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# Defining a Branch, Finding the Center: The George Court

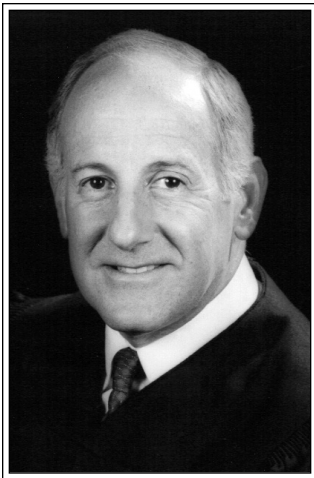
1996–2010

CHAPTER SEVEN | BY MOLLY SELVIN\*

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## INTRODUCTION: THE ANXIOUS GOLDEN STATE

**R**ONALD M. GEORGE took the helm of California's sprawling court system on May 1, 1996, as the state was edging out of another boom-bust cycle. Yet Californians were still profoundly nervous about the economy. The recession that began in 1990 was deeper than any time since the 1930s, and it would hold the record as the most severe downturn in the state until the Great Recession that began in 2007–08.



CHIEF JUSTICE  
RONALD M. GEORGE

Moreover, in part because of the collapse of the aerospace industry, long a mainstay of the Southern California economy, the 1990 recession hit the state harder than the rest of the nation, a double jolt to longtime residents convinced that California's diverse and vibrant economy immunized it from the boom-bust cycle that, for example, plagued the Rustbelt states. Because the recession forced a steep drop in California hous-

ing prices and personal income along with a rise in unemployment and poverty indicators, this time the economic doldrums took longer to shake in the Golden State than in the rest of the nation.

As often happens, economic fears took political form, centering on crime and immigration. Crime rates rose through the early 1990s but began to level off through the later part of the decade. At the same time, immigration continued to change the face of California. Whites, who comprised 68.9 percent of the

state's population in 1990, dropped to 57.6 percent in 2010, while the Hispanic and Asian population grew dramatically during that time.

Notwithstanding a plateau in the crime rate, fearful state voters passed a number of ballot measures, challenges to which landed on the new Court's docket. Through these initiatives and constitutional amendments, voters defined new felonies and significantly stiffened the penalties for existing crimes. Fears about immigration also led voters to back measures barring undocumented immigrants from a variety of public services, requiring public officials to report suspected aliens, and eliminating bilingual education instruction as well as affirmative action programs in university admissions and public sector hiring. Frustration with what some perceived as "shakedown" lawsuits prompted passage of Proposition 64 (2004), which limited private lawsuits against businesses, requiring the plaintiff to have been injured and suffer a loss due to an unfair, unlawful, or fraudulent business practice. Challenges to some of these measures had made their way to the high court's docket during Malcolm Lucas's tenure but others faced their first constitutional test with the George Court.

It should be noted that these and other measures fundamentally altering the rights of all Californians were passed by a steadily diminishing share of eligible voters. In 1996, when George became chief justice, 52.56 percent of eligible voters cast ballots in the November general election but only 43.74 percent went to the polls in 2010 with turnout dipping as low as 20.80 percent in 2009. The chronically dismal turnout gave rise to unease among lawmakers and others concerned about the scope and often extreme nature of these measures. For instance, voter angst and antipathy also found voice in two same-sex marriage measures that, to a considerable extent, came to define the George Court's legacy. Passed after nasty and expensive campaigns, Propositions 22 (2000) and Proposition 8 (2008) contained identical language, limiting marriage to one man and one woman. Voters first enacted that limitation by amending California's Family Code; then, when the George Court struck it down as unconstitutional, voters amended the state constitution. These propositions, part of a wave of same-sex marriage bans that voters in more than 30 states passed

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during the mid-1990s and early 2000s, gave rise to the California Supreme Court's trio of marriage decisions which, in turn, drew national attention—and lent considerable momentum—to the cause of marriage equality nationally.

The Court's caseload aside, the chief justice oversees the nation's largest court system. In 1996, however, California's courts were less a cohesive whole than they were some 220 often-querulous local court fiefdoms. Knitting judges from Siskiyou to San Diego into a unified and forceful judicial branch—a goal that Chief Justice George shared with several of his predecessors—would prove no less difficult than parsing voters' intentions on a variety of contentious ballot issues, most prominently the volatile same-sex marriage question.

This chapter, then, is a story in two parts. The California Supreme Court between 1996 and 2010 weighed in on some of the major legal and political issues of the day, and its decisions burnished the Court's reputation for the quality of its jurisprudence. If the George

Court seldom reached out to create new rights, as the Court had done during the 1960s and 1970s, it did take bold steps on social issues, including same-sex marriage and abortion, and in other areas of the law, and it compiled a solid record as a moderate to liberal body. That this Court, a majority of whose members were appointed by Republican governors, was not reliably pro-business and pro-prosecution is largely indicative of how the newly constituted Court had parted ways with both the Lucas majority and with Republican elected officials who had dragged their party sharply rightward. The George Court's jurisprudence has evoked comparisons between Ronald George and Chief Justices Roger Traynor and Phil Gibson, and it re-established the California Supreme Court's reputation and prominence after the steep dive and discord of the late 1970s and early 1980s.

The story of the California Supreme Court between 1996 and 2010 is also one of Chief Justice George's considerable managerial accomplishments. By centralizing administrative control and funding for California's



#### THE GEORGE COURT

CHIEF JUSTICE RONALD M. GEORGE (CENTER) AND (LEFT TO RIGHT) ASSOCIATE JUSTICES JANICE R. BROWN, JOYCE L. KENNARD, KATHRYN M. WERDEGAR, MING W. CHIN, MARVIN R. BAXTER, AND CARLOS R. MORENO

220 courts, he did what others had tried and failed to do; in essence, he helped to create a coherent judicial branch in place of a collection of courts that historically had been unable to effectively lobby for the funding needed to run efficiently. Through persistence and force of personality, he succeeded by forging alliances with feuding legislators to secure operating funds, by courting judicial colleagues around the state and the bar, and when needed, by winning voter support. Many of George's colleagues on the Court held him in exceptional respect—several of them used the word “beloved”—and he had an easy working relationship with the three governors with whom he served. Yet a number of judges, particularly on the larger superior courts, and most notably judges on the gargantuan Los Angeles bench, bitterly resented losing the considerable autonomy they had long exercised with county officials to the state's judicial administrators. Many of them held strong views of the man they derided as “King George” and their resentment surfaced as rebellion during the last years of George's tenure.

#### THE NEW CHIEF, COLLEAGUES AND CONSENSUS

Ronald George was Gov. Pete Wilson's first and only choice to succeed Lucas as California's 27th chief justice. Few questioned his qualifications or readiness for the post; and indeed, his elevation appears to have been a foregone conclusion. George had long been viewed as a star who had distinguished himself in nearly two decades on the Los Angeles Municipal and Superior Courts. As noted in Chapter 6, above, George's seemingly boundless appetite for judicial administration and attendant politics was well known. During the two-year Hillside Strangler trial (1981–83)—the longest criminal trial in U.S. history—he took on an unusually crushing set of extracurricular assignments, serving both as president of the California Judges Association and supervising judge of the Los Angeles criminal courts, as well as sitting on numerous panels and commissions.

Polished, yet with a terrier's persistence, George had a reputation as a skilled politician, administrator, and marketer by the time he assumed the Court's top post. Disciplined and a hard worker, colleagues recall him in a constant blur of meetings and activities, always with pen and yellow pad—even in the barber's chair. The administrative reforms he pushed as chief and earlier won him national recognition and shelves of awards. Apart from his experience and relative youth—he was 56 when he took the helm of the high court—George was well-liked by many of his judicial colleagues, politicians, and the state's bar. After joining the Supreme Court in 1991, George had earned a reputation as a capable if not brilliant judicial thinker,

and his enthusiasm for the challenge of managing the state's gargantuan court system and its often fractious judges was obvious.

The Court experienced little turnover during these years. Gov. Gray Davis tapped Carlos Moreno to replace Stanley Mosk who died in June 2001. Mosk served 37 years on the high court, longer than any other justice, and authored almost 1,700 opinions with landmark rulings in nearly every area of the law. Moreno, a Los Angeles native and the son of a Mexican immigrant, had served as Deputy Los Angeles City Attorney and practiced commercial litigation before becoming a federal trial judge. In 2005, Gov. Arnold Schwarzenegger added Carol Corrigan, a former prosecutor and Alameda County Superior Court judge, to replace Justice Janice Brown when President George W. Bush appointed her to the U.S. Court of Appeals. (Wilson tapped Brown when he elevated George, in 1996; she had been the governor's legal secretary and had served briefly on the Sacramento appellate court.)

#### JURISPRUDENCE

These appointees joined with holdovers from the Lucas Court, including Justices Joyce Kennard, Kathryn Werdegar, Marvin Baxter and Ming Chin, to produce a Court more centrist—and often liberal—than in past years, and one that more generally spoke with unanimity or at least consensus. The chief himself moderated some of more conservative positions he had taken as an associate justice and the Court's dissent rate fell significantly from the Lucas years, partly as a result of the chief's push for collegiality, with an unprecedented number of unanimous decisions.

Substantively, the Court under George's leadership was generally friendly toward prosecutors; it affirmed nearly every death sentence and largely upheld the “three-strikes” law while blunting some of its harshest elements. Employers were pleased by decisions bolstering California's at-will employment law and capping punitive awards and consumer litigation. At the same time, many credit, or blame, the Court's wage-and-hours rulings with triggering a wave of employee class actions in this area. The George Court favored strong constitutional protection for speech and press, and for transparency, notably articulating expansive public and media access rights to court proceedings and legal documents. Women and minorities gained stronger protection from discrimination, and the Court threw out a law requiring minors to receive parental permission before having an abortion. With notable exceptions, the Court largely deferred to voters and the legislature, the problematics of which were vividly exemplified by its handling of the “three-strikes” and gay-marriage cases. And if its decisions “rarely soared,” the California Supreme Court during this period maintained its 65-year status



SPECIAL SESSION COMMEMORATING THE COURT'S SESQUICENTENNIAL FEBRUARY 8, 2000,  
B.F. HASTINGS BUILDING, OLD SACRAMENTO: (LEFT TO RIGHT) JUSTICES MING W. CHIN,  
MARVIN R. BAXTER, STANLEY MOSK, CHIEF JUSTICE RONALD M. GEORGE, JUSTICES JOYCE L. KENNARD,  
KATHRYN M. WERDEGAR, AND JANICE R. BROWN

as the nation's most influential state court, at least by the measure of citations in other jurisdictions: A study tracking the citation patterns of state supreme courts from 1940 to 2005 found that California Supreme Court decisions were followed more often than those from any other state.

#### TOWARD A UNIFIED STATE JUDICIARY

George's signature administrative accomplishments include trial court unification, centralized court funding, and a menu of initiatives designed to improve civics education, increase access for unrepresented litigants, improve jury service, and raise the profile of the state court system. Each of these ideas has a long history of study and support in California and nationally. In 1906, Roscoe Pound, Harvard Law School's dean, famously criticized the multiplicity of courts and concurrent jurisdictions as archaic and wasteful. His calls were echoed by Chief Justices Phil Gibson, Rose Bird, and Malcolm Lucas, other prominent California jurists, the State Bar, and numerous panels and commissions. Meanwhile, several other states had adopted various forms of consolidation. George's packaging of these proposals as a reform that would create a true "judicial branch" in place of a fragmented system of superior, municipal, and justice courts, as well as his considerable political skill, helped push them to fruition.

So did California's precarious finances in the wake of the 1990 recession.

To be treated like a branch co-equal to the legislature and governor, George believed, the judiciary needed to "act like one." He largely succeeded in this regard—at least for a time. When George retired in 2010, funding for court operations was substantially greater than before he became chief; disparities between counties had narrowed; court rules had become more unified across the state; and a number of programs and services helped litigants of modest means, including self-help centers and expanded interpreter services.

William Vickrey, who led the Administrative Office of the Courts (AOC) until 2011, wielded the laboring oar on much of this effort. Vickrey had arrived in California in 1992 from Utah to work with Chief Justice Lucas; he took charge of a relatively low-profile agency with some 261 professional positions and a modest portfolio, namely, to oversee administration of the Supreme Court and the Courts of Appeal. By the time Vickrey resigned, in 2011, AOC staff numbered 1,100, as large as the Administrative Office of the United States Courts, which serves far fewer judicial officers, and its supervisory reach extended to most every aspect of California's trial and appellate courts.

Shortly before George's confirmation, he and Vickrey decided to visit courthouses in each of the



THE SUPREME COURT VISITS THE FIFTH APPELLATE DISTRICT'S NEW GEORGE M. BROWN COURTROOM — CHIEF JUSTICE RONALD M. GEORGE (CENTER) WITH ASSOCIATE JUSTICES JOYCE L. KENNARD (LEFT), MARVIN R. BAXTER (RIGHT), AND (STANDING, LEFT TO RIGHT) CARLOS R. MORENO, KATHRYN MICKLE WERDEGAR, MING W. CHIN, AND CAROL A. CORRIGAN.



THE NEW COURTHOUSE OF THE CALIFORNIA COURT OF APPEAL, FIFTH APPELLATE DISTRICT

PHOTOS THIS PAGE BY HOWARD K. WATKINS

state's 58 counties. George was already keenly aware of the courts' longstanding needs and the inequities in funding and facilities between counties. But the tour, which attracted newspaper reporters in virtually every county the two men visited, drew public attention to the deplorable physical condition of many county courthouses and generated momentum for reform. George later said that his support for trial court unification, state funding, and jury reforms "jelled" after he

saw the "abysmal conditions" in many county courthouses. For instance, the Paso Robles courthouse that the chief visited had been the scene of an attempted hostage taking some years before but still had no money for security. One judge there had piled tall stacks of law books around his bench as an improvised bulletproof shield. One northern county had no jury assembly room, and on the day George and Vickrey visited, jurors there huddled on the sidewalk holding umbrellas in the rain as they waited to be called to a courtroom. In another county, jurors sat all day on the concrete steps of the courthouse stairwell and had to scoot to the side when sheriffs led defendants past them in chains to and from a courtroom.

The courthouse tour, which continued over 18 months and covered an estimated 13,000 miles, also won him allies among the judiciary. "I don't think we've ever had a chief justice come here," said a Sierra County judge visited by George in late 1997. "He seems to be a decent guy who's interested in finding out what our problems are." George often met as well with local political leaders, consciously using these visits to talk about the importance of an independent judiciary and to build support for the administrative and budgetary changes he sought.

The tour was just one aspect of George's effort to raise the judiciary's visibility and build consensus for change. He was a familiar sight in Sacramento, lobbying legislators and regularly briefing successive governors on court issues. To some extent, the Court still suffered from the fallout from Lucas's caustic language in *Legislature v. Eu*, upholding California's term limits measure. Meanwhile, those term limits, which state voters imposed in 1990, had begun to hollow out the capitol's core of legislative expertise. As a result, George later recalled, some lawmakers lacked even basic civics knowledge, seemingly unaware that the judiciary is an independent, co-equal branch of California government. Not infrequently, a lawmaker would ask George or Vickrey which agency judges work for, audaciously grill the chief about a matter pending before the Supreme Court, harangue him about a decision already rendered, or block funding for some aspect of judiciary's operations out of personal pique. George was incredulous and dismayed.

By late 1997, George's personal diplomacy began to bear fruit as the legislature passed a first package of administrative reforms—transitioning trial courts from county to state funding—and appropriated additional money for badly needed new judgeships. The following year, California voters passed a constitutional amendment authorizing the superior and municipal courts in each county to voluntarily “unify” as a single, county-wide trial court. By January 2001, all 58 California counties had voted to unify their trial court operations, and municipal and justice courts ceased to exist as separate entities. The additional judgeships some counties obtained during these years, and the sizeable judicial pay raises received helped win support for unification and other major reforms.

To trial court judges used to considerable autonomy over these matters, this centralization was a naked power grab. Nowhere was this loss of power felt more keenly than in Los Angeles, which as the state's—and the nation's—largest trial court, was long used to managing its own operations and striking its own lucrative deals with the county and state lawmakers. Moreover, some Los Angeles judges genuinely feared that a unified superior court in their county, with its 400-plus judges and enormous geographic span, would simply be unmanageable. These same worries would surface as the state's trial courts moved to one-day or one-trial jury service beginning in 1999.

In both instances, the Los Angeles court has adapted but the transition gave rise to formation of a rump group, the Alliance of California Judges, committed to “accountable local management of the California courts.” Initially led by judges from Los Angeles, Sacramento, and Kern counties, the Alliance proved a potent political adversary for George and his successor, Chief

Justice Tani Cantil-Sakauye, undermining unity within the judicial branch and forcing some ugly showdowns, for example, over legislation to erode state funding.

## CONCLUSION

George's signal achievement, forging splintered local courts into a judicial branch, is of enormous significance and unlikely to be undone. The accomplishment ranks him as among California's most effective chiefs. Court unification, the first step, set much else in motion including state funding for local trial courts, the massive courthouse title transfer and revamped jury duty to a more citizen-friendly model. Paternity for these accomplishments is, of course, shared with many over decades; what George brought were the exceptional leadership and political skills to finally drive these ideas to fruition by forging alliances with legislators, governors, the bar, and his judicial colleagues. He repaired the judiciary's relationship with the legislature after the frostiness of the Lucas years; as a result, he won significant funding increases for the state judiciary in boom times and, once the recession hit, was able to hold the line for a period of time. But the chief did not get everything he wanted—no one does—and notwithstanding the demise of a long-planned computer system, the California courts still badly needed a 21st century caseload management system.

The George Court's jurisprudence has often been described as a reflection of the chief's own views—pragmatic, moderate and “steadfastly” centrist. Those views, in turn, reflected the thinking of many if not most Californians, who considered themselves (as evidenced in initiative voting and opinion polling) as being tough on crime; progressive on most social issues; holding a strong sense of individual autonomy and privacy; and seeking a positive business environment with strong consumer protections. By the time George retired, the justices seemed to have found themselves most comfortable in that space somewhere between the conservative Lucas Court of the late 1980s and 1990s and the liberal Rose Bird Court of the late 1970s and early 1980s—not always ideologically consistent but nuanced and flexible.

Perhaps most significant for the Court and the chief himself was the trio of gay marriage decisions, particularly *In re Marriage Cases*, in which the Court invalidated the 2000 voter-approved ban on gay marriage as a violation of state constitutional principles. Momentous at the time, the Court's reasoning has since been echoed in same-sex marriage cases by dozens of federal and state court rulings. That opinion, like most others during his tenure, was largely the work of Chief Justice Ronald George. With that opinion, along with creation of an independent, viable third branch of California government, he left an enduring mark on the law and California history. ★