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Judicial Power—The Inherent Power of the Courts to Compel Funding for Their Own Needs—In re Juvenile Director, 87 Wn. 2d 232, 552 P.2d 163 (1976)

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JUDICIAL POWER—THE INHERENT POWER OF THE COURTS TO COMPEL FUNDING FOR THEIR OWN NEEDS—*In re Juvenile Director*, 87 Wn. 2d 232, 552 P.2d 163 (1976).

In 1975, the superior court of Lincoln County, Washington, proposed that the salary of its director of juvenile services be raised by $125 per month.[1] The Lincoln County Board of Commissioners rejected the increase and refused to honor the subsequent order to pay it. At the show cause hearing before the Lincoln County superior court, the trial judge[2] held that because the superior court had authority to appoint the director, it also had the inherent power to agree with him on compensation. Consequently, R.C.W. § 13.04.040, granting to the board the power to determine the director's salary, was held to be an unconstitutional infringement on the court's power to appoint.[3]

On appeal by the board of county commissioners, the Washington Supreme Court did not agree that the statute was unconstitutional.[4]

1. When the position was created in 1973, the director's salary was established by mutual agreement between Lincoln County, its superior court, and the director himself. The salary was paid by the county, which was then reimbursed by the state. Regular salary increases thereafter were tied to salary increases for state employees, but the proposed increase which precipitated this dispute was above the state scale and would have been paid entirely by the county. Brief for Respondent at 3–4, *In re* Juvenile Director, 87 Wn. 2d 232, 233–34, 552 P.2d 163, 164 (1976).

2. The judge was called in from a neighboring county, apparently to avoid conflict of interest problems. *Id.* at 233, 522 P.2d at 164.

3. The supreme court found that the trial court's decision hinged on two basic conclusions. The trial court held first that R.C.W. § 13.04.040, granting power to the board of county commissioners to set salaries, was an infringement on the superior court's inherent power to compel funding of its own functions. *In re* Juvenile Director, 87 Wn. 2d 232, 235, 552 P.2d 163, 165 (1976). R.C.W. § 13.04.040 provides in pertinent part: "The probation counselors and persons appointed to have charge of detention facilities shall each receive compensation which shall be fixed by the board of county commissioners . . . ." WASH. REV. CODE § 13.04.040 (1976). The trial court also held that such granting of power violated the doctrine of separation of powers. 87 Wn. 2d at 237, 552 P.2d at 166. Article IV, § 1, of the Washington Constitution, defining judicial power, states: "The judicial power of the state shall be vested in a supreme court, superior courts, justices of the peace, and such inferior courts as the legislature may provide." On the facts of the case, the supreme court expressly rejected the first conclusion, *see* note 4 and accompanying text *infra*, and also the second, but left the door open for a future finding, given stronger evidence, that action by the board pursuant to the statute could be an unconstitutional infringement on judicial power. For a brief discussion of the doctrine of separation of powers, *see* note 18 and accompanying text *infra*.

4. *In re* Juvenile Director, 87 Wn. 2d 232, 236, 552 P.2d 163, 166 (1976). The superior court, citing Norman v. Van Elsberg, 262 Or. 286, 497 P.2d 204 (1972), held that the burden of proof rested with the board of county commissioners to prove that the director's salary was unreasonable. But in that case, the statute in question allowed the court to designate the salary of the official in question and the board to approve it.

The court, however, did agree unanimously with the general proposition that, under certain circumstances, the judiciary is empowered to set salaries of court personnel under the doctrine of inherent powers. Five of the eight members of the court who participated in the decision[5] declared that this power should be used only when the court could show by "clear, cogent, and convincing proof"[6] that the salary increase was reasonably necessary. Because that standard had not been met by the Lincoln County superior court, the decision was reversed.[7]

In re Juvenile Director[8] defines the scope of the inherent power of the judiciary to compel funding of its own operations.[9] It imposes, for the first time in any state jurisdiction, a strict standard which the court must meet to prove the reasonable necessity[10] of such action—clear, cogent, and convincing proof.[11] This note will analyze the court's rea-

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The Washington statute, R.C.W. § 13.04.040, *quoted in part at* note 3 *supra,* gives the board of county commissioners full authority to fix salaries. Because the statute in question differed significantly from the one at issue in *Norman,* that case was not persuasive.

5. Justice Dolliver, who had only recently been appointed to the court, did not participate in the decision. *In re* Juvenile Director, 87 Wn. 2d 232, 233, 552 P.2d 163, 163 (1976).

6. *Id.* at 251, 552 P.2d at 174.

7. *Id.* at 252, 552 P.2d at 175. A concurring opinion disagreed with the majority view on the issue of standard of proof, favoring the less stringent "preponderance of the evidence" test to prove reasonable necessity. *Id.* at 253, 552 P.2d at 175. Justice Brachtenbach signed both the opinion which contains the actual holding and the concurring opinion. His position on the proper standard of proof remains unclear.

8. 87 Wn. 2d 232, 552 P.2d 163 (1976).

9. The Washington Supreme Court introduced the proposition that the judicial branch has inherent power to compel funding in Zylstra v. Piva, 85 Wn. 2d 743, 539 P.2d 823 (1975) (courts do not relinquish inherent powers when their employees are allowed to bargain collectively, nor does a statute authorizing collective bargaining impair the inherent power of the judiciary to require payment of necessary funds for the efficient administration of justice). Other recent Washington Supreme Court decisions dealing with the doctrine of inherent powers in general include State v. Fields, 85 Wn. 2d 126, 530 P.2d 284 (1975) (courts have inherent power to prescribe rules of procedure); State v. Smith, 84 Wn. 2d 498, 527 P.2d 674 (1974) (courts have inherent power to set conditions of bail), State v. Cook, 84 Wn. 2d 342, 525 P.2d 761 (1974) (courts have inherent power to determine who may appear before them as legal counsel); Iverson v. Marine Bancorp., 83 Wn. 2d 163, 517 P.2d 197 (1973) (courts have inherent power to make and waive rules); Deskins v. Waldt, 81 Wn. 2d 1, 499 P.2d 206 (1972) (inherent power of courts to punish for contempt cannot be legislatively modified).

10. Reasonable necessity is shown to exist when, absent the requested funding, the court could not fulfill its duties or would be unable to efficiently administer justice. 87 Wn. 2d at 252, 552 P.2d at 175. *Cf.* note 36 *infra* (use of equivalent terms in other jurisdictions). *See generally* Kaplan, *There Must Be No Interference With The Courts,* MUNICIPAL COURT REV., April 1966, at 15 (funding is reasonably necessary when it is essential to court survival or efficient functioning as a judicial agency).

11. 87 Wn. 2d at 251, 552 P.2d at 174. Although many jurisdictions require proof

sons for establishing this high standard of proof, examine the standard itself, and compare it with the standards applied in other jurisdictions to compel judicial funding under the doctrine of inherent powers. In addition, this note will compare the application of the doctrine in other jurisdictions with the scope of the doctrine as now applicable in Washington. Comparison will focus primarily on those states in which the doctrine has been liberally construed to permit broad judicial discretion in its application. Finally, the values which support liberal application of the doctrine—the desire for judicial independence and adequate financing—and those which militate against liberal use of the doctrine—constitutional barriers and policy restraints—will be examined.[12]

This note concludes that by requiring courts to meet a strict standard of proving reasonable necessity before they are allowed to compel funding of their own operations under the inherent powers doctrine, the Washington Supreme Court has correctly perceived the pitfalls and illusory attractiveness of liberal application of the doctrine and has correctly determined that constitutional and political considerations require great restraint in its application. Although some

beyond a reasonable doubt in certain types of civil actions, *see, e.g.*, 27 U. FLA. L. REV. 260 (1974), the Washington courts do not equate clear, cogent, and convincing proof with proof beyond a reasonable doubt. Bland v. Mentor, 63 Wn. 2d 150, 154, 385 P.2d 727, 730 (1963). Rather, it is a standard of proof lying somewhere between a preponderance of the evidence and the more rigorous standard of proof more commonly found in criminal proceedings. *See* 9 J. WIGMORE, EVIDENCE § 2498, at 329 (3d ed. 1940); James, *Burdens of Proof*, 47 VA. L. REV. 51 (1961). Nevertheless, the standard is high, particularly when compared with that used in most other jurisdictions in which the doctrine of inherent powers has recently been used to compel funding of court expenses. *See, e.g.*, Smith v. Miller, 153 Colo. 35, 384 P.2d 738 (1963); Carlson v. State *ex rel.* Stodola, 247 Ind. 631, 220 N.E.2d 532 (1966); Judges for the Third Judicial Circuit v. County of Wayne, 383 Mich. 10, 172 N.W.2d 436 (1969), *modified on rehearing*, 386 Mich. 1, 190 N.W.2d 228 (1971); Norman v. Van Elsberg, 262 Or. 286, 497 P.2d 204 (1972); Commonwealth *ex rel.* Carroll v. Tate, 442 Pa. 45, 274 A.2d 193, *cert. denied*, 402 U.S. 974 (1971). Implicit in these decisions is the requirement that the normal preponderance of the evidence standard of proof in civil cases is adequate to meet the court's burden of proving reasonable necessity, both when the burden lies with the courts to prove legislative unreasonableness and when it lies with the legislative body to prove judicial unreasonableness.

12. An ancillary problem in the case, beyond the scope of this note, is whether R.C.W. § 13.04.040 is constitutional. The Lincoln County superior court declared it to be unconstitutional on the grounds mentioned at note 3 *supra*. The Washington Supreme Court upheld that court's reasoning with respect to the inherent powers doctrine, but limited the scope of its applicability by imposing a strict standard of proof. Thus the statute is constitutional, but if it operates to deny the power to fund when a court proves reasonable necessity by clear, cogent, and convincing proof, then it is unconstitutional as applied because it infringes upon the court's inherent power.

commentators and courts have seen great promise in the doctrine, particularly as a solution to budgetary problems in the judicial branch, doctrinal and practical limitations preclude its extensive application.

I. THE COURT'S REASONING

After rejecting the statutory basis for the superior court's decision,[13] Justice Utter examined the constitutional basis upon which a court may justifiably compel funding to meet its own requirements. He found that because the judiciary has no power to appropriate funds, as does the legislative branch,[14] and because it has no power to exercise a veto as a bargaining device, as does the executive,[15] its only means of participating in the budgeting process is through litigation to compel funding.[16] The doctrine of inherent powers provides the theoretical justification for such lawsuits.[17]

Justice Utter analyzed at some length the doctrines of separation of

13. 87 Wn. 2d at 236, 552 P.2d at 166. *See* discussion at notes 3 & 4 *supra*.

14. 87 Wn. 2d at 237, 552 P.2d at 166. That the power to tax is a legislative power is almost axiomatic. WASH. CONST. art. II, § 1 does not specifically list the power to levy taxes as a legislative power, but WASH. CONST. art. VII, § 1 (dealing with revenue and taxation) makes it clear that this is the case. *Accord,* Love v. King County, 181 Wash. 462, 44 P.2d 175 (1935) (taxation is a legislative process). *See generally* R. DISHMAN, STATE CONSTITUTIONS: THE SHAPE OF THE DOCUMENT (National Municipal League State Constitutional Studies Project No. 1, rev. ed. 1968). That the power to tax is a legislative power is consistent with conventional constitutional theory as well, as reflected in THE FEDERALIST No. 78 (A. Hamilton): "The legislature . . . commands the purse . . . . The judiciary, on the contrary, has no influence over . . . the purse; no direction . . . of the wealth of the society; and can take no active resolution whatever."

15. 87 Wn. 2d at 237, 552 P.2d at 166. *See* U.S. CONST. art. I, § 7.

16. 87 Wn. 2d at 237, 552 P.2d at 166.

17. Under the doctrine of inherent powers, a branch of government possesses the means necessary to perform its constitutionally assigned tasks even though the powers to do so are not specifically granted either by the Constitution or by enabling legislation. The doctrine of inherent powers is thus a necessary adjunct of the doctrine of separation of powers. *See* note 18 *infra*. Each branch has separate duties assigned it by the Constitution and each branch is said to have, of necessity, those powers which will enable it to carry out its duties. Those powers are *inherent* in the branch. Knox County Council v. State *ex rel.* McCormick, 217 Ind. 493, 498, 29 N.E.2d 405, 407–08 (1940). The doctrine of inherent powers is most often invoked by the courts to protect their ability to perform their constitutionally assigned duties. It has been applied to punish for contempt, Wood v. Georgia, 370 U.S. 375 (1962); to allow courts to appoint counsel for a criminal defendant, Powell v. Alabama, 287 U.S. 45, 73 (1932); and to appoint counsel for indigent defendants, State v. Rush, 46 N.J. 399, 217 A.2d 441, 448 (1966) (the county should pay counsel "at 60% of the fee a client of ordinary means would pay an attorney of modest financial success"). *But see* United States v. Dillon, 346 F.2d 633 (9th Cir. 1965) (requiring an attorney to represent an indigent defendant is not a "taking" of the attorney's services which would require compensation under the fifth amendment). It has been used to control photography in court, *Ex parte* Sturm, 152 Md. 114, 136 A. 312 (1927); to honor letters

powers and checks and balances[18] which provide the doctrinal underpinnings of inherent powers. He argued that a delicate balance exists among the three branches of government, fostered by the fact that each has separate powers and functions while exercising some influence over the others. Serious imbalance can occur, however, if checks by one branch on the activities of another serve to undermine the op-

rogatory, *Ex parte* Taylor, 110 Tex. 331, 220 S.W. 74 (1920); and to insure a fair criminal trial, Sheppard v. Maxwell, 384 U.S. 333 (1966).

18. This note assumes, as did the Washington Supreme Court, that the doctrines are applicable in the state as well as the federal context. Although the focus of this note is the doctrine of inherent powers, a brief discussion of the related doctrines of separation of powers and checks and balances is in order.

The doctrine of separation of powers is based on the philosophical assumption that governmental power should be limited and that the only way to limit it is to divide it among coequal branches of government. In its purely theoretical form, the doctrine has three elements. First, the *agencies* of government should be divided into three categories: The legislature, executive, and judiciary. Second, the *functions* of government are, by nature, divisible into three classes: The legislative, executive, and judicial. The difference between the first and second elements is as follows: The agencies of government are divided to create, almost artificially, three separate centers of power within government. The functions, on the other hand, are viewed as natural tasks which all governments must perform regardless of their structure. The third element is "separation of persons"—that is, not allowing the same people to occupy the same positions or perform the same functions. M. VILE, CONSTITUTIONALISM AND THE SEPARATION OF POWERS 14–18 (1967). In its pure form the doctrine of separation of powers represents a system of negative checks on the exercise of power by the government, designed to protect the citizens against abuse of power.

Applied practically, the doctrine is not absolute, however, and is complemented in constitutional theory by the doctrine of checks and balances. Indeed, there is evidence that the drafters of the constitution viewed checks and balances as an integral part of the separation of powers doctrine. Madison, in discussing separation of powers, argued: "[U]nless these departments [the three branches of government] be so far connected and blended as to give to each a constitutional control over the others, the degree of separation which the maxim requires, as essential to a free government, can never in practice be duly maintained." THE FEDERALIST No. 48 (J. Madison). Nevertheless, the doctrine of checks and balances is distinct and useful as a positive check by one branch on abuse of power by another. Thus, the executive branch checks the legislative through its limited veto power, U.S. CONST. art. I, § 7, and, for example, by setting tariff policies, *see, e.g.,* Yakus v. United States, 321 U.S. 414 (1944); Exec. Order No. 11,615, 3 C.F.R. 602 (1971–1975 Compilation) (superseded by Exec. Order No. 11,718, 3 C.F.R. 877 (1971–1975 Compilation), *reprinted in* 12 U.S.C. § 1904 app., at 764 (Supp. V 1975)). The same branch exercises limited judicial power by granting pardons and appointing judges, U.S. CONST. art. II, § 2. Likewise, the legislative branch has limited control over both the executive and judicial branches through its impeachment power, *id.* art I, § 2, cl. 5; art. II, § 4. Finally, the judicial branch performs legislative functions when, for example, it sets general rules for automobile safety, *see* Baltimore & O.R.R. v. Goodman, 275 U.S. 66 (1927), *limited by* Pokora v. Wabash Ry., 292 U.S. 98 (1934), or exclusionary rules in criminal procedure, *see, e.g.,* Miranda v. Arizona, 384 U.S. 436 (1966); Mapp v. Ohio, 367 U.S. 643 (1961). The court injunction is an effective and frequently used check on executive power. This jurisdictional overlap was both intended and necessary. Without it, the strict requirements of separation of powers alone would have created inflexible institutions incapable of dealing with the gray areas where functions, in fact, overlap. For a more extensive discussion of separation of powers and checks and balances, *see Juvenile Director,* 87 Wn. 2d at 238–43, 552 P.2d at 167–71 (collecting cases and citing au-

erations of that branch or otherwise interfere with its lawful responsibilities.[19] He found that the potential for this kind of abuse exists in the area of judicial financing.[20] When, for example, the refusal of a legislative body to allocate funds results in the inability of the court to fulfill a necessary and lawful function, the court may compel that expenditure through the exercise of its inherent power. In this manner, the court can act as a check on an abuse of power by the legislative body which threatens the balance between the branches.[21]

Justice Utter noted, however, that the judicial branch itself is not immune from abusing its power. Judicial involvement in court financing creates a risk of abuse because a lawsuit to compel court funding based on the doctrine of inherent powers ignores the fact that monetary allocation is essentially a political act. Constitutionally and traditionally it is performed by persons, elected by the people and responsible to them, whose decisions are based on compromise and the weighing of competing interests. Thus it is necessary to balance judicial autonomy with reciprocity and a recognition of non-judicial interests when considering the exercise of inherent judicial power to compel court funding. Because the public is the final arbiter of disputes between the branches, it is necessary that the public find acceptable the exercise of this inherent power if it is to have any long term usefulness.[22] Justice Utter concluded that the courts do, in fact, have

thority). *See generally* A. VANDERBILT, THE DOCTRINE OF THE SEPARATION OF POWERS AND ITS PRESENT-DAY SIGNIFICANCE (1953); THE FEDERALIST NOS. 47–51 (J. Madison); Frohnmayer, *The Separation of Powers: An Essay on the Vitality of a Constitutional Idea,* 52 ORE. L. REV. 211 (1973). For a criticism of the doctrine in the context of the development of administrative law, see J. LANDIS, THE ADMINISTRATIVE PROCESS 1–2, 49 (1938).

19. 87 Wn. 2d at 243, 552 P.2d at 170.

20. Justice Utter stated:

> Although the judiciary possesses authority to check the arbitrary or unconstitutional exercise of power by legislative and executive branches, it is the only branch excluded from participation in the formulation and adoption of the government budget. Such exclusion makes the courts vulnerable to improper checks in the form of reward or retaliation.

87 Wn. 2d at 244, 552 P.2d at 170. *See also* C. BAAR, SEPARATE BUT SUBSERVIENT: COURT BUDGETING IN THE AMERICAN STATES (1975); E. FRIESEN, E. GALLAS, & N. GALLAS, MANAGING THE COURTS 67–82 (1971); G. HAZARD, M. MCNAMARA, & I. SANTILLES, COURT FINANCE AND UNITARY BUDGETING (A.B.A. Comm'n on Standards of Judicial Admin., 1973) [hereinafter cited as COURT FINANCE AND UNITARY BUDGETING]; Carrigan, *Inherent Powers and Finance,* TRIAL, Nov.-Dec. 1971 at 22.

21. 87 Wn. 2d at 245–47, 552 P.2d at 170–72.

22. *Id.* at 250–51, 552 P.2d at 173–74. Public acceptance was argued to be important for two reasons. First, through its electoral power, the public can discourage use of judicial power against public interest. Second, and according to Justice Utter more important, compelling a legislative body to allocate funds against its wishes is a

the inherent power to compel funding for their own use, but that in order to protect these legitimate competing interests, the exercise of that power should be carefully controlled. For this reason, the majority imposed a strict standard of proof, requiring the courts to prove the reasonable necessity of any expenditure by clear, cogent, and convincing evidence. The opinion concludes by suggesting that this strict standard may not be appropriate in all circumstances, and that where the ability of a court to perform a "constitutionally-mandated function" is at issue, a different standard might apply.[23]

II. THE USE AND ABUSE OF THE INHERENT POWERS DOCTRINE

A. Inherent Powers

The doctrine of inherent powers has long been used in ways related

form of coercion which, in the long run, would undermine public support upon which the rule of law ultimately rests. *See* P. FITZGERALD, SALMOND ON JURISPRUDENCE 89 (12th ed. 1966).

23. 87 Wn. 2d at 252, 552 P.2d at 175. No guidance is given in the opinion as to when a less burdensome standard would apply. However, the following parameters may be implied: First, the term "constitutionally-mandated function" should be relatively narrowly defined to include those functions of the courts which are either expressly ordered by the Constitution or which flow naturally and directly from it, including, for example, the payment of attorney's fees to provide a proper defense for indigent criminal defendants, *see, e.g.*, Luke v. County of Los Angeles, 269 Cal. App. 2d 209, 74 Cal. Rptr. 771 (1969); State v. Rush, 46 N.J. 399, 217 A.2d 441 (1966), and the payment of necessary expenses which are unanticipated but of constitutional importance, *see, e.g.*, People v. Randolph, 35 Ill. 2d 244, 219 N.E.2d 337 (1966) (trial court of a sparsely populated county ordered the *state* to pay for an unanticipated and costly murder trial), or which come upon a court because of the actions of a higher court. For example, if the work load of a court were substantially increased due to a proliferation of writs of habeas corpus as a result of the United States Supreme Court's decision in Swain v. Pressley, 97 S. Ct. 1224 (1977), that court could arguably justify a mandate for more funds and not be required to meet the higher standard of proof to obtain them—this being a "constitutionally-mandated function" as therein defined by the Supreme Court. There is a great qualitative as well as factual difference between the suit in which a court applies the inherent powers doctrine and flowing rhetoric to acquire control of the courthouse elevator, *see* Board of Comm'rs v. Stout, 136 Ind. 53, 35 N.E. 683 (1893), or to purchase new chairs and carpet, *see* State *ex rel.* Kitzmeyer v. Davis, 26 Nev. 373, 68 P. 689 (1902), and the suit in which a person's freedom is in jeopardy. In the former cases, the link between need and constitutional necessity is tenuous at best, whereas in the latter the link is direct and immediate. Consistent with the holding in *Juvenile Director,* the standard of proof to which a court is held is correspondingly higher in the former suits than in the latter. Likewise, the need to take into account the public interest in insuring that notorious criminals be tried and convicted must give way to the mandate of the Constitution that such persons be guaranteed a fair trial. Whether the public approves of the expenditure of money for that purpose is irrelevant; thus a high standard of proof is unnecessary. *See generally* notes 57–60 and accompanying text *infra.*

to court financing,[24] but only relatively recently has the scope of its application been broadened to permit courts more direct control over funds not specifically allocated to the judicial branch. Traditionally, all governmental budgeting, including judicial budgets, had been considered the prerogative of the legislative branch because it has the power to tax[25] and is closer to the roots of sovereign power—the people. Consequently, a strict interpretation of the separation of powers doctrine has led some courts to refrain from compelling legislative bodies to pay for unbudgeted expenses except in unusual or extreme circumstances.[26] Some jurisdictions continue to follow this narrow application of the doctrine,[27] while others have denied the validity of the doctrine, at least to the extent that it can be used to justify compulsion of present budgeting for future expenditures.[28]

More recently, however, scholarly advocates have declared the inherent powers doctrine to be a useful, almost invaluable tool enabling courts to execute their responsibilities properly and to solve the broad

24. The doctrine has been used in a variety of ways related to court financing, including determining the necessity for and selection of court employees, fixing salaries and requiring their payment, setting effective dates of salary raises, determining annual leave and retirement benefits, compelling services to third parties (meals for jurors, elevators for court visitors, etc.), and mandatory funding for courthouse facilities, equipment, and supplies. *See* cases cited in J. CARRIGAN, INHERENT POWERS OF THE COURTS 13–21 (National College of the State Judiciary, 1973); text accompanying note 53 *infra*.

25. *See* note 14 *supra*.

26. An early and much cited case in which the potential of the doctrine was recognized but its application was narrowly restricted was State *ex rel.* Hillis v. Sullivan, 48 Mont. 320, 137 P. 392 (1913). The Montana Supreme Court stated that, given the existence of a statutory scheme which would normally be expected to allow proper court financing, the exercise of inherent power to compel unbudgeted spending was allowed only when those statutory methods of meeting the specific problem failed, or when there was some other emergency.

27. *See, e.g.*, Merrill v. Phelps, 52 Ariz. 514, 84 P.2d 74 (1938) (only when a statute is so unreasonable that it hampers or prevents a court's performance of its constitutional duties is there an unconstitutional infringement on the court's inherent power); State v. Leavitt, 44 Idaho 739, 260 P. 164 (1927) (the courts' inherent power to appoint is applicable only when there is some peculiar emergency, or when the agency with statutory appointment power either neglects or refuses to act); Board of County Comm'rs v. Devine, 72 Nev. 57, 294 P.2d 366 (1956) (courts have inherent power to secure employees at public expense only if the regular statutory scheme fails or if the appointing body arbitrarily and capriciously fails to provide such a person and efficient administration of justice is thereby destroyed or seriously impaired).

28. *See, e.g.*, Morgan County Comm'n v. Powell, 292 Ala. 300, 293 So. 2d 830 (1974) (authority to determine budgetary allocations vests completely in the legislature; courts may use inherent powers to compel funding only when an emergency expense has already been incurred). *Cf.* O'Coin's, Inc. v. Treasurer of County of Worcester, 362 Mass. 507, 287 N.E.2d 608 (1972) (courts may incur reasonably necessary expenses by using the inherent powers doctrine, but only with prior approval of the chief justice of the state's supreme judicial court or some other designated judicial officer).

and chronic problems of judicial financing.[29] Also, decisions by the supreme courts of Michigan,[30] Colorado,[31] Oregon,[32] Indiana,[33] and Pennsylvania[34] lend support to the view that courts can and should take a more active role in budget matters by bringing suit to enforce their inherent powers. The rationale for this form of judicial activism

29. Carrigan, *supra* note 20; Note, *Judicial Financial Autonomy and Inherent Power,* 57 CORNELL L. REV. 975 (1972).

30. Judges for the Third Judicial Circuit v. County of Wayne, 383 Mich. 10, 172 N.W.2d 436 (1969), *modified on rehearing,* 386 Mich. 1, 190 N.W.2d 228 (1971). An action by the judges of the third judicial district seeking to compel the county and its officers to pay for additional court officers and employees was sustained by the Michigan Supreme Court. The court held that inherent powers may be invoked in an emergency to compel hiring of additional administrative help. In dictum the court noted that because the courts must exercise this power carefully as a coequal branch, they bear the burden of proving reasonableness. The facts of the case reveal, however, that the reasonableness of the demand was not disputed; Wayne County defended solely on the basis of lack of funds. 172 N.W.2d at 446. The holding of the Michigan Supreme Court was that non-availability of funds was not relevant, and the final order resulted in an increase of approximately $200,000 in the court's yearly budget. 190 N.W.2d at 241–42; 172 N.W.2d at 446. The fact that the expenditures were prospective in nature rather than retroactive, as well as the amounts involved and the rhetoric the court used in justifying the decision, distinguish this case from the line of cases cited in notes 26–28 *supra.*

31. Smith v. Miller, 153 Colo. 35, 384 P.2d 738 (1963). In an action to compel a board of county commissioners to approve salaries of court employees set by the court (a procedure provided for by statute), the Colorado Supreme Court held that district courts have inherent power to fix salaries of their employees and the boards of county commissioners have a ministerial duty to approve them, absent a showing that the salaries are unreasonable and unjustified or that the court's actions are arbitrary and capricious.

32. Norman v. Van Elsberg, 262 Or. 286, 497 P.2d 204 (1972). *See* note 4 *supra.*

33. Carlson v. State *ex rel.* Stodola, 247 Ind. 631, 220 N.E.2d 532 (1966). The Indiana Supreme Court sustained a city court's power to mandate approval of its budget proposal by the city council. Even statutes which set certain salary schedules for court employees had to yield to the inherent right of the court to determine its own needs and compel the legislative body to meet them. "[T]he . . . court [has] authority to provide for the payment of expenses necessary for its proper functioning in the absence of any showing of abuse of such discretion." *Id.* at 536. *See* Noble County Council v. State *ex rel.* Fifer, 234 Ind. 172, 125 N.E.2d 709 (1955).

34. Commonwealth *ex rel.* Carroll v. Tate, 442 Pa. 45, 274 A.2d 193, *cert. denied,* 402 U.S. 974 (1971). From an original prayer for $3,962,532 from the Court of Common Pleas of Philadelphia, the Pennsylvania Supreme Court entered judgment for $1,365,555. 274 A.2d at 200. The court held that, although the court seeking the funding bore the burden of proving reasonable necessity for such expenditures, a judicial finding of reasonableness would supersede a prior legislative determination that funding was unnecessary. *Id.* at 199–200. The amounts involved, coupled with the language found in the opinion, suggest very strongly that the Pennsylvania Supreme Court considered the doctrine of inherent powers to be the means whereby the judicial branch may achieve full fiscal autonomy and thus true independence from the other branches of government:

> [T]he Judiciary *must possess* the inherent power to determine and compel payment of those sums of money which are reasonable and necessary to carry out its mandated responsibilities, and its powers and duties to administer Justice, if it is to be in reality a co-equal, independent Branch of our Government.

Id. at 197 (emphasis in original). The decision occasioned much comment, both positive, *see* Carrigan, *supra* note 20; Note, *Judicial Financial Autonomy and Inherent Pow-*

is concern over inadequate legislative consideration for judicial needs and the resulting widely held perception that the judicial branch is the weakest of the three "coequal" branches of government.[35]

All of these decisions require as a condition precedent to the particular expenditure a finding of "reasonable necessity" or some similar condition.[36] Some of these courts place the burden of proving lack of reasonable necessity on the legislative body resisting the expenditure,[37] while others place the burden upon the courts to prove reasonable necessity.[38] None of these decisions, however, sets out a clear standard of proof by which this condition precedent must be shown. In this respect, *In re Juvenile Director* presents a new formula for the application of the doctrine.

The substantive attraction of using the inherent powers doctrine more widely to compel court funding lies not so much in the desire to increase judicial power, but rather in the promise it offers for solving the much broader and more chronic problems of judicial financing.[39]

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er, 57 CORNELL L. REV. 975 (1972), and negative, *see* Comment, *State Court Assertion of Power to Determine and Demand Its Own Budget*, 120 U. PA. L. REV. 1187 (1972). The Pennsylvania Supreme Court may have softened its inherent powers rhetoric somewhat in Glancey v. Casey, 447 Pa. 77, 288 A.2d 812 (1972), in which it held it was powerless to overturn a legislative determination that judicial salary increases were retroactive only to a limited extent—a determination which the lower court had disputed, citing *Tate* and the inherent powers doctrine as authority. The high court distinguished *Tate* because in that case judicial salaries were not involved. This distinction is more technical than explanatory because the funds in *Tate* did involve salaries of court employees, though not of judges.

35. *See* note 20 and accompanying text *supra*.

36. Other jurisdictions use roughly equivalent terms in stating the test applied to determine whether an inherent powers mandate will be used to compel expenditures. *See, e.g.*, Smith v. Miller, 153 Colo. 35, 384 P.2d 738, 741 (1963) (county commissioners must show salaries fixed were "unreasonable and unjustified" in order to carry the burden of proof to defeat a mandate); Judges for the Third Judicial Circuit v. County of Wayne, 383 Mich. 10, 172 N.W.2d 436, 441 (1969) ("practical necessity"), *modified on rehearing on other grounds*, 386 Mich. 1, 190 N.W.2d 228 (1971).

37. This is so in Colorado, Oregon, and Indiana. *See* notes 4 & 31–33 *supra*. In Colorado and Oregon, the courts relied in part on statutes controlling the determination of judicial salaries.

38. Although both the Michigan and Pennsylvania supreme courts place the burden of proving reasonable necessity upon the courts, the ease with which that burden is met appears to differ. *See* notes 30 & 34 *supra*.

39. Indeed, at least one successful practitioner has suggested that the doctrine of inherent powers is potent enough to solve the problems courts face because of increased caseloads, shortage of personnel, inadequate equipment, and shortage of funds for other purposes. He states:

> [T]he separation of powers doctrine, properly understood, imposes on the judicial branch . . . a *positive* responsibility to perform its own job efficiently. This *positive* aspect of separation of powers imposes on courts affirmative obligations to assert and fully exercise their powers, to operate efficiently by modern standards, to protect their independent status, and to fend off legislative or executive at-

Given the long history of inadequate funding and frequent and well-reasoned calls for reform of court financing,[40] the doctrine of inherent powers offers an enticing means of self-help, enabling the courts to resolve budgetary problems and to function smoothly. In fact, the doctrine is a useful tool for asserting judicial independence and for accomplishing objectives of limited financial import and scope.[41] With the exception, however, of the Pennsylvania, Michigan, and possibly Colorado decisions, the history of the doctrine does not lead one to the irresistable conclusion that it is a panacea for solving the financial ills of the judiciary.[42]

B. Inherent Powers in Juvenile Director

In contrast to the affirmative use of the doctrine, expressed or implied in the cases and articles cited earlier, in ways that would allow broad control by courts over their own funding, the Washington Supreme Court in *Juvenile Director* has declared that inherent powers will be used only as a *defensive* tool in court financing problems. By requiring a court seeking to utilize the doctrine to compel expenditure of funds to meet a very high standard of proof,[43] it has served notice to both the legislature and the public that the courts' inherent power to compel funding will be used only in circumstances in which failure

tempts to encroach upon judicial prerogatives. From that responsibility arises an inherent power of courts to require that they be reasonably financed.

Carrigan, *supra* note 20, at 22 (emphasis in original). Mr. Carrigan was counsel for the successful respondent in Smith v. Miller, 153 Colo. 35, 384 P.2d 738 (1963), *discussed at* note 31 *supra*, and is now a member of the Colorado Supreme Court.

40. *See, e.g.*, COURT FINANCE AND UNITARY BUDGETING, *supra* note 20; Brennan, *Judicial Fiscal Independence*, 23 U. FLA. L. REV. 277 (1971); National Conference of Court Administrators & Conference of Chief Justices, *Statement of Principles—The Need for Independence in Judicial Administration*, 50 JUDICATURE 129 (1966); Rieke, *Unification, Funding, Discipline and Administration: Cornerstones for a New Judicial Article*, 48 WASH. L. REV. 811, 818–24 (1973).

41. *See* note 24 *supra;* cases cited at note 53 *infra*.

42. Indeed, the inability of the courts to enforce their decisions in two of the three cases places one of the problems in stark relief. The controversy decided in Judges for the Third Judicial Circuit v. County of Wayne, 383 Mich. 10, 172 N.W.2d 436 (1969), was remanded and, upon rehearing before the Michigan Supreme Court, the court's inherent power to compel funding was "strengthened" so that reasonableness did not depend on availability of funds in the county to pay for the proposed expenses. 386 Mich. 1, 190 N.W.2d 228, 241–42 (1971). The county, however, ignored the order. *See* C. BAAR, *supra* note 20, at 147. Similarly, in Commonwealth *ex rel.* Carroll v. Tate, 442 Pa. 45, 274, A.2d 193, *cert. denied*, 402 U.S. 974 (1971), the Philadelphia court of common pleas won a judgment in excess of $1.3 million but has yet to see any of it. *See In re* Juvenile Director, 87 Wn. 2d at 251 n.6, 552 P.2d at 174 n.6.

43. *See* note 11 *supra*.

to exercise that power would threaten the ability of a court to operate effectively and independently.[44] Such caution is preferable to the more ambitious approach noted in other jurisdictions and is more consistent with constitutional and political imperatives.

1. Constitutional limits on inherent powers

a. The taxing power

Power in the courts to determine not only how their funds are spent but also the amount they have to spend is precluded simply because the legislature, not the courts, has the power to levy taxes and thus to determine the amount of funds available for all governmental purposes.[45] A court order directing legislative funding of a judicially proposed budget approaches the constitutional limits determined by balancing the often competing doctrines of separation of powers and checks and balances.[46] As the extent to which the courts attempt to control their own budgets increases, the likelihood of violating the legislature's right to speak for the people as to the allocation of tax resources increases as well.[47] The point at which judicial self-determination exceeds its proper bounds cannot be precisely defined, but the threat to the judiciary of legislative retaliation and of erosion of public support increases as it is approached. The cautious view taken by the court in *Juvenile Director* shows a healthy respect for these possibilities and will enable the Washington courts to define the reasonable limits of their inherent powers while avoiding the problems which would accompany what might appear to be hasty overreaching.

b. Separation of powers

The doctrine of separation of powers[48] does not require that the

44. *See* notes 52–60 and accompanying text *infra*.
45. *See* note 14 and accompanying text *supra*. Direct taxation by the courts has never been proposed and is not a reasonable alternative.
46. "Checks and balances is the notion that while a different branch performs each of . . . three functions, the others should, by the performance of their functions, prevent arbitrary or unlimited exercise of any one power." C. BAAR, *supra* note 20, at 151; *see In re* Juvenile Director, 87 Wn. 2d at 240–243, 552 P.2d at 168–70; note 17 *supra*. *See generally* W.B. GWYN, THE MEANING OF THE SEPARATION OF POWERS (1965); M. VILE, *supra* note 18.
47. *See generally* COURT FINANCE AND UNITARY BUDGETING, *supra* note 20.
48. *See* note 18 *supra*.

three branches of government be absolutely separate, but rather allows for a certain amount of overlap in function and authority.[49] Indeed, such overlap is vital because extending the inherent powers doctrine to allow a court full control of its own budgetary allocations is contrary to the constitutional premise of the doctrine—no branch of government can be trusted to determine the extent of its own powers.[50] Should this occur, there would no longer be a separation, or even a reasonable overlapping of powers, but a severe encroachment by the judiciary into the affairs of the legislative branch. A direct confrontation between constitutionally equal state governmental branches has been avoided thus far because most decisions have involved a state supreme court sustaining a lower court's use of inherent power to compel relatively minor expenditures of either a municipal or county legislative body.[51] Consequently, the limits of the doctrine of inherent powers have not been tested. The limitations imposed upon the exercise of the doctrine by the court in *Juvenile Director* will insure that these constitutional principles are not violated. This means, however, that the doctrine is not as useful as some have claimed in seeking to resolve basic problems in judicial financing.

2. *Policy considerations*

The use of the inherent powers doctrine in Washington, if applied with the discretion evidenced in *Juvenile Director,* will enable courts to achieve a variety of modest but necessary results. Typical characteristics of inherent powers lawsuits in other jurisdictions[52] are meeting direct threats to the judicial process by external forces, mandating relatively modest emergency expenditures, legitimately sharing control with either the executive or legislative branches, and retaining

49. *Id.*; *see* J. STORY, COMMENTARIES ON THE CONSTITUTION OF THE UNITED STATES § 539 (Boston 1833).

50. This was a basic principle upon which Charles de Montesquieu formulated his treatise on liberty. *See* C. DE MONTESQUIEU, THE SPIRIT OF LAWS 69 (4th ed. London 1878) (1st ed. Geneva 1748). The link between Montesquieu and our own constitutional heritage of separation of powers is most evident in THE FEDERALIST No. 47 (J. Madison).

51. COURT FINANCE AND UNITARY BUDGETING, *supra* note 20, at 3–4. The few cases in which coequal branches at the state level were in conflict involved very narrow and relatively minor issues. *See, e.g., In re* Appointment of Clerk of Court of Appeals, 297 S.W.2d 764 (Ky. 1957) (power to appoint new clerk of court upon incumbent's death); State *ex rel.* Schneider v. Cunningham, 39 Mont. 165, 101 P. 962 (1909).

52. *See* note 24 *supra.*

a particular judicial prerogative which has gained the force of law because of custom or longstanding practice.[53] Thus the doctrine has been most successful as a defensive tool. In addition to constitutional dangers, aggressive use of the inherent powers rationale would cause serious policy consequences, including limitations on judicial independence, a weakening of public trust, and serious budgetary problems.

a. Judicial independence

One of the primary attractions of the use of the inherent powers doctrine is increased judicial autonomy.[54] It is not improbable, however, that excessive use of the doctrine could have the opposite effect —control over the judiciary because of the increased demand for accountability that would result. In a state such as Washington, where judges are elected rather than appointed, pressure from the public during pre-election campaigning could lead to commitments to make fiscal cuts.[55] Demands and criticism from the legislature could also be expected. Thus, although the courts could theoretically achieve fiscal autonomy by using their inherent powers to control their own budgets,[56] the resulting political controls might serve to impose other restrictions on judicial independence which would outweigh the fiscal gains.

b. Public opinion and trust in the judiciary

Although no attempt has yet been made to determine the nature or

53. *See, e.g.*, Adams v. Rubinow, 157 Conn. 150, 251 A.2d 49 (1968) (legislative branch has only limited power regarding certain rules of practice, procedure, and court administration, at least for constitutionally created courts); O'Coin's, Inc. v. Treasurer of County of Worcester, 362 Mass. 507, 287 N.E.2d 608 (1972) (court had power under emergency conditions to order payment of $86 for recorder and tapes necessary for trial); Leahey v. Farrell, 362 Pa. 52, 66 A.2d 577 (1949) (judiciary must comply with legislative fiscal decisions unless the legislature acts arbitrarily or capriciously to deny court funds); *In re* Surcharge of County Comm'rs, 12 Pa. D. & C. 471 (C.P. Lackawanna 1928) (common pleas judge should have a stenographer because every other common pleas judge had been provided with one). *See generally* cases cited in J. CARRIGAN, *supra* note 24, at 13–21.

54. *See* note 39 and accompanying text *supra*.

55. *See* Comment, *State Court Assertion of Power to Determine and Demand Its Own Budget*, 120 U. PA. L. REV. 1187, 1203 (1972). These conclusions are nowhere documented because so far the judicial branch has been largely removed from the budgetary process.

56. If the rhetoric found in many of the decisions were any indication of status,

extent of the impact that extensive use of inherent power to compel court funding would have on public opinion and support for the judiciary,[57] it seems reasonable to expect that the impact would be negative. First, the courts might become convenient scapegoats for a legislature seeking to explain ever-increasing governmental expenditures. Also, the spectacle of one branch of government insisting that its budgetary needs be given priority over those of other branches would be difficult to justify. In the long run, successful assertion of the judiciary's right to compel its own budget would simply raise to a new level of abstraction the debate over the division of limited resources available for all governmental purposes. Each branch conceivably could justify its own needs in terms of what it thought was reasonable and necessary[58] to insure its proper functioning and independence from other branches. When all three branches make the same arguments and each is, in theory, coequal, none can really win. Furthermore, the power and moral force of the judicial branch, resting in large measure on public acceptance of courts as fair and impartial tribunals, would be seriously eroded. It would be difficult indeed to consider a court as an impartial forum when that same court had a stake in the outcome of a suit. In the extreme situation, in which a court demand is met by legislative or executive refusal to comply,[59] the judicial branch would have little to gain and a great deal of respect to lose.[60]

c. Budgeting

The foregoing discussion leads to the conclusion that the doctrine of inherent powers is too circumscribed by constitutional and political restraints to be of significant value in solving the basic problems which courts face because of inadequate funds. At present, the courts in Washington are funded from a variety of sources, including state

one might conclude that several courts had already reached this level of independence. *See, e.g.*, Board of Comm'rs v. Stout, 136 Ind. 53, 35 N.E. 683 (1893); State *ex rel.* Kitzmeyer v. Davis, 26 Nev. 373, 68 P. 689 (1902); Commonwealth *ex rel.* Carroll v. Tate, 442 Pa. 45, 274 A.2d 193, *cert. denied*, 402 U.S. 974 (1971).

57. *See generally* C. BAAR, *supra* note 20, at 148.

58. *See* note 36 and accompanying text *supra*.

59. *See* note 42 *supra*.

60. This recalls President Jackson's well-known response to the Supreme Court decision in Worcester v. Georgia, 31 U.S. 515 (1832): " 'John Marshall has made his decision, now let him enforce it.' " E. CORWIN, JOHN MARSHALL AND THE CONSTITUTION 194 (1919).

legislative allocations,[61] county and city appropriations,[62] and court fees assessed.[63] Such decentralized judicial funding has been widely and justifiably criticized.[64] In general, the most favored solution to the problems of court financing is a system of centralized funding— unitary budgeting—whereby all state courts (with the possible exception of justices of the peace and some municipal courts) would be financed from state funds appropriated by the legislature.[65] Assuming that the present decentralized system of court funding is inadequate and that some form of unitary budgeting is desirable, the question arises, what effect would the use of inherent powers have on achieving that objective? Two contradictory effects are reasonably predictable.

61. The salaries of the judges of the supreme court and one-half of the salaries of the superior court judges are paid by legislative appropriation. WASH. CONST. art. IV, § 13. The salaries of the judges of the court of appeals are paid entirely from state funds. WASH. CONST. art. IV, § 30; WASH. REV. CODE § 2.06.060 (1976).

62. Counties are required to pay one-half the salaries of superior court judges, WASH. CONST. art. IV, § 13, as well as employee salaries and other costs of operating and maintaining superior and district courts. WASH. REV. CODE §§ 2.28.139, .140 (1976); WASH. REV. CODE §§ 2.32.210, .360, .370 (1976). Municipal courts are supported by municipal appropriations. *See, e.g.*, WASH. REV. CODE §§ 34.46.090, .130, .140 (1976).

63. In some cases, the costs of court operations are borne by the court itself, with income derived from the fees it collects and retains for its internal expenses. *See* Rieke, *supra* note 40, at 821 n.51. Though this practice is not as prevalent as it once was, pressure on courts to contribute more to the county budget through increased fees has almost the same result. *See* Seattle District Court, King County Washington, A Management Audit by the Office of County Auditor (May 12, 1972).

64. *See generally* C. BAAR, *supra* note 20; E. FRIESEN, E. GALLAS, & N. GALLAS, *supra* note 20; COURT FINANCE AND UNITY BUDGETING, *supra* note 20; Rieke, *supra* note 40. Specific criticisms include the very real possibility that the members of the board of county commissioners, who allocate the funds to support the superior and district courts, may be parties in a dispute before the same courts, thus presenting possible conflicts of interest; the lack of funds available in some counties to adequately finance their courts; the fact that most county funds come from property taxes—a regressive and limited source of income which may not meet rising budgetary needs of either the courts or other county governmental bodies; the obvious conflict-of-interest problems where the fee justice system still exists; and the general disorganization and unevenness of the present funding system.

65. A "most significant need is to provide adequate appropriated funds for the operation of the entire judicial system from state rather than local government sources." Citizens' Committee on Washington Courts, 1972 Conference Summary, point 5, at 3. *See* COURT FINANCE AND UNITARY BUDGETING, *supra* note 20, at 8–13. *See generally* C. BAAR, *supra* note 20; Rieke, *supra* note 40. The advantages of unitary budgeting would include (1) a strengthening of the judicial branch in relation to executive and legislative branches at all levels of state and local government, (2) a more equitable distribution of funds because surpluses and deficits could be equalized from county to county, (3) increased ability for unified planning and development of more efficient administrative processes, and presumably, (4) increased awareness by the legislature of the needs of the judiciary because of greater exposure to its problems at all levels and the resulting increase in budget allocations.

The first was observed in Colorado following that state's supreme court decision in *Smith v. Miller*.[66] Prior to 1970, Colorado courts were financed primarily from county and local funds, with some salaries and benefits paid by the state. Following the 1963 *Smith* decision, in which it was held that the courts had the inherent power to set employees' salaries,[67] the counties found their court expenses increasing by ten to twenty percent with little practical means of controlling such increases.[68] The counties thereafter supported unitary judicial budgeting at the state level,[69] apparently reasoning that state control of court expenses was preferable to no control. In 1970, unitary budgeting was instituted in Colorado.[70] In Washington, this result is less likely under the conditions created by *Juvenile Director,* because the standards which would allow a court to compel a particular expenditure are at present so strict that they do not pose as significant a threat to municipal and county control over their respective courts. Only if the frequency of the successful use of inherent power were to increase, or if the applicable standards were modified,[71] could one expect the doctrine to have the same impact on Washington court budgeting as it had in Colorado.

A second possible effect of the doctrine would be just the opposite of the first. The use of inherent power to compel court funding could act as an inducement to the state legislature to avoid centralizing state financing of the court system. Admittedly, there is no demonstrable precedent for this result; however, the legislature might prefer to retain a fragmented system of court financing. Under the present decentralized system, demands for payments under the inherent powers doctrine would involve relatively modest amounts, would come from individual courts, and would be directed against city and county legis-

66. 153 Colo. 35, 384 P.2d 738 (1963).
67. 384 P.2d at 741.
68. ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS, STATE-LOCAL RELATIONS IN THE CRIMINAL JUSTICE SYSTEM 207–09 (1971). The situation was also aggravated by a 68% increase in the number of district judges two years after the *Smith* decision. *Id.* at 208.
69. *See* C. BAAR, *supra* note 20, at 144.
70. ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS, STATE-LOCAL RELATIONS IN THE CRIMINAL JUSTICE SYSTEM 207 (1971).
71. Modification of the standard would be undesirable but not an unlikely event considering the fact that the more rigid standard of proof may not in fact enjoy the support of a majority of the court. *See* note 7 *supra*. Should the question be raised again before the Washington Supreme Court, Justice Dolliver may cast the deciding vote.

lative bodies.[72] If unitary budgeting were adopted, demands for payment would be directed to the state legislature, would often involve larger amounts because of the larger budget base of the state judiciary, and would come from the "judicial branch" of government. The state legislature may prefer the de facto limitations of the present decentralized system to the unknown dangers of unitary budgeting. Although it is unlikely that such considerations alone would be sufficient to deter the creation of a system of centralized funding, and although the limitations of *Juvenile Director* pose no major threat to legislative control over expenditures, such factors should be considered as the use of the inherent powers doctrine to compel court funding develops.

III. CONCLUSION

Juvenile Director shows a thoughtful awareness of the conflicts that exist between the need for judicial independence and the demand for more adequate fiscal support for the court system on the one hand, and the perils of confrontation with the legislative branch and the public on the other. By purposefully establishing a high standard of proof when the inherent powers doctrine is to be applied in circumstances not involving constitutionally mandated functions, the court is serving notice that the doctrine is applicable in situations in which the need for such judicial intervention in the budgeting process is truly justified. Because the decision will discourage extensive use of the doctrine, it allows the courts to have modest influence on their own budgets without threatening the legislative branch's basic position as the budgeting authority. Were the high standard of proof to be modified so that courts would find it easier to compel funding, it would increase the likelihood of conflict without appreciably enhancing the usefulness of the doctrine.

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72. This has been the past experience with the doctrine in most jurisdictions. *See* note 51 and accompanying text *supra*.