ON LEADERSHIP

Values and Leadership

MATTHEW S. RICHTER

Where to start on a values statement? I pointed out in my last column that there can be a wide gap between a values statement and the application of the value. The statements reside in frames, posted on walls, gathering dust. Rarely are they integrated thoroughly into behaviors, true beliefs, and the culture of employees.

Another challenge stems from the tendency to espouse ill-defined principles and then behave in a completely different way. Sometimes the hardest thing to do is to really figure out our own values systems. What is it we really care about?

Given the complexity of values, it is important to look at them as a system. Bay Area consultant Patrick Lencioni, in his article "Make Your Values Mean Something" (July 1, 2002, *Harvard Business Review*), categorizes organizational values in four ways:

❑ Permission-to-play values: These values echo the minimum behaviors and standards required by employees in the organization. They are generic in that every organization on the planet would agree that these are important values to have. Nothing sets them apart. Integrity, for instance, is a permission-to-play value.

❑ Core values: An idiosyncratic set of values that distinguishes one organization from another. These values reflect the spirit of the organization and may not be compromised. They should provide, as Lencioni says, "a blueprint for employee behavior." For example, in the courts we value access to justice; Siebel Systems uses the value of professionalism to set it apart from other Silicon Valley companies.

❑ Aspirational values: These are the values to shoot for. The organization requires these standards to succeed in the future but currently lacks them.

❑ Accidental values: These values are outgrowths of the organizational culture and do not derive from the leadership. They can be helpful when they foster growth and collaboration, or unhelpful when they stem from the reinforcement of negative behaviors.

So what does this have to do with leadership? Why do values matter so much?

Simply, values are the standards by which we operate. They are fundamental to our identity. They are rules that dictate our behavior and inform our choices. Our values act as guides in implementing the court's vision.

What can you do? The first step is to be able to answer the following questions.

1. What distinguishes your court from others? What values and what beliefs make you unique and special? How do your values support and validate the Judicial Code of Ethics and the Code of Ethics for Court Employees of California? What values are necessary for the growth and development of your court?

2. Have you identified as core or aspirational values those that are really just permission-to-play values?

3. Are you aware of the cultural drives in your court that affect the values system?

4. Are you being honest with yourself? Are you willing to discard a value you have claimed when it really isn't reflected in your court?

5. The converse is true, as well. Are you willing to acknowledge a value that is present but that you would not espouse? Are you willing to engage in the challenge of long-term cultural change if that value isn't attractive?

6. Values such as integrity, good communication, respect, and honesty are wonderful permission-to-play values. They are also unclear. Can you define your values specifically, contextually, and clearly?

Are we willing to see what values truly drive us toward our vision, or are we willing to be blind for the sake of expediency and avoidance of conflict. Most importantly, are we willing to do the work? There is a reason most organizations and most courts avoid a proper values discussion. It's hard work. We don't have a lot of time to do our jobs as it is. But in the end, it's pretty simple: do the work of clarifying values, and our courts can be even better than they already are.

Matthew Richter is a program manager for the California Center for Judicial Education and Research, responsible for development of staff management for the trial and appellate courts.

● Please contact Matt with ideas, feedback, or suggestions at matthew.richter@jud.ca.gov. ■

Orientation to Court Leadership

Leaders of the trial courts will convene in the San Francisco area on October 20–22 to hone the skills they need to guide their staffs through the challenging times that lie ahead.

The Center for Judicial Education and Research's Presiding Judges Orientation and Court Management Program is tailored to the executive leadership teams of the courts. The attendees will include presiding judges, presiding judges–elect, assistant presiding judges, supervising judges, executive officers, and assistant executive officers.

Experienced judges and court executive officers will serve as faculty. They will cover topics such as duties and responsibilities, the transition to the leadership role, management of judicial and administrative resources, judicial branch relationships, and creating a leadership vision and a plan for the court.

● For more information, contact Karen Moen, Senior Education Specialist, 415-865-7823; e-mail: karen.moen@jud.ca.gov.

S.F. Opens Multilingual Self-Help Center

A new self-help center in San Francisco is giving assistance to litigants in a variety of languages.

ACCESS (Assisting Court Customers With Educational and Self-Help Services) provides services in English, Spanish, Cantonese, Russian, Tagalog, and Vietnamese. The center offers informational materials, assists with the completion of court forms, coordinates referrals to other service providers, and conducts educational workshops in community-based agencies in San Francisco that serve non- and limited-English speakers. ACCESS can assist litigants with general court procedures as well as with civil harassment proceedings, name changes, guardianships, evictions, traffic matters, and family law matters.

"The biggest demand is for Spanish speakers," says ACCESS Director Cristina Llop. "One of our challenges has been to increase awareness of the center [among] other limited- or non-English speakers who do not traditionally seek services due to language and cultural barriers. We regularly go out and speak about the program at community and social service agencies. We have also done a half-hour radio show on a local Chinese radio station describing our services."

Since its inception in March 2003, ACCESS—with the help of students, court personnel, and volunteer interpreters—has assisted more than 750 self-represented litigants. Customer satisfaction has been high and the program has been well received by community agencies, court staff, and judicial officers, adds Ms. Llop.

ACCESS is one of five self-help center pilot projects being funded by the Administrative Office of the Courts as directed by the Budget Act of 2001. The projects were funded to test varied models of self-help services for California's rapidly increasing population of self-represented litigants.

● For more information on ACCESS, contact Cristina Llop, Superior Court of San Francisco County, 415-551-5737.

Chief Justice Ronald M. George (right) joined Superior Court of San Francisco County Presiding Judge Donna J. Hitchens and Executive Officer Gordon Park-Li on June 17 in celebrating the inauguration of ACCESS, the court's new multilingual self-help center. The ACCESS center was conceived in 2002 by San Francisco's Self-Represented Litigant Task Force, chaired by Judge Hitchens and composed of court personnel, other judicial officers, and community-based legal service providers.

Q&A Bench and Bar: Partners in Justice

A Conversation With Thomas Warwick

Attorney Thomas Warwick
Grimes & Warwick

In December, Attorney Thomas Warwick will become the President of the San Diego Bar Association, the latest progression in what has been a career full of appointments, elevations, and memberships to a multitude of legal associations.

His involvement with these groups gives Mr. Warwick a feeling of satisfaction by helping to advance the legal profession. But he also admits that his extracurricular activities have also been incredibly valuable in making him a better lawyer, and that he has learned skills from these groups' members that have allowed him to better represent his clients.

If belonging to legal associations makes one a better lawyer, his clients are getting very good representation.

During his career, Mr. Warwick has been on the board of directors of his local bar association, participated in the State Bar's Conference of Delegates, has been on the State Bar's Board of Governors, and has been involved with defense bar associations, consumer attorney associations, and barrister clubs.

Mr. Warwick not only is involved in attorney groups, but also devotes time to the improvement of the judiciary. He was appointed to the Judicial Council in 2001 and is a current member of the Bench-Bar Coalition. Court News *spoke with him about his work for both organizations and their commitment to improving the judicial system.*

What is the Bench-Bar Coalition? What is its role and how does it work?

The Bench-Bar Coalition is made up of the leaders of the judiciary and bar associations throughout the state, as well as attorneys who participate on a daily basis in the courts. This cross-section of legal professionals has banded together in an effort to improve the justice system.

The coalition was started when Malcolm Lucas was the Chief Justice of California. It was an attempt by the judiciary and the bar to try to form some alliances with the goal of strengthening the judicial process.

Members of the coalition routinely communicate via conference calls and participate in lobbying efforts in Sacramento. The coalition attempts to educate and be a resource for the Legislature so its members understand the needs of the courts, attorneys, and litigants, with the ultimate goal of improving access to justice for the public.

Can you tell me a few of the issues the Bench-Bar Coalition has worked on?

The coalition has always been very active in trying to improve the judicial process. It was very supportive of trial court funding and unification. The coalition has worked to adjust judicial salaries to a level that more closely resembles the private sector, improve the judicial retirement system, and was an advocate for the one-day or one-trial jury system and increased juror compensation.

How are the bar and the courts working together to secure adequate funding for the judicial branch?

The coalition has become very involved in the state budget crisis. It has tried to educate both legislators and the public about the necessity for adequately funding the third branch of government. Letters were sent out to attorneys, who were encouraged to forward them on to their clients, in an effort to have both groups communicate with their legislators and locally elected officials the effects that budget cutbacks to the court system would have on them.

The letters sought real examples of how litigants would be, or are being, affected by budget cutbacks in their local courts. For example, one consistent message has been the need for, and effectiveness of, collaborative justice courts and alternative dispute resolution programs. When adequately funded, these programs that the courts have embraced improve the judicial experience for many individuals.

It has been important for the Legislature to hear directly from all those persons affected by the proposed cuts to the judicial branch budget. The goal is to have legislative members hear these effects from as many of their constituents as possible so that they can make informed decisions.

The coalition's efforts on the judicial branch budget have been an effective way of getting the judiciary's message out to attorneys, the public, and ultimately, the Legislature. It is sometimes difficult for the judiciary to make the case for itself due to a shortage of resources. In addition, sometimes it can be more effective to have someone else or another group advocating on your behalf. In that way, the targeted recipient hears "this is what's needed" rather than "this is what I need."

Are efforts being made on behalf of the bar to encourage employers to compensate their employees for jury duty?

The Bench-Bar Coalition has been involved in an ongoing effort to have the legal profession lead by example in the push to have employers compensate their employees for jury service. The coalition is starting its outreach efforts with law firms because if we can't sell our own profession on the practice, then how can we go to our client base and ask them to support the jury system in this way.

However, large law firms often have several different bosses, partners, and shareholders that are making the decisions. It has been a challenge to get all those parties to support the notion of paying employees for jury duty, as some attorneys see the need for a jury system more than others. Despite this, the coalition's education efforts continue and law firms are changing their practices.

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You are a member of the Judicial Council's Policy Coordination and Liaison Committee. What role does it play in the legislative process?

Any legislation that the Judicial Council sponsors is reviewed by its Policy Coordination and Liaison Committee. Much time and work goes into reviewing the bills and researching potential results if passed into law.

The committee, in collaboration with the Administrative Office of the Courts' Office of Governmental Affairs (OGA), also makes recommendations on any other bills that affect the administration of justice so the Legislature is aware of their potential impact. Often legislators draft bills that address a particular problem of their constituents. But sometimes this legislation can have unintended, negative consequences for other parties that the drafters were not focusing on.

The Policy Coordination and Liaison Committee and OGA do a great job of working with legislators and informing them of potential pitfalls of well-meaning legislation. It is a very challenging process both intellectually and politically.

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There are four practicing attorneys on the Judicial Council. How does your perspective as a bar member help contribute to the council and its goals?

Judges have the job of running their courtrooms and we as attorneys have the job of advocating for our clients. The attorney members of the council bring a different experience of the justice system to the table. This differing perspective is important because sometimes the efficient administration of justice conflicts with defending the rights of the individual litigants.

It is important that the council, when reviewing potential rule changes, take into consideration their affect on individual litigants. During my time on the council, I have been very impressed with its members, their willingness to consider these impacts, and their desire to craft a rule that better addresses litigants' needs as well as those of judicial economy. ■

Something New in the Proof of Strikes?

Judge J. Richard Couzens
Superior Court of Placer County

Judge Couzens is a former member of the Judicial Council and past chair of its Criminal Law Advisory Committee.

CRIME and PUNISHMENT

The rules governing the proof of strikes are long-standing. *People v. Guerrero* (1988) 44 Cal.3d 343 and *People v. Reed* (1996) 13 Cal.4th 217 direct the trier of fact to the "record of conviction" in determining whether a defendant has suffered a prior strike for the purposes of the three-strikes law.

Two recent cases, one from the state courts and one from the federal courts, have the potential to greatly expand the pool of evidence to be considered by the court. *People v. Dale* (2003) 106 Cal.App.4th 194 holds that when a transcript of the preliminary hearing is offered to prove strike conduct, the trier of fact may reweigh the credibility of witnesses who testify at the hearing. The prosecution alleged that the defendant had suffered a 1991 prior conviction of Penal Code section 245(a)(1), assault with a deadly weapon. It was alleged that the defendant had slashed the victim with a broken beer bottle during the attack.

The only proof in the current proceeding that the defendant used a deadly weapon was the victim's testimony at the preliminary hearing. After reviewing the transcript of the testimony, the court in the current case found that the victim had been very intoxicated during the incident, and her testimony was so vague that a finding of personal use of a deadly or dangerous weapon could not be made.

The prosecution appealed the dismissal of the strike, arguing that the trial court had gone beyond the record of conviction by relitigating the issue of personal use of a weapon, a fact that was uncontroverted and already proven, as reflected in the holding order of the magistrate. The appellate court disagreed.

The court found that the testimony at the prior preliminary hearing was admissible in the current proceeding under the provisions of Evidence Code section 1290, which allows the admission of testimony from a prior proceeding under circumstances applicable to a case. The preliminary hearing testimony, however, was presented to the magistrate only for the purpose of determining whether there was probable cause to hold the defendant over for trial. Although the magistrate, in this limited role, weighs evidence, resolves conflicts, and gives credence to particular witnesses or withholds it from them, the preliminary hearing is not a trial. The trial court is not bound to accept the truth of matters testified to by the witnesses at the preliminary hearing.

The court observed that Evidence Code section 1291(b) requires the current court to accept former testimony "as though the declarant were testifying at the hearing . . . ." The current court, therefore, is entitled to weigh against all the factors listed in Evidence Code section 780 the credibility of the witnesses who testified at the preliminary hearing.

Although *Dale* primarily addresses whether the People have the right to appeal the dismissal of a strike in these circumstances (the People do not have such a right), the case has interesting implications. Does this case apply also to *trial* testimony offered to prove a strike? Is the defendant now allowed to make a form of collateral attack on the prior conviction by requesting a review of an entire trial transcript of a prior proceeding to determine whether "guilt" was properly found? The Supreme Court may answer these and other questions; *Dale* has been granted review.

Gill v. Ayers (2003) 322 F.3d 678 is a Ninth Circuit case that holds, at least in certain circumstances, that a defendant has a constitutional right to testify at his or her trial regarding the facts of a prior strike conviction.

As in *Dale*, the defendant's alleged strike was a violation of section 245(a)(1). The People contended that the defendant had personally used a baseball bat in the prior assault. The prior jury, however, had made no actual finding of personal use of the weapon. The prosecution in the current proceeding sought to prove the strike via the admission of the defendant in the probation report that he had, in fact, used a bat during the assault. The defendant requested an opportunity to tell the jury that he had not used a weapon and to explain the comments made in the probation report. The trial court denied the defendant's request.

The federal court acknowledged that California law bars both the defense and the prosecution from presenting "live" testimony about the circumstances of the prior conviction, and both sides are limited to a review of the record of conviction. The court found, however, that such a rule applied to the defendant violates the defendant's due process rights under the 14th Amendment because it arbitrarily and unreasonably prohibits the defendant from testifying on a critical issue. The court found that the California rule violated the defendant's right to testify as discussed by the U.S. Supreme Court in *Rock v. Arkansas* (1987) 483 U.S. 44, 49.

Although California trial courts are obligated to follow California appellate decisions (see *People v. Bradley* (1969) 1 Cal.3d 80, 86), *Gill* raises several interesting questions, particularly concerning how broadly the decision might be applied. The case could be limited to its facts—a crime that is counted as a strike only if it was committed in a certain way and if the prior trier of fact failed to make specific factual findings on the relevant issue. In *Gill* this failure was the absence of an express finding that the defendant personally used a deadly weapon, a necessary element to make the defendant's section 245(a)(1) conviction a strike.

On the other hand, *Gill* potentially has a very broad application. Nothing in the opinion expressly limits the right of the defendant to testify to circumstances when the factual nature of the prior conviction is at issue. The decision potentially applies to any prior strike. Taken to its logical conclusion, *Gill* may stand for the proposition that the defendant has a right to testify regarding any prior strike, not only in cases where the manner of the crime's commission is important—as in an assault under section 245(a)(1)—but also in cases where the crime is a designated strike, such as a robbery or rape.

Gill also may apply whether the prior conviction was obtained by trial or by plea. Does the decision open up the possibility of additional defense witnesses? If the defendant testifies, does the prosecution then have the right to call live witnesses to rebut the defendant's testimony? While it may seem logical that, if a defendant is tried and convicted of a strike offense by a jury or enters a plea admitting all of the elements of the crime, he or she should not have another chance to attack the facts of the conviction, nothing in *Gill* limits the defendant's right to testify under such circumstances.

Until the foregoing issues are addressed by California appellate courts, the most prudent and appropriate approach for the trial courts is to follow the rules enunciated by *Reed* and *Guerrero*. ■

National Court Awards

Nominations are open for the National Center for State Courts' (NCSC) annual Distinguished Service Awards. The NCSC board of directors presents the awards to people who have made substantial contributions to the field of court administration and to the work of NCSC.

DISTINGUISHED SERVICE AWARDS

The Paul C. Reardon Award is named for the late Massachusetts Supreme Court Justice Paul C. Reardon, the first president of the NCSC board of directors. The Reardon award honors individuals who have worked unselfishly to further NCSC's mission of providing leadership and service to state courts for the improvement of judicial administration.

The Warren E. Burger Award honors the late Chief Justice of the United States, who was instrumental in founding NCSC and its Institute for Court Management. The Burger Award is presented to individuals who have made significant contributions to the field of court administration through management and administration, education and training, or research and/or consulting, and who have contributed to NCSC's mission.

Nominations are due by September 10 and should be addressed to:

Shelley L. Fischer
National Center for State Courts
300 Newport Avenue
Williamsburg, Virginia 23185

● For more information, visit the National Center for State Courts' Web site at www.ncsconline.org/. ■

Access to Justice Award Nominations Due

Nominations for the Benjamin Aranda III Access to Justice Award are due by October 10. Named for the late Judge Benjamin Aranda III, who was known for his promotion of access and fairness in the courts, this award annually honors a California trial judge or appellate court justice whose activities demonstrate a long-term commitment to improving access to the courts for low- and moderate-income Californians.

The California Commission on Access to Justice will select the award recipient in consultation with the Judicial Council, the State Bar, and the California Judges Association. The commission—whose membership includes appointees from each of those three entities as well as from the business, labor, education and religious communities—is dedicated to pursuing long-term strategies for significantly improving access to justice.

The award recipient must have demonstrated one or more of the following:

❑ A commitment to increasing the involvement of volunteer attorneys in the representation of indigent persons;

❑ Successful establishment of a model system for assisting self-represented litigants;

❑ Successful establishment of a model project, in cooperation with local legal services programs or bar associations, to improve the representation available to low- and moderate-income litigants; or

❑ Other significant activities evidencing a long-term commitment to improving the accessibility of our judicial system for all Californians, regardless of income.

This year's award will be presented at the 2004 California Judicial Administration Conference.

● For more information on the Benjamin Aranda III Access to Justice Award, contact Chris Zupanovich, State Bar of California, 415-538-2534; e-mail: chris.zupanovich@calbar.ca.gov.

ABA Report on Judicial Elections—Improving Diversity

A recent report from the American Bar Association (ABA) Commission on the 21st Century Judiciary analyzes appointment versus election of state judges and makes recommendations for reducing the influence of money and partisanship in judicial elections.

Noting that judicial elections in some states have become extremely contentious in recent years, *Justice in Jeopardy* recommends new ways for states to improve judicial selection and proposes a blueprint for restoring eroded public trust and confidence in the courts.

For example, the report suggests that judges not be subjected to re-election campaigns so that "justice does not turn on the outcome of popularity contests" and so that judges need not solicit contributions from those who may have an interest in the outcomes of cases they will decide while on the bench. In states that cannot abandon re-election processes altogether, the commission recommends that judges be subject to reappointment by a credible, neutral, diverse, and nonpartisan deliberative body.

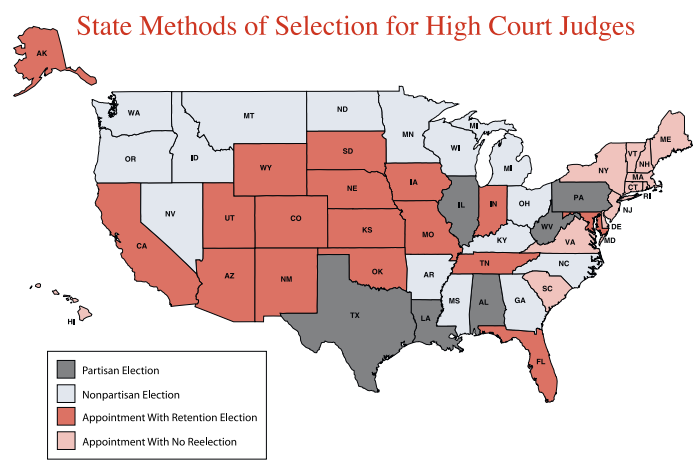
In addition to recommendations on the selection of judges, the report includes tips for maintaining the judiciary's institutional legitimacy by increasing the diversity of the court system. For example, it urges lawyers and judges to participate in aggressive outreach activities aimed at encouraging minorities to attend law school, and recommends that attorneys expand their training and recruitment programs to encourage minority lawyers to join their firms. It also calls on the courts to act aggressively to ensure that language barriers do not limit access to the justice system, and to take steps to improve and expand minority representation in jury pools.

The ABA convened the commission in 2002 to study and make recommendations on ensuring fairness, impartiality, and accountability in state judiciaries. The commission held four public hearings, generating more than 1,000 pages of testimony, and conducted a national colloquium—attended by more than 150 judges, lawyers, law and social science scholars, and interested citizens—to discuss possible solutions to the problems identified.

The conclusions contained in the report do not reflect the official positions or policies of the ABA. The ABA's House of Delegates is scheduled to consider the report's recommendations at the ABA annual meeting in San Francisco in August.

● For more information on the commission, visit www.manningproductions.com/ABA263/ABA263_Main.htm. To view the report, go to the ABA's Web site at www.abanet.org/media/. ■

Selection of High Court Judges in U.S.



Source: American Bar Association

Roger K. Warren, President of the National Center for State Courts

Warren: State Courts Facing Greatest Budget Crisis Since World War II

Following is an interview with Judge Roger K. Warren, President of the National Center for State Courts (NCSC). Warren, a former state court judge in California, discusses the issues and challenges confronting the state courts and what the National Center is doing to help. This interview is excerpted from the Summer 2003 edition of the NCSC's newsletter, Center Court.

In your work and interactions with this country's state courts, what have you found to be the most common issues and concerns they are facing?

That's easy—the state budget crises. The state judiciaries are facing their greatest financial challenge since World War II. They are eager for information on how other courts are responding to the budget crisis and what the National Center for State Courts can do to help them.

What can the National Center do to help?

I've discussed this with the officers of the Conference of Chief Justices and Conference of State Court Administrators and with the NCSC Board of Directors, and together we have formulated a plan of action.

First, we created a listserv consisting of designated budget contact persons in each state to share information and ideas. Second, we established a state court budget working group led by NCSC Vice-President Dan Hall and includes Kent Pankey and Bob Tobin, authors of the principal NCSC publication on this topic, *Managing Budget Cutbacks*. Third, we have conducted several surveys of the states to assess the extent of fiscal shortfall and to identify the various budget strategies that states are using. And finally, we have disseminated the pertinent survey information, an up-to-date compilation of civil filing fee information in state and local courts, and other information to each state's budget contact person.

This information is also available on the NCSC Web site at www.ncsconline.org/. Further information on this issue will be regularly posted on the NCSC Web site in the future.

What is the principal strategy being used to balance state court budgets?

The main strategy seems to be an attempt to reduce costs without laying off full-time employees or reducing services, through an assortment of short-term actions: things like hiring and salary freezes, travel and training restrictions, elimination of positions, reduction of funding for appointed counsel, purchase reductions, and delay of technology and other new court projects. Nevertheless, many courts still have been required to lay off hundreds of full-time employees, close courthouses, suspend jury trials, defer prosecution of nonviolent criminal cases and small claims cases, and postpone other civil proceedings.

Have the courts also tried to find ways to increase revenues?

Yes. Two common approaches are finding ways to increase the collection of court-ordered fines, fees, and forfeitures, including state tax refund intercept programs and a proposed national income tax intercept program, and increasing court filing fees and surcharges.

What advice do you offer to court leaders?

I was the presiding judge of a major trial court in California when that state last went through a recession in the early '90s. I think the biggest danger is that court leaders will make short-term decisions that they will regret in the long term. Once positions, functions, or services are eliminated or restricted, it is very difficult to get them back to pre-existing levels.

Courts need to carefully weigh their long-term priorities and objectives in making critical budget decisions, especially in shortfall situations. In addition, courts need to take advantage of opportunities to fundamentally re-engineer court processes—opportunities that may exist during a budget crisis but may not be available in the so-called "good times." . . .

Do you see differences between the current situation and the recession of the early '90s?

Well, first of all, in most states the scope of the budget shortfalls is significantly greater now than 10 to 12 years ago. But, happily, the relationships between the state judiciaries and the legislative and executive branches of state government are much better today than they were earlier. Courts have more managerial credibility today. They recognize that they must share in the pain, and are less likely to support their budget requests solely with assertions about judicial independence or inherent powers, or threats of mandamus actions to compel adequate funding.

Do you feel that the worst is behind us?

No. In most states 2004 promises to be an even more challenging year than 2003. The worst mistake a court manager could make at this point is to assume that the worst is behind us.

What advice do you have for court leaders?

Be bold. Be innovative. Assume that the budget decisions you make today will have long-term consequences. Now is the time to put on the table some of your best and most far-reaching proposals to improve your court. ■