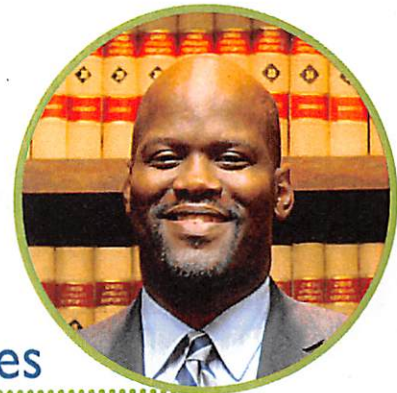


REFLECTIONS FROM THE TORTOISE SHELL ON THE GOVERNMENT SHUTDOWN AND ITS IMPLICATIONS FOR THE LEGAL PROFESSION



Marlon A. Primes

In addition to representing federal agencies and employees in state and federal courts in the Northern District of Ohio, one of my other responsibilities while serving as an assistant U.S. attorney for the past 26 years has been providing advice to new and less-experienced attorneys. When my co-workers and other members of the local community ask me to share any words of wisdom about the record-breaking government shutdown, I always explain that federal service has its benefits and burdens, and federal employees need to develop the outer shell of a tortoise to survive. The 2019 shutdown tested my tortoise shell because many of my fellow federal employees and I did not receive a paycheck for 35 days.

I developed my tortoise shell that enabled me to survive the recent government shutdown by recalling the hardships my fellow federal employees and I endured during the then-record shutdown of 1995, which lasted 21 days. During that time, my wife, Kathi, was nine months pregnant and scheduled to deliver my youngest child, Kayla, at any moment. My oldest child, Markus, was three years old, and his daycare costs required several hundred dollars per week. I also had a large and extensive trial that I had to handle alone with little administrative support because most of the secretarial staff was furloughed.

My late father travelled from Akron each morning to attend that trial in the old federal courthouse in Cleveland. He sat in the back of one of its majestic, early 20th century courtrooms, where he provided much-needed moral support, and he volunteered to rush Kathi to the hospital in the event that she went into labor.

One of the many problems with the recent shutdown and the shutdown in 1995 is that it forces attorneys representing the United States to focus on more than simply upholding

justice. Instead, it naturally forces us to juggle simultaneous thoughts of whether we can pay our housing and food expenses. In my case in 1995, I also had to juggle whether I could afford daycare for Markus, or whether the insurance premiums I was no longer able to pay would cause my medical insurance to lapse when Kathi needed it to give birth to Kayla.

When the smoke cleared, and the 1995 shutdown finally ended, I emerged from my tortoise shell. I had withstood the storm and endured all the low blows and punches the shutdown could muster. I won my trial and, most importantly, my wife delivered Kayla, a beautiful and healthy baby girl who is now 23-years-old.

During the recent government shutdown, telephone conversations with my adult children, who followed me into federal employment, caused me to rethink my tortoise-shell mentality. A large number of federal employees are quickly approaching retirement. If my children, who have degrees from top colleges in the country, leave federal employment, and other talented millennials follow them or are scared away from federal service by the shutdown, it could have severe consequences for our federal judicial system.

Federal employees and support staff who work at U.S. attorney's offices around the country are dedicated public servants who represent the United States in state and federal courts. Our client, the United States, is an indispensable part of our civil and criminal legal systems because it is one of the nation's largest landowners, landlords, mortgage holders, civil defendants, and debt collectors. Our criminal attorneys enforce federal statutes that help keep our nation safe from drug traffickers, gun smugglers, and others who harm our communities.

There is also an extensive administrative legal system, which attorneys, paralegals, and support staff at federal agencies coordinate.

Among other duties, those professionals investigate and hold hearings regarding worker safety, discrimination, sexual harassment, immigration, Social Security benefits, and tax liens. Because all litigants who file claims against the United States must complete an administrative process at a federal agency before filing suit in federal court, it is essential that our talented millennials are not discouraged from working in those essential positions. Without the expertise of competent workers at federal agencies who diligently investigate and screen administrative claims before they reach the federal courts, unripe lawsuits would inundate the federal judiciary and substantially clog or potentially collapse the entire judicial system.

Most importantly, the shutdown threatens our federal judiciary, which was only a few days from going without pay or furloughing its employees. Federal judges are the only individuals in our government who have lifetime tenure, as we want them focused exclusively on doing justice for litigants who appear before them. Shutdowns make that task more difficult because it forces federal judges to focus on whether they and their employees will be paid and able to maintain their households.

The recent shutdown has certainly opened my eyes, and I hope it has opened the eyes of all attorneys in Northeast Ohio and across our nation. I now realize we simply cannot climb into our respective tortoise shells and absorb the punches of the shutdown.

Consequently, I am so pleased that the Cleveland Metropolitan Bar Association (CMBA) Board of Directors held a public forum about the shutdown, provided a list of resources available to furloughed federal employees, and issued the following public statement:

"Our nation is facing the longest partial shutdown of government in its history. As of today, January 25, 2019, many governmental



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agencies have been severely limited in what they can do, including their ability to pay approximately 800,000 government employees. And now, 35 days into the shutdown, the Federal Courts and the Bureau of Prisons have been directly affected by the lack of funding. The Cleveland Metropolitan Bar Association implores our leaders to find a resolution to this impasse as quickly as possible to avoid continued harm and potential lasting prejudice to the families of our dedicated public servants and the multitude of parties to court proceedings nationwide. The Cleveland Metropolitan Bar Association believes that access to justice for many will be delayed or denied and urges our elected governmental officials in Washington, D.C. to reach a final resolution to what seems to be nothing more than political maneuvering.”

View more at CleMetroBar.org/President.

CMBA members and other attorneys who are concerned about the future of our judiciary and federal workforce need to stand up and let our communities and elected representatives know that using our federal employees as pawns to settle political disputes harms us all. I hope there is not another government shutdown. However, if there is, the CMBA and I will not be hiding in tortoise shells. Instead, we will be educating the public about how shutdowns harm the future of our federal workforce, our federal judiciary, and our judicial system. How about you?

Marlon A. Primes has been a CMBA member since 1993. He previously served as: a member of the Board of Trustees, the Chair of the Litigation Section, the Chair of the 3Rs Committee, and the Chair of the Justice for All Committee. Marlon has worked as an Assistant U.S. Attorney in Cleveland for the past 26 years. He received his law degree from Georgetown University Law Center and his undergraduate degree from Ohio University’s E.W. Scripps School of Journalism. He can be reached at (216) 622-3684 or Marlon.Primes@usdoj.gov. Follow him on Twitter @MPrimesCMBA.

The views expressed in the foregoing column are those of the writer in his personal capacity and are not necessarily those of the U.S. Attorney’s Office or the U.S. Department of Justice.