



# Learning from Recession Experience

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## Introduction

Courts, like all public sector institutions, sometimes experience budgetary difficulties as the result of general economic recessions.<sup>1</sup> In earlier decades, when counties financed the bulk of trial court operations, the state judicial budget was so small that it was not a realistic target for budget-cutters. The impact of recessions on county budgets for courts was difficult to assess because it was simply not feasible to capture and analyze information from thousands of local governments on how trial courts were affected or to distinguish between the affluent counties and those in dire straits. In short, there was no database from which courts could learn the effects of recession on court budgets.

From roughly 1980 onward, there were enough states with state-funded trial court systems that it became feasible to collect and analyze, at least in part, the impact of budget reductions on state courts. The first full-scale documentation of a recession's impact on courts occurred with the downturn in the early 1990s. There was a detailed COSCA survey and an SJI-funded project to document the effect of the recession on courts, including some locally financed trial courts. The data gathering was pretty well structured due to the formal research mode.

Several trends emerged. Courts tended to do better than they originally expected based on the early budget scenarios and also tended to fare better than executive branch agencies. Courts were very interested in the experience of other states but found it difficult to apply this experience to their own needs. To some extent, the information gathering and sharing was a pain-sharing phenomenon. Then, as now, the recession did not affect states evenly, so that some courts were unscathed or actually improved their budget position. There was no particular regional pattern; much depended on the tax structure and fiscal management of individual states and the existing interbranch relationships. Some states seized on the budgetary situation to effect reforms and efficiencies that would have been more difficult in a more relaxed budget environment, but over 90% of the changes were basically emergency steps. By the time courts analyzed what was going on, the recession started to ease and the urgency abated, but for the first time, there was a rudimentary database.

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<sup>1</sup> There are sometimes regional recessions that affect courts, but these usually do not stimulate much analysis or concern, although the lessons to be learned are similar to those gleaned from national recessions. There were, however, some well-known examples of the effect of local financial crises on courts, notably the fiscal problems of New York City that ended the resistance in the city toward state financing of trial courts and speeded budgetary unification in New York.

The current downturn appears to be more severe than that of the early 1990s, but there is remarkable similarity in the responses of courts to the tight budget situation, pretty much déjà vu. There are currently more state-funded systems than there were a decade ago, so there is a broader database. There are now about 31 court systems primarily funded by the state, not counting three state court systems in transition, Minnesota, Florida, and Pennsylvania. The most prominent addition to the state-funded court systems was California. There are still a number of states that rely primarily on local funding but have such a large admixture of state funding that they may be strongly affected by a downturn, Arizona, for example.<sup>2</sup> As a practical matter it is hard to draw many conclusions about state budgetary impact on courts where a small percentage of court funding comes from the state. The most useful and pertinent data are those from court systems that are state-funded.

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### **Lessons:**

#### **Short-term Responses, Revenue Enhancements, and Change**

Two recessions do not provide a rich historical database that would lend itself to trend analysis, but they provide enough data to start asking questions about what has been learned. As a practical matter, it is very hard to learn much from other states during a recession because the situation is so fluid and usually of relatively short duration. Budget crises tend to build up, peak, and then subside within a fairly brief time span, perhaps three years. By the time courts react and start to pool information, it may be too late to effectively employ any ideas borrowed from other jurisdictions.

It follows that previous recessions are the best source of data, not only when a budget downturn is looming but also in the less hectic period after a recession when a court can take steps to strengthen its organization, technology, efficiency, and budget relationships. This suggests the need to have an institutional memory in place because recessions occur cyclically. This historical data should be more than a compilation. It requires analysis to sort out those actions that are particularly efficacious and worthy of general consideration.

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#### **Short-term responses are often necessary but not particularly applicable to other court systems tailored to the local administrative environment.**

Information on emergency steps is useful, but marginally so because the measures taken are tailored to the administrative environment of a particular state. The common pattern among short-term measures is that they are considered temporary tactical responses pending a return to a healthier budget situation. The NCSC has identified

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<sup>2</sup> A perennial discussion among court scholars is the desirability of having both state and local funding, so that the courts are not totally dependent on one source. Generally, however, the counties in a state with budget problems are similarly affected; moreover, the main impetus for state financing of courts comes from county officials who are not heavily influenced by academic discussions of whether the county should remain in the funding picture. Most want "out."

some 30 measures employed by courts to cope with the current budgetary restrictions; all but a few are standard responses to fiscal crises.

Most of the steps that can be taken are outlined in public administration handbooks and will reoccur whenever there is a recession, typically:

- freezing employment
- initiating furloughs and changes in work hours
- laying off staff
- deferring pay raises and COLAS
- delaying the filling of judicial positions
- temporarily reducing court services, such as hours and days of court, or not hearing certain types of cases
- freezing spending in various non-personnel areas (typically training, travel, equipment purchase)
- deferring payments on goods and services to later fiscal years

What is important about these steps is how they worked out in practice. What steps are least likely to have an adverse effect on service? What “temporary cuts” are restored and which are never regained?<sup>3</sup> How are reductions spread out evenly to avoid crippling a particular court component? Which personnel steps can be taken with the least likelihood of encountering heavy legal, union, or political opposition? What is the effect of closing down or severely rationing some types of services? The fact is that the answers to these questions will probably not be known at the height of a recession and will, for the most part, require a post mortem. What courts need is not a laundry list of short-term steps but a more analytical assessment of the steps that were taken. This again suggests the need for a historical database rather than an ad hoc response to every cyclical downturn.

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### **Enhancement and creation of revenue streams has become crucial to long-term financial planning in courts.**

Recession leads to a quest for revenue sources other than the normal general fund appropriations. This takes various forms:

- Increasing the rate of collection on court-generated revenue as a bargaining tool to stave off budget cuts, a tactic that is only of limited use
- Creating or increasing fees earmarked for general court use (some fees are dedicated, e.g., court automation)
- Winning ability to retain some court-collected revenues as an incentive to maximize collections

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<sup>3</sup> Wyoming courts have not suffered much in the current downturn but report that the courts have never regained positions lost in the recession of the 1990s. It is interesting that the response was in a comparative mode, harking back to the earlier recession.

One of the more unusual steps taken during the current budget downturn is the imposition of an emergency surcharge by the Kansas Supreme Court. Minnesota increased fees on civil filings substantially, offsetting much of its shortfall, but this was done in cooperation with the legislature.

The courts that are best able to withstand a budget crisis are those with accumulated reserves from internal savings or earmarked fees and costs. This latitude is best obtained by mutual incentives. The appropriating bodies and the executive branch are guaranteed some sort of a spending cap or increased revenues in return for allowing courts to retain internal savings or some percentage of revenues. Traditionally, courts have been reluctant to act as revenue agents without some special incentive other than the routine enforcement of the court's monetary sanctions.

Based on recent information compiled by the NCSC from 32 states, 15 states have imposed new court fees and 11 states have increased their collection efforts. The whole revenue and fee area has become so crucial to long-term financial planning in courts that it should be documented and maintained. It is not necessary to wait for the impetus of a recession to examine the possibilities in this area and the downside, most notably limiting access to justice. The lessons learned can lead to steps that institutionalize alternative funding sources within a framework of accountability.

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### **Recession is often a change agent.**

The recession of the early 1990s produced some important changes that endured. This pattern is appearing again, although seemingly on a smaller scale. There is need to identify these opportunity areas that are usually waiting in the wings for the right time. This does not mean that reform is always on the backburner awaiting a recession, but money shortage has a way of forcing hard changes. Among these are:

**Changes in interbranch relations.** Tight budgets are usually seen as an occasion for interbranch conflict but can be used to promote judicial administrative independence in return for court commitment to efficiency and revenue enhancement, including, if necessary, budget cuts or budget ceilings. With this sort of quid pro quo, courts may obtain a share of the revenue they collect and the ability to make flexible multiyear use of their share (e.g., California), ability to move appropriated funds more freely among budget categories, freedom from various executive branch financial management and personnel constraints, and carryover of savings and unspent appropriations. The New Jersey court system has achieved the power to retain savings, but Maryland reported reverting over \$11 million in FY 2003. Another possibility is to seek the authority to shape court administrative and venue districts and freely move resources among them, as occurred in North Dakota in the recession of the early 1990s.

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**Organizational Change.** Budget problems often result in organizational change. This can take the form of organizational or administrative unification of a court or court system. More often, it involves consolidation in some parts of a court. These changes may not produce efficiencies in and of themselves but provide the setting for more flexible use of resources and elimination of redundancies. The New York judiciary has proposed unification of the trial courts outside New York City. The upstate courts were not affected by the court consolidation that took place within the city and constitute a lingering source of inefficiency. In Texas, where the trial courts are largely dependent on counties, legislators have suggested a merger of the two high courts, one for civil, one for criminal. The chief justice has indicated willingness to reduce the number of justices.

**Divesting non-core functions.** In hard financial times, courts reconsider their core functions. This implies that courts perform a number of functions that are not, strictly speaking, judicial. Mainly, these are functions that can or should go to the executive branch, such as probation and various social services. Another costly function that some courts have shed is appointment of counsel for indigents and contracting for indigent defense counsel. The Rhode Island Supreme Court has created a committee to explore whether the court should seek transfer to an executive branch agency of the judiciary's current funding responsibilities for appointed counsel in all state courts. Some courts, however, like to retain non-core functions that can take the main budget hit at a time of retrenchment.

Another form of shedding, perhaps best described as semi-shedding, is to contract out services such as collections, court reporting, interpreting, etc. Some courts contract for probation services and security. The cost remains in the court budget but does not involve the thorny personnel issues of freezes, furloughs, and layoffs and is easier to cut.

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**Work process change.** Reduction of resources, particularly personnel resources, forces reconsideration of work processes, more elegantly referred to as reengineering. This involves consolidation of functions, elimination of unnecessary work steps, and reduction of labor-intensive procedures. It may also involve a change in who performs a particular procedure, for example, the use of non-deputized bailiffs in lieu of deputies or the use of quasi-judicial officials to fulfill various functions. Of the 32 states that reported steps taken in FY 2003, three reported streamlining their jury processes. Several reported that they have increased lateral mobility in state assignments across jurisdictional lines or within individual courts. Eleven states reported use of cross-training to offset personnel reductions.

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**Facilities and information technology as catalysts.** Changes in the configuration and use of facilities and expanded use of information technology both involve a review of work process and relationships and serve as change agents that may enhance the efficiency of the court or court system. Facilities, even a single facility, can fragment work processes and defeat reengineering. Elimination of outdated facilities or more efficient distribution of court work among multiple facilities often produce efficiencies. Capital financing has a different dynamic than operational financing and can sometimes be artfully employed in times of budget uncertainty. Recession can, of course, cause delay in facility projects. Four states reported doing this in FY 2003.

Information technology in courts has not, on the whole, had dramatic impact on work processes and has tended toward automation of existing paper processes. The criticism of information technology has been that it adds to costs without displacing manual processes. This should no longer be the case.

Web-based technologies and advanced telecommunications have emerged since the last recession and offer a more favorable means of effecting efficiencies. Interestingly, 21 states reported increased use of electronic communication in 2003. Eleven states increased their automation expenditures in FY 2003, but 12 states reported delaying technology projects in FY 2003.

## **Conclusion**

The essential question is “what are we learning that might be generally useful?” The NCSC can best serve to analyze specific areas of interest that are identified by court leaders and propose strategies that will serve courts now and in the future. The NCSC does not have the resources to carry out a broad mandate but could focus on key areas. The preceding paper suggests the range of options.

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