Legislative Action Required to Achieve Managerial Excellence in the Trial Courts

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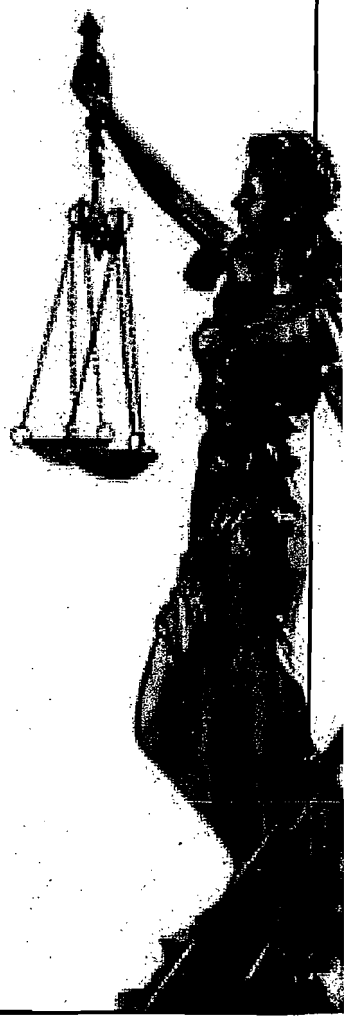


The Report of the Massachusetts Court Management Advisory Board

March 2010

INTRODUCTION

The Court Management Advisory Board, as it approaches its final six months of service, applauds the significant management reforms achieved by the Trial Court in the past five years and would now like to make the case for reforms that can only be accomplished through a partnership among the three branches of government. The Judiciary is faced with deep and painful cuts in its budget, as is the case with all budgets across the Commonwealth. For this reason, among others, the Board believes that this is the ideal time to tackle structural reforms. Despite the best efforts of people within the Judiciary, structural changes are necessary for the Commonwealth's Courts to operate more efficiently and effectively. These changes can only be achieved with the help of the Legislature and Governor. The recommendations made in this Report are not novel - they have been advocated by many other groups over the past 40 years - but they are long overdue. Given the financial problems facing the Commonwealth, this is the right time for leaders to act on these proposals.

PROGRESS ACHIEVED AND PROGRESS IMPERILED [1]

In 2003, following issuance of the widely acclaimed though harshly critical Report of the Visiting Committee on Management of the State Courts (the "Monan Report"), the Legislature, following the recommendation of the Monan Report, created the Court Management Advisory Board ("CMAB"). The purpose of the CMAB is to advise the Justices of the Supreme Judicial Court ("SJC") and the Chief Justice for Administration and Management ("CJAM") in implementing the Visiting Committee's blueprint for effecting significant reform of the management structures, policies and practices of the Courts. SJC Chief Justice Margaret H. Marshall has made improved management of the Judiciary one of the central tenets of her service as Chief Justice and has pushed the CMAB to implement the reform agenda put forth by the Visiting Committee.

Focusing in large part on the Trial Court, the Visiting Committee identified three deficiencies as the principal contributors to a system "mired in managerial confusion" and unable to deliver justice in a timely, efficient and cost effective way:

- a leadership culture and structure that hobble management,

[1] The Massachusetts Judiciary is composed of the Supreme Judicial Court, the Appeals Court, and the Trial Court. Seven Departments make up the Trial Court: the Superior Court, the District Court, the Boston Municipal Court, the Juvenile Court, the Housing Court, the Land Court, and the Probate and Family Court. The Supreme Judicial Court is the only Court in Massachusetts with constitutional status. All other Courts have been established through legislation. *See* Mass. Const. Pt. 2 c. 1, § 1, art. III (vesting the Legislature with the authority to establish the courts). In 1978, the Legislature enacted a statute to reorganize the administration of the Court system, and to make substantive changes in the jurisdiction of certain Courts. 1978 Mass. Acts c. 478. The state Courts were again reorganized in 1992 with the passage of Chapter 379, an act aimed at "improving the administration and management of the judicial system of the Commonwealth." 1992 Mass. Acts c. 379. The current system and many of the positions described below are largely a product of that legislation.

- a lack of performance measurement and accountability, and
- an inability to manage costs and resources.

The Visiting Committee recommended three initiatives which should be aggressively pursued to address these deficiencies:

- commit to a new leadership style and a revised organizational structure,
- create a culture of high performance and accountability, and
- establish discipline in resource allocation and use.

Noting that the challenges to implementing necessary reform are daunting, the Visiting Committee observed repeatedly that only with the full cooperation and collaboration of all three branches of government could its recommendations, particularly those requiring structural change, be fully achieved.

In the almost six years since its inception, the CMAB, whose members were appointed by the Justices of the Supreme Judicial Court and include, by statute, representatives of the business, public sector, academic and legal communities, has been privileged to work closely with the CJAM, Hon. Robert A. Mulligan, and his team of talented Trial Department Chief Justices to address many of the deficiencies identified in the Monan Report. In defining the initial steps to be taken, a collective decision was made to concentrate on those problems which could be solved by the Trial Court itself, including the issues of performance measurement, accountability, and management of resources, leaving to a future day the fundamental structural obstacles to ultimate reform.

As a result of the tireless leadership of Chief Justice Marshall, and the consistent efforts of Chief Justice Mulligan and the Trial Court Chief Justices, the CMAB, the CJAM's staff, and a host of dedicated Clerks, Registers and other Court personnel, transformative change in the efficiency and culture of the Trial Court has occurred during these years. As set out in more detail in Attachment 3, achievements include, among others:

- implementation of time standards in all Trial Court Departments,
- development of goals and metrics to improve and track the flow of cases from commencement to disposition (including the collection and public dissemination of data from each Court Department on a quarterly basis),
- adoption of staffing models by which personnel needs can be assessed and resources allocated,
- installation of MassCourts (the web-based case management system) throughout the Judiciary, except the Juvenile and Superior Court which are scheduled for implementation in 2010,
- design of surveys to measure user satisfaction in the Courts, and

- creation of a broadly representative fiscal task force to develop budget reduction strategies.

Notable also is the growing sense of professionalism, motivation and improved morale among personnel in the Courts as they work to meet clearly articulated goals and realize the benefits of accountability. The CMAB is proud to have been associated with these efforts, all of which are responsive to the directives of the Monan Report and many of which have been achieved in the face of dwindling resources.

Work will continue in all of the areas mentioned above, as well as in other areas where the Trial Court itself can effect improvements. It is imperative at this point, however, that the structural obstacles which are at the heart of real reform be addressed. These obstacles, discussed in depth in the next section, Critical Issues, stem largely from the absence of a comprehensive, professionalized administrative and leadership structure which would enable the Judiciary to fully and effectively manage itself. This is the most pressing issue identified by the Monan Report, and it is now a matter of even more urgency in light of the fiscal crisis facing the Commonwealth and the Courts. As the Visiting Committee observed, the problem was created by all three branches of government, and while the Judiciary must take the lead in it solution, the three branches "must now collaborate to redesign the Judiciary with clear reporting lines and roles" in order to "untangle the confusing structure that binds the Courts in mediocrity." Although a seemingly Herculean task, it is one that now must be undertaken. No financial resources will be required, and the result at the end of the day will certainly be, as the Monan Report states, a less expensive and more effective Court system.

The CMAB unanimously recommends that work begin immediately on these structural issues. Specific recommendations are set forth at the end of this Report. Members of the CMAB, whose terms end in May 2010, believe that the Judiciary, having demonstrated in the last six years a sustained ability to effectuate transformative change despite significant constraints, should now have the opportunity to work in cooperation with the Legislative and Executive branches, as well as other stakeholders, to make full implementation of the Monan Report a reality.

CRITICAL ISSUES

A. Organizational Dysfunction

The first recommendation of the Monan Committee, and the recommendation identified as the most challenging to implement, is *"restructuring the Courts to clarify reporting lines and responsibilities within the system."*

The current management structure of the Judiciary, the creature of a patchwork of Constitutional, statutory and budgetary provisions adopted at various times in the Commonwealth's history, leaves the Judiciary with no centralized authority, no control over a large segment of its workforce, and a limited ability to manage its resources. No Executive Department of the Commonwealth, and no private sector organization, could

ever operate within such a labyrinthine structure where no one is clearly in charge and where important business is performed by personnel over whom the titular leadership can exercise little or no real authority or have little if any role in hiring, disciplining or terminating. Monan Report Exhibits 6 and 7 (Attachment 4) illustrate the limitations and confusion of the current structure.

For example, the Justices of the Supreme Judicial Court have "general superintendence" powers derived from the Constitution and authorized by Mass. Gen. Laws c. 211 §3. Although the statute states that the SJC has "general superintendence of the *administration* of all courts of inferior jurisdiction, including the power to appoint the Chief Justice for Administration and Management"[2], it goes on to say that this general superintendence *"shall not include the authority or power to exercise or supersede any of the powers duties and responsibilities of the chief justice for administration and management.... except under extraordinary circumstances...."* Meanwhile, Registers of Probate and Clerks of the Superior Court (who are elected) and all other Clerks (who are appointed by the Governor), function independently of not only the CJAM but also the First Justices in their own Courts. Additionally, the CJAM's general superintendence power with respect to Clerks and Registers of Probate is limited by Mass. Gen. Laws c. 211B, § 10C, which expressly excepts Clerks and Registers of Probate from this power and states that the powers of the CJAM, the Departmental Chief Justices, or the First Justices of particular Courts

"...shall not include the authority or power to exercise, supersede, limit, prevent the exercise of or otherwise affect any of the powers, duties and responsibilities of the clerks or registers of probate in any general or special law, including laws authorizing or governing the selection and appointment of personnel, except where expressly authorized."

In the case of First Justice of the Bristol Juvenile Court v. Clerk-Magistrate of the Bristol Juvenile Court, 438 Mass. 387 (2003), the SJC upheld the constitutionality of statutes which limit the authority of the CJAM and the Chief Justices and First Justices of various Trial Court Department over the selection of Assistant Clerks and Probation

[2] The SJC also has the power of "general superintendence of all courts of inferior jurisdiction to correct and prevent errors and abuses therein if no other remedy is expressly provided." Mass. Gen. Laws c. 211, § 3. Additionally, the SJC's general superintendence power includes oversight of the administration of all courts of inferior jurisdiction, limited as set out above. The Chief Justice for Administration and Management (CJAM) manages and administers the Trial Court of Massachusetts, which consists of seven Trial Court Departments. As such, the CJAM is the statutory employer of the approximately 7,000 employees of the Trial Court who work in 130 locations across Massachusetts. The Administrative Office of the Trial Court (AOTC) is made up of nine Departments, each managed by a Director who reports to the Chief of Staff. The AOTC is the office through which the CJAM both manages the Trial Court and provides services to it. This office works closely with the Trial Court Departments and Commissions and with the SJC and Appeals Court to enhance the administration of justice in the Commonwealth. The CJAM technically has direct supervisory authority over the Office of the Commissioner of Probation and the Office of the Jury Commissioner. This authority, however, has been diluted by outside sections in each state budget since FY 2001.

Officers. In doing so, the SJC stated that the Judge who presides over a session has the inherent authority to insure that Clerks, Assistant Clerks and Probation Officers perform their tasks in a professional manner and specifically referred to the power to "oversee activity within the realm of judicial administration that takes place in and out of the courtroom." The decision appears to emphasize the Judge's authority to exercise physical control over the courtroom, but it leaves untouched the statutory scheme which vests in the appointed Clerks and the Commissioner of Probation the power to appoint and dismiss Assistant Clerks and Probation Officers without judicial interference. Thus, under the statutes as construed by the SJC in this case, a substantial number of employees of the Court system are removed from the managerial authority of the Judiciary.

The Probation Department, while technically part of the Judiciary, operates with an astonishing degree of autonomy. Yet this Department has approximately 2,200 employees, about one-third of the entire Judiciary staff. Outside sections of the Commonwealth's budget each year since 2001 have removed any mention of the CJAM in the appointment, assignment, dismissal or discipline of a majority of Probation Department staff (specifically Probation Officers, Associate Probation Officers, Probation Officers-in-Charge, Assistant Chief Probation Officers, and Chief Probation Officers) and vested all powers in the Commissioner of Probation. Prior to Fiscal Year 2001, appointments were subject to the approval of the CJAM. This is the case despite statutory language which says, finally, that the CJAM is "responsible for the management of court personnel, facilities, administration, security, and court business and [has] the authority necessary to carry out these responsibilities." Mass. Gen. Laws c. 211B, §9. As the Monan Report points out:

"The lack of meaningful authority is evident throughout the courts. Each layer of management has little ability to direct the next and little accountability to the one above. Reporting lines are vague and do not reflect natural working units. Basic tools of authority are undermined or absent; consequences cannot be tied to performance; resources cannot be removed or redirected; even the selection of those in key positions is often outside of a manager's control."

Some of these structural impediments originate with the Massachusetts Constitution, and others are statutory, including legislation adopted as recently as the 1990s, which places significant limitations on the Judiciary's ability to manage itself. Commissions and groups such as the CMAB have called for reform in nine separate reports since 1976, but because amending statutes and the Constitution is difficult, very little reform in this area has occurred. The Judiciary has no natural advocacy groups and this, in part, makes creation of a broad constituency for change very challenging. The CMAB believes that it is of critical importance that these structural deficiencies be addressed, especially in light of the current (and worsening) fiscal crisis, and endorses and reiterates (with minor variations) the prescriptions of the Visiting Committee as follows:

- The Chief Justice of the SJC (or other designated leadership entity) should be given clear authority to make management decisions regarding all the Courts in the Commonwealth. (See Attachment B for examples of management models in other states where judicial councils rather than individuals have ultimate responsibility for policy making and implementation of policy is left to professional administrators).
- Lines of reporting and accountability throughout the system must be clarified.
- The Judiciary should build a corps of professional administrators including a chief operating officer who is responsible for fiscal affairs, human resources, information technology, leases and other non-judicial functions subject to judicial policies established by the Judiciary.
- The Chief Administrator (or Chief Justice for Administration and Management) should report and be clearly accountable to the Chief Justice of the SJC (or other designated leadership entity).

At the end of this Report, the CMAB proposes a set of specific actions based on these recommendations, which, if taken, would have the effect of finally modernizing the management of the Judiciary at this very crucial time.

B. Lack of Management and Control over Parts of the Judicial System

Although significant activities within the judicial system are performed by Clerks, Registers, and the Probation Department, to a great extent the Judiciary does not control the hiring of personnel in the Probation Department and Clerks' and Registers' offices. Language that by implication removes the CJAM from the hiring process for these operations is contained in outside sections of the state budget for the Probation Department and in statutes (Mass. Gen. Laws c.276, §83 for Probation and c.211, §10B and §10C for Clerks). These employees, working in courthouses throughout the Commonwealth, have no lines of accountability to the First Justices in their courthouses, who, by statute, are responsible for that courthouse.[3] The Monan Report highlighted this problem:

> *"First Justices often armed only with moral suasion in their dealings with probation officers and clerks. Clerks who are appointed for life openly feud with judges they are supposed to support, and Chief Probation Officers feel torn between the Commissioner of Probation's hierarchy and the First Justice they serve."*

[3] In each of the Trial Court Departments, a First Justice, or in the case of the Superior Court, a Regional Administrative Judge, serves as the administrative head for that Trial Court Department in a courthouse or region.

Clerks and Registers may appoint whomever they choose to fill positions in their offices without consultation with either the First Justices or the CJAM. In fact, c.211B, which specifically spells out the Clerks' powers of appointment, specifically states that the Clerks have the *exclusive* authority to appoint Assistant Clerks without the review or approval of any other person. Only a blanket hiring freeze, such as that in effect now, places any limit on hiring freedom of Clerks, Registers and the Probation Department. This presents a major management issue for the Trial Court. The CMAB is quick to note, as did the Visiting Committee, that the majority of employees are hardworking and committed to doing a good job regardless of their reporting arrangements.

Past reports on the administration of the Courts, some dating back 40 years, have sought to tackle this issue (among many others) with complete lack of success.

Of special concern is the Probation Department which falls under the Judiciary, yet its budget and hiring processes are held out separately. The CMAB believes this is an anomaly which must be corrected. The current Commissioner of Probation was appointed in January 1998. Prior to 1992, the Commissioner had a six-year term, but that restriction was eliminated in 1993 (changes to Mass. Gen. Laws. c.276, §98 effective January 13, 1993) and today no limitation exists. Subsequently, a 2001 amendment to c. 276, §83, and strengthened in the budget process by the insertion of section 0339-1001 of every budget since 2001, gives the Commissioner of Probation the "*exclusive authority to appoint, dismiss, assign and discipline probation officers, associate probation officers, probation officers-in-charge, assistant chief probation officers and chief probation officers...*" Prior language called for the CJAM to approve such appointments. This budgetary provision leaves 2,200 staff – nearly one-third of Judiciary staff - outside the control of both the Chief Justice and CJAM as they attempt to manage under increasingly severe fiscal constraints.

An important management tool for the CJAM, particularly in times of reduced resources, is the ability to transfer funds between Court Departments to meet changing needs. Recognizing the value of transferability, the budget specifically states that the CJAM may transfer funds between Court Departments to more effectively administer justice in the Commonwealth. However, the CJAM is prohibited from transferring any funds which have been appropriated to Probation. The CMAB is aware of no other departmental head or manager in the Commonwealth who is explicitly restrained, via statute or budget, from touching one specific, large area under his or her purview. There is no rational justification for insulating Probation from the rest of the Judiciary in this important respect.

It is also interesting to note that while the Probation caseload has been basically flat for the past five fiscal years, the Department's staff has increased by 10 percent (from 2,005 to 2,200) and its budget has increased by 18 percent. As this Report was being written, the Legislature has added $4.5 million dollars to Probation's FY 2010 budget while drastically cutting all other areas of the government because of declining state revenues. This preferential treatment for Probation raises questions as to whether the interests of the public and of good management are being served. Although on paper

the Commissioner reports to the CJAM, the CJAM has virtually no control over the Probation Department. There is no basis for making this particular area off limits.

C. Life Tenure

There are obstacles to good management even within courthouses. Often unspoken is the fact that a large number of key managers (approximately 100) in non-judicial positions in the Courts have no terms of office. They may have been appointed by the Governor's office, elected, or, as is the case with assistant Clerks, Registers and Probation Officers, hired outside of a reporting structure that would be generally accepted in most departments of state government. Nor do these personnel have a mandatory age of retirement as do Judges. While Judges must retire at age 70, and are subject to oversight by the Commission on Judicial Conduct and the Supreme Judicial Court, Clerks of all Trial Court Departments, except Superior Court Clerks and Registers of Probate who are elected, are appointed by the Governor and are outside the scope of authority of either the First Justices in their courthouses or the CJAM. The process for removing appointed and elected Clerks, Registers, Assistant Clerks and Assistant Registers for poor performance is extremely onerous, requiring that that a case for removal be developed and made to a Committee on Professional Responsibility which then must examine the issues and decide whether or not to send the matter to the SJC for a determination.[4] As such, the process is rarely tested and these positions (as noted by the Monan Report) are tantamount to a system of "lifetime tenure." Probate Court Registers and Clerks of the Superior Court must at least stand for election.

Again, while most people in these positions are outstanding public servants, the burdens of such a system are self-evident. Even the most well-intentioned, hard-working people find it difficult at best to function as a team - to operate efficiently and to work effectively, without a clear management reporting structure to formulate a vision, establish priorities and objectives, and to monitor performance against those goals.

The management structure of the Judiciary should be brought into conformity with all other areas of state government where there are clear reporting hierarchies. All non-judicial management staff members should serve at the pleasure of those to whom they report. Judicial leadership positions should carry 5-year terms, as is appropriate since Judges have tenure until the age of 70. (Similar terms would not be appropriate for non-judicial appointees who, theoretically, do not have the same tenure.)

THE IMPORTANCE OF REFORM NOW

Why are changes to the current management system so important now? The Trial Court has already reduced its budget by about $50 million in the last two years -

[4] Chapter 211 §4 describes the process for removal of Clerks and Registers (appointed and elected) and Code of Professional Responsibility for Clerks of the Courts, SJC Rules 3:12 and 3:13, as amended, 427 Mass. 1322 (1998) defines the process.

from $600 million for FY 2008 to $554 million for FY 2010 - and deeper cuts are being proposed for FY 2011. Yet the Chief Justice and the CJAM must implement these reductions without a clear management hierarchy and without clear authority over nearly half of the Judiciary employees. Both statutory and budgetary provisions expressly prohibit the Chiefs from moving funds between and among budget lines (full transferability) or from having oversight over nearly 40 percent of the Judiciary's 7,000 employees, most notably those in the Probation Department and the Clerks' and Registers' offices.

No one can be held accountable for the management of the system as a whole, yet somehow huge budget cuts must be identified and implemented. It is unrealistic to cut tens of millions of dollars from the Trial Court's operating budget while making it impossible for the Court to make cuts in a rational way or to reassign personnel as needed. Nevertheless, the Trial Court is doing the best it can. In the spring of 2009, the CJAM appointed a fiscal task force chaired by District Court Chief Justice Lynda Connolly and Housing Court Chief Justice Steven Pierce. The task force, comprised of Judges, Registers, Clerks and Probation staff, was asked to develop comprehensive recommendations for achieving a large portion of the $50 million in budget cuts. One of the most important aspects of this committee was that representatives of all the components of the Trial Court came together to work towards one goal. While the problem of ultimate accountability could not be solved, the committee and its work represented a significant step towards building a cohesive Trial Court.

As at no other time in recent memory, it is critical that the best management practices and efficiencies be in place to deal with the Commonwealth's fiscal crisis. A unique opportunity now exists for the Legislative and Executive branches to work in partnership with the Judiciary to assure that the Courts no longer lag embarrassingly far behind in this regard.

The CMAB believes that it is imperative that these problems be addressed now. As mentioned earlier, the focus for the last six years has been on internal improvements which would not necessitate an appeal to the Legislature or Governor for changes in the statutes. It has been the shared belief that if the Judiciary could demonstrate (as it surely now has done) the will and the ability to make significant reforms itself, the cooperation of the other branches in addressing the structural issues could more likely be enlisted. There is much tangible evidence of the effects of the reforms of the past six years, as detailed in Attachment 3, much of which can also be found in the case flow management and other reports published on a regular basis by the Trial Court.

RECOMMENDATIONS AND ACTION STEPS

The CMAB has no illusions that these reforms will be easy - others have advocated them for more than 40 years - but members are certain that the changes are necessary for a more effective and cost-efficient Judiciary, something that the citizens of Massachusetts need and deserve. These reforms are consistent with the Monan Report, as well as the eight other reports that preceded it since 1976 (including those from the

Senate Ways and Means Committee, the Governor's office, Pioneer Institute and Massachusetts Bar Association's Harbridge House Report - all making similar or overlapping recommendations in the past 40 years).

Recent events and the Commonwealth's fiscal problems present a perfect opportunity to correct the structural problems of the Court system. A more rational management structure would enable discussion of and more expeditious decision making on critical issues facing the Judiciary including the potential for Court consolidation, appropriate location of the Probation Department (e.g., within the Judicial branch or in Public Safety), internal audit capabilities to prevent fraud and abuse in the collection of fees, and other cost saving measures.

The CMAB recommends that the following seven actions be taken expeditiously:

1. Clarify the lines of authority in the Judiciary by repealing the 1992 amendment to Mass. Gen. Laws c.211, § 3. Clearly define lines of authority for managing both policy and administration of the courts.

2. Examine [and amend as appropriate] other sections of c.211 and related state statutes with the goal of modernizing the Judiciary's management system and creating a coherent structure.

3. Eliminate limitations and restrictions on full transferability.

4. Professionalize the management of the Judiciary's $554 million dollar 7,000 employee operation. Broaden the criteria so that the person heading administrative (as opposed to the policy) operations has professional management experience. This person could be either a professional administrator or a judge, but he or she needs to have management expertise in overseeing facilities, information technology, and resource allocation and budgeting, analysis and human resources in order to enable the Trial Court to operate efficiently.

5. Immediately bring under a system of accountability and regular, effective performance review all non-judicial positions which are currently, by statute, lifetime appointments with no mandatory retirement age. In addition, insure that all personnel working in the offices of such non-judicial lifetime appointees are subject to the management supervision, review, direction and control of the Chief Justice of the Trial Court Department within which they work. When feasible, in the interest of the orderly and effective management of the Court system, such non-judicial lifetime appointments should be prospectively eliminated. Moreover, all senior level non-judicial officials (as defined by the CJAM) within the Court system, such as the Commissioner of Probation, should serve in those positions at the "will and pleasure" of their

appointing authority as is the case with any other commissioner level or senior management positions in the Commonwealth.

6. Make Chiefs of the Trial Court Departments (Superior, District, Probate and Family, Boston Municipal, Land, Housing and Juvenile) responsible for their Departments and everyone who works in them, including actions required to meet their budgets, under the general supervision of the Administrative Office of the Trial Court (AOTC) and the SJC. Give the AOTC and Trial Court Chiefs the authority to transfer personnel as needed. (The CMAB acknowledges that major progress occurred in the summer of 2009 when the Legislature reduced the number of Court-related budget lines from 140 to 15 providing some additional flexibility to manage within broader parameters in the FY '10 budget.)

7. Make First Justices responsible for their courthouses and ALL employees working with them.

These are important goals. They require specific action steps. The CMAB has not addressed the issue of elected Registers in Probate Courts or Clerks in Superior Courts as their election is a Constitutional matter. This Report limits recommendations to areas of statutory and budget language that the Governor and Legislature may address without undertaking the process of changing the Commonwealth's Constitution.

Attachment 1 is a list of specific actions that should be taken. They are organized into items that are achievable, have realistic timeframes, and should help provide a road map for achieving these objectives.

Attachment 2 briefly describes a judicial council model, used by some states for managing their courts, which should be considered as a leadership option for Massachusetts. While the CMAB is not recommending this model without further study, it is interesting to note how other state judiciaries function. In South Carolina, for example, there is yet another model. There each Court Department has an advisory board comprised of selected judges of that Department. In Massachusetts, the Trial Court Chief Justices meet as a group with the CJAM but do not have all of the functions outlined by many judicial councils.

Attachment 3 describes many of the accomplishments of the Trial Court system since the Monan Report issued in 2003.

Attachment 4 is comprised of three exhibits from the Monan Committee Report that illustrate how the current organizational structure of the Courts does not support effective leadership or management (Exhibits 6 and 7) and proposes an alternative organizational structure, which has similarities to the structure proposed in the Harbridge House Report sponsored by the Massachusetts Bar Foundation and the Massachusetts Bar Association in 1991.

The terms of present CMAB members come to an end in mid-2010, and others will be appointed in their stead. The current CMAB respectfully submits that its successor Board be constituted to focus exclusively on implementing the above recommendations and be composed of persons who can not only advocate for but also be instrumental in bringing about these changes.

By adopting these crucial management reforms, the Commonwealth will finally achieve excellence not just in the quality of justice, but also in its administration, as has been advocated repeatedly by many independent groups for over 40 years. The citizens of the Commonwealth deserve nothing less.

Attachment 1

Court Management Reform Action Steps

1. In the FY 2011 Budget the Governor and Legislature should include the following changes:

- Outside Section 0339-1001 should be rewritten to revert to language contained *in the FY 2000 budget and prior.* That language stated:

  > *"For the office of the commissioner of probation; provided, that said commissioner of probation, subject to the approval of the chief justice for administration and management, shall appoint any associate probation officer or probation officer-in-charge..."*

  Since FY 2001 this section has given the Probation Commissioner "exclusive authority to appoint, dismiss, assign and discipline Probation Officers, Associate Probation Officers, Probation Officers-in-Charge,..."

- Provide the Judiciary with the full responsibility for managing its budget and resources. Allow for transferability between and among all budget lines under its jurisdiction, including the trial courts, probation, office of community corrections and Administration.

2. As soon as possible, the CMAB will meet with the Governor's Legal Office and the SJC Chief Justice to discuss development of proposed revisions both to Mass. Gen. Laws c.211 relating to the SJC and the AOTC, and, as appropriate, to other statutes governing the courts, for discussion and submission to the Legislature.

- Proposed revisions will clarify the lines of authority between and among the Supreme Judicial Court, Chief Justice for Administration and Management, Trial Courts, Clerks and Registers, Probation, and Office of Community Corrections, all of which are components of the Judiciary.

- Consideration will be given to structures such as judicial councils used in other states and whether a similar model should be recommended for Massachusetts. (A brief summary of some of these models appears as Attachment 2.)

- Professionalizing the management of the Court system, including broadening the criteria for the administrative head of the Courts so that it could be a judge, lawyer or professional administrator, will be another goal of the proposed revisions.

3. The CMAB in its final report will provide an update on these recommendations and specific actions that have been taken.

Attachment 2

State Judicial Council Models

Some states have Judicial Councils that assist in the administration of all the courts in the state. This may be a governance model worth exploring. Below is a brief summary of what these councils are and how they are structured. It is interesting to note that Massachusetts may have had a Judicial Council as described in Mass. General Laws Ch. 221 §34A, but it long ago was dissolved.

1. What are the functions of Judicial Councils?

A Judicial Council is responsible for improving the statewide administration of justice. Chaired by the Chief Justice of a state's Supreme Court, and in accordance with the state constitution, the Judicial Council:

- Establishes direction and set priorities for the continual improvement of the court system
- Promulgates uniform rules of court administration, practice, and procedure;
- Sponsors and takes positions on legislation that affects the state's judicial system;
- Allocates the judicial branch budget;
- Responds to legislative mandates; and
- Sets standards for performance, court facilities, support services, and judicial and non-judicial staff levels.

2. How are they structured?

A brief look at states with Judicial Councils shows that they range from seven members to a high of 27 members in California. The Council consists of the Chief Justice of the Supreme Court who chairs the Council. The other members often include: a Supreme Court Justice; a judge of the Court of Appeals; judges from the various trial courts; a state bar representative; and other non-legal professionals. Some states also include representatives from the governor's office and the state legislature. Terms for the judges and other representatives are set, typically at about three years. These states typically have adopted a State Court Administrator model and this person serves as secretary to the Council.

3. How is the Council staffed? How is the Court System administered?

Under this model, the courts have an administrative office of the courts, similar to the Administrative Office of the Trial Court (AOTC) in Massachusetts. The work of the Judicial Council is supported by its staff agency, the Administrative Office of the Courts (AOC). The leader of the AOC is called the Administrative Director of the Courts, or State Court Administrator, and is appointed by the Chief Justice and serves as the Secretary to the Council. The Administrator, or Director, is an individual with professional ability and experience in the field of public administration and an understanding of court procedures and services. The State Court Administrator is assisted by a Deputy Administrator, Superior, District, Probate, Juvenile, and other trial court administrators, and management personnel in the following areas: Human Resources, Public Information, Planning and Research, Finance, Information Technology, Information Services, Audit and General Counsel. The Administrative Office of the Courts

serves as staff to the Judicial Council, rules committees, boards of judges, standing and ad hoc committees, and supports clerks of court and trial court executives throughout the state.

Attachment 3

Trial Court Management Achievements Since 2003 Monan Report

The Trial Court has made a number of improvements that have improved the efficiency and effectiveness of the courts. These range from use of data to inform decision making, introduction of technology to improve access to records and facilitate coordination between the courts and other agencies (e.g. Registry of Motor Vehicles), and management discussions for the trial court chief justices. Below are some of the highlights.

1. Data Driven Decision-Making

The Trial Court is continuing its transformation to a court system that uses performance measurements and empirical data to inform decision-making and determine best practices. The CMAB attributes the progress in management reform not only to the strong leadership of Chief Justice Mulligan and the Departmental Chief Justices, and also to the dedication and hard work of the Trial Court judges, clerks and staff.

In 2008, the Trial Court completed its third full year using four case flow CourTools performance metrics on timeliness and expedition, and continued to use and publish the data to measure and evaluate case management and court performance; a fifth CourTools measure addressing access and fairness in the delivery of quality justice was implemented state-wide; MassCourts continued to roll out across the Commonwealth; a sixth CourTools metric assessing case file integrity was piloted successfully in all eight divisions of the Boston Municipal Court Department; and staffing models were updated and used to allocate staff support in courthouses during a year of fiscal crisis and diminishing resources.

2. Third Full Year of Case Flow Court Metrics Completed

The Trial Court has completed its third full year using four case flow CourTools measurements focusing on timeliness and expedition in all seven court departments - namely, Clearance Rate; Time to Disposition; Age of Pending Caseload; and Trial Date Certainty. Setting ambitious target performance goals for each measurement, the CJAM, with the assistance of the departmental chief justices, compiled and created quarterly statistical reports, presented them at the formal sessions of the CMAB, and published them on the Trial Court website.

- A review of the data highlights the steady progress made on the timely disposition of cases throughout the Massachusetts court system. In 2008, the Trial Court cleared cases at the rate of 97 percent; disposed of 89.4 percent of cases within time standards; reduced the number of cases pending beyond time standards by 6 percent; and began 76.3 percent of all trials by the second trial date. While falling short of some of the target goals, the data reveals continued improvement in the time to disposition of cases.

After over three years using CourTools measurements to manage timely case processing, these metrics have become more widely embraced and understood throughout the Trial Court. Court leadership maintains that these statistical reports have become increasingly important case and court management tools and provide an important foundation for their management reform efforts.

3. Access and Fairness Survey Implemented Across all Seven Court Departments

In 2007, the Trial Court expanded its focus beyond timeliness and expedition and to evaluate and measure the components of access and fairness in the delivery of justice in Massachusetts courts. This measurement utilizes National Center for State Courts developed CourTools, a set of ten trial court performance measures designed to measure court performance in five areas: access to justice; expedition and timeliness; equality, fairness and integrity; independence and accountability; and public trust and confidence. This is a nationally recognized survey instrument to elicit feedback from court users on their experiences in accessing the courthouse and conducting their business while there.

After a successful pilot in the Roxbury Division of the Boston Municipal Court Department in 2007, the project was implemented in 2008 across all Trial Court departments in all 106 courthouses throughout Massachusetts, yielding 9,044 completed court user surveys. The vast majority of statewide responders agreed or strongly agreed that: their overall experience at the courthouse was satisfactory - 80.5 percent; they were treated with courtesy and respect - 87.7 percent; and they felt safe in the courthouse - 91.4 percent. Reinforcing the court's emphasis on timely case management, 68.6 percent agreed or strongly agreed that they were able to complete their court business in a reasonable amount of time. The information gathered from these surveys has been reviewed and reported on by each Trial Court department. These reports will guide efforts for further improvements to the system.

4. MassCourts Expanded

Calendar year 2008 represented another year of active progress for MassCourts, the Trial Court's web-based, integrated case management system, as it continued to expand across the court system. Leaders and staff of Trial Court Information Services and the departmental administrative offices continued to work collaboratively to progress toward full implementation which will ultimately replace 14 individual systems. Implementation progress prompted the State Auditor to issue a positive report in July 2008. State Auditor Joe DeNucci reported that MassCourts was progressing in a "systematic and efficient manner" and commended the Trial Court "for the progress it has made to date in implementing this very important project." DeNucci's report was based on a 14-month audit of the MassCourts project.

Some of the highlights of the progress on MassCourts implementation in all seven court divisions include:

- Successful of MassCourts in five trial court departments, with implementation scheduled for the Juvenile and Superior Court in 2010.
- Number of Records in System Increases Dramatically. As of December 31, 2008, more than 5.3 million cases were in the system, an increase of more than 1.2 million from the year before. An average of 32,000 new cases per month was entered into the system in 2008.
- Data Exchanges Planned. Trial Court Information Services worked with the Trial Court departments and a number of external partners, including the Registry of Motor Vehicles, the Department of Children and Families and the Registry of Vital Records and Statistics, to coordinate the implementation of a variety of additional electronic exchanges of information of common interest from MassCourts. Daily data transfers of case disposition information to the Registry of Motor Vehicles by the Boston Municipal Court and the District Court Departments went online in

January 2009 facilitating electronic reporting of approximately 500 case outcomes daily. This new interface will join the existing interfaces to Criminal History, State Police, the Board of Bar Overseers and the Committee for Public Council Services already in place.

5. Case File Integrity Project Piloted

In 2008, under the leadership of Chief Justice Charles Johnson, the Boston Municipal Court Department piloted a sixth CourTools performance measure by implementing the Reliability and Integrity of Case Files Project. The project, spearheaded by a committee of experienced Boston Municipal Court Department personnel, reviewed 1,600 randomly selected case files across the department for timeliness of retrieval, accuracy and reliability of case file contents, and completeness of case file information. The results of the project indicated good quality of the case files, but also the need to develop standard policies and procedures across all court divisions for similar case types.

6. Staffing Model

- During calendar year 2008, the Trial Court updated its empirical, case-weighted staffing

model periodically to provide the most accurate assessment of the staffing needs for each division of the Trial Court and to inform the allocation of resources across the court system in a systematic, fair and equitable way. Given the worsening fiscal crisis, the staffing model is an even more critical framework for decision-making for Trial Court leadership as it assessed and identified the most critical staffing needs in the system in order to allocate the limited resources accordingly.

On February 27, 2008, the CMAB sponsored a major symposium titled "Striving for Excellence in Judicial Administration" to commemorate the five year anniversary of the issuance of the Monan Report. More than 300 judges and court staff, lawyers, and business leaders came together to reflect back on the progress made to date on the recommendations of the Monan Report, and to look ahead at additional areas for improvement. Attendees heard from California Supreme Court Chief Justice Ronald M. George who delivered the keynote address, as well as a distinguished panel of management experts and CMAB.

7. Open Dialogues and Management Discussions

- **Open Dialogues**

Recognizing the importance of input and feedback from the bar to enable continuous improvements in court practices, the CMAB, along with the Trial Court, the Massachusetts Bar Association and regional bar associations held a series of five bench-bar meetings called "Open Dialogues on Court Practices" throughout Massachusetts in 2008. The sessions, conducted in Brockton, Lawrence, Boston, Springfield and Worcester, brought together 1,000 attorneys, judges and court personnel to get reactions, thoughts and ideas on court management initiatives, systems and practices. The series was based on the overwhelming success of a CMAB sponsored "town meeting" in May of 2007, hosted by William Kennedy, Esq. of Nutter, McClennen & Fish LLP, to provide a forum for experienced practitioners who appear with some regularity in the trial courts to provide opinions on trial court practices and offer suggestions for

improvements. As a result of the Open Dialogues, each of the Trial Court departments developed action steps to follow up on issues raised by the sessions.

- **Management Training**

The CMAB and CJAM have hosted a series of management roundtables for departmental chief justices and CMAB members, featuring prominent business or governmental leaders with expertise in management reform and system transformation. Paul Levy, President and CEO of Beth Israel Deaconess Medical Center, the Honorable Christine M. Durham, Chief Justice of the Supreme Court of Utah and Joseph S. Nye, Jr., former Dean of the Harvard Kennedy School of Government.

The Trial Court's website at www.mass.gov/courts also highlights some of the management reforms and has links to many detailed reports about the above topics. Management reform efforts were also featured in two additional publications in 2008: "Massachusetts courts slash backlogs" in the *National Law Journal Online,* and "The courts better themselves" in *The Boston Globe.*

Attachment 4

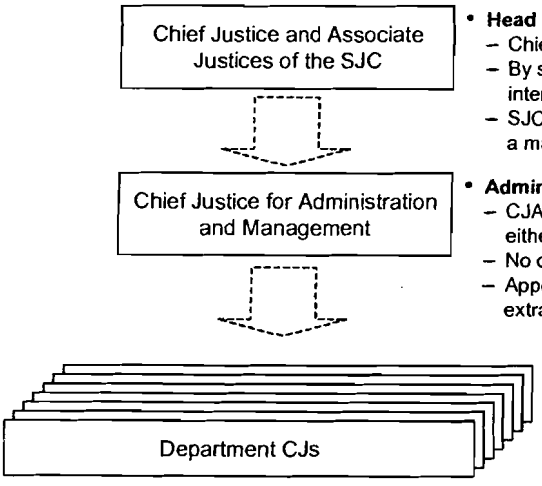
Monan Report Exhibits Reflect Organizational Structure

- **Exhibit 6: The Current Structure Does Not Support Effective Leadership**
- **Exhibit 7: Current Structure: External Pressures and Unclear Relationships Make Division Management Difficult**
- **Exhibit 8: Proposed Structure: The Judiciary Requires Clear Lines of Authority and Defined Consequences for Differential Performance.**

Exhibit 6

THE CURRENT STRUCTURE DOES NOT SUPPORT EFFECTIVE LEADERSHIP

SIMPLIFICATION



- **Head of the Judiciary, but limited role in court administration**
  - Chief Justice is the *de facto* system leader, under the general superintendence clause
  - By statute, SJC/CJ cannot exercise superintendence over administration if doing so interferes with CJAM's authority
  - SJC appoints CJAM for a 5-year renewable term; can remove or overrule CJAM by a majority vote only under extraordinary circumstances*
- **Administrative head of the Trial Court**
  - CJAM has broad statutory responsibility over administration, but authority to lead is either limited (e.g., personnel and resource transfer) or not specified in statutes
  - No direct authority over most system personnel or resources
  - Appointment of department Chief Justices (CJs) every 5 years, removal under extraordinary circumstances*
- **Administrative head of the department**
  - Subject to CJAM superintendence but with direct statutory authority
  - No direct authority over most department personnel or resource allocation
  - Appointment of division First Justices every 5 years; removal under extreme circumstances**

- Power is directly assigned to leaders rather than delegated from above
- System administrators have limited administrative authority, much of which overlaps
- No one has authority over system or department-wide management of resources
- The authority that SJC, CJAM, and department CJs can exercise lower-level leaders is intermittent

* The statutes define extraordinary circumstances as "severe, adverse impact on the administration of justice" in the case of CJAM's tenure, and as "best interests of proper administration of justice" in the case of department CJs and division First Justices. In practice, extraordinary circumstances have not been specified

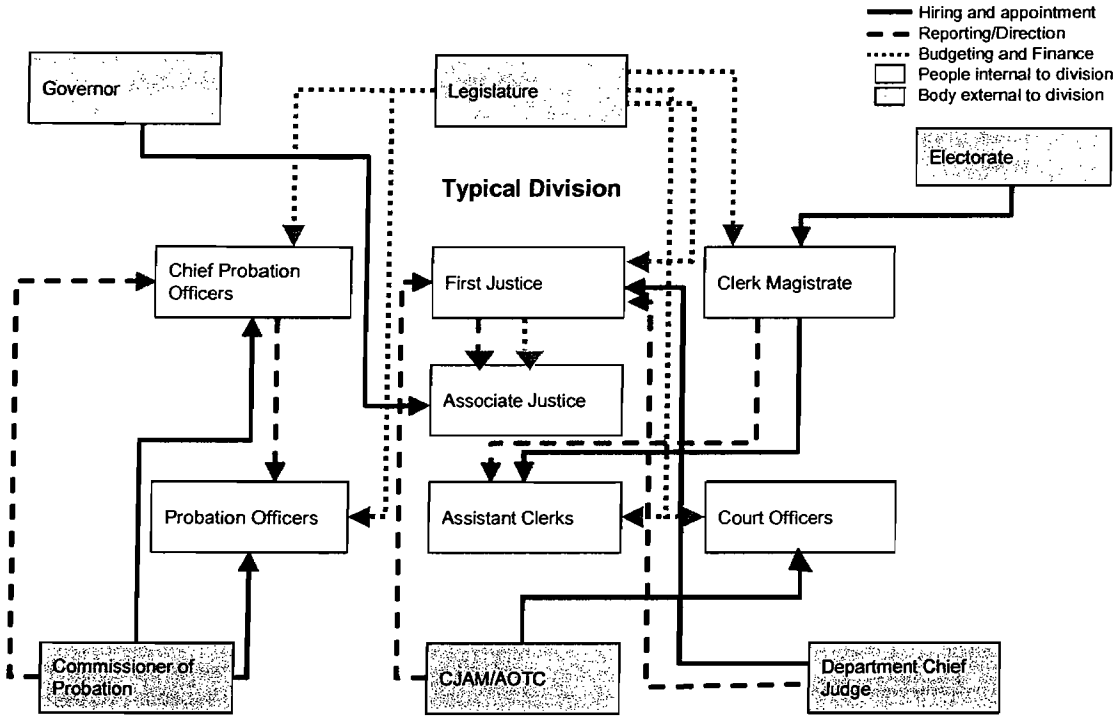
** CJAM approves First Justice appointments in some departments (e.g., District Court), but not others (e.g., Juvenile Court). CJAM consent is required to remove a First Justice

Source: Massachusetts General Laws; interviews

Exhibit 7

EXTERNAL PRESSURES AND UNCLEAR INTERNAL RELATIONSHIPS MAKE DIVISION MANAGEMENT DIFFICULT

SIMPLIFIED



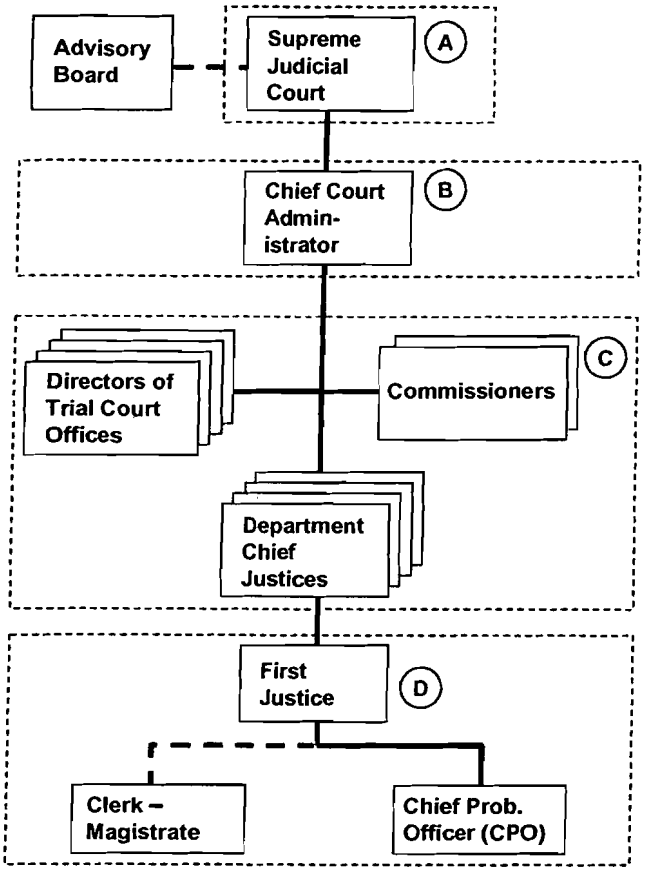
Note: While Superior Court Clerks of Courts and Registrars of Probate are elected, Land Recorder and Clerk-Magistrates in other departments are appointed by the Governor

Source: Interviews; AOTC and SJC materials

Exhibit 8

THE JUDICIARY REQUIRES CLEAR LINES OF AUTHORITY AND DEFINED CONSEQUENCES FOR DIFFERENTIAL PERFORMANCE

PROPOSED STRUCTURE



A. Supreme Judicial Court
- Under the leadership of the Chief Justice, sets and promulgates the mission and goals of the Judiciary
- Hires and removes the Chief Court Administrator based on evaluations of administrative performance

B. Chief Court Administrator
- Term is at will and based on administrative performance
- Authority delegated from SJC; primary responsibility is to administer Judiciary based on missions and goals set by the SJC
- Hires and removes directors, commissioners, and department Chief Justices based on evaluations of administrative performance

C. Directors of Trial Court offices, Commissioners, and department Chief Justices
- Term is based on evaluations of administrative performance
- Authority delegated from Chief Court Administrator
- Each is responsible for the operations and performance of their respective offices/departments
- Department Chief Justices appoint and remove First Justices based on individual and unit performance evaluations

D. Division management teams
- First Justice appointed at will by department Chief Justice, based on administrative skills
- Clerk-Magistrate appointed by Governor based on managerial aptitude and knowledge of the law and of court procedures
- CPO appointed by First Justice based on managerial aptitude
- Managers are evaluated individually as well as on a unit basis