

**The Politics of Court Budgeting in the States:
Is Judicial Independence Threatened by the
Budgetary Process?**

by

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Abstract

Judicial independence in American politics has been hailed as one means to preserve individual liberty and minority rights versus the actions of the more majoritarian branches of government. Recently, however, legal professionals and scholars of the courts have begun to question the magnitude of judicial independence. These scholars have suggested that budgeting and finance issues constitute a potential threat to judicial independence. This article explores whether state judiciaries are being threatened on this front by soliciting the perceptions of key state officials. Using surveys of court administrators, executive budget officers, and legislative budget officers in the states we examine three different aspects of the politics of judicial budgeting; 1) competing for scarce resources, 2) inter-branch competition, and 3) pressure to raise revenues. The survey responses suggest that judicial independence in a substantial number of states has, at times, been threatened by inter-branch competition and pressures to raise revenues.

Introduction

In his historic commentary on American politics, *Democracy in America*, De Tocqueville observed that an independent judiciary vested with the ability to impartially make rulings “forms one of the most powerful barriers which has ever been devised against the tyranny of political assemblies” (1956, 76). Indeed, judicial independence in American politics has been hailed as one means to preserve individual liberty and minority rights versus the actions of the more majoritarian branches of government. Chief Justice William Rehnquist has described judicial independence as “one of the crown jewels of our system of government today” (Cited from Perry 1999, 1).

Recently, however, legal professionals and scholars of the courts have begun to question the magnitude of judicial independence. On one hand, there has been an increase in judicial bureaucracy that has secured a more organized framework for American courts. Some offer that the bureaucratization of courts has increased the independence of the judiciary with respect to internal decision making about such things as budgeting and finance (Wheeler 1988). On the other hand, legal scholars and professionals have recently complained of (and to some extent documented) assaults on the independence of the judiciary by the other branches (See Perry 1999; American Bar Association 1997; American Judicature Society 1997; Kaufman 1999). One such potential “assault” on the judiciary has been said to be punitive threats to decrease judicial budgets and salaries of judges in the wake of unpopular court rulings (Kaufman 1999; Bermant and Wheeler 1995).

Whether the budget power of the executive and legislative branches threatens judicial independence is an interesting question, given that courts must rely on other branches for the funding necessary to their independence and administration (Baar 1975; Wheeler 1988). This article is an exploratory study examining whether budgetary politics poses a threat to the independence of state courts. We use surveys of state court administrators, executive budget officers, and legislative budget officers to examine this issue. Our evidence suggests that budgetary politics does threaten judicial independence in at least some states.

Judicial Independence and Budget Politics

Judicial Independence

Judicial independence, according to one scholar of American courts, “refers to the

insulation of the judiciary from the influence of other political institutions, interest groups, and the public” (Tarr 1999: 8). Under this definition, the United States federal court system and its state counterparts, are considered separate branches of government with their own unique powers. One such power is judicial review, which allows the judicial branch to rein in the powers of the other branches of government by declaring the legal actions of other branches null and void when determined to be unconstitutional. This power allows the judicial branch to check the actions of the majoritarian branches of government using the concept of the rule of law. The rule of law, according to Donald W. Jackson (1999), is a fundamental ingredient of a “liberal” democracy that “is intended to mandate and enforce constraints even on democratic majorities, so that the liberties and rights of minorities and even of individuals can be preserved” (8).

In Irving Kaufman's (1980) classic article, judicial independence and the rule of law are based on the concept of separation of powers in which the judiciary is a co-equal branch. Through dividing the powers of government among the judiciary, executive, and legislative branches, the rule of law is achieved (671). Thus, as an independent branch of government that is armed with judicial review, the judiciary is afforded the power to constrain majority government power. However, as the democratic branches of government have their own powers, the executive and legislative branches can also constrain courts. Therefore, courts are placed in an environment where they can be independent of the other branches, but the executive and legislative branches can also constrain the ability of courts to run “amok.”

In the Declaration of Independence, the framers referred to the problems of the colonies with judges who were dependent on the will of the British Monarch. According to Perry (1999), the Declaration states that colonial judges were “dependent on his [the king's] will alone, for the tenure of their offices, and the amount of their salaries” (1776, paragraph 11). This placed royal judges at the mercy of the king concerning their subsistence. Should they choose to make a ruling that displeased the king, they risked their jobs and their salaries. As a result, the convictions of the king had the potential to carry more weight with royal judges than the rule of law. The founding fathers feared such attachments between the judiciary and either the executive or legislative branches.

Over one hundred years later, Woodrow Wilson (1908) reaffirmed the importance of judicial independence. Wilson argued that an independent judiciary was the essential ingredient necessary to make our constitutional system work. He stated that, as a “non-political forum,” the courts are able to maintain the Constitution, preserve individual liberties, and preserve the legal powers of government. According to Wilson, intrusions upon judicial independence can damage “the integrity of every natural process” (167). Wilson writes:

It is thus that they [the courts] are the balance-wheel of the whole system, taking the strain from every direction and seeking to maintain what any unchecked exercise of power might destroy. They are at once instruments of the individual against the government, of the government against the individual, of the several members of our political union against one another, and of the several parts of government in their legal synthesis and adjustment. (150)

Elements of and Factors that Influence Judicial Independence

Donald W. Jackson (1999) asserts that the courts are not intended to be entirely independent

of all influence of other branches, but "should be free of some things, but not others" (8). So, for example, courts should be free to make their own decisions, but if these fall outside of the boundaries of the rule of law or precedent, other branches or other courts may alter their decisions. The courts, then, are influenced by the work of other branches of government, which leaves a number of influences on judicial independence.

Jackson (1999) lays out nicely factors that influence judicial independence in his recent essay. These are said to vary and include: (1) method of selection, (2) tenure of office, (3) removal for official misconduct, (4) institutional rules that protect decisional integrity, (5) a legal/political culture that is supportive of the rule of law, and (6) adequate resources. In each of these, Jackson emphasizes that there will always be some degree of influence on court independence. However, Jackson argues that institutional design should attempt to mute the partisan influence of the other branches of government. On the subject of court resources Jackson (1999) argues that "courts must have the staff support, facilities, and resources to accomplish their duties. This would include the power of judges to commission necessary resources, such as professional experts on an ad hoc basis to assist with complex matters" (10).

Thus, influences on judicial independence include the basic ability to administrate the functioning of the branch itself. Resources are a necessary component of judicial independence and the functioning of the judiciary as a branch.

While much of this literature review has focused on judicial independence in the federal context, the context among state judiciaries is similar, but has some notable differences. The United States Constitution, Article IV, Section 4 provides a "...guarantee to every State in the Union a Republican Form of Government...". Thus, the structure of state governments provides a separate and independent judiciary for each state. However, some suggest that while state judiciaries have independence, they are also vulnerable to attacks from political branches. Indeed, many state constitutions make it easier to attack judicial independence. G. Alan Tarr (1999) discusses judicial selection (e.g., partisan election of judges), retention (e.g., elections to retain judges), and limitations on the tenure of state judges as avenues for more political accountability from majoritarian branches. Such institutional differences have led to numerous controversies and outcries about whether state judges are less insulated than federal judges from their counter-majoritarian roles. Tarr argues that the recent expansion of "judicial efforts to protect rights, including those of unpopular groups and defendants in criminal cases," in states may have increased tension between judicial independence and accountability. However, as is often the case, state judges are typically less visible to the public as political actors than are federal judges. This, then, may leave more opportunity for political and legal elites to punish state courts for judicial decisions and intrude upon judicial independence without incurring public scrutiny.

Threats to Judicial Independence

Recently, public law scholars and legal professionals have called attention to a perceived assault on the independence of the American judiciary. One scholar, in an American Bar Association publication, warned that "recent political events 'have threatened to dim the jewel's [judiciary's] sparkle and reduce its worth in our constitutional structure'" (Perry 1999, 1). Such "political events" have been spurred by criticisms of judges for behaving

like “activists” and/or legislating from the bench. These criticisms are usually leveled when political actors disagree with controversial decisions made by the courts, and have opened the door for increased intervention by the more political branches of government. Chief executives and legislatures have the ability to appoint, block, delay, and reject nominations of judges based upon ideological concerns (Goldman and Slotnick 1997 1999; Hartley and Holmes 1997). The legislative branch has the power to limit the discretion and administrative functioning of courts through actions such as establishing sentencing guidelines, reforming the law of torts, and creating rules governing evidence such as rape shield laws (Perry 1999, 3-4; See also American Bar Association 1997). Additionally, the budgetary authority of the other two branches affords them a powerful, punitive weapon, which can be used in response to unfavorable court decisions (Kaufman 1999; Bermant and Wheeler 1995, 845-57).

The budgetary threat to the judiciary is particularly interesting given the judiciary’s need for funding in order to carry out its operations, and reliance upon the other two branches for most of its resources. The budgetary powers that can be used against the courts by the executive and legislative branches are considerable. Congress and most state legislatures have the authority to cut court spending in their appropriations bills and limit court spending discretion through the use of restrictive line items in those bills. Meanwhile, the president and many governors have the authority to alter court budget requests in their executive budgets and veto spending allocated to the courts in appropriations bills. Some, then, argue that these budgetary powers place the independence of the judiciary at the mercy of the executive and legislative branches. Others, however, have described these powers as checks and have emphasized that these powers of government are shared (see Fisher 1988; Rosenberg 1991).

The founding fathers recognized that the budgetary powers of the other branches of government could be used to diminish judicial independence. John Adams (1776) argued that in order to maintain judicial independence it was essential to eliminate the budgetary threat to judges’ salaries from the other branches. Hamilton (1788) added in *The Federalist* No. 79 that “Next to permanency in office, nothing can contribute more to the independence of the judges than a fixed provision for their support. ...And we can never hope to see realised in practice the complete separation of the judicial from the legislative power, in any system, which leaves the former dependent for pecuniary resources on the occasional grants of the latter” (531). The framers placed constitutional protections for federal judges from the whims of the electorate as well as the ability of other branches to punish them with pay decreases. Judges, then, were isolated in such a way that they could feel less pressure to make decisions against the will of public majorities.

It is true that the founding fathers focused their attention on judges’ salaries. This is so because the administrative costs of the courts were relatively low during the early years of the nation. The explosion in judicial responsibilities and court administrative costs that have occurred in recent years could not have been foreseen by the founders. One could reasonably argue that threats by the executive and/or legislative branches against judicial budgets could result in pressures on the judiciary similar to those feared by the founders should judges’ salaries be subject to cuts. In other words, the reasons (as noted by the founders) for believing that judges’ salaries should be protected are equally valid for arguments in favor of

protecting judicial budgets today in order to maintain judicial independence. After all, it is possible that threats by the legislature to cut judicial staff and resources could cause judges to keep legislative prerogatives in mind when making rulings or policy. Recently, there has been an organized campaign by advocates for the courts to avert budgetary assaults on the independence of the judiciary. Judicial professionals and scholars have demonstrated Russell Wheeler's (1988) assertion that effective administration can secure judicial independence and protect courts from dependence on other branches. As a result, in highlighting threats against judicial independence, organizations such as the American Bar Association and the American Judicature Society have called attention to the problems inherent in having an independent judiciary that is dependent upon at least one of the other branches for its funding. Two examples include editorials by the American Judicature Society (1997 1999) and recent publications by the American Bar Association (ABA Division for Public Education 1999; American Bar Association 1997) that advocate judicial independence. The American Judicature Society's Center for Judicial Independence includes "punitive cuts in the budgets of the federal and state judiciary," among its list of threats to the judiciary (Kaufman 1999). American Bar Association publications detail similar concerns at the federal and state levels including a general lack of funding for the courts (ABA Division for Public Education 1999; American Bar Association 1997).

Judicial Budgeting and Inter-Branch Relations

In general, studies on the politics of state court funding are limited, and works on how the branches interact to secure judicial funding are rare. Studies of state court budgeting, however, do exist. Some works have described and detailed the framework and process of state court budgeting (Baar 1975; Lim 1987; Tobin 1996a 1996b). Other works primarily describe and advocate approaches that states have adopted to fund their court facilities (Tobin 1995). There is also work that discusses the generation of revenues by courts and the appropriateness of using these fines, fees, and forfeitures (Bresnick 1982 1993; Dimond 1993). A good deal of research has also analyzed the reform of shifting from local funding of state trial courts to unitary state budgeting systems (see Baar 1975; Stout 1993; Tobin 1996a; Tobin and Hudzik 1993). Scant attention, however, has been paid to the question of how state courts deal with and are affected by the politics of budgeting with respect to the other branches.

Scholars have given some attention to the strategies used by federal courts to obtain adequate funding (Walker and Barrow 1985; Yarwood and Canon 1980). Additionally, two studies focusing on the budgetary strategies of state courts (Douglas and Hartley 2001; Douglas forthcoming), and one (Baar 1975) examining the determinants of success of state courts during the budgetary process have been conducted. These, however, did not examine the extent to which executive and legislative budgetary powers were affecting judicial independence.

Robert W. Tobin (1999) has shown how local funding of state courts had damaged judicial independence in the states. Tobin explains that this threat to judicial independence was one of the reasons most states moved to take over the majority of the funding responsibilities for their judiciaries. Court budgeting scholars have discussed the potential

effects of state financing upon judicial independence. For instance, Tobin and Hudzik (1993) argue that state funding may increase judicial independence. One could also argue, however, that with the increased reliance upon governors and state legislatures for court resources, state courts have become more vulnerable to budgetary incursions by executive and legislative officials. In fact, Tobin (1999) has provided some evidence that the budgetary powers of some state legislatures have been used against the courts in retaliation for certain court rulings. Recent events in New York, where the chief judge of the state filed suit against the governor in order to obtain more funding, also illustrate how budgetary issues in state funded systems can lead to battles between the judiciary and the other branches of government (see Glaser 1994).

As stated earlier, the budgetary powers that can be used against the courts by the executive and legislative branches are considerable. It is well documented that governors and state legislatures are more than willing to use the budgetary powers at their disposal to force each other to submit to policy demands (for example, see Clynch and Lauth 1991; Abney and Lauth 1998). An excellent example of this behavior is displayed in the use of gubernatorial line-item vetoes. Abney and Lauth (1985) found that governors tend to use their line-item veto power more as a tool to influence legislators to support their policies than as an instrument of fiscal restraint. Given the propensity of governors and legislators to behave in such a manner, there is no reason to believe that they will not behave similarly when dealing with the courts. The courts, after all, influence policy through their rulings. One way for the executive and legislative branches to have a say regarding this judicial influence is by employing their budgetary powers. Threats to judicial budgets could persuade judges to take the concerns of the other two branches into account when making their rulings, just as line-item veto threats against legislative pet projects can persuade individual legislators to take gubernatorial concerns into account when voting on legislation.

Only one study has attempted to link the politics of funding courts to judicial independence in an empirical fashion (Douglas and Hartley 2001). These researchers pose the question of whether state courts are being assailed on the front of budgetary politics. Making use of elite interviews of state court administrators, executive budget officers, and legislative budget analysts in Oklahoma and Virginia, they found that the courts in these states are not being held hostage by the budgetary powers of the other branches. In general, the absence of attacks on the courts were left to four factors; 1) respect for the judiciary as an independent branch, 2) rules and procedures favorable to the courts, 3) court budgetary strategies, and 4) legislative allies. There was, however, variation in these factors between Oklahoma and Virginia.

Given the lack of research in this area of court financing, and the spotty evidence that exists, a comprehensive examination of the states is needed to determine the extent to which the budgetary powers of governors and legislatures are threatening judicial independence in the states. The remainder of this article is devoted to examining this issue.

Methodology

The data used in this article come from surveys, which were mailed to key judicial, executive, and legislative officials in each of the 50 states. Each survey asked a distinct set of

questions pertaining to court budget procedures and judicial independence. Each group of subjects was sent a unique survey designed to address issues pertinent to the group. Some overlap in the questioning did occur (i.e. several questions appeared on all three of the surveys). The three groups surveyed included the chief court administrators, the directors of the executive budget offices, and the directors of the legislative budget offices. These groups were selected due to their vast knowledge and experience in dealing with judicial appropriations in their states.

The surveys were mailed to each group in early July, 1999. A second mailing was sent out one month later. After the second mailing, e-mail and telephone contacts were made to all non-respondents. These contacts were followed-up with a third mailing in January, 2000. The surveys elicited a response rate of 82 percent for court administrators, 90 percent for executive budget officers, and 90 percent for legislative budget officers.

The surveys produced descriptive data regarding the activities associated with court budgeting. We use these data to test whether three different aspects of court budgeting threaten judicial independence. These include: 1) competing for scarce resources; 2) inter-branch competition; and 3) pressure to raise revenues. Budgetary threats to judicial independence emanating from local officials will also be examined briefly. Each of these threats will be defined below.

Before proceeding, one important threat to the internal validity of the study must be highlighted. For several questions, respondents were asked if, to their knowledge, particular events had *ever* occurred in their states. Questions were asked in this manner because it is likely that many of the events in question occur at relatively infrequent intervals. This presents a problem given that the various respondents are unlikely to have served equal amounts of time in their states. Therefore, respondents with longer tenures in office may be more likely to answer these questions in the affirmative. Readers should keep this problem in mind when reviewing the results of the article.

Findings

Competing for Scarce Resources

Given the scarcity of resources in state government and the variety of demands placed upon those resources, it is difficult to argue that the judicial branch should be given a blank check in order to satisfy its resource needs. Elected officials have a responsibility to the citizenry to consider carefully all of the demands placed upon the budget, allocate funding so that it meets the highest needs of the state, and ensure that appropriated funds are spent in a competent and prudent manner. This responsibility, at times, has caused elected officials¹ to take budgetary actions which are unfavorable to the courts. For example, judicial budget requests have been reduced to make funding available for other government activities, and line-item restrictions have been included in court budgets to promote accountability (Baar 1975; Tobin 1999). While the authority to control judicial budgets does provide governors and state legislatures with an awesome power which potentially could be used to interfere with court prerogatives, actions such as those mentioned above are not necessarily an *attack* upon judicial independence. Such actions are more likely to be taken in an effort to free-up resources for priorities elsewhere in government.

The problem for the courts is that they have few allies in the political process of budgeting. Lacking a strong constituency places the courts at a disadvantage when competing with executive branch agencies for resources (Walker and Barrow 1985). Elected officials often have little incentive to divert resources to the judicial branch at the expense of projects that might benefit their constituents more directly. State judges complain that this often makes it difficult to fund the variety of activities associated with a modern system of justice such as indigent defense, probation officers, sufficient court rooms, and civil courts (Wolfson 1994). Carl Baar (1975) asserts that this vulnerability can endanger judicial independence because it can prevent the courts from acquiring the funding they need to carry out their constitutional functions properly. In this section we attempt to determine the extent to which this vulnerability exists by examining the amount of control governors and state legislatures tend to assert over judicial budgeting on a year to year basis.

One way to ensure that judicial needs are considered by elected officials when putting together the state budget is for executive and legislative branch officers to hold hearings or meetings with judicial officers. Court officials can use such meetings to provide detailed information about their budget requests, and deal with any concerns or questions executive and legislative officials might have about the judicial budget and court spending practices. The legislative budget officers reported that all state legislatures hold budget hearings with judicial personnel every year or two, depending largely on whether appropriations are made on an annual or biennial basis. Hearings with executive branch officials are a bit less common. Only 60 percent (27 of the 45 respondents) reported that executive officials held budget hearings with the courts at least once every two years. Thirty-three percent indicated that such hearings are held less than once every five years. This, however, is not surprising given that fewer than half of the states permit their governors to alter judicial budget requests when putting together their executive budgets.² Additionally, the governors in only 31 states are even sent a copy of the judicial budget request. While this diminishes the role of some governors in judicial budgeting, the lack of hearings with executive branch officials could work to the disadvantage of the judicial branch should the legislature take an unfavorable position regarding the judicial budget. A lack of contact with the executive branch could dissuade the governor from intervening on the courts' behalf.

After submitting their requests and pleading their case for why the requests should remain unaltered, court officials must wait to see what changes, if any, elected officials make to their budgets. The court administrators reported that governors and legislatures both tend to make changes to judicial requests. Responses from court administrators were received from 23 of the 24 states where governors are permitted to alter the judicial budget requests. Table 1 shows that fourteen (60.9 percent) of these respondents reported that it is very common for the governors in their states to make changes to the court budget, whereas only 5 (21.7 percent) indicated that such changes are rare at best. Court administrators reported further that the median change made by governors in these states is 6.8 percent of the judicial request. Legislatures appear to be even more willing to make changes to court requests. Table 1 shows that legislative changes are common in all but 7.3 percent (3 out of 40) of the states responding. The median change made by legislatures in these states is 7.5 percent. A further indication of legislative intervention into the courts' budgets is the degree to which

restrictive line-items are used by the legislature to limit judicial spending discretion.

[Table 1 here]

Legislative officers were queried in this regard, and their responses are shown in Table 2. The table reveals that line-items are at least somewhat restrictive in most states (60.0 percent). However, approximately 3 out of 4 legislative officers reported that it is easy for the courts in their states to shift money between objects of expenditure during the fiscal year. In regard to line-items, court administrators were asked if the judiciary felt obligated to adhere to such restrictions placed upon their appropriations. Six (14.6 percent) of the respondents indicated that the courts ignored such restriction because they infringed upon the courts' independent status. This suggests that the courts in some states felt that line item restrictions were inappropriate for judicial budgets because the judiciary is a separate branch.

[Table 2 here]

The findings discussed above show that elected officials, particularly those in the legislature, are willing to alter and confine judicial budgets. To get an idea of how this impacts court funding levels, legislative budget officers were asked to provide the amounts of the legislative appropriation for the judiciary for fiscal years 1997 and 1998, and the judicial budget requests for fiscal year 1998. Forty-one of the legislative officers provided this information. The data reveal that, on average, the judicial branch had its budget requests cut by only 2.3 percent. In 12 of 41 states the legislature actually gave the courts more than what was requested (on average 5.5 percent more), an occurrence that does not happen very often for executive branch agencies. Additionally, despite the cuts in their requests the state courts received an average budget increase of 10.3 percent for fiscal year 1998. Therefore, it appears that elected officials in the states are more than willing to increase judicial budgets and provide the courts with most of what they ask for in the aggregate.

How does this willingness to fund the courts compare with the willingness of elected officials to fund agency activities? To find out, we asked all three respondent groups to compare court and regular agencies in terms of the adequacy of their funding to enable them to carry out their functions. Table 3 shows that the executive and legislative branch officers in most states rated their court systems as being better funded, in general, than regular agencies. Court administrators were less enthusiastic in this regard. However, over a quarter (26.8 percent) acknowledged that the judicial branch tended to be somewhat better funded than regular agencies in their states. Most (58.5 percent) placed the level of judicial and agency funding as being about the same. These findings regarding judicial funding levels indicate that the inability of state courts to provide direct electoral benefits (such as pork) to elected officials is not working against the courts to any great extent during the budgetary process. The courts are receiving substantial budgetary increases, and are funded at levels consistent with executive branch agencies.

[Table 3 here]

One possible explanation for the apparent healthy funding levels for state courts is that many state constitutions and statutes mandate certain expenditures for the courts. This is often the case for judges' salaries. The court administrators were asked to provide their best estimate of the percentage of all judicial expenditures that are mandated by law. Thirty-four court administrators responded to this question. They reported a range of 0 percent to 100 percent, with a mean score of 60 percent. In states where the percentage of mandated expenditures is high, elected officials have their hands tied to a large degree in how much they can alter the judicial budget. Given that few executive branch agencies have large percentages of their budgets mandated by law, the judicial branch gains an advantage when competing for resources when it has a portion of its funding mandated. Twelve of the 34 states (35.3 percent) responding to this question indicated that over 90 percent of their expenditures were mandated.

Another possible explanation for the apparent healthy funding levels for state courts is the dedication of court collected funds to judicial activities. Courts collect fines, fees, and forfeitures during their day to day operations. These funds can either revert back to the general fund or be earmarked to the courts for their use. When funds are earmarked, the courts gain access to resources that cannot be diverted to other purposes by elected officials. This, in effect, grants the judiciary some independence over its budget. Thirty-seven court administrators responded when asked to provide the percentage of court collected funds that are earmarked to the courts. Responses ranged from 0 percent to 75 percent, with a mean score of 10.9 percent. Four of the 37 respondents (10.8 percent) indicated that over 50 percent of court collected funds were earmarked to the courts. Fourteen (37.8 percent) indicated that no court collected funds were so earmarked. Of the twenty-three states where at least some funds were earmarked, 13 court administrators (56.5 percent) reported that the judiciary is restricted in how it can spend the funds. For example, the courts might be required to spend the earmarked funds on specific items such as judges' salaries or law libraries. Additionally, 14 of the court administrators (60.8 percent of states receiving earmarked funds) reported that the legislature must approve at least some of the spending derived from court collected funds. Thus, a substantial number of state judiciaries have at least some of their court collected revenues earmarked to them. In these instances, having a guaranteed revenue source may strengthen court funding. However, discretion over how these guaranteed funds may be spent is limited in some states due to legal restrictions.

This section has shown that governors and state legislators do intervene in court budgeting. Modest adjustments are made to the budget requests of the judicial branch, and some restrictions are placed upon judicial appropriations. While these changes and restrictions limit judicial discretion over court spending to at least some degree in most states, the evidence presented above concerning funding levels suggests that state courts are not being treated unfairly in comparison to executive branch agencies during the budgetary process. Practices such as mandating resources and earmarking funds aid the courts in many states. These findings call into question the assertion that the independence of state courts is being threatened due to the difficulties associated with competing for scarce resources against executive branch agencies in a political environment.

Inter-Branch Competition

A second, and perhaps more ominous, budgetary threat to judicial independence comes from the power struggle between the branches of government. As stated earlier, the courts make rulings which have an impact upon public policy. The courts are also dependent upon the other branches for their funding. This funding is vital to maintain the functioning of the judicial branch of government. Given all of these factors, it is not unreasonable to assume that governors and state legislatures use their budgetary powers to influence court rulings and policies. After all, governors and legislatures have used their budgetary powers against each other to influence policy for decades (Clynch and Lauth 1991). This section explores whether the budgetary powers of the executive and legislative branches are used to influence court rulings and policies.

Before examining whether budgetary powers are used to influence the courts, it must be determined if such actions are construed to be a real threat to judicial independence. It is possible that the various budgeting actors believe that such actions are a legitimate check upon judicial power. If this is so, then the implication of any actions taken against the courts' budget becomes less menacing. Budget officers from all three survey groups were asked to give their perceptions of budgetary actions taken against the courts. A substantial number of respondents chose not to answer this question (see Table 4). Of those that did respond, the majority indicated that they viewed budgetary actions by the executive and legislative branches taken to influence court rulings and policies to infringe upon the independence of the judicial branch. Not surprisingly, court administrators were most likely to view such budgetary actions as an infringement. It is interesting to note, however, that executive branch officials were least likely to view such actions in the same light. Executive officers, in fact, were almost evenly split on the issue.

[Table 4 here]

A possible indicator of use of budgetary powers against the courts could be the condition of the relationship between the judiciary and the other two branches. Table 5 shows the responses of executive and legislative officers concerning the relationship between the judiciary and elected officials. In general, relations between the elected branches and the judiciary are good. The judicial branch appears to maintain better relations with governors than with legislatures, as 13.3 percent of legislative respondents reported that relations between the legislature and the courts are strained, whereas only 4.4 percent of executive officers reported that relations between the governor and the courts are strained. This suggests that legislatures might be more likely than governors to use their budgetary powers to influence court actions.

[Table 5 here]

Gubernatorial Action. So, to what extent do governors and legislatures use their budgetary powers against the courts? Respondents from all three groups were asked whether, to their knowledge, any of a list of budgetary powers had ever been employed by their governors or legislatures to influence or protest court rulings or policy. Table 6 shows the

responses of court administrators and executive budget officers regarding gubernatorial powers. At first glance, it does not appear that governors use their budgetary powers as a policy tool against the courts. For each of the gubernatorial powers listed, few court administrators or executive budget officers reported having any experiences with the governors in their states using them to influence or protest court rulings or policies. Court administrators were more likely than executive officers to claim that the listed powers had been used against court budgets.

[Table 6 here]

Reducing the funding of the judiciary in the executive budget, meaning reducing judicial requests, appears to be used more than any other gubernatorial budget power to influence court rulings and policies. Four executive budget officers (8.9 percent of 45) and seven court administrators (17.1 percent of 41) indicated that governors in their states had used this power to influence the courts. No more than 7.3 percent of the court administrators and 4.8 percent of the executive officers reported that any of the other listed powers had been used in their states. Of the respondents reporting that these other powers had been used in their states, over 75 percent came from states where the governor does not possess the authority to change judicial budget requests when putting together the executive budget. Therefore, when governors use their budgetary powers against the courts they appear to prefer to reduce spending in the executive budget for the courts. However, when this power is not within their authority, governors resort to other budgetary devices under their control.

Overall, no gubernatorial budgeting power enjoys widespread use throughout the states to influence court rulings and policies. Few respondents, 22.0 percent of the court administrators and 17.8 percent of the executive officers, reported that *at least one* gubernatorial action had taken place in their states. Additionally, only six court administrators (14.6 percent) and one executive officer (2.2 percent) reported the use of more than one gubernatorial power in their states. Therefore, it appears that governors in most states do not use budgetary powers in ways that might infringe upon judicial independence. In fact, many respondents noted that such actions would be inconceivable given the deference governors in their states had for the judicial branch. However, the independence of the courts in a few states does appear to be at risk from this front. Unfortunately, no questions were asked regarding the frequency with which gubernatorial actions are taken against the courts. Therefore, we are unable to paint a clearer picture concerning the extent to which the independence of the courts in these state is being threatened by executive budgeting powers.

Legislative Action. Responses of court administrators and legislative budget officers regarding the use by the legislature of its budgetary powers to influence court actions and policies are quite different from those concerning gubernatorial behavior. Table 7 reveals that a number of budgeting powers receive usage by legislatures in a substantial number of states to influence or protest court rulings or policies. Court administrators were more likely than legislative officers to claim that the listed powers had been used against court budgets. Both respondent groups reported that the most common methods used by legislatures were *Threatening to reduce the judiciary's budget*, *Actually reducing the judiciary's budget*, and *Using*

restrictive line-items to inhibit judicial spending discretion. Threatening to reduce the judiciary's budget was the most popular tactic used by legislatures, with 36.6 percent (15 out of 41 states) of the court administrators and 28.9 percent (13 out of 45 states) legislative budget officers indicating that this action has been used by the legislatures in their states to influence or protest court rulings or policies. Respondents from both groups also revealed that *Attempts to deprive the judiciary of an apportionment*, *Attempts to prevent the judiciary from transferring funds within its budget*, and *Other budgetary actions* were used by relatively few state legislatures to influence court rulings and policies.

[Table 7 here]

The number of states where legislatures have taken budgetary action against the courts is more than double the number where governors have taken action. Court administrators from 22 states (53.7 percent of 41) and legislative budget officers from 21 states (46.7 percent of 45) acknowledged that at least one budgeting method had been used by the legislatures in their states to influence court rulings or policies. Furthermore, Table 8 shows that a substantial number of state legislatures have used more than one of their budgetary powers to influence the courts. Approximately 32 percent of court administrators and 20 percent of legislative officers reported that their state legislatures had used more than one budgetary power.

[Table 8 here]

Two additional findings of interest regarding legislative budgetary actions against the courts are worth noting. First, in every state where the court administrators reported gubernatorial actions against the courts, they also reported legislative actions against the courts. A possible explanation for this finding could be that court rulings or policies in these states angered the electorate, compelling elected officials from both branches to take action. An alternative explanation could be that the political culture in these states permits such actions to take place even when they are viewed to be an infringement upon judicial independence.

Second, we used a chi-square statistic to determine whether a relationship exists between the status of the relationship between the legislature and the judiciary in each state, and the number of budgetary methods used by the state legislature. The results of the chi-square test revealed that a substantial ($p < .05$) relationship exists. As the relationship between the two branches of government becomes more strained, the legislature tends to use more of its budgetary powers against the courts.³

The findings concerning legislative action indicate that legislative budgeting powers pose a much greater risk to judicial independence than gubernatorial budgeting powers. Several legislative budgeting powers have been used in a substantial number of states, and several state legislatures have used more than one of their budgeting powers against the courts. Additionally, approximately 50 percent of the respondents reported that their state legislatures have used budgeting powers to influence or protest court rulings or policies. It

should be noted, however, that a number of respondents from states where such actions were not reported to take place commented that the legislative bodies in their states held a high regard for the courts and would never consider using their budgetary powers to influence the courts.

What Court Actions are Likely to Induce Budget Action Against the Judiciary? Given the evidence that elected officials do, at times, use their budgetary powers to influence court activities or policies, what types of judicial actions are likely to induce governors and state legislatures to take action against court budgets? In an effort to answer this question, we asked court administrators who reported budgetary actions against court budgets in their states to rate various court actions based upon the likelihood of those actions to induce elected officials to use their budgetary powers against the courts. For each court action, we asked the respondents to rate the item using a 5 point scale (1 being very unlikely, 5 being very likely). Table 9 provides the range and mean scores for the various court actions identified in the survey. Scores are broken down by states where governors took budgetary action and states where legislatures took budgetary action.

[Table 9 here]

None of the court actions for either group is rated particularly high. This could indicate that the number of incidents where elected officials take action against judicial budgets is low. For governors, the highest rating was given to *Rulings over the constitutionality or legality of a law or state action which has budgetary implications* and *Rulings which have a direct impact upon the governor personally*. Both of these actions had a mean score of 2.50. Mean scores for legislatures tended to be slightly higher than scores for governors, but they remained low overall. The highest ratings for legislatures mimicked those for governors, *Rulings over the constitutionality or legality of a law or state action which has budgetary implications* and *Rulings which have a direct impact upon individual member of the legislature personally*.

Pressure to Raise Revenue

The need for elected officials to increase revenues without raising taxes poses an additional threat to judicial independence. Scholars are concerned that elected officials may put pressure on courts to do more to increase revenues derived from court fees, fines, and forfeitures. Such occurrences are troubling because high fees make it difficult for lower income citizens to gain access to the courts (Dimond 1993), and pressuring courts to raise more money creates the potential for biasing court decisions; for example, judges might be inclined to impose the maximum fine in all cases in order to increase funding (Nase 1993). These outcomes would threaten judicial independence because they would limit court discretion and effectiveness. In regards to the importance of avoiding the former outcome, Wilson (1908) wrote:

...the courts should in fact be open to all, equally accessible and serviceable to every man. If it be true...that our courts are serviceable only to the rich...our system is impaired at its very heart; its poise and balance are gone. (153) ...There is no guarantee

of liberty under a system like ours, if the courts be not as accessible and as serviceable to the poor man as to the rich. (154)

To ascertain the extent to which state judiciaries are compelled to increase court generated revenues, executive and legislative budget officers were asked whether governors and legislatures in their states had ever pressured the courts to raise more money in order to help cover costs. Respondents were also asked whether governors and legislatures were successful in their attempts to get the courts to increase court collections. Only 8.9 percent (4 out of 45) of the executive officers indicated that governors in their states had pressured the courts to raise more money. All of these respondents (100 percent) indicated that pressure from the governor caused the courts to try to raise more money on their own. In contrast, 42.2 percent (19 out of 45) of legislative officers reported that their state legislatures had pressured the courts to raise more money. Legislatures were slightly less successful than governors in this regard. Only 84.2 percent (16 out of 19) of the legislative officers indicated that pressure from the legislature caused the courts to try to raise more money on their own. These numbers indicate that the courts are coming under some pressure to raise more revenues for their states. Additionally, when they are pressured to increase revenues, they tend to comply to at least some extent. The data also show that legislatures are more proactive than governors in this regard.

Threats and Actions by Local Governments Against Court Budgets

Finally, our survey included items about budget threats to judicial independence by local governments. Many state courts are still funded, at least in part, by local counties and cities. These entities, then, may have some influence over courts given that they are a funding source. While this study did not survey local government actors, we did ask state court administrators several questions regarding difficulties associated with locally funded courts. Fifteen (36.6 percent of 41) of the court administrators reported that at least some of the funding for their state courts was derived from local governments.

First, court administrators were asked if local governments tried to influence court rulings with budget threats. Only 4 (26.7 percent of 15) replied that courts in their states had been subject to such pressure. Second, court administrators were asked if local government officials had ever actually denied funding to the judiciary due to a disagreement over a court ruling or policy. Only 3 (20 percent of 15) reported that local officials had taken such action. Third, court administrators were asked if local officials had ever put pressure on the courts to raise more money to help cover costs. Eight (53.3 percent of 15) responded that pressure had been placed on the courts to raise more money. Finally, court administrators were asked whether local financing for state courts made it difficult for trial courts in poor districts to acquire adequate funding. Eleven (73.3 percent of 15) indicated that local financing does hurt the funding of trial courts in poor districts.

The numbers in this section indicate that local funding for state courts does threaten the independence of the judiciary. While direct attacks against court budgets do not appear to be common, they have occurred in some states. Less direct threats appear to be a larger problem for the courts when dealing with local officials. The data indicate that pressuring

courts to generate more money and underfunding courts in poor districts occurs in a majority of states where local funding exists. These threats have the potential to limit the effectiveness and discretion of the judicial branch.

Conclusion

Raising and spending money are crucial elements of governmental power. Does budget politics threaten the independence of courts? The evidence in this article demonstrates that judicial independence is threatened, to at least some extent, by elements of the budgetary process. We find that the different aspects of budgeting for the courts (competing for scarce resources, inter-branch competition, and pressures to raise revenues) affect judicial independence to different degrees.

In general, our evidence suggests that one aspect of court budgeting, competing for scarce resources, is not particularly threatening to judicial independence. State governors and legislatures can intervene in the funding of state courts. While changes in budget requests and restrictions on appropriations limit judicial discretion over court spending in states, our data indicate that state courts are not being treated unfairly in the budgetary process in comparison to executive branch agencies. Special institutional attention such as constitutionally mandating resources and earmarking funds protects the courts in many states. These findings call into question the assertion that the independence of state courts is being threatened due to the difficulties associated with competing against executive branch agencies for scarce resources. Some, however, may argue that the importance of the judiciary as a constitutionally created branch of government warrants special attention with regard to funding. Executive agency comparisons, then, may not satisfy proponents of the courts.

Beyond routine decisions concerning who gets what during the appropriations process, we found that judicial independence is threatened to a larger degree by two aspects of court budgeting. First, inter-branch conflict appears to have induced elected officials in a substantial number of states to use their budgetary powers in order to influence court decisions. Our data show that legislatures are more active than governors in this regard. Court actions found to be most likely to induce such behavior are rulings over the constitutionality or legality of laws or state action which have budgetary implications, and rulings which have a direct impact upon the governor and/or legislators personally. These findings support the arguments of Kaufman (1999) and Bermant and Wheeler (1995) that "assaults" on state judiciaries include actions against judicial budgets. While the separation of powers necessitates branches of government coming into conflict, our research has discovered that budget politics has the potential to lead to an excessive entanglement of the other branches into the administration of courts. Second, confirming Dimond (1993) and Nase's (1993) fears, we found that the courts in a substantial number of states have been pressured, particularly by legislatures and local officials, to increase court generated revenues. While the frequency with which these sorts of behaviors occur in these states was not determined, their existence raises questions concerning the firmness of judicial independence in the states.

The Framers of the Constitution set up a system of government where the branches would have distinct powers and compete for authority. In Federalist 51, Madison (1788) reminds us of the importance of the courts as a separate and distinct branch of government.

Hamilton (1788) in Federalist 78 and 79 also reminds us that not all branches are created equal. The courts, according to Hamilton, would be less insulated from the powers of the other branches of government, particularly with regard to resources. In modern times, there has been increased saliency of the issue of the independence of courts. In the response to recent perceptions of attacks on judicial independence, Tarr (1999) reasserts that the definition of judicial independence includes an insulation of courts "from the influence of other political institutions" (8). Jackson (1999) also argues that court resources are one of the essential elements of judicial independence.

In some ways, the power of courts has advanced in modern America with great expansions in both jurisdiction and bureaucratic size. Wheeler (1988), though, tells us that this increase in judicial administration does not necessitate judicial independence, but does provide a means for courts to "protect its independence [against] the other branches?" (37). Our work suggests that the insulation of state courts from other political institutions is sometimes thin when it comes to budget politics. While budget politics as a "check" on the powers of other branches may certainly occur in the funding of state agencies, agencies, unlike courts, are creatures of legislative and executive politics. The threat of budgetary entanglement into the administration of courts does not support the separate judicial "will" as elicited by Madison in Federalist 51, but more supports the ideas of Hamilton in Federalist 78 that the judiciary "has neither force, nor will, but merely judgement". This article concludes that, in budget politics, state courts sometimes find themselves subject to the influence of other government institutions in order to exert their will as a counter-majoritarian branch.

This is the first study to provide evidence showing that threats to judicial budgets do exist in many states. It is the first stage of a larger research project. Future research should involve both case studies and multivariate analysis. Case studies should uncover detailed information regarding the extent to which such threats occur in various states, what forms the threats tend to take, and the influence such threats have upon judicial decision making. Multivariate analysis should reveal the influence key budgeting and institutional variables have upon judicial budgets.

References

Abney, Glenn and Thomas P. Lauth. 1985. The Line-Item Veto in the States: An Instrument for Fiscal Restraint or an Instrument for Partisanship? *Public Administration Review* 45(3): 372-377.

Abney, Glenn and Thomas P. Lauth. 1998. The End of Executive Dominance in State Appropriations. *Public Administration Review* 58(5): 388-394.

Adams, John. 1776. Thoughts on Government. Papers 4:86-93. In *The Founders' Constitution*. Edited by Philip B. Kerland and Ralph Lerner. Chicago, IL: Chicago University Press, 1987, Vol.1, p.107-110.

American Bar Association. 1997. *An Independent Judiciary: Report of the ABA Commission on Separation of Powers and Judicial Independence*. Washington, DC: American Bar Association.

American Bar Association Division on Public Education. 1999. *Judicial Independence: Essays, Bibliography, and Discussion Guide*. *Teaching Resource Bulletin*, No. 6. Chicago, IL: American Bar Association.

American Judicature Society. 1997. Editorial: Strengthening the Court-Legislature Relationship. *Judicature* 81(3): 96.

Baar, Carl. 1975. *Separate but Subservient: Court Budgeting in the American States*. Lexington, MA: D.C. Heath and Company.

Bermant, Gordon and Russell Wheeler. 1995. Federal Judges and the Judicial Branch: Their Independence and Accountability. *Mercer Law Review* 48: 835-862.

Bresnick, David. 1982. User Fees for the Courts: An Old Approach to a New Problem. *Justice System Journal* 7(1): 34-43.

Bresnick, David. 1993. Revenue Generation by the Courts. In *Handbook of Court Administration and Management*, edited by Steven W. Hays and Cole Blease Graham, Jr. New York, NY: Marcel Dekker.

Clynch, Edward J. and Thomas P. Lauth, eds. 1991. *Governors, Legislatures, and Budgets: Diversity Across the American States*. Westport, CT: Greenwood Press.

De Tocqueville, Alexis. 1956. *Democracy in America*. Edited by Richard D. Heffner. New York, NY: Mentor Books.

Dimond, Alan T. 1993. Judicial Funding and Justice: A Vital Link. *Florida Bar Journal*

67(4): 8(2).

Douglas, James W. and Roger E. Hartley. 2001. State Court Budgeting and Judicial Independence: Clues from Oklahoma and Virginia. *Administration & Society* 33(1): 54-78.

Douglas, James W. and Roger E. Hartley. 2001. State Court Strategies in the Politics during the Appropriations Process. *Public Budgeting and Finance* 21(1): 35-57.

Douglas, James W. forthcoming. Court Strategies in the Appropriations Process: The Oklahoma Case. *Public Budgeting, Accounting, and Financial Management*.

Fisher, Louis. 1988. *Constitutional Dialogues: Interpretation as Political Process*. Princeton, NJ: Princeton University Press.

Glaser, Howard B. 1994. *Wachtler v. Cuomo: The Limits of Inherent Powers*. *Judicature* 78(1): 12-24.

Goldman, Sheldon and Elliott Slotnick. 1997. Clinton's First Term Judiciary: Many Bridges to Cross. *Judicature* 80(6): 254-273.

Goldman, Sheldon and Elliott Slotnick. 1999. Clinton's Second Term Judiciary: Picking Judges Under Fire. *Judicature* 82(6): 264-285.

Hamilton, Alexander. 1788. The Federalist No. 78. May 28. In *The Federalist*, edited by Jacob E. Cook. Hanover, NH: Wesleyan University Press, 1961.

Hamilton, Alexander. 1788. The Federalist No. 79. May 28. In *The Federalist*, edited by Jacob E. Cook. Hanover, NH: Wesleyan University Press, 1961.

Hartley, Roger E. and Lisa M. Holmes. 1997. Increasing Senate Scrutiny of Lower Federal Court Nominees. *Judicature* 80(6): 274-278.

Jackson, Donald W. 1999. Judicial Independence in Cross-National Perspective. In *Judicial Independence: Essays, Bibliography, and Discussion Guide*, edited by the American Bar Association Division for Public Education. Chicago, IL: American Bar Association.

Kaufman, Irving R. 1980. The Essence of Judicial Independence. *Columbia Law Review* 80: 671-701.

Kaufman, Robert M. 1999. Threats to Judicial Independence: An Appeal from AJS Immediate Past President Robert M. Kaufman. Available at <http://www.ajs.org/indepen2.html>. Accessed June 15, 2000.

- Lim, Marcia J. 1987. A Status Report on State Court Financing. *State Court Journal* 11(3): 13-17.
- Madison, James. 1788. The Federalist No. 51. February 6. In *The Federalist*, edited by Jacob E. Cook. Hanover, NH: Wesleyan University Press, 1961.
- Nace, Jonathan P. 1993. The Revenue Role of State Courts: Implications for Administration and Adjudication. *Judicature* 76(4): 195-200.
- Perry, Barbara A. 1999. Defending the Third Branch in the Twenty-First Century: Historical and Contemporary Perspectives on Judicial Independence. In *Judicial Independence: Essays, Bibliography, and Discussion Guide*, edited by the American Bar Association Division for Public Education. Chicago, IL: American Bar Association.
- Rosenberg, Gerald N. 1991. *The Hollow Hope: Can Courts Bring About Social Change?* Chicago, IL: University of Chicago Press.
- Stout, Ronald M., Jr. 1993. Unified Court Budgeting. In *Handbook of Court Administration and Management*, edited by Steven W. Hays and Cole Blease Graham, Jr. New York, NY: Marcel Dekker.
- Tarr, G. Alan. 1999. Judicial Independence and State Judiciaries. In *Judicial Independence: Essays, Bibliography, and Discussion Guide*, edited by the American Bar Association Division for Public Education. Chicago, IL: American Bar Association.
- Tobin, Robert W. 1995. *A Court Manager's Guide to Court Facility Financing*. Williamsburg, VA: National Center for State Courts.
- Tobin, Robert W. 1996a. *Funding the State Courts: Issues and Approaches*. Williamsburg, VA: National Center for State Courts.
- Tobin, Robert W. 1996b. *Trial Court Budgeting*. Williamsburg, VA: National Center for State Courts.
- Tobin, Robert W. 1999. *Creating the Judicial Branch: The Unfinished Reform*. Williamsburg, VA: National Center for State Courts.
- Tobin, Robert W., and John K. Hudzik. 1993. The Status and Future of State Financing of Courts. In *Handbook of Court Administration and Management*, edited by Steven W. Hays and Cole Blease Graham, Jr. New York, NY: Marcel Dekker.
- Walker, Thomas G., and Deborah Barrow. 1985. Funding the Federal Judiciary: The

Congressional Connection. *Judicature* 69(1): 43-50.

Wheeler, Russell. 1988. *Judicial Administration: Its Relation to Judicial Independence*. Williamsburg, VA: National Center for State Courts.

Wilson, Woodrow. 1908. *Constitutional Government in the United States*. New York, NY: Columbia University Press.

Wolfson, Barbara, Editor. 1994. *Preserving the Independence of the Judiciary: The Duel Challenge of Democracy and the Budget Crisis*. Report of the 1993 Forum for State Court Judges. Washington DC: The Roscoe Pound Foundation.

Yarwood, Dean L., and Bradley C. Canon. 1980. On the Supreme Court's Annual Trek to the Capital. *Judicature* 63(7): 322-327.

Notes

1. In this article, the term "elected officials" refers to governors and legislators only.
2. West Virginia is the only state where the legislature is restricted from cutting the judicial budget.
3. A similar test was run using responses concerning gubernatorial actions, but no relationship was found to exist.

Table 1
 How Common it is for Governors and Legislatures to Make Changes
 to Judicial Budget Requests

Court Administrators Responding

	Governors	Legislatures
Very Common	60.9% (14)	72.5% (29)
Somewhat Common	17.4% (4)	17.1% (7)
Somewhat Uncommon	0% (0)	2.4% (1)
Rarely	13.0% (3)	4.9% (2)
Never	8.7% (2)	2.4% (1)
Missing	(0)	(1)
N	23	41

Table 2
Extent to which Legislatures Inhibit Judicial Spending Discretion
by Using Restrictive Line-Items when Appropriating Funds to the Courts

Legislative Budget Officers Responding

Line-Items are Very Restrictive	6.7% (3)
Line-Items are Somewhat Restrictive	53.3% (24)
Line-Items are Not Very Restrictive	26.7% (12)
Line-Items are Not Restrictive At All	11.1% (5)
Missing	(1)
N	45

Table 3
Judicial Funding Levels in Comparison with Regular Agencies
in Terms of the Adequacy of Their Funding to Enable Them to
Carry Out Their Functions

Responses of:	Court Administrators	Executive Budget Officers	Legislative Budget Officers
The Courts are Much Better Funded	0% (0)	8.9% (4)	11.1% (5)
The Courts are Somewhat Better Funded	26.8% (11)	51.1% (23)	42.2% (19)
The Courts are Funded at about the Same Level	58.5% (24)	31.1% (14)	42.2% (19)
The Courts are Somewhat Worse Funded	7.3% (3)	0% (0)	0% (0)
The Courts are Much Worse Funded	0% (0)	0% (0)	0% (0)
Missing	(3)	(4)	(2)
N	41	45	45

Table 4

Are the Use of Gubernatorial and Legislative Budgetary Powers to Potentially
have an Impact on Court Rulings and Policies a Legitimate Check on Judicial Power
or on Infringement upon the Independence of the Judicial Branch?

Responses of:	Court Administrators	Executive Budget Officers	Legislative Budget Officers
Use of Budget Powers is a Legitimate Check on Judiciary	11.4% (4)	44.4% (16)	34.2% (13)
Use of Budget Powers is an Infringement upon Judicial Independence	88.6% (31)	55.6% (20)	65.8% (25)
Total:	100% (35)	100% (36)	100% (38)

Table 5

Nature of the Relations between Governor/Legislature and the Judiciary

	Governors Responses of Executive Officers	Legislatures Responses of Legislative Officers
Excellent	33.3% (15)	13.3% (6)
Good	37.8% (17)	46.7% (21)
Neutral	17.8% (8)	20.0% (9)
Somewhat Strained	4.4% (2)	11.1% (5)
Very Strained	0% (0)	2.4% (1)
Missing	(3)	(3)
N	45	45

Table 6
Budgetary Powers Used by Governors
to Influence or Protest Court Rulings or Policies

Responses of:	Court Administrators	Executive Budget Officers
Threatened (directly or indirectly) to use veto power on the Judiciary's budget	7.3% (3)	2.2% (1)
Actually used the veto power on the Judiciary's Budget	7.3% (3)	2.2% (1)
Attempted to deprive the Judiciary of on apportionment	0% (0)	0% (0)
Attempted to prevent the Judiciary from transferring funds from within its budget during the fiscal year	2.4% (1)	2.2% (1)
Threatened (directly or indirectly) to reduce funding for the Judiciary in the executive budget recommendation	7.3% (3)	2.2% (1)
Actually reduced the funding for the Judiciary in the executive budget recommendation	17.1% (7)	8.9% (4)
The Governor has taken Other budgetary actions against the Judiciary's budget	2.4% (1)	4.8% (2)
N	41	45

"Other" budget actions included: action against judicial salaries and by merely commenting on judicial budgets.

Table 7
Budgetary Powers Used by Legislatures
to Influence or Protest Court Rulings or Policies

Responses of:	Court Administrators	Legislative Budget Officers
Threatened (directly or indirectly) to reduce the Judiciary's Budget	36.6% (15)	28.9% (13)
Actually Reduced the Judiciary's budget	26.8% (11)	17.8% (8)
Attempted to deprive the Judiciary of an apportionment	4.9% (2)	6.7% (3)
Attempted to prevent the Judiciary from transferring funds from within its budget during the fiscal year	9.8% (4)	6.7% (3)
Inhibited Judicial spending discretion by using restrictive line-items when appropriating funds to the courts	19.5% (8)	17.8% (8)
The Legislature has taken other budgetary actions against the Judiciary's budget	12.2% (5)	2.2% (1)
N	41	45

"Other" budget actions included: asking for very specific expenditure information for those judges who issue unpopular rulings, stalling or acting against judicial pay legislation, reductions in response to judicial corruption/indictment, not funding requests for new judgeships, and acting against benefit changes.

Table 8
 Number of States Where Legislature has Used
 More than One Budgetary Power Against the Judiciary

Number of Budgetary Powers Used by Legislature	Responses of Court Administrators	Responses of Legislative Budget Officers
0	46.3% (19)	53.3% (24)
1	22.0% (9)	26.7% (12)
2	14.6% (6)	13.3% (6)
3	12.2% (5)	2.2% (1)
4	2.4% (1)	2.2% (1)
5	2.4% (1)	2.2% (1)
N	41	45

<p align="center">Table 9 Court Actions Likely to Induce Governors and Legislatures to Take Action against the Judiciary's Budget</p> <p align="center">Responses of Court Administrators from States where such actions have taken place</p>		
Court Actions	Likelihood of Gubernatorial Action Range, Mean, (n)	Likelihood of Legislative Action Range, Mean, (n)
Rulings over the constitutionality or legality of a law or state action which has <i>no</i> budgetary implications	1-4 2.14 (7)	1-4 2.69 (16)
Rulings over the constitutionality or legality of a law or state action which has budgetary implications	1-5 2.50 (6)	1-5 2.93 (14)
Rulings which affect the balance of power between the Governor and Legislature	1-4 2.17 (6)	1-5 2.42 (12)
Rulings which have a direct impact upon the Governor or individual member of the Legislature such as rulings over their salaries	1-5 2.50 (6)	1-5 2.79 (14)
Rulings which go against the client(s) of individual legislators who practice law	N/A	1-3 1.50 (12)
Policy disagreements with the Courts	1-4 2.13 (8)	1-5 2.63 (16)
N	9	22

The following question was posed to legislative analysts and court administrators:

"Which types of court actions are likely to induce the legislature to take action against the Judiciary's budget? Rank items on a scale of 1 to 5, (1 being very unlikely, 5 being very likely)."