

Courts in Crisis: Court Budgets Cut Access to Justice in California

Josef Preciado, Teresa Palmer, Terra Townsend, Cecilia White and Millie Yan
Graduate Students
California State University, California

Abstract

During the economic recession, California's court system experienced a budget crisis, characterized by \$3.5 billion in cumulative cuts over 5 years. Severe budget cuts threaten the courts' operations and, hence, adequate access to justice. The courts diverted special funds and reserves to backfill the loss of state general funds at the expense of other investments, such as facility maintenance. In spite of the stopgap measures, courthouses and courtrooms closed, services were reduced, and the backlog of cases increased. This report explores the context surrounding the ongoing funding reductions to the branch and investigates three alternatives to help increase access to justice in California: re-invest in the judiciary from the state General Fund, improve technological tools to increase efficiency and access, and expand partnerships with private and non-profit groups. We conclude that the restoration of court funding is necessary before the courts can undertake major investments in technology or partnerships.

Equality and Democracy Undermined by Limited Access to Justice

The role of the judicial system in American democracy is to interpret and enforce laws and to protect the rights of people. The judiciary stands co-equal in importance with the legislative and executive branches of government and metes out justice in accordance to proper procedure and law. A well functioning judicial system underpins social stability, government legitimacy, and the rule of law. Central to the courts' integrity are its accessibility to the public and the ability to process cases efficiently so that parties can resolve disputes and clarify their legal rights and obligations in relation to others. Presumptively, every individual has equal access to the judicial system regardless of income, geographical location, language ability, or other social factors.

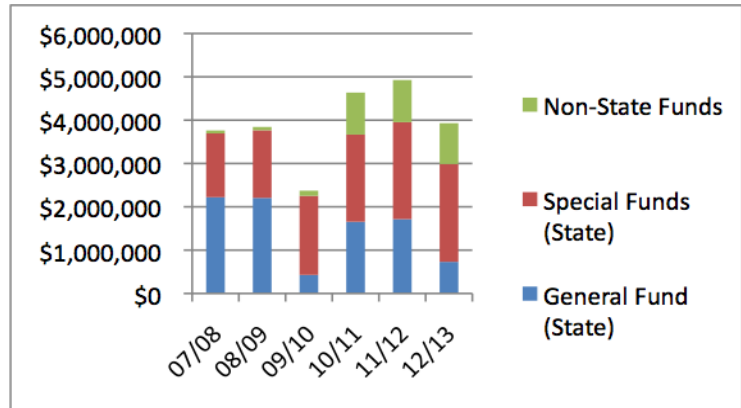
The California court system is the largest in the nation, providing access to justice to over 38 million people (about 12% of the country). Fifty-eight county-level trial courts administered a caseload of 706,941 criminal cases; 1,085,189 civil and small claims cases; and 446,927 family law cases in 2012 (Judicial Council of California 2012a). Six Courts of Appeal Districts review 23,021 superior court decisions that litigants contest. The California Supreme Court is the final reviewing court for 10,145 decisions from the Court of Appeals level.

In spite of the high levels of case processing the court achieves, the court's efficiency and quality of justice has diminished with deep budget cuts in recent years. In the past several years, 51 courthouses closed and 30 courts have reduced public service hours, limiting physical access to the courtroom (Judicial Council of California, 2014). Reductions in facilities and services can result in excessively long wait times for court hearings, legal matters requiring extensive one-way trips, and delayed emergency restraining orders, all of which limit Californians' access to justice. Funding cuts since 2008 have adversely impacted access to justice for the state's citizens.

Recession Drives the Legislature to Direct Court Funding to Other Priorities

The legislature drastically reduced General Fund support for the courts from 56% of the General Fund share in the 2008-2009 fiscal year to 25% in fiscal year 2013-2014 in response to the 2008 economic recession and state budget shortfalls (Judicial Council of California 2014). Figure 1

Figure 1. Judicial Branch Funding by Fiscal Year



Source: Department of Finance

demonstrates that General Fund allocations primarily funded the Judicial Branch prior to 2008, but were drastically reduced during the recession. The courts responded to cuts by using “Special Funds” savings intended for construction, court programs, and rainy day funds, to make up for shortfalls. The General Fund became secondary to “Special Fund” diversions and user fees. Table 1 displays more specific offsets courts used to maintain a minimal level of functioning.

Table 1. Trial Court Funding Reductions & Offsets (dollars in millions)

Reductions	08-09	09-10	10-11	11-12
Unallocated Reduction	\$92.2	\$268.6	\$55	\$320
One-time Reduction		(100)	(30)	
Total	\$92.2	\$268.6	\$55	\$320
Offsets	08-09	09-10	10-11	11-12
Use of Local Reserves	\$92.2	\$71	\$25	\$0
Transfer From other Funds		130	130	233.0
Fee Increases		46.7	113.2	107.1
Use of Fund Reserve		3	36	69.4
Total	\$92.2	\$250.7	\$304.2	\$409.5

Source: California State Senate Judiciary Committee, “Background Paper: Public Access to Justice in the Wake of Budget Cutbacks”

Lack of Funding impedes Court Operations and Access to Justice

California courts have been accessing their reserve funds to absorb General Fund reductions. However, many court reserves now represent less than 5% of original balances and others are only 1% of their original amounts (California State Senate Judiciary Committee 2012). Although the judicial branch has remained operational despite the reduced budget, it cut many basic court services at the expense of other needs such as facility maintenance and modernization efforts. Limited funding has forced counties to reduce staffing and close facilities, resources necessary to provide basic judicial functions.

Facility reductions and layoffs of permanent trial court staff have created massive backlogs and long delays for citizens trying to access the judicial system. In her article on the impact of budget cuts on courts, Maura Dolan notes wait times for child custody dispute mediations rose in at least 19 counties with waits up to 17 weeks in Stanislaus County (*Los Angeles Times*, April 9, 2013). In addition, court-based self-help services that provide vital legal information to self-represented litigants have cut back or disappeared in more than 38 of

California's 58 counties. Service reductions in some counties include the suspension of small claims court hearings entirely (*Los Angeles Times*, April 9, 2013). Interpretation services for non-English speakers are constitutionally guaranteed in criminal cases, yet budget limitations render that guarantee tenuous. Officials at the Superior Court of Los Angeles County estimated 10,000 delayed proceedings each year due to the lack of a certified or registered interpreter (California Commission on Access to Justice 2005).

Operational changes to the justice system resulting from budget cuts put the foundational requirement of equal access to justice out of reach for many Californians. While wealthier Californians may have resources to arrange for private representation and mediation services as an alternative to the public justice system, moderate to low-income citizens must continue to use the now backlogged system.

The Middle Class: A Class Left Behind

The California Commission on Access to Justice (2002) identifies an unaddressed need to provide lower-cost legal services for middle class litigants in California. Middle class and moderate income Californians are often ineligible for free legal services and legal aid programs when annual income exceeds the federal poverty guidelines that allow access to these types of programs. In the year 2000 7.5 million Californians earned incomes of 125% above the federal poverty threshold or more, yet these individuals still made less than the state's median income. The high cost of living in California is yet another factor that exacerbates the unaffordability of legal services for middle class litigants when a need for legal representation arises. Furthermore, the State Bar of California (1996) reports that:

Low- to moderate-income households—those earning between \$27,000 and \$45,000—also averaged one new or ongoing legal need per year, and that fewer than 40 percent of these families were able to pursue legal action.

Limited research has been conducted to update these 1996 figures, but it is reasonable to assume that the legal needs of middle class and moderate income Californians has increased following the funding reductions to the judicial branch since 2008. Relatively few stopgap measures have been implemented in the California to improve access to the justice system for middle class litigants. Court closures and reductions in facilities and services continue to widen the access to justice gap, and further highlight a need for creative solutions to address this growing problem. Despite the availability of limited legal services for middle class litigants via pro bono attorneys, law clinics, community education programs, and court-based online services the justice gap continues to grow. Pro per litigants that cannot afford an attorney or obtain pro bono representation are often underprepared or unprepared for self-representation in court because they are unfamiliar with formal regulations and procedural practices of the justice system.

The access to justice gap in California has significant implications for middle class Californians relative to individuals in other socioeconomic groups. Kritzer (2005) explains that middle class litigants in Canada face similar challenges relative to their independently wealthy and lower class socioeconomic counterparts. He argues that wealthy Canadians and large corporations in that country can afford to hire private attorneys, and ultimately lose a legal case if necessary. Individuals of lower socioeconomic class on the other hand have much to gain, but little or nothing to lose monetarily from the outset of litigation. However, the cost of a private attorney disproportionately affects middle class Canadian litigants in the Canadian legal system because financial barriers force individuals to sacrifice basic necessities like food and shelter in order to afford the cost of legal representation. The financial burden of losing a legal case can also make maintaining a middle class lifestyle difficult at best. Although the context of Kritzer's

position is based outside the US, his argument is parallel to the experience of many middle class Californians in similar circumstances.

Rhode (2009) echoes Kritzer confirming that a majority of middle income Americans' legal needs remain unmet. She explains that the American Bar Association's civil Gideon resolution urges US federal, state and territorial governments to provide legal counsel to litigants at the expense of the public where basic human needs are at stake. California is one of several US states that has implemented pilot programs in the spirit of "civil *Gideon*" to target the unmet civil law needs of litigants in the state. The Modest Means Incubator Project (2013) is one of these low-cost legal services pilot programs that targets two mutually beneficial groups: Unemployed and underemployed recent law school graduates and underserved middle class, moderate-income California litigants. Critics highlight sustainability and longevity concerns associated with the pilot project. Peacock (2014) points out that recent law school graduates often have significant educational debt, and that incubator projects may not provide a long-term incentive for new lawyers to participate. Given the opportunity incubator project lawyers may opt for higher paid positions elsewhere to pay off recently incurred educational debt. Ultimately the successes and shortcomings of the Modest Means incubator project effort remains unseen as a result of the project's recent development and implementation. Nevertheless, California is making some progress toward providing greater access to the justice system for middle class litigants via the development of state funded legal aid programs.

Drivers of Funding Shortage

When other departments or agencies face funding shortfalls, they have several ways to advocate their position to lawmakers. Primary among their tools is the use of lobbying and public

opinion. Yet the judicial branch's role limits its ability to lobby and advocate, and recent investments by the branch have soured public confidence in the court system.

Lack of a Public Constituency

Courts have no natural public constituency to lobby their cause and keep court funding on the agenda. In a national survey, 66% of respondents thought public schools received too little funding while only 17% cited courts as inadequately funded (NCSC 2012). While state agencies and departments with strong constituencies are a high priority on lawmakers' agendas, court funding garners little attention. This lack of a lobbying base may contribute to the severe cuts incurred by the branch during the recession.

Advocating within the branch seems a logical secondary approach, given the lack of a broad public constituency. Yet judges are bound by a code of ethics that exalts impartiality and independence. Lobbying for funding can appear as a conflict of interest in contravention of the canons that judges swear to uphold, subverting the impartiality of the branch. A recent Committee on Judicial Ethics opinion found that while a judge may meet with attorneys and branch partners to discuss adequate branch funding, it is ethical only if the meeting does not convey 1) the appearance of impropriety 2) the impression of special influence and 3) the potential for disqualification (California Supreme Court 2013). The constraints of impartiality make advocating for funding not only difficult for judges, but unethical in certain circumstances.

Poor Public Confidence

In recent years, the judicial branch received sharp criticism for its spending priorities and operations. Criticism largely focused on failed implementation of a statewide computer case management system (CCMS). As noted in Charles Horan's editorial, CCMS was decommissioned in March 2012 after an external audit found implementation costs grossly

underestimated by millions of dollars (*San Francisco Gate*, February 24, 2011). A subsequent review of the Administrative Office of the Courts (AOC) found the organization oversized, dysfunctional, and overly bureaucratic (Strategic Evaluation Committee 2012). As a result, the media criticized the judicial branch, and the credibility of the courts greatly diminished in the public's eye. The millions of dollars spent on the failed project now temper requests for increased funding, and lack of public trust jeopardizes efforts to restore court funding.

Three Strategies to Increase Access to Justice

Amidst these budgeting challenges, we identified three paths to help increase access to justice for the courts: increasing trial court funding, increasing technological capacity, and expanding partnerships with private and non-profit entities.

Proposal 1: Increase Trial Court Funding

Restoring stable baseline funding to the court system will help the state fulfill its constitutional and statutory mandates. Reinvesting in courts up to pre-reduction levels could help California restore services, re-open facilities, and invest in self-help centers and alternative dispute resolution programs to increase access to justice in the state. While the judiciary favors this solution, as noted previously judges are limited in their ability to lobby the legislature for more funding. Given these constraints, the branch relies heavily on stakeholders, branch partners, and the Chief Justice to advocate this approach.

The Chief Justice addresses the Legislature annually in a State of the Judiciary Address. This annual event gives the Chief Justice an appropriate platform to highlight the challenges faced by the court system. The Chief Justice used her 2013 address to highlight the judicial crisis and advocate for branch funding. She illustrated key markers of the fiscal crisis, including court closures and employee layoffs resulting from budget cuts (Cantil-Sakauye 2013). As head of the

judiciary in the state, she advocated for a reinvestment in the branch in order to improve access to justice in California.

Branch partners and other stakeholders are also necessary to relay the impact of budget cuts on the courts to lawmakers. Information about budget impacts is largely relayed to the public through the state court's website. A recent section of the website focused solely on the judicial branch budget crisis, with videos about court closures, the geographic remoteness of judicial centers, service hour cuts and long delays (Judicial Council of California 2013). Images of dilapidated ceilings and collapsing floors illustrate the impact of insufficient funding on courts and court users to branch partners, stakeholders and members of the public alike.

In spite of the branch's reliance on external parties to advocate for increased funding, the individuals who depend on a functioning judiciary constitute a diffused interest group. The judicial branch budget crisis manifests in different forms to different constituents. For example, to corporations, problems emerge with the inability to resolve disputes between entities and to enforce contracts. For senior citizens, it may mean that neighbor disputes cause tension within communities. For children, uncertainty is wrought by familial instability if the courts cannot decide custody disputes or issue domestic violence restraining orders in a timely manner.

While each group has a defined interest in keeping courtrooms accessible, the magnitude and diversity of the groups impedes self-organization as an intentional, aggregate constituency that can lobby decision-makers for support. Most court litigants are single users of the system and do not have the resources to organize around access to justice issues, including the restoration of judicial branch funding.

In spite of these challenges, constituent sub-groups with concentrated power and resources can take the lead by self-organizing and lobbying for an improved judicial system. The

California Bar, which includes all lawyers licensed to practice in the state, frequently lobbies state legislators. Lawyers have an interest in resolving their clients' problems quickly, but an inefficient, backlogged judiciary impedes that goal. Lawyers, as repeat users of the court system, thus have an interest in improving access to justice in California. The California Bar can use its influence with legislators and executive officials to promote funding restoration to the branch.

Increased court funding is the best path to improve access to justice in California. It can advance efficiency in the court system, as basic services would return. Increased efficiency promotes equity by broadening access for all litigants, regardless of social position, allowing each an opportunity to have his or her day in court. A functioning judiciary provides a forum where disputes are resolved through a timely, fair process. The likelihood of violence or other illegal actions diminishes as a means of dispute resolution. Security and liberty allow individuals freedom to follow their desired pursuits. Ultimately, the welfare of society is enhanced when the public is confident that the courts stand ready to support their rights.

Proposal 2: Increasing Technological Capacity to Achieve Greater Efficiencies

The technological delivery of legal services offers great potential to help large numbers of court users without requiring a trip to the courthouse (Staudt 2009). The State could enhance efficiency by using existing technologies and developing a statewide infrastructure to deliver general legal information and services to the public. In addition, technology can promote equality by providing multilingual information and services and access to rural areas.

Current technological advances that allow broad judicial services access include:

- Websites targeting low-income individuals, providing online access to legal information and attorney resources (*e.g., LawHelpCA.org*);
- Websites for attorneys to access litigant court documents and advise clients via telephone or video conference (*e.g., Legal Aid Society of Orange County's "Legal Genie"*);

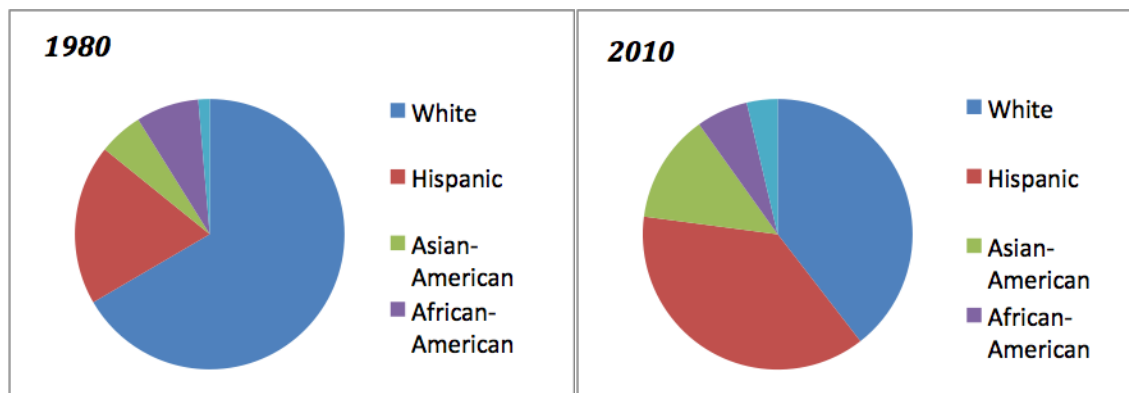
- Online applications assist self-representing parties to complete standard court forms (e.g., *San Mateo County Court's EZLegalFile* and *Legal Aid Society of Orange County's I-CAN!*).

The California Commission on Access to Justice suggests the use of video-conferencing to hold hearings and foster communication among users, the court, legal aid offices, and private attorneys. It also advises increased use of web-based conferencing to conduct multi-site trainings where information is broadcast to litigants and attorneys across jurisdictions. Improving technological resources can help reduce operating costs in courts by streamlining procedures and enabling users to access the justice system remotely.

Technological options also help fulfill equity goals by increasing judicial access to non-native English speakers. As depicted in figure 2, California has become more culturally diverse over the last three decades, and an increasing number of non-English speakers require court interpreter services in multiple languages.

Figure 2. California's Racial and Ethnic Makeup Has Changed Since 1980

Share of Population in Each Group



Source: Legislative Analyst's Office, *2013 Cal Facts*

Interpreters' use of web-based and telecommunication tools is a more cost effective strategy to providing access to justice for non-English speakers, that limits high travel costs incurred by the courts, while still meeting the court's language needs.

Technology can also increase access to legal services for rural Californians by eliminating the need for long-distance travel by litigants and attorneys alike. The State Bar of California highlights low numbers of lawyers in rural areas, a problem exacerbated by many well-resourced urban law firms unwilling to engage in pro-bono work outside of their city zones (California Commission on Access to Justice 2010). Video-conferencing would allow urban lawyers to provide much needed assistance to rural court users, and enable litigants and court interpreters to appear virtually before a judge. Similarly, self-service online platforms decrease the cost of providing court services while promoting faster responses to court users. These platforms equitably and efficiently allow for broad, instant access without an equality-efficiency trade-off; both sides win.

Advancing technology in the courts can also favor the technology industry. Courts need technological firms to develop and implement the remote access tools, and technology companies would appreciate the increased business and profits. Developing technological solutions to court access problems is an investment in the technology industry, which promotes innovation and creates jobs.

Although technology can help increase equity and efficiency in the judicial branch, not all Californians will necessarily benefit from technological solutions. Some rural areas do not have Internet access or proper telecommunications infrastructure to support advancing technology. Additionally, seniors may have difficulty navigating computers and other necessary

equipment. Thus, technological proposals are not wholesale solutions and traditional in-person assistance must remain in place to enable all Californians equal access to the judicial system.

Proposal 3: Expanding Partnerships with Private and Non-Profit Entities

Providing legal services at no or low cost expands low-income and moderate-income litigant's ability to navigate complicated legal processes and favorably resolves cases. To ensure the provision of legal services to low- and moderate-income individuals and families, the judicial branch should expand its partnerships with organizations to provide free or sliding-scale fee legal help, engage the private bar in pro bono services, and continue funding for innovative programs.

The standard high fees of for-profit entities that provide private mediation services like Judicial Arbitration Mediation Services Incorporated (JAMS), renders them a non-option for low and moderate-income Californians. However, these private firms can become more accessible if they opt into offering minimal levels of free or sliding-scale fee assistance (JAMS 2013). Courts can also partner with law schools, using students to offer low-cost mediation services as a means of gaining practical legal experience. The judicial system can seek to institutionalize pro bono services rather than depend on isolated acts of public interest-minded private attorneys. Judges and justices can develop pro bono networks and encourage the private bar to donate funds or volunteer for legal services programs and court-based self-help centers.

One example of an innovative legal services program is the Sargent Shriver Civil Council Act (AB590). The Sargent Shriver Act of 2009 allocated \$9.5 million to create pilot programs for the civil representation of low-income Californians with legal matters affecting basic life necessities such as housing, domestic violence, personal safety (issues of harassment and elder abuse), guardianships, and family stability/integrity (Judicial Council of California 2012b). The bill created "law partnerships" with non-profit entities, local courts and other community-based

law providers. These entities have the discretion to identify cases meritorious of legal services provisions and help increase access to justice for low-income Californians.

However, a potent criticism of such funding programs is that entities receiving the funds may have a perverse incentive to handpick cases that are easily resolved or settled out of court. This creates the appearance of success to continue the receipt of funding. Consequently, producing a successful track record does not necessarily mean legal service providers are honoring the spirit of the funding programs by taking on difficult cases for people in dire circumstances who cannot negotiate or litigate for their own best interests.

Critics also highlight the requirement of legal citizenship status as an AB 590 shortcoming (Harvard Law Review 2010). The legislation effectively excludes undocumented individuals, some of the most vulnerable litigants in the system, from access to legal assistance. Some immigration cases involve the deportation of undocumented immigrant parents from U.S.-born children. In these complex instances immigration status and guardianship or custody of a minor who remains in the United States are at stake. Undocumented immigrants are shut out from assistance under AB 590. California's ethnic population continues to grow with many Latino and Asian immigrants of legal and undocumented status (Legislative Analyst's Office 2013). If immigration trends continue as they have in recent years this particular population will likely create increased strain on an already underfunded state legal system. Their exclusion from state funded assistance programs may be perceived as a barrier preventing access to justice for Californians.

Conclusion

Restoring judicial branch funding to pre-2008 levels is the most important step California can take to improve access to justice in the state. Net social benefits for society are maximized with a functioning, accessible judiciary to resolve legal disagreements. Everyone benefits from an efficient and accessible justice system that ensures the liberty, security and welfare of its citizens. The justice system enforces the rights and responsibilities of private individuals and groups with impartiality, providing forums for reasoning and deliberation in our consent-based democracy. As such, the return of a fully functioning judiciary with the prioritization of court funding is paramount.

Technological investment can help increase court efficiency, equity, and access, but it requires up-front investments that courts cannot currently afford. Without first reinvesting in the judiciary, technological investments may be difficult to implement. In addition, technology cannot replace the physical courthouse and in-person proceedings. The benefits of improving technology are many, but maintaining the basic structure of the current system is necessary in order to improve access to justice in the state.

Relying on partnerships with private and non-profit entities alone does not solve the access issues present in the courts. Like technology, partnerships require up-front government funds to compensate for- and non-profit groups for their services and courts still incur administrative costs overseeing contracts and monitoring partners' performances. Reinvestment in the judicial branch will help courts create partnerships, but without the necessary up-front funding, partnerships may never come to fruition.

Restoring allocations from the General Fund to pre-2008 levels is the first step towards resolving the problem of access to justice for Californians, and promotes the fundamental

traditions and ethical ideals and of liberty, welfare, security and equity. Increased funding to the judicial branch will aid the judiciary in investing in technology and expanding partnership to help increase efficiency, equity and access into the future.

As I stand before you as Chief Justice of California, it would be unsuitable for me to advocate for branch funding if I didn't look within our own house and find out ways that we could improve and be better. And I have. But before I preface my remarks in this regard, I want to say that no amount of efficiencies we can implement will ever make up for a billion dollars [in] cuts. We will never have a fully functioning judiciary when we are receiving one penny on every dollar of General Fund. *Chief Justice Cantil-Sakauye - 2013 Legislative Address*

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