

COURT MANAGEMENT ADVISORY BOARD

2005 ANNUAL REPORT

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2005 Annual Report
of the
Court Management Advisory Board

A. BACKGROUND

The Court Management Advisory Board (“CMAB”) was created in 2003 by an act of the Massachusetts legislature. (A copy of the statute is attached as “Exhibit A”.) The CMAB is the result of one of the recommendations of the Visiting Committee on Management in the Courts contained in a March 2003 a Report to Chief Justice Marshall. The Visiting Committee (popularly known as the “Monan Committee”) had conducted a six-month study of the Massachusetts courts and had concluded that the “administration and management of the Judiciary is uneven at best, and sometimes dysfunctional... (and) that, despite pockets of genuine excellence, the management of the Judiciary is preventing the people of Massachusetts from receiving the justice they deserve.” One of the many recommendations contained in the Report of the Visiting Committee (known as the “Monan Report”) was the creation of a permanent advisory board which would include members from within the legal system and members from the private sector and government who could bring their experiences to bear on the managerial challenges facing the Judiciary and “provide needed performance pressure and a sense of urgency.” It was as a result of this recommendation that the legislature created the CMAB. Its mandate, according to the enabling legislation, is to advise and assist the Justices of the Supreme Judicial Court and the Chief Justice for Administration and Management (“CJAM”) on matters pertaining to judicial administration and management and all matters of judicial reform.

B. MEMBERSHIP AND GOALS OF CMAB

In the summer of 2004, the Justices of the Supreme Judicial Court appointed the twelve members of the CMAB according to the categories of experience set forth in the enabling statute. In addition to the twelve appointed members, the CJAM serves as Executive Secretary of the CMAB. Attached to this report (as “Exhibit B”) are the biographies of the twelve appointed members. Several are drawn from the legal community but an equal number come from the private sector, with business and information technology experience, and others from public sector managerial positions. Although in the past there have been many efforts to bring non-judicial experience to assist the judiciary, the CMAB is the first attempt to bring persons with

non-legal experience to assist and advise the judiciary. It is one of the unique strengths of the CMAB that it includes members from outside the legal community who bring the highest level of management experience in business, government and technology to the table. Many have no prior exposure to the Massachusetts judicial system and are, therefore, not burdened by that cultural experience which may interfere with proposing management reforms within the judicial system. That fresh perspective -- contemplated by the Monan Committee and the CMAB enabling statute -- has been an important addition to the value of CMAB in matters of judicial reform.

Early in its deliberations, the CMAB identified the constituency to which it believes it must be responsible. That constituency is the public -- not the legal community or the judiciary. CMAB's mandate -- advising and assisting the Justices of the Supreme Court and the CJAM in the management and administration of the courts and other matters of judicial reform -- is to serve the public's desire (to quote the Monan Report) to receive "reasonably priced, quick and courteous justice." The CMAB thus sees its legislated mandate to be a catalyst for change -- for the benefit of the public.

C. THE "BLUEPRINT"

Both Chief Justice Marshall and Chief Justice Mulligan have stated publicly that the Monan Report is the "blueprint" for the future management of the Massachusetts court system. Consequently, much of the activity of the CMAB has been working with the CJAM to address the major concerns articulated in the Monan Report.

One of the major criticisms of the judicial system in the Monan Report was the lack of expeditiousness and timeliness in the delivery of justice. The Monan Report acknowledges -- appropriately -- that the Massachusetts judicial system is without peer in the quality of its decision making -- both at the trial and appellate level. The Monan Report also acknowledges that court personnel are working diligently. Those facts, however, do not mean that a lack of timeliness and expeditiousness in the movement of cases through the system does not have a qualitative and adverse impact on how the public perceives the justice it receives. It is no longer acceptable for the judicial system to insulate itself from management norms and processes which are routinely relied upon by other "service" industries, such as higher education and health care, on the theory that what the judicial system delivers, i.e., "justice" is somehow unique. Other court systems (which also deliver "justice") have adopted management and administrative

procedures which make those court systems more efficient than Massachusetts' and those systems have a much better record of timeliness and expeditiousness than Massachusetts has achieved.

Efficiency and timeliness are not incompatible with the delivery of high quality justice. In fact, they must be part of the delivery of high quality justice. For too long, the Massachusetts court system's excellent decision-making has been obscured in the minds of the public (and in the legal community) by instances of inordinate delays, inadequate or uneven staffing, and other indices of inefficiencies.

Although the CMAB recognizes that adequate resources are clearly required to achieve the level of excellence contemplated by the Monan Report, the application of sound management principles will make that goal more achievable. Not only will these improvements change the perception of the delivery of justice but they will, in fact, improve the delivery of justice. None of these reforms, incidentally, are intended to impact the way in which a judge conducts a hearing or a trial which, as noted above, is regarded as exemplary. Improved management processes, however, will assist litigants to reach that legal proceeding in a more timely and less costly way.

D. ACTIVITIES OF CMAB

The members of CMAB have met at least once a month in formal sessions which are always attended by Chief Justice Mulligan and members of the staffs of CJAM and the Supreme Judicial Court. In addition to the regular monthly meetings, members of the CMAB have met informally with members of the judiciary and their staffs to discuss matters relating to judicial administration and management.

At each of the monthly meetings, the CMAB has invited and received presentations from interested parties. The first meeting was with the Justices of the Supreme Judicial Court to discuss the role of the CMAB. Following that meeting, the CMAB met with members of the Monan Committee to discuss its findings and recommendations and later received a detailed presentation by McKinsey & Company which had assisted the Monan Committee in the fact-gathering upon which the Monan Report was based.

The CMAB has also met with several of the Chief Justices of the Trial Court Department, including Chief Justice Barbara Rouse of the Superior Court Department, Chief Justice Lynda Connolly of the District Court Department, Chief Justice Martha Grace of the Juvenile Court

Department and Chief Justice Charles Johnson of the Boston Municipal Court Department. Meetings are currently scheduled with the Chief Justices of the remaining Trial Departments. These meetings with the Chief Justices have been extremely informative to the CMAB, both in developing an understanding of the complexity of each of the Trial Departments and as an occasion to discuss with the Chief Justices their efforts, which are impressive, to develop management and administrative practices for each of the Trial Departments. Each of the Chief Justices with whom the CMAB has met has articulated an encouraging interest and willingness to develop administrative and management procedures which will improve the efficiency and timeliness of the work of their Departments.

E. Progress to Date

Chief Justice Mulligan and the seven Chief Justices of the Trial Court Departments have taken several significant steps over the past year to address the issue of timeliness and expeditiousness. Notably, a significant milestone was achieved in November, 2004, with the establishment of time standards for all trial work departments, criminal and civil. Under the time standards, cases were classified according to their complexity, and timeframes were set from filing to disposition, along with specific benchmarks for key decision points in the course of a case. Related to the establishment of time standards is an initiative to improve case flow management in each trial court department using performance standards promulgated by the National Center for State Courts. The CMAB believes that now the court system should turn its energies towards creation of a system to measure the extent to which the flow of cases is consistent with the metrics established under the time standards. This will give the Departments of the Trial Court a means to determine whether the goals of the new time standards are being met and whether there is a measurable improvement in the timely and expeditious manner in which cases are processed through the system. Goals that do not have tangible measures run the risk of being unfulfilled. The CMAB further believes that the courts should begin to publish the results of these performance audits in 2006.

Another major criticism of the Monan Committee was that the trial court lacked a systematic, empirical basis for developing budgets and allocating resources. One of the recommendations of the Monan Committee was that the Trial Court develop a case-weighted court staffing model to serve as the basis for the equitable allocation of resources across the trial court. In February, 2005, Chief Justice Mulligan and the CJAM staff, working with the Trial

Court Justices and staff from all seven departments in conjunction with the National Center for State Courts, created a staffing model which provides an empirical framework for assessing the staffing needs of each trial court division and for allocating resources across the trial court system in a fair and equitable manner. The staffing model has been used by the CJAM to allocate 108 positions statewide to those trial courts which the model showed to be understaffed. The staffing model was also used in the preparation of the FY 2006 Trial Court budget proposal. Unfortunately, the FY 2006 budget did not give the CJAM the ability to move funds between trial court departments. The lack of transferability impedes sound fiscal management of the court system.

In addition to the implementation of time standards and the staffing model, the CJAM has also hired personnel who are developing MassCourts, which will automate criminal and civil proceedings in each of the trial court departments and provide a court-wide information system that will produce objective data to inform management policies and decisions.

It is worth noting that one of the steps undertaken by CJAM, is to convene monthly meetings of the Chief Justices of the Trial Court Departments with Chief Justice Marshall and Chief Justice Mulligan to set Trial Court goals, establish priorities and report on the progress of ongoing initiatives. These meetings provide a forum for an active discussion of the management challenges facing the courts and an opportunity to discuss progress towards articulated goals. Chief Justice Mulligan and his staff should be commended for these important steps.

Further to achieving the transformational reforms contemplated by the Monan Committee are the development of system-wide goals and the implementation of processes to measure empirically the progress of the Trial Department to achieve those goals. Many important and valuable management improvements are being implemented in several of the Trial Departments -- with encouraging indications of tangible results in the elimination of backlogs and case disposition.

In this connection, the CMAB strongly believes that there must be unified goals established across all Trial Court Departments as a whole and that there should be a system-wide ability to measure how each Department is progressing towards the articulated goal. The CMAB also believes that the only effective way to measure progress towards goals is to implement a system which is designed to do just that -- measure the progress. One device, sometimes referred to as a "dashboard," is routinely relied upon in most large and complex organizations which have

articulated goals. The CMAB has reviewed articles which discuss the application of “dashboard” technology to court systems.

In its transmittal letter to Chief Justice Marshall, in which the Monan Report was presented, the Monan Committee underscored the importance of a unified system: “But it is among the links that are needed to forge all the Courts into a unified system that was found the most significant management gaps. These gaps will not ultimately be bridged by personal talents of individual personnel, but by assuring that the best organizational structures and management practices are at work in molding the Courts into a true “system” as opposed to a loose collection of parts.” Although each Trial Department has its own unique subject matter and area of expertise, the CMAB believes that the administration and management of the court system must treat them as part of a unified system, sharing the same objectives.

E. CMAB Activities in 2006

Recently, the CMAB met with the Justices of the Supreme Judicial Court to discuss the CMAB activities and to report on its observations regarding the progress in management and administration over the past year and where the CMAB believed the court system should focus its efforts in the coming months. The CMAB commended Chief Justice Mulligan and his staff for the many important steps referred to above.

A central recommendation made to the Justices is that the court system develop tangible metrics, which would apply uniformly to all Trial Departments, to measure empirically the progress towards articulated goals. The CMAB recommended that steps be initiated as soon as possible to gather the necessary data to permit the managers of the system to know at any point in time whether the system is making progress towards these goals.

The CMAB recognizes that until MassCourts is rolled out for all Trial Departments, complete information will be difficult to obtain but believes that sufficient data can be obtained -- even if by sampling -- to develop the dashboard which will measure progress empirically. The CMAB believes that actual measurements and metrics are the only way to gauge progress towards the articulated goals. The CMAB believes this process is a priority matter (even before the completion of MassCourts) and one which, by its very existence and importance, will cause court personnel to conduct their business in light of the articulated goals.

The CMAB is mindful that the Monan Report calls for a much needed transformation of the management of the court system. This transformation requires everyone to focus on the

development and use of information that has heretofore existed only in pieces of the court system. This information has never been publicized. It has not been used to spur system-wide improvement and change. Analytic tools, shared models, performance goals and public measurement will create resistance in any organization, particularly one with a strong culture of independence. The CMAB recognizes that the work to date is only a prelude to the hard work yet to come.

The CMAB legislative mandate charges it with advising and assisting the Justices of the Supreme Judicial Court and the CJAM in all matters of judicial reform. Therefore, in addition to continually working with the Justices and the CJAM on the matters referred to above, members of CMAB will continue to work with the leadership of the court system to provide outside assistance to help achieve the goals of the Monan Report. This assistance can take many forms: one area of articulated need is in management training and another would be to bring outside experts to work on matters of court management and administration. In addition, the CMAB will work with the CJAM towards the goal of obtaining greater flexibility in the allocation of existing resources consistent with previously mentioned staffing models.

CONCLUSION

The CMAB believes that Massachusetts has an historic opportunity to implement a real transformation of its court system. This belief is driven by several important factors. First, the Monan Report itself provides a detailed and comprehensive plan -- based upon extensive and careful analysis to achieve that transformation. Second, the leadership of the court system, including Chief Justice Marshall, Chief Justice Mulligan, who was appointed in the aftermath of the Monan Report, and the Chief Justices of the Trial Departments, are committed to making that transformation occur. Third, the CMAB provides a permanent and legislatively mandated voice to advise and assist in this effort and to continually remind the court system of the urgency of this task.

The CMAB believes that the coming year -- 2006 -- will be a critical one in demonstrating that the recommendations contained in the Monan Report are being implemented and that the momentum towards that transformation continues in measurable ways. The CMAB is committed to providing its best efforts in pursuit of that worthy goal.