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Institute for Civil Justice

# Who Pays for Justice?

Perspectives on State Court System  
Financing and Governance

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## Preface

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In 2011, the RAND Institute for Civil Justice conducted a broad review of the impact of the financial crisis on the civil justice system. One major area of inquiry involved funding for state courts. Widespread anecdotal accounts suggest that state court funding has significantly dropped from precrisis levels in many parts of the country. Moreover, given broader fiscal problems and trends toward government austerity, it now appears unlikely that lost resources will be restored in the near future. What funding cuts will eventually mean for the function of the state courts, and for litigants who depend on access to those courts, remains to be seen.

Subsequently, RAND launched a new study to help understand the variation that exists in the finance and administrative governance of state court systems across the country. Our aim is to investigate and describe state court systems' funding mechanisms, corresponding elements in the systems' budgetary accounting, and the systems' management structure as it relates to generating and spending resources. Such information could be key to understanding what publicly reported budget numbers actually mean for the state courts. In turn, that understanding will be vital to tracking the financial health of state court systems in the future, and to future studies seeking to gauge the impact of judicial branch funding levels on the work that state courts actually carry out.

This work should be of interest to policymakers, court administrators, and other stakeholders concerned about ensuring high levels of access to justice through the state courts and the long-term stability of the courts as an institution of government. Previous RAND research in this area yielded the report *An Early Assessment of the Civil Justice System After the Financial Crisis: Something Wicked This Way Comes?* (Greenberg and McGovern, 2012).

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## Summary

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In the aftermath of the financial crisis of 2008, state resources, such as tax revenue from real estate transactions, business deals, sales taxes, and similar economic activities, fell. As part of a study whose report was released in 2012 (Greenberg and McGovern, 2012), we sought to understand the extent of the financial crisis' effects on the civil justice system, including cuts to state court annual operating budgets. What we found, however, was that court annual reports documenting the effect of the crisis seemed to be somewhat incomplete. At times, the narratives they told about court resources did not always match the accounting figures provided. Moreover, the material contained in the annual reports suggested that a more complicated story is at work concerning how the courts operate, where they get their operating budgets, and how they track those resources.

RAND researchers subsequently sought to gain a better understanding of the way state courts are funded. In part, our goal in undertaking this effort was simply to explore how a handful of illustrative states have funded their judiciaries, the corresponding challenges that they have faced, and the administrative and budgetary solutions officials have adopted in those states to manage the tough times. Also, part of our goal was to identify a set of basic questions that any outside observer of state courts would need to ask in order to understand the meaning of financial disclosures from a particular state and the basic anatomy of its funding mechanism.

This report describes five very different state court systems (California, Florida, Massachusetts, Ohio, and Utah) and offers a template of questions for those wishing to further investigate state court system financing. Such a template can help articulate basic dimensions of variance that any outside observer would need to recognize and describe in order to really understand the mechanics of funding in any particular state. To generate this template, we conducted cross-state research through annual reports and other documentation when available. In addition, we held in-depth interviews with court administrators, focusing on the mechanics of finance and governance in specific court systems. We also interviewed several judges who provided valuable long-term perspectives on changes in court financing and administration in their states over time. This work should be of interest to policymakers, court administrators, and other stakeholders concerned about ensuring high levels of access to justice through the state courts and the long-term stability of the courts as an institution of government.

## Key Findings

Not surprisingly, our examination suggests that today's state court systems deploy a wide range of funding, accounting, and governance strategies, which we describe in this section.

## State and County Revenue Streams Vary Widely

Perhaps the most basic dimension of variance in state court system financing involves the degree to which the trial courts are funded at the county level versus at the state level. A state within which the trial court system is entirely financed and operated at the state level, with little or no involvement by counties, could operate as a centralized mechanism for collecting and distributing resources and for allocating those resources in a manner not dictated by the income constraints of individual counties. A state within which the trial courts are primarily financed and organized at the county level, with only limited involvement from state government, has the potential advantage of offering greater local control (or *home rule*) over resources. In such states, the counties have more authority to determine the level of funding for their own courts and (perhaps) to set local priorities for how that funding will be used. On the other hand, a county-based financing model also has the potential drawback of contributing to inequality across counties in what resources will be available for use by the courts. As summarized in Table S.1, most of the states examined fell somewhere between the extremes of state- and county-level funding for trial court systems.

**Table S.1. State- and County-Level Funding of Trial Court System, by State**

State	Financing for Trial Courts	Note
Calif.	Mixed state and county funding	California shifted emphasis from county to state funding in the 1990s.
Fla.	Mixed state and county funding	Florida shifted emphasis from county to state funding by state constitutional amendment in 1998.
Mass.	State funding	Massachusetts trial courts are purely state funded.
Ohio	Emphasis on county funding	Interviews suggested that county-level funding is not centrally tracked and that state officials cannot account for it.
Utah	Emphasis on state funding	The state provides all funding for district-level trial courts. A separate county and municipal justice court system (covering low-level misdemeanors and small claims) is county funded.

## Funded Services Vary Between State Courts

Deciding the defining boundaries for what constitutes the state court system in terms of services offered and expenses covered is vital, both for operating purposes and for budgeting purposes. Some basic elements, such as the operation of the trial courts and the salaries and benefits of judges, are fairly prototypical and are probably understood to be aspects of the court system (and of related costs) in every state. Some other elements may be less prototypical, such as court clerks, translators, social workers, and courtroom security personnel. These elements involve people and work processes that are closely connected to the justice system but nevertheless regarded in some states as distinct groups of personnel and operating activities with separate associated revenue streams and budgeting oversight. There are also some elements that

are usually associated with court system functioning but that tend not to be regarded as a part of the court system for budgetary purposes in many states. Examples include the offices of the public defender, legal aid, various state and local prosecutors, and law enforcement authorities.

Table S.2 summarizes several elements across the states. Even trying to put labels on what is included in the state court system within a given state can become ambiguous and complicated in such states as Utah (where the operation of some trial courts, but not others, are locally funded) or Ohio (where some security personnel, but not others, are directly employed by the courts).

**Table S.2. Categories of Activity Included in the State Court System, by State**

State	Trial Court Security	Trial Courthouse Maintenance	Trial Courthouse Construction	Judicial Retirement
Calif.	Included	Included	Separate	Included
Fla.	Included	Excluded	Excluded	Included
Mass.	Included	Included	Excluded	Excluded
Ohio	Mixed	Mixed	Mixed (but often funded at county level)	Unclear
Utah	Mixed	Mixed	Mixed	Mixed

*How State Courts Spend Fee Revenue Varies Significantly*

Courts in most states collect a range of fines and fees in the course of their operations, and the structure and magnitude of revenue generated varies significantly from state to state. So, too, does what happens to fee and fine revenue once generated. In some states, a substantial proportion of such revenue remains within the state court system, either captured in accounts dedicated to paying for specific categories of expenditure within the court system or funneled into some kind of broader account or fund for the court system as a whole. In other states, most court system fee revenue has to be remitted to the state’s general fund (or sometimes to other state government funds or accounts), where the legislature can then use it for purposes wholly unrelated to the court system. In such instances, the court system then depends on subsequent legislative appropriations for its funding, which may be unrelated to any revenue remitted out of the court system based on collected fees and fines. Regardless of the details, a significant financing distinction separates states that permit their court systems to retain control over some portion of court-generated fee revenue from states that do not. Table S.3 summarizes findings in this area.

**Table S.3. What Happens to Court System Fee Revenue in Selected States?**

State	How Much Fee Revenue Is Raised?	Where Does the Fee Revenue go?
Calif.	Unclear	A mix of purpose-restricted court system accounts and funds; the state general fund
Fla.	Approximately \$1 billion estimated in FY 2010	Divided among the SCRTF, other restricted-use funds (some unrelated to the court system), and the state government's general fund
Mass.	~\$110 million in 2011	50%+ to the state government, with the remainder retained by the court system
Ohio	Unclear	Mostly to Ohio counties
Utah	Estimated at \$40 million based on 2013 court system operating budget	Approximately half to the state government, with the remainder allocated to restricted accounts on behalf of the court system

NOTE: FY = fiscal year. SCRTF = State Courts Revenue Trust Fund.

### *State Court Systems Vary in Their Flexibility to Carry Forward Resources or Revenue*

Another state court system financing issue involves the timing of revenue recognition by the state court systems and the degree of flexibility in their being able to draw on funds (or to bank unused funds) over time. The representatives who spoke with us raised this set of finance and timing issues in several different ways. For Massachusetts, it was mentioned that timing and cash-flow issues associated with retained fee revenue play a meaningful part in the operational management of the courts and sometimes present a challenge in ensuring that available funds are sufficient to meet operating expenses and payroll on a month-to-month basis. In Utah, one of the strengths of the state court system involves having financial carry-forward authority, which allows the system some autonomy to carry funds that are allocated but not spent in a given fiscal year forward into the following year. Florida, by contrast, created the SCRTF in 2009 to try to ensure that a dedicated pool of funding for the courts, drawing on fee and fine revenue, would be available to insulate them from volatility in the state's general revenue base. Unfortunately, dependence by the SCRTF on foreclosure-related revenue led to shortfalls in available court system funds beginning in late 2010 and early 2011. As a result, the system had to seek out millions of dollars in emergency funding and cash transfers from the state legislature, beginning in 2011. For California, several interviewees described a more serious retained revenue and timing issue. In recent years, the California court system reportedly used its operating reserves (as well as the ability to draw on and transfer assets from other restricted funds, particularly for courthouse construction) in order to soften some of the impact from cuts in state appropriations. In 2012, however, the governor reportedly instituted a new policy forcing the trial courts to spend down most or all of the existing reserves and limiting the size of future reserves to 1 percent the annual budget allocation. Interviewees told us that the effect would be to eliminate much of the flexibility of the court system in responding to annual volatility in its revenue, while creating new challenges for the courts in meeting their operating cash-flow targets, in the event of unforeseen budget shortfalls in the future.

### *Line Items and Fund Allocation Vary Between Systems*

Some state legislatures provide for many more court system funding line items than others do—a state practice that can thereby reduce the flexibility and autonomy of a court system in determining how to allocate appropriated funds for operations. For Massachusetts in particular, interviewees observed that recent consolidation in the state budgeting process had reduced the state court system budget down from 153 line items to 17 line items, thereby making it easier for the system to deal with potential funding shortfalls going forward. According to the most recent iteration of the Ohio executive budget, there appear to be ten budget line items connected with the judiciary or supreme court, together with several additional budget line items dedicated to the Ohio Judicial Conference and the Court of Claims of Ohio. The Utah state budget involves only three corresponding line items, dedicated to court system personnel and operating costs; court system building contracts and leases; and jury, witness, and interpretive fees, respectively. The lion’s share of state funding for the court system in Utah is concentrated in a single budgetary line item, and interviewees told us that, because of this, the court system has a lot of flexibility and control over allocating how those dollars are actually spent.

### *Disclosure Differs Greatly Between Systems*

The details of what accounting information gets formally disclosed in the annual report and how this corresponds to the more detailed accounting that is undertaken in the operational management of the court system also varies from state to state. Among the states whose representatives spoke with us, Florida is noteworthy for tracking and publishing detailed fee-revenue accounting disclosures on an annual basis, whereas several of the other states do not disclose this kind of accounting information, and Ohio apparently does not even track court-generated fee revenues in a systematic way across the state.

### *Governance Models Vary Significantly*

Examination of the governance models used by the state court systems we examined also reveals significant variation. Several core components are worth consideration. Table S.4 summarizes governance dimensions and provides examples and explanations of their implications for state governance.

**Table S.4. Elements in State Court System Governance**

<b>Governance Dimension</b>	<b>Description</b>	<b>Example</b>
Central management	Some states use a system in which a judicial council manages the administrative authority for such activities as budget preparation and allocation of resources.	The Utah Judicial Council has the skill and authority to act with one voice in all manners of court administration (although the Justice Court system is locally managed).
Micromanaged postappropriation	Line items and earmarks for special legislative priorities can frustrate attempts at efficient management of resources and slow the reaction time when funding shortages appear.	Massachusetts once funded the state judiciary through 153 separate line items, with no judicial authority to reallocate. Utah, however, gets a lump sum for its state-run component.
Locus of power	Courts in some states are centralized at the state level, while others rely on counties for trial court functions.	Ohio uses a system of 88 independently run and financed county courts, below a thin layer of state-run appellate courts.

## Recommendations for Further Inquiry

The variation in state court approaches to funding and governance presents an opportunity for researchers to explore which systems are effective at managing resources, to study whether some funding approaches are more or less resilient than others to economic shocks, and to investigate how the control and governance of court finances may present discrepancies in the number of court services provided, volume of clients service, and quality of court services across and within state systems. But in order to begin to answer these important questions, scholars need to grapple with the basic variation that exists—a problem that had yet to be addressed before we began the process of comparing our sample states.

With this in mind, we created a set of essential questions that policy researchers and advocates who are interested in court financing issues would need to ask before they could understand the context, complexity, and variety of state court systems. Given the variation across states, it makes sense that the first step would be to understand these dimensions of governance and funding within their states of interest. We distilled our research into a template of key issues and questions that help to frame these dimensions:

- Is the court system in state X funded primarily at the state level, at the county level, or through a mix of the two?
- Is state-level funding for the court system in state X obtained primarily through tax revenues or through fees and fines collected by the courts?
- What categories of government activity are formally defined as part of the state court system or state judicial branch in state X for budgetary purposes?
- Does the state court system in state X have the authority to carry forward unspent resources from one fiscal year to the next?
- How many legislative line items are there in the state X budget pertaining to the state court system?
- How does the state X’s state court system allocate and manage the funding that it receives each year?

This template of questions—which ought to be useful to court researchers seeking both single-state and multistate analysis of court system funding and governance—contains several of the core aspects of difference and importance as expressed in our interviews with court administrators and judges.

Clearly, states handle funding cuts differently from one another. To inform court administrators, judges, and court advocates, a deeper understanding of the on-the-ground situation in each state is essential. Hence, our three key dimensions—governance, funding sources, and accounting—are important aspects to keep in mind when trying to grasp the variations across the states and when discussing the ways in which state court systems are recovering from or still face challenges imposed by the financial crisis. Of course, financing, accounting, and governance will not capture all of the unique distinctions across state systems, but they are the major components that those interested in comparing the condition of state judiciaries should understand. The ability of the states to adopt different structures and policies represents an opportunity for comparative research on what approaches work and when.



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## Abbreviations

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FY      fiscal year

NCSC   National Center for State Courts

SCRTF   State Courts Revenue Trust Fund



# 1. Introduction: Why Study State Judicial Funding?

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## Introduction

As a co-equal branch of state government, the state judiciary is charged with dispensing equal justice and responding to the plethora of controversies that arise on a daily basis.<sup>1</sup> State courts, including civil and criminal trial and appellate courts, as well as traffic, family, and small claims courts, have the responsibility for hearing the vast majority of U.S. legal cases. The state courts are at the front lines in the administration of justice. Those who avail themselves of the legal system are far more likely to find themselves in state courts than in the federal counterparts.

As we addressed in an earlier study (reported in Greenberg and McGovern, 2012), the economic crisis that began in 2008 has been hard on some state judiciaries. State governments, no less than the American citizenry, were affected by the economic consequences of the credit crisis, the stock market collapse, and the dramatic drops in the value of personal and commercial real estate. State tax receipts and revenue from business transactions fell as economic activity scaled back. The effect on state programs, pension funds, and general operating budgets has, at times, been quite severe. The effect on the courts has been no less damaging. There is mounting evidence that many state courts have been struggling with increased case-load demands, decreased staffing levels, and frozen to slashed annual operating budgets. Chief justices from across the nation have decried the funding cuts that state court systems have suffered, asserting that courts are “at the tipping point of dysfunction,” “on the edge of an abyss,” and “slowly failing” (Tarr, 2011–2012, p. 786; Lippman et al., 2012, p. 1705).

These accounts of court systems in crisis raise significant concerns about the provision of timely and independent justice. Nonetheless, and despite the calls for increased attention to court budgets in a time of fiscal austerity, our own previous research revealed unanswered, important questions for putting the scope of the crisis in context. Our 2012 study revealed that previous reports that documented the magnitude of the funding cuts to state judiciaries (undertaken by the National Center for State Courts [NCSC] and others) could be joined with information on the sources of funding and the mechanisms of providing resources for state court systems. Taken together, information on the magnitude of the cuts and the mechanisms for funding courts could be of high value to policymakers statewide. Understanding the variation in methods of funding state courts could also encourage cross-state research and efforts to find acceptable policy solutions in the face of austerity budgeting.

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<sup>1</sup> Throughout this report, we refer synonymously to the *state judiciary*, the *state judicial branch*, and *state court systems*. Although fine distinctions can easily be drawn among these terms, we use all of them here to refer broadly to the activities, personnel, and infrastructure connected with the judicial function of state government: i.e., hearing and resolving cases under the law.

The research presented in this report begins to address the mechanics and architecture of court system funding as a necessary first step toward a richer understanding of the putative funding crisis in the state judiciaries. Here, we report on key findings concerning the mechanisms and basic approaches to state court financing and governance, drawing on information from five selected state court systems. Our initial suspicions proved correct: Not only is there ample variation in how courts are funded across the states, but the various state systems can be broadly categorized based on several architectural dimensions in their financing and organization. These categorical differences in funding, taken together with their impact on the functions of the judiciary, hold the potential for novel and perhaps more-resilient approaches to financing the third branch of government.

## Previous RAND Research Indicates That State Court Budgets and Financing Methods Warrant Further Research

The motivation for this pilot comes from exploratory research conducted by RAND researchers from 2010 to 2011 on the short-term effects of the 2008 economic crisis and its aftermath on the civil justice system. That study (reported in Greenberg and McGovern, 2012) broadly reviewed areas of civil justice that were experiencing or were likely to experience negative effects of the instability in financial markets that gripped the country. One high-priority topic that arose from that research was the effect of sharply decreased state revenues on state court system budgets. Anecdotal evidence suggested that not only were court budgets frozen or cut from previous years' levels but also court case loads were potentially on the rise, multiplying the stress placed on state courthouses. The combination of decreased resources, increased workloads, shorter courthouse hours, judicial staff and support vacancies, and similar austerity measures holds the potential for delayed, diminished, and possibly denied access to justice.

RAND has not been the only organization looking into the condition of the state judiciaries. A series of conferences and symposia in recent years has brought together practitioners and judges in an attempt to raise awareness of the impact of reduced court funding on the delivery of judicial services. NCSC, a long-time advocate for state judicial interests, has been at the forefront of raising public awareness on this topic. For example, a statement released by NCSC noted that 2011 brought cuts to 29 state court system budgets (NCSC, 2011). These cuts came on the heels of cuts in 40 states in the previous year (Schauffler and Kleiman, 2010).

These reports and symposia certainly raise concerns about the health of the third branch of state government, nationwide. The concerns are amplified, however, by the fact that policymakers and court administrators in many states may not be well equipped with the accounting data and research needed to manage the lasting effects of the financial crisis. After conducting our own investigation in 2011–2012, we found that details and data about state court resources, such as total funding levels, sources of financial support, and the types of services

paid for by those revenue streams, are neither uniformly described nor uniformly available to the public across the states.

As one would expect from independent state governments, methods of financial accounting, of information dissemination, of budgeting, and of defining the justice system itself vary widely. This makes it extremely difficult to generate a clear picture regarding state court system finances across the nation. But it also makes it difficult to distill an image of the court systems within individual states. We discovered, in reading the annual reports published by the state court systems, that

- state court systems use funding mechanisms (both financial and accounting methods) that are different and more or less idiosyncratic
- the mechanisms and revenues are sometimes difficult to parse from the annual reports themselves, in which statements often focus more on notable accomplishments and accolades by the judiciary
- in some instances, when data on finances are available in the annual reports, the official budget data are nevertheless difficult to reconcile with the official narrative describing the same budgets.

In short, we encountered difficulty in our 2012 study in getting the numbers, making the numbers add up, and understanding the numbers in a way that reflected the true flow of dollars from the state to the judicial branch. These difficulties were orthogonal to our substantive questions about the financial well-being of state courts, but they heralded another basic problem for the courts, in simply being able to communicate their financial status in a comprehensible way to an interested outsider.

Viewed in total, we believe that this situation—in which court officials are contending with reduced funding streams while the publicly reported and accessible data on funding are often opaque, confusing, hidden from view, or otherwise unrepresentative of the true flow of money to the courts—serves neither the interests of the judicial branch nor those of the public. Moreover, given a variety of approaches to funding state court operations, the lack of transparency makes it difficult to evaluate which methods of funding state court systems provide the stability and reliability needed to ensure ongoing access to justice.

## Research Approach

Our aim in this pilot was to shed new light on the basic anatomy of state court system financing. Given increasing national attention to state court resources, we began by working with the advisory board of the RAND Institute for Civil Justice to prioritize research projects that could add value and transparency to the state courts' current condition. Foremost among the proposed topics was research to undertake a comprehensive taxonomy of judicial finance or, more specifically, a study seeking to describe and detail the financing and architecture for the judicial systems in each of the 50 states. After consulting further with several of our board members, we decided to move forward with a somewhat more modest effort: namely, a study of

state court system financing in five illustrative and varied states, whose approaches and experience might be useful in understanding the financial mechanics of court systems more broadly. In part, our goal in undertaking this effort was simply to explore how a handful of illustrative states have funded their judiciaries, the corresponding challenges that they have faced, and the administrative and budgetary solutions that officials have adopted in those states to manage the tough times. Also, in part, our goal was to identify a set of basic questions that any outside observer of state courts would need to ask in order to understand the meaning of financial disclosures from a particular state and the basic anatomy of its funding mechanism.

By drawing on the experience of our selected states, we have identified in this report a handful of core dimensions of variance in state court system financing and governance, reflecting basic choices that every state needs to make in setting up, funding, and accounting for its courts. Any outside scholar or policymaker who truly wants to plumb court system finance within a given state needs to recognize and understand these basic dimensions. These dimensions also suggest some new directions for standard disclosures on the part of state court systems themselves, in an effort to make their own finances more transparent, and their putative funding shortfalls more comprehensible to policymakers and the public. In sum, we hope that the findings we outline here can help the public to broadly understand how the courts are structured and financed, the courts to improve the consistency of budgetary and accounting disclosures connected with their own operation, and scholars to undertake future empirical research into the ways in which varied financing schemes affect the underlying function of state courts.

The work presented in this report is a summary and analysis of our attempt to trace the sources of funding that support the operations of the state court systems in California, Florida, Massachusetts, Ohio, and Utah.<sup>2</sup> We chose these states based on input we received from our judicial and attorney advisers. Because this was a small pilot study, we sought to maximize the variety in funding mechanisms among the states we selected. The five states in our study represent some of the starkest differences in the various current methods of state court financing. Other states are certain to have important variations on the themes we observed in these five states, but these five pilot states will give us a core set of approaches against which to view other state variations that may exist.

Note that, when we use the term *state court system*, we are attempting to use a generic term that refers to the segment of the state judiciary that a state-level office (as opposed to local- or county-level offices) manages and operates. Both state- and local-level courts may fulfill the broader judicial function in a state; however, we are limiting our review to the state government component alone. We do so for two reasons. First, the genesis of our research in this area came from an attempt to harmonize state-level annual reports from the state court systems with public pronouncements of court funding shortfalls. Unlike these annual reports, no single source of

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<sup>2</sup> We also considered New Hampshire for the study. We sought New Hampshire's inclusion, but the state judiciary declined to participate.

information on the funding for local-level courts is available, although we suspect that many of these local courts also faced and may still be facing budgetary pressures. Second, within most of the states, the state court system will be the largest court system and the most significant institution in the administration of civil and criminal justice. Focusing on this major component seems to us an appropriate way to begin to tackle the issue of court system financing.

Having settled on our participant states and defined the state level of the court system as our focus for review, we then developed a research approach that involved contacting and interviewing state court system administrators and sometimes the judges themselves. Our thinking was that we needed to move beyond the officially reported numbers and narratives presented in the court annual reports and instead seek detailed explanations of how court system financing works and how it is managed, by interviewing the people who live that reality day to day. Although the annual summary reports that the state court systems publish contain much valuable information, those reports are used for many different public purposes:

- providing access to information about the courts
- presenting the courts in a positive light
- celebrating achievements, such as new programs or new courthouse openings
- and establishing a public record that courts can use in their dealings with the legislature and the executive branch.

Some of these purposes have little to do with financing, and others could potentially come into conflict with a true accounting of court revenues and expenses. Also, as we have noted, we have found the annual reports to be incomplete and difficult to parse in our previous attempts to mine them for financial and budgetary information (see also discussion in Greenberg and McGovern, 2012).<sup>3</sup> Interviews with administrators provided an in-depth source of information on the mechanics of finance and governance in specific court systems, as well as expert opinions regarding the diversity of state approaches. Moreover, several of the judges with whom we spoke also provided very valuable long-term perspectives on the changes in court financing and administration in their states over time. The judges brought to us a wealth of experience, in management both of their courtrooms and of judicial finances. The choices made by court administrators, judicial councils, and legislative appropriation committees play out daily in the work of the judges. Their perspectives were, therefore, invaluable.

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<sup>3</sup> It is important to acknowledge that the annual reports published by state court systems are not the only official source for obtaining relevant budgetary and accounting data pertaining to the courts. Another important source for such information is the official legislative appropriations report that most (if not all) states publish on an annual basis. In principle, a state-level legislative appropriations summary can be used to generate another snapshot of the funding and financing of the courts. In practice, however, that snapshot tends to suffer from major limitations and ambiguities as well—the most obvious being its neglect of any court system funding that does not flow through the instrumentality of state government. Because the current study does not attempt a deep dive into available accounting information to pinpoint actual court system resourcing levels in particular states, we do not discuss data drawn from legislative appropriations reports in any detail herein. Note, however, that many of the financing and accounting issues that we do address herein are equally pertinent to interpreting the legislative appropriations reports as they are to interpreting the accounting disclosures in the annual court system reports.

Our interview protocol for working with court administrators and judges was designed to let the administrators instruct us on how their financing systems work and to let the judges offer similar comments while also providing a narrative about the effects of the crisis on court operations. Here, we were interested in two main dimensions of operations: funding and governance. The focus on funding is clearly a priority for our project: We are interested in where court system revenues come from and how the money is spent. Governance, however, was an aspect that we quickly adopted based on our conversations with court officers. In a 2011 panel discussion during a symposium for the Albany Law School, then-Chief Justice of the Utah Supreme Court Christine Durham noted that there are three categories of current challenges facing state judiciaries: funding, court organization and governance, and methods of judicial selection and retention (Lippman et al., 2012, p. 1704).<sup>4</sup> Judicial selection and retention are outside the scope of our project, yet governance seems to us to be a key player in the financing story. To us, governance concerns the management of resources, including the funding, in relation to the authorities afforded to the judiciary and the relationships between the judiciary and the other offices of state government. Governance, then, involves such issues as whether the court has autonomy to move money across financial units to areas where it is most needed, whether there is a professionalized body that prepares the budget, whether legislature controls the location of courthouse construction, and whether the annual budget is divided into separate line items or pooled resources that may be used as needed. It should be apparent that the funding and governance dimensions are intricately linked. We believe that a richly financed judiciary can still face problems when managed poorly; likewise, financially strapped courts can produce remarkable results when effectively managed. These two dimensions, financing and governance, are the fundamental key dimensions that we think are borne out in our analysis.

## Organization of This Report

The story that emerges in the remainder of this report is one that certainly goes beyond the two factors of governance and funding. But approaching court system financing with these two basic factors in mind can help policymakers and court watchers to quickly analyze state court systems. How much money is flowing into the systems, and from where? And who exercises control over that money? This kind of rubric can help judicial administrators and their legislative and executive counterparts think about the resilience of justice in the face of funding uncertainty.

The body of this report is a summary of the lessons we have learned in reviewing the methods of financing our five pilot states' judiciaries. Rather than presenting a series of state-level case studies, we have instead chosen to summarize the major issues and dimensions of court system financing and governance as these our interviewees described to us. In turn, these issues offer a template by which policymakers, legislators, court administrators, and judicial

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<sup>4</sup> Justice Durham is a member of the RAND Institute for Civil Justice Board of Overseers and has been most helpful in assisting us in the planning and execution of this study.

observers can better understand judicial funding, and related accounting data, even in states beyond those we specifically investigated. If, as we expect, there continue to be more news stories and advocacy positions that report and criticize cuts in judicial budgets, the financing template contained in this report will help better equip readers to understand the complexities of judicial finances. We hope that the template will also support more serious future inquiry into the funding status of state court systems and into the policy options available in connection with funding reform.

Finally, in our concluding chapter, we reflect on the major unanswered questions that exist when one reviews the putative crisis in the courts and the variation in the state structures. The continuing vulnerabilities to court resources and the uncertainty about consistent funding of a core element of government concern us. A few policy recommendations, mostly related to transparency and reporting on the state of the state judicial finances in court annual reports, are provided, and a prioritized list of future topics of research is given to set the stage for the next steps in understanding the true financial status of the courts.



## 2. State Court System Financing and Accounting Show Significant Variations

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### Introduction

*State court system financing* refers to the process by which state governments raise and commit money to pay for the function of their judicial branches. Financing fundamentally involves money. Recent media coverage and publicity have spotlighted austerity measures undertaken by some state courts and have drawn attention both to the adequacy of resourcing for the judicial branch and to a putative shortfall in the available funding in some jurisdictions. Financing for the state courts, however, invites a series of more-foundational questions about institutional governance and money. Who pays for the activity and infrastructure of the state courts? How is the money collected and then allocated? How much money is being spent, and on what? It turns out that the answers to these basic questions are not consistent between states. Different states organize and pay for the function of the judicial branch and of the state courts somewhat differently from one another. Simply understanding how this is so involves an important set of dimensions of the architecture of state courts. It is also a key piece of contextual information for assessing arguments and empirical data concerning state-level budget shortfalls for the court systems. In a related vein, an understanding of the financing framework for the judicial branch in any given state is likely to be critical in attempting to link the service and performance of the courts to the costs associated with operating them. For all of these reasons, state court system financing is a worthwhile topic of study.

One important distinction we wish to draw bears special note: the distinction between financing and accounting within state court systems. *Financing* refers to the ebb and flow of money through the systems, and *accounting* refers to the conventions for keeping track of that money and for identifying how much is spent and on what. Accounting is important because it helps to establish transparency within state court systems, in terms of tracing where the money is coming from and where it is going. However, complexity in finance tends to result in complexity in accounting as well. The states are varied in what they pay for under the heading of “state court system,” how they pay for it, and who is keeping track of it all. This variation can obfuscate, for an outsider, what related accounting disclosures mean, even when the state government formally publishes basic balance sheet and income statement information. One recurring theme that we heard in our interviews with officials was that state court system accounting is often complex, hard to follow, and incomplete in the disclosures that it attempts to provide. Here again, beginning to understand some of that accounting complexity, and the financial reasons behind it, may be a threshold step for seeking to improve transparency and oversight and for strengthening state court systems and governments in their ability to monitor and manage scarce resources.

In this chapter, we have drawn both on our interview findings and on published information about the state court systems in California, Florida, Massachusetts, Ohio, and Utah to highlight some of the most-important features and dimensions of variance in state court system financing and accounting. These major prototypical factors distinguish the practices of one state from those of another. According to our conversations with state court administrators and judges, these are factors that need to be recognized and understood as a precursor to any assessment of resourcing levels, and resourcing adequacy, within any given state court system.<sup>5</sup>

## Theoretical Approaches to Court System Financing

When considering the universe of available resources to support a state court system, two primary pools of money come readily to mind: general fund appropriations and court-generated revenues. General fund appropriations are part of the tax-and-spend authority of state government. A legislature may decide to fund a court system through annual appropriations from this tax revenue. Alternatively, courts generate revenue through user fees and fines. This generated revenue stream could offset some or all of a court system's expenses.

In a vacuum, it is easy to imagine a state court system that collects its own revenue to cover expenditures, therefore operating in a manner analogous to that of a private business. This closed-system approach follows a user-pays principle: Those who need the courts (including those who find themselves facing fines and penalties) are generating the revenue that sustains the court operations. Such an approach allows courts to operate on their own, free from any financial dependency on the legislature or executive. If court expenses are high, the court may be able to raise fees and fines to cover those expenses. Likewise, if courts wish to offer additional services, such as pro se assistance programs, they can raise their own revenue to cover the expenses of providing those services. For several reasons, however, that is not the way that state court systems actually tend to work in practice. In large part, state constitutions define the role of the judicial branch. Those constitutions typically establish the responsibility of the courts for hearing and resolving certain kinds of disputes and for doing so in a way that provides a threshold of access to justice for all litigants. Put another way, a hypothetical court system that finances its activity exclusively through user fees would likely be prohibitively expensive to access for many people who otherwise might need to use its services.<sup>6</sup> Requiring users to pay for judicial services

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<sup>5</sup> A truly meaningful assessment of resourcing adequacy would go beyond simply documenting court system revenue and funding levels in a coherent way and would, in addition, require judgments about the efficiency and effectiveness of the system. This kind of assessment goes considerably beyond the scope of the current report to address. NCSC has compiled a set of normative guidelines for judicial administration that could potentially help to ground such assessments in the future. See NCSC, 2012b.

<sup>6</sup> There are several other potential drawbacks to funding a hypothetical state court system primarily through user fees, including (1) likelihood of collection difficulties and diminishing returns as the magnitude of user fees increases; (2) likelihood of fluctuating revenues based on litigation volume, despite the fact that court operational costs are largely fixed and inelastic; and (3) potential for ethical problems associated with discretionary fines and

is, in many ways, anathema to public access to the courts (although, to our knowledge, all courts levy fees for service, mitigating the financial hardship in cases of extreme need).<sup>7</sup>

Meanwhile, state constitutions assign to legislatures (rather than to the judiciary) the power to raise revenues through taxation—this being one of the defining features of the legislative branch and of the constitutional separation of powers. One implication, then, is that state courts are funded in large part by revenues raised by a separate branch of government. This mechanism has the theoretical advantage of supporting broader access to justice by tying court system funding to taxes, rather than to court-related fees. All taxpayers, then, defray the costs of a constitutionally mandated judicial system. This general-fund approach also has the advantage of contributing to democratic oversight of funding for the courts. Whether courts will offer foreign-language or interpreter services, programs for drug offenses and rehabilitation, or other such specialized offerings will be decided, in part, through the legislative allocation of state tax revenue and resources. On the other hand, however, this funding approach means that there is a disconnect between the administrative operation of the courts—independent and powerful in their own constitutional right—and the instrumentality that raises and allocates money for them. Under this approach, courts are, to some measure, dependent on the will of the legislative appropriators.<sup>8</sup> As will become apparent, in some instances, the result can be a cumbersome financing and budgetary process, one that makes it difficult for state court systems to efficiently administer the resources allocated to them, much less to ensure that those resources accurately match up with the demand for related judicial and court system services.

With this theoretical dichotomy between autonomy and dependency as background, we turn to the lessons we learned from the states in our pilot. We begin with a discussion of three aspects

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fees and discretionary court spending, in that both fees and spending are controlled at the local level (i.e., by the same judge).

<sup>7</sup> There is an important set of legal questions that is raised by the user-fee revenue model for state courts—namely, what is the defining authority that limits the imposition of fees on access to the courts, and how much latitude and authority do the courts have over this for themselves? Here again, a detailed study of the law on this point is beyond the scope of the current report. However, we can offer several related observations. First, all five of the states we investigated for this study do indeed collect revenue through user fees imposed on their court systems, although the states vary considerably in the degree to which such fee revenue flows back to the courts. Second, we briefly reviewed relevant constitutional provisions in all five states to look for a basic explanation of court system funding and any restrictions on the imposition of user fees. We discovered that only one of the states (Florida) explicitly addressed the funding mechanism for its court system through its constitution, and none addressed user fees. Third, NCSC (2012a) undertook a project to catalog civil filing fees in 45 states and identified a byzantine mix of state and municipal statutes, together with court system-imposed rules, defining such fees. Fourth, all of the states appear to have some version of a constitutional bill of rights, some provisions of which presumably limit the imposition of user fees as applied to some court system activities (e.g., jury trials for criminal cases). In sum, it appears likely that the legal foundation for court system user fees in any given state involves a unique mix of statutory law, constitutional provisions, and case law. We hope to undertake a more comprehensive scholarly investigation of this legal landscape in a future study.

<sup>8</sup> Notwithstanding the constitutional separation of powers, there is a long-standing line of case law that establishes the “inherent” authority of courts “to ensure [their] own survival when insufficient funds are provided by the other branches [of government]” *In re Salary of Juvenile Dir.*, 552 P.2d 163, 171 (Wash. 1976). For a state-by-state survey describing the law of inherent funding authority for state courts, see Spivey (1974).

of a state court system's financial anatomy. The first concerns whether the dependent sources of funding (the funding that comes from tax revenue, distributed by a legislature) are local- or state-level funding. The second concerns the categories of services for which this dependent funding pays. The third traces the fee revenue as part of the court financing equation.

## Financial Anatomy 1: State Versus County Revenue Streams and Administration

Perhaps the most basic dimension of variance in state court system financing involves the degree to which the trial courts are funded at the county level versus at the state level.<sup>9</sup> At one extreme, one could imagine a state within which the trial court system is entirely financed and operated at the state level, with little or no involvement by counties. The potential advantages to this financing model include a centralized mechanism for collecting and distributing resources and for allocating those resources in a manner not dictated by the income constraints of individual counties. At the other extreme, one could imagine a state within which the trial courts are financed and organized primarily at the county level, with only limited involvement from state government. The latter financing model has the potential advantage of offering greater local control (or *home rule*) over resources, so that the counties have more authority to determine the level of funding for their own courts and (perhaps) to set local priorities for how that funding will be used. On the other hand, a county-based financing model also has the potential drawback of contributing to inequality across counties in what resources will be available for use by the courts.<sup>10</sup> In practice, many states fall somewhere between the extremes of state- and county-level funding for their trial court systems. Table 2.1 and Figure 2.1 summarize related information on California, Florida, Massachusetts, Ohio, and Utah.<sup>11</sup>

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<sup>9</sup> In most (if not all) states, the trial courts represent the largest category of operational expenditures and activity within the judicial branch—with appellate and supreme courts reflecting a relatively small slice of expenditures by comparison. See, e.g., Trial Court Budget Working Group, 2011, p. 7.

<sup>10</sup> County-level inequalities in court system resourcing could potentially become problematic, if they result in more or worse access-to-justice problems in poorer counties than in wealthier ones. This was mentioned in several of our interviews with state officials as one of the reasons reforms were contemplated or undertaken to move trial court operational financing more strongly to the state level.

<sup>11</sup> In October 2012, NCSC conducted a 50-state budgetary survey of state court systems in which each state was asked whether state government or county government was primarily responsible for funding each of several categories of trial court expenditures, including judge salaries, technology, courthouses, and clerical staff. Related data are available from NCSC (undated [b]) and suggest that some mix of state and county funding is the norm in more than half of the states. Ohio is notable for being one of eight states from which NCSC did not succeed in collecting any resourcing data.

**Table 2.1. State- Versus County-Level Funding of Trial Court System, by State**

State	Financing for the Trial Courts	Note
Calif.	Mixed state and county funding	California shifted emphasis from county to state funding in the 1990s.
Fla.	Mixed state and county funding	Florida shifted emphasis from county to state funding by state constitutional amendment in 1998.
Mass.	State funding	Massachusetts' trial court system is purely state funded.
Ohio	Emphasis on county funding	Interviews suggested that county-level funding is not centrally tracked and that state officials cannot account for it.
Utah	Emphasis on state funding	The state provides all funding for district-level trial courts. A separate county and municipal justice court system (covering low-level misdemeanors and small claims) is county funded.

**Figure 2.1. Spectrum of Emphasis on State Versus County Funding in Selected State Trial Court Systems**



Among the states on which we focused for this pilot, Massachusetts and Utah reported placing the strongest emphasis on funding the trial courts through revenues collected at the state level, rather than at the county level. According to our respondents in Massachusetts, that state’s trial court funding comes exclusively from state-level appropriations (more than 90 percent) and from court-collected fees, with no involvement on the part of the counties. Similarly, Utah also has a court system that mostly state-level revenue and appropriations, rather than the counties, funds. More specifically, we were told that state-level funding in Utah exclusively covers the costs associated with most facets of the court system and of the judicial branch there, notably including the state’s district courts, which are the trial courts of general jurisdiction in Utah. However, we were also told that there is a separate Justice Court system in Utah that consists of municipal and county trial courts with the authority to deal with minor misdemeanors, small claims, and infractions on a local (territorial) basis. Utah counties and municipalities provide the majority of the funding for the Justice Courts in Utah, including expenditures for judge salaries and benefits, clerical support, security, and facilities.

By contrast, Florida and California both have more-mixed models for funding their state trial courts, with the responsibility for revenue collection and cost being split between state and county levels. For both these states, our interviewees told us that the division between state and

county governments had shifted in the late 1990s to put more emphasis on state-level funding and to help ensure consistency and adequacy of resources for the courts. In Florida, the current framework for financing the state courts was established by a state constitutional amendment in 1998, which explicitly made the state broadly responsible for funding most aspects of the state court system, with enumerated exceptions to define county funding responsibilities, including with regard to facility (i.e., trial courthouse) costs, maintenance, and court security.<sup>12</sup> Whereas budgeting and spending for the state-funded aspects of the Florida court system are closely monitored and managed by the state court administrator, county-level funding and court costs are reportedly not directly tracked by state authorities. In California, the current framework for financing the state courts was established under the 1997 Lockyer-Isenberg Bill, which reportedly consolidated funding for the California courts at the state level while capping counties' funding responsibility for the courts based on what they had paid in fiscal year (FY) 1994 and imposing all subsequent growth in operational costs for the court system onto state government. Briefly, then, the California court system has evolved during the past 15 years to put increasing funding responsibility onto the state, but the counties continue to play a funding role in remitting revenues to the state to support the court system as well.

Of the states we considered in this pilot, Ohio has the court system that places strongest emphasis on county-level funding and oversight. We were broadly told that salaries, overhead expenses, and supply costs for Ohio trial courts are largely the responsibility of the counties and that, as a result, the county courts vary in whether they are well funded or in financial “dire straits.” More specifically, interviewees noted that, because much of the funding stream for the Ohio trial courts depends heavily on local revenue, it is possible not only for some county trial courts to be financially better off than others (sometimes substantially so) but also for the impact of budgetary shortfalls to be much more strongly felt in some county courts than in others. Meanwhile, because both the funding and the governance of the Ohio trial court system is highly decentralized, we were told, no one above the county level is closely tracking or consistently monitoring the county-level aspects of court system revenue and budgeting. As one respondent told us,

Nobody can tell what is actually spent on the courts of Ohio or . . . how much money is coming into the system through nonstate sources; the only thing that is generally known is what the state budget [and dedicated state appropriations] are set at.

## Financial Anatomy 2: What Categories of Services Are Paid for as a Formal Part of the State Court System?

Another preliminary, philosophical question arises in any discussion of state court system financing: What actually counts as being a part of the court system? In some respects, we can

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<sup>12</sup> See, e.g., discussion in Revenue Stabilization Workgroup, 2011.

frame this as a simple accounting issue (e.g., how many line items or “buckets” of expenditure are there associated with a given state court system), but the question also has a more substantive and operational dimension to it. The judicial branch of government and the state courts perform a raft of different functions, involve significant numbers of government employees, and touch on many other collateral aspects of the government, particularly in the executive branch. Deciding exactly the defining boundaries for what constitutes the state court system in terms of services offered and expenses covered is vital, both for operating purposes and for budgeting purposes. Some basic elements, such as the operation of the trial courts and the salaries and benefits of judges, are fairly prototypical and are probably understood to be aspects of the court system (and of related costs) in every state. Some other elements may be less prototypical, such as court clerks, translators, social workers, and courtroom security personnel. These elements involve people and work processes that are closely connected to the justice system but are nevertheless regarded in some states as distinct groups of personnel and operating activities with separate associated revenue streams and budgeting oversight. Finally, some elements are usually associated with court system functioning but tend not to be regarded as a part of the court system for budgetary purposes in many states. Examples include the offices of the public defender, legal aid, various state and local prosecutors, and law enforcement authorities.

One set of questions that we asked of officials in each of the five pilot states involved whether certain specific elements of court operations and costs were formally regarded as being a part of the state court system for purposes of finance and budgeting. Table 3.2 summarizes several of those elements across the states. Broadly speaking, security for the trial courts is a particularly ambiguous category that court-affiliated state employees (e.g., bailiffs) or outside personnel (e.g., county sheriffs) may provide. Courthouse construction and judicial retirement benefits are also categories of activity and expense that vary across the states, in terms of whether they are technically regarded as a part of the revenue stream and budget that support the state court system or instead are segregated into distinctive budgeting categories and specifically allocated revenue models. Even trying to put labels on what is included in the state court system within a given state can become ambiguous and complicated, in such states as Utah (where the operation of some trial courts, but not others, is locally funded) or Ohio (where some security personnel, but not others, are directly employed by the courts).

**Table 2.2. Categories of Activity Included in the State Court System, by State**

State	Trial Court Security	Trial Courthouse Maintenance	Trial Courthouse Construction	Judicial Retirement
Calif.	Included	Included	Separate	Included
Fla.	Included	Excluded	Excluded	Included
Mass.	Included	Included	Excluded	Excluded
Ohio	Mixed	Mixed	Mixed (but often funded at county level)	Unclear <sup>a</sup>
Utah	Mixed	Mixed	Mixed	Mixed

<sup>a</sup> We were not able to pin down unambiguously the treatment of judicial retirement benefits and whether these are or are not considered a part of the state court system for budgetary purposes.

Several conversations with officials and court administrators underlined for us the ambiguity of boundaries around what is recognized as a part of the state court system. One such conversation involved the observation that county courthouses in Ohio are surely a part of the court system there but that the courthouses also represent major capital assets for the counties where they reside and that sometimes the counties conduct other government activities out of the same buildings that go beyond the immediate function of the courts (e.g., also using them to house police stations). In Ohio, this kind of mixed use happens also to be tied to a county-level funding mechanism for the courthouse facilities, which accommodates the reality of activities being carried out in them but that also contributes to blurring the definitions and boundaries for what is, or is not, a court-related activity and expenditure. Interviewees highlighted a very different example for Florida, where they noted that the county clerks of court had, for many years, represented a separate budgetary category and revenue stream from the rest of the state court system and judiciary and had actually been competing with the judiciary for funding resources. However, the clerks of court also had varied responsibilities in Florida’s counties, some of which were closely tied to the operation of the trial courts, but others of which were not. Although the funding and revenue streams tied to the Florida clerks and the judiciary were reportedly integrated in the mid-2000s, the case nevertheless illustrates that key groups of state court-affiliated personnel may sometimes not be regarded as a part of the state court system, particularly for budgetary and finance purposes.

### Financial Anatomy 3: Fee Revenue Versus Tax Revenue

As we began our discussion of court financing in this chapter, we highlighted the theoretical importance of the extent to which state court system funding depends on court-collected fees, as opposed to legislative appropriations based on tax revenue. Interestingly and from a business point of view, state court systems can be understood not only as cost centers but also as revenue centers within state governments. Courts in most states can and do collect a range of fines and fees in the course of their operations. The structure and magnitude of revenue generated in this way vary significantly from state to state, of course. So, too, does what happens to fee and fine

revenue once generated. In some states, a substantial proportion of such revenue remains within the state court system, either being captured in accounts dedicated to paying for specific categories of expenditure within the court system or funneled into some kind of broader account or fund for the court system as a whole. By contrast and in other states, most court system fee revenue has to be remitted to the state's general fund (or sometimes to other state government funds or accounts), from which the legislature can then use it for purposes wholly unrelated to the court system. In such instances, the court system then depends on subsequent legislative appropriations for its funding, which may be unrelated to any revenue remitted out of the court system based on collected fees and fines. Regardless of the details, a significant financing distinction separates states that permit their court systems to retain control over some portion of court-generated fee revenue from states that do not.<sup>13</sup> From all of the foregoing, several basic descriptive questions arise concerning how particular states deal with fee and fine revenue generated by their court systems. In particular, may the courts to retain (or bank) any of the revenue to cover their own expenses? And what fraction of court system expenditures does this actually cover? Table 2.3 provides a summary of the answers for the five pilot states.

Among the states we investigated for this pilot, Massachusetts and Ohio represent two ends of the spectrum with regard to their disposition of court system fee revenue. For Massachusetts, interviewees told us that, in FY 2011, the state trial court system generated about \$110 million in fees, compared with operating costs of about \$545 million. Interviewees further told us that less than 10 percent of funding for the trial courts (and none of the funding for the appellate and supreme courts) derives from court system fee revenues.<sup>14</sup> On further discussion, we learned that the Massachusetts courts may retain a significant portion of the general fee revenue that they collect, subject first to meeting a "floor" of fee revenue (set by the legislature; the courts then remit the floor amount to the state's general fund). In context, interviewees observed that dependence by the Massachusetts trial courts on retained fee revenue has a serious downside, in that it makes the court system vulnerable to financial shortfall when the system fails to meet expectations for the amount of fees that it collects.<sup>15</sup> As a result, we were told, there is an advantage to the system in receiving most of its funding through legislative appropriations (based on planned expenditures) and, in turn, remitting the majority of the court system's fee revenues back to the state.

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<sup>13</sup> Among the potential implications is the timing of recognition of court system revenue, which, in some states, can occur on an ongoing basis in which the courts retain fee revenue but that is likely to be more restricted and episodic in court systems that depend exclusively on appropriated funds from the state legislature.

<sup>14</sup> These numbers are loosely consistent with fiscal information provided in the annual court system reports from Massachusetts for FYs 2010 and 2011, which indicate approximately \$45 million of retained fee revenue on roughly \$578 million of total revenue during FY 2011. See Supreme Judicial Court of Massachusetts, 2011, 2012.

<sup>15</sup> A problem that interviewees told us actually manifested in Massachusetts when anticipated court system revenue from foreclosure filing fees dried up, during 2010–2011.

By contrast with the practice in Massachusetts, we discovered that basic information on Ohio’s court system fee revenue and where it goes is difficult to obtain.<sup>16</sup> Interviewees told us that “the vast majority of filing fees go back to [the] counties” and that there is an unfulfilled need in Ohio to “discover how much of a revenue generator the courts really are.” Although interviewees suggested that some Ohio counties might use a portion of the fee revenue to support the operation of their local courthouses, they also observed that there is no consistent, state-level tracking of whether or how much of the fee revenue is being used for this purpose.

The court system fee revenue picture in Utah is clearer. There, according to our interviews, the fee revenue collected by the courts represents approximately 30 percent of the annual state court system’s operating budget. The majority of that revenue is then remitted back to state government and to the state’s general fund. Some of the fee revenue, however, is segregated in restricted accounts and later appropriated or allocated back to the court system, sometimes to cover specific categories of related cost. In total, we were told that fee revenues that are retained in purpose-restricted accounts and appropriated back to the Utah court system add up to approximately 15 percent of the state court system’s annual budget.

In Florida, the state court system generates considerably more fee and fine revenue than the system in Utah does. The Florida courts generated approximately \$1 billion in such revenue according to the most recent annual estimate—an amount in excess of the annual recorded expenditures for both the Florida state court system and the closely affiliated clerks-of-court system. This said, the revenue that is generated by the Florida courts is remitted into a series of accounts and split among trust funds dedicated to the state court system, to the clerks-of-court system, and to state general revenue and other agency trust funds. In recent years, this has meant that several hundred million dollars of court-generated fee revenue in Florida has not been dedicated to covering costs of the court system, while appropriations from the state’s general fund has instead covered a significant fraction of the actual cost of the state court system. In striking contrast to the funding concern we heard expressed about Massachusetts (about volatility in fee revenues as a potential risk factor for court system funding), we heard the opposite concern expressed about Florida—namely, that volatility in state general revenue (as during an economic downturn) represents a potential risk factor to court system funding in the state. Interviewees noted that the relative risk of depending on fee-based revenue stream, as opposed to a tax-based revenue stream, depends partly on how much the courts collect annually in fees and how that amount compares with annual court system expenditure levels.

Finally, interviewees told us that California’s court system’s fine and fee revenue had increased in the past decade, although we were unable to pin down the specific amount of annual

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<sup>16</sup> The annual court system reports for Ohio notably do not include information on the collection of fee revenues by the courts. See, for example, Supreme Court of Ohio, 2011.

court system revenue collection in recent years.<sup>17</sup> The revenue collected by the California courts is reportedly remitted to a mixture of purpose-dedicated accounts (some of which are tied to the state court system), the state’s general fund, and a “spider web of distributions,” with some of the revenue being shared out at the city and county levels.<sup>18</sup> However, the California court system reportedly still depends on legislative appropriations in order to access money from many of the purpose-dedicated funds. We were told that increases in fee and fine revenue in the past decade, together with corresponding increases in dedicated accounts tied to financing the state court system, had resulted in a dramatic reduction in the proportion of the court system’s budget that was funded by a draw from the state’s general fund, down from a historical apex greater than 50 percent of the annual total budget, to a more recent level of approximately 20 percent.<sup>19</sup> Interviewees observed that this drawdown reflects a pivot away from state taxpayer funding for the court system and toward a greater reliance on financing the system through user fees.

**Table 2.3. What Happens to Court System Fee Revenue in Selected States?**

State	How Much Fee Revenue Is Raised?	Where Does the Fee Revenue Go?
Calif.	Unclear	A mix of purpose-restricted court system accounts and funds, the state’s general fund, and a “spider web of distributions”
Fla.	Approximately \$1 billion estimated in FY 2010	Divided among SCRTF, other restricted-use funds (some unrelated to the court system), and the state government’s general fund
Mass.	~\$110 million in 2011	50%+ to state government, with remainder retained by the court system
Ohio	Unclear	Mostly to the counties
Utah	Estimated at \$40 million based on 2013 court system operating budget	Approximately half to state government, with remainder allocated to restricted accounts on behalf of the court system

NOTE: SCRTF = State Courts Revenue Trust Fund.

## How Much Flexibility Do State Court Systems Have to Carry Forward Resources or Revenue from One Time Period to Another?

Another state court system financing issue that interviewees raised about several of the states involves the timing of revenue recognition by the state court systems and the degree of flexibility in their being able to draw on funds (or to bank unused funds) over time. It is easy to imagine a hypothetical state court system that depends on an annual legislative appropriation for its operating funds. In an idealized scenario, such a system might receive one lump-sum payment

<sup>17</sup> Our interview respondents were unable to tell us with specificity how much fee revenue the courts collect. Moreover, as far as we can determine, California does not publish descriptive statistics on court fee and fine revenue either.

<sup>18</sup> For more detail, see Overholt, 2012. See also Overholt et al., 2006.

<sup>19</sup> We were unable to reconcile this statement with an official FY 2011 summary of California court system funding sources, which did not specifically identify a state general fund as one of the enumerated sources (Overholt, 2012).

per year, which is then spent down over the course of time. Such a system might likely be “cash rich” during the early part of its fiscal year and “cash poor” during the latter part of the year. Depending on the accuracy of its expenditure projections, such a system might also need either to seek additional appropriations or to curtail its costs toward the end of the fiscal year. Put another way, income to state courts that derives entirely from an annual appropriations process and the state’s general revenue fund might be naturally “lumpy” and might or might not correspond well to the ordinary cadence of court system spending, with the result of creating cash shortfalls for the court system at some points during the year. By contrast, when a state court system relies on dedicated trust accounts, with more of the funding flowing from court-collected fee and fine income and with greater court system authority and autonomy in determining when and how to draw money from the dedicated accounts, then, in principle, the likelihood of running into calendar-based cash shortfall problems should be reduced.<sup>20</sup>

Interviewees raised this set of finance and timing issues in several different ways. For Massachusetts, it was mentioned that timing and cash-flow issues associated with retained fee revenue play a meaningful part in the operational management of the courts and sometimes present a challenge in ensuring that available funds are sufficient to meet operating expenses and payroll on a month-to-month basis. For Utah, interviewees told us that one of the strengths of the state court system involves having “financial carry-forward authority,” which allows the system some autonomy to carry funds that are allocated but not spent in a given fiscal year into the following year. In a different vein, for Florida, interviewees noted that the state had created a new SCRTF in 2009 to try to ensure that a dedicated pool of funding for the courts, drawing on fee and fine revenue, would be available to insulate them from volatility in the state’s general revenue base.<sup>21</sup> According to official materials published on the Florida court system’s website, the SCRTF is funded primarily from several different streams of fee and fine revenue generated by the courts. Unfortunately, dependence by the SCRTF on foreclosure-related revenue led to shortfalls in available court system funds beginning in late 2010 and early 2011. As a result, the system had to seek out millions of dollars in emergency funding and cash transfers from the state legislature, beginning in 2011. In commenting on the shortfall in SCRTF funding, the chief justice of the Florida Supreme Court notably observed that “recurrent cash flow problems hinder court efficiency and can potentially disrupt day-to-day court operation” and that, in consequence,

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<sup>20</sup> An analogy to household finance readily illustrates the logic of why a dedicated trust account with reserve funding can help to prevent short-term cash-flow problems. Imagine two households. The first lives from paycheck to paycheck, and it pays for all of its expenses with cash. The second household has a checking account with two months of reserve salary on deposit. When the first household runs short of cash to meet expenses, it either has to stop spending until the next paycheck arrives or has to find some other funding source from which to borrow money (very quickly). By contrast, the second household can draw money from its reserve account when needed and then pay back the reserve with its next paycheck. The second household clearly has more flexibility to meet short-run expenses than the first, even assuming that both households receive the same paycheck and that they generate similar expenses.

<sup>21</sup> See also Florida Courts (undated [b]) on this point.

“a more diversified and resilient funding stream formula is necessary” in supporting both the SCRTF and the funding of the court system in Florida.

For California, several of our interviewees described a more serious retained revenue and timing issue. We were particularly told that the trial court system in California had been given authority in 1997 to hold unspent fund balances in reserve from year to year, a practice that strengthened the financial independence of the courts and their ability to weather the impact of occasional budget shortfalls and appropriations cuts. In recent years, the California court system reportedly used its operating reserves (as well as the ability to draw on and transfer assets from other restricted funds, particularly for courthouse construction) to soften some of the impact from cuts in state appropriations. In 2012, however, the governor reportedly instituted a new policy forcing the trial courts to spend down most or all of the existing reserves and limiting the size of future reserves to 1 percent of the state allocation that the trial courts received.<sup>22</sup> Interviewees told us that the effect would be to eliminate much of the court system’s flexibility in responding to annual volatility in its revenue, while creating new challenges for the courts in meeting their operating cash-flow targets in the event of unforeseen budget shortfalls in the future.

## How Many Line Items Are in the Budget for the General Fund–Financed Court Systems?

One of the basic accounting observations that can be made concerning any state court system involves the extent to which state appropriations and funding are given to that system in a flexible form, as opposed to being purpose-dedicated across several (or many) specific accounts. In particular, we were told in interviews that some state legislatures provide for many more court system funding line items than others do—a state practice that can thereby reduce a court system’s flexibility and autonomy in determining how to allocate appropriated funds on an operating basis. For Massachusetts in particular, interviewees observed that recent consolidation in the state budgeting process had reduced the state court system budget down from 153 line items to 17 line items, thereby making it easier for the system to deal with potential funding shortfalls going forward. For Ohio, interviewees told us that “the number of state budget line items will convey a lot about the flexibility of the state court system in managing its own funds.” According to the most recent iteration of the Ohio executive budget, there appear to be ten budget line items connected with the judiciary or supreme court, together with several additional budget line items dedicated to the Ohio Judicial Conference and the Court of Claims of Ohio (see Ohio Office of Budget and Management, 2011). For Utah, we were told that one of the major financial strengths of the state-run court system involves the fact that the Utah state budget involves only three corresponding line items, dedicated to court system personnel and operating

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<sup>22</sup> The governor adopted the new policy in the context of sweeping state efforts to address an acute fiscal crisis in 2012. Reduced funding autonomy to the courts was only a minor aspect of broader fiscal reforms adopted by California during 2012 and 2013.

costs; court system building contracts and leases; and jury, witness, and interpretive fees, respectively. Because the lion's share of state funding for the court system in Utah is concentrated in a single budgetary line item, interviewees told us, the court system there has a lot of flexibility and control over allocating how those dollars are actually spent.

## Who Records State Court System Accounting Information, and What Information Is Being Reported?

Finally, another basic observation with regard to state court system accounting is that there is often more than one source of accounting information corresponding to various aspects of appropriations, revenue, and expenditures for a particular state court system. In their annual comprehensive budgetary reports, states typically record enacted legislative appropriations, in particular, including the appropriations made to their court systems. The official state budgets may or may not encompass other sources of nonstate funding to the courts, particularly in those states that have structured their court systems to depend heavily on county-level funding. In the latter, county government entities and administrators may instead track county-level funds and appropriations, and that information may or may not be aggregated, tracked, and disclosed at the state level. Meanwhile, more-detailed tracking of actual expenditures undertaken within a state court system and of revenues generated by that court system are typically undertaken by the administrative and supervisory offices of the courts and summarized in an annual report published either by the state supreme court or the administrative authority for the state court system (with some variation in the responsible reporting entity from state to state). The details of what accounting information the annual report formally discloses and how this corresponds to the more-detailed accounting that the operational management of the court system undertakes varies from state to state.

One implication of all of the foregoing is that any simple summary of court system budget information for a given state is likely to omit some important complexities with regard to who is compiling that information and what is being included. Among the states whose representatives spoke with us, several referred us to the official, published state budget as the best source of information on appropriations to the courts. However, in several of the same states, we also learned that (1) the state budgets do not account for county-level funding, which is nevertheless reportedly significant; and (2) the published state budgets themselves reflect a snapshot of the legislative appropriations process at a particular point in time and may not accurately reflect the ultimate amount of funding that the courts actually receive in a given year. Some of the basic variations in court system governance and architecture almost inevitably influence the more-detailed accounting that the state court systems undertake. Court system accounting is going to look different in states that rely more or less heavily on county-level funding; that are either more or less centralized in the administrative oversight and budgeting of the trial courts; that either do or do not outsource related court functions (e.g., security, clerk support) to other

government instrumentalities; and that do or do not have direct responsibility for funding capital infrastructure cost as a part of their operating budgets. These all represent basic questions about what is being accounted for that need to be understood in order for the details of summary balance sheets and income statements to have meaning. In a related vein, it is also noteworthy that state court systems also vary in the degree to which they track and publish details about the fee revenues that they generate, regardless of whether those fee revenues are actually retained by the courts or play much of a role in helping to fund them. Among the states whose representatives spoke with us, Florida is noteworthy for tracking and publishing detailed fee-revenue accounting disclosures on an annual basis, whereas several of the other states do not disclose this kind of accounting information, and Ohio apparently does not even track court-generated fee revenues in a systematic way across the state.

## Discussion

One of the reasons that led us to decide to investigate state court system financing and accounting issues involved an earlier RAND study that looked broadly at the impact of the 2008 financial crisis on the U.S. civil justice system (reported in Greenberg and McGovern, 2012). As a part of that earlier study, we reviewed some of the basic annual court system accounting disclosures that several of the states had published. What we realized, more than anything else, was that, without having some deeper context for the information presented, it could be difficult for outsiders to fully understand what those accounting statements and disclosures actually mean. In part, the accounting statements raised questions for us about what was actually being paid for under the heading of “state court system” and whether the definition for this bucket tends to be consistent across the states. In part, the accounting statements raised questions about how money actually flows into and out of the state courts. We also questioned the implications of the financing mechanisms for subsequently tracking the money. The statements also raised some questions about the mechanics and conventions of the accounting disclosures themselves. Ultimately, answers to these sorts of questions are important for making sense out of state court system accounting disclosures and for using the disclosures to gauge changes in the resourcing level of the courts between states and over time. Particularly at a time when many state court systems across the country are facing austerity budgets and operational and staffing cuts, the ability to understand and measure their financial challenges depends on the foundation of their financing mechanisms and the clarity of their accounting disclosures.

One of our aims in this pilot was to develop a basic taxonomy of state court system financing, sufficient to ground a broad understanding of what the accounting statements and financial positions of the different court systems mean. By *taxonomy*, we are referring to a set of primary funding and organizational dimensions along which court systems vary and that, together, can be used to sort the systems into different categories or types, based on how their financing actually works. Much of our conversation with state court administrators and judges

was geared to exploring basic dimensions of variation in how the state systems are funded and which, among those dimensions, were consistently viewed as important by our interlocutors. In essence, what we were seeking to identify is a set of fundamental questions that anybody would need to ask to understand the basics for how courts are organized within a given state and how money passes into them and is spent by them because of this organization. According to our research, at least five descriptive dimensions emerged as being important:

- the breadth of what is defined as the state court system in terms of the court structure and the services included
- the degree to which the system depends on county-level funding
- the degree of emphasis on fee revenue and retention of that revenue by the courts
- the legislative constraint on court system funding imposed by the number of budgetary line items
- the court system's ability to carry forward reserves and to flexibly obtain access to funds to meet operating expenses over time.

Table 2.4 summarizes these financing dimensions and provides state examples and accounting implications that tie back to each dimension.

**Table 2.4. Some Proposed Taxonomic Elements in State Court System Financing**

<b>Financing Dimension</b>	<b>Explanation</b>	<b>Example</b>	<b>Accounting Implication</b>
Is <i>state court system</i> defined narrowly?	Some states include such elements as courthouse buildings, security, and clerks of court under this heading, while others do not.	Massachusetts treats courthouse construction and judicial retirement benefits discretely from the court system budget.	The things paid for as a part of the court system vary from state to state.
Is there an emphasis on county-level funding?	Counties play a major role in funding the courts in some states but not others.	The Ohio system relies on a heavy funding role for counties.	State-level accounting disclosures often omit county funding, an omission that results in an incomplete financial picture in some states.
Is there an emphasis on retained fee revenue?	Courts in some states, but not others, are funded largely out of fee revenue.	Florida raises more than \$1 billion in court system fees annually.	Some states are more transparent in disclosing court system fee revenues and retained revenues than others.
Are there many legislative budget line items or few?	Some legislatures are more directive than others in establishing purposed-dedicated pots of funding for the courts.	Utah has only three legislative line items.	The number of line items imposes more or fewer basic constraints on court system budgeting and accounting.
Can the court system carry forward reserves or retained revenue?	Some states allow their court systems more cash-flow flexibility in holding onto resources in trust funds and carrying forward unspent resources from one accounting period to another.	California allowed its court system considerable carry-forward flexibility, until reforms in 2012.	Are reserve carry-forwards clearly documented in accounting disclosures? <sup>a</sup>

<sup>a</sup> For a yearly summary of California court fund balances (reserves) delineated for each county's trial court, see Overholt, 2012.

Our discussion so far has focused primarily on court system financing and accounting. However, it is impossible to examine the way in which courts are funded without also tangentially considering how they are organized and managed. Any investigation of the flow of money into the courts also invites basic questions about how the courts exercise control over their own funding and what the governance and administrative management structure of the courts is. These are important attributes of state court systems in their own right, but they are also closely tied to understanding the financing of the courts and the interplay of authority between the different branches of government (judicial, legislative, and executive) and across different levels of government (state and county) in the operation of the courts. In the next chapter, we delve in more detail into the governance of state court systems and complementary dimensions of variation in the ways in which these systems are organized and operated.



### 3. State Court Governance: Autonomy and Flexibility Can Mitigate the Effects of Fiscal Crises

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#### Introduction

Governance—the structural arrangement that determines how institutions function, assign responsibilities, distribute power, and establish how decisions are made—is as important a component to an understanding of variation across state court systems as the funding and accounting dimension described in the previous chapter. More formally defined, governance is “the means by which an activity or ensemble of activities is controlled or directed, such that it delivers an acceptable range of outcomes according to some established social standard” (Hirst, 2000, p. 24). For state judicial systems, this suggests that we should be keen to understand the arrangement and mechanisms for direction and control of state court activities. Some activities that are relevant to a broad inquiry about state court financial resources involve the direction and control of budget preparation and expenditures, allocation of resources across the many departments of the judicial branch, the ability (or lack thereof) to self-direct initiatives, and the loci of power both between the legislature, the executive, and the courts and within the court system itself.

Although all state court systems provide venues for criminal and civil justice, the approach to statewide judicial administration and governance can be quite different from state to state. For example, courts might be organized by counties, which retain local control as well as financing. Alternatively, a unified court system might provide for statewide management of judges, budgets, and relations with the legislature, executive, and the public. Another dimension of governance would concern whether the executive branch develops a budget for the court system or whether the judiciary itself has a budget-preparation function. Just as the methods of state court system financing and accounting differ in important ways (discussed in Chapter Two), the fact that there are differences in governance models used in the state court systems adds another important dimension to understanding the state-level administration of justice.

Therefore, we are interested in the variance across our pilot states’ governing structures and, secondarily, whether the governance arrangements may have exacerbated or mitigated the financial crisis’ effect on the state courts. Although we know that a majority of courts experienced funding reductions for years after the crisis, the responses to the shortfalls differed between states. Some states were able to divert money to needy departments, while others seemed hamstrung by earmarks and line items. It seems likely that the variation in response is not purely attributable to the severity of cuts on a percentage basis alone. Hence, we think that the system of governance used in the state judiciary could explain part of the actions taken by the courts.

In this chapter, we describe some examples of governance structures in our pilot states. As in the previous chapter, in this chapter, we draw both on interviews with court administrators and judges and on published information about the court systems in our pilot states. We do not focus on every governance difference in their systems, but rather highlight some of the most-relevant dimensions that are particularly important when trying to understand the way money is managed for the state court systems.

## Theoretical Approaches to Court System Governance

At a basic level, court system governance might initially be thought of as the arrangement of the judicial hierarchy: the trial, appellate, and courts of last resort, as well as the specialized courts for traffic offenses, domestic disputes, juvenile issues, and the like. Hence we have, such as in Utah, a judicial system organized into separate Justice Courts (municipal and county courts with authority over “class B and C misdemeanors, violations of ordinances, small claims, and infractions committed within their territorial jurisdiction”), juvenile courts, district courts, courts of appeals, and the Utah Supreme Court (see Utah Courts, 2014b). Yet, court governance has more-important theoretical and practical implications beyond the hierarchy of justice and the separation of appellate and trial jurisdictions.

Judicial independence is implicated in the concept of governance. In other words, an independent system of court governance would be based on the principle of self-administration: “The administrative rules for a state’s courts, would be set not by the legislature, but by the governing authority of the judiciary, consistent with the principle of the judiciary as an independent branch of state government” (Durham and Becker, undated, p. 1). This sense of self-governance—the determination of the administrative rules for the day-to-day operations of courts spread throughout the state—concerns a core internal management function. Whereas other bureaucratic entities (such as administrative agencies) are part of the management system under the governor or the state legislature, the courts are not exercising a delegated executive or legislative authority. The courts stand on their own, theoretically, in the separation of governmental powers. Management of the court’s own internal functions, it seems, would be the exclusive prerogative of court personnel in a truly independent system.

Independence of courts from legislatures regarding administrative rules is only one dimension of independence, however. As the previous chapter described, the independence of the judiciary is also linked with the sources of funding that support the court system’s operations. A judicial system with a closed (i.e., retained) revenue-generation model might be independent of the legislature from a fiscal viewpoint, but the trade-off is the link between access to justice and the ability to bear the costs and fees levied on litigants. Alternatively, a court might be less financially independent if state general fund revenues fund the court’s budget; yet, it could be in a better position to provide more-open access to the public. Here we see where funding and governance overlap. The right to self-administration means little if the courts must always appeal

to the legislature. And even when the legislature provides resources, earmarks and line items can frustrate court systems' ability to manage those operational funds in an efficient and proper fashion.

Interest in state court system self-governance is of relatively new vintage, but the acceptance of some variety of increasing self-governance has been nearly universal:

The state court systems of today emerged in the 1970s and 1980s as the long-standing vision of court reformers began to be realized at a rapid pace. Reformers had decried the degree to which trial courts were enmeshed in local politics, subject to overlapping jurisdiction, and governed by widely divergent court rules and administrative procedures within a state. To varying degrees in recent decades, all states have changed the organization of their courts to address these concerns. (Durham and Becker, undated, p. 1)

How then to organize and govern a state judicial system? There is no central model for organizing court governance. The result of this reform movement has been a patchwork of different approaches to administering the state court systems. This laboratory of management approaches provides ample variation for governance scholars and policy researchers interested in institutional structure. But the variation presents a difficulty when searching for aggregate statements about how state courts across the nation operate. Moreover, the variation makes it difficult to untangle the effects of the financial crisis on judicial systems when the systems manage their financial resources in very different ways.

We begin our discussion of governance with three aspects of a state court system's governance anatomy. The first concerns the administration of the court system and whether there is a centralized judicial council (as well as the powers that may inhere in such a body). The second deals with the degree of legislative micromanagement (such as earmarks or line items). The third looks at the locus of power in the state judicial system, highlighting the state-versus-county dimension that remains prevalent in many states.

## Governance Anatomy 1: Deciding Who Decides

Within state court systems, there is wide variety in how the policymaking authority and the policy-implementation authority are organized. Clearly, any administrative tasks for the state court systems are going to involve a mix of activity and oversight by some number of judges and usually the chief justice, along with a professional staff of public administrators who carry out the bureaucratic necessities of the judicial branch. "All states have an administrative office of the courts," the bureaucratic organization that provides the day-to-day services related to court personnel management, public information, information technology, purchasing and contracting, resource planning, and general staffing needs (Durham and Becker, undated, p. 2).

Just what authorities and portfolio of work the administrative office has differs from state to state. In Florida, for example, the state court administrator plays a crucial role in the operations

and planning tasks of the court, which include legislative and executive relations and budgetary functions. Established in 1972, the position of state court administrator

was created with initial emphasis on the development of a uniform case reporting system to provide information on activity in the judiciary in the preparation of its operating budget and in projecting the need for judges and specialized court divisions. (Florida Courts, undated [a])

The administrator, who serves under the chief justice and the six associate justices of the Florida Supreme Court, oversees the Office of Resource Planning and Support Services, which manages “resource funding methodologies for allocations/requests/reductions; revenue forecasting/monitoring, with assistance provided to the Article V Revenue Estimating Conference; and, liaison support for clerks of the circuit court budget and other related issues” (Florida Courts, undated [c]). To complicate matters, however, Florida has separate trial and district court budget commissions that prepare recommendations for budget policies to the state supreme court. The administrator manages these recommendations in the process of making the annual budget request.

The Florida state court administrator has a large portfolio. Much of this authority and the system’s reliance on the administrator’s professional staff result from some significant restructurings in the Florida courts over several decades (for a history of the Judicial Council, see Judicial Branch Governance Study Group, 2011). As it stands today, there is a Judicial Management Council in Florida. This advisory body to the Florida Supreme Court was a recreation of former judicial advisory groups, disbanded for lack of resources. The reconstitution of a judicial council suggests increasing attention to issues of governance in the Florida courts. Whether this new body will help refine and reformulate the administrative tasks of the Office of the State Courts Administrators remains to be seen. Regardless, from our perspective, it is a positive development that the Judicial Management Council will take a more active role in exploring court governance issues.

Florida, then, has a judicial governance structure that currently favors a strong administrative-office role and a weaker judicial-council role (although the state supreme court has the final authorities of the rules of court administration and procedure). Budget requests are funneled from various commissions through the administrator’s office. Utah, on the other hand, has both a strong administrator and a centralized Judicial Council that actively manages the judicial branch resources and strategic planning. The Utah Judicial Council is a 14-member committee made up of the chief justice, a second state supreme court justice, a state bar association representative, and 11 judges of the lower courts (Utah Courts, 2014a). A constitutionally required body, the Judicial Council “is responsible for adopting uniform rules for the administration of all courts in the state, setting standards for judicial performance, and overseeing court facilities, support services, and judicial and nonjudicial personnel” (Utah Courts, 2013). Our interviews with Utah judicial and administrative personnel revealed that the Utah Judicial Council is remarkably hands-on when managing the state courts. Meeting monthly,

the council works with the state court administrator to jointly address strategic planning needs, develop the annual budget, and communicate with the executive, legislature, and the public.

According to our interviews, this controlled, unified system of governance allows for short response times and streamline budgeting. In the face of the financial crisis, the permanency of the Judicial Council, the regularity with which it meets, and the depths to which it is involved in budgetary and management activities helped the Utah courts know what areas of court administration could be restructured and where cuts could be made.

California also has a constitutionally mandated Judicial Council that serves as the governing body for the state court system. The Judicial Council of California establishes strategic and operational goals for the state judiciary (Judicial Council of California, 2006). It has authority to establish administrative procedures and rules of practice, as well as to approve the California judicial budget (see Judicial Council of California, 2008). The chief justice, who chairs the Judicial Council, and the administrative director of the courts are empowered to make technical changes to the proposed judicial budget and negotiate with the legislature and executive branch. They also allocate the appropriated annual funding.

The Judicial Council of California and the California Administrative Office of the Courts have, at times, been at odds with some trial court judges of the California superior courts over governance issues. The root cause of these tensions appears to be the history of court unification in California. California's was once a system of county-funded trial courts; the process of unification was completed in 2001. Since then, the growth of authority in the Judicial Council and the Administrative Office of the Courts has caused numerous occasions for disagreements within the judiciary (Jacobs-May et al., 2011). One of the long-standing disagreements has concerned the allocation of funding to the trial courts. Traditionally, funding allocations have been based on historical levels; presently, the court is considering tying financing to workload and case-filing metrics. The sheer size and diversity of the California state court system makes management and governance a challenge. Trying to sort out governance issues during the financial crisis further amplifies the challenge. Furthermore, the size of the California court system additionally complicates management and governance. Superior Court of California for the County of Orange alone has 116 judges and 15 commissioners, larger than the number of district and juvenile court judges in Utah. With more than 2,000 judges, managing California's courts is a different governance challenge—at least in terms of magnitude—than is faced in the other states.

On the other end of the spectrum, Massachusetts has decentralized court management, opting not for a central office across the judicial hierarchy but rather establishing the Executive Office of the Trial Courts, headed by a chief justice for administration and management. The office has budgetary, accounting, and procurement responsibilities for the trial courts in the state, essentially bifurcating the administrative duties for the trial and appellate divisions (Massachusetts Court System, undated).

Ohio's system of state court governance also bears brief mention here. The Supreme Court of Ohio, not a judicial council, has the constitutional responsibilities of managing the state court system. That court system, however, is of more limited scope than what exists in other states: The state-funded component of the judicial system in Ohio includes only the state supreme court, the courts of appeals, and the court of claims. The state court system does not include the county-funded courts of common pleas, of which there are 88, or the various municipal and county courts. The Administrative Division of the Supreme Court, through an administrative director, exercises the administrative and bureaucratic functions. The Ohio Judicial Conference is a body consisting of all judges in the state. Its role is to study and promote the fair administration of justice; however, it has no direct budgetary or policymaking role akin to that of the Utah or California judicial councils.

## Governance Anatomy 2: Legislative Influence

In Chapter Two, we described the importance of knowing where the funding from courts came from and the methods used to tabulate and record it. A closely related concept that emerged in our interviews was the degree to which the courts could direct the money to needy activities or, alternatively, the extent to which the allocations were earmarked for specific purposes. The nexus between source of funding and the governance connection should be clear: Money with strings attached implies a diminished degree of autonomy and self-governance for the courts. This, in turn, further constrains judiciaries if funding cannot be reallocated in a timely fashion.

To explore the degree to which the courts had autonomy over the money, we discussed whether the sources of funding were attached to special line items or special projects. From a financial point of view, line items are revealing something important about how restrictively the money is being allocated and how much is going to specific categories of expense. From a governance point of view, the focal point of interest is less about the money itself and more about the lack of judicial branch control. In a state where pencils and paper are separate legislative line items, the judiciary is not even going to be able to make purchase decisions about how to allocate money for writing materials. Line items, then, may be a partial proxy for independence and strength of judicial administration, apart from also being an easy way to track the allocation of money by the legislature.

We discuss legislative line items in Chapter Two as a financing and accounting matter, but, purely from a governance point of view, line items are a way for the legislature to manage the operations of the court. Along this governance dimension, the degree of variation in the states is striking. On one end of the spectrum, the Utah court system is the most autonomous. During its appropriation process, the Utah legislature provides the judicial branch funding in three pieces: The largest component is for personnel and operating costs; the second is a line item for contracts and leases on buildings and facilities; and the third is for jury and interpreters' fees. By

getting their allocation in one large lump sum free of encumbrances, the Judicial Council and the court administrator can manage an efficient bureaucracy. It is no accident that, in Utah, the powerful and skillful Judicial Council has been as successful in managing court resources as it has been in resisting legislative desires to impose more control over the way the judicial budget is spent.

Massachusetts, historically, had been on the other end of the spectrum. The Supreme Judicial Court of Massachusetts, the Appeals Court of Massachusetts, and the Massachusetts trial courts are state funded and have been so since 1978 (with some retained revenue for the trial courts, as discussed in Chapter Two). With state funding, however, has come state legislative input into how the money is to be allocated. Until recently, the appropriation from the legislature (called the General Court of the Commonwealth of Massachusetts) came in the form of 153 line items. This has since been consolidated to 17 line items, and there is great desire by some administrators of the judicial system to consolidate even further. The desire comes from both a management perspective (a desire to be able to move money to where it is most needed in a timely fashion) and an independence perspective (the appropriations process can be viewed as an attempt by the legislature to treat the judiciary as merely an executive agency, rather than a constitutional equal).

Another dimension of legislative influence concerns whether the court system or subsystems within the state judiciary have carry-forward budget authority. Here, too, we see the intersection of financing and governance. Chapter Two discusses the budgetary authorities in terms of financial sources of money flowing to the courts. But, from a governance perspective, it is an administrative tool that some courts can use to manage resources while others cannot. Whether courts have such authority is, of course, legislatively determined. Year to year, the courts may not need all of the funding they are appropriated. In California, for example, significant county reserve funds had been built up. These funds were essential in managing the budget cuts suffered post-financial crisis. New legislative rules, however, have limited reserve fund levels, thereby removing yet another tool that local administrators had used to manage reduced budgets. This has put the courts in an even more dependent position relative to the legislature.

We highlight the Massachusetts and Utah examples to demonstrate that the critical task is not just adequately funding the judiciary, but adequately funding the judiciary in the right way. A state judicial system that is hamstrung by legislative pet projects and micromanagement may find it much more difficult to fulfill its constitutional duties according to the principles of good public management. Moreover, a judiciary that, like California's, a legislature tells that it cannot carry over its budget or retain reserves over a specified threshold is further subjugated to the funding priorities and capabilities of the legislative branch.

### Governance Anatomy 3: State System Versus County Dynamics

It bears noting, more explicitly than we have in Chapter Two's discussion of funding sources, that governance is implicated in a state's decision to choose county- versus state-level funding of its trial courts. In Chapter Two, we cast the degree to which courts receive funding from the counties or the states as a major line of demarcation across state court system financing. But the choice of state versus county is much more a question of governance than it is of financing; county financing is a derivative feature of local-level control of the courts.

Local control has always been a policy preference that has appealed to American voters. Indeed, with local control, there is a closer nexus between decisionmaking and priority setting and the people. However, in the administration and governance of a state judicial function (not to mention the funding of the trial court system), there is a less clear justification for a preference for localization. When local laws require interpretation (as might be the case with local zoning ordinances, for example), municipal courts might be the appropriate venue. But, for statewide laws, which ought to apply and be administered equally to the populace regardless of local funding availability or local governance mechanisms, the argument for local control is more tenuous at best. The results would likely be a patchwork of courts, some with ample resources and some with less, with the resultant disparities in the time to case disposition, levels of support, and specialized programming. On top of this, oversight and investigation into the local courts would be obstructed in the absence of statewide reporting requirements.

Ohio's approach to the state judiciary presents the strongest example of this local-control dimension. Eighty-eight independent counties, with independent funding streams and independent governance models, form the foundation of the trial courts. On top of this layer, a thin veneer of state-controlled appellate courts operates with little oversight of the trial courts—indeed, with little information about the operations of the lower courts. Although the Ohio Supreme Court manages the state-funded component, that slice was a mere \$134 million in 2012. Compared with billion-dollar budgets in Florida, it is evident that just a tiny fraction of the judicial function in Ohio falls under state control.<sup>23</sup> This decentralized approach is not necessarily a bad thing, however. County-funded courts are freed from the statewide politics of funding allocations and statewide financial circumstances. Yet the decentralization of governance in the Ohio courts has arguably created a black-hole effect on their finances: At present, there is no transparency or light regarding the funding of the county courts.

Florida provides another complex example of the split between local- and state-level control of some state court functions. In Florida, an important distinction concerns the role played by county-level clerks of the courts. These elected officials epitomize local control (because of the

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<sup>23</sup> To clarify, Florida's population is approximately 19 million people, while Ohio's population is 11 million people; thus, Florida's population is a bit less than twice that of Ohio. Notwithstanding, Florida's state budget for the courts is roughly an order of magnitude greater than the analogous budget in Ohio—an effect that the relative sizes of the two states alone cannot explain.

direct electoral connection), yet they are administering a state-level bureaucratic function within the state court system. These clerks are more than court staff; they have constitutionally given authority as comptrollers and auditors for the counties (Florida Court Clerks and Comptroller, undated). In fact, the clerks and comptrollers have “responsibility for nearly 1,000 different constitutional and statutory functions or duties” (Florida Association of Court Clerks and Comptrollers, undated). Furthermore, the clerks of court are financed at the state level as an annual appropriation that is separate and distinct from that for the state courts. The clerks work through the legislatively created Clerks of Court Operations Corporation to help prepare their annual budget and manage relations with the legislature and the executive (Florida Clerks of Court Operations Corporation, undated). Historically, there have been tensions between the clerks and the state courts over revenue and administration. It is possible that part of this tension is institutional: The rules of financing and administration have established a county–state and clerk–court competition for resources and autonomy.

## Discussion

Governance entered our analysis because of some judges and court administrators who provided a narration about the difficulties of the financial crisis. Across the board, the stories we heard reiterated that the experience of the financial crisis was painful and troubling. But those state court systems that recovered the quickest seemed, anecdotally at least, to be those that were managed by leaders with the will, skill, and governance authorities to make hard choices, cut budgets where possible, and reallocate funding to meet changed priorities and resource constraints. What we realized was that identifying the sources of funding and the aggregate funding levels, without accounting for the manner in which the budgets are prepared, the ways in which the money can be managed, and the structures of organizing the court administration, would be of limited use in policy discussions about whether state court systems are appropriately resourced.

Looking more closely at governance led us to discover that there is as much variety in the governance models used by state court systems as there is in the approaches to funding and accounting. The states, as laboratories of policies and procedures, again demonstrated ingenuity in structuring court administrative functions. For policy analysts, court administrators, and public affairs specialists who want to really understand the state of the state courts following the financial crisis, it is crucial to gain at least a passing familiarity with the states’ governance models and how they can affect the securing and subsequent management of resources.

Although the potential number of important variations in state court system governance is quite large, we believe that several core components should be on any court watcher’s radar. Table 3.1 summarizes these governance dimensions and provides examples and explanations of their implications for state governance.

With this additional governance dimension as a backdrop, our review of state court financing mechanisms takes on a more complete and sophisticated dimension. The basic questions about how courts exercise control over their own funding are inextricably linked to the sources of those funds and the dependencies that are created. To get the full picture, we think it appropriate for court watchers to ask these questions: (1) How does the court get its funding? (2) How does the court account for, track, and report on the resources it uses? and 3) Who governs the allocation of those resources for each level of the state court system? Only when these three questions are answered do we get a clear picture of the condition of the state judiciaries.

**Table 3.1. Elements in State Court System Governance**

<b>Governance Dimension</b>	<b>Explanation</b>	<b>Example</b>	<b>Governance Implication</b>
Is the state court system centrally managed?	Some states use a system in which a judicial council implements the administrative authority for such activities as budget preparation and allocation of resources.	The Utah Judicial Council has the skill and authority to act with one voice in all manners of court administration (although the Justice Court system is locally managed).	The court system's administrative structure can define roles and responsibilities, or it can dilute power, obscuring leadership.
Does the legislature micromanage postappropriation?	Line items and earmarks for special legislative priorities can frustrate attempts at efficient management of resources and slow the reaction time when funding shortages appear.	Massachusetts once funded the state judiciary through 153 separate line items, with no judicial authority to reallocate. Utah state courts, however, get a lump sum for its state-run component.	Judicial authority, which should include the power of self-governance and direction of the budget, is potentially subjected to the political priorities of the legislature.
Does the locus of power reside in the state or the counties?	Courts in some states are centralized at the state level, while others rely on the counties for the trial court function.	Ohio uses a system of 88 independently run and financed county courts below a thin layer of state-run appellate courts.	Both governance and funding are decentralized; local control exerts a strong force over policy; discrepancies arise across counties, but there is little oversight or information available from state offices.

## 4. Conclusions and Going Forward

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In 2012, we published a report that investigated broad categories of the civil justice system that plausibly might have experienced detrimental effects from the financial crisis that began in 2008 (Greenberg and McGovern, 2012). One of our conclusions from the 2012 study was that the financing of state court systems was a topic worthy of further research. In particular, we suggested that the effects of funding austerity on the state judiciaries was a particularly high-priority topic because of widespread anecdotal accounts of court closures, furloughs, vacancies, and reductions in the type of services offered by many state courthouses. These sorts of coping strategies could potentially have lingering ramifications on the provision of both civil and criminal justice at the state level. At the time our first report was published, we suggested that “[b]etter data on resourcing, and a better taxonomy for state court system financing mechanisms, could offer a much clearer picture of operating ‘strain’ on the civil justice system going forward.” We also articulated the hope that better financing information

could be combined with various judicial branch administrative performance measures [in the future], in a new generation of studies exploring how court systems respond to austerity, and what the ultimate impact of austerity on litigation volume and outcomes appears to be. (pp. 75–76)

Our research presented in this report follows up on the same lines of inquiry. With the aid of the RAND Institute for Justice Board of Overseers, we launched a new project that would not only echo the many concerns about state funding for judiciaries heard in the legal and policy communities but also inform the policy discussion about the ways in which the courts get their funding. In conducting an investigation of court system funding mechanisms and governance in five states, we discovered that, although these systems provide essentially similar services for their citizens, they nevertheless differ in some stark ways. From sources of funding, to corresponding accounting practices, to the structures of governance and administration, the states are deploying very different strategies for operating the third branch of government.

The main elements that emerge from our review of a small sample of state court systems concern the sources of funding for court operations, the means for tracking and accounting for those resources, and the core governance structures that arrange the rights and powers of various judicial officials. Those main elements—financing, accounting, and governance—are clearly linked, rather than distinct concepts, and there is significant overlap in how these three pieces play out in various court systems. Governance, as we see it, underlies the entire process of funding and accounting for resources. No government action takes place entirely free of some layer of governance, so we have placed the financing and accounting activities within the field of governance. From here, one can easily understand the intersection of governance and financing: The issues concerning official rules about where the court gets its money (retained revenue, for

example, or state- versus county-level funds) are determined by governance choices made at the state level.

The intersection of governance and accounting, on the other hand, would come into play when, for example, a legislature hamstring a court system through line-item appropriations that severely restrict the activities that may be funded by general revenue money. Here, too, we would place the role with the court annual reports that are meant to provide a window into court operations and budgets (but, as we have mentioned elsewhere, these reports are not always as useful as one would like). Overlaps between accounting and financing are more straightforward; the money that goes into a court system needs to be tracked in terms of both revenue and expenses.

## Recommendations for Further Inquiry

Previous attempts to draw attention to the challenges that state courts face have focused almost exclusively on the aggregate level of financing for state court systems. Essentially, this approach only looks at one component of the financing piece. Of course, this measurement can create headline-making news when state court system budgets are reduced. However, annually published court system summary budget statistics are often difficult to understand and interpret in a vacuum. What is actually being paid for? Where is the money coming from? What restrictions are there on the money, and who has control over it? The answers vary widely from state to state, and the most consistent observation that can be drawn from annual state court system reports is that only rarely do they provide clear answers to any of these sorts of institutional questions. Consequently, we believe that looking at the aggregate level of funding for state court systems (whether in the abstract or in reference to a previous year's budget) is an important piece of the resourcing story but only part of the disclosure that is needed to clarify what the funding status of the courts really is. It does even less to make a compelling argument about funding shortfalls or a funding crisis. A better approach, we believe, needs to view the bigger picture of how court system resources are being used and who has decision rights over the allocation of funds.

In the introduction to this report, we talked about generating a template of state court system financing to help articulate basic dimensions of variance that any outside observer would need to recognize and describe in order to really understand the mechanics of funding in any particular state. That template also offers a potential blueprint for supplemental disclosure that state courts could easily adopt to make their funding schemes much more transparent and their annual accounting disclosures more consistently meaningful and comparable than they now are.

Informed by our review, we believe that the key questions for a state court system finance template are these:

- Is the court system in state X funded primarily at the state level, at the county level, or through a mix of the two?

- If funding responsibility is divided, then in what proportion is it divided and for what restricted purposes (if any)?<sup>24</sup>
- Do the accounting disclosures in the annual state court system report include or exclude any funding that is obtained from the counties?
- Is state-level funding for the court system in state X obtained primarily through tax revenues or through fees and fines collected by the courts?
  - If the funding is divided, then in what proportion is it divided and for what purposes?
  - If funding comes primarily through tax revenues, is this typically appropriated from the state general fund or through some other set of state sources?
  - If fee and fine revenue is being collected by the court system but does not fund it, then where is that money going?
  - Is the court system publishing annual aggregate data describing fee and fine revenue and where that revenue is going?
- What categories of government activity are formally defined as part of the state court system or state judicial branch in state X for budgetary purposes?
  - Does this category include funding for capital infrastructure and maintenance?
  - Does this category include funding for retirement benefits?
  - Does this category include funding for courthouse security, clerks of court, and other major elements of administrative support and service?
- Does the state court system in state X have the authority to carry forward unspent resources from one fiscal year to the next?
  - If yes, how many dollars can be carried forward in this way each fiscal year?
  - How many dollars were actually carried forward in the most recent fiscal year?
- How many legislative line items are there in the state X budget pertaining to the state court system?
  - Are there other mechanisms for purpose-restricting the funds that the legislature allocates to the court system in your state (e.g., through dedicated trust funds)?
  - What are the major categories of purpose-restricted funding, and how much of the total annual funding for the state court system falls into these categories?
- How does the state X's state court system allocate and manage the funding that it receives each year?
  - Does an administrative office for the courts have control over this at the state level? The state supreme court? An appointed judicial council?
  - What kind of input do state court system officials have in the legislative appropriations process for the courts?
  - How much budgeting autonomy is granted to individual trial courts, as opposed to state-level court system officials, in determining how money will be spent locally?

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<sup>24</sup> By asking “for what purposes,” we mean to inquire whether county-level funding is dedicated to specific categories of expense (e.g., building and maintaining trial courthouses) while state-level funding is dedicated to other categories of expense (e.g., paying judicial salaries).

If an outside observer knows the answers to all of these template questions with regard to a given state, then he or she would know quite a bit about the basic architecture for how that state finances and manages its court system. Moreover, if state court systems themselves were to generate and disclose the kind of information requested in this template and to update it on a regular basis to reflect any changes in their financing and governance practice, then their annual accounting disclosures would become more transparent and meaningful as a result. Among other things, this might make it easier for policymakers and the public to understand the financial status of the courts over time and the impact of government austerity on their bottom lines.<sup>25</sup> It could also have the effect of making comparisons of accounting disclosures from court systems across states easier by reducing the problem of apples-to-oranges comparisons.

But what does the proposed template for court system financing mean for future research and policy choices confronting the judiciary? To begin, we think that there are general disclosures that state courts could include in their annual reports that would clarify these financing, governance, and accounting differences, or at least would introduce their states' unique features to the general public. We had to contact judicial officials to gain our relatively sophisticated understanding of how our five pilot states operate. Some states have more information available on their websites or in public documents than others, but no state included a very useful overview of the governance, accounting, and financing dimensions of its system in its annual report or on its website. In particular, annual reports are universally silent on the budget-preparation process: how the budget is prepared, how closely the budget request matches the ultimate appropriation for the year, and how the judiciary reallocated the appropriated funds across its many components. Although this information will have a limited natural audience, it would enhance the usefulness of the annual reports and highlight the interbranch dynamics that are at play.

Next, if judicial budgets remain far below their historical levels because of the lingering austerity measures (and we believe that they will), this research suggests, courts' ability to withstand the pressures of fiscal austerity is closely aligned with the governance authorities and structures used by the judicial branch. Here, we are concerned about the judiciaries. As part of a co-equal and independent branch of government, the courts are tasked with exercising a highly specialized and important function. Though its influence may be narrow and its ability to affect policy limited, the judicial branch stands out as a hallmark of democracy under the rule of law. What we have witnessed in the past few years has been a willingness by the state legislatures to view the court budgets as another area of possible savings and cuts. We heard in our interviews that, in some states, the cuts have disproportionately targeted the judiciary.

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<sup>25</sup> Although we identified answers to many of these template questions concerning California, Florida, Massachusetts, Ohio, and Utah in the course of our current study, we were not able (and did not attempt) to answer all of the questions for all 50 states. Rather, the primary aim for our interview study was to identify a set of useful questions for the template, not to seek out the answers for every state. We learned during our investigation that some of the template questions are currently not answerable for some states, given available data.

Our hope is that the overview contained in this report will help equip readers to understand the complexities of judicial finances and inspire new lines of research into the possibilities of securing stable funding for the third branch. Several major unanswered questions still exist; we list a sampling of them here in hopes that they spark sustained interest in state judicial research in the future:

- How has the historical trend toward state financing (as opposed to county-level financing) fared as a policy experiment, generally, and specifically in light of the lessons learned during the financial crisis?
- What are the implications of judicial remittances to the general fund? As part of an independent branch of government, should courts be allowed to retain the revenue that is generated to fund further court operations and services?
- Despite the challenges faced by state court systems in the wake of the financial crisis, are there comparative advantages inherent in the different governance models used by different states?
- What impact do budget cuts have on court system processes and outcomes? Or, put another way, how much extra justice are we buying for every marginal dollar spent? (The template that we have offered could make it easier to look at these sorts of questions across states and to recognize apples-to-oranges-type comparisons.)
- Are there constitutional concerns raised when legislatures treat judicial branches as revenue sources? Or as budgetary units that can be squeezed in times of fiscal austerity? Dependent judiciaries raise separation-of-powers concerns that we have only begun to explore.
- How dire is the financial difficulty facing the state court systems?

Clearly, these are just a prelude to a host of interesting and important policy questions that state judiciaries face. What is clear is that the financial crisis has laid bare the weaknesses and vulnerabilities of state court systems to financing shortfalls. Such a threat to the stable and reliable administration of justice suggests the need for a reevaluation of financing and governance models for the court. States' ability to adopt different structures and policies represents an opportunity for comparative research on what approaches work and when. To conduct that research, researchers will need to be aware of the core dimensions of difference we have outlined here. It is our hope that this contribution will inspire continued research into these and related questions.



## Appendix: Interview Protocol

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### Discussion Topics

#### *Financing Revenue*

- What are the main sources of revenue for [your] state court system?
  - Any federal government support for specific operations? Grant money received? Bar association support?
  - How dependent is the court system budget on appropriations by the state legislature?
  - Is the court system primarily funded by revenue drawn at the state level, or by revenue drawn at county or municipal levels? Has this changed in the past 20 years?
- How much fee revenue is generated by the justice system?
  - On what basis are fees levied?
  - Where does the fee money go?
- What are the three most important background facts to understand about how [your state's] revenue model for the court system is set up?
- Has your state's revenue model for the court system *changed* in a major way in the past two decades? If so, what was the change, and why did this occur?

#### *Financing Expenditures*

- What functions and agencies are financed as a part of [your] state court system?
  - What are the major categories of expenditures included in your budget?
  - Are courthouse buildings and facilities operations and maintenance included in your budget?
  - What about facility construction?
  - Personnel costs for [bailiffs], security personnel, administrative staff?
  - Indigent defense?
  - Retirement personnel costs?
- Are there important “silos” of dedicated court system funding within your state? If so, what are those silos, and how do they work?
- Who controls and administers the expenditure of funds on the court system? How much influence does the state judiciary have over this?
- Are all levels of the court system financed in the same manner? Are there significant differences in how the state pays for trial [versus] appellate courts? Family courts? Juvenile courts?

### *Accounting Practice and Data*

- Is it possible to break out basic revenue/income statement/balance sheet information for [your] state court system, based on data already collected and/or made publicly available?
- Who is responsible [in your state] for capturing the numbers on state court budgeting and revenue?
- [If relevant] at what point in the state appropriations process can/should financial information on the state court system be captured? What does the official budget information [in your state] actually mean, in light of where [those] financial data [are] captured in the financing process?
  - Governor's budget?
  - Legislative appropriation?
  - Fulfillment?
- Can you provide us, or refer us to, best available snapshot data on overall state court financing levels for the most recent available [five- or ten-year] interval for your state?

### *Finance and Accounting Strengths and Targets for Improvement*

- What are the strongest elements of court system financing in your state that other states might want to emulate?
- What are the best features of formal budgetary accounting and disclosure for the state court system in your state? What should other states be modeling in their accounting practice and data collection, based on your example?
- What [three] improvements would you most like to see in order to improve court financing mechanisms and/or accounting in your state?
- What would you most want to improve on, in order to improve the consistency and transparency and comprehensiveness of budget [numbers] for all state court systems?

### *General Questions About State Court System Financing*

- What do you think the [three] key categories or dimensions of difference are for classifying states into different types of funding mechanisms with regard to their court systems?
- What principles should be generally adopted by other states, in compiling and disclosing budget information about judicial branch and state court systems?
- What are the best practices in gathering, compiling, and reporting on state court budgetary information? How can states do better, and how might better data make a stronger case for improved support to state and local legislative authorities?

### *Other Background Questions*

- Is there anybody else in your state whom you think we should specifically talk to about any of these general financing and accounting topics?
- Is there any one question broadly related to this subject matter that we *haven't* asked you about, but that you think we should be asking? If so, what is that?

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