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Address by

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Chief Justice of California

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CHIEF JUSTICE RONALD M. GEORGE

Good afternoon. I want to begin by thanking the President pro Tem of the Senate, Don Perata, and Assembly Speaker Fabian Núñez for their invitation to speak with you today. This annual event—my 13th State of the Judiciary Address—combined with visits to many legislators by members of the Bench Bar Coalition, provides the courts with a unique opportunity to share with our sister branches of government information about how we are using the resources you afford us and how, together, we can best serve the administration of justice and the people of our state. I am pleased to be joined not only by members of the Bench Bar Coalition, but also by my colleagues on the California Supreme Court—with the exception of Justice Kennard, who regrets that a medical problem prevents her attendance—as well as members of the Judicial Council and its advisory committees and task forces, state and local judicial and bar leaders, and the executive leadership of the Administrative Office of the Courts.

We in the judicial branch are keenly aware that this is a difficult year for you and the Governor. The fiscal challenges facing California are set against a backdrop of troubling financial developments on the national level. These often seem magnified in our large, complex, and diverse state—and complicate your task of achieving a budget that reasonably meets the public's needs.

I am not here to request funding for sweeping new initiatives. I am here today to tell you that the judicial system understands its obligation to contribute to the solution. Accordingly, we have carefully examined the judiciary's budget to determine how we can assume our share of the burden in an equitable manner and will be discussing that information with you in budget hearings in the coming weeks. In speaking with you today, I will be stressing those needs that are essential to the very integrity of the justice system and the vital interests of Californians, and explaining the impact on the state's people and institutions of any failure to provide the courts with the resources essential to allow them to function effectively.

California's judicial system is said to have the largest law-trained judiciary in the world, far surpassing the federal system. That is not surprising when one considers that 95% of the legal proceedings in the United States are filed in state courts, and California is the leader in filings by virtue of its size and the diversity of its institutions that have made us one of the largest economies in the world.

Statistics from the National Center for State Courts, however, indicate that California is at the bottom of the lists of comparable states in the number of judges it provides in proportion to the state's population. We also for that reason are near or at the bottom of the list when it comes to the time it takes to bring every type of case,

including criminal, to final judgment. I will return to the impact of these circumstances in a few moments, but I mention them now to place the situation of California's judicial system in a national perspective.

There is another comparison of California's judiciary I want to mention—with some pride. In a recent article in the *New York Times*, legal reporter Adam Liptak reported on a study showing that over the past several decades, the decisions rendered by California's Supreme Court have been followed by other state high courts in the nation far more than the decisions of any other state high court. This finding reflects the leadership role of our court—and our state's entire judiciary—in the development of the law of our nation. Credit goes not only to my colleagues on the California Supreme Court, past and present, but also to the highly qualified jurists who serve at every level of our court system and fully develop cases and issues that come to us for review. California's judicial branch, I suggest, provides excellent value for the approximately 2.5 percent of the state budget it is allocated.

Beyond its careful attention to the substance of the law, the judicial branch for more than a decade has engaged in self-examination intended to make us more responsive to the needs of the California public we serve, and more effective and accountable in using the resources made available to us. With your help, we have transformed our court system into an increasingly fair and effective branch of government better able to serve the public. And because of the structural reforms we have undertaken at our own initiative, our branch is in a better position to cope with the present fiscal crisis than it otherwise would be. Nevertheless, given the proposed reductions, it will remain difficult to perform our core function of providing accessible justice to all Californians.

The last major piece of the structural transformation of our judicial branch, following the transition from county to state funding and the unification of the state's 220 trial courts into a single level of 58 courts, one in each county, is the transfer of court facilities from the counties to state ownership under judicial branch management. The Trial Court Facilities Act of 2002 began the transfer process, but it immediately encountered delay because so many courthouses were in worse shape than anticipated and could not be transferred without the expenditure of substantial sums by the counties.

In 2006, an agreement was reached among the counties, the courts, and the state. Enabling legislation provided that counties could transfer facilities, and the state would accept them, with the understanding that the counties would retain liability for any damages caused by the condition of the buildings—for 35 years or until the buildings were replaced, refurbished, or no longer used for court purposes.

This new measure jump-started the process, and of the 451 courthouse facilities, approximately 120 were transferred by the end of the last fiscal year. The authorizing statute, however, had a sunset date. During the closing hours of last year's legislative session, a bipartisan proposal to extend this deadline was unexpectedly sidetracked. As we were promised by legislative leadership, the necessary urgency bill, AB 1491 authored by Dave Jones, Chair of the Assembly Judiciary Committee—building on the efforts of Senator Ellen Corbett last year—is before you. The judicial branch and the counties are poised to move on the transfers once this measure is adopted.

The focus then shifts to how to rehabilitate and replace those court facilities that, because of earthquake, fire safety, and security deficiencies, pose substantial dangers not only to those who work in them, but also to persons who appear as witnesses, parties, or jurors, or enter these structures to pay traffic tickets or obtain documents or various services. Senator Perata is carrying legislation, SB 1407, authorizing a revenue bond that would help us meet many of the most urgent needs. We are exploring using performance based infrastructure processes—involving public/private partnerships—to the greatest extent possible for new construction, which should allow us to maximize the state's contribution.

Many courthouses also have major security problems. The lack of adequate resources is a contributing cause to the dangerous incidents that occur all too frequently in courthouses across the state.

For example, last year in Los Angeles, two separate attempted escapes resulted in one deputy sheriff being pepper-sprayed by a prisoner, and another deputy being repeatedly struck in the face and cut by a jail-made razor shank. An attack by a prisoner who had to be escorted in a public elevator in the Monterey courthouse put both a deputy and the public in danger. These and similar incidents might have been avoided if resources had allowed for a second deputy to accompany the prisoner.

A partial list of the items collected from individuals entering the courthouse on one day last fall in one of our smaller courts, the Superior Court of Kings County—gives a sense of the daily danger: thirteen knives, two sets of handcuffs, three handcuff keys, a stun gun, and two cans of mace.

Disputes that lead to court proceedings can be volatile. Criminal cases sometimes involve gang rivalries and angry victims and families, bent on retaliation. But family law matters in civil courts often are the most dangerous. When I arrived at the main Los Angeles courthouse a few years ago to meet with court leaders, I observed personnel mopping up blood in a hallway after a physician involved in a marital dissolution proceeding had fatally shot his wife. Years earlier, when I was a trial judge, an elderly juror serving in a case over which I was presiding was stabbed to death during a brief recess while using the public restroom across the hall from the courtroom.

Security costs have been the fastest growing and the most expensive component of the trial court budget, comprising almost \$500 million of our budget. We have worked closely with the Sheriffs of our state to set proper and consistent security standards statewide to bring some predictability to the cost of these services. Expected funding from the Legislature to accomplish these goals also failed to materialize at the end of last year's session, and we remain without the allocation of funds needed to implement this program.

Innocent bystanders are at risk if we cannot secure our courthouses—as are the employees who work there and the understaffed law enforcement officers who serve in unsafe conditions. I strongly urge you to support the security standards and funding needed to reduce those risks.

Meanwhile, those who come to the courts increasingly arrive without legal representation. Access to justice has been a primary goal of the Judicial Council. The Council, which as Chief Justice I chair, is the constitutionally created entity charged with overseeing and setting

policy for the statewide administration of justice. The Administrative Office of the Courts, ably headed by our Administrative Director of the Courts, Bill Vickrey, and his Chief Deputy, Ron Overholt, serves as the Council's staff arm.

Seeking ways to improve access to the courts, the Judicial Council has created a Task Force on Self-Represented Litigants, and has worked with local courts, the State Bar's broadly constituted Commission on Access to Justice, and with Bar, legal services, and local community organizations to offer a broad range of services to assist self-represented litigants.

Along with many others, I repeatedly have encouraged lawyers across the state to provide pro bono services, and we have been heartened by the response. This year when, for the first time, lawyers were provided with the opportunity to contribute to legal aid services at the same time they pay their bar membership dues, almost one million dollars was collected.

People must have *meaningful* access to the courts, or the phrase "justice for all" becomes no more than an empty promise. That requires making necessary tools available, including court information in several languages, user-friendly forms, guidance on how to file and respond to pleadings, and at least limited assistance from legal counsel and interpreters when needed. The judicial branch has expanded its efforts to improve the availability of interpreters without additional funding from the Legislature, and will continue to attempt to augment those services even under the constraints of the present budget situation.

The courts also have actively participated in improving services to families and children in the foster care system. These children are among the most vulnerable members of our society. Timing here is critical. During the brief period of a child's development and learning, delay in providing services or a proper placement too often amounts to a denial of those vital needs to the developing child.

In 2005, the Pew Commission on Children in Foster Care issued a national report recommending that courts become more involved in tracking and analyzing foster care caseloads, and urging more funding for child welfare services. Our Administrative Director of the Courts served on that commission. Two years ago, I appointed a Blue Ribbon Commission on Children in Foster Care, chaired by my colleague Justice Carlos Moreno, and including Senator Darrell Steinberg and Assembly Members Karen Bass and Bill Maze as members.

Ten days ago, our commission issued draft recommendations and solicited public comment before preparing its final report to the Judicial Council, which is expected in June of this year. Those recommendations are expected to respond to the urgent needs of California's nearly 80,000 children in foster care, who include a disproportionate number who may drop out of school, end up homeless or unemployed, or become involved with the mental health or criminal justice systems. I anticipate that the Judicial Council will be bringing recommendations to you later this year, and we look forward to working with you to improve the treatment of foster children in California. Similar progress is taking place in providing more protection in domestic violence cases and more safeguards for those individuals in conservatorships.

The steps we have taken to improve access, procedures, and services for the public we serve will, however, be meaningless if we lack the judges needed to implement them. Three years ago, the Judicial Council

came to you with a request to meet the urgent need for more judicial positions. A study by the National Center for State Courts recommended the addition of more than 350 judges to meet current needs after years of no increase in judgeships. We focused on the 150 highest priority positions, and asked that they be created in groups of 50 over the next three years. You responded, creating 100 new judgeships in the last two legislative sessions.

It is vital that the last complement of 50 judgeships be authorized this year. Senator Ellen Corbett is carrying this bill, SB 1150, and I urge you to support it. Although funding for many of the newly created judgeships was delayed by one year during the special budget session earlier this year, I hope you will carefully consider providing, as soon as it is feasible, the funding needed for an adequate number of judgeships.

Many of the new judicial positions are designated for areas of the state that have seen an enormous growth in population over the last few decades without a corresponding increase in the bench. This is especially true for the Inland Empire and the Central Valley.

For example, the case backlog is so acute that recently, for two years in a row, Riverside's court was forced to close down all of its civil courtrooms for months at a time to handle criminal cases, which have priority under the Constitution. At the request of court leadership and the Bar, I created a special task force of experienced judges from all over the state to go to Riverside County to help reduce its staggering backlog. Progress has been made, and discussions of possible changes in practices by both the courts and their justice system partners are producing important results. Nevertheless, a substantial backlog of cases remains. By the way, we sent this task force to Riverside using our existing budget resources with the flexibility you have allowed us, without seeking any additional allocation from the Legislature.

Court delays have real, human consequences. In one Riverside criminal case, an individual who had spent five years in jail was found not guilty when his case, which had resulted in a hung jury at an earlier trial, finally was retried. In a civil case in that county, the surviving husband and very young children of a mother who stayed at home to care for the children and who was killed in an automobile accident, ended up in homeless shelters during the years they spent waiting for a trial date to be scheduled. No judge was available to hear their case. Once a trial date was set, the case was settled within two weeks.

Cases involving young children or the elderly have statutory priority in our court system. Yet such priorities are thwarted by criminal case backlogs. Elderly people have written to the courts after their cases repeatedly have been put over, stating that they fear they will die before their cases are resolved. I mentioned earlier in my remarks how poorly California's case clearance rates measure against those of other states. This circumstance reflects a fundamental tenet of court administration: that the setting of a trial date often is the key to reaching settlement and resolution—and that nothing happens until then. And a case cannot be set for trial without there being a judge available to try the case.

The failure to provide sufficient resources and personnel for the court system risks depriving California of an effective public civil justice system. The absence of an operational civil justice system will affect every aspect of California life: business and financial institutions, dissolutions of marriage, probate distributions, child custody and

support, civil rights, governmental functions—all will have no place to go. The legislation you enact into law may not be subject to judicial enforcement if that occurs. I believe we all agree that a functioning court system is not a luxury—it is an essential component of state government.

There are severe limits to how much we can reduce the services that we are required to provide. For example, providing legal counsel to criminal defendants is not simply a program that can be eliminated as part of budget reductions—it is a constitutional responsibility, and one that would be enforced by federal courts at state expense if we ignore it. Cutting back on the processing of vehicle offenses would make no sense—such matters are a source of revenue to state and local government. Reducing services in dependency matters is not an option—such action would jeopardize federal funding.

These circumstances also illustrate the need not to limit the use of the resources that are provided to the judicial branch, but instead to authorize the judicial branch to apply them in the most effective manner. We, in turn, will continue to remain accountable for how we have used the funds you allocate to our branch.

Flexibility is especially important in developing much needed technology. My colleague, Justice Ming Chin, chairs the Judicial Council's Technology Committee. At a recent meeting of the Council with the leaders of the Departments of Corrections, Social Services, Child Support, Department of Justice, and the California Highway Patrol, we discussed the urgent common need for a system that allows us to share updated information. Without that, domestic violence restraining orders, warrants, and dispositions among other important records, too often are not circulated promptly to law enforcement. We are working to create a consistent case management system that makes information more transparent to the public, more accessible to other parts of government, and more effectively shared among the courts.

Having spoken about the need for flexibility in managing our resources, I want to turn for a moment to a proposal that is intended to help the California Supreme Court do just that. Each year, our seven-justice court reviews more than 9,000 petitions for review and original relief and typically issues opinions in 110 to 115 cases. The nine-justice United States Supreme Court has issued about 70 opinions each of the past few terms. Only appeals from judgments of death come directly to the California Supreme Court. Twenty to twenty-five of the opinions issued by our court each year are in these very lengthy and time-consuming capital cases. We also dispose of another 30 or so related habeas corpus petitions in death penalty cases each year, involving the preparation of lengthy internal memoranda addressing the multiple issues presented.

The court has improved and expanded the selection of counsel and shortened the time for filing briefs in our court. Our efforts have met with some success—at present, we have approximately 80 fully briefed appeals from judgments of death pending in our court, and another 100 fully briefed capital habeas corpus matters. The records in these cases are routinely 10,000 pages long, and sometimes several times that length, and involve numerous issues. Considerable staff and judicial time must be expended on each case.

Earlier this year, the Supreme Court proposed a constitutional amendment, endorsed by all the justices of the court and backed by the

administrative presiding justices of the Courts of Appeal, that would allow the Supreme Court to transfer certain fully-briefed cases to the intermediate appellate court for argument and preparation of an opinion. After the Court of Appeal's decision, the Supreme Court would carefully review all cases, and proceed with oral argument and a written opinion if there is an important question of law or a conflict between Courts of Appeal on a matter of law, or if the Supreme Court finds that the lower court may have committed an error in reaching its decision. This proposal does not concern the merits of the death penalty; it is strictly about process.

The proposal arose out of a grave concern that the death penalty caseload in the California Supreme Court is consuming too large a portion of the resources needed by the court to perform its basic constitutional role of deciding significant issues of law in civil and noncapital criminal cases in order to provide guidance to the lower courts, government, business, and individuals.

To effectively handle these difficult matters, adequate resources must be allocated to every part of the justice system—prosecution, defense, and the Courts of Appeal. In view of the budget situation, I have asked that our proposal not be advanced at this time. I shall, however, at a more propitious time, seek your consideration of this constitutional amendment, and in the meantime we are interested in hearing the Legislature's ideas about how to best address the difficult issues of delay and workload presented by the Supreme Court's backlog of death penalty cases.

Before I close, I want to mention one additional subject. As many of you know, it has become increasingly difficult to attract well qualified candidates from diverse backgrounds to the bench from both private and public practice, because the judicial retirement system in effect for judges appointed since 1994 is grossly inadequate. This urgent situation should be corrected if we are to ensure the continued excellence of our judicial system, and I ask that you deal with this problem in the near future.

California's court system has a nationwide reputation for excellence and innovation in providing service to the public, for the high quality of its bench, and for the creativity and innovation of judges and 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 our judicial branch is essential to our democratic form of government in good times and in bad.

We in the judiciary look forward to working with our coequal branches of government to further enhance the administration of justice in our state. Thank you again for the opportunity to address you. And now I invite you to join me, my colleagues from the courts, the Judicial Council, the Administrative Office of the Courts, and the Bar, at a reception to be held in the Capitol Rotunda. I hope to see you there, and to have further opportunities to speak with you in the months and years ahead.