

When Justice is Recession Proof

By Leslie Kay, MBA President.

Can you name the three branches of government? If so, you are among the one-third of Americans who are possessed of this information. This statistic was ruefully noted by retired Supreme Court Justice David Souter in his address to the ABA at its annual meeting in Chicago on August 1. Justice Souter was asking his fellow attorneys to join him in making civics instruction a priority across the county: "Consider the danger to judicial independence when the people have no conception of how the judiciary fits within the constitutional scheme," he said.

Here in Oregon, faced with a withering budget shortfall, state law makers recently removed \$6.3 million from Oregon's judicial branch in the waning days of the 2009 legislative session. The cuts upset an agreement made earlier in the session that would have ensured the survival of court hours and key judicial staff such as referees, pro se litigant facilitators and drug court coordinators.

Governor Kulongoski responded. First, he said, in an interview with the editorial board of *The Oregonian*, that someone has to say "No, you can't do that," and then he proceeded, on August 6, to veto Section 61(6) of Enrolled House Bill 5054 which disappropriated \$6,259,420 in general funds from Judicial Department operations.

What happens when we lop off \$6.3 million of the judicial department budget? Plenty. Aside from the elimination of key judicial staff, cuts of this magnitude fundamentally compromise public safety and the Oregon constitutional mandate to administer justice "openly and without purchase, completely and without delay...."

National civics education polls reveal not only that many are unaware of the three branches of government but, of those who are, the judicial branch is the least known of the three. Many do not know that the judicial branch is co-equal with the legislative and executive branches of government. This lack of public understanding not only weakens our social fabric but has the immediate effect of weakening political support for court funding in the legislative budget debate.

According to an article in the New Hampshire *Concord Monitor*, Justice Souter was inspired to become involved in promoting civics instruction by fellow retired justice Sandra Day O'Connor. Justice O'Connor has recently launched an interactive Web site, www.ourcourts.org, that offers civics lessons for children. That site explains that "Civics education is being marginalized in our country, and available curricula are lacking in teacher-friendly solutions to excite and engage students. The news is not all bad, however. In recent elections, young people have participated in campaigns and at the polls in record numbers. Politicians and entertainers are learning how to excite young people about public affairs by speaking to them in their language and through their media. Our Courts seeks to bring this approach to the educational arena in order to supply the next generation with the tools they will need for informed civic engagement and leadership."

Justice Souter recalled that his parents first exposed him to civics by bringing him to annual town meetings in Weare, New Hampshire. Even as a boy, Souter saw that the selectmen had part of the power, but so did the voters. Residents weren't shy about disagreeing with one another, but they did so respectfully. He described the events as "the most radical exercise of American democracy that you can find.... It didn't matter if someone were rich or poor, young or old, sensible or foolish." The meetings were governed by "fundamental fairness."

How can we continue to respond to this call in Oregon? For over 100 years the MBA has advocated for the independence and integrity of the justice system, and access to that system for those who are unable to afford lawyers. In a recent association membership poll, 94% of the respondents reported that they support the association's efforts in this regard.

Recently the Multnomah Bar Foundation, led by Judge Adrienne Nelson and its board, urged some of our community organizations that lead the way on civic education - The Classroom Law Project, the Bus Project, League of Women Voters, the Portland City Club, and the Urban League - to collaborate on a civics education project. The Campaign for Equal Justice strives tirelessly to educate the bar, bench and public about the state of access to our justice system. Some of our members participate in coaching the constitution teams at our local high schools. These efforts and others that we can all name are crucial and must be sustained on a continuing

basis to make a dent in public awareness and the corresponding political will to adequately support our entire justice system.

At the conclusion of his Chicago address, Justice Souter repeated the story told by Benjamin Franklin about his conversation with a woman following the adjournment of the Constitutional Convention in 1787. The woman had asked Franklin if America was to have a monarchy or a republic. Franklin responded: "It would be a republic – if you can keep it." Souter elaborated: "He understood that a republic can be lost. And one way it may be lost is a kind of erosion of the minds of its people. It can be lost by citizens who lack the understanding to feel responsible for preserving the power of the constitutional government they have."

We are not out of the darkness yet with either the current recession or the threat to the courts. Not only are court operations underfunded and state judicial salaries far below national norms ... our courthouse facilities statewide are crumbling and our own Multnomah County Courthouse is in a well known state of disrepair that puts its occupants - litigants, juries, judges and staff alike - in danger. Newly appointed Justice Sotomayor remarked in her confirmation hearings that public service "is a core responsibility of lawyering." Let's take up the charge.