicial and staff resources, eliminated duplicative services, and led to the creation of additional new services for the public such as collaborative justice courts, domestic violence courts, drug courts, and complex litigation courts.

The third major reform for our state system came in 2002 with the Trial Court Facilities Act. The new law called for the transfer of responsibility for court facilities from the counties to the state — a major and entirely new undertaking for the Judicial Council and its staff agency, the

Administrative Office of the Courts. I believe that California is unique in entrusting the management of our court facilities to the judicial branch rather than to an agency of the executive branch. To date, almost all of the state's 534 court structures have been transferred to state ownership under judicial branch management, and the remainder should transfer by year's end.

We embarked upon this court-facility effort when it became increasingly apparent that as counties became less and less financially solvent and were relieved of their financial responsibilities to the courts, their interest in courthouse "maintenance" — using that term in a very loose sense — often went to the bottom of the list of priorities. This was not the case in every county, but a study of court facilities did indeed show an overall deterioration of court facilities.

The transfer process was complicated: some courts shared space with county services; other courts required seismic retrofits or other repairs, and it was not clear which entity or institution had responsibility for those. Despite the complications, we were successful against strong odds in obtaining authorization for the issuance of \$5 billion in revenue bonds for courthouse construction and maintenance passed by the Legislature and signed into law by the Governor last fall. It begins the process for the development of 41 of the most urgent projects in the state while serving as an economic stimulus in a time of economic recession, with no impact on the state's general fund.

These historic reforms of our state court system — trial court funding, court unification, and facilities transfer — have been a means to an end. They have strengthened the independence of the judiciary as a branch of government. They have addressed institutional budget inequities among trial courts around the state. And they have ultimately enhanced access to justice and provided a greater degree of accountability to the public.

None of these steps would have been possible without the governance of the state judicial branch by a constitutionally created body, the Judicial Council, supported by an extraordinary staff agency to carry out its policies, the Administrative Office of the Courts, or AOC, led by its Director, Bill Vickrey, whom I mentioned earlier.

The structural changes that I have described have been invaluable in helping us meet many of the challenges created by the current fiscal crisis. The statewide judicial branch budget of approximately \$4 billion has been cut by some \$450 million. This year, with the use of one-time money from trial court reserves and the reallocation of almost \$160 million in judicial branch funding to trial court operations, we have managed to absorb the bulk of the decrease in funding. But we still remain in a perilous condition.

We live in a digital age, and our technological capabilities are very deficient. For years, we have been engaged in the development of a California Case Management System.

Now, I confess to not being proficient in the use of new technology. I call myself roadkill on the information highway, and the palm of my hand is my palm pilot. Nevertheless, I recognize that courts must be able to employ the new technologies in order to best serve the public.

Courts in California currently operate more than 70 different case management systems with about 130 variations. These systems do not connect with one another and do not provide information across court and county jurisdictions. Many trial courts have outdated case management systems, operating on platforms designed in the late 1970s and early 1980s.

We cannot afford to operate in an electronic Tower of Babel. Antiquated information systems frequently crash. Judges and law enforcement officers in the field too often are unaware of outstanding warrants for violent offenders and of domestic violence restraining orders, and sometimes are equally unaware that other warrants have been recalled.

System development of our case management system, undertaken at the urging of two governors and the Legislature, is nearly complete, and when fully implemented by 2013 the new case management system will change the way the courts do business and deliver the services and efficiencies that the public has a right to expect from its government.

But building a statewide technological infrastructure — moving the courts from the 20th into the 21st century — is as costly as it is complex. In recent months we have benefitted from healthy debate within the judicial branch about the use of scarce resources and about finding the proper bal-

ance between our commitment to maintain existing court operations, and our obligation to prepare for the future.

The state fiscal crisis and subsequent reductions of more than \$450 million to the judicial branch budget compelled the Judicial Council to reallocate funds (\$105 million) for urgent technology projects to court operations, among other reallocations we have had to make. Some courts still are finding it necessary to restrict services. At an emergency budget meeting in July, the Judicial Council made the very difficult decision to close courts one day per month to avoid even more damaging consequences of budget cuts.

The decision to close the courts one day each month beginning in September was made with great reluctance by council members. But after months of examining other solutions and obtaining input from court leaders across the state, we determined that court closures were the only rational option available to us to adequately address year-end budget reductions while at the same time providing statewide consistent notice to the public, protecting our employees from major layoffs, and preserving equal access to justice.

At that meeting, I pledged to reduce my own salary and asked judges statewide to set a similar example, to acknowledge the sacrifice we have asked of the more than 20,000 men and women who work in the California judicial branch, most of whom will experience pay reductions due to the court closures.

I am pleased to report that the vast majority of justices and judges in California — about 80 to 90 percent — are participating in a voluntary salary waiver program amounting to a 4.6 percent pay reduction, or otherwise have made equivalent donations to their courts to preserve access to justice in their communities.

I have mentioned several of the new programs that courts have been able to offer as a direct result of the benefits of statewide funding and unification. These include interpreter services, to help with some of the more than 100 languages translated in California's courts each year, self-help centers in every county, as well as a nationally recognized self-help web site that receives millions of hits every year and is available in Spanish

and, in part, in several other languages. Other new programs include collaborative justice courts, domestic violence courts, drug courts, complex litigation courts, jury instructions written in layman's language, and community outreach programs.

I would like to briefly mention three other initiatives that are priorities for me and the Judicial Council because of the promise they hold to improve access to justice for millions of Californians. We cannot, and will not, abandon these efforts, nor should we ignore the urgent needs that remain. First, our foster care system is severely strained and clearly needs improvement. The state assumes parental responsibility for these children when they enter the foster care system, and the courts are charged with overseeing their care. Reform of the system is a matter not only of legal obligation, but of moral obligation as well.

Among the priorities for the Judicial Council is implementation of the recommendations of the California Blue Ribbon Commission on Children in Foster Care. Chaired by my colleague, Supreme Court Justice Carlos Moreno, the Commission includes stakeholders representing all three branches of government, as well as the private and non-profit sectors. The Commission submitted its final report and action plan in May, and in order to ensure that this valuable work is not relegated to gathering dust on bookshelves, I immediately reappointed the commissioners to help ensure implementation of sweeping recommendations for reform of the state's juvenile dependency courts and foster care system.

Despite serious fiscal constraints encumbering the state, we must honor our obligation to our most vulnerable residents. We must help to ensure that foster children have the best possible chance to become successful citizens.

Another very important initiative well underway is the Commission for Impartial Courts, chaired by my colleague, Supreme Court Justice Ming Chin. The Commission's charge is to study and make recommendations to ensure that California's courts remain impartial and accountable.

Unlike the legislative and executive branches, which are designed and intended to be responsive to the will of the majority, the role of the judicial branch — in providing impartial justice based upon the constitution,

legislative enactments, and case precedent — is not to act upon the preferences of constituents, political platforms, or personal inclination.

The Commission for Impartial Courts is comprised of judges and lawyers, as well as members of the public — including former legislators, the business community, media, and leading scholars. In December, the Judicial Council will receive the final report of the Commission, a monumental work examining judicial candidate campaign conduct, campaign finance, public information and education, and judicial selection and retention.

The final development I want to mention is the Governor's approval last week of AB 590 — the "Civil Gideon" bill — authored by Assemblyman Mike Feuer. At a time when so many aspects of the California Dream have faded, we have achieved this monumental accomplishment: California is the first state in the nation to establish a right to counsel for low-income individuals in critical-needs civil cases — a concept endorsed by the American Bar Association and one that I have advocated for several years. In some parts of the state, 85 to 90 percent of the parties in family law cases — involving critical issues such as child custody, child support, and division of marital assets — appear without counsel.

The new law will create a pilot program offering legal services to poor litigants in domestic violence, health, child custody, and other cases. The program will be launched in 2011 and be funded by court fees.

I believe that this new program will have a profound impact on access to legal services in our state. I and many others have worked for years for a solution like this one to begin narrowing the justice gap for individuals unable to vindicate their vital interests, and to assist courts with processing caseloads of unrepresented litigants, which often clog the courts. A global solution to this problem is being pursued by the Elkins Task Force that I have appointed.

One of the greatest challenges for our courts is to avoid simply staying in place in the face of increasing demands, or going backwards in response to reduced resources. Justice cannot wait for better economic times. Courts are not a luxury to be funded in good times and ignored in bad times. Even as we attempt to absorb and address the reductions in our budget, we should not and cannot stop the progress we have made to meet the needs

of all Californians, despite the circumstance that government undoubtedly is in difficult straits.

In an address I made earlier this month in Boston to the American Academy of Arts and Sciences upon my induction into that organization, I described what I perceive to be the dysfunctionality of California's state government. Chief among the culprits I described has been the use of initiative measures, often sponsored at the instigation of special interests, to place straightjackets on the Legislature's ability to pass budgets, enact taxes, and allocate available resources. The result has been to place California in a disorienting cycle of boom and bust. I doubt that Hiram Johnson and the other progressives who saw the initiative power as a means to combat the power of the railroad barons who controlled our state's government in an earlier era would recognize or approve of where that power has brought us.

This is not a dilemma for the courts to resolve — but courts must make their voices heard. For those of us who value the fair and impartial administration of justice, we must speak out about the effect of budget uncertainty and budget shortfalls on the ability of our judicial branch to meet the reasonable and appropriate expectations of the public we serve. If we cannot provide timely, effective, and efficient judicial services for the people of our state, all of us — and the basic governance of our state—will be at grave risk, given the unique — but absolutely essential—role played by the judicial branch in the governance of our state.

We are fortunate in one resource.

In the best of times, making good on the promise of equal justice under law is a challenge. In times like the present, it requires the extraordinary commitment of a great number of individuals in the court system, in the legal profession, and in government at all levels.

California's courts have a nationwide reputation for excellence and innovation in providing services to the public, for the high quality of its bench and bar, and for the creativity and innovation of judges, court administrators, and court staff, who are dedicated to enhancing the administration of justice. In my view, an impartial judiciary — and its corollary, adherence to the rule of law — are the cornerstones of our democracy.

Support for the judicial branch is essential to our democratic form of government in good times and in bad.

I am proud that California's judicial system has assumed greater responsibilities in shaping its own future. Doing so not only has strengthened our ability to improve access to justice — but also has reinforced our obligation to remain accountable for the resources entrusted to us and to safeguard our role as one of the three separate and independent branches of government.

At a time when the public's regard for its institutions is on the wane, recent polls indicate that the confidence of Californians in their courts has increased — from 42 percent in 1992, to 67 percent in 2005, when the last poll was conducted.

The reasons for this notable improvement in public trust and confidence in the courts are clear — in fact, many of them are represented by the persons who are present in this auditorium today. During my 37 years on the bench, I have never encountered more dedication, devotion, and enthusiasm from our judges and staff, from Bar organizations and individual attorneys, than I see today.

Many of you here have contributed in ways large and small to bring us to where we are today. I encourage all of you — but especially the students here — to join us in our continuing effort to expand access to justice and to make good on the promise of equal justice for all. We have come far, but have much further to go.

Thank you.

About Golden Gate University School of Law

FOUNDING:

The School of Law was founded in 1901 as the YMCA Evening Law School, Northern California's first evening law school.

LOCATION:

San Francisco Financial District

DEAN:

Drucilla Stender Ramey

ENROLLMENT:

JD: 651; LLM & SJD: 221. The fall 2009 first-year JD class includes 250 students selected from nearly 3,000 applicants.

FACULTY:

Full-time 41; Adjunct 165

FACILITIES:

Newly refurbished and expanded Law Library, state-of-the-art auditoria with seating for more than 200, Moot Court Room, Student Lounge, and Student Services Center.

JD PROGRAM:

Doctor of Jurisprudence (JD) degree program with day and evening options, 10 Certificates of Specialization, Honors Lawyering Program, and extensive clinical and externships program, including on-site clinics in Environmental Law and Justice and Women's Employment Rights.

GRADUATE LAW DEGREE PROGRAMS:

Master of Laws (LLM) degrees in Environmental Law, Intellectual Property Law, International Legal Studies, Taxation, and United States Legal Studies and Doctor of Juridical Science (SJD) degree in International Legal Studies.

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JD/MBA and JD/PhD in Clinical Psychology and accelerated JD/LLM in Taxation.

CENTERS, LECTURE SERIES, AND SPECIAL PROGRAMS:

Chief Justice Ronald M. George Distinguished Lecture Series, Jesse Carter Distinguished Lecture Series and Jesse Carter Society, Intellectual Property Law Center and Conference, Sompong Sucharitkul Center for Advanced International Legal Studies and Fulbright International Law Symposium, Environmental Law Symposium, Poverty Law Conference, Appellate Advocacy Institute and Moot Court for Practicing Lawyers, Paris Study Abroad Program, Law and Leadership Program, and Annual Public Interest Law Foundation Auction.

PUBLICATIONS:

Golden Gate University Law Review

Golden Gate University Environmental Law Journal

Annual Survey of International and Comparative Law

HONORS AND RECOGNITION:

Diversity and Access: One of the first US law schools to admit women, the second ABA-accredited law school to appoint a woman as dean, and the first ABA-accredited law school in California to appoint an African-American as dean. The School of Law is currently ranked one of the most diverse US law schools by *US News & World Report*.

Environmental Justice: One of the first US law schools to establish an Environmental Law & Justice Clinic, which received the 2009 Award for Outstanding Achievement from the US Environmental Protection Agency.

Tax Program: The LLM Taxation program, now in its third decade, is the only such program in the San Francisco Bay Area and one of the preeminent tax law programs in the Western United States.



About the Chief Justice Ronald M. George Distinguished Lecture Series

Golden Gate University School of Law established the Chief Justice Ronald M. George Distinguished Lecture Series to bring distinguished Chief Justices to campus to share their perspectives on the justice system and to shine a spotlight on the critical importance of the state courts in American jurisprudence. The Lecture Series is named for The Honorable Ronald M. George, who joined the Supreme Court of California as an Associate Justice in 1991 and became the Court's 27th Chief Justice in 1996.

The School of Law is grateful to Thomson Reuters for its generous support of the Chief Justice Ronald M. George Distinguished Lecture Series.

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