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Critics Say Budget Cuts for Courts Risk Rights

By [JOHN SCHWARTZ](#)

NASHUA, N.H. — For years, state courts across the nation have been scraping by on the support they get from state and local government budgets. Since the financial crisis of 2008, those budgets have been tightened in new ways that are being felt in courthouses and communities across the country.

“The justice system’s funding has been decreasing in constant dollars for at least two decades,” said David Boies, co-chairman of a commission formed by the [American Bar Association](#) to study court budget issues. “We are now at the point where funding failures are not merely causing inconvenience, annoyances and burdens; the current funding failures are resulting in the failure to deliver basic justice.”

Wayne and Kristy Haggie of Nashua, N.H., would agree. In June last year, they persuaded a judge to grant them visitation rights with their two children. Ms. Haggie’s parents had assumed child-raising duties during a financial rough patch for the Haggies, and then refused to give the toddlers back. With the judge’s ruling, the Haggies assumed that they would be seeing the children again immediately and regaining full custody before long. They borrowed \$500 from Mr. Haggie’s relatives for a trip to Wal-Mart to buy the toddlers clothes and supplies.

“We got everything set,” Mr. Haggie said. “And then we sat there.”

The judge’s order was not mailed for three months — an eternity in the life of a child. The paperwork emerged from the courthouse only after the Haggies’ lawyer, Kirk Simoneau, joined with other New Hampshire lawyers to sue the state over budget issues and court delays. Between that delay and others while setting up visitation arrangements, the Haggies say, they have lost precious bonding time and been deprived of important moments.

“We missed our daughter’s first steps,” Mr. Haggie said. “We missed her first day of preschool.”

While most state agencies are feeling a squeeze, legislatures squeeze courts at the risk of violating the access to the courts guaranteed in criminal and civil matters by the Constitution, said Steven Zack, a former president of the [American Bar Association](#). Set up to be coequal branches of government, the courts are nonetheless dependent on the legislative and executive branches.

“The real failure of the legislatures is to treat the courts as another bridge or another library,” Mr. Zack said. “It is not another bridge or another library. Without a working court system, our very democracy is at stake.”

The bar association created the [Task Force on the Preservation of the Justice System](#), led by Mr. Boies and Theodore B. Olson, who served as solicitor general under President George W. Bush, to study financial issues and recommend courses of action.

“There has not been a natural constituency for the justice system,” Mr. Boies said. The rule of law, civil rights and the market economy are all profoundly affected by the courts, he noted, so, “Whatever is important to you, it’s ultimately the justice system that is protecting it and advancing it.”

While dockets are bulging with foreclosures and other pressing legal matters, 42 states have reduced their judicial budgets in the previous three fiscal years, with cuts in some jurisdictions totaling more than 12 percent. In the last three years, 34 states have laid off court employees, 39 have stopped filling clerk vacancies and 23 have reduced court operating hours, according to the [National Center for State Courts](#).

State courts hear 95 percent of the nation’s legal cases, so the cuts are affecting the level where most people encounter the justice system, said Rebecca Love Kourlis, a former Colorado Supreme Court justice who is executive director of the [Institute for the Advancement of the American Legal System](#) at the University of Denver and co-author of [a new book](#) about the plight of the nation’s civil courts.

“For most Americans, Lady Justice lives in the halls of state courts,” she said. “Whether it is a divorce, traffic ticket, foreclosure or personal injury case that draws someone into the system, they will find themselves in state court.”

State courts around the country have found many ways, some unusual, to deal with the cuts. In Mount Gilead, Ohio, the Morrow County Municipal Court, like many others, is now working a four-day week. And that is not as large a hardship as the county experienced in 2009, when the court announced that it could not take new case filings for three months, until the end of the budget cycle, unless litigants brought their own paper for the court to use. Money for paper had run out.

“Even though paper is inexpensive, it’s still enough to shut us down,” said Judge Lee W. McClelland. Ultimately, he said, people in the community donated enough paper so that “we were able to limp through the year.”

“We also got about three rolls of toilet paper,” he said. “Obviously, they were confused about what kind of paper we needed.”

The courts are now looking at electronic filing to avoid the situation in the future.

Chief Justice Carol W. Hunstein of the Georgia Supreme Court said that after two and a half years of budget cuts for her state’s courts, “it has gotten to the point where it is difficult to say that we are delivering the constitutionally required judicial system.”

The implications are troubling for the state as a whole, she suggested: “I don’t know that you would have a new business or corporation that would want to relocate in a state where you couldn’t get your contract disputes or your business disputes resolved in a timely fashion.”

In Glynn County, Ga., Judge Amanda F. Williams issued a moratorium on all civil jury trials in 2009; because criminal defendants have a constitutional right to speedy trial, she said, her courts had put them first, along with domestic cases like divorce.

“You can’t leave people in jail,” she said, and “you can’t have somebody out there if they should be in jail.”

Domestic cases also came ahead of civil jury trials, Judge Williams said. “You can’t have people tied to each other when they can’t live together,” she said.

Judge Williams said she had to ask herself, “Which one can I put on the back burner a little bit longer? It’s obviously what you call the car wreck case.”

Ultimately, a newly appointed judge was assigned solely to civil trials for more than a year to ease the backlog, she said, but the budget problems remain and require further action.

In states like New Hampshire, there is a real impact from court budget cuts, said John T. Broderick, a former chief justice of the New Hampshire Supreme Court and now dean of the University of New Hampshire Law School. "I've been a lawyer and judge in New Hampshire for 38 years — I've never seen it like this."

Mr. Simoneau, the Haggies' lawyer, said that when he tells potential clients in personal injury cases that they might have to wait two or three years for resolution of their claims, some take settlement offers far lower than what a trial might result in. "They can't afford to wait," he said.

Meanwhile, the Haggies are getting more regular visits with their children, now 4 and 5 years old, and are still working through the process of gaining full custody.

But much has already been lost, Ms. Haggie said. "By the time they came, the clothes didn't fit them anymore."