

PERSPECTIVES ON
STATE COURT LEADERSHIP

KEEPING COURTS FUNDED:

RECOMMENDATIONS ON HOW COURTS CAN AVOID THE BUDGET AXE

*One in a series from the Executive Session
for State Court Leaders in the 21st Century*

written by:
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This is one in a series of papers that will be published as a result of the **Executive Session for State Court Leaders in the 21st Century**.

The Executive Sessions at the Harvard Kennedy School bring together individuals of independent standing who take joint responsibility for rethinking and improving society's responses to an issue.

Members of the Executive Session for State Court Leaders in the 21st Century over the course of three years sought to clarify the distinctive role of state court leaders in our democratic system of government and to develop and answer questions that the state courts will face in the foreseeable future. Themes addressed include principles for effective court governance, the tension between problem solving and decision making, the implications of social media for court legitimacy, how courts defend themselves from political attack, and the notion of chief justices as civic leaders. Many themes were developed by Session members into papers published in a series by the National Center for State Courts.

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Out-of touch judges; arrogant court administrators; unhelpful judicial staff. True statements? Not necessarily. A perception among some decision-makers? Absolutely.

Such perceptions exist at a time when courts are asked to do more and more, such as rehabilitate criminals, settle complex legal disputes before protracted trials, and prevent victims of unscrupulous mortgage companies from losing their homes. As a result of the current economic crisis, virtually every line item in any given state's budget is at risk for reduction or elimination, and funding for state courts to merely continue their present operations is no exception.¹ This is more than an academic concern; budget cuts will infringe on the very ability of courts to do the work that the public expects them to do.

To be sure, political and policy decisions that would – either intentionally or unintentionally – reduce the role and impact of our nation's courts are nothing new and are a part of our nation's history. In 1809, when the Supreme Court required Pennsylvania to pay up in a dispute between the Commonwealth and a Connecticut sailor, Gideon Olmstead, Pennsylvania's governor, sent the state militia out to prevent its enforcement.² In the wake of *McCulloch v. Maryland*, some states outright defied the Court's decision that they lacked the constitutional power to tax banks.³ President Lincoln vowed while campaigning for president not to give the *Dred Scott* decision any precedential authority.⁴ And more recently, in response to *Brown v. Board of Education*, Southerners engaged in "massive resistance," accusing the Court of acting unconstitutionally.⁵

The majority of today's serious debates, however, are different. Certainly some who believe in more limited government are using the economic crisis to reduce the reach of the courts. But generally speaking, the majority of debates today are not explicitly ideological attacks on particular decisions, viewpoints, or judges. They tend to not challenge the very existence of courts, nor do they seek to ignore judicial decisions. Rather, they are often technocratic, rooted in a consideration of how best to spend limited taxpayer dollars. The arguments by proponents of cuts have, to varying degrees, a certain appeal and logic: courts,

like other taxpayer funded entities, should tighten their belts and be even more accountable during this challenging economic time. True or not, the surface-level appeal of this argument makes the job of avoiding the budget axe challenging.

There is one further challenge to overcome. A segment of elected officials have tended to reject some parts of government, and their goals include reducing

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the scope of those parts of our governmental infrastructure—and courts are not immune. In addition to the technocratic battles about how best and most efficiently to spend taxpayer dollars, therefore, court leaders or their representatives may also have to respond to those who believe government is necessarily a bad thing.

These debates and proposed budgetary cuts are not likely to end soon. The economy is still weak, and recovery will be slow. Dollars that states have received from the American Recovery and Reinvestment Act have generally expired. Further, Congress is reducing the financial aid it provides to states, which will require states to make even further cuts to their budgets.

Consider what has happened over the last several years:

- In 2011, **New York's** judiciary has seen its \$2 billion budget cut by \$170 million after Governor Andrew Cuomo lambasted state court leaders for proposing budget increases amidst an economic downturn. These cuts are already having effects, as measures to reduce the state's case backlog have

been pared back, small claims and night court hours have been reduced, and hundreds of administrative employees have been laid off.⁶ In early 2012, a report from the New York State Bar Association determined that “the impact of reductions in funding for New York state courts during the 2011-2012 year has been substantially harmful and far-reaching.” The sharply reduced budget has decreased courtroom hours, leading to overcrowded dockets, more delays, and longer trials. Funds continue to be stretched, however, and the courts recognize this; the judiciary’s own FY2012-2013 proposal cuts another \$19 million from the current budget.⁷

- **Georgia’s** steep revenue declines resulted in a 14 percent cut to the state’s judiciary budget in FY2010 and a six percent cut in FY2011. Many courthouses have had to shutter operations on certain weekdays, one circuit suspended all civil trials indefinitely, and the state Supreme Court has had to rely on unpaid help to complete administrative tasks.⁸ Tax revenue increases going into 2012, however, have made court leaders optimistic that some funding will be restored.⁹
- As a result of recent cuts in **Maine’s** courts, court security has been reduced, stay-away orders delayed, and technology improvement funds slashed—all as the courts continue to see 150,000 new cases on its dockets every year.¹⁰ In FY2012, the state did not enact further significant cuts to the judiciary’s budget, which allowed many non-judge vacancies to be filled. Maine’s Supreme Court Chief Justice has used the opportunity to call for, among other things, the consolidation of services and improvements to technology.¹¹
- **Florida’s** courts have faced sizable cuts over recent years, losing \$50 million in funding between 2007 and 2009. Courthouse closings, layoffs, and unfilled positions resulted.¹² Twice in 2011, the courts needed emergency loan infusions from the governor in order to stay solvent. Many senior circuit judges are retiring, which one local chief justice blames on growing caseloads and chronic understaffing. Furthermore, the courts are struggling with fewer funds from foreclosure fees, as there have been fewer foreclosures in the past year.¹³
- In response to the governor’s calls for cuts in all agencies in 2009, **West Virginia’s** Supreme Court submitted \$2 million in cuts (on a \$117 million total budget), arguing that although it was not easy to produce the cuts, they could do so without reducing services. The cuts would instead result from the delayed implementation of a case management system.¹⁴ In FY2012, however, West Virginia’s judiciary stood as an outlier and received a \$1.7 million budget increase. These funds are intended to expand drug treatment programs and add designated sex offender probation officers.¹⁵
- Despite its embrace of voluntary cuts in FY2009, the **Massachusetts** trial courts’ budget was cut again by \$25 million (about 4%) in FY2010, resulting in a hiring freeze and a 7.5 percent decrease in staff.¹⁶ In FY2012, the governor approved another \$24 million in state court cuts, despite warnings from the Supreme Court Chief Justice that services would be negatively impacted. All told, the cuts from the beginning of FY 2009 to the present come to \$96 million, and have led to a loss of over 1100 positions. Upon passage of these cuts, the chief

justice requested that the governor stop appointing new judges for the next fiscal year, arguing that every additional judge would require three support staff be cut.¹⁷

What virtually all states have in common are significant budgetary challenges. In order to avoid layoffs, furloughs, salary freezes or cuts, fewer operating courtrooms, and reduced functions, judges and court administrators need to engage with members of their executive and legislative branches far more proactively than they have at any time in the past. Every state is different; the reputations and personalities of their courts, judges, and administrators are unique.

In order to advocate for funding during this economic crisis, courts must approach the budgetary process proactively, effectively, and humbly. Unlike many other entities seeking continued state funding, courts do not typically employ paid lobbyists or have PACs. As a result, the need to approach the budget process methodically, comprehensively, and with accurate data is arguably more important for courts than it is for other entities funded by their state's budget.

Below is a series of recommendations on how to engage with members of state executive and legislative branches. These are merely recommendations. State court leaders should not necessarily employ each recommendation or follow these recommendations precisely as outlined below. The recommendations would likely need to be adapted to the particular circumstances of your state. Instead, the recommendations are intended to help you develop a framework for your advocacy efforts with members of your executive and legislative branches.

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UNDERSTAND THE POLITICAL CLIMATE IN YOUR STATE

DETERMINE HOW THE JUDICIAL BRANCH IS VIEWED IN YOUR STATE.

An honest assessment of how the executive and legislative branches regard the judiciary is necessary before embarking on a strategy of advocating for funding. Additionally, the same assessment should be undertaken with regard to the general public's perception as well as that of any industries that wield influence in state government. It goes without saying that those courts that are well-regarded within their own states are more likely to escape the budget axe. Conducting some self-assessment may be difficult and, in some people's minds, is undignified. But effective advocacy typically requires an understanding of how those who hold the purse strings feel about you and what they hear from their constituents with regard to the courts.

REALIZE THAT SOME GOVERNORS AND LEGISLATORS DO NOT CONSIDER THE COURTS A COEQUAL THIRD BRANCH.

This recommendation may be difficult to adopt because courts are indeed a coequal third branch. Everything changes, however, when money is on the table. Some believe that because courts are funded by taxpayer dollars, court funding must undergo the same level of scrutiny as every other budgetary line item. Right or wrong, this is the new budget reality, and one which judges and court administrative staff must accept and consider when devising their outreach strategy.

TAILOR YOUR MESSAGE TO THE POLITICAL CLIMATE OF YOUR COMMUNITY.

No efforts that you undertake to save court budgets should operate in a political vacuum. You must tailor and shape your message based in large part on the political climate of your state. For example, if your state is focused on reducing prison costs, highlight the role of the courts in diverting offenders from prison; if your state faces judicial scandals, demonstrate how

funding will ensure the scandals never happen again; if the courts are viewed as aloof, apply the personal touch and show how courts have a positive impact on the lives of citizens of the state. More globally, consider how to frame your message in a political climate in which some leaders and their constituents seek to drastically shrink the size of the government. How are the courts different from what is perceived by some as a “typical government bureaucracy” that wastes taxpayer dollars?

UNDERSTAND AND ACCEPT THAT COURT BUDGETS MAY BE CUT.

There is no question that in most states, every single line item, including court funding, is on the table. Realization of this fact is critical to developing a proactive strategy of avoiding future cuts. Budgeting and advocating for funds in a manner like that of the other branches of government is not beneath the judiciary, and judges and court administrators who are reluctant to accept this reality need to be convinced otherwise very quickly.

DEVELOP RELATIONSHIPS WITH KEY INDIVIDUALS AND GROUPS

FIND A POWERFUL ALLY IN THE LEGISLATURE.

A legislator—one who has some power—who can passionately advocate for the courts may be able to save the courts from significant cuts. Legislators at the budget negotiating table are often in a position to stave off particular cuts. Having one powerful senior legislative ally will likely be more beneficial than having dozens of legislators who lack the power to affect budgetary line-items on your side. In states with term limits, however, a powerful staffer who stays in his or her position of influence as members come and go is an important person to have advocating for the courts and is someone who will likely be of enormous assistance.

DO NOT STAND ALONE: PARTNER WITH THE LEGISLATURE AND EXECUTIVE BRANCH ON OTHER PROJECTS.

The Judiciary cannot act like it simply stands alone. Instead, building a good relationship with the other branches of government is critical and should not begin with, nor solely revolve around, the budget. This could include working on joint grant proposals, sharing information about IT projects, creating informal advisory boards or task forces, or even something as simple as brown bag lunches on topics of mutual interest.

ENGAGE DIRECTLY WITH THE LEGISLATURE AND EXECUTIVE BRANCH ON NON-BUDGETARY MATTERS.

While ethical rules may limit some judges from engaging in the legislative process, at a minimum court administrative staff should weigh in on legislative initiatives on a regular basis, even if only to offer technical advice. Providing information at the last minute, particularly in a reactive way, only engenders hostility. Moreover, lawmakers bristle when the only time that the courts engage with the other branches is during budget season. Individual judges and key staff may have particular relations with members of the other two branches. Identify these relationships, develop and use them.

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DEVELOP A COHERENT COMMUNICATION STRATEGY

BE ACCESSIBLE.

Administrative staff should be available to answer any budgetary questions or to provide any relevant data to policy makers. Consider making one person a legislative liaison who can provide the necessary information, develop long-term relationships within government, and coordinate with the appropriate people within the courts. Courts should not be viewed as aloof, arrogant, or above it all. Failing to respond to requests for information or data may lead to such negative conclusions.

DECIDE WHO YOUR SPOKESPERSON WILL BE.

There is often no substitute for a dynamic, well-respected voice. In some states, that is the chief justice. In others, it is an associate justice or another judge who once served in the legislature and is well-regarded by his or her former peers, or it can be a member of the court's administrative staff who has good relations with the governor's office and legislature and can most effectively lobby for the courts. And as governors, legislatures, and courts change, the spokesperson for the court may need to change as well.

SPEAK WITH ONE VOICE.

Perceived divisions between and among justices, judges, or administrative staff can stymie efforts to secure funding. Opponents of the courts will use internal divisions to thwart its attempts to secure line items or other funding. Court leaders must emphasize the importance of cooperation on funding issues.

HIGHLIGHT YOUR SUCCESSES.

Self-promotion is a good thing. It may earn you some extra funding and give you the opportunity to showcase your branch with passion and sincerity. Methods of appropriately highlighting successes include annual reports, meetings with key officials from the executive and legislative branches, press releases, interviews with reporters, or discussions with stakeholders who come before the courts on a daily basis.

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PRESENT WELL, WITH GOOD DATA.

Responses to requests for information or data during budget/appropriations hearings or in response to appropriate questions at other times should be presented in a persuasive and readable manner. Use these occasions as opportunities to highlight what the courts do, the public benefits to such work, and the costs involved. Tell a story with your data; use the data to make the case for why your work is so important. Also, remember that the information you provide may be analyzed by people who themselves are overworked and cannot spend a lot of time reviewing what you send them. As a result, whatever you provide must be in a user-friendly and easily-accessible format. Finally, learn how agencies that have budgetary success budget and present themselves. Following a successful model may be helpful with some decision-makers. An example could be to show the cost savings and reduction in local and/or state prison population that specialty courts have helped to achieve. Another example could be to show how court innovations and improvements in efficiencies are resulting in the collection of fines and fees that would otherwise have gone unrealized.

BE CLEAR REGARDING THE REAL-LIFE IMPACT THAT CUTS WILL HAVE.

Because every dollar is in jeopardy, do not be afraid to highlight how cuts to the court budget will impact lives, be it by cutting victim services or probation officers, shutting down treatment courts, increasing case-loads that judges must handle, or causing stay-away

order delays. Demonstrate that peoples' lives will be negatively affected. Show that businesses or corporations will have more difficulty seeking justice as well, a strategy successfully employed recently in South Carolina.

ENGAGE DURING THE BUDGETARY PROCESS

ACKNOWLEDGE THAT COURTS ARE COMPETING DIRECTLY WITH THE PRIORITIES OF GOVERNORS AND LEGISLATORS.

When faced with the difficult decisions of whether and how much to cut such programs as education, community development, and welfare spending, as well as determining whether and by how much to increase or cut taxes, governors and legislators will look to appropriations in areas that are of less import to them. For some, that means the courts. Your mindset must be that you are competing with programs and appropriations from other entities, including legislative and executive branch agencies. But you should also remember and think about highlighting that the percentage of the overall budget for which the court accounts is likely small.

COLLECT DATA AND PUBLISH PERFORMANCE MEASURES.

Government agencies are increasingly required to publish performance measures, typically annually. Performance measures allow others to see what it is that an agency or entity is actually accomplishing and, equally important, that it is carefully tracking what works and what does not. Relying upon the information in performance measures provides an opportunity to make the argument, backed up by data, that courts are making many critical contributions, as well a data-based argument that courts are not only making critical contributions but serving taxpayers well by using data to improve the way courts operate.

There are no guarantees in the budgetary process. Adequate court funding is an open, fluid issue in many states, and in these states the courts must fight to ensure they receive it.

DEMONSTRATE YOUR FISCAL PRUDENCE.

No one likes an entity or body that spends more than it should; most respect one that is responsible with taxpayer dollars. To help achieve such a reputation, determine whether targeted cuts or freezes can be made, such as freezing salaries, implementing rolling furloughs to administrative staff, eliminating non-essential programs, or shifting to competitive sourcing for supplies and equipment. Highlight how innovative programs such as treatment courts have saved your state money.

CONCLUSION

There are no guarantees in the budgetary process. Adequate court funding is an open, fluid issue in many states, and in these states the courts must fight to ensure they receive it. Court leadership needs to realize that there is a limited pot of taxpayer money available, and that they are competing directly with every other entity that receives a budget appropriation. The collective mindset of court leadership must be "how can we make sure we receive enough money from the Legislature." Beginning to think of yourselves as one of many important entities fighting for funds is helpful; thinking of yourselves, by contrast, as above the budgetary process and entitled to a certain portion of funding because you are the third branch of government is an invitation to be underfunded.

The more you can do to foster good working relationships with policymakers in your state and demonstrate how integral the courts are to public safety, victims, the administration of justice, the business community, consumers, families, and everyone else, the more likely you are to avoid significant cuts to your funding. But such work requires a concerted, organized self-assessment, as well as a proactive strategy that must begin well before budget season in your state. This work is quite different from the day-to-day work that judges, clerks, and court personnel typically perform.

Judges expect those who come before them in the courtroom to present not just the facts, but the implications and importance of such facts and what they mean in the context before them. Legislators similarly expect you to justify their budget requests with more than just simple facts and numbers. They expect budget requests to identify and analyze the real life implications of funding, justify what benefit the state will derive from appropriate levels of funding, and, by contrast, what harm the state will suffer if funding is inadequate.

Of course, expect the unexpected. The budgetary dynamics are not only unpredictable, but are often different every budget cycle.

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This project was supported by Grant No. 2007-DD-BX-K056 awarded by the Bureau of Justice Assistance. The Bureau of Justice Assistance is a component of the Office of Justice Programs, which also includes the Bureau of Justice Statistics, the National Institute of Justice, the Office of Juvenile Justice and Delinquency Prevention, the Office for Victims of Crime, and the Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking. Points of view or opinions in this document are those of the authors and do not necessarily represent the official position or policies of the U.S. Department of Justice.

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