

## 2011-2012 BELLWOOD KEYNOTE ADDRESS

# AGAINST ANY WINDS THAT BLOW: THE SPECIAL ROLE OF THE JUDICIARY IN PROTECTING RIGHTS AND SECURING THE RULE OF LAW

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BOISE, IDAHO

INTRODUCTION BY DEAN DONALD J. BURNETT\*\*

When William T. (Bill) Robinson III became President of the American Bar Association in August, 2011, his presidential calendar already included a trip to Idaho in September. As President-Elect of the ABA, Bill Robinson had warmly accepted an invitation to make the Sherman J. Bellwood Memorial Lecture an early touchstone of his presidency. Recognizing the Bellwood Lecture as one of American legal education's most distinctive public lecture programs, he saw an opportunity to focus the attention of the academic community, the legal profession, and public officials upon two interwoven crises: the shrinking resources devoted to our state and federal courts, and the eroding public comprehension of the need for an independent, impartial judiciary.

In Moscow on September 13, 2011, President Robinson delivered a public lecture entitled *The American Judiciary: Underfunded, Misunderstood, and More Important than Ever*. Throughout the day, the College of Law also presented a program of panel discussions on constitutional issues, commemorating the 220th anniversary of the Bill of Rights. The following day, September 14, the Bill of Rights program continued in Boise, keyed by another Bellwood address by President Robinson entitled *'Against Any Winds That Blow' . . . The Special Role of the Judiciary in Protecting Rights and Securing the Rule of Law*. The Boise address, which closely paralleled the Moscow lecture, was delivered to an audience that included members of the public, the legal profession, and state and federal public officials in all three branches of government. In both Moscow and Boise, President Robinson emphasized the need for law-related civic education. To underscore the point, he asked that his Bellwood honorarium be directed to supporting civic education in Idaho.

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With this generous act, and in his remarks, President Robinson revealed the soul of a practicing lawyer who cares deeply about the rule of law, who honors the special place of the judiciary in our constitutional system, and who embraces the lawyer's role as a public citizen with a special responsibility for the quality of justice. Bill Robinson's professional life has taken him from a two-person law practice in Kentucky to a senior position in a multistate firm, Frost Brown Todd, LLC, with more than 475 attorneys in Ohio, Kentucky, Indiana, Tennessee, and West Virginia. He has devoted a career to civil litigation and appellate practice, with emphases in class actions, environmental law, product liability, governmental affairs, and medical malpractice defense. A Fellow of the American Academy of Appellate Lawyers, he has been recognized each year from 1997 to 2011 by *Best Lawyers in America*. Before ascending to the presidency of the ABA, he served as the ABA's Treasurer, as a Director of the American Bar Foundation, as a member of the ABA Board of Governors and House of Delegates, as a member of the Diversity Law Institute, and as president of the Kentucky Bar Association. In 2010 the U.S. Legal Services Corporation awarded him a Certificate of Appreciation for Lifetime Pro Bono Services/Support.

The College of Law is grateful that President Robinson chose Idaho as a venue for his compelling message, and that he readily accepted the invitation of our students to publish his remarks in the *Idaho Law Review*.

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It's an auspicious day to talk about our Bill of Rights and the values that we hold dear as a nation. Almost 200 years ago today Francis Scott Key penned, *Defense of Fort McHenry*, a poem we know better as the *Star-Spangled Banner*.<sup>1</sup> We only sing the first stanza of that poem, which famously ends with a question. Key asked if, when the fog of war dissipated in the morning, the flag still waved.<sup>2</sup> Of course, it did.

We take for granted that every morning when we wake up, the same flag will hang above our porch. It's a foregone conclusion. In much the same way, we always assume that we will have access to our courts. After all, our courts are fundamental to securing the rights guaranteed to us by the first ten amendments.

Yesterday, I talked about the topics addressed in previous Bellwood Lectures. I told the audience that speakers in years prior discussed the rule of law, and the enduring strength and many interpretations of our Constitution.<sup>3</sup> Others explored sovereignty and the nature of national security.<sup>4</sup>

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1. *Star-Spangled Banner and the War of 1812*, ENCYCLOPEDIA SMITHSONIAN (Nov. 2004), [http://www.si.edu/Encyclopedia\\_SI/nmah/starflag.htm](http://www.si.edu/Encyclopedia_SI/nmah/starflag.htm) (last visited Oct. 27, 2011).

2. *The Star-Spangled Banner*, SMITHSONIAN, <http://americanhistory.si.edu/starspangledbanner/the-lyrics.aspx> (last visited Oct. 27, 2011).

3. *Past Lecture Speakers*, UNIV. OF IDAHO, <http://www.uidaho.edu/law/newsandevents/bellwoodlectures/pastspeakers> (last visited Oct. 25, 2011).

4. *Id.*

There is a system that binds all of these concepts together, and in fact mediates between some of them. That system is our system of justice, a system that we always assume will be open to us. In fact, our system of justice is disastrously underfunded, chronically misunderstood and—I assure you—more important to preserving the Bill of Rights than ever.

The key here is access to our courts. The question isn't whether we will wake up and see the flag sailing above Fort McHenry. The question is whether we will choose as a nation to invest in our courts so that we will wake up and have a place to go to settle disputes in our everyday lives and defend the rights we cherish.

Across our nation, our courts are in crisis—they are being starved. I am confident that this statement may initially impress you as a bit overbroad and maybe exaggerated, but such is not the case.

Last year, the ABA created the Task Force on Preservation of the Justice System, co-chaired by Theodore Olson and David Boies.<sup>5</sup> You may know them from the *Bush v. Gore* case.<sup>6</sup> Over the last year, this ABA Task Force, under their bi-partisan leadership, discovered just how badly our state courts are hurting financially.

According to the National Center for State Courts, which is working closely with the ABA on these issues, forty out of fifty states cut court funding in fiscal year 2010,<sup>7</sup> and budgetary cuts have continued in 2011 from coast to coast.<sup>8</sup> Some states, including Maine and Oregon, will need to find ways to operate without 10 percent of their already withered budgets.<sup>9</sup> Remember, we are talking about one of the three co-equal branches of government. Yet across the United States we see that each and every state judiciary must try to operate on less than some individual departments in the executive branch.

Across this great nation, too many of our judiciaries receive as little as 1 percent or less of the state budget pie, and few states receive more than 3 percent. Idaho spends approximately \$43 million annually on its courts.<sup>10</sup>

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5. *Incoming American Bar Association President to Appoint Ted Olson and David Boies to Task Force on Justice System*, ABA NOW (Aug. 6, 2010), <http://www.abanow.org/2010/08/incoming-american-bar-association-president-to-appoint-ted-olson-and-david-boies-to-task-force-on-justice-system/>.

6. *See Bush v. Gore*, 531 U.S. 98 (2000). Theodore Olson and David Boies acted as counsel for the petitioner and respondent, respectively.

7. ABA COMM'NS & MEDIA RELATIONS DIV., THE GROWING CRISIS OF UNDERFUNDING STATE COURTS 1 (Mar. 16, 2011), [http://www.abanow.org/wordpress/wp-content/files\\_flutter/1300290469court\\_funding\\_crisis\\_background2.pdf](http://www.abanow.org/wordpress/wp-content/files_flutter/1300290469court_funding_crisis_background2.pdf).

8. *Budget Percent Change Maps and Tables*, NAT'L CTR. FOR STATE COURTS (Dec. 7, 2010), <http://www.ncsc.org/Informationand-Resources/~media/Files/PDF/Information%20and%20Resources/Budget%20Resource%20Center/Budget%20Percent%20Change%20Maps%20and%20Tables%2012-7-10.ashx> (tallying the percent change in each state's 2010 and 2011 judiciary budgets).

9. *Id.*

10. IDAHO LEGIS. BUDGET BOOK FOR FISCAL YEAR 2012, 61st Leg., 1st Sess. at 3–55 (2011), available at <http://www.legislature.idaho.gov/budget/publications/PDFs/LBB/FY2012/>

So even here, only a little less than one percent of your state operating budget must currently cover the cost of your entire justice system.<sup>11</sup> Try building an elementary school today for just \$30 million. I saw the Kibbie Dome, by the way, at the University and the renovation you just completed cost that much.<sup>12</sup>

So far, fifteen states have reduced the number of hours when the courts are open to serve the public.<sup>13</sup> Compounding the backlog of cases and consequent delay in our courts, thirty-one states have delayed filling much-needed court administration positions.<sup>14</sup> Twenty-six states have delayed filling critical judicial vacancies.<sup>15</sup> Like many government employees, staff in sixteen states and judges in nine states are being furloughed without pay.<sup>16</sup> And, fourteen states laid off judicial staff.<sup>17</sup>

I am advised that Idaho has also suffered serious consequences as a result of inadequate court funding, including salary freezes and cuts, furloughs, layoffs, intentionally unfilled judicial vacancies, reduced court hours, and higher filing fees and fines.<sup>18</sup>

Still, other states around the country confront uniquely challenging circumstances. A municipal court in Ohio announced that no new cases could be filed unless the litigants brought their own paper to the courthouse.<sup>19</sup> The court simply had no money for office supplies.<sup>20</sup> This is a reoccurring theme across the country. In Georgia, the budget is so lean that courts solicit pen and pencil donations from vendors like LexisNexis and Westlaw.<sup>21</sup> A local bar association in North Carolina ran an office supply drive to collect paper and copier toner because shortages meant that parties could not exchange documentation, even in serious criminal cases.<sup>22</sup>

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FY2012LBB.pdf.

11. *See id.* at 23.

12. Elisa Eiguren, *Dome's Done*, ARGONAUT, [http://uiargonaut.com/sections/news/stories/2011/august/81911/domes\\_done.html](http://uiargonaut.com/sections/news/stories/2011/august/81911/domes_done.html) (last visited Oct. 25, 2011).

13. List of Cost-Saving Measures by State, NAT'L CTR. FOR STATE COURTS (Dec. 2010), [http://www.ncsc.org/InformationandResources/-/media/Files/PDF/Information%20and%20Resources/Budget%20Resource%20Center/Cost%20Saving%20Measures%2012\\_10%20corrected%20version.ashx](http://www.ncsc.org/InformationandResources/-/media/Files/PDF/Information%20and%20Resources/Budget%20Resource%20Center/Cost%20Saving%20Measures%2012_10%20corrected%20version.ashx).

14. *Id.*

15. *Id.*

16. *Id.*

17. *Id.*

18. *State Activities Map: Idaho*, NAT'L CTR. FOR STATE COURTS, <http://www.ncsc.org/Information-and-Resources/Budget-Resource-Center/States-activities-map/Idaho.aspx> (last visited Oct. 25, 2011).

19. D. Wilson, *Paperless Court is Motionless*, THE COLUMBUS DISPATCH, Mar. 14, 2009), [http://www.dispatch.com/content/stories/local/2009/03/14/morrowct.ART\\_ART\\_03-14-09\\_A1\\_4HD7RR4.html](http://www.dispatch.com/content/stories/local/2009/03/14/morrowct.ART_ART_03-14-09_A1_4HD7RR4.html).

20. *Id.*

21. Brett Barrouquere, *Bar Association Looking at Cuts to State Courts*, SAN JOSE MERCURY NEWS, Sept. 22, 2011, [http://www.mercurynews.com/news/ci\\_18952521](http://www.mercurynews.com/news/ci_18952521).

22. Douglas J. Brocker, *Message from the President*, WAKE BAR FLYER (Wake Cnty. Bar Ass'n, Cary, NC), July 2009, at 1–3, available at [http://www.wakecountybar.org/resource/resmgr/bar\\_flyer\\_archives/jul\\_09.pdf](http://www.wakecountybar.org/resource/resmgr/bar_flyer_archives/jul_09.pdf).

Lastly, in Alabama, a judge asked the charitable arm of a local bar association to donate money to the court to help pay juror stipends.<sup>23</sup>

Right now, California courts are reeling from the additional elimination of \$350 million from the state's judiciary budget,<sup>24</sup> the largest reduction in California's history.<sup>25</sup> It now looks like San Francisco may be getting a supplemental infusion of cash,<sup>26</sup> but the city announced last month that it still must close twenty-five of sixty-three courtrooms,<sup>27</sup> while giving pink slips to forty percent of the court staff.<sup>28</sup> There was a story recently in the *New York Times* about how stressed and overburdened San Francisco courts have already become.<sup>29</sup> The lines there are often so long that people are actually bringing lawn chairs to use while they wait.<sup>30</sup>

One of the more distressing stories the Task Force heard came from New Hampshire, where depleted court financial resources were so strained that the resulting case backlog forced the suspension of all civil trials by then-Chief Justice Broderick for an entire year.<sup>31</sup> Lawyers are fond of the maxim "justice delayed is justice denied." Well, in New Hampshire, justice was denied for a year because of inadequate financial support for the courts there.

It is astounding how little real money is saved by reduced court funding, when at the same time, so much is sacrificed to the detriment of so many. As indicated earlier, many state judiciaries receive about one percent of their state's operating budget, so massive percentage cuts in court budgets do not represent—in real dollars—a significant financial savings for the state operation budget as a whole. Consider that earlier this year,

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23. Kent Faulk, *Jefferson County Chief Judge Seeks Private Donations to Help Pay Jurors*, BIRMINGHAM NEWS, June 28, 2011, [http://blog.al.com/spotnews/2011/06/Jefferson\\_county\\_judge\\_asks\\_fo.html](http://blog.al.com/spotnews/2011/06/Jefferson_county_judge_asks_fo.html).

24. EDMUND G. BROWN, JR., GOVERNOR OF CAL., 2011-12 STATE BUDGET 15, available at <http://www.ebudget.ca.gov/pdf/Enacted/BudgetSummary/FullBudgetSummary.pdf>.

25. News Release, Judicial Council of Cal., Judicial Council Allocates Historic Judicial Branch Budget Reductions (July 25, 2011), <http://www.courts.ca.gov/documents/nr34-11.pdf>.

26. News Release, Superior Court of Cal., Cnty. of S.F., San Francisco Reaches Agreement with AOC for Emergency Funding to Reduce Layoffs, Courtroom Closures (Aug. 31, 2011), <http://www.sfsuperiorcourt.org/Modules/ShowDocument.aspx?documentid=2910>.

27. News Release, Superior Court of Cal., Cnty. of S.F., The San Francisco Superior Court Notifies the AOC of Reduced Clerks' Office Hours, Closure of 25 Courtrooms Effective October 3, 2011 (Aug. 3, 2011), <http://sfsuperiorcourt.org/Modules/ShowDocument.aspx?documentid=2895>.

28. Paul Elias, *San Francisco Court Closure: 200 Employees and 25 Courtrooms Gone*, HUFFINGTON POST (July 18, 2011), [http://www.huffingtonpost.com/2011/07/18/san-francisco-courtroom-closure\\_n\\_902097.html](http://www.huffingtonpost.com/2011/07/18/san-francisco-courtroom-closure_n_902097.html).

29. Jesse McKinley, *As Budgets Continue to Shrink, the Lines Will Grow in California Civil Courts*, N.Y. TIMES (Aug. 24, 2011), <http://www.nytimes.com/2011/08/24/us/24courts.html?pagewanted=all>.

30. *Id.*

31. Barrouquere, *supra* note 21.

New York slashed \$170 million from the state's 2012 judiciary budget.<sup>32</sup> That is about six percent of the entire, annual New York judiciary budget.<sup>33</sup> That \$178 million cut means 500 people who used to work for New York courts are now unemployed.<sup>34</sup> You would expect that to put 500 people out of work and hamstringing New York's court system, the state would expect a significant savings as a result. But, in fact, \$178 million represents just two-tenths of one percent of the 2012 New York state operating budget as a whole.<sup>35</sup> In other words, for every dollar New York spends, taking away six percent of the total judiciary budget only saves New York a fraction of a penny.

While these cutbacks are often justified in the name of saving tax dollars, it's almost impossible to calculate the real cost to the public, to businesses, and to society in terms of access to needed justice, the value of which is often tied to the timing of the judicial remedy that is sought and direly needed. People require access to our courts when they need it, not years from now. Likewise, businesses, including the vast number of small business, which are the backbone of this nation's economy, need open and available courtrooms.

Commerce depends on the reliability and timeliness of the justice system. Among its many other benefits to our society, it is this historical dependability of our courts that has made the United States globally the most secure opportunity for business growth and international investment throughout our history. If a company buys machine tool parts from another company, and those parts are never delivered, where can the business go to resolve the dispute if the courthouse is closed? We know—because economists have told our ABA Task Force—that such uncertainty costs businesses big money and, as a result, it costs states sorely needed revenue.<sup>36</sup> Businesses will simply not do business in places where the judiciary is financially unable to operate effectively and in a timely manner.

The cost to society of inadequate court funding is even more difficult to measure. In Minnesota, one-third of the criminal cases filed take more

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32. See Press Release, N.Y. State Bar Ass'n, Statement on the Judiciary Budget (Apr. 5, 2011), <http://www.nysba.org/AM/Template.cfm?Section=Home&ContentID=47791&Template=/CM/HTMLDisplay.cfm>.

33. Joel Stashenko & Daniel Wise, *'Hundreds' of Layoffs Loom as Judiciary Prepares to Slash Another \$70 Million*, N.Y. L.J., March 29, 2011, at 1.

34. *Id.*

35. See ANDREW M. CUOMO, GOVERNOR OF N.Y., ENACTED BUDGET FINANCIAL PLAN FOR FISCAL YEAR 2012, at 10 (2012), available at <http://publications.budget.ny.gov/budgetFP/2011-12EnactedBudget.pdf>.

36. See, e.g., Roy Weinstein & Stevan Porter, ECONOMIC IMPACT ON THE COUNTY OF LOS ANGELES AND THE STATE OF CALIFORNIA OF FUNDING CUTBACKS AFFECTING THE LOS ANGELES SUPERIOR COURT 10 (Dec. 2009), available at [http://www.micronomics.com/articles/LA\\_Courts\\_Economics\\_Impact.pdf](http://www.micronomics.com/articles/LA_Courts_Economics_Impact.pdf); The Wash. Econ. Grp., Inc., THE ECONOMIC IMPACTS ON THE GEORGIA ECONOMY OF DELAYS IN GEORGIA'S STATE COURTS DUE TO RECENT REDUCTIONS IN FUNDING FOR THE JUDICIAL SYSTEM 10 (Jan. 24, 2011), available at <http://www.gabar.org/public/pdf/news/2011%20Georgia%20Bar%20Economic%20Impacts.pdf>; The Wash. Econ. Grp., Inc., THE ECONOMIC IMPACTS OF DELAYS IN CIVIL TRIAL IN FLORIDA'S STATE COURTS DUE TO UNDER-FUNDING 9 (Feb. 9, 2009), available at [http://www.floridabar.org/TFB/TFBResources.nsf/Attachments/1C1C563F8CAFFC2C8525753E005573FF/\\$FILE/WashingtonGroup.pdf](http://www.floridabar.org/TFB/TFBResources.nsf/Attachments/1C1C563F8CAFFC2C8525753E005573FF/$FILE/WashingtonGroup.pdf).

than a year to be resolved.<sup>37</sup> Similarly, because Georgia cannot afford to provide constitutionally required counsel in some capital cases, a capital case has languished there for five years,<sup>38</sup> raising serious Sixth Amendment speedy trial concerns. It is clear that a public not served by the institutions of its government will cease to have faith and trust in those same institutions.

We need to ask ourselves: how essential is the rule of law to our constitutional democracy? This year is the 220th anniversary of our Bill of Rights. The first ten amendments to our Constitution are virtually “American scripture.”<sup>39</sup> They have transcended the mere words on the page. Those words of the Bill of Rights continue to validate and vindicate something very special about our national character. Those words continue to speak to us as a people on a very personal level. Those first ten amendments to our Constitution are sacred.

The Bill of Rights may be a part of the Constitution, but it is separate in ways that go well beyond just purpose and tone. In many ways, our Bill of Rights is more like the Declaration of Independence, written fifteen years earlier than the Constitution. The Declaration of Independence has no direct bearing in law, but it is one of our most cited and inspirational affirmations of fundamental human rights.<sup>40</sup>

The phrase that every child knows—“all men are created equal”—has been on the lips of every American who has fought for fundamental fairness under law. From Lincoln at Gettysburg, opening what may be the greatest and shortest speech in history,<sup>41</sup> to the steps of the Lincoln Memorial where Doctor King told us that equality is more than a dream,<sup>42</sup> the sacred words of the Declaration of Independence carry the weight and imprimatur of a heroic age.

It is appropriate then, that our contemporary struggle for more adequate funding for our state courts brings us to cite “American scripture” like the Declaration of Independence and the Bill of Rights, because these documents represent a kind of indictment against governmental authority when it becomes oppressive. The Declaration of Independence is really a

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37. *State Budget Survey*, NAT’L CTR. FOR STATE COURTS (Dec. 7, 2010), <http://www.ncsc.org/information-and-resources/budget-resource-center/~media/Files/PDF/Information%20and%20Resources/Budget%20Resource%20Center/budget%20narratives%2012%207%2010.ashx>.

38. Bill Rankin, *Lack of Funds for Death-Penalty Defense Cited in Bid for Dismissal*, ATLANTA JOURNAL-CONSTITUTION, March 9, 2010, <http://www.ajc.com/news/gwinnett/lack-of-funds-for-358363.html>.

39. See generally PAULINE MAIER, AMERICAN SCRIPTURE: MAKING THE DECLARATION OF INDEPENDENCE (1997).

40. See generally Lee J. Strang, *Originalism, The Declaration of Independence, and the Constitution: A Unique Role in Constitutional Interpretation?*, 111 PENN ST. L. REV. 413 (2006).

41. Abraham Lincoln, President of the United States, *The Gettysburg Address* (Nov. 19, 1863).

42. Martin Luther King, Jr., “I Have a Dream Speech” (Aug. 28, 1963).

list of complaints against King George. The Bill of Rights is really a list of allegations against a government that goes too far in the exercise of its power.

Each of the ten amendments to our Constitution, the Bill of Rights, has been legally challenged at some point in our history. Suffice it to say, from time to time, the state's attempted interpretation of citizens' rights may be at odds with its citizens' interpretation. And where do we go to resolve that historical tension other than to our courts?

When our rights are infringed, there is only one place to go: the courthouse. Courts are designed to be the arbiters of that tension between the state and its individual citizens over the appropriate scope and attempted exercise of governmental authority.

Consistently throughout our country's history, courts have been instrumental in protecting the rights of the oppressed minority. From the beginning of our country that was a concern. Alexis de Tocqueville worried that the "tyranny of the majority" would crush the freedom of those who stood opposed to the majority's will.<sup>43</sup> "I am not so much alarmed," he wrote, "at the excessive liberty which reigns in that country, as at the inadequate securities which one finds there against tyranny."<sup>44</sup> We all know the sad legacy of what the majority in this country can do to the minority. We should remember that while our courts have sometimes made historically wrong decisions, our courts have also stood more frequently as a fire-wall against some of the worst aggression of the other two branches of our government.

Governments, for allegedly benign reasons or in the name of "security," will often reach for excessive control. If our courts are not open and available when that occurs, we will be helpless and without remedy. Our misunderstood, underfunded, constantly overburdened courts are the only institutions that can stand toe-to-toe with the other two branches of government and tell them, "No."

One of the more eloquent quotes in a legal opinion offered the title of my talk today. Justice Black, speaking for the majority in *Chambers v. Florida* said this about the authority of the government and our Sixth Amendment:

Under our constitutional system, courts stand against any winds that blow as havens of refuge for those who might otherwise suffer because they are helpless, weak, outnumbered, or because they are non-conforming victims of prejudice and public excitement. . . . No higher duty, no more solemn responsibility, rests upon this Court, than that of translating into living law and maintaining this constitutional shield deliberately planned and inscribed for the benefit

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43. ALEXIS DE TOCQUEVILLE, DEMOCRACY IN AMERICA 255 (John Canfield Spencer ed., Henry Reeve trans., George Adlard 3d ed. 1839).

44. *Id.* at 256.

of every human being subject to our Constitution—of whatever race, creed or persuasion.<sup>45</sup>

Courts must also be the one “safe place” for the public—a safe place for individual, citizen voices to be heard. All of us must have and protect the right and the freedom to use that open forum of the courtroom. That courtroom must be open to protect families. That courtroom must be open to validate and protect contracts for business. That courtroom must be open to keep the wheels of justice turning. That courtroom must be open to protect and validate personal rights that prove we are a free society.

As we have discussed, our judiciary is disastrously underfunded, chronically misunderstood and yet—I assure you—our courts are more important to our basic freedom than ever before.<sup>46</sup> The core of the issue is access to justice. In that regard, I’d like to tell you a story about why access to courts is paramount.

Norm, a Vietnam War veteran, was living in a car. Norm has a severe mental illness that makes it very difficult for him to live a fulfilling life. One day, Norm lost his Supplemental Security Income, food assistance, and veteran’s benefits because of a mistake. The Social Security Administration and the Department of Veterans Affairs were notified that Norm had an outstanding warrant in Florida. As it turns out, that warrant was quashed, but neither agency found out. With no money, no housing assistance, and no healthcare, Norm became one of the more than 100,000 veterans who go to sleep homeless every night.

I’m happy to tell you that, right now, Norm has a roof above his head and enough food to eat. I know his story because he found help from a legal service provider. They worked with Social Security and the VA to get Norm emergency relief and then to restore all the things that were taken from him. Norm fought for our country. He gave up a bit of his freedom so that future generations could enjoy theirs. Decades later, Norm was cast out and were it not for legal aid we would count him among the lost.

The more I think about Norm, the more clear it becomes to me that the innocent and our most vulnerable in society will suffer the most as our courts are gradually closed, one after another, and our system of justice goes missing in action.

I mentioned that Norm received help from a legal aid group. I hope that you are all familiar with the Legal Services Corporation in this country and its important mission. For those who are not, “LSC is the single largest provider of civil legal aid” nationally to low-income Americans.<sup>47</sup> LSC money is delivered to every county, in every congressional district, in

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45. *Chambers v. Florida*, 309 U.S. 227, 241 (1940).

46. See ABA COMM’NS & MEDIA RELATIONS DIV., *supra* note 7.

47. *What is LSC?*, LSC.GOV, <http://www.lsc.gov/about/lsc.php> (last visited Oct. 22, 2011).

every state, including Washington, D.C., and our territories.<sup>48</sup> Ninety-five percent of LSC's budget goes towards grants for legal services—a remarkable success story for any grant-purposed nonprofit.<sup>49</sup>

Every year, LSC-funded programs resolve nearly one million civil cases in this country.<sup>50</sup> That number is astounding. It is a testament to the hard work of lawyers who volunteer, or who are paid very little, to help approximately 2.3 million people every year.<sup>51</sup> If you're impressed by that figure, you should be staggered by this one—right now it is estimated that due to lack of financial resources, legal aid groups must turn away about half of the people who come to them for help. In other words, there are one million legal cases for civil remedy for our most vulnerable population who must continue to go unrepresented.<sup>52</sup>

The types of cases we're discussing go to the heart of our daily lives. In this state, you have Idaho Legal Aid Services. They helped more than 4,300 clients in 2009.<sup>53</sup> That's about one-in-five struggling Idahoans who needed help.<sup>54</sup> These cases are about family. These are cases about struggling to live day-to-day, about keeping a roof over heads, about the disabled being treated with dignity. This is about a veteran having enough to eat. That's what the justice system means, day-to-day, to the vast majority of Americans. In fact, for the more than fifty seven million Americans who qualify for LSC help, free or reduced-cost legal advice is the only lifeline they have.<sup>55</sup> That's why efforts to deeply reduce or eliminate funding for LSC in the face of underfunded courts are so dangerous.

Right now, Congress is poised to make a tragic decision to eliminate a huge percentage of what we invest as a nation so that the most vulnerable in our society can have their needed day in court. In July, an appropriations subcommittee of the House of Representatives passed a \$104-million cut recommendation for LSC.<sup>56</sup> That is approximately a quarter of the entire current LSC budget.<sup>57</sup> It's estimated that if this cut were to occur, courtroom doors across this country would be closed in the faces of 235,000 Americans.<sup>58</sup> Numbers that large are hard to contemplate. Instead of trying to think of a quarter million faces, just think about a veteran who sleeps in a car and scavenges for food. But for the hope that they provide,

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48. *Program Information: Overview*, LSC.GOV, [http://www.lsc.gov/program/program\\_overview.php](http://www.lsc.gov/program/program_overview.php) (last visited Oct. 31, 2011).

49. *What is LSC?*, *supra* note 47.

50. *Id.*

51. *Id.*

52. LSC, DOCUMENTING THE JUSTICE GAP IN AMERICA 9 (Sept. 2009), [http://www.lsc.gov/pdfs/documenting\\_the\\_justice\\_gap\\_in\\_america\\_2009.pdf](http://www.lsc.gov/pdfs/documenting_the_justice_gap_in_america_2009.pdf).

53. IDAHO LEGAL AID SERVS., 2009 ANNUAL REPORT 2 (2009), [http://www.idaholegalaid.org/files/ILAS\\_2009\\_Annual\\_Report\\_sm\\_Final.pdf](http://www.idaholegalaid.org/files/ILAS_2009_Annual_Report_sm_Final.pdf).

54. *Id.*

55. Press Release, LSC, Statement by John G. Levi, Chairman, Board of Directors, On New Fed. Poverty Data (Sept. 16, 2010), [http://www.lsc.gov/press/pressrelease\\_detail\\_2010\\_T261\\_R27.php](http://www.lsc.gov/press/pressrelease_detail_2010_T261_R27.php).

56. Press Release, LSC, House Proposal Would Cut Civil Legal Aid by \$104 Million (July 6, 2011), [http://www.lsc.gov/press/pressrelease\\_detail\\_2011\\_T274\\_R35.php](http://www.lsc.gov/press/pressrelease_detail_2011_T274_R35.php).

57. *Id.*

58. *Id.*

for the dignity they offer, for all the ways that they help the less fortunate in our society find a foundation they can build upon, for the peaceful resolution of disputes, legal services and pro bono lawyers can only serve their clients if the courtroom doors are unlocked and wide open.

The problems of underfunded state judiciaries and underfunded legal aid groups are clearly interconnected. Legal aid and court funding are two sides of the same “access to justice coin.” Money for our courts means access to justice for our citizens and for small business. If we do not adequately fund our courts, the public cannot access our courts. If we do not adequately fund legal service providers, the most vulnerable in society cannot access our courts. All of this about the need to adequately fund our courts is so obvious. So why does court funding continue to decline?

I respectfully submit that the primary reason our justice system continues to face ever declining funding, state after state, is a pervasive lack of civic awareness in this country, going back at least two generations.<sup>59</sup> Legislators apparently do not understand or sufficiently appreciate how harmful an across-the-board budget cut is to the judicial system. They don’t realize or adequately appreciate just how many of their constituents need judicial relief though legal aid. And worse, the next generation of voters may know even less about what our courts do and why they are so essential in protecting fundamental rights and liberties of our citizens.

Right now, civics is one of the lowest priorities in the schoolhouse.<sup>60</sup> As many of you know schools are required to test students on reading and math knowledge under the No Child Left Behind Act, which ties test scores to federal education dollars.<sup>61</sup> If it is tested, as is the case with reading and math, it is taught—to the detriment of other subjects such as civics. It is a sad commentary about our country that the federal government—of the people, by the people—has put civics on the endangered species list.

Earlier this year, Newsweek polled Americans using the U.S. citizenship test.<sup>62</sup> Almost forty percent of Americans failed the test.<sup>63</sup> And yes, Americans did very poorly on the questions related to law and our legal system. Two-thirds, for example, did not know that the Constitution is the supreme law of the land.<sup>64</sup> The fact is that the next generation of voters is more likely to know the first and last names of the three judges on Ameri-

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59. COMM’N ON SEPARATION OF POWERS & JUDICIAL INDEPENDENCE, ABA, AN INDEPENDENT JUDICIARY 62 (1997), [http://www.americanbar.org/content/dam/aba/migrated/2011\\_build/government\\_affairs\\_office/indepenjud.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/migrated/2011_build/government_affairs_office/indepenjud.authcheckdam.pdf).

60. Joel Westheimer, *Introduction – The Politics of Civic Education*, 37 PS: POL. SCI. & POL. 231, 233 (2004) (“Although the rhetoric supporting civic education abounds, educating democratic citizens remains a low priority in relation to other educational concerns.”).

61. *See* 20 U.S.C. §§ 6311(a)(1), (b)(1)(C) (2006).

62. Andrew Romano, *How Dumb are We?*, NEWSWEEK, Mar. 28, 2011, at 56.

63. *Id.*

64. *Id.* at 59.

can Idol than know three Supreme Court justices. A large percentage polled cannot name the Chief Justice of the United States.<sup>65</sup>

This general lack of civics understanding is having horrible consequences for everyone in our country. An electorate ignorant about its own history and unaware of the historical struggle for freedom in this country, has little interest in defending or adequately funding the institution that protects that freedom—our courts. One of the three co-equal branches of government. We must teach civics more widely to preserve the values that have guided and validated our constitutional democracy so well, throughout our history. The future of our freedom is at stake . . . unless we do something to achieve more adequate funding of our courts in every state in this country.

The ABA is continuing the work of the Task Force on Preservation of the Justice System, bringing judges, lawyers, court employees and those affected by this crisis together, to discuss strategies to help our courts gain needed funding as the courts continue to work more efficiently and effectively.<sup>66</sup> The Task Force will also continue to educate policymakers about this growing need for more adequately funded courts and timely justice.<sup>67</sup>

As Officers of the Court, lawyer members of the ABA have been consistent and insistent advocates for more adequate funding for our courts,<sup>68</sup> for Pro Bono representation<sup>69</sup> and for the critically needed access to justice work of LSC.<sup>70</sup> It is a sacred privilege to be an Officer of the Court. But being an Officer of the Court also brings with it serious responsibilities, not the least of which is standing up for our courts. If not us, who? If not now, when?

Courts simply must be open, available, and adequately staffed. No one would accept closing one day a week the local emergency room, or the local fire house or the local police station. So too for our courts. We must protect our constitutional democracy by standing up for our courts and for access to justice—for everyone. Otherwise: No courts. No justice. No freedom.

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65. Tanya Roth, *FindLaw Survey: Can You Name the Supreme Court?*, FINDLAW (June 2, 2010, 9:42 AM), [http://blogs.findlaw.com/law\\_and\\_life/2010/06/findlaw-survey-can-you-name-the-supreme-court.html](http://blogs.findlaw.com/law_and_life/2010/06/findlaw-survey-can-you-name-the-supreme-court.html).

66. *Incoming Bar Association President to Appoint Ted Olson and David Boies to Task Force on Justice System*, *supra* note 5.

67. *Id.*

68. *See, e.g.*, Betsy M. Adeboyejo, *Time to Act for Adequate Court Funding is Now, Say O'Connor, Bar Leaders*, ABA NOW (Aug. 8, 2011), <http://www.abanow.org/2011/08/time-to-act-for-adequate-court-funding-is-now-say-oconnor-bar-leaders/>.

69. *See, e.g.*, Video: H. Thomas Wells, Jr., *Expand Pro Bono Work and Funding for Legal Services: ABA President H. Thomas Wells, Jr Tells House of Delegates*, ABA NOW (Feb. 16, 2009), <http://www.abanow.org/2009/02/expand-pro-bono-work-and-funding-for-legal-services-aba-president-h-thomas-wells-jr-tells-house-of-delegates/>.

70. *See, e.g., id.*