

Court Funding Symposium
University of Kentucky Law School
September 23, 2011

In *Federalist* No.17 – written in late 1787 – Alexander Hamilton assured the citizens of New York that the government proposed by the new Constitution would not displace the authority of the states. Why? Because the most powerful guardian of life, liberty, and property – the administration of justice – would remain essentially a state function. The “ordinary administration of criminal and civil justice” Hamilton argued, “contributes more than any other circumstance ... to the public’s respect and esteem towards government.”

Even though the federal courts play a more prominent role in today’s society than Hamilton envisioned, the basis of his

observation still holds. The state courts are the nation's preeminent instruments for "the ordinary administration of criminal and civil justice – the great cement of society" where over 96% of our country's litigation is resolved.

But as long as there have been courts there have been critics of their performance. These conflicts are hardly new even during the current economic crisis. Hamlet bemoaned the law's delay. Dickens wrote a novel based upon a seemingly endless chancery case. American colonists argued with colonial governors about judicial pay and tenure as well as the right to a trial by jury.

Even after the Revolution disputes erupted in state after state over the use of lay judges and the need for formalized court

procedures – “a cheap, simple, easily available and speedy system of justice requiring little contact with the legal profession” or a “technical legal system capable of maintaining order and providing stability, harmony, uniformity, requiring the use of lawyers.” In Kentucky, for example, arguments arose over whether to increase the number of courts and lower qualifications of judges while Pennsylvanians argued over expanding the jurisdiction of justices of the peace.

In other words, disputes about how courts should be organized, funded and administered are hardly new to the 21st century. So why has the Kentucky Law Review chosen to dedicate its 100th Anniversary publication to funding state courts? Because the future of the Rule of Law and the American justice system – the citizens respect and esteem for government – are tied to state

courts. How can we insure the vitality and stability of those courts in the midst an economic tsunami?

We find one answer in Kentucky's state motto - "united we stand – divided we fall." Its origin is somewhat hazy but popular accounts link it to Kentucky's first governor, Isaac Shelby, a decorated Revolutionary War veteran. Reportedly Governor Shelby was fond of a song, used to rally the Revolutionary troops, written by John Dickson of Delaware – The Liberty Song. "Then join hand in hand brave Americans all – by uniting we stand by dividing we fall." I especially like the Chorus: "in freedom we're born and in freedom we'll live; our purses are ready - our money we'll give."

I'll be passing out contribution envelopes after lunch.

But Kentucky's motto serves as a fundamental tenet for surviving the state courts' current economic tsunami – "united we stand – divided we fall." Courts in virtually every state have faced debilitating budget reductions creating hiring freezes, pay cuts, judicial furloughs, staff layoffs, increased filing fees, reduced hours of operation and postponement of jury trials. (35 states have delayed filling vacant judicial positions; 44 states have frozen judicial salaries; 14 states have eliminated court staff; 27 states have increased filing fees and 23 states have curtailed operating hours or postponed jury trials). These reductions come at the very time when the demand for judicial resolution of economic claims have dramatically increased. Our courts, historically underfunded, have been forced to provide justice by applying Generally Accepted Accounting Principles

rather than the Rule of Law. Without the support of the bar, the business community and the public, courts are easy prey to Draconian budget cuts even though government appropriations for courts average less than 2% of state and local budgets.

Recognizing this very real crisis, Steve Zach & Bill Robinson have convened the Preservation of Justice Task Force under the banner of the ABA — co-chaired by David Boies & Ted Olson. Initiated during Steve Zach's Presidential year — this Task Force of illustrious lawyers, judges, business executives, and civic leaders with the support of the ABA CEO Jack Rives and his dedicated team have traveled the country holding public hearings — listening to Chief Justices, trial judges, lawyers and citizens tell their stories — stories about the personal impacts of underfunding courts. Passing the torch, Bill Robinson has

committed his Presidential year to the “solutions” phase of the Task Force but, I’ll leave that chapter of the story to Bill – But inner-branch cooperation; bench-bar press initiatives; model court projects and Law Day 2012 echo Kentucky’s state motto:

United we stand – divided we fall

As serious as the impact of insufficient court funding can be in terms of public safety – the negative impact on economic recovery is no less devastating – and far more widespread. A number of economists have calculated the costs of underfunded courts all with the same conclusion: the costs to local economies far exceed the projected savings from court budget cuts. Perhaps nowhere is this more apparent than in the area of residential foreclosures. Economists estimated that

in 2009 in Florida – where the courts’ constitute 1% of the state’s budget – the backlog of mortgage foreclosures cases alone cost that state’s businesses and residents over \$9.9 billion dollars.

United we stand – divided we fall

Today we will hear from three panels of judges, business leaders, academics and lawyers about the role of courts economically, constitutionally and personally. Beginning with the first panel’s discussion of the economic case for courts, moving to a review of courts as the business of government and finally ending tomorrow with a panel considering solutions for moving ahead. Bill Robinson, ABA President and former CJ from Massachusetts Margaret Marshall will bring our

discussions into focus with their closing remarks on Saturday.

But you are vital to this discourse...and each panel has reserved time for your participation.

Because – United we stand – divided we fall...

As the KLJ celebrates its 100th Anniversary, with a special edition on court funding – Stefan Bing and his dedicated editors send a challenge to future lawyers across the country – as future officers of the courts, their leadership is essential to the vitality of our state courts and the preservation of justice – as graduates of the University of Kentucky Law School, they embody Kentuckian's commitment to justice and send the challenge to their colleagues across the country that "United We Stand or Divided We Fall."