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## Addressing the funding crisis facing our nation's largest court system

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"Crippling"

"Devastating"

"Collapsing"

These are just some of the terms used recently by California judges, including Chief Justice Tani Cantil-Sakauye, to describe the latest round of draconian state court budget cuts that went into effect earlier this month. By any account, the nation's largest court system is reeling after cumulative reductions that total more than \$1 billion during the last three years (or more than 30 percent of prior general fund support). With courthouses

shuttered, key personnel laid off and critical services curtailed or eliminated, our third branch of government is at grave risk of defaulting on the promise of justice.

And California is not alone: After 40 states slashed court budgets last year, the American Bar Association issued a report this August describing the resulting harm to public safety, economic activity and access to justice. "*Crisis in the Courts*" - produced by the ABA Task Force on Preservation of the Justice System co-chaired by David Boies and Theodore Olson - goes on to decry the threat these cuts pose to our democratic system of government:

"Ultimately, the continuing failure to address the underfunding of our judicial system threatens the fundamental nature of our tri-partite system of government. If, as John Marshall observed, the "power to tax is the power to destroy," it seems just as clear that the repeated refusal of the legislative and executive branches to provide adequate funds for a state's justice system becomes a "power to destroy" the courts as a separate and co-equal branch."

### We face many challenges in California, but rarely has a core democratic institution faced a crisis of these proportions.

How we arrived at this deplorable state of affairs - barely a decade after passage of a landmark state court funding bill that was supposed to bring stability and access to the courts - seems obvious at first blush. The state budget turmoil of recent years is the proximate cause. The legislative and executive branches control the purse strings, placing the justice branch at the mercy of a dysfunctional political process awash in red ink. At the same time budgets are being slashed, however, court dockets are also on the rise.

During the 10-year period beginning in the mid-1990s, state court filings remained relatively stable. Though criminal cases still represent four out of every five filings in

### SPECIAL REPORT

#### Top Neutrals

Top Neutrals



Thursday, October 20, 2011

#### Government

##### Committee considers cutting courthouse construction projects

Local officials traveled from across the state Wednesday to ask court leaders to spare their courthouse construction projects from state budget cuts.

#### Environmental

##### Enviro groups target railways using hazardous waste law

Environmental groups are suing two major railway companies alleging they are failing to control toxic diesel pollution from their California rail yards and putting surrounding communities at risk of cancer and other serious health problems.

#### Judicial Profile

##### Joyce M. Cram

Superior Court Judge Contra Costa County (Martinez)

#### Litigation

##### Prop. 8 donors seek protection

The proponents behind Prop. 8 are headed to federal court today in an effort to force Secretary of State Debra Bowen to remove from her office's website a list of donors who backed the contentious measure.

##### Judge rules suit against hedge fund accounting firm can proceed

Lawyers representing two investment management company executives notched a win in court Wednesday that will allow their fraud case against a San Francisco hedge fund accounting firm to proceed.

#### Immigration

##### Report criticizes federal immigration program

Thousands of U.S. citizens have been arrested under a controversial federal immigration enforcement program that disproportionately targets Latinos, according to a report issued by UC Berkeley School of Law on Wednesday.

#### Law Practice

##### Orrick environmental lawyer heads to boutique

A leading environmental transaction attorney at Orrick, Herrington & Sutcliffe LLP has left to open a San Francisco office for a Seattle-based boutique firm.

California, lawsuits related to the economic downturn - including consumer debt cases, foreclosures, and family law matters - have pushed civil dockets up more than 20 percent since 2006. And civil litigants will bear the budget-cutting brunt of the delays and outright denial of justice. With reduced hours, personnel and services, courts will have no alternative but to shelve or abandon these cases. We may soon see justice lines, like bread lines, unless this crisis is resolved.

Like most disasters, this one will fall most heavily on those who can least afford it. Recent Census Bureau data tell us that more than 6 million Californians now live in poverty, including 2.2 million children (or almost 1 in 4 kids in our state). Millions more live above the poverty line but cannot afford to hire a lawyer. Unlike better-off Californians, low- and modest-income litigants cannot opt out of the crumbling public justice system through private dispute resolution. Unrepresented parties are least able to navigate the system on their own, and courthouse-based programs developed to assist them have been some of the first to fall under the budget axe.

In the meantime, the two single largest sources of funding for legal aid to the poor are both in decline. In inflation adjusted dollars, federal legal services funding now represents less than one-half the high water mark reached 30 years ago, and the U.S. pales in comparison to peer nations in per capita spending on civil legal aid. Interest on lawyers trust accounts - which supplements federal legal services funding in all 50 states - has been decimated due to historically low interest rates.

Other government, philanthropic and private sources of support have also fallen during the recession. Even with modest state investments in legal aid through the Equal Access Fund and the recently enacted Sargent Shriver Civil Counsel Act, fewer than 900 of the more than 172,000 active California attorneys - or roughly one-half of 1 percent of lawyers in the state - are dedicated to serving the poor. With one lawyer for every 10,000 or more eligible clients, our most vulnerable residents will have the least access to justice in this deepening era of scarcity.

In response to this crisis, the recent ABA report recommends that states: establish a predictable and adequate funding system, create a more efficient and effective system of delivering justice, and communicate the importance of the justice system to the public and political decision makers. As first-hand witnesses to the crisis in the justice branch, and with special responsibility for the quality of justice in society, lawyers, bar associations and law schools must speak out and act together to ensure access to the courts for all Californians.

First, every lawyer should give generously to the Justice Gap Fund and to local legal services providers ([www.CAForJustice.org](http://www.CAForJustice.org)). Each lawyer should also increase *pro bono* efforts to meet the statutory obligation "never to reject, for any consideration personal to himself or herself, the cause of the defenseless or the oppressed" ([www.CAProBono.org](http://www.CAProBono.org)). Lawyers for the poor can reduce the growing burden on the courts of unrepresented litigants while ensuring access to justice for those who most need it.

But our charitable giving and *pro bono* work alone will not be sufficient to close the growing justice chasm. All legal professionals should support the work of the newly-established Open Courts Coalition, a statewide steering committee convened to propose a more secure funding base for the courts. The 17-member steering committee is comprised of bar leaders from the public, private and government sectors, including lawyers in plaintiffs and defense firms and civil and criminal practice. The coalition will lobby the governor and legislature to restore court funding in next year's budget. If unsuccessful, the coalition intends to sponsor a statewide ballot initiative to guarantee adequate court funding.

Finally, we urge all Californians to participate in upcoming hearings on the civil justice crisis ([www.CaliforniaHearings.org](http://www.CaliforniaHearings.org)). Co-sponsored by the State Bar and OneJustice in partnership with business leaders, corporate counsel, foundation directors, state and county officials, and private bar and nonprofit leaders - and modeled on a similar successful effort in New York state - the hearings will present and gather information about "the fundamental role of the courts and legal assistance in society and the devastating effects, especially for low-income Californians, of chronic underfunding and recent budget cuts." Hearings are scheduled in Sacramento (Nov. 15), San Francisco (Nov. 30), Los Angeles (Dec. 2), and Irvine (Dec. 7).

We face many challenges in California, but rarely has a core democratic institution faced a crisis of these proportions. Now is the time to act.

## Intellectual Property

### Oracle-Google Java trial postponed

A San Francisco federal judge on Wednesday vacated the Halloween trial date of Oracle Corp.'s Java-related copyright and patent infringement lawsuit against Google Inc.

### U.S. Court of Appeals for the 9th Circuit Convicted defense contractor may get a second chance

A key figure in a bribery scandal involving a congressman in San Diego may get another chance to contest his conviction, a 9th U.S. Circuit Court of Appeals panel ruled Wednesday.

## Bankruptcy

### Judge approves settlements in Heller bankruptcy

A federal bankruptcy judge on Wednesday approved settlement agreements between the Heller Ehrman LLP estate and 10 law firms that hired away its shareholders.

## California Supreme Court

### State justices take up DNA collection case

The state Supreme Court has agreed to review whether it's constitutional to collect DNA samples from anyone arrested for a felony.

## Litigation

### SF city attorney settles consumer suits

The San Francisco City Attorney's Office this week secured settlements in two cases that will require defendants to pay the city and county nearly \$1.9 million.

### High court set to hear redevelopment case arguments

The state Supreme Court announced Wednesday it will hear oral arguments Nov. 10 in a case that will determine the fate of redevelopment agencies in California.

### Judge shows approval for OC class action deal

A final settlement appears imminent in a business litigation case that was once estimated to be one of the largest nationwide consumer class actions filed in Orange County.

## Law Practice

### Quinn Emanuel to open office in Moscow

Quinn Emanuel Urquhart & Sullivan LLP plans to open an office in Moscow to serve high net-worth clients who do business in the U.S., joining a small number of American law firms that have a presence in Russia.

## Real Estate

### Real Estate Deals

Lotus Cafe, a vegetarian restaurant, leased 3,625 square feet of retail space for 10 years in San Diego for \$1.4 million

## Letter to the Editor

### If only women acted more like men ...

A reader responds to "Forget the glass ceiling, take the elevator up."

## Judges and Judiciary

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