

PRESIDENT'S MESSAGE

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It's All About the Money

In July, I had the honor of representing NYSBA at the World Justice Forum, sponsored by the World Justice Project (WJP). The WJP is an independent organization whose sole mission is to advance the Rule of Law throughout the world. It was founded and funded by William H. Neukom, a former General Counsel of Microsoft. The benefit of attending the World Justice Forum and other foreign symposia is to learn the approaches taken by other jurisdictions to issues similar to those we face in New York.

One of the projects of the WJP is the maintenance of the Rule of Law Index.¹ It scores and ranks 113 countries on nine factors: 1) Constraints on Government Powers; 2) Absence of Corruption; 3) Open Government; 4) Fundamental Rights; 5) Order and Security; 6) Regulatory Enforcement; 7) Civil Justice; 8) Criminal Justice and 9) Informal Justice. Each factor has several subfactors, and each subfactor is rated from 0 to 1. For 2016, the United States ranked 18 of 113, with a composite score of 0.74, but among countries of similar wealth, we only ranked 18 of 36. The countries which ranked 1, 2 and 3 were Denmark, Norway and Finland, with scores of 0.89, 0.88 and 0.87.

The subfactors where the United States scored poorly in comparison to our wealth group are: sanctions for official misconduct (0.69), corruption in the legislature (0.56); freedom from discrimination (0.52), labor rights (0.58), violent redress (0.62), delay in regulatory enforcement (0.53), and almost all of the subfactors regarding civil justice (composite = 0.65, ranking 27 of 36) and criminal justice (composite = 0.68, ranking 22 of 36).

For those of us who were brought up believing that the U.S. Constitution and the courts bound by it provide the best system of justice in the world, this is harsh and unwelcome news. If we focus on the scores of individual subfac-

tors of civil and criminal justice, however, we can readily see why the United States had scored so poorly. Our scores for the subfactors of civil justice were: Accessibility and affordability (0.41); No discrimination (0.46); No corruption (0.87); No government influence (0.75); No unreasonable delay (0.61); Effective enforcement (0.66); and Impartial and effective ADRs (0.80). Our scores for the subfactors of criminal justice were: Effective investigations (0.76); Timely and effective adjudication (0.74); Effective correction system (0.56); No discrimination (0.46); No corruption (0.73); No improper government influence (0.80); and Due process of law (0.70). If we are honest, we can admit that these scores are consistent with our observations and experience.

We know the high cost and lack of access to civil justice. NYSBA has a history of pushing for court reform to eliminate the complication of our 11 trial courts. It was this policy that pushed us to advocate for a constitutional convention. We have also adopted reports advocating innovations to cut costs and time to resolution; proposals like a simplified procedure for civil litigation, which, unfortunately, never had any traction in the legislature. We know the delay in reaching resolution, particularly at the appellate level, which has caused us, once again, to push for a constitutional amendment that would permit a fifth appellate department. We know of the difficulty of people living at or near the poverty level to seek civil justice, and we fight hard every year for increased funding for the LSC and civil providers in New York. We know the problems of our correction system, which causes us to focus on the minimization of incarceration. We know about discrimination and the disproportionate prosecution, conviction and incarceration of people of color. We have made efforts to provide access to ADR, which has been very



effective in resolving many civil cases; however, we need to fix our justice system, and not just provide alternatives to it.

The answer for a lot of the problems with our justice system comes down to money. While the judiciary is supposed to be a branch of government equal to the legislative and executive branches, it is an impoverished sibling of these two branches. Year after year, NYSBA advocates for adequate funding for our judiciary in the New York legislature and in Congress, and year after year we see either cuts or minor increases.

Funding for courts is not likely to improve significantly in 2018. The tax cuts given by Congress, which disproportionately benefit their campaign donors, will undoubtedly be paid for by a cut to government budgets, which may include the courts. The diminution of the deduction for state and local taxes will cause a decrease in state tax dollars, leaving less income to budget for New York. If we care about civil and criminal justice and the Rule of Law, it's time to tell Congress and the legislature that we expect adequate funding for our courts. NYSBA will be there on the front line – will you? ■

1. The Index may be accessed online at: <https://worldjusticeproject.org/our-work/wjp-rule-law-index/wjp-rule-law-index-2016>.

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