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Judicial Efficacy – Providing Justice in State Courts in the Midst of a Budget Crisis

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a Budget Crisis

by Mark Gould

Justice must be administered “freely and without sale, completely and without denial, promptly
and without delay.” – Maine Constitution

Introduction

In the wake of the recession of 2008, budgets have been slashed in many if not all states.
In this continuing environment of lingering economic hardship and sluggish recovery, funding
for state courts has decreased to perilously low levels. To illustrate the effects of inadequate
court funding, it is reported that “crowded court calendars… delayed the trial of a violent felon
two days beyond speedy trial deadlines. Released from prison, he broke into the home of a young
mother and raped her, and while fleeing from police, crashed his vehicle into a motorist, killing
the innocent bystander instantly.”¹

The lack of judicial funding also affects us in our own backyard. Recently, legislators in
Massachusetts were incensed to discover that eleven courthouses in the Commonwealth were

¹ I would like to thank Judge Francis J. Larkin, Professor at the University of Massachusetts School of Law -
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invaluable feedback on earlier drafts. Also, a debt of gratitude is owed to librarian Cathy O’Neill, at UMass Law for
research assistance and Ricky Bonilla for assisting in conceptualization.

¹ BOARD FOR JUDICIAL ADMINISTRATION COURT FUNDING TASK FORCE, JUSTICE IN JEOPARDY: THE COURT
FUNDING CRISIS IN WASHINGTON STATE at 4 (Dec. 2004) available at
closing, including some in the very districts where the legislators resided. Former Chief Justice of the Massachusetts Supreme Judicial Court, Margaret H. Marshall, said “about one-third of the people in the country are involved in court disputes each year and that justice is not the same as transportation, education, or even health care.” Justice is essential to our system of ordered liberty because if justice is denied to just one, then all of us are in jeopardy. Or, stated in another way, “injustice anywhere is a threat to justice everywhere.”

In order for the courts to function effectively, there must be adequate funding, current expenses must be evaluated and revised and revamped where necessary. New programs should be implemented to maximize the cost savings of technology and innovative improvements. The public perception of the judiciary will increase as the finances allocated there are used in the most prudent and efficacious manner. With consistent funding and the proper utilization of funds, the state judiciary will be able to enforce their respective states’ Constitutions and be able to protect the public with justice and equity.

**Adequate Funding**

Without adequate funding, state courts cannot function effectively and in some cases are even forced to close their doors. “[T]he House of Delegates Resolution and Report by the ABA Task Force on Preservation of the Justice System states that the courts of our country are in

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crisis,” and that “[o]ver the last three years, the courts of most states have been forced to make
due with 10 to 15 percent less funding than they had in 2007.” 6 It is further noted that “[m]any
of our states judiciaries receive as little as 1 percent or less of the annual state operating budget
and not one receives more than 3.5 percent.” 7 State courts have responded by ordering staff
layoffs, mandating unpaid furlough, raising fees, cutting heat to buildings, and closing
courthouses. 8 “The largest impediment to the courts is the lack of law clerks and court
officers.” 9 The court needs essential personnel in order to process complaints, file documents,
guard prisoners, and provide administrative support for Judges. With fewer operating hours, an
ever increasing caseload and more pro se litigants, the court administration is currently stretched
to the limit. 10

There are millions of lawsuits filed annually in state courts that are delayed because of
inadequate funding. 11 These suits include many foreclosure cases, credit card cases, and others

6 Id. at 43.

7 William T. Robinson III, Rising to Historic Challenge: Funding For State Courts, Preserving Justice, JUDGES’

8 Dixon, supra note 5, at 1.


10 In a Symposium on state court funding that was held in September, 2011, and sponsored by the University of
Kentucky School of Law, Kentucky Law Journal, American Bar Association, LexisNexis, & the National Center for
State Courts, the topic of state judicial finding and independence was addressed by prominent legal scholars, judicial
officials, and other government leaders across the United States. The recurring theme of the conference was that our
states’ judicial systems must be accessible in order to be impartial, just, and fair. The effects of our judicial system
are far reaching and include victims, defendants, affected families, businesses, lawyers, and ultimately the entire
public. Keeping the courtrooms open and operating efficiently must be a priority. Current ABA President William
Robinson III, emphasized in a clarion call to all that the public’s courts “are the key to constitutional democracy,
because otherwise: No Courts, No Justice, No Freedom.” Symposium, Crisis in the Courts,
www.americanbar.org/portals/courtunderfunding.

11 Editorial, Threadbare American Justice: Severe Budget Cuts are Gutting the Effectiveness of the State Court
related to the economic downturn.\textsuperscript{12} In order for our states to continue to function as the laboratories of democracy\textsuperscript{13} that they are where 95 percent of all legal cases are filed,\textsuperscript{14} justice must be administered “freely and without sale, completely and without denial, promptly and without delay.\textsuperscript{15} Former Massachusetts Supreme Judicial Court Justice, Margaret H. Marshall, stated that “state courts are the legal equivalent of the emergency room.”\textsuperscript{16}

Since the Judiciary lacks the sword of the Executive Branch and the purse of the Legislative Branch, “the judiciary is beyond comparison the weakest of the three departments of power.”\textsuperscript{17} The Judiciary’s power must then come from the support of the people. Chief Justice Warren E. Burger has noted that:

A sense of confidence in the courts is essential to maintain the fabric of ordered liberty for a free people and three things could destroy that confidence and do incalculable damage to society: that people come to believe that inefficiency and delay will drain even a just judgment of its value: that people who have long been exploited in the smaller transactions of daily life come to believe that courts cannot vindicate their legal rights from fraud and over-reaching; that people come to believe the law - in the larger sense - cannot fulfill its primary function to protect them and their families in their homes, at their work, and on the public streets.\textsuperscript{18}

\begin{itemize}
\item \textsuperscript{12} Id.
\item \textsuperscript{13} New State Ice Co. v. Liebmann, 285 U.S. 262, 387 (1932) (Brandeis, J., dissenting) (emphasizing the unique nature of state courts in our federal government system).
\item \textsuperscript{14} Robinson, \textit{supra} note 7, at 10.
\item \textsuperscript{15} ME. CONST. art. I, § 19.
\item \textsuperscript{16} Symposium, \textit{Crisis in the Courts, supra} note 9.
\item \textsuperscript{17} Dixon, \textit{supra} note 5, at 1 quoting Federalist No. 78 by Alexander Hamilton.
\end{itemize}
Justice Sandra D. O’Connor further articulated that “not adequately funding the third branch of government will cause a delay in justice and that, in turn, will hurt the state economically.” 19 In addition “[e]very state constitution establishes and enumerates the responsibilities of the state judiciary as one of the three co-equal branches of government.” 20 Therefore, “to fulfill their constitutional duties, courts need to be sheltered from budget squalls.” 21

In order to attract competent talent to the bench, judicial salaries should be relatively competitive with what the judge could earn in the private sector. Otherwise, many gifted and able candidates will not opt to accept a judicial appointment or will not remain on the bench for a significant period of time. Although some may consider judges serving at significant salary reductions to be a noble sacrifice to serve the public, practically speaking, judges are just as susceptible to economic conditions as the rest of us.

Some would suggest that court fines and penalty assessments should be used as a source of funding for the judiciary, but this cannot be considered a viable and permanent alternative. The funding of a branch of government should not be subject to the fluctuations of a fee system, but, “should be funded largely from general tax revenues.” 22 Also, fee revenue is not a substantial source of funding, raising fees inhibits the public’s access to the courts, and funding


20 Robinson, *supra* note 7, at 12.

21 Id.

based on a fee system places the judge in the unenviable position of “determining the appropriate punishment for the offense on one hand and raising revenue for the courts” on the other.  

While it is important on the one hand to increase court funding in these perilous times to ensure that justice is properly meted out, it is equally as essential to critically assess the courts use of funds. We must ensure that courts are using their current funding to the maximum advantage through regularly revamping, revising and renewing court operations.

**Revamp, Revise, and Renew**

There must be a regular and thorough evaluation of current court expenditures and practices and improvements must be made where they are needed. Michael L. Buenger, a senior counsel at the National Center for State Courts stated that we must “find ways to operate more efficiently by performing what business calls a ‘penetrating review of operations.’”  

By critically assessing performance and setting goals, effectiveness and reliability will increase. North Carolina Supreme Court Justice, Mark Martin, acknowledged that “the judiciary should enhance transparency, visibility, accountability, and accessibility.”  

Director of South Carolina Court Administration, Rosalyn W. Frierson, stated that “court records should be accessible 24/7 without stepping foot in the court,” and also mentioned that “Twitter is now used to get the word out on last minute stay of executions.”

New methods of technology are currently being implemented in every professional industry. Many courts currently use a court website to inform the public on hours of business and

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23 *Id.*

24 Olivier, *supra* note 3, at 28.

25 *Id.*

26 *Id.*
locations and to otherwise direct traffic. Now, even oral arguments from the Supreme Judicial Court of Massachusetts are available for viewing from the comfort of your living room through a partnership with Suffolk University Law School. The courts can save money, time, and resources through an increased focus on regularly assessing the efficacy of current expenditures through annual independent audits. In addition, the courts will be better able to maximize resource effectiveness by keeping up to date with new trends in technology.

Training, Tools, and Technology

Many courts are still using antiquated technology and equipment and outdated methods to accomplish routine tasks, which if performed with more efficient methods, would save time, effort, physical space, and money. Some of the court computers take extensive amounts of time to boot up. Then, some computers are not compatible with discs containing exhibits that lawyers provide the court. An investment in modern computers and technology will save the court time and translate into assessable justice for all of us.

One technological improvement in Massachusetts is the “web-based Mass Courts [which] increas[ed] the timely disposition of cases by more than 15 percent.” Another improvement that many courts have already implemented is in the use of electronic filing (E-filing). E-filing significantly reduces the amount of time for a clerk or judge to locate a particular case, to file recent developments, and to keep track of an entire docket of cases in one central system. The implementation of E-filing would result not only in financial savings, but also is a more environmentally conscious alternative to paper filing and will conserve our limited natural

27 Massachusetts Supreme Judicial Court oral arguments are available at http://www.suffolk.edu/sjc/archive/index.html.

28 Robinson, supra note 7 at 10.
resources. Professionals across many disciplines are switching over to electronic filing methods as evidenced by the growing use of electronic medical records, electronic tax filings, and electronic bill payment systems. Electronic filing and archival systems are the way that courts will operate in the future. The Judiciary and the public will continue to benefit incrementally as this switchover occurs in more and more courts.

Dictated oral decisions are another use of technology that will save the court’s resources. By dictating a decision in a case, the judge saves the time that would have been allocated to drafting a lengthy opinion and disseminating it to the parties. The judge will then be able to devote that time saved to managing an ever growing court docket. However, the recording still needs to be transcribed in order to be disseminated to the parties. In addition, court proceedings such as hearings or motions that typically require a court reporter may be recorded. This would result in a substantial savings of salary expenses for court reporters. Technology driven jury instructions would provide jurors clear and concise instructions without taking up the court’s time and would reduce the risk of miscommunication.29

**Innovative Programs that Address Core Issues**

In order to assist the court maximize the effectiveness of its funding, the judiciary must critically evaluate whether implementing innovative, narrowly tailored, and cost-effective programs would assist the courts in accomplishing the principals of punishment. The prevailing view is that punishment and sentencing addresses four main principals: 1) restraint, 2) retribution, 3) rehabilitation, and 4) deterrence.30 “It is highly debatable whether society really

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29 Symposium, *Crisis in the Courts, supra* note 9.

succeeds in deterrence or rehabilitation.” 31 The courts can save money by investing in programs that address these key issues of rehabilitation, recidivism, and deterrence. The real goal of having fewer crimes committed and therefore less need for expensive criminal prosecutions and prison overcrowding is a much more financially responsible and socially desirable outcome. “The United States [has] the highest incarceration rate in the world, [with] one in every 31 adults… [either] in prison, on parole, or on probation… [and a]t any one time, half a million individuals sit in jail awaiting trial, not yet convicted of a crime. The annual cost of our supervised population is a staggering $9 Billion.” 32

**Drug Addict Rehabilitation**

One such program that addresses a core area of concern is rehabilitation for people who are addicted to drugs. Instead of “throwing the book” at simple possession violators, we can offer them assistance in overcoming their addictions. As a society, we can save the harsher penalties for the drug sellers and traffickers. When we decriminalize the health condition of having a drug addiction, we can save money by focusing on the real issue. The finances saved will include the cost to arrest, process, imprison, and supervise the addict. The better option is to use finances to provide a substance abuse program to treat the root issue of the problem.

For example, Portugal has experimented with a program that offers addicts who are convicted of possessing small amounts of drugs therapy instead of jail time. 33 Glenn Greenwald of the Cato Institute, a libertarian think tank, who researched the effect of Portugal’s program

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31 Judge George Jacobs, Criminal Law Review, Address at University of Massachusetts School of Law – Dartmouth (Dec. 7, 2010).


after 5 years reports that “[j]udging by every metric, decriminalization in Portugal has been a resounding success.”  

The rates of teenage use of drugs have decreased as well as HIV infections due to sharing dirty needles.  

Also, many jurisdictions have implemented Drug Treatment Courts (DTC’s). “Drug treatment courts have rapidly proliferated throughout the United States since the first one was implemented in Miami, Florida, in 1989.”  

Studies have shown that up to 80% of inmates have substance abuse issues. The DTC’s promote addressing the root cause of the problem and “reduce repeated criminal behavior, avoid the costs of incarceration, and rehabilitate the offender, thereby ultimately benefitting the community.”  

The DTC monitors the offender and requires regular court appearances and compliance with directives from an assigned case worker. Many jurisdictions have met with success. Of course the program does not work with everyone and sanctions and imprisonment are necessary consequences of noncompliance with the program. A temporary downside to DTC is the initial funding required to implement the program and hire case workers. However, by treating the addiction, rehabilitation may occur saving an addict’s life, saving taxpayers money, and bettering the community.

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34 Id.  
35 Id.  
37 Id.  
38 Id. at 35.  
39 Id.  
40 Id. at 34.  
41 See id. at 35.
Prison Labor

Sentencing prisoners to physical labor will act as an effective deterrent to people committing crimes. Prisoners are not exploited today like they have been in the past “due to New Deal-era restrictions on the interstate sale of goods produced by prison labor.” In addition, the prisoner’s labor will assist to finance the expense of their imprisonment. Unpaid labor today by prisoners, solely in order to operate the prisons, totals over six billion dollars annually. Prisoners can perform a variety of manufacturing or agricultural duties. Since fewer crimes will be committed, there will be a resultant decrease in the prison population thereby improving the state’s finances. An increasing number of states such as New Jersey, Ohio, and Georgia are currently looking towards prisoner work as a source of financial assistance to help alleviate state budgetary concerns. Prison labor is performed much more humanely than it has been in the past and there is even discussion regarding prisoners forming labor unions.

A program in Massachusetts prisons, “Computers for Schools,” trains inmates to refurbish and upgrade computers and donates them to local school districts. This initiative has distributed close to 4,000 computers and has saved the state over $1 Million. This is an ideal

43 Id.
45 Id.
47 Id.
solution for prisoners, state administrators, and schools. More constructive avenues like this are needed to assist inmates gain marketable skills while giving back to the community.

**Educate Offenders**

By offering basic primary education as well as technical training in prisons, prisoners can develop marketable skills that enable them to contribute positively to society upon their release. However, at least half of prisons have cut their prison educational funding in the last five years. This initiative will directly decrease the recidivism rate and save money because of a decrease in the prison population. One study shows the recidivism rate in United States prisons at 67 percent. That study also showed that when prisoners earned their GED while in prison, the recidivism rate substantially decreased. In Missouri, inmates that earned their GED while in prison and obtained a full time job upon their release had reduced chances of returning to prison by 33 percent. Maryland’s prison educational program saves the state $24 million annually in incarceration costs, while the operating costs of the program are under $12 million.

However, there have been a few studies that have shown little or no difference in employment prospects and income due to a GED obtained while in prison. Some people will inevitably complain that we should not be rewarding criminal offenders with education and

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50 *Id.*

51 *Id.*

52 *Id.*

advanced training options. It is true that prison education programs do not serve as an effective
deterrent effect to criminal activity, but they do provide a vital role in encouraging a criminal to
seek a different lifestyle, contribute positively and integrate successfully into society, and be less
likely to reoffend criminally, which consequently benefits the entire community.

Other Programs

One Florida County has saved money and reduced the rate of juvenile offenses by
decriminalizing minor offenses. 54 Juvenile arrests were down 46 percent and the first time
reoffender rate was reduced by 80 percent. 55 Youth were able to avoid “criminal records and jail
time,” and the financial benefits to the state were significant. 56 Another highly successful
program is Brooklyn’s ComALERT, which assists ex-convicts in their transition from prison,
provides drug treatment and counseling, housing, employment placement assistance, and boasts
over $10 Million in savings to the state since 2004. 57

Another avenue that has worked in some jurisdictions is restorative justice (RJ). RJ
“seeks to restore the relationship between the criminal offender and his or her community.” 58 RJ
uses mediation involving the community to stress accountability and has a “resultant potential
for rehabilitating juvenile offenders.” 59 These are but a few of the solutions that have worked to

54 Robinson, supra note 7, at 11.

55 Id.

56 Id.

57 Id.; See also http://www.brooklynda.org/ca/comalert.htm.

58 Daicoff, supra note 36, at 30.

59 Id.
both decrease the burden on the courts and to increase the effectiveness of the crime deterrence and criminal rehabilitation.

**Conclusion**

In order to ensure that our courts are able to adequately dispense justice, consistent and adequate funding is necessary. Improvements can be made to the way funds are allocated to and within the judiciary. New cost saving initiatives and social programs can implemented to both increase efficacy and improve fiscal responsibility. With adequate funding and responsible use of finances, the judiciary may operate independently and as a coequal branch of government and provide the public with justice.

The public relies on the judiciary to perform its role in to convict criminals, protect domestic violence victims, protect those suffering from lack of adequate medical treatment, issue needed restraining orders, grant divorces, and settle civil disputes to name a few. 60 Legislatures and the public have an essential role in ensuring that the needs of the judiciary are met. As informed citizens, we have a duty to support adequate funding for the courts as well as to support new and innovative programs to assist the judiciary in achieving equitable justice for all.

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60 Symposium, *Crisis in the Courts*, supra note 9.