

By Robin Meadow

The Looming Crisis in California's Courts

Apathy over the budget crisis imperils a cornerstone of our democratic system

What is the unique genius of the American system of government? What has made it a model for every nation aspiring to freedom? Most lawyers do not have to think long about the answer: It is the separation of powers and its bodyguard, an independent judiciary.

This should not be so hard for people to figure out, particularly at a time when every day brings a deluge of stories about a country, Iraq, that, by design, singularly lacked even the pretense of these cornerstones of our way of life. But the state of California does not seem to get it—in a big and very dangerous way. And so far, no one seems to be listening.

I hope it comes as no surprise to you to hear that California is in the midst of an unprecedented budget crisis, one that reaches into every corner of government operations and will affect everyone in a variety of unpleasant ways. What is surprising, however, is the widespread silence that has greeted the disproportionately disastrous effect that the crisis threatens to have on the judicial system. Even under the most optimistic assumptions about what the budget will ultimately look like, the courts will have to drastically scale back their services. The most pessimistic projections will send the courts right over a cliff. By one reckoning, the Los Angeles County Superior Court would lose half of the budget supporting its civil and family law courts. Any lawyer who was trying cases in the 1980s already has a taste for what that means: Trials don't start until a case is up against the five-year rule; trials get rescheduled numerous times at enormous cost to clients; judges are not available to hear emergency motions; the list goes on and on.

But the broader impact will go far beyond inconveniences for lawyers and their clients:

- Families, children, and victims of elder abuse will suffer. By jeopardizing prompt access to our courts for those in need of domestic violence and child welfare protective orders or protection from elder abuse, reduced funding will expose those most defenseless in our community to potentially life-threatening harm. It will curtail the availability of custody and visitation orders that protect children from parental conflict and from parental resort to such crude self-help tactics as abduction and concealment. And hearing delays and diminishing court supervisory powers will provide elder abusers with unprecedented opportunities to dissipate estates and commit fraud against the elderly.
- Emergency civil judicial relief will become increasingly unavailable. Whether the threat is a foreclosure by one of the many perpetrators of homeowner frauds, the devastation of an environmentally sensitive area, or the theft of a high-tech company's closely guarded trade secrets, courts hobbled by the proposed budget cuts will be unable to provide effective and timely relief. Citizens unable to obtain prompt

judicial relief may seek other, more problematic means of resolving their disputes.

- Many in need will lose access to justice. The burden of reduced funding will likely weigh most heavily on the poor who rely on court-sponsored equal-access programs. Cutbacks would also result in the reduction of services for self-represented litigants—services that, for example, assist over 100,000 persons a year in family law matters in Los Angeles County alone. Disputes that can no longer find resolution in small claims courts, in court-sponsored mediations, or with the assistance of court informational services may erupt into destructive self-help.

- Courthouse and courtroom security will be compromised. Reduced funding will substantially undermine the courts' ability to provide reasonable public security within our courthouses, even as our society faces increasing threats to its security. The danger extends beyond the obvious security concerns in the criminal courts. Tempers are often highest, and the potential for violence greatest, in family law and juvenile courts.

Leading the Battle

Lawyers are guardians of our court system. We cannot sit passively by and allow such wanton destruction. Your Association has already been active. In an effort to formulate a unified legislative strategy, the Association has been engaged in extensive dialogues with the Los Angeles County Superior Court, the Administrative Office of the Courts, and the State Bar. The Association recently hosted a well-attended conference that featured speakers from every part of the system: Senator Joe Dunn, chair of the Senate Budget Committee's subcommittee on the judiciary; Bill Vickery, director of the Administrative Office of the Courts; Jim Herman, president of the State Bar; Hon. Robert Dukes, presiding judge of the Los Angeles County Superior Court; Steve Cooley, Los Angeles district attorney; Mike Judge, Los Angeles public defender; Dan Grunfeld, president of Public Counsel; Steve English, incoming chair of the Association's Litigation Section; and Edith Matthai, Association vice president. We are building on that effort by reaching out to bar leaders all across Southern California, asking them to join the Association in demanding that the leg-



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islature recognize the special needs of the judicial system and the indispensable role it plays in the life of our society.

You Can Help

What can you do? Among the illuminating remarks made at the conference was Senator Dunn's explanation of why the judicial system is facing this battle—why the legislature, in his words, is such a “tough jury.” Senator Dunn is an experienced trial lawyer who understands both the judicial system and the legislature from the inside. He knows what he is talking about, and we need to take his words to heart. In a nutshell, he noted that legislators—much younger than they used to be and with far few lawyers in their ranks than there used to be—do not see the courts and the millions who use them as part of their constituencies. Those people, the members of the legislature seem to believe, do not vote.

We know better. People who depend on the courts are voters, and many of them are people and businesses with extraordinary power. The legislature needs to learn that. One obvious thing you can do is write to your legislator and ask your friends and clients to do so as well. The State Bar will be posting information and suggested talking points and

facts on its Web site (www.calbar.ca.gov), but a personally crafted appeal is always the most effective.

However, as dramatic as the need for this kind of action is, it really is not the main event. There is a more systemic problem that we also must address, because if lawyers do not address it, no one will.

The courts are facing this crisis because, despite their status as an independent branch of government, the legislature holds their purse strings. In one sense, this is inevitable; after all, only the legislative branch has the power to tax. But, in Chief Justice Marshall's timeless phrase in *McCulloch v. Maryland*, “The power to tax involves the power to destroy.” I do not believe that any legislator intends to destroy the judicial system, but whether that destruction comes by design or neglect will make little difference once it has happened.

We should be particularly concerned about the possibility that now or in the future the legislature may try to use the unprecedented power that the budget crisis has conferred upon it to exact concessions from the judicial system that it should never be asked to make. A legislature that is not attuned to the demands of litigation and is largely devoid of lawyers who understand the judicial system

cannot be expected to restrain itself in limiting the ability of lawyers to represent their clients and of courts to do justice.

This risk—and I do not think we should deceive ourselves into believing that it is illusory—should persuade us that our goal must be not just to survive the current budget crisis, but also to strive for systemic restructuring that will provide the courts with at least some protection from the vagaries of economic caprice and political convenience. But beyond this—or perhaps in order to accomplish this—we have a far greater task. We face this crisis because the legislature's ignorance of the importance of the judicial system only mirrors that of the public at large. The public is not only uninformed but uninterested, as we can see with the unmistakable trend toward lower voter turnouts with succeeding elections. I do not have an answer to ignorance and apathy, and I harbor no quixotic belief that the Association can solve this society-wide problem. But I do know that if lawyers do nothing—lawyers who are the most knowledgeable about the judicial system and the most sensitive to its indispensability—then we might as well begin resigning ourselves to living in a third-rate, third-world system of justice.

I hope we will not let that happen. ■

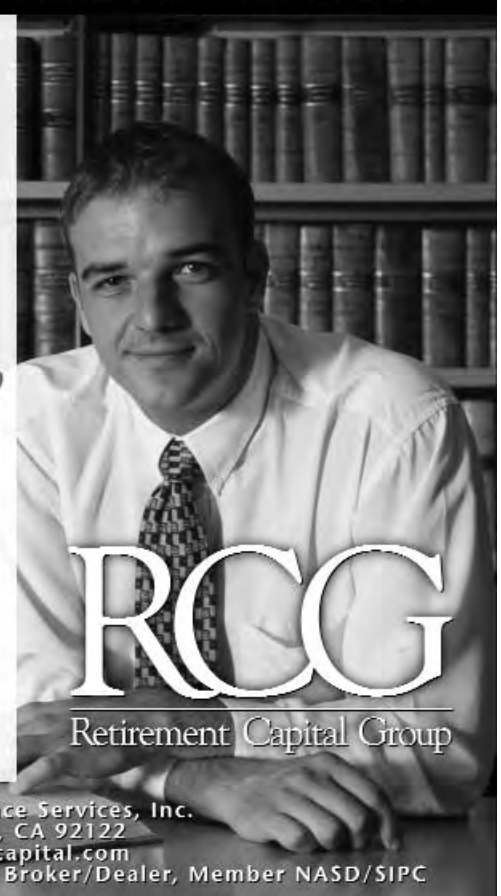
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