

AMERICAN BAR ASSOCIATION  
COALITION FOR JUSTICE



# Road maps

A “How-to” Series to Help the Community,  
the Bench and the Bar Implement Change  
in the Justice System

Funding the  
Justice System  
How are the Courts  
Funded?

## **American Bar Association**

# **Roadmap to Funding the Justice System How are the Courts Funded?**

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## *INTRODUCTION*

The justice system in states across the country has traditionally suffered from a lack of adequate and balanced funding. It now accounts for just over four percent of all government expenditures nationwide, with similar allocations from state budgets.. There are many components of what is generally referred to as the “justice system.” In addition to the courts themselves, this system encompasses law enforcement, prosecution, indigent defense, and corrections. There are strong arguments to be made that all aspects are underfunded in light of overall budgets. Traditionally, the courts have been particularly at risk in this regard. This Roadmap will focus on the courts both because of their critical and central role in the system as a whole, and as an illustration of the kinds of concerns and approaches which may be applicable for other elements as well.

Some states have begun to address the problem of court funding in recent years. In many cases, the issue was largely ignored until economic collapse was imminent. An overall improved economy in the late 1990's, with concurrent increased tax revenues, eased the crisis in many jurisdictions temporarily, only to find significant budget shortfalls reappear when the economy took a down turn in the early 2000's. Even in today's relatively improved economic times, it is critical to examine the issue of court funding and strive to put into place institutional plans and methods that will assure the future of court funding when the inevitable downturns come, and judicial systems again become prime targets for budgetary strictures. By providing information as to how courts are funded currently, and examining shortfalls and problems encountered through the years, we hope to offer ideas as to how the courts themselves, the organized bar, and the public can work together toward solutions.

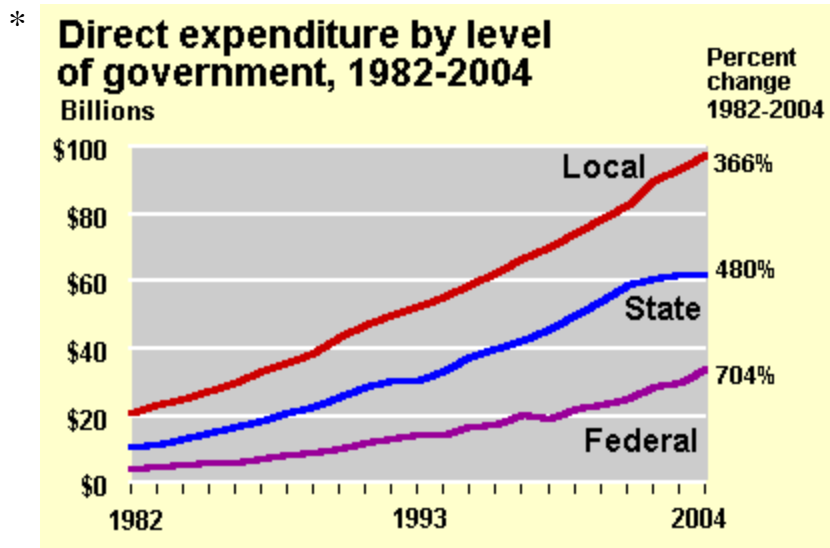
## *THE PROBLEM*

### **Background**

Most recently, the ABA Commission on State Court Funding, chaired by Justice Joseph P. Nadeau of the New Hampshire Supreme Court reaffirmed the importance of adequate, stable court funding to the independence of the judiciary. Those recommendations were adopted by the ABA House of Delegates in 2004. The Commission was created to make recommendations on court funding issues identified in a 2003 report by the ABA Commission on the 21<sup>st</sup> Century Judiciary entitled “Justice in Jeopardy”. Not surprisingly the Commission found that not only is adequate court funding essential to the proper functioning of the courts, but is also essential to preserving the independence of the judiciary as the third branch of government.

The report found that state legislatures provide the majority of funding for state appellate courts and courts of general jurisdiction, with an increasing amount of funding being provided by state legislatures to courts of limited jurisdiction. Yet local governments still provide the majority of funding for state courts.

According to studies performed by the Bureau of Justice Statistics on the increase in justice spending between 1982 and 2004 by state, local, and federal governments, local governments in 2004 provided over 50% (over \$97 billion of the estimated \$193 billion) of total justice expenditures.



Despite overall increases in justice expenditures, the percentage of state funds going to the courts has decreased to 1.5% while Police and Corrections receive 3.1% and 2.5% of state expenditures respectively. Although the courts only receive a small percentage of state total expenditures, court budgets are not small and thus are targets for reduction during financial shortfalls. Large urban trial courts can have operating budgets of over \$100 million, with typical trial courts costing several million dollars annually. Importantly, reductions in court budgets have a disproportionately negative impact on services since court budgets are overwhelmingly composed of personnel expenses, accounting for 70-90 percent of total court expenditures.

\*Direct expenditure chart, used with permission by The Bureau of Justice Statistics. [www.ojp.usdoj.gov/bjs/glance/expgov.htm](http://www.ojp.usdoj.gov/bjs/glance/expgov.htm)

Despite recent improvements in state budgetary outlooks, the tendency in many states is that once a court program is cut during a budget crisis, it is rarely restored to full funding since state budgets are under increasing pressure due to other increasing costs such as healthcare. For example, in Alabama, 475 court positions were cut in 2004 due to budget cuts and New Hampshire suspended jury trials for a month. Oregon closed its courts to the public on Fridays and prosecutors in that state were unable to bring lower crimes to court for four months. During the time Oregon was unable to prosecute property crimes, one car thief was arrested and released three times in four days before finally being prosecuted. Service cutbacks in other states caused the closing of court service desks and reductions in other court assistance programs. Service reductions reduce the effectiveness of court programs and impedes the courts ability to carry out constitutionally mandated, nondiscretionary functions. Despite budget cutbacks, the courts have no control over the number of lawsuits filed each year resulting in increased backlogs of civil cases since many courts have to give priority to criminal cases in order to meet constitutional requirements for due process.

In response to budgetary shortfalls, many courts and state legislatures have turned to court fees and fines as a means of generating necessary revenue. In the majority of jurisdictions, the power to authorize the assessment of court costs and fees also resides with the State Legislature, although with limited jurisdiction courts and municipal courts this power sometimes rests with the local government entity. In very few instances do the courts themselves have any power whatsoever over such assessments. Furthermore, the large majority of courts are mandated to forward the proceeds of court costs and fees directly to the State General Fund. In a fewer number of instances, costs or fines may be distributed to the general fund of the local government. Courts seldom have the right to retain such funds for their own budgets. Rather, they are required to submit an application to that state and/or local government entity in order to receive the much-needed funding to operate. Michigan has taken a unique approach to court funding by creating a Justice System Fund to preserve their large number of specialty courts, where all fines and fees collected by Michigan courts are placed into the fund and then distributed to courts as needed. A 2003 survey of a large number of state court administrators conducted by the National Center for State Courts (NCSC) found that in response to budget cuts, 84% of the states froze or delayed hiring's, 34% withheld cost of living increases, 56% reduced training, and 31% cut funding to specialty courts. All of the actions taken to meet temporary budget shortfalls can ultimately cost the courts more in the long run by postponing necessary projects, or causing a longer recovery period when the budget situation improves.

A description of the ongoing efforts of the ABA with respect to this issue is set forth in the section below entitled "ABA Policy/Participation."

**Competing for limited funds**

As stated above, the justice system has numerous components. In most instances, these co-existing entities are poised as competitors, independently seeking their own share of a very small slice of pie. Recent national political trends have been toward the support of "get-tough-on-crime" provisions such as more prisons, mandatory minimum sentences, and stricter juvenile penalties, all of which put additional strains on the courts. In many cases, such proposals have become law with no funding provisions whatsoever. When funding is provided, it is usually allocated to such tangibles as the bricks and mortar of a correctional facility, with no consideration given to the impact upon the court docket and its personnel.

Those who seek funding are further hampered by the need to piece together a budget with funds from a variety of sources. Virtually none of the courts surveyed by the ABA in recent years has the benefit of a single funding source. Rather, each must participate annually in state, county, and city budget processes, and independently seek competitive federal and/or private grants. With more than 34 states having already moved to a centralized source of funding for state courts, state legislatures typically limit expenditures for judicial salaries and leave the local governments to fund the facilities and maintenance of the courthouses.

California has taken a comprehensive approach to court funding, including a unique approach to the problem of maintenance and facility costs. California has begun transferring ownership of local court buildings to the state, so that state legislature can take over operational costs as part of a larger restructuring of the state court system. In many jurisdictions, the issue of facility costs is complicated by the combined use of court buildings by other local government offices. The impact of building expenses is not restricted to state courts. In the 2005 Report on the Federal Judiciary by Chief Justice John G. Roberts, Jr., he identified two areas of concern for the federal court system. First the federal judiciary was spending 16% of its budget on rent for court space from another branch of government, the General Services Administration, while the second area for concern was the failure to increase judicial salaries. In 2006 the federal judiciary spent over 21% of its budget on rental of court space with expectations that rentals in 2008 will top \$1 billion.

In the 2006 Report on the Federal Judiciary, Chief Justice Roberts again raised the dangerous impact caused by failure to increase judicial pay. He noted that when adjusted for inflation, judicial pay has declined by 23.9% since 1969, while the average U.S. worker's wages have increased 17.8%. The overall decline in judicial salaries impacts the ability of the courts to attract and retain the best personnel. This is a trend that may result in judicial appointments ceasing to be the capstone of a distinguished career, and instead becoming a stepping stone to a lucrative private practice. As a result, the independence of the judiciary is

jeopardized. Judicial salaries for state court justices have followed the same path, with many state and federal court systems also reducing or freezing the number of support staff as well.

Judicial budget cuts in 2004 and 2005 resulted in a 6% reduction in judicial branch employee positions that largely have not been replaced despite increases in the 2006 and 2007 budgets. Federal staff cuts cause a reduction in services and an increase in the time for resolution of cases in the same way that state courts have seen reductions in services despite increases in the number of lawsuits filed. Budget cuts have affected such basic services as security. Budget shortfalls in Maine in 2006 forced the state courts to ration security to only the highest risk cases, so despite having x-ray machines, metal detectors and other entry screening devices, Maine courts could only afford to staff security check points 5% of the time. Reductions in security and other basic services increases the threat not only to court personnel and all users, but threatens the court's ability to perform their basic constitutional function.

An added difficulty for many courts is that the budgets they receive are controlled by specific line item allocations determined by the executive or legislative branch regardless of how the judicial branch could best utilize the funds. The Massachusetts judicial budget for example contains over 100 separately funded line items, when combined with an inability to transfer excess funds across line items, there is little incentive for judicial efficiency. Many courts' inability to retain unused funds from year to year also reduces their incentives to increase efficiency since the court rarely receives the benefits from an increase in efficiency. The growth of problem solving courts is a good example of efficient use of resources, since many studies have shown that not only do problem solving courts reduce recidivism rates, they also cost the justice system less overall than traditional prosecution and incarceration. As with many court programs, problem solving courts have been impacted by budget cuts, with 31% of states reporting funding for problem solving courts cut during recent budget shortfalls.

For example, in 2006, Maine instituted a moratorium on establishing new problem solving courts because the judicial budget could not afford the start up costs, despite the long term savings that these courts provide to both the justice system and the community as a whole. Many problem solving courts receive substantial portions of the start up costs from federal funding from the Bryne JAG program, but that funding is not secure and was eliminated in the President's 2007 budget proposal, but fortunately it was replaced by funding in a later House Bill. Federal funding to start problem solving courts does not solve the problem of providing continued funding to maintain the specialty courts once the federal startup funds have ended. The cost of these courts is ultimately shifted to state court budgets, and subject to budgetary shortfalls.

**Accessibility**

A clear and somewhat disturbing current trend is to switch the burden of court financing to court users regardless of which government entity has the responsibility for court financing. As a result, there is the growing danger that court systems across the country may become increasingly inaccessible to the average citizen. Should this trend continue, there is a real concern that segments of our society will no longer find the justice system available to them. This development is most acutely felt by low income individuals, minorities, and other disadvantaged groups for whom legal services and legal access are already most precarious. Recent studies support these fears indicating that up to 75% of the legal needs of low-income Americans are not being met.

For example, cuts to the New York Court budget resulted in cuts for The Public Interest Law Office in Rochester, resulting in 200 low-income residents not receiving the help needed to successfully resolve legal problems ranging from obtaining supplemental security income for disabled residents to protecting low-income debtors subject to predatory lending. In Virginia Beach, Virginia, in 2003, the Commonwealth's attorney announced that due to budget cuts his office would no longer prosecute the 2,200 domestic violence cases brought each year. In Minnesota, budget cuts eliminated many court services, including assistance navigating the sometimes confusing legal system for domestic violence victims and instituting mandatory, unwaivable charges to obtain a public defender.

The imposition of increased court fines and fees is of great concern since the impact of increased legal costs falls disproportionately hard on low-income individuals, who are already impacted by other reductions in court services. For example, in 2003 the Kansas Supreme Court authorized an emergency surcharge of five dollars for most cases, the emergency charge was then extended again in 2004. Texas imposed an additional fifteen dollar surcharge upon divorce and annulments, while Minnesota substantially increased fees on all civil filings. Many courts have also taken steps to increase collection of court fines and fees. While increases in fines and fees can temporarily help resolve budget issues and provide bargaining points for requesting state funding, they do not provide a long term solution for court funding.

**Litigation**

In recent decades, courts have sometimes chosen to use the doctrine of inherent powers to address funding issues. When courts themselves become litigants, many issues are raised that generally fail to benefit any of the parties involved. Interbranch conflict on such a sensational scale is best avoided entirely. Most of the earliest contemporary disputes of this nature addressed a local court's power to fill support positions or buy materials and compel state legislatures to fund them appropriately. In cases where courts as plaintiffs were successful, they

usually received funding for specific expenditures such as personnel and equipment. These conflicts, although between the judicial and legislative branches, were not truly between equals, as they were actually waged between a state entity and a local entity.

The use of litigation to resolve judicial budget disputes was expanded in the case of *Commonwealth ex rel. Carroll v. Tate*, 274 A.2d 193 (Pa. 1971), cert. denied, 402 U.S. 974 (1971). In that action, the Pennsylvania Supreme Court ultimately restored more than \$ 2 million of funding to the Philadelphia Court of Common Pleas, after cuts by the Mayor and City Council. This remained, however, a conflict between not-quite-equals, as the state court ruled upon a local appropriation. Subsequent to *Tate*, several states attempted to limit a court's exercise of its inherent power through caselaw, court rules, and administrative orders.

As the trend away from local financing and toward state financing of courts took hold, the use of this doctrine diminished. However, the issue resurfaced and reached its peak with the case of *Wachtler v. Cuomo* in New York in 1991. This raised the stakes to a true dispute between co-equal branches of government, in the persons of the Chief Judge and the Governor. After receiving the judiciary's annual budget request, the Governor had recommended a ten percent reduction, and most of that decrease was approved by the legislature. After fighting a public battle through the media, the Chief Judge ultimately filed suit against the Governor. Space does not permit a full discussion of the facts herein, but the matter was ultimately settled, with no meaningful dollar gain to the judiciary.

The most significant lesson to be gained from the New York controversy is the reality that all sides apparently emerged as losers in the court of public opinion. One obvious problem with courts as litigants is the unavoidable conflict of interest, especially when the state's highest court is involved. This conflict seriously jeopardizes the judiciary's appearance of impartiality. In New York, the Governor publicly accused the judiciary of ignoring the needs of other branches and state-funded programs in favor of its own selfish interests. This incident undermined public confidence in the judicial branch at a time when, nationwide, such confidence was already tentative.

On a seemingly positive note, the battle did serve to bring the issue of court funding to the public's attention. During the standoff, many court officials and lawyers publicly supported the Chief Judge's position, and widespread press coverage included stories about deteriorating court conditions and the need for funding. However, the ultimate outcome was largely negative. At a time when all state funding was scarce, the court was perceived as seeking special treatment, thus damaging the public trust.

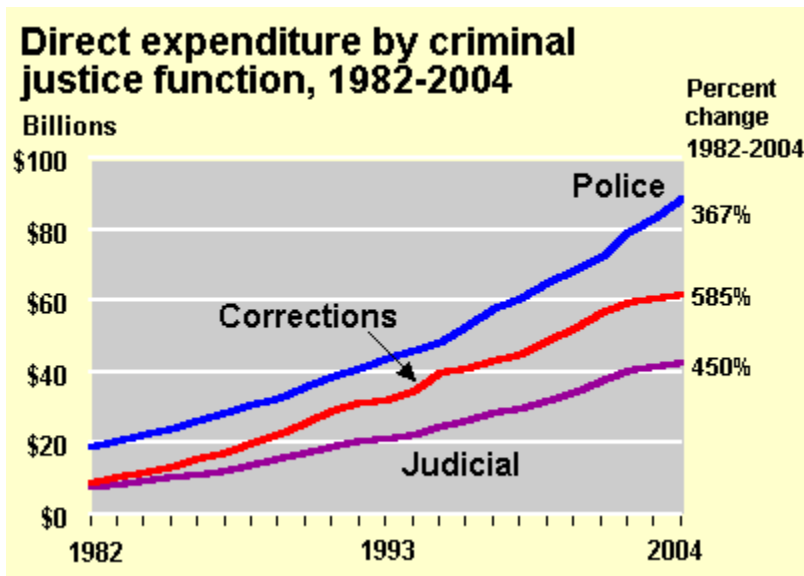
This most visible and dramatic example of the use of the courts, by the courts, to force funding for the courts, illustrates the need for extreme caution in that regard. Litigation and its

attendant publicity can irreparably harm the relationship among the three branches of government. If a court gains funding in the short run, it may lose effectiveness for a longer period. Filing suit between or among branches will also upset the delicate balance of powers, as when one branch gains, there is most certainly a corresponding loss of power by another branch. An analysis of this method of seeking funding should serve as the impetus for all interested parties to instead pursue the collaborative methods outlined in this publication.

#### Direct Expenditures for Justice as Proportion of All Government Expenditures

##### Breakdown of Justice Spending (Millions of Dollars) 2004

Level	Total Gov't Spending	Total Justice Spending	Enforcement	Law Courts	Corrections
FEDERAL	\$2,162,204	\$34,290	\$19,152	\$9,714	\$5,424
% of Total Exp.	100%	1.5%	0.8%	0.4%	0.2%
% of Justice Exp.	NA	100%	55.8%	28.3%	15.8%
STATE	\$1,406,175	\$61,757	\$9,471	\$15,323	\$36,963
% of Total Exp.	100%	4.3%	0.6%	1.0%	2.6%
% of Justice Exp.	NA	100%	15.3%	24.8%	59.8%
LOCAL	\$1,257,580	\$97,462	\$60,235	\$17,669	\$19,558
% of Total Exp.	100%	7.7%	4.7%	1.4%	1.5%
% of Justice Exp.	NA	100%	61.8%	18.1%	20.0%
TOTAL	\$4,825,959	\$193,509	\$88,858	\$42,706	\$61,945
% of Total Exp.	100%	4.0%	1.8%	0.8%	1.2%
% of Justice Exp.	NA	100%	45.9%	22.0%	32.0%



## The Players

### Government Officials

As explained above, the power to set fees and to allocate operational funds most often is vested with the state legislature and/or a local governing body. In many jurisdictions, the governor, mayor, or other member of the executive branch also play a role in the funding process.

Predictably, members of the legislative and executive branches of government are subject to political considerations and pressures which differ from those of the judicial branch. In addition, the constitutional scheme of checks and balances among the three branches itself creates a certain unavoidable level of tension which can affect the judicial budgeting process.

For example, judges have the power to hear cases affecting the other branches, such as challenges to certain actions or interpretation of legislation. Frequently, the judicial decision at issue is not warmly received by the other branches or is at odds with those branches' political aims. Similarly, the decisions of legislators and executive branch officials can significantly impact the judicial branch in many ways, not the least of which being its fiscal stability and, in fact, its very existence.

Exacerbating these inevitable tensions is the fact that historically, there has been little communication among the branches, and a serious lack of education and information about the challenges faced by those in different roles.

The interaction which does exist between the judicial and legislative branches tends to be concentrated on an often combative annual budget process.

Too often there are long-standing negative attitudes among many legislators toward the judiciary which are strengthened by this failure of communication and lack of knowledge. Legislatures, which were once populated by lawyers, now have fewer numbers from that profession among their ranks, and thus are much less informed about the courts. According to the National Conference of State Legislators, the number of lawyers in state legislatures declined from 22% in 1976 to around 15% today. At the same time, judges and judicial administrators are sometimes naive about the often cryptic and complicated legislative process, and may approach these processes with a sense of entitlement which is off-putting to legislators.

The executive branch can also be viewed as a roadblock to funding when it interferes in the administration of funds, such as making demands for specific uses of allocated funds. Changes in executive personnel may also result in changes in priorities and strategies which affect the courts. Experience indicates that the executive branch seldom includes a role for the judicial branch in its long-range planning processes when overall priorities are adopted among competing requests.

### **The Judiciary**

In order to overcome some of the problems outlined above, it is absolutely essential that the judicial branch be proactive. This is often perceived as impossible, or at the very least difficult, due to ethical constraints and a lack of clear guidelines for judges on how to interact with other government officials.

One problem is the lack of an identifiable spokesperson on behalf of the judiciary. In many states, neither the Chief Justice nor a single court administrator is able to speak for the entire system. Very often, different courts within a state are seeking different levels of funding from the legislature. This piecemeal approach can often seem confusing and ineffective from the legislator's perspective. Such a structural problem is difficult to eliminate, but its negative effect can be minimized if courts band together to present a unified message regarding common trends and mutual concerns. In doing so, the courts themselves must put aside their own differences and get over the natural tendency to view each other as competitors. A situation in which overall allocations are insufficient can make a unified effort a challenge, but if such a coalition is successful, it can frequently generate a greater total amount to be shared among the various deserving entities.

Judges and other court personnel can be part of the solution to the communications problems set forth above. Most city council members, county commissioners, and state

legislators hear from the courts only once a year when they are looking for money. Ongoing personal contact will begin to break down barriers. Legislators can be invited to visit the courthouse and observe its successes and its needs firsthand in "sit-along" programs akin to police department "ride-along" programs. Workshops and receptions which provide opportunities for legislators and judges to meet face to face and discuss mutual concerns should be encouraged. In some jurisdictions, the Chief Justice meets personally with each freshman legislator. Such personal relationships should be encouraged and developed.

The courts should also provide legislators and executives with vital information regarding the numbers of constituents they serve and the efficiency with which they operate. The judiciary should share its successes with its peers from other branches of government, in a manner separate and apart from the budgeting process. Information regarding innovative projects, favorable statistical trends, and positive public feedback should be brought to the attention of elected officials outside the judicial system, throughout the year, not only at budget time.

Efforts by the judiciary to educate both the general public and the users of the courts should be undertaken. Most citizens have little direct contact with the judicial system, yet often have strong opinions about its effectiveness. These deeply held beliefs are often difficult to overcome. The involvement of the community in judicial reform and other initiatives can be a very effective and rewarding effort. Specific ways to bring the community into the process are discussed in depth in the ABA Roadmap entitled *Community Involvement*. More traditional methods of public education include outreach to schools, informational brochures, user friendly websites, community involvement in specialty courts, and public speeches by judges.

The court can have an even greater impact upon the individuals who observe the system firsthand such as jurors, litigants, witnesses, and attorneys. Perceptions among these individuals arise directly from their experiences. Judges and other court personnel should be constantly aware of and sensitive to the needs of those who find themselves inside the courthouse. Traditionally, courts have not provided the best examples of customer service. It costs little to remedy that situation and to place the emphasis on the court's users by establishing user-friendly information desks inside the courthouse, user-friendly websites, online hearing schedules, automated information kiosks in courthouse lobbies, providing wireless access for users and visitors, conducting user surveys, and developing other methods of addressing the needs of those who come into contact directly with the court.

As discussed more in the next section, judges should also look to the organized bar and lawyers in their communities. After better educating each of these constituencies, courts may find new allies in their struggles for increased funding.

## **The Bar**

One group that is often overlooked when considering ways to improve justice system funding is the very group that could have the most impact on the process. If motivated, the organized bar—state and local bar associations—can provide both a unique perspective and considerable resources in this effort. Traditionally, state bar associations have thought their role was limited to the monitoring of legislation that could adversely impact the justice system, and occasionally taking public positions on that legislation through lobbying efforts. These efforts have been crucial for the reorganization and improvement of the entire state courts system in California, and will be crucial in implementing proposed restructuring in New York. While such efforts are necessary and worthwhile, there are many more local contributions that can and should be generated by the organized bar.

The bar can be a direct ally of the bench in this effort, without facing the ethical constraints which limit the actions of the judges themselves. As a starting point, lawyers should work cooperatively and creatively with the judiciary to learn about the way their courts are funded, and to devise methods to relieve the economic burden derived from systemic or arbitrary under funding. The political tensions described above, which are at play among the three branches of government, do not impact the private lawyer or the organized bar in the same way. Thus, lawyers can serve as liaisons in this process, bringing facts and issues to the attention of the elected officials.

The bar may be in the best position, for example, to bring legislators and members of the executive branch to the table with members of the judiciary for discussions. The bar can spearhead the creation of committees and design studies which address the issue of court funding. Committees on which judges, administrators, legislators, and representatives of the executive serve together, can work collectively to develop strategies to increase revenue and maximize resources, and devise programs which improve the efficiency of the court.

The bar can bring new and important players together around the funding issue. Bar associations are often able to mobilize the support of major corporations and small business leaders—their clients and colleagues—within a community. The bar can help those businesses learn more about the problems faced by the justice system, and better their understanding of the impact delay and dysfunction can have on their own businesses and on the lives of their customers and employees. A study published in 2007 on the impact of proposed reorganization of the New York court system found that improvements in efficiency and ease of use would not only save the state \$59 million per year, but would save individuals, businesses, and municipalities \$443 million per year. Through such an education process, business leaders themselves can be motivated both by self and civic interest to assist the courts directly and advocate for court needs.

The bar can be the catalyst and conduit for the public education efforts discussed above. Lawyers and judges together should make efforts to involve the community and educate the general public about funding issues. Community forums, educational pamphlets and the like can be developed and distributed by both the bench and bar. The bar should also be part of education programs and other efforts by the judiciary to inform and improve conditions for the "user" public inside courthouses.

One of the most effective ways to begin the partnership between bench and bar is to cultivate techniques to encourage ongoing dialogue between the two groups. If the bar in a given jurisdiction does not currently sponsor a Bench/Bar Conference, members should begin to develop one. If such a conference is already established, court funding should be a topic which is thoughtfully presented and discussed. As suggested with respect to elected officials, the bar should be invited by the courts to observe operations behind-the-scenes, from a different perspective than that of even the most experienced litigator.

There can sometimes be natural tension between bench and bar, just as there is tension among the branches of government. However, where it exists, such tension can be mitigated by direct efforts by the bar to break down the walls which impede communication. Bar associations are in a position to create an environment in which both groups feel comfortable with working together, sharing ideas, and providing constructive criticism. Joint efforts to address the funding issue are an exemplary way in which to begin this dialogue. Judges, clerks of court, and court administrators constantly face frustration when it comes to funding and budgeting. Lawyers who approach the courts to be their allies in this struggle are likely to be welcomed and included in the development of solutions.

In the frequently abrasive political battles for improved court funding, one of the most complicated obstacles is the lack of an identifiable constituency. It is likely that the bar has already undertaken other programs and projects that have begun to build a public constituency around law-related issues. They must go a step further and mobilize those allies to step forward and be heard when the issue is the adequate funding of our system of justice.

### ***The Solutions***

The categories of individuals described above, working closely with the general public and groups such as the League of Women Voters, AARP, and the Chamber of Commerce, must take the lead and make stable court funding a top priority. Over the past decade, jurisdictions have striven to address the critical issue of funding with varying levels of success. The matter has generally been approached in one of three ways.

One method is to persuade traditional funding sources that the justice system deserves a greater share of the funds available. Most often, that source is the state legislature or other government body. Positive accomplishments in this direction will depend heavily upon the building of coalitions and improvement of communications as described above. In order to successfully manage changes in that direction, the “players” described herein must begin to view their roles in a new way, and understand the value of a joint and directed effort. One of the essential parts of such an effort is public education about the courts and their needs, which has been previously addressed.

Another strategy to address the funding gap is the development of new revenues. Increased filing fees and new user fees may be helpful, but as cautioned above, should not be relied upon too heavily, or at the expense of citizen access. There is a growing trend to look to private funding sources such as corporations and foundations to supplement public funds, but these are typically one time, project specific grants. These resources are available most readily in the family and juvenile court arenas, or for technology upgrades. Information regarding public, corporate, and private foundation grants can be accessed through The Foundation Center, 79 Fifth Avenue, New York, NY 10036-3076, 800-424-9836, 212-620-4230, fax: 212-807-3677, or online at <http://foundationcenter.org/>. The federal government, largely through the Department of Justice, has made available funds for security and specialty courts such as drug courts, domestic violence courts, community courts, and other innovative justice settings. Many federal grants provide start up funding, but do not provide long term funding to properly utilize the security equipment or continue operation of the specialty courts. Specific information about Department of Justice grants can be obtained through the DOJ Office of Justice Programs, 810 Seventh Street NW, Washington, DC 20531, 202-307-0627, [www.ojp.gov/funding/](http://www.ojp.gov/funding/)

A further successful tactic to ease financial constraints on the judicial system is to develop creative ways in which a court's internal expenditures can be reduced. This has been accomplished in some jurisdictions through the institution of quality management standards and other innovative programs within the system which allow the court to operate in a more efficient and cost-effective manner while in no way diluting the quality of justice. Various publications identified in the “Resources” Section which follows provide examples of methods of improving efficiency. Courts have tended to be among the last “businesses” to seriously assess their operations in this manner. In addition to the obvious benefits of streamlining operations, if a court is able to do so with positive results, it becomes far easier to make the case with funding sources that greater resources are nonetheless needed. Developing reliable methods for monitoring and reporting judicial improvements is also key to negotiating greater funding.

Any and all of these options should be explored by the bench, the bar, and their partners in this endeavor. The key to success in the long run, however, is not likely to be a specific program or a single added fee, but rather an ongoing collaborative effort among government officials, the judiciary, the organized bar, and the public at large. It is only with this level of continuing cooperation and commitment that the recurring cycles of funding crises can be leveled out and the negative impact upon the courts and those who use them eventually eliminated.

## ***ABA POLICY/PARTICIPATION***

### **The History of the ABA's Involvement in Funding the Justice System Issues**

Several ABA studies have described the harsh results that come with years of underfunding and poorly structured funding of the justice system. In 1986, the ABA funded a two-year national study of criminal justice chaired by Professor Samuel Dash of the Georgetown University Law Center and comprised of experienced people from all segments of the criminal justice system. In its 1988 report "Criminal Justice in Crisis," the Committee observed that the criminal justice system was starved for resources and cautioned that, as then currently funded; the system could not provide the quality of justice that the public legitimately expects.

In 1991 the ABA House of Delegates approved a resolution which recognized that "the highest priority of the bar and bench must be to promote improvements in the American system of justice by ensuring balanced and adequate funding for, and timely access to, the entire justice system." In 1992, the American Bar Association Special Committee on Funding the Justice System, published "Funding the Justice System – A Call to Action" in an effort to document the problems created by revenue shortfalls prevalent throughout the nation. Noting that "the combination of increased demand and shrinking resources now threatens the quality and availability of Justice in our nation . . . The current lack of resources is causing a drastic limitation on the amount of work those elements are able to process," the study analyzed the impact of inadequate funding for justice agencies and identified strategies for securing adequate and balanced funding for the justice system.

The Special Committee on Funding the Justice System issued its second report in 1993. "Saving Our System: A National Overview of the Crisis in America's System of Justice" was a result of the 1993 Interbranch Conference on Funding the Justice System hosted by the State Justice Institute, The National Center for State Courts, The National Conference of State Legislatures, and the ABA Special Committee. The conference brought together judges, bar leaders, legislators, prosecutors, public defenders, court and government officials, representatives of business and industry, and other interested parties from across the nation. The conference focused on exchanging information concerning approaches and solutions that were

being used effectively in different states to improve the system of justice. The “Saving Our System” report sought to document not just stress points, but also some of the successful approaches taken to provide more effective justice services.

The two reports provided a unique repository of justice system information about every state in the nation. The 1995 publication, “Striving for Solutions – An Overview of Crisis Points in America’s System of Justice,” was an updated survey focused on the crisis points and each state’s situation with respect to each point. The 1996 report, “Funding the Justice System Survey,” produced by the ABA Ad Hoc Committee on Funding the Justice System examined how the justice system at that time was funded in each state.

The ABA perspective on funding the justice system was summarized in its 1996 report, “Agenda for Justice – ABA Perspectives on Criminal and Civil Justice Issues.” The report stated that the ABA believed that “underfunding of any governmental branch threatens the fundamental quality of justice across the United States, and urges greater recognition of the right to fundamental civil, criminal and family law-related legal services and the establishment of guidelines to insure that the legal services that are provided are adequate to meet demand. At the same time, the ABA recognizes that the justice system must compete with other societal needs for scarce dollars and that, at least to some extent, underfunding is likely to be an ongoing problem for the foreseeable future.”

In 1995 the ABA joined with the National Center for State Courts and the National Conference of State Legislatures to co-sponsor the “National Interbranch Conference on Funding the Courts.” That conference culminated with the initial publication in 1998 of this Roadmap, “Funding the Justice System: How are the Courts Funded.” In addition the ABA Judicial Division and the Standing Committee on Judicial Independence created an online toolkit addressing state court funding, including data on current funding levels, model op-ed pieces, talking points for those promoting adequate court resources, and a collection of links to more information on state-specific problems and issues; [www.abanet.org/jd/courtfunding/home.html](http://www.abanet.org/jd/courtfunding/home.html).

Most recently the ABA Commission on the 21<sup>st</sup> Century Judiciary reaffirmed the importance of adequate, stable court funding in “Justice in Jeopardy” (July 2003), described further in “Court Funding” (August 2003) by Frances K. Zemans for the ABA Standing Committee on Judicial Independence.

In August 2004 the ABA House of Delegates passed a resolution on state court funding with four main focus points. [1] The resolution urges “states and territories to adopt judicial budgeting procedures that ensure efficient and effective use of public funds and enable the courts to fulfill their constitutionally prescribed role.” In an effort to achieve that end there

should be; (A) a predictable general funding stream that is not tied to fee generation; (B) direct submission of the judicial branch budget to the funding authority; and (C) a reasonable degree of flexibility to expend funds across line items and fiscal years to encourage efficiency in the administration of justice. [2] The resolution urges “courts to demonstrate their fiscal responsibility by providing clear and detailed documentation for budget requests, and by establishing measures by which their expenditure of public funds can be evaluated.” This documentation should include; (A) those costs beyond the control of the courts that must be incurred as a result of increased caseloads, unfounded mandates, and the effects of federal and state funding to other entities; and (B) the expected public benefits from new programs and services for which funding is requested. [3] The resolution “encourages courts to engage in regular communication with other branches of government, as well as with the bar, the business and civic communities, and the public concerning the administration of justice and its costs.” [4] Finally the resolution “encourages broad-based advisory bodies comprised of laypersons, lawyers, and representatives of all branches of government to help courts secure the funding necessary for the delivery of judicial services.”

## ***Resources***

### **Contacts**

The following organizations and individuals should be contacted for further, more specific information on funding of the judiciary justice reform efforts.

- American Bar Association, 321 N. Clark Street, Chicago, IL 60654; [www.abanet.org](http://www.abanet.org)
- ABA Governmental Affairs Office, 202/662-1760; FAX: 202/662-1762, [www.abanet.org/poladv](http://www.abanet.org/poladv)
- ABA Coalition for Justice, 312/988-5689; FAX: 312/988-5709, Gilda Fairley, Diversity & Outreach Manager, [fairleyg@staff.abanet.org](mailto:fairleyg@staff.abanet.org); [www.abanet.org/justice](http://www.abanet.org/justice) • ABA Judicial Division, 800/238-2667 x5705; FAX:312/988-5709, Aimee Skrzekut, Director; [www.abanet.org/jd](http://www.abanet.org/jd)
- ABA Judicial Division, State Court Funding Crisis Online Toolkit; [www.abanet.org/jd/courtfunding/home.html](http://www.abanet.org/jd/courtfunding/home.html)
- American Judicature Society, 2700 University Ave., Des Moines, IA, 50311; 515/271-2281; FAX: (515)279-3090, Seth S. Andersen, Executive Vice President; [www.ajs.org](http://www.ajs.org)
- Council for Court Excellence, 1111 14<sup>th</sup> Street, NW, suite 500, Washington, DC 20005; 202/785-5917; FAX: 202/785-5922, June B. Kress, Executive Director; [www.courtexcellence.org](http://www.courtexcellence.org)
- State Justice Institute, Established in 1984 by federal law to award grants to improve the quality of state courts; 1650 King St., Suite 600, Alexandria, VA 22314, 703/684-6100; Janice Munsterman, Executive Director; [www.statejustice.org](http://www.statejustice.org)
- National Center for State Courts, 300 Newport Ave., Williamsburg, VA 23185-4147; Tel. 800/616-6164, ; FAX: 757/564-2022, Mary C. McQueen, President; [www.ncsconline.org](http://www.ncsconline.org)
- State Bar Presidents, Presidents-elect and Executive Directors: names and addresses available through: American Bar Association, Division for Bar Services, 312/988-5344; Roseanne Lucianek, Director; [www.abanet.org/barserv](http://www.abanet.org/barserv)

- State Court Administrators and Chief Justices: names and addresses available through, National Center for State Courts, Knowledge and Information Services (KIS) help desk, 800/616-6164; [www.ncsconline.org/D\\_KIS/index.html](http://www.ncsconline.org/D_KIS/index.html)
- Court Website directory, contains links to Local, State, Federal, and Tribal Courts; hosted by National Center for State Courts; [www.ncsconline.org/D\\_KIS/info\\_court\\_web\\_sites.html](http://www.ncsconline.org/D_KIS/info_court_web_sites.html)

## **PUBLICATIONS**

- American Bar Association, Commission on State Court Funding, was established in 2003 to examine problems arising from chronic under-funding of state judicial systems. The Commission's recommendations was adopted by the ABA House of Delegates in 2004, and is available online. [www.abanet.org/jd/courtfunding/funding\\_comm.html](http://www.abanet.org/jd/courtfunding/funding_comm.html)
- "Justice in Jeopardy," 2003, American Bar Association, Commission on the 21<sup>st</sup> Century Judiciary. Report offers state governments two dozen ways to improve their judicial systems. ISBN: 1-59031-319-4, PC: 3970005; [www.abanet.org/judind/jeopardy/pdf/report.pdf](http://www.abanet.org/judind/jeopardy/pdf/report.pdf)
- "An Agenda for Justice: ABA Perspectives on Criminal and Civil Justice Issues," 1996, American Bar Association, Ad Hoc Committees on Civil and Criminal Justice
- "Funding the Justice System Survey," American Bar Association, Ad Hoc Committee on Funding the Justice System, 1996
- Special Committee on Funding the Justice System, Robert L. Spangenberg, 1995, Paperback. Regular Price: \$12.00. (\$10.00 for 10 or more copies), PC: 3440026
- "Funding the Justice System: A Call to Action," American Bar Association, Special Committee on Funding the Justice System, 1992
- "Constitutional Crisis in the Federal Criminal Justice System: The CJA Funding Crisis," Judy Clarke and R. Keith Stroup, 1992, ABA Section of Criminal Justice, Criminal Justice. Vol.7, Issue 3, p.26. January 1992. \$10., PC: 50901010703

- American Bar Association publications are available through the ABA, 321 North Clark Street, Chicago, IL 60654. To order by fax or phone with VISA, MasterCard or American Express: Fax 312/988-5568, Phone 800/285-2221 or use the order form on the ABA website at [www.abanet.org/abastore/books/WebOrdFrm.pdf](http://www.abanet.org/abastore/books/WebOrdFrm.pdf)
- “Justice in Jeopardy, 2007/2009 Biennium Information and Advocacy Guide” Washington State Court Fund Task Force charged to develop and implement a plan to achieve stable, adequate, long term funding for Washington’s trial courts; [www.courts.wa.gov/programs\\_orgs/pos\\_bja/?fa=pos\\_bja.funding](http://www.courts.wa.gov/programs_orgs/pos_bja/?fa=pos_bja.funding)
- “A Court System for the Future: The Promise of Court Restructuring in New York State” February 2007, analysis of New York’s Court System, recommending changes to improve efficiency, cost, accessibility, and understanding; includes analysis of success achieved by changes in CA and NJ court systems. available online at; [www.nycourts.gov/reports/courtsys-4future\\_2007.pdf](http://www.nycourts.gov/reports/courtsys-4future_2007.pdf)
- “Future Trends in State Courts, 2006” Published by National Center for State Courts. ISBN: 0-89656-260-3 or; [www.ncsconline.org/WC/Publications/KIS\\_CtFutu\\_Trends06.pdf](http://www.ncsconline.org/WC/Publications/KIS_CtFutu_Trends06.pdf)
- “Ensuring Adequate Funding for the Courts” Editorial in Judicature, Vol. 88, Number 4, January-February 2005, American Judicature Society, online at; [www.ncsconline.org/wc/CourTopics/pubs.asp?topic=FundCt](http://www.ncsconline.org/wc/CourTopics/pubs.asp?topic=FundCt)
- “Learning from Recession Experience” Robert W. Tobin, National Center For State Courts. 2004, online at; [www.ncsconline.org/wc/CourTopics/pubs.asp?topic=FundCt](http://www.ncsconline.org/wc/CourTopics/pubs.asp?topic=FundCt)
- “Balancing Judicial Independence and Fiscal Accountability in Times of Economic Crisis” Daniel J. Hall, Robert W. Tobin, Kenneth G. Pankey, Jr. Judges’ Journal, Vol. 43, No. 3, Summer 2004, online at; [www.ncsconline.org/wc/CourTopics/pubs.asp?topic=FundCt](http://www.ncsconline.org/wc/CourTopics/pubs.asp?topic=FundCt)
- “Funding Court Technology Initiatives” Jeffrey N. Barlow, presented at Eighth National Court Technology Conference, October 2003, online at; [www.ncsconline.org/WC/Publications/Summary/KIS\\_FundCtCTCSum.htm](http://www.ncsconline.org/WC/Publications/Summary/KIS_FundCtCTCSum.htm)
- “Why the Judicial Branch Needs Increased Recurring Funds to Fulfill its Responsibilities to South Carolina Citizens,” South Carolina Bar Ad Hoc Task Force on Judicial Funding Report, November, 1995

- “Justice Denied: Underfunding of the Courts: Report of a Roundtable Discussion,” Barbara, Wolfson, ed., Roscoe Pound Foundation, 1994
- “Striving for Solutions: An Overview of Crisis Points in America's System of Justice,” 1994
- “Wachtler v. Cuomo: The Limits of Inherent Powers,” *Judicature*, Vol. 78, Number 1, July/August 1994, American Judicature Society
- “Handbook of Court Administration and Management” (Public Administration and Public Policy, No. 49), Steven W. Hays, 1993, ISBN: 0824787692
- “Is There a Constitutional Claim to Minimum Funding of the Courts?” Ruth Wedgwood, Forum for State Court Judges, 1993
- “Funding the State Courts: Issues and Approaches,” Robert W. Tobin, National Center for State Courts, 1996, Report of the September, 1995 National Interbranch Conference on Funding the State Courts sponsored by National Center for State Courts, National Conference of State Legislatures and the American Bar Association, funded by the State Justice Institute, online at; [www.ncsconline.org/wc/CourTopics/pubs.asp?topic=FundCt](http://www.ncsconline.org/wc/CourTopics/pubs.asp?topic=FundCt)
- “Government Responsibility for Court Financing in the States,” Robert W. Tobin and Brian Lynch, National Center for State Courts, 1989
- “Fiscal Administration in State-Funded Courts,” Harry O. Lawson and Barbara J. Gletne, National Center for State Courts, 1981
- “The Transition to State Financing of Courts: The Implications for Financial and Personnel Management,” Robert W. Tobin, National Center for State Courts, 1981

## **WEBSITES**

- [www.abanet.org/justice](http://www.abanet.org/justice) (American Bar Association Coalition For Justice)
- [www.abanet.org/jd/home.html](http://www.abanet.org/jd/home.html) (ABA Judicial Division)
- [www.albany.edu/sourcebook](http://www.albany.edu/sourcebook) (Bureau of Justice Statistics Sourcebook)
- [www.ajs.org](http://www.ajs.org) (American Judicature Society)

- <http://aja.ncsc.dni.us> (American Judges Association)
- [www.courtinnovation.org](http://www.courtinnovation.org) (Center for Court Innovation)
- <http://cosca.ncsc.dni.us/index.html> (Conference of State Court Administrators)
- [www.nacmnet.org](http://www.nacmnet.org) (National Association for Court Management)
- [www.statejustice.org](http://www.statejustice.org) (State Justice Institute)
- [www.ilrg.com](http://www.ilrg.com) (Internet Legal Resource Group)
- [www.ncsl.org](http://www.ncsl.org) (National Association of State Legislatures)
- [www.fjc.gov](http://www.fjc.gov) (Federal Judicial Center)
- [www.uscourts.gov/adminoff.html](http://www.uscourts.gov/adminoff.html) (Administrative Office of the United States Courts)
- [www.usdoj.gov](http://www.usdoj.gov) (U.S. Department of Justice)
- [www.ojp.gov/BJA/grant/jag.html](http://www.ojp.gov/BJA/grant/jag.html) (Bureau of Justice Assistance, Justice Assistance Grant (JAG) Program)
- [www.ojp.usdoj.gov/bjs](http://www.ojp.usdoj.gov/bjs) (Bureau of Justice Statistics)