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Threadbare American Justice

It is an American article of faith that the path to justice runs through the courts. State courts, which handle a vast majority of civil and criminal cases, are in a state of crisis. Across the country, deep budget cuts and increased caseloads have created long delays and a denial of basic access to justice.

More than 48 million cases, excluding traffic cases, were filed in state courts in 2008. Since then, courts have been flooded with thousands of new foreclosures, credit card cases and other lawsuits driven by economic hardship. At the same time, the recession and the deepening budget crunch have led states to lay off judges, law clerks and other courthouse personnel, which means longer waits for trials and delays even for recording judgments so that cases can be resolved.

Swamped by this huge docket, no state court system now delivers justice as it needs to. In Massachusetts, budget cuts have drastically reduced the number of court-appointed guardians for children who need to have their legal interests represented. In Oregon, cuts have reduced critical support staff, slowing the processing of cases. And these are two of the best-run systems in the country.

An American Bar Association task force led by David Boies and Theodore Olson, the former solicitor general, took on this issue in a valuable report issued last week, called [“Crisis in the Courts: Defining the Problem.”](#)

The report rightly says that “even the most eloquent constitution is worthless with no one to enforce it.” As they cut spending on the courts, state legislatures are degrading public safety by delaying the resolution of criminal cases; hurting vulnerable populations like children and the elderly, who need the courts’ protection; and damaging our system of government by weakening the judiciary, a separate and co-equal branch.

The courts in Georgia, the report says, have seen their financing shrink by 25 percent the last two years, so their budget (which also pays for prosecutors) now constitutes

less than 1 percent of the state's overall budget. Most state systems have had significant cuts in the past three years.

The report offers some worthy recommendations that could help provide adequate budgets and increase alternative ways to resolve conflicts. For instance, it calls on states to adopt judicial financing formulas that recognize changes in caseloads. Without these and other reforms, access to justice will continue to contract.

Even this sober report barely begins to convey to national and state policy makers how much cuts to the judiciary have harmed individuals and democracy. As budget-starved courts become more dysfunctional, they lose the confidence of the public, which counts on them for relief, adding to the institutional crisis.

These courts may continue to process cases, but they will be less and less able to deliver justice.