The Massachusetts Courts In Crisis:

A Model For Reform

BOSTON BAR ASSOCIATION

The Report of the Boston Bar Association
State Court Study Committee

June 1991
PREFACE

Responding to the mounting public and professional concern with the operations of the state courts, I appointed the State Court Study Committee in November 1990 to conduct a critical examination of the management and condition of those courts. The Committee, composed of attorneys with extensive trial experience at every level of the judicial system and a certified public accountant, undertook a study of the structure, organization and management of the Massachusetts court system. This Report presents the findings and recommendations of the Committee.

The study and recommendations are directed to institutional arrangements embracing organization, jurisdiction and procedures governing the courts which are prescribed primarily by the Legislature. However, it is to both the Executive and the Legislative branches of government that most of the major recommendations are addressed, although a number of the recommendations can be implemented by actions of the Justices of the Supreme Judicial Court under their general superintendency powers.

The Committee’s comprehensive examination of the state court system has yielded information bearing on measures for fundamental reform. In some quarters the Report may be viewed as a call for radical reform of our court system. The Boston Bar Association is prepared to advocate this position because, as the Committee found, it is critical to implement its proposals now in order to salvage a court system in crisis rather than attempt incremental measures of reform. The proposed reforms are essentially structural and managerial. Both approaches are vital. We respectfully urge the three branches of government, the executive, legislative and judicial, and indeed the public at large to whom access to justice is a most precious right, to appraise these proposals on the merits.

All of us who are concerned with the administration of justice owe an immense debt of gratitude to the members of the State Court Study Committee who have contributed so much of their knowledge, experience and time to this important effort. None was more dedicated to this arduous task than the chairman, R. Robert Popeo, who by his leadership and commitment established a standard of excellence invaluable to the work of this Committee. I wish to offer our thanks to his firm, Mintz, Levin, Cohn, Ferris, Glovsky & Popeo, for generously providing its support and resources to the Committee. I also wish to specially acknowledge the extraordinary contribution of Sandra L. Lynch, who chaired the drafting subcommittee. Finally, this project could not have been sustained without the unflagging assistance of staff
members, and I acknowledge with deep appreciation the efforts of our Executive Director, Francis S. Moran, Jr.; Sara Romer, Government Relations Director; and Michael F. Connolly and Joseph C. Hegarty of Mintz, Levin, Cohn, Ferris, Glovsky & Popeo.

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President
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Over the past seven months the Boston Bar Association State Court Study Committee has conducted an extensive analysis of the condition and management of the Massachusetts court system. The Committee focused particularly on the administration, authority and governance of the Trial Court. It is a system characterized by antediluvian management resources and serious lack of accountability. We arrived at the inescapable conclusion: the management of the Massachusetts court system is broken and needs to be fixed.

OVERVIEW

We found judges and court personnel demoralized and often working under conditions like those deplored by Charles Dickens more than a century ago. But we believe the situation is not irredeemable. We offer this brief overview of the problems we found and the solutions we think are feasible.

THE PROBLEMS

The problems are fundamental:

1. **There is almost no accountability.**

   No single entity or office has responsibility and authority for management of the courts, so no one can be, or is, held accountable. To the question "Who's in charge here?", the answer is "No one."

2. **The legislature and the governor intrude excessively into the management of the courts.**

   Although the courts are one of the three branches of government intended to be co-equal, in fact the courts have not been treated as such. The legislature exerts pervasive control over the courts through line item budget control and a vast array of legislation that reaches deep into the day to day operation of the courts. As a result, patronage rather than need has often dictated the number and identities of personnel hired. Not infrequently, political factors have kept open unneeded court facilities while those crushed with business are ignored. The governor's direct appointment of various non-judicial court personnel means ultimately that the courts do not control those who should be working for them.

3. **The present administrative structure of the courts is too complex and diffuse.**

   The present Kafkaesque system -- seven different trial court departments, each with its own Chief Administrative Justice,
overlaid by the bureaucracy of the Office of Chief Administrative Justice, underpinned by 69 Presiding Justices of the District and Boston Municipal Courts and supported by a cadre of non-judicial staff which is often neither hired by nor accountable to the judges -- can make accomplishing even the most basic task a nightmare.

4. Support personnel do not report to and frequently do not in fact support the courts.

Courts depend on their support personnel -- clerk magistrates and other clerks, probation officers, court officers, stenographers and others -- to get their work done, but these support personnel too often literally do not work for or report to the judges. In some instances the relationship between the courts and support staff resembles guerilla warfare.

5. The needs of children and families are not adequately served by the existing structure and that situation will only get worse.

Except for certain specialized courts available only in certain locales, the particular needs of children and families are ill met by courts neither trained nor equipped to handle their situations.

6. The mechanisms for judicial accountability are unclear.

Judges must, in a manner consistent with judicial independence, be held accountable, and must be given the tools to effectively manage the courts under their responsibility. The Chief Judges of the courts involved must clearly have the power to discipline judges for abuses, such as some of those described in press reports in 1990. Judges must also be subject to some form of qualitative evaluation.

7. The budget process has little relevance to management objectives.

The present budgetary process provides at best a "maintenance" budget based on prior expenditures plus inflation, and not a realistic assessment of how best to run a system with limited resources.

8. The legislature and governor have ignored the impact on the courts of enactment of new laws, thereby exacerbating the court system's problems.

The explosion in the workload of the courts results directly and primarily from the expansion of rights, crimes and penalties through enacted legislation. Yet the courts have not been given a corresponding increase in resources.
RECOMMENDATIONS

The problems identified are not beyond solutions. We recommend the following as realistic, attainable principles for change.

1. The courts must be given the tools to manage themselves and then they can and must be held accountable.

Courts must have the power to transfer funds, transfer positions and personnel and close courts, powers the legislature traditionally has reserved to itself. The courts must have the power to appoint and remove court personnel, including those traditionally appointed by the governor.

2. The legislature must give up its control over the courts by relinquishing its control over the line items in the courts' budget. The governor must give up his power to appoint non-judicial court personnel.

The historic pattern of systematic intrusion into the management of the courts by the legislature through line item budgeting and by the governor through appointment of court support personnel must end.

3. Ultimate oversight of the management of the court system must be lodged in the Supreme Judicial Court.

Responsibility and accountability for management should ultimately rest in the Supreme Judicial Court, which should, however, not be required to exercise line management.

4. Responsibility for day to day management of the court system must be implemented by units closer to the actual operation of the courts involved.

The Chief Justices of the Trial Court should be vested with broad managerial responsibility and charged with accountability for their departments.

5. The present Office of Chief Administrative Justice should be abolished and a new Administrative Office reporting directly to the Supreme Judicial Court should be created.

A new Administrative Office of the Supreme Judicial Court should handle the irreducible minimum of centralized administrative functions.

6. The Trial Court must be streamlined for management, administration and accountability purposes into fewer operating units.
The present seven departments of the Trial Court should be reduced to three: the Superior Court, the District Court and a new Family and Juvenile Court. Responsibility for management of these courts should be in the Chief Justices of those courts.

7. A new statewide Family and Juvenile Court should be created out of a merger of the present Juvenile Court and some functions of the present Probate and Family Court.

The best way to insure that the special and interrelated needs of children and families not get lost in the system and to enhance the delivery of justice to them is to consolidate matters directly involving them into one statewide court with the needed expertise and services.

8. Complete unification of the Trial Court is not desirable.

The specialized functions served by particular courts are valuable and should be retained. Accordingly, the Land Court should become a Division of the Superior Court and the Housing Court a Division of the District Court. At the same time, non-judicial functions and unnecessary historic artifacts should be eliminated or diverted to appropriate administrative agencies. Accordingly, many of those Probate Court functions not assumed by the new Family and Juvenile Court should be absorbed by the Superior Court or given to non-judicial administrators. The anomaly of the Boston Municipal Court existing as a court separate from the District Courts should be eliminated.

9. The court system must have responsibility for and authority over all support personnel within the court system.

The three Chief Justices of the Trial Court must have control -- including the power to hire, fire, discipline and transfer -- over all non-judicial personnel in the system: all clerk-magistrates and other clerks, probation officers, court officers, court reporters, stenographers, law clerks and others.

10. There must be built in mechanisms to insure accountability.

The three Chief Justices of the Trial Court must be given the power to discipline judges and to do so quickly. The courts must implement methods to evaluate qualitative judicial performance.

11. The budget process must be changed so that it becomes a management tool and expresses management objectives.

Especially in an era of tight public resources, the courts must move from an accretion-to-prior-expenditure method of budget
preparation to a budget which reflects defined needs and objectives.

12. Before enacting new laws the legislature and governor should consider the impact of those laws on the courts.

Civic responsibility requires that if more work for the courts is generated by new legislation, an assessment of the impact on the courts be made for each new law and resources be allocated and funds appropriated to the courts accordingly.

There is a major caveat to these recommendations. Unless adequate funding is provided to the courts, nothing, much less these recommendations, will save the system from collapse.

WHY THE SYSTEM IS IN CRISIS

Virtually every Chief Justice, Associate Justice and user of the court system interviewed by the Committee has agreed that the Massachusetts Trial Court is in crisis. For example, Superior Court Chief Justice Robert L. Steadman has stated:

[The Massachusetts courts now sit on the brink of crisis . . . . By crisis I mean the courts’ inability to discharge [the courts’] mandate of affording to the people of the Commonwealth a fair, impartial, speedy, and inexpensive resolution of their disputes, be they criminal or civil.

These sentiments have been echoed throughout all segments of the Massachusetts judiciary, from the Chief Justice of the Supreme Judicial Court to the Chief Justices and Associate Justices of the Juvenile and District Courts, among others.

A common theme running through the Committee’s interviews with more than a hundred judges and others is the inability of the court system to manage and govern itself. Although a separate and equal branch of the Massachusetts government, the judiciary has been shackled by legislation which strips it of any effective ability to govern itself and manage its resources. This lack of ability to manage is seen most clearly when applied to the smallest segments of the court system: the individual courtrooms which deliver the services to the public. The following is a sample of some of the management problems which currently plague the courts of the Commonwealth.

First, a number of the Presiding Justices in the various District Courts across the Commonwealth have no authority to coordinate or control their individual courts. The three most
important people in these courthouses are the Presiding Justice, the Clerk and the Chief Probation Officer. Many times all three of these individuals are appointed for life and, after relationships deteriorate, they refuse to work cooperatively with one another again. For example, the Committee was informed that in one county, one out of every four head clerks simply refuses to work. Since these clerks are appointed by the governor, the Presiding Justices have no authority to compel them to work. Thus, the Presiding Justice is in effect precluded from administering justice. An extreme, but revealing, example, which occurred this past year, involved a dispute between a clerk and a Presiding Justice which resulted in a physical confrontation between court officers and the clerk whereby the clerk was removed from the courthouse in handcuffs by the police.

Similar problems arise from the relationships between superior court judges and clerk's staffs. The problems are exacerbated by the fact that superior court judges rotate through the counties on a regular basis and the clerks and administrative personnel of the various courthouses stay in place. Add to this mix the fact that the Chief Justice of the Superior Court does not have any control over the hiring, firing and discipline of the courtroom personnel, and the situation emerges where no one is in control. One Chief Justice describes the position as a "ceremonial ornament." More than one judge interviewed by the Committee expressed concern over the lack of authority over the non-judicial personnel who work for the court system. Given the heavy caseload of the courts, this situation is intolerable.

Although the National Center for State Courts recommends that the maximum caseload in a trial court session not exceed 1000 cases, the Massachusetts Superior Court sessions routinely handle many more cases than that. To give but a few examples, in Lowell, there are 2400 cases per judge; in Essex, the caseload is 2300 cases per judge; in Worcester, it is 2100; in Barnstable it is 2000. In contrast to the burden on the Superior Court, in the U.S. District Court for Massachusetts, the federal judges handle caseloads ranging from 350 to 525 cases per judge. One study has concluded that the Massachusetts judiciary has the least support staff of any state in the nation.

The Chief Justices of the Trial Court at present have not been given functional managerial authority to run their courts. There is limited authority for the Chief Justice of a department to discipline or otherwise control the non-judicial personnel. The Chief Justice cannot even transfer an uncooperative court clerk or other non-judicial staff member to another court to solve these problems, in part due to collective bargaining agreements and other employment arrangements. In fact, the individual judge presiding over the courtroom many times will not even be able to require the employee to perform the appropriate filings or other administrative services required for the administration of justice.
Just as a Presiding Justice is many times unable to control the non-judicial personnel, the Chief Justice is severely limited in the ability to control the presiding and associate justices. For example, one Trial Court Chief Justice has in the past disciplined various judges for minor infractions, but always with the consent of the perpetrating judge. Although these judges accepted the discipline and the problem was solved for the most part, the Chief Justice, in disciplining these judges, was doing so without explicit authority. Therefore, a judge engaged in an improper activity may ignore the reprimand of the Chief Justice and continue as he or she pleases. The only recourse for the Chief Justice is to transfer the judge to another location.

This problem is compounded when the complaint or complaints pertain to a Presiding Justice in a District Court. Because Presiding Justices obtain their positions based on seniority and retain those positions for life, these judges are essentially uncontrollable. In fact, the Chief Justice of the District Court met with one such judge to inquire about that judge's attendance record and the judge responded to the Chief: "Look, you have no right to call me in. Your job is to get the better jury instructions and better forms. I don't see anything else in the statute which gives you any more than that." Without the proper authority of the Chief Justice over judges and non-judges alike, running an efficient and effective department of the court system is virtually impossible.

Chief Justices also have problems in attempting to transfer non-judicial personnel for reasons other than discipline. Because of the collective bargaining agreements entered into between certain unions and the Office of the Chief Administrative Justice ("OCAJ"), a portion of the staff supposedly serving the judiciary cannot be transferred to another county or court where there may be a much greater need for their particular services. This problem reached heightened proportions in February of 1991 when the Presiding Justice of the Brockton District Court, acting in his capacity as a Regional Justice, was forced to close down the Fall River criminal and civil courts due to a shortage of court officers.

The inability of the departmental Chief Justices to run their respective departments is highlighted by the lack of control over the necessary finances. After the Chief Justice prepares the budget for his or her department, it is submitted to the OCAJ. The departmental Chief Justice usually will not see that budget again. The OCAJ submits the budget to the Executive Office of Administration and Finance and it is then forwarded to the House and Senate Committees, which develop line-item recommendations for each department or court. These line items are subsequently voted on by the legislature. The various court departments then receive their funding in the form of line-item budgeting and they are required to adhere to those line-item allocations, with no ability to transfer funds, positions or
personnel between departments or, in some cases, among courts without legislative approval.

This system forces the Chief Justices to adhere strictly to the legislative line-items, which, in turn, promotes serious inefficiencies. For example, if one court house is extremely light on business and has unused resources and personnel, the Chief Justice is unable to close that court or even transfer funds allocated to it by the line-item budget to a neighboring court in distress. This issue is exacerbated by the fact that the relative budget allocations to various courts may have little relationship to the difference in workloads handled by different courts. This legislative control of the courts’ purse string is, in effect, crippling the effective and efficient operation of the system.

Another problem arising out of the legislative control of the court budget is the inability of the individual Chief and Presiding Justices to control their own facilities. In fact, under the current management system the judges themselves are many times precluded from working past a certain hour, often 4:30 p.m., and on weekends, because funding is not in the budget. Thus, this lack of financial flexibility clearly adversely diminishes the administration of justice.

The way the court system prepares the budget also creates problems. The budget requests are developed based solely upon the current year’s level of activity and expenditure. Personnel costs are estimated by taking currently authorized staffing at currently authorized pay levels plus anticipated increases. Non-personnel expenditures are budgeted based upon the current year level of expenditure, less clearly non-recurring costs, plus an inflation factor. Thus, the budget that is produced is effectively a maintenance budget. The budget projects expenditure levels in the next fiscal year assuming that everything except cost levels will stay the same. It is not clear that any attempt is made to anticipate changes in external factors (such as caseload) which will require changes in expenditure levels, nor does it appear that any meaningful attempt is made to anticipate management actions which will increase efficiency or otherwise affect expenditure levels. This situation may be a result of a belief on the part of managers within the court system that they do not have the ability to make any real impact upon the allocation of the resources available to the courts.

Further, because the court system does not have a clear process by which management objectives are developed, the budget does not reflect those objectives. An effective budgeting process should be not only a vehicle for estimating spending levels but also a tool for management. The overall objectives for the system should be set and communicated to the operating units, which should then set their own specific objectives with which to accomplish the larger objectives of the system. Only then should the budgeting
process begin, as it is the method by which the court’s management objectives are translated into the estimate of the resources necessary to achieve the objectives. The managers in the system should then evaluate spending plans in relation to prioritized objectives to reach a final management plan and spending budget. However, little can be done to improve the effectiveness of the Trial Court’s budgeting system until the more basic management deficiencies have been addressed.

The enactment of legislation which increases the work of the courts without a corresponding increase in resources is a major concern. The legislature has passed and the governor has signed numerous laws of recent vintage which have drastically increased the business of the courts. One example is the expansion of mandatory sentencing. Because of the negative effect of a mandatory sentence on plea bargaining, the number of criminal cases which go through a complete trial has substantially increased. Similar judicial-intense legislation which involved no assessment of or provision for the impact on the courts include the consumer protection statute (G.L. c. 93A), abortion petitions for minors (G.L. c. 112, §12S), and petitions to stop cruel and abusive treatment (G.L. c. 209A). The enactment of legislation -- without input from the courts and without proper planning -- simply creates more work and requires more resources from our overworked, overutilized court system.

A different problem arises from the poor physical condition of many court facilities. The facilities in which the courts must work are often deplorable. One judge told of roaming the halls of the courthouse attempting to find a courtroom with adequate heat. The jury simply could not be attentive to the trial in a freezing cold courtroom. During the winter many judges and court personnel in older courthouses must work with their coats on to keep warm. The Boston Juvenile Court is crammed into the same facilities made available to it in 1906 although the workload has increased many times over. Portions of the Boston Municipal Court still operate on direct current thus preventing the use of many electrical devices.

Administrative support is also lacking. Many courts have no computers and are drowning in a sea of paper. Some judges do not even have ready access to law libraries. Judges tell stories of deciding cases, only to wait weeks before their decisions are typed. In frustration some judges type their own decisions or issue handwritten orders, but then cannot get copies made. Once the decisions are typed and copied, they sometimes sit in the clerk’s office because there is no money left in the postal line item in the budget to mail the decisions to the parties in the case. Another example is when judges attempt to hear cases after 4:00 p.m., only to find that the papers are unavailable because the clerk’s office locks up the docket and file rooms at 4:00 p.m. Files are often lost and lawyers now routinely bring an extra set of papers to court so the judge can have them.
Many judges and court support personnel use ingenuity and wit to maneuver the system so that they can get their jobs done. They are forced to expend time and energy on things that in any normal working environment would happen automatically. The inadequate resources provided to the courts and the chaotic management directly increase the transaction costs to those who use the judicial system. The costs of litigation are driven upward, thus effectively closing down the courts as a place to obtain justice to the many who cannot afford these costs.

Demoralization of the Massachusetts trial court judiciary is a major issue which has resulted from the deterioration of the judicial system. Massachusetts' judges are clearly among the best qualified and most devoted in the entire country. Our Supreme Judicial Court is the oldest continuously sitting, and certainly one of the most prestigious, state appellate courts in the country. The Superior Court -- the great trial court of the Commonwealth -- is considered to be among the finest in the United States. Notwithstanding such high reputations, Massachusetts trial judges suffer from judicial burnout. For example, one Chief Justice informed the Committee that it was not uncommon for bright, dedicated young judges to completely burn out after 10 years of sitting on a district court bench hearing near identical prostitution, sexual assault, petty larceny and drug cases day after day. These judges, plagued with inadequate or sometimes unhelpful staffs and scarce resources in an antiquated and dilapidated building, are responsible for the delivery of justice to the citizens of Massachusetts. It is no wonder the court system is on the brink of disaster.

**RECOMMENDED CHANGES IN ORGANIZATION AND ADMINISTRATION OF THE MASSACHUSETTS TRIAL COURT**

Assuming adequate funding\(^1\) for the courts, we believe the problems are capable of solution. The solution must start with the recognition that the present confused and irrational "system" for managing the courts is no system at all. There is no head of the system, in either practice or theory, who has the power to manage and who can be held accountable. The Massachusetts courts have not been given the tools to manage themselves. The single most important step that can be taken is to give the courts the legislative power to operate the system without excessive interference and then hold them accountable for the results.

Certain powers now asserted by the legislature, and especially the power over the purse string in all but the most general way, should be transferred to the judiciary. Other powers, now asserted by the governor, to appoint and remove court support personnel should be transferred to the judiciary. The

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\(^1\) Recent appropriations have failed to provide the funding which is necessary to operate a truly effective and responsive court system.
judiciary can neither manage nor be held accountable for what it
does not control. This transfer of powers to the courts is the
key concept underlying the proposed court reform legislation of
the Supreme Judicial Court (Senate 718) and we specifically
endorse that concept. Historically the legislature has set
budgets and restricted expenditures by rigid line items for each
aspect of the operation of the court system. The legislature
thereby has controlled the number, location, positions and
sometimes the personnel employed by the system, as well as the
funds to be spent in different areas. Such powers must be
transferred to the judiciary itself. We believe the judiciary
should be given a total dollar budget, not a line item budget,
should have the powers to transfer personnel and positions within
the system, to transfer funds\(^2\) and to close court facilities. It
should have the power to appoint and remove court support
personnel.

The transfer of budget and managerial powers and
responsibilities from the legislature and governor to the courts
is the essential first step. But there must also be established
a realistic system of management to insure accountability and the
efficient use of limited resources. Five basic principles should
guide the allocation of power and responsibilities within the
court system:

1. The ultimate oversight of the management of the court
   system must be lodged in the Supreme Judicial Court.

2. The Trial Court must be streamlined, for management,
   administration and accountability purposes, into fewer
   operating units.

3. Responsibility for the day to day management of the
   court system must be decentralized to units closer to
   the actual operation of the courts involved.

4. The court system must have responsibility for and
   authority over all of its support personnel and
   facilities.

5. There must be built-in mechanisms to insure
   accountability.

We briefly review these principles.

First, we agree with another concept in the Supreme Judicial
Court’s proposed court reform legislation (Senate 718): the
Supreme Judicial Court should be explicitly recognized as having
ultimate managerial authority and control over the judicial
system. If a corporate analogy were to be used, the Supreme

\(^2\) Limited transfer powers were provided in Chapter 341 of the
Acts of 1990, but much more flexibility is needed.
Judicial Court should be the parent corporation with ultimate control over the Trial Court operating entity subsidiaries.

Second, the Trial Court should be organized into three operating departments: the Superior Court, the District Court, and a new Family and Juvenile Court of the Commonwealth. This would replace the present seven department Trial Court structure.

Third, responsibility for day-to-day management of the Trial Court, subject to the overall supervision of the Supreme Judicial Court, should be vested in the three departments. The Supreme Judicial Court is and historically has been, far removed from the day-to-day operations of the trial courts. Accountability is best achieved by requiring that management be accomplished at levels close to the courts involved and that the role of the Supreme Judicial Court be one of ultimate oversight, not line management. The details of how this decentralized management would operate are set forth below. There are, however, certain irreducible minimum support functions to the entire court system which should not be decentralized. Those discrete and limited functions should be allocated to a small administrative support organization which operates as an adjunct to and under the direct authority of the Supreme Judicial Court. The present Office of Chief Administrative Justice of the Trial Court would no longer be needed and should be abolished.

Fourth, it is essential that all support personnel, including clerk-magistrates and other clerks, probation officers, secretaries, court officers, stenographers, maintenance personnel and others come under the direct control of the judiciary, since they are key components of the system.

Fifth, as to accountability, the Chief Justices of the Trial Court must have the power to discipline and to create performance evaluation procedures.

THE SUPREME JUDICIAL COURT

The Supreme Judicial Court should have ultimate authority over and responsibility for management of the courts of inferior jurisdiction. The general superintendence powers inherent in the Supreme Judicial Court should be recognized explicitly by legislation. However, direct managerial authority over the Trial Court departments should be vested in the Chief Justices of these courts, who would be appointed by and could be removed by a majority of the Supreme Judicial Court.

Appointment Powers

The Chief Justices of the Superior Court, the District Court and the Family and Juvenile Court departments should be appointed from the respective courts by a majority of the members of the Supreme Judicial Court. Those appointments should be for a five
year term, which could be renewed. We recommend that those Chief Justices of the Trial Court may be removed from those offices only upon a determination by a majority of the Justices of the Supreme Judicial Court that such removal is in the best interests of the administration of justice. We recommend no change in the appointment of the Chief Justice of the Appeals Court.

The sitting Chief Justices of the Superior Court, the District Court" and the Juvenile Court should continue to serve out their present appointments up to a maximum of a five year term. They would, however, be subject to the removal powers of the Supreme Judicial Court, described above, upon enactment of the enabling legislation. The present respective Chief Justices of the Juvenile Court and the Probate and Family Court should continue to serve until the Supreme Judicial Court has, by order, as described below, created a unified Family and Juvenile Court. Upon unification, the Chief Justice of the Juvenile Court should become Chief Justice of the unified Family and Juvenile Court for the remainder of his five year term. Thereafter, the Chief Justice of that Court should be selected by a majority of the Supreme Judicial Court Justices.

**SJC Budget Powers**

The responsibility to propose a budget to the legislature for the operation of the entire Massachusetts court system should be vested in the Supreme Judicial Court. That proposed budget, in turn, should be based upon the budgets for their respective courts submitted to the Supreme Judicial Court by the Chief Justices of the Appeals Court and the three Trial Court departments. Once the legislature has appropriated a budget for the Court system, it would be the responsibility of the Supreme Judicial Court to be the final arbiter of allocation of that budget among the various courts in the system and to see that the system lives within the budget. A fuller description of budget recommendations is set forth below.

**Powers to Transfer Funds and Personnel**

The Supreme Judicial Court would, from the appropriated budget, establish budgets for each of the three Trial Court departments. In the ordinary course, it would be the responsibility of the departmental Chief Justice to live within that budget and to transfer personnel, positions and funds within the departmental budget in order to do so.

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3 Should an amendment to the Massachusetts Constitution, Amend. Art. XCVIII, be necessary in order to alter the term of office of the three Chief Justices given life terms by the 1978 legislation, then the Committee recommends that such amendments be made.
In such extraordinary circumstances as would lead to a severe, adverse impact on the administration of justice or public safety, non-consensual transfers of personnel, positions and funds may be made by a majority of justices of the Supreme Judicial Court from one department of the Trial Court to another. This power would be in addition to the disciplinary powers of the Supreme Judicial Court over court personnel.

**Administrative Office of the Supreme Judicial Court**

The Supreme Judicial Court should establish and appoint an Administrative Office. Its functions would include: collective bargaining, computerization, purchasing, payroll, budget preparation and analysis and such other functions as deemed appropriate by the Supreme Judicial Court. We concur with the recognition in current law of the benefits to a judicial system of a centralized administrative office, see G.L. c. 211B, § 9, and that the functions of such an office are not necessarily judicial in nature. See G.L. c. 211B, § 6.

As to facilities management, upon a declaration by any of the three Chief Justices of the Trial Court closing a facility in his or her department, the Administrative Office should consult with the other departments concerning whether they need to use the facility. The Supreme Judicial Court should have the power, after determining that a facility is not needed by the court system or too costly to maintain, to declare the facility surplus. If necessary, the Massachusetts Constitution, at Pt. 2, C. 1, § 1, Art. 3, should be amended to recognize explicitly in the Supreme Judicial Court the power to close courts. In the interim, we recommend that the Supreme Judicial Court be empowered to close courts upon notice to and approval by the legislature.

The Administrative Office should also assist the Supreme Judicial Court in exercising its rule making powers to eliminate as judicial functions the many functions now performed by judges which could be performed by non-judicial personnel. We can no longer afford to have judges spend their time doing tasks which do not require judicial skills.

Unlike the present OCAJ, the new Administrative Office should be directly under, and responsive to, the Supreme Judicial Court. To that end, its Administrator ought to be appointed by the Supreme Judicial Court, and he or she should serve at the pleasure of the Court. Further, the role of the Administrator, and the office he or she runs, ought to be strictly administrative and should not, as now, have duties and functions which encroach on the judicial aspects of the operation of the system. In short, the Administrative Office should coordinate, regulate, manage and control those functions which can best be handled by a centralized office serving in a support role to a state-wide judicial system, while at the same time avoiding
encroachment upon the judicial and management functions of the Chief Justices of the various departments.

The Administrator should perform functions that are non-judicial in nature and, as such, she or he need not be a judge. Judges are selected for their skills and abilities of a judicial nature, not because they are accomplished at, or even have a desire to revel in, the administration and management of a large enterprise. Consequently, it is expected that the Administrator will be selected from the ranks of persons trained in the special nuances of court administration, having administrative and political skills appropriate for the task. At the same time, the position will be one of importance and should be endowed with stature and compensation fitting of the task.

Communications Function

We observe that communications among the various levels of the court system need substantial improvement. We recommend that the Justices of the Supreme Judicial Court meet on a monthly basis with the three Chief Justices of the Trial Court. We also strongly recommend that the Supreme Judicial Court regularly convene Judicial Conferences of the court system, to which members of the bar should be invited to participate from time to time. The sense of fragmentation and balkanization already prevalent in the system, the poor morale, and the feeling of disenfranchisement require that there be regular and better communications. The judicial branch as a whole needs to operate and support its operation with a much greater sense of common purpose.

THE TRIAL COURT

Reorganization of The Trial Court

The Trial Court should be reorganized from the present seven departments into three: Superior, District, and Family and Juvenile. We believe that the present Trial Court organization into seven court departments does not best serve the interests of the public and reflects history, rather than the needs of our present society. There are many functions now being performed by judges which need not be, and different methods should be used to address those functions. When the core functions of the Trial Court are analyzed, we think it is most sensible to have only three separate courts.

THE SUPERIOR COURT

The Superior Court, presently composed of 76 judges, is our court of general jurisdiction handling both civil and criminal cases. Criminal cases of a more serious nature are usually tried in the Superior Court, as are most civil cases involving substantial sums or issues. Traditionally its judges have
"ridden circuit", or rotated among the counties. The Superior Court should continue as a court of general jurisdiction.

The Superior Court should also encompass the litigation aspects of the Land Court, now a separate court department, as a specialized Division and should assume some of the litigation functions presently performed by the Probate and Family Court.

**Land Court Reorganization into Division of Superior Court**

The Land Court has statewide jurisdiction and is presently composed of 4 judges and expert support personnel. It sits only in Boston but handles land registration and cases concerning real estate located throughout the Commonwealth. We recommend that the Land Court be reorganized into the Land Court Division of the Superior Court, and come under the direct administrative control of the Chief Justice of the Superior Court. Many of the cases handled by the Land Court involve the dollar value and complexity of matters handed by the Superior Court, making it appropriate to link it with the Superior Court. In addition the Land Court has a specialized staff of engineers and surveyors and has considerable expertise in specialized areas of law, warranting its becoming a specialized Division of the Superior Court. We recommend that the governor continue to make appointments of judges to the Land Court Division, but that cases in the Division could, when appropriate, be heard by other justices in the Superior Court department.

**Probate and Family Court Reorganization**

The Probate and Family Court has 43 justices, at least one court in each county, and handles adoptions, divorces, family matters, the probate of wills and related issues.

We recommend that the present family-related jurisdiction of the Probate and Family Court be transferred to a new Family and Juvenile Court, as described below. All contested estate, trust and guardianship matters should be transferred to the Superior Court. Consistent with Pt. 2, C. 3, Art. IV of the Massachusetts Constitution, the Superior Court should by rule or other process set times and places for handling of probate of wills and administration of estates. The disposition of all uncontested probate matters should be assigned to a non-judicial section of the courts. In light of our recommendations, we do not see a need for the Probate and Family Court to continue as a separate entity.

States where the Uniform Probate Code is in force and other jurisdictions, including the United Kingdom, do not treat uncontested "probate" matters such as the allowance of wills, appointment of fiduciaries, allowance of their accounts and the like as matters requiring the intervention of a judge. All of these matters can be dealt with by what the Uniform Probate Code
(which the Committee neither endorses nor opposes as such) calls a Registrar. In fact, present Registries of Probate would need to change only in their organization to effectively transition into this role. The Registrar would be an official, preferably appointed in the manner of the clerks of the Superior Court, authorized to perform routine quasi-judicial acts. When a proffered will or account is contested, or when a fiduciary is sought to be removed, or a trustee seeks instructions, to give a few examples, the matter would be assigned for trial in the Superior Court. Eventually, with the expenditure of adequate funds this system can be made to provide for centralized repositories of documents and other information, accessible by electronic means from remote locations as well as on site.

We recommend that the Supreme Judicial Court request the present Chief Justice of the Probate Court to prepare a plan, in consultation with the Chief Justice of the Superior Court, for the transition of these probate functions to the Superior Court and non-judicial officials within a two-year period (to be contemporaneous with the transition period for a new Family and Juvenile Court).

THE DISTRICT COURT

The District Courts are the community based courts of the Commonwealth, and hear criminal cases and smaller dollar value civil cases, care and protection and other cases affecting families, traffic and driving under the influence cases, among others. At present there are 168 district court judges, located in 68 district courts in different communities. Each community district court has a Presiding Justice.

We recommend that the District Court be one of the three Trial Court departments and that it encompass within it both the Boston Municipal Court and, as a specialized Division, the Housing Courts. The District Courts should be explicitly vested with full equity jurisdiction, to resolve any issues which may now exist as to the extent of that jurisdiction. Because the Housing Court has such equity jurisdiction, the merger of the Housing Court into the District Court also requires such empowerment.

Merger of Boston Municipal Court Into District Courts

The Boston Municipal Court functions like a district court but has a territorial jurisdiction limited to a portion of the City of Boston. It has 12 judges. We believe, along with Suffolk University Dean Paul R. Sugarman, that there is no justification for maintenance of the Boston Municipal Court as a court independent of the other district courts and the Boston Municipal Court should be merged into the District Court.
Housing Court Reorganization

The Housing Court is presently composed of 6 judges and various support personnel. It was created in 1972. Its three divisions are located in Boston, Worcester, and Springfield. New divisions of the Housing Court, to open in July 1991, will be located in Taunton and Lawrence. It should become the Housing Court Division of the District Court. As such, it would be subject to the direct administrative control of the Chief Justice of the District Court. The Presiding Justice of the Housing Court Division would be selected by the Chief Justice of the District Court as of the effective date of the reorganization legislation. Because the Housing Court serves continuing specialized needs, it should continue as a specialized court and judicial appointments to the Housing Court Division would be made by the Governor. The Chief Justice of the District Court would have authority, inter alia, to transfer judges into or out of the Housing Court Division as the needs of justice required.

THE NEW FAMILY AND JUVENILE COURT

Massachusetts was extremely progressive in 1906 when it established the Boston Juvenile Court, recognizing that neither children nor society are well served by treating family and children’s issues as indistinct from other matters handled by the court system. Today, the Juvenile Court Department, with 12 judges, has courts in Boston, Worcester, Springfield and Bristol County. Where it does not have territorial jurisdiction, its functions are performed by the District Courts. Since 1906 the laws concerning children and families have increased geometrically, as have the strains on families and children. The number of children who are before the courts -- because they are abused, because they need care, because they have become delinquent, and because their family units have dissolved -- has, sadly, increased. Moreover, we have just begun to realize the profound impact the drug crisis has had on this system.

We strongly recommend that the Commonwealth once again recognize that the needs of children and their families are special and reorganize its courts to address those needs in today’s society. We cannot, as a society, afford to lose children in the maze of cases handled by an already over-burdened court system.

The Juvenile Court and certain aspects of the Probate and Family Courts should be merged into a new statewide Family and Juvenile Court. The Supreme Judicial Court should have responsibility for the transition of these courts to a unified court, and that transition should be completed within two years. The present Chief Justices of the Juvenile Court and the Probate and Family Court should continue to serve during the transition.

4 See footnote 6.
period; thereafter, the Chief Justice of the Juvenile Court should become the Chief Justice of the new unified court for the remainder of a term of five years from the date of enactment of court reform legislation.

The new Family and Juvenile Court would hear the matters which occupy most of the time of the present Probate and Family Court judges, all of the time of the Juvenile Court judges and some of the time of the District Court judges. The new Family and Juvenile Court would have full civil and criminal jurisdiction. This proposed new court would centralize and maximize utilization of the expertise of these specialized judges, and to a considerable extent, that of non-judicial personnel.

Moreover, the many diverse aspects of a matter affecting all members of a family would be addressed within one specialized forum, a forum where the most relevant talent, expertise and connection to extra-judicial resources is available. This would provide greater focus and, therefore, efficiency to the services brought to bear in support of family issues; reduce the problem of conflicting approaches and results in related family matters pending, under the present system, before different courts and judges; permit the Family Service Office mechanism the greatest latitude in assisting in family resolutions, investigation and evaluation, and delivery of extra-judicial services; and result, we hope, in less expensive litigation for parties. The merged court should use clinics and other support services of the type presently used by the Juvenile Court.

The matters which the Committee would recommend fall into the jurisdiction of the new Family and Juvenile Court would include, but not necessarily be limited to:

- Divorce and related matters (G.L. c. 208)
- Separate Support and related matters (G.L. c. 209)
- Adoption and related matters (G.L. c. 210)
- Abuse prevention and related matters (G.L. c. 209A not exclusive)
- Interstate custody and related matters (G.L. c. 209B)
- Paternity and related matters (G.L. c. 209C)
- Abuse and neglect of children, children in need of services and related matters (G.L. c. 119)
- Juvenile Delinquency (G.L. c. 119)
- Matters relating to special education (G.L. c. 71)
- Guardianship of minors (G.L. c. 201)

Those areas of the present Probate and Family Court subject matter jurisdiction which the Committee would recommend being transferred elsewhere, include, but are not necessarily limited to: uncontested estate administration matters, will contests, account contests, removal of fiduciaries (except guardians of persons), change of name, non-family land disputes.
Guardianship of the person, including medical emergencies (G.L. c. 201)
Civil commitment proceedings (G.L. c. 201)
General equity (G.L. c. 215, § 6)
Non-support (G.L. c. 119A not inclusive) (excluding criminal)
Uniform Reciprocal Enforcement of Support Act (URES A)
(G.L. c. 273A, §§ 6, 9)

Implementation of this proposal will take time, because of the variety and complexity of the subject matters and because of the typical lengthy life of cases in this area. Certain matters will be relatively easily handled, but others will be more difficult and will try the ingenuity of all concerned. For that reason we believe that a two-year transition period will be necessary.

The location of the Family and Juvenile Courts would be in the present location of the Probate and Family Courts and the Juvenile Courts and as established by the Supreme Judicial Court. However, we recognize the importance of community services as well as the desirability of maximizing local access to the courts, particularly in matters relating to abuse, care and protection of children, and children in need of services. Therefore, we recommend that the Supreme Judicial Court be granted the power to designate portions of District Court buildings to be made available to the Family and Juvenile Court for the purpose of periodic sittings for specifically identified matters. This would also permit non-judicial personnel such as family service officers to travel to District Courts for the purpose of providing services to litigants.

POWERS AND RESPONSIBILITIES OF THE CHIEF JUSTICES OF THE TRIAL COURT

Hand in glove with the need to streamline the Trial Court into fewer and more sensible administrative and managerial units is the need to provide the tools to manage those units. We view the Chief Justices of each of the three Trial Court departments as strong executives whose job it will be to manage that court and who will be held accountable for the results. That person cannot do the job unless control is given to her or him over court support personnel such as clerks, court officers, and others. We have attempted to identify those specific powers which should be vested in the Chief Justices of the Trial Court, subject always to the ultimate oversight of the Supreme Judicial Court.

Each Chief Justice of a Trial Court, under the ultimate authority of the Supreme Judicial Court, must be given the line authority to make all relevant decisions for his or her court. There must be a system where an individual is responsible for all activities of that court. Responsibility necessarily involves
the power to control the court. This is the key to both the
problem and the solution. The Chief Justices of the Superior
Court, the District Court and the Family and Juvenile Courts
should have at least the following powers over their respective
courts and personnel.

1. The power to hire, fire, discipline, evaluate and
transfer non-judicial personnel, including all clerk-magistrates,
clerks, probation officers, court officers, court reporters, law
clerks and other support personnel. The Massachusetts
Constitution should be amended as needed to eliminate the
election and gubernatorial appointment of clerk-magistrates.

2. The power to transfer judges within their respective
courts, subject to the judge’s right to appeal that transfer to
the Supreme Judicial Court.

3. The power to discipline judges within their respective
courts as described below.

4. The power to set the days and hours during which their
respective courts will be open for business.

5. The power to determine that certain court facilities
are not needed by their courts or cannot be operated within the
budget, to declare those facilities surplus and turn them over to
the authority of the Administrative Office of the Supreme
Judicial Court.

6. The power to recommend budgets for their courts to the
Supreme Judicial Court.

7. Upon receipt of an appropriated budget sum from the
Supreme Judicial Court, the power to administer that budget,
including transferring funds and positions among various line
items.

8. The power to establish geographic, venue and legal
jurisdictional lines for courts within their departments in
consultation with the other Chief Justices. This will permit
more even and efficient distribution of the workload of the
courts.

9. The power to recommend to the Supreme Judicial Court a
performance evaluation system for judges and other personnel
within their departments.

10. The Chief Justice of the District Court should have the
power to appoint the Presiding Justices of the various courts in
the District Court and of the specialized Housing Court
Division, after the expiration of the terms of those Justices. The Chief Justice of the District Court should have the power to remove all such Presiding Justices as of the date of enactment of enabling legislation. All such justices shall serve at the pleasure of the Chief Justice. The Chief Justice shall have the power to define the jobs of the District and Housing Court Presiding Justices.

11. The Chief Justice of the Superior Court should have the power to define administrative regions and to appoint Regional Administrative Justices and the Presiding Justice of the Land Court Division, to serve at her or his pleasure. The present Presiding Justice of the Land Court shall serve out his term, subject to the power of the Chief Justice of the Superior Court to remove him in the best interests of the administration of justice.

12. The Chief Justice should have the responsibility to make comprehensive annual reports to the Supreme Judicial Court, which should be made public, concerning the operation of her or his court.

THE BUDGET PROCESS

A brief description of the present budgetary process may be helpful. Responsibility for the preparation of the Trial Court's annual budget now rests with the OCAJ, which prepares the guidelines and instructions for the individual budgetary units, reviews their submissions, and ensures that the submissions are made in a timely fashion. The OCAJ then consolidates the individual unit budget submissions and adds items for certain centrally controlled functions and services. In the process, trial departmental Chief Justices and the Administrator of Courts may confer with the budgetary unit and cause an amendment of its initial budget requests. However, departmental Chief Justices are not usually consulted again on the budget after the initial submission. In a mechanical sense, the budget system administered by the OCAJ appears to be appropriate from a monetary control aspect.

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6 The present Chief Justice of the Boston Housing Court, should serve a five year term in that position, subject to the powers of the Chief Justice of the District Court to remove him in the best interests of the administration of justice.

7 A flaw that was noted in the existing system centered on the budgeting for services controlled centrally, such as facilities, utilities, capital expenditures, etc. These items are not budgeted by the individual budgetary units, but are budgeted by OCAJ based upon input from the budgetary units as to amounts and types needed.
The budgeting process is designed to fit into the state budget appropriation process in two ways. All budgeting is done on a standard, state-wide chart of accounts. The timing of the process is designed to provide to the governor's office a fully reviewed and reconciled budget by late November, so that the governor can include it with his budget recommendations to the legislature.

For fiscal year 1991-92 the governor has submitted to the legislature a single amount for the Massachusetts court system. In prior years, amounts were submitted for each of the individual spending categories. This year's budget request was for an amount substantially less than the summarized budget prepared by the Administrator of Courts. Historically, the legislature has tended to micro-manage the court system budget process in that it enacts a state budget which may contain amounts for individual spending categories different than those requested. However, in the current fiscal year the Trial Court has received temporary legislative approval to transfer funds among appropriated line items.

Perhaps the most important improvement in the budget process would be the development of a clear set of objectives for the system. These can be both subjectively and objectively measurable criteria, and they should derive from a clear "mission statement" for the system as a whole. That mission statement is best defined by the courts themselves.

Other management steps which need to be taken include the development of a clear organizational structure (each level of which would have its own measurable objectives), and the establishment of clear lines of authority over management matters with true accountability at appropriate levels of the organization. Once these steps have been taken, the budget system can then become the means by which management decides how to allocate resources (i.e., money and people) available to it in a manner that most efficiently meets the court system's overall objectives of fairly administered justice.

It is strongly recommended that the objectives of the system be clearly articulated in the budget submission to the legislature, thus encouraging review of the objectives in conjunction with allocation of the Commonwealth's monetary resources. This would also help the legislature to focus on the fact that changing levels of monetary resources allocated to the court system implies that the achievement of the objectives must be changed as well. Furthermore, the court system management must recognize that, if the legislature changes the level of resources allocated, that must trigger a further management review of the system's objectives to make explicit the change in objectives needed to accommodate the altered level of funding.
Certain basic principles would need to be observed. These include:

1. Each budgetary unit (i.e., each of the three Trial Courts) should have control over all line items in its budget. Central services, such as facilities, personnel, case management, and the like should be charged to each budgetary unit using an internal pricing mechanism so that each budgetary unit will have the capability to make intelligent allocations of its resources in the light of its objectives.

2. The process should have some iterative capability built into it. While this currently appears to exist in the budget process, it should also include the setting of objectives, as the two should be integral parts of the same process. Additionally, the iterative process must be driven by the increasing levels of authority and responsibility culminating in a final budget for the system. The process must focus not only on monetary aspects but also on the objectives which the monetary resources can support (i.e., a high priority for one budgetary unit’s objectives may require additional funding, and since funds available to the court system are not infinite, a lower priority objective in another budgetary unit may force a reduction in that unit’s budgeted resources).

3. The departmental Chief Justice, who has overall management authority for the unit, should have as much flexibility as possible over transfer and utilization of resources available to allow her or him to meet the needs of his unit as efficiently as possible.

4. There should be a separate planning, budgeting and evaluation capability, reporting to each departmental Chief Justice, responsible for managing the budget process and advising the Chief Justice on the evaluation of the effectiveness and efficiency of each manager in the system in meeting his or her operational and economic objectives. This function should be managerially separate from the central support service functions in order to maintain an appropriate independence of performance evaluation. Ultimately, however, the responsibility for all functions belongs to the Chief Justice who then reports to the line management his findings so that remedial action or rewards for performance can be implemented.

JUDICIAL DISCIPLINE

Important to the principle of accountability and sound management is the need to provide each Chief Justice of a department with limited summary power to discipline judges within that department. Such limited power should be exercised in response to certain incidents of judicial conduct, in or out of court, which require immediate and effective action but do not justify energizing the lengthy and expensive administrative
process of the Commission on Judicial Conduct ("Commission"). It is in the public interest and that of the judiciary that the Chief Justices of the departments have such disciplinary powers so that they may act swiftly and responsively and thereby not only deter any future similar conduct but bolster the image of a sound well-managed judiciary.

The difficulties inherent in providing the Chief Justice of each department with disciplinary powers lie both in defining and limiting the powers given, and in meeting the contentions of favoritism or leniency that invariably arise in the public mind whenever judges discipline other judges. Nonetheless if the Chief Justice is to be held accountable for the management of his or her department, the judges in that department must remain accountable for their conduct to the Chief and be subject to his or her summary disciplinary power.

We therefore recommend that the Chief Justices of each department be given limited summary power to impose immediate discipline on judges in their department, including the power to fine, suspend, transfer, and take other disciplinary action, in certain instances of judicial misconduct which bring the judiciary into disrepute or lowers the public confidence in the judiciary. The precise nature of the conduct for which this summary disciplinary power should be utilized must be developed on a case by case basis in conjunction with the Commission, which has been empowered by statute to act in this area and whose jurisdiction should remain as presently constituted.

This grant of disciplinary power is intended to supplement, not supplant, the power and jurisdiction of the Commission. In general, the institution of proceedings by the Judicial Conduct Commission should involve more serious, substantial or repeated instances of misconduct than those intended to be dealt with by the proposed summary disciplinary power.

The disciplined judge should have the right to appeal the discipline to the Supreme Judicial Court and the actions of the Supreme Judicial Court should be binding upon the Commission. All such departmental disciplines, whether consensual or not, must be reported to the Supreme Judicial Court. Consistent with the provisions of G.L. c. 211C, any such discipline should remain confidential unless the disciplined judge agrees it shall not be confidential or unless the Supreme Judicial Court decides it is in the public interest that it be made public.

JUDICIAL EVALUATION

For judges to be truly accountable, there must be a program by which quality of judicial performance may be evaluated. This program should not focus on statistics or quantitative measures, but on the overall quality of judicial performance and overall excellence in the execution of judicial duties.
In 1989 the Advisory Committee on Judicial Performance Evaluation, appointed by the Supreme Judicial Court and chaired by Justice Wilkins, issued its report and recommendation as to whether a program of judicial performance evaluation should be adopted in Massachusetts. The Advisory Committee, with some dissenting judges, recommended "the adoption of a program for the enhancement of judicial performance in Massachusetts if it can be operated with absolute confidentiality".

The Advisory Committee recommended that a program be developed in each Trial Court department and approved and supervised by a committee of the Supreme Judicial Court. The Advisory Committee recommended that the Chief Justices of each department be instructed to prepare a program for judicial performance enhancement within their department and submit the program to the supervisory committee. That committee was then to report its conclusions about the various programs to the Supreme Judicial Court.

While we endorse these recommendations of the Advisory Committee, we believe that the judiciary must go beyond a program of judicial enhancement to a program of qualitative judicial performance evaluation. We recommend that the Supreme Judicial Court require the Chief Justices of each department to submit a program for qualitative judicial performance evaluation and that the Supreme Judicial Court decide upon and implement an evaluation program.

JUDICIAL IMPACT STATEMENT

The Committee observes that over the last several decades, without correspondingly increasing the number of judges and support to the court system, the legislature and governor have, through the enactment of various laws, including but not limited to expanded mandatory sentencing, greatly increased the workload of the courts. Unlike a private sector corporation, the court system has virtually no control over the amount of work it is required to perform. We believe it is critical, therefore, that before any new law is enacted which will increase the workload of the courts, that that law should include a judicial impact statement to make clear whether that legislation increases the need for resources to the court system, so that appropriate funding may be included.

CENTRALIZED CRIMINAL COURTS

The Committee recommends, as did the Boston Bar Association Task Force on Drugs And The Courts, that the Supreme Judicial Court require creation of a centralized criminal court for Suffolk County. We believe that should this court prove successful it would then become the model for centralized criminal courts in other major urban areas.
In order to understand the reason for the recommendation, a brief description of what is involved is in order. Every year thousands of arrests are made in Suffolk County, particularly in the City of Boston. Each arrest leads to multiple court appearances before the matter is resolved. At each court appearance the accused has a right to be present, and prosecution and defense counsel are necessary. In addition, quite often needed in court will be the police, the victim and other witnesses, reports from the laboratory, probation officers and all of those other officials necessary to make the system run.

Most criminal cases start and end their journey through the court system in the District Court. Some move from District Court probable cause hearings to the Superior Court or arrive at the Superior Court initially because of direct indictments. Additionally, if there is a review of bail set in the District Court, that review proceeding is held in the Superior Court.

In Suffolk County, which encompasses Boston, Chelsea, Revere and Winthrop, there are eight District Courts, as well as the Boston Municipal Court, the Boston Juvenile Court and the Suffolk Superior Court, all of which are located in various buildings sprinkled throughout the County. There are a number of different police agencies as well. The District Attorney’s office must send its lawyers to 11 different courts. Similar logistical problems exist for the defense lawyers, the police, other witnesses -- and, most significantly, for the accused, who unlike the others, often cannot travel freely to court. The accused, in the custody of the Sheriff’s Department, must be delivered under controlled circumstances from the jail to the particular court, kept under guard, and returned to the appropriate jail after the proceeding is concluded. The logistical problems for the Sheriff’s Office, and the costs involved, are immense.

The location of the Public Health Drug Analysis Laboratory which serves most of the drug related cases in Suffolk County causes problems. Situated in Jamaica Plain, it is not near any of the busiest courts. All too frequently, after all of the participants -- police, prosecutors, defense counsel, probation officers and the defendant -- are assembled in court, it is learned that the report from the laboratory is not ready or not available. Everyone is then sent home or back to jail, only to be reassembled on another day.

Another cause for continuances is the lack of availability of judges or support personnel in the particular court on a particular day. Yet another, and all too common, reason for continuance is that busy police officers are often needed in more than one District Court on different cases on the same day. These numerous continuances greatly undermine public confidence in the system, as victims and ordinary citizen witnesses are burdened by returning to court again and again and again on the same case.
A solution to this chaotic, inefficient, and wasteful process is the creation in Suffolk County of a single centralized criminal court in one building in a location convenient to the jail for pre-trial detainees. The soon-to-be vacated Registry of Motor Vehicles building on Nashua Street, next to the new jail and just a few short blocks from the District Attorney’s office in Pemberton Square, seems an ideal site. An enclosed ramp can be built from the jail to the new courthouse so that the Sheriff’s Department can simply walk the prisoners to court, thus saving immense costs for transportation, personnel and safety.

The courthouse should include sessions from the full array of courts -- Superior, District and Family and Juvenile -- complete with judges, clerks, stenographers, probation officers and other support staff who can be moved about the building on an as-needed basis. Probation records could be located in the same facility. Additionally, it would be advantageous to have the Drug Analysis Laboratory located in the same building so that the necessary scientific evidence, and the witnesses who accompany it, would be readily available.

With such a centralized facility the coordination of all aspects of the criminal justice process would be maximized at a significant monetary savings and, of even more importance, a much greater ability to provide swift, fair and certain justice to all involved.

THE STATE COURT STUDY COMMITTEE ITSELF

In December, 1990, Boston Bar Association President John P. Driscoll, Jr. appointed twelve experienced attorneys and one certified public accountant to serve as members of the Boston Bar Association State Court Study Committee. Additionally, six attorneys were asked to serve ex-officio on the Committee.

The Committee is chaired by R. Robert Popeo, of Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C. The other members of the Committee are: BBA past-President Edward J. Barshak of Sugarman, Rogers, Barshak & Cohen; Ruth R. Budd of Hemenway & Barnes; Thomas E. Cargill, Jr. of Cargill & Associates; Harvey A. Creem of Coopers & Lybrand; Thomas E. Dwyer, Jr., of Dwyer, Collora & Gertner; Jerome P. Facher of Hale and Dorr; John M. Harrington, Jr. of Ropes & Gray; BBA Vice-President Sandra L. Lynch of Foley, Hoag and Elliot; BBA past-President Rudolph F. Pierce of Goulston & Storrs; BBA past-President Richard W. Renehan of Hill & Barlow; Martin R. Rosenthal of the Criminal Justice Institute of Harvard Law School; and Edward A. Schwartz, President of the New England Law Foundation and former General Counsel to Digital Equipment Corporation.

Appointed ex-officio to the Committee were Joan A. Lukey of Hale and Dorr, Chair of the BBA Litigation Section; William M. Levine of Lee, Levine & Bowser, Chair of the BBA Family Law
Section; John K. Markey of Mintz, Levin, Cohn, Ferris, Glovsky & Popeo, P.C., Chair of the BBA Criminal Law Section; Allan van Gestel of Goodwin, Procter & Hoar, Chair of the BBA Administration of Justice Section; and Leslee Klein of Cambridgeport Problem Center and Nicholas U. Sommerfeld of Gaston and Snow, Co-Chairs of the BBA Delivery of Legal Services Section. The Committee members collectively have more than 500 years of first hand experience with the Massachusetts court system. The Committee also gratefully acknowledges the assistance of Francis S. Moran, Jr., BBA Executive Director; Sara Romer, BBA Government Relations Director; Michael F. Connolly and Joseph C. Hegarty of Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.; and William B. Ford of Coopers & Lybrand.

Together, the members of the Committee have contributed the resources of their respective law and accounting firms on behalf of the study. Moreover, the Committee members individually have expended approximately 3,000 volunteer hours on Committee work, including research, analysis and actual interviews with numerous Massachusetts state court judges, attorneys and other users of the court system.

The Committee has had the benefit of numerous reports and studies on court administration as well as the recent reports relating to the court systems in other states including New York, Arizona, Alabama, and Connecticut. These sources include materials prepared by the National Center for State Courts, National Judicial College and American Bar Association. In addition, the Committee has reviewed numerous law review articles and other materials relating to the efficient management and organization of court systems.

Of special note, the Committee is particularly grateful for the analyses and findings set forth in a number of studies specifically relating to the Massachusetts court system: "Report on the State of the Massachusetts Courts," by the Governor’s Select Committee on Judicial Needs (December 1976); "An Analysis of the Suffolk County Civil Clerical Support System" by the National Center for the State Courts (December 1989); "Record Management Practices in the Suffolk County Civil Clerk-Magistrate’s Office," by The National Center for State Courts (September 1990); the reports of the Boston Bar Association Task Force on Drugs and the Courts (May 1989 and March 1990); the reports on the Massachusetts Trial Court (1976-1990); "Agenda 90: Modernizing the Judiciary" by the Senate Committee on Ways and Means (1987); the "Report of the Governor's/Massachusetts Bar Association’s Commission on The Unmet Needs of Children" (1987); and "Justice Endangered: A Management Study of the Massachusetts Trial Court," prepared for the Coalition for the Courts by Harbridge House, Inc. (April 1991).

Finally, the most significant contributions to this study came from the written reports and interviews with the judicial
and non-judicial personnel of the Massachusetts Trial Court. The Committee has conducted extensive interviews with the Chief Justices of the Supreme Judicial Court, Appeals Court and many of the Trial Court departments, as well as with a number of the associate justices from the various trial court departments. The Committee has interviewed in excess of 100 judges and received written materials from many more. In addition, the Committee has contacted and interviewed numerous non-judicial personnel, attorneys and other users of the court system. Primarily through the information gleaned through these interviews and written materials, as well as the extensive personal experiences of the Committee members, the Committee has unanimously come to the findings and recommendations set forth in this report.

The Committee is also preparing legislation embodying the recommendations contained in this report.

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Management Structure
Massachusetts Trial Court System
Boston Bar Association State Court Study Committee

Trial Court

Supreme Judicial Court

Supreme Judicial Court

District Court

Family and Juvenile

Probate and Family

Superior Court

Land Court Division

Housing Court Division

Municipal Court
Chief Justice of the Superior Court:

- Appoint Presiding Justices in Court.
- Make annual reports to the Supreme Judicial Court.
- Recommend an evaluation system for judges and other personnel.
- Establish venue and jurisdictional lines.
- Fund personnel and positions.
- Administer the budget of the Court, including the ability to transfer funds.
- Recommend budget for the Court.
- Close courts.
- Set courthouse hours of operation.
- Discipline judges subject to appeal to Supreme Judicial Court.
- Transfer judges within the Court.
- Hire, fire, discipline and transfer non-judicial personnel, i.e., all clerks.

Responsibilities of Chief Justices of the Trial Court

Massachusetts Trial Court System

Boston Bar Association State Court Study Committee