

**ABA Communications and Media Relations Division**  
**The Growing Crisis of Underfunding State Courts**  
March 16, 2011

The ABA's [Task Force on the Preservation of the Justice System](#), co-chaired by David Boies and Theodore B. Olson, has been investigating the under-reported but increasingly serious problems resulting from the underfunding of the nation's courts. Today, as part of that on-going effort, we are releasing an informal survey of American Bar Association members that helps quantify the problems experienced by citizens and all persons seeking justice in jurisdictions around the country. The systematic underfunding of the country's courts causes delays in court proceedings, loss of staff and reduction of services. It prevents court cases from being heard and leads to delayed justice.

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“When the legislature and the governor say, ‘Well, you know, you don't have one-time money anymore, you just need to downsize the courts,’ the logical question is, ‘Who doesn't get justice now?’ And is it the — the domestic violence victims? Is it children in foster care? Is it child custody and visitation issues? Do we let criminals loose? Who is it that we should not allow into the courts anymore? ... We are a branch of government that provides the most basic rights of — of a civilization, and that's access to justice.” — Ronald Overholt, Chief Deputy Director of California Courts (ABA Task Force Hearings, Testimony, Atlanta, Feb. 9, 2011, p. 196, lines 11-22)

*This backgrounder includes information from the National Center for State Courts' Budget Resource Center, the Legal Services Corporation, the 2011 Task Force on the Preservation of the Justice System informal survey, and testimony taken at the February 2011 Hearing of the Task Force on the Preservation of the Justice System.*

**Last fiscal year, 40 out of 50 states slashed state court funding.** (<http://www.ncsc.org/Information-and-Resources/Budget-Resource-Center/States-activities-map.aspx>)

**Difficult and once-unthinkable choices are being made to fulfill constitutional responsibilities.**

- \* New Hampshire delayed all civil trials one year to satisfy speedy trial concerns in criminal proceedings. (Task Force Hearings, Testimony, p. 62, lines 22-25)
- \* Nine states have furloughed judges without pay. [http://www.ncsc.org/Information-andResources/~media/Files/PDF/Information%20and%20Resources/Budget%20Resource%20Center/Cost%20Saving%20Measures%2012\\_10.ashx](http://www.ncsc.org/Information-andResources/~media/Files/PDF/Information%20and%20Resources/Budget%20Resource%20Center/Cost%20Saving%20Measures%2012_10.ashx)
- \* Sixteen states have furloughed staff without pay. [http://www.ncsc.org/Information-andResources/~media/Files/PDF/Information%20and%20Resources/Budget%20Resource%20Center/Cost%20Saving%20Measures%2012\\_10.ashx](http://www.ncsc.org/Information-andResources/~media/Files/PDF/Information%20and%20Resources/Budget%20Resource%20Center/Cost%20Saving%20Measures%2012_10.ashx)

**There are reports that courts are running out of basic supplies.**

“We have taken to soliciting pen and pencil donations from vendors like Westlaw and Lexis. Now, that's — that is as — as tight a budget, I think, as you can get.” — Carol Hunstein, Georgia Supreme Court Chief Justice (Task Force Hearings, Testimony, p. 44, lines 2-4)

“In Ohio, Morrow County ... a municipal court has announced that they will not be processing new cases, and the reason is they've run out of paper. They don't have the funds to buy more paper. Now, if you bring your — use your own paper in filing your matters, it will get processed.” — Manny Medrano, Lawyer, Commentator (Task Force Hearings, Testimony, p. 81, lines 7-13)

**The middle class and small businesses are increasingly being shut out of the system, particularly in civil litigation.** (Task Force Survey)

### **Small Business**

“The underfunding of the state judiciary undercuts business confidence, reduces the chance a business will locate in such a state, thereby adversely affecting the state's economic environment by reducing tax revenue and providing fewer jobs for its citizens.” — Wayne Withers, General Counsel, Emerson Electric (Task Force Hearings, Testimony, p. 9, lines 10-15)

“...despite the fact that each [party in a case] may be very confident about the outcome, neither one can be certain of what that outcome is. And that means that those funds that are in dispute are tied up. Neither side can count on them; neither side can use those funds fully to make investments, to hire new employees, to do things. And this — this is a huge impact. ”

— Roy Weinstein, Economist, ERS Group (Task Force Hearings, Testimony, p. 21 lines 1-8)

**Local economies are hurt by the underfunding of the state courts.**

- In Los Angeles County, the economic impact of funding cut backs is billions of dollars to the California economy:  
[http://www.micronomics.com/articles/LA\\_Courts\\_Economics\\_Impact.pdf](http://www.micronomics.com/articles/LA_Courts_Economics_Impact.pdf)

This California study explained how court delays are tying up capital and making U.S. business less competitive:

"Litigants do not know the outcome of their dispute until it is resolved. Until then, they operate in the presence of uncertainty, the effect of which is commensurate with the amount at issue.

For example, a dispute between a supplier and purchaser in which the supplier believes the purchaser owes \$100,000 leaves both supplier and purchaser uncertain as to which party will retain the \$100,000 after disposition. The purchaser cannot invest the \$100,000 in new equipment since it may have to pay the supplier upon settlement or adjudication. Likewise, the supplier cannot hire new employees with the \$100,000 because it does not have the money in hand and because it may never receive the money. Both parties are thus constrained.

More generally, resources at issue between litigants are removed from circulation until disputes are resolved. When the duration of litigation is increased, the total amount at issue at a given point in time is increased and is not fully available to any of the litigants.... We have measured damages associated with delays in

dispute resolution as the difference between a normal return on these assets (i.e., which allows for risk and illiquidity) and a relatively low risk free return. This reduction in return exceeds \$7.1 billion from 2009 through 2012.”

— Roy Weinstein and Stevan Porter, Micronomics, Inc., *"Economic Impact on the County of Los Angeles and the State of California of Funding Cutbacks Affecting the Los Angeles Superior Court,"* December 2009, p. 15-16.

### **Civil Cases**

“When I was Chief Justice I suspended civil jury trials. I suspended civil jury trials for 12 months in the state of New Hampshire.” — John Broderick, former New Hampshire Supreme Court Chief Justice (Task Force Hearings, Testimony, p. 62, lines 22-25)

“Curtailing or eliminating court services to families exacerbates and increases the burden on our courts. Examples include reduction of, or elimination of, court-sponsored alternative dispute resolution, curtailing family services and resources, and reductions in the number of judges on family, landlord-tenant, and small claims calendars. These reductions have a direct impact on communities, and the cost is borne both in increased social services but also increased negative impact on the families and the communities involved in these disputes.” — Kim Keenan, NAACP General Counsel (Task Force Hearings, Testimony, pp. 169-170, lines 25, 1-4)

### **With court resources stretched so thin, civil trials are sidelined.**

The cost associated with repeated delays is a major concern. Of the 71 percent of survey respondents who say state court underfunding is a concern:

- \* 97 percent say clients are affected negatively by inadequate court funding.

(Task Force Survey)

- \* 78 percent also worry that court services are becoming scarce. (Task Force Survey)

Court services help civil litigants navigate complicated legal processes, a service principally important when so many civil litigants go to court without a lawyer.

### **Impact on the Middle Class**

With the lingering effects of the long recession still being felt across the country, the middle class is joining the poor in facing serious access to justice issues. A telling 88 percent of lawyers and judges who responded say affordability is a problem and caution that middle-income Americans may be forced out of the court system by increasing costs. (Task Force Survey)

### **Costs from state court budget cuts are passed on to poor and middle-class Americans who can least afford them.**

- \* Inadequate state court resources mean delays, a problem according 82 percent of respondents who say underfunding is a problem. (Task Force Survey)

- \* Delays mean higher costs for clients.

- \* Courts in 22 states, reeling from years of budget woes, have raised court fees and fines. <http://www.ncsc.org/Information-and->

[Resources/~//media/Files/PDF/Information%20and%20Resources/Budget%20Resource%20Center/Cost%20Saving%20Measures%2012\\_10.ashx](http://www.lsc.gov/media/Files/PDF/Information%20and%20Resources/Budget%20Resource%20Center/Cost%20Saving%20Measures%2012_10.ashx)

**Just as court services are being cut and the poor and middle class are feeling the squeeze, one of the only ways millions of Americans will ever be able to get into the courtroom — Legal Services Corporation — is under threat.**

- The most common cases that local legal aid providers handle deal with family and housing issues. (Legal Services Corporation, <http://www.lsc.gov/about/lsc.php>)
- Family cases are about helping victims of domestic violence obtain protective and restraining orders, determining child custody and helping family members become guardians to orphans. (Legal Services Corporation, <http://www.lsc.gov/about/lsc.php>)
- Housing cases include landlord-tenant disputes, help for homeowners facing foreclosure and tenants who are being evicted because their landlord is being foreclosed upon. (Legal Services Corporation, <http://www.lsc.gov/about/lsc.php>)

LSC funding is already too low: According to the U.S. government, half of all legal-service-qualified applicants are turned away. <http://www.lsc.gov/justicegap.pdf>

“Michigan has been able to hold steady on — on the provision of legal services so that we are still providing legal aid to one of two people who qualify for it, but we're not getting beyond that threshold.” — Janet Welch, State Bar of Michigan Executive Director (Task Force Hearings, Testimony, p. 145 lines 18-22)

**Those who go to court without a lawyer face an uphill battle and can inadvertently contribute to worsening court delays.**

- \* 75 percent of respondents said that litigants who represent themselves in court are more likely to lose their cases. (Task Force Survey)
- \* 76 percent of respondents point out that these cases move more slowly. (Task Force Survey)
- \* 86 percent said proper procedure is not being followed in these cases. (Task Force Survey)