

FOREWORD

CRISIS IN THE JUDICIARY

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The Symposium articles examine the current crisis facing the judiciary. This crisis arises from economic conditions both here and abroad. Our country is facing fiscal challenges at all levels of government that have not been seen since the Great Depression. One of the great virtues of our tripartite system of government is that the judiciary is independent from those who control the fisc. In this way, the judiciary can act as a check against unwarranted and improper actions by those who collect tax revenue, as well as those who determine how to spend it. However, as a counterweight to the judiciary's check on taxing and spending, judicial budgets are subject to the discretion of the other two branches of government.

In their contribution, *Responding to the Crisis—Reengineering Court Governance and Structure*, Daniel J. Hall and Lee Suskin examine efforts by several state judiciaries to dramatically redesign, or “reengineer,” their court systems with the main goals of decreasing costs and increasing quality. Hall and Suskin provide data on the funding of state courts and the impact on those served by the courts. They provide examples of state court systems that have dramatically and successfully reengineered their operations. They also discuss how the *Principles for Judicial Administration*, adopted by the Conference of Chief Justices and the Conference of State Court Administrators, can guide state-court leaders and legislators as they work to ensure that courts serve those who enter their doors seeking justice.

Dr. Roger Hartley's article, *Moving Past Crisis . . . Promoting Parity: How Effective Intergovernmental Relations Can Help Build a More Co-Equal Judicial Branch*, discusses a difficult political conundrum faced by the courts. The needs of the courts are not given the same weight by political officials as

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the needs of agencies in the justice system—such as public safety, prosecution, and correction. Dr. Hartley's article raises significant questions about how courts enter the political process and how they might do so more effectively. He posits that well-planned, active, and effective intergovernmental relations by courts are a necessary condition for moving past the crisis impacting the judiciary.

Professor Donald Campbell's article, *The Sky is Falling (Again): Evaluating the Current Crisis in the Judiciary*, examines the effects on the judiciary of the current funding crisis. The article is structured around three broad themes: (1) access to the courthouse; (2) access to lawyers; and (3) access to justice, substantive and procedural. First, Professor Campbell notes that there is a limitation on physical access to courthouses. Second, in the civil context, he posits there is a lack of adequate legal representation, but in the criminal context there is a lack of competent lawyers. Third, Professor Campbell discusses substantive and procedural hurdles of access to justice. His article also provides some ideas of what can be done in the current environment to alleviate the crisis of access faced by the legal system and the public.

In *Au Revoir Voir Dire and Other Costly and Socioeconomically Unjust Judicial Practices*, Dr. Marie D. Natoli provides her perspective on the judicial crisis: that justice in the true sense of the word does not exist in the American judiciary. Rather, she notes that a number of practices, which have developed their own lucrative fiefdoms, have contributed to shortchanging those at the bottom of the socioeconomic ladder. These practices include: (1) plea bargaining; (2) the jury selection process; (3) the use of expert jury consultants; and (4) the use of expert witnesses. Dr. Natoli's article argues for either eliminating or drastically tightening these practices.

Professor Martha F. Davis, in her article, *Shadow and Substance: The Impacts of the Anti-International Law Debate on State Court Judges*, provides a unique perspective on an important issue that is constraining state courts. Professor Davis explains how the "American law in American courts" movement has gained momentum, with some state courts now barred by legislation from citing international or foreign law. Her article begins by discussing the debates occurring in many states regarding judicial reliance on foreign and international law, and focuses on two cases that are at the center of those debates. Next, she examines the legal impact of proposed restrictions on foreign and international law. Professor Davis notes that international and foreign law are often necessary components of a domestic state court judge's decision-making. She then considers the impacts of public pressure on state courts to refrain from considering international and foreign law. Her article concludes by discussing possible

responses to ensure that state judicial decision-making is not unduly influenced by legislative (or other) attacks on foreign and international law.

When I assumed the Presidency of the New York County Lawyers' Association in 2011, I created a Task Force on Judicial Budget Cuts that examined the effects of judicial budget cuts on the New York state courts. The Task Force concluded that the administration of justice was detrimentally affected by budget cuts, despite the best efforts of able and dedicated court administrators and staff. While there are savings from the cuts, they clearly carry increased financial and other costs to the public. To be sure, the price of the public's access to justice has increased.

The Symposium articles address vitally important issues affecting the justice system in our country. The dialogue that this Symposium continues is necessary to focus attention on the issues so that viable and practical solutions can be developed.