



## ***From The Executive Editor:***

### ***The Dark Side Of Court And Justice System Budgeting In Hard Times***

**By Markus Zimmer**

Often diminutive but recurring indicators of fiscal improvement in government budgets in 2013 eased the multi-year cycle of reductions in funding allotments for a slight majority of the states in the U.S. However, their residual impact has persisted in the form of under- and unfunded capital and other improvement projects and diminished services in court and justice systems, recently headlined in closures of courthouses in small California and Mississippi towns. Moreover the unanticipated default endorsement by the U.S. Congress of federal funds sequestration resulted more recently in rashly contrived automatic reductions in the federal courts' spending authority, prompting 87 of 94 chief U.S. district court judges to complain in correspondence to congressional leaders in mid-August that "...they have forced us to slash our operations to the bone." The simile is selectively applicable. Most recently, the federal government shutdown coerced additional reductions as trial and intermediate appellate courts struggled to avoid closing their doors during business hours.

Proactive responses to these hard times for courts have spawned an extraordinary blossoming of innovative ideas, many of which reflect ingenuity and creativity, for how courts and justice systems could do more with less. Their overall impact has tempered the earlier groundswell promoting court excellence in all things with steroid injections compelling us to focus equally if not more on improving efficiency, maximizing performance, stimulating effectiveness, intensifying multi-tasking, supplementing proficiency, streamlining processes, amending procedural rules, and the like.

Looming largely inaudibly in the background amid all this clatter are darker elements of coping with budget shortfalls, elements whose impacts diminish and even contravene the values that court and justice systems ostensibly were created to foster. In the federal sector, for example, a key component of the U.S. Judicial Conference's response to bone-exposing reductions is the disparate impact in funding federal criminal defense services. These are administered under the auspices of the Judicial Branch for indigent defendants. Sequestration consequences for defender services total \$50 million, triggering furloughs and layoffs of federal defense counsel and staff plus reductions in hourly rates for contract defense attorneys. There are no commensurate resource reductions for their prosecutorial counterparts, the U.S. Attorneys Offices, whose lawyers establish the pace and quantity of federal criminal litigation.

Involuntary debt accumulation among convicted felons through innovative cost-shifting schemes is another of these dark elements. Corrections systems, primarily on the state and local levels, have spawned an assortment of fines, case processing fees, inmate housing costs, and other user charges imposed on defendants. The assortment includes fees for public defenders, prosecution charges, jail and prison bills, court administrative services payments, and probation/parole services tabs. These are piled on top of restitution payment schedules. Circa 80 percent of defendants ensnared in U.S. criminal justice systems qualify for court-appointed counsel based on assessments of their economic status as indigent. If employed while incarcerated, they are compensated at levels equivalent to cents on the dollar, essentially precluding their capacity to pay off accumulating fees and monthly interest charges that unpaid balances accrue. Some systems by statute seize up to one-third of funds provided by inmate families, many of whom are struggling mothers with children, perpetuating the poverty cycle through successive generations. When offenders are released, already impoverished and many devoid of high-school credentials, their employment searches invariably result in minimum wage positions insufficient to cover basic food, clothing, shelter and medical care expenses as their criminal justice fee accounts with monthly interest charges continue to mount and trigger coercive non-payment penalties. As the Brennan Center for Justice reports, sociological studies document that burdensome justice fees and fines tend to spawn recidivism.

Among the blackest of these dark elements is the abusive application of civil forfeiture laws that entitle law enforcement authorities at all levels to confiscate money and property from suspects on mere, sometimes contrived, grounds of suspicion rather than indictable offenses or adjudicated guilt. The value of such seizures, from which nothing is exempt, is diverted in numerous state and local jurisdictions to fund questionable expenditures incurred in the names of wars on drugs and crime. Such laws originally sought to dispossess criminal defendants of profits earned through highly lucrative illicit activities and to return them to victims or fund legitimate criminal justice initiatives. Over time, however, they have been loosely applied by some jurisdictions to deliberately seize cash, cars, homes, and other property under cover of

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flimsy or fabricated suspicion of criminal activity, often triggered through minority profiling. Where the deployment of such laws is aggressively sanctioned by corrupt police, prosecutors, judges and civil authorities, the cumulative value in millions of dollars of proceeds can stagger the imagination, wreaking economic devastation in the lives of innocent victims. Examples of particularly egregious uses of the proceeds include compensation bonuses for police and civic officials, luxury vehicle rentals, credit card late-payment fees, Halloween costumes, a popcorn machine, a thousand-dollar donation for a Baptist congregation key to the re-election of a county district attorney, a police boat valued at one-hundred-thousand dollars and a twenty-thousand dollar-plus beach party with a drug-prevention theme.<sup>1</sup>

Looking over our shoulders into our own backyards is not always pleasant, but doing so soberly reminds us that no government, regardless of its level of economic and social development, is immune from misuse and abuse of political and statutory authority, and that the consequences of such abuse, almost always, fall disproportionately on the shoulders of the poor. As we negotiate the rapids of declining or stagnant government budgets, we all might be more conscious of the implications for justice of alternative schemes for generating funding for our courts and justice systems.

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<sup>1</sup> See Sarah Stillman, "Taken," *The New Yorker*, (12 August 2013) 49-61.