

## Court Management Advisory Board

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*Lisa C. Goodheart, Chair*  
*Kathleen M. Donovan*  
*The Honorable Gail Garinger (ret.)*  
*Richard Johnston*  
*Scott Harshbarger*  
*Allen B. Kachalia*  
*Liam Lowney*  
*The Honorable James F. McHugh (ret.)*  
*Donald Oppenheimer*  
*Denise R. Squillante*  
*Kenneth Turner*

February 28, 2018

Re: *2017 Report of the Court Management Advisory Board – “Building on the Past and Investing in the Future”*

On behalf of the Court Management Advisory Board, I am pleased to deliver the CMAB's 2017 Report, "Building on the Past and Investing in the Future."

The members of the CMAB appreciate the opportunity to offer our assistance and advice on matters of court management and administration. We are honored to do so, as we recognize that the quality of the Trial Court's operational functions has a profound impact on the judicial system's ability to provide access to justice for all. It is our hope that the CMAB's work will be useful to the Legislature, and to the Supreme Judicial Court and the Trial Court leadership, in support of that justice mission.

Sincerely,



Lisa C. Goodheart  
Chair, Court Management Advisory Board

Enclosure

**2017 Report of the Court Management Advisory Board  
on the Management and Administration  
of the Massachusetts Trial Court**

**BUILDING ON THE PAST AND INVESTING IN THE FUTURE**



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**Chief Justice Paula M. Carey, Executive Secretary**

# **2017 Report of the Court Management Advisory Board on the Management and Administration of the Massachusetts Trial Court**

## **BUILDING ON THE PAST AND INVESTING IN THE FUTURE**

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# **2017 Report of the Court Management Advisory Board on the Management and Administration of the Massachusetts Trial Court**

## **BUILDING ON THE PAST AND INVESTING IN THE FUTURE**

### **I. INTRODUCTION AND OVERVIEW**

This is the annual report of the Court Management Advisory Board (CMAB) for 2017, respectfully presented to the members of the Joint Committee on the Judiciary, the Joint Committee on State Administration, and the House and Senate Committees on Ways and Means of the General Court, and to the Justices of the Supreme Judicial Court (SJC) and the Chief Justice and the Court Administrator of the Trial Court of Massachusetts. This report reflects the work of the CMAB during the past year, in support of court leaders' pursuit of continuous improvement in the management and administration of the Massachusetts Trial Court.<sup>1</sup> The CMAB is an advisory board created by statute and appointed by the SJC, tasked with advising court leaders on all matters of judicial reform. A listing of the CMAB members, and the calendar and principal discussion topics for the CMAB's plenary meetings during 2017, is presented in **Appendix A**.

To provide some context, **Section II** of this report addresses two notable events that impacted 2017 and will shape the Trial Court's management going forward. The first was a major leadership transition, with the retirement of Court Administrator Harry Spence upon the completion of his five-year term, and the Supreme Judicial Court's appointment of Jonathan S. Williams to serve as the new Court Administrator, in partnership with the Chief Justice of the Trial Court, Paula M. Carey. The second was the Trial Court's issuance of a comprehensive courts capital master planning report, which is expected to provide the blueprint for necessary investments over the next 25 years in essential court facilities. The April 2017 executive summary of this master plan is attached as **Appendix B**.

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<sup>1</sup> Throughout 2017, as in prior years, the CMAB greatly benefited from and sincerely appreciates the assistance it received from many court staff members. The CMAB particularly wishes to thank Carol R. Lev, the Acting Executive Director of the SJC, Mary F. Rafferty, the Senior Assistant for Administration & Communications of the Executive Office of the Trial Court, Kim J. Wright, the Trial Court's Senior Assistant for Judicial Policy, and Trial Court Executive Office Administrative Assistants Jennifer LaRocque MacBeth and Donna A. Hall, for their substantial and reliable support.

**Section III** of this report describes the CMAB's 2017 analysis of the Trial Court's hiring and promotion practices, which was one of the CMAB's two major projects for the year. As explained below, the CMAB formed an internal working group, led by Scott Harshbarger, to evaluate and report upon the extent to which the Trial Court has implemented the 2011 recommendations for a comprehensive overhaul of the Trial Court's hiring and promotion practices that were made by a special task force appointed in 2010. The CMAB also developed and presented new recommendations of its own, for further improvements in hiring and promotion practices within the judicial branch, with the goal of building upon the progress made since 2011. The CMAB's work on hiring and promotion practices is summarized in its Report on Hiring and Promotion in the Judicial Branch, attached as **Appendix C**.

**Section IV** of this report describes the second of the CMAB's two major projects during 2017, which was the development and support of the Visiting Committee on Managing With Data. The CMAB's focus on "managing with data" reflects the importance of evidence-based and data-driven decision-making, and the value of promoting increasingly robust and sophisticated data analytics as a management tool throughout the judicial system. To address this subject, the CMAB convened a group of outside experts to make an assessment of the Trial Court's current usage of data and data analytics in the management of court operations, and to offer recommendations for enhancing the role of data analytics in matter of court administration. Based on an intensive investigation, the Visiting Committee produced a set of findings and recommendations which are presented in the Report of the Visiting Committee on Managing With Data in the Massachusetts Trial Court, attached as **Appendix D**.

Finally, **Section V** of this report addresses the CMAB's current work on the "court user experience," which will continue to be a focus of the CMAB's attention during 2018, and **Section VI** provides the CMAB's concluding remarks.

As the discussion below reflects, during 2017, the Trial Court successfully accomplished a critical leadership transition, and completed a thoughtful plan for the prudent stewardship and forward-looking development of essential court facilities. Moreover, as reflected by both the CMAB's major projects during 2017, the Trial Court has made real progress in responding to previously identified needs and challenges in the areas of hiring and promotion practices and managing with data, and it is now building on that progress to confront current challenges and drive continuous improvements in its operations.

The CMAB wishes to commend the Trial Court's leadership for affirmatively welcoming and genuinely embracing critical external assessments of its management and administration. In 2017, this openness to outside criticisms and

recommendations was demonstrated by the positive response of the Trial Court's leadership to the CMAB's Report on Hiring and Promotion in the Judicial Branch and the Report of the Visiting Committee on Managing With Data. In the CMAB's view, this eagerness to benefit from constructive criticism is an important attribute of the Trial Court's current leadership which should not be taken for granted and which strengthens the entire organization.

## **II. THE TRIAL COURT LEADERSHIP AND THE COURT CAPITAL MASTER PLAN**

### **The Completion of Harry Spence's Term as the First Court Administrator**

In April of 2017, the first Court Administrator of the Trial Court, Harry Spence, retired upon the successful completion of his five-year term of office. The Court Administrator position was created by the Judicial System Reorganization Act of 2011, which calls for the Court Administrator to work with the Chief Justice of the Trial Court as co-leaders of the Trial Court. In our 2016 Annual Report, we highlighted a number of the important operational accomplishments that marked the first five years of the reorganized Trial Court structure under the joint leadership of Chief Justice Paula M. Carey and Court Administrator Spence. We will not detail those accomplishments again here, but do wish to highlight what we said in summary last year about the strong and productive working partnership of these two remarkable leaders:

From the CMAB's perspective, perhaps the most important operational accomplishment of the Trial Court in the last five years has been the daily demonstration by Chief Justice Carey and Court Administrator Spence that the unprecedented leadership structure of the Trial Court can and does operate effectively to support substantial organizational transformation. The value of these leaders' joint achievement in "proving the model" cannot be overstated.

(2016 CMAB Annual Report, p. 7.)

In recognition of Court Administrator Spence's 2017 retirement, the CMAB wishes to express its deep appreciation for his considerable contributions to the Trial Court from 2012 to 2017. Because of Court Administrator Spence's ambitious, persistent, and effective work in partnership with Chief Justice Carey, the Trial Court today is more collaborative, efficient, and modern than it was five years ago.

### **The Appointment of the Current Court Administrator, Jonathan S. Williams**

On March 23, 2017, the Justices of the Supreme Judicial Court announced their selection of Jonathan S. Williams as the new Court Administrator of the Trial Court. Court Administrator Williams officially assumed his new duties on May 1, 2017. As the new administrative head of the Trial Court, Mr. Williams has the responsibility of ensuring the provision of effective, timely, and innovative support to judges, clerks, probation officers, and staff. His responsibilities entail shaping and guiding the administrative functions that support the Trial Court's delivery of justice to the people of Massachusetts, including budget preparation and oversight, labor relations, information technology, capital projects, security, and personnel policy.

Before he joined the Massachusetts Trial Court, Mr. Williams served as Senior Deputy Director in the North Carolina Administrative Office of the Courts, where he supervised operations for the Judicial Branch, including technology, finance and general services. As the Chief Reporter to the North Carolina Commission on the Administration of Law and Justice, Mr. Williams led the support of a 65-member group charged with making broad recommendations for state court reform, by appointment of the North Carolina Chief Justice Mark Martin. Mr. Williams helped to secure funding and structured the overall work of that Commission from its inception to the delivery of its final report in March 2017. Prior to his service to the North Carolina court system, Mr. Williams was Assistant Secretary for the North Carolina Department of Commerce and the Chairman of the Alcoholic Beverage Control Commission. Before that, he spent ten years working for the North Carolina Department of Crime Control and Public Safety, after spending eight years as an attorney in private practice.

The CMAB has been pleased to work with Court Administrator Williams over the better part of 2017. As he is new to Massachusetts and to the Massachusetts judicial system, his out-of-state experience gives him a unique perspective on the management and administrative opportunities and challenges that now face the Massachusetts Trial Court. He has joined a court system that has experienced great growth and change in the last five years, and he will have the opportunity, and has already begun, to reinforce and build upon an existing solid foundation, and to pursue further progress and improvements in the administration of the Trial Court. The CMAB is encouraged by Court Administrator Williams' management insights and fresh approach to the issues that we have raised for consideration and discussion, and we look forward to continuing to work with him and Chief Justice Carey as they build their partnership and jointly lead the Trial Court, going forward.

### **The Continued Leadership of Chief Justice Paula M. Carey**

Since we have touched upon the leadership of both of the Court Administrators who served the Trial Court during the course of 2017, we would be remiss if we did not also say a word about the continued leadership of the Chief Justice of the Trial Court, Paula M. Carey. In a word, that leadership has been and continues to be extraordinary. Since her term as Chief Justice began on July 16, 2013, she has led the Trial Court in partnership with two different Court Administrators, and provided essential continuity through a time of transition. The CMAB is pleased to recognize Chief Justice Carey's deep commitment to the mission of the Trial Court, her focus on the human dimension of that mission, her cultivation of productive partnerships with successive co-leaders of the Trial Court, and her effective and relentless efforts to drive continuous improvements within the court system.

### **The 2017 Draft Massachusetts Courts Capital Master Plan**

In April of 2017, the Executive Office of the Trial Court issued its Draft Massachusetts Courts Capital Master Plan, which is expected to be made final upon the passage of bond funding for the first phase of the planned projects. This master plan reflects the Trial Court's focused and disciplined effort over several years, under the leadership of Chief Justice Carey and Court Administrator Spence, to develop a sound and realistic plan for addressing the facility needs of the more than 100 courthouses that currently operate across the Commonwealth. For reference, the Executive Summary of the Draft Courts Capital Master Plan is appended to this report as **Appendix B**.

Many of the courthouse facilities in active use by the Trial Court are in a state of deterioration and disrepair, and in need of replacement. At the same time, there have been substantial constraints on available capital funding for court construction and renovation in recent years, this will almost surely be the case in coming years, as well. As a result, it is essential for the Trial Court to have a detailed and accurate understanding of where its courthouse facility needs are the greatest, what those needs consist of, and how and at what cost those needs can best be addressed, in order to support prudent and necessary capital funding requests and spending choices. The Trial Court developed its Draft Courts Capital Master Plan in response to this functional imperative.

As the draft plan explains, there have been numerous capital appropriations targeted to improving the condition of the Commonwealth's courthouses since the Courthouse Improvement Act of 1988. These appropriations have responded to both short and long-term planning goals, ranging from emergency repairs at community-located District Courts to the design and construction of regional justice



centers housing multiple court departments serving several communities. More fundamentally, these appropriations have helped to facilitate access to justice at courthouses statewide. The Draft Courts Capital Master Plan was developed with the goal of further enhancing access to justice in a thoughtful and fiscally responsible manner. To that end, the draft plan aimed to do the following:

- establish and apply objective criteria for ranking facilities according to relative need based on building conditions, caseload, overcrowding and other factors;
- create a methodology for setting priorities for planning court capital improvements, including new construction, renovations and repairs;
- provide for periodic review of project priorities and allow for adjustments based on new information, changed circumstances, advancing technologies, and funding availability;
- define the design principles that will guide the courthouse capital improvements; and
- identify operational and organizational changes that could ease overcrowding, instead of or in addition to capital improvement.

The draft plan was developed by a team comprised of representatives from the Trial Court and the Division of Capital Asset Management and Maintenance (“DCAMM”), plus the design consultant RicciGreene Associates. To determine the nature and extent of the courthouse investment needs, this team evaluated data including building condition assessments, staffing projections, caseload figures, and population trends, and also took account of factors such as regional significance, historical value, and the potential to replace private leases. For purposes of ranking facility needs, courthouses with severe problems involving life safety, security, and accessibility were prioritized.<sup>2</sup>

The CMAB has long recognized the need for adequate capital funding to address the existing and increasing shortcomings of many courthouse facilities. Accordingly, we strongly support the Draft Courts Capital Management Plan as a thoughtful and prudent proposal for major capital funding. We note that the Draft Courts Capital Master Plan was carefully developed pursuant to the Trial Court’s 2013 Strategic Plan, and it provides for undeniably essential repairs and replacements of aging and obsolete court facilities and technology infrastructure. This funding plan proposes a critical investment in the court system’s facilities and technology infrastructure that is necessary in order to address serious safety and accessibility issues, to bring the

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<sup>2</sup> The Trial Court will continue to collaborate with DCAMM on feasibility studies for particular capital projects, going forward, as the Draft Courts Capital Master Plan has a 25-year time horizon, and necessarily contemplates that adjustments will be made and additional assessments will be conducted, when and as they become timely.

court system's existing facilities and infrastructure into compliance with modern standards, and to maximize existing assets and drive greater efficiencies. More broadly, this proposed investment in court facilities and technology infrastructure will enable the Trial Court to provide better access to justice to the people of the Commonwealth, and lay essential groundwork for the court system of the future.

We urge the Legislature to give careful consideration to the well-documented and demonstrated capital needs of the Trial Court, as reflected by the Draft Courts Capital Master Plan. Further, we encourage continued reflection on the easily overlooked but very real and significant relationship between the condition of the physical facilities used by the Trial Court and the capacity of our courts to deliver justice to all with dignity and speed.

### **III. HIRING AND PROMOTION PRACTICES IN THE TRIAL COURT**

The CMAB decided to focus its attention on hiring and promotion practices in the latter part of 2016, and asked an internal working group to lead this effort, which entailed substantial work over the course of 2017. The CMAB sought to follow up on the recommendations presented in the 2011 reports of the SJC Task Force on Hiring Practices in the Judicial Branch, which proposed a comprehensive overhaul of the Trial Court's hiring and promotion practices. The CMAB sought to determine whether and to what extent the Task Force's recommendations have been implemented and are now in effect within and across the Trial Court, and with what results. In addition, the CMAB sought to identify current opportunities for the Trial Court to improve its hiring and promotion practices.

CMAB member (and former Task Force leader) Scott Harshbarger directed this project, together with CMAB members Judge James McHugh (ret.), Kate Donovan, Randy Chapman (prior to his judicial appointment), and Lisa Goodheart.<sup>3</sup> During 2017, this working group reviewed the 2011 Task Force reports, the Trial Court's current personnel policies and procedures, and various public reports and other documents that pertain to hiring and promotion issues. The group spoke at length and on many occasions with the Trial Court's Human Resources Director, Mark Conlon. In addition, the group interviewed many key stakeholders who have had a range of experiences with hiring and promotion processes within the Trial Court, and who offered a variety of perspectives on the questions of interest to the CMAB.<sup>4</sup> The

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<sup>3</sup> All of the members of this working group except Lisa Goodheart were also members of the task force appointed by the SJC in 2010 to investigate the Trial Court's hiring practices.

<sup>4</sup> The CMAB's working group on hiring and promotion practices was joined at these interviews by Attorney Carmen F. Francella III, of Casner & Edwards, LLP, who provided valuable staff assistance to the group.

working group presented preliminary results of its work to the full CMAB in June of 2017, and thereafter did some focused, follow-up investigations to refine its assessment and respond to the initial feedback. The final CMAB Report on Hiring and Promotion in the Judicial Branch (**Appendix C**) was received, reviewed, and approved at the CMAB's October 2017 meeting.

The CMAB is pleased to report that the Trial Court's changes in its hiring and promotion practices since 2011, in combination with other factors, have substantially reduced, if not fully eliminated, hiring pressure from public officials. This is so with respect to the pervasive and highly-leveraged pressure that led to the dramatic problems uncovered in the Probation Department in 2010 and 2011, and also with respect to the more subtle pressures that were at one point an environmental backdrop to most Trial Court hiring. There has been a significant increase in merit-based hiring and promotion accompanied by a substantial improvement in overall employee quality and morale.<sup>5</sup> These positive changes reflect effective and sustained leadership, both centrally and in courthouses throughout the Commonwealth, and the desire by many members of the Trial Court workforce to create and maintain an environment in which high-quality public service is a daily objective.

As with any critical examination of any organization, and without in any way diminishing the importance of what the Trial Court has achieved, the CMAB identified certain areas in which further improvements in hiring and promotion practices are desirable, and its Hiring Report presents its findings and recommendations for such improvements. The CMAB presented separate sets of findings and recommendations for (1) the Human Resources Department, the Probation Department, the Security Department, and the Judicial Information Services Departments, all of which lie within the Trial Court's Office of Court Management ("OCM"), and (2) the offices of appointed or elected Trial Court Clerk-Magistrates ("Clerks"), elected Registers of Probate ("Registers") and the Land Court Recorder ("Recorder").<sup>6</sup> This approach stemmed from the CMAB's recognition of the reality that the Trial Court outside of the OCM remains in very real senses a federation rather than a single, fully integrated operating unit. The challenges and

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<sup>5</sup> To be sure, there have been instances in which personnel matters have gone awry and a few of those have commanded public attention. In the main, however, those instances appear to be the result of unique circumstances and are not the product of subverted hiring or promotion systems.

<sup>6</sup> The CMAB's recommendations for the several departments and offices on which it focused are set forth in its Hiring Report as follows: Human Resources Department (pp. 11-12), Probation Department (pp. 15-16), Security Department (p. 17), Judicial Information Services (p. 18), Clerk-Magistrate, Register and Recorder Officers (pp. 23-24). See Appendix C.

opportunities faced by these very differently situated and differently structured units within the Trial Court are quite disparate, and the CMAB accordingly determined that they called for separate sets of findings and recommendations.

There is a unifying theme to the CMAB's recommendations for further improvements to the Trial Court's hiring and promotion practices as they are deployed in support of a remarkably wide range of operating units statewide. That theme is the need for the Trial Court to prioritize and push the positive development of its culture, *i.e.*, the shared values, attitudes and goals that pervade every organization and drive organizational behavior to a greater degree than any specific set of policies and procedures ever will. The Trial Court's culture has evolved in many salutary and important ways, and today, it largely supports and encourages merit-based hiring and promotion. But it also continues to be substantially influenced by a state of mind that tends to prompt employees to focus almost exclusively on their immediate operating unit, and to place in the background, often the deep background, the broader networks to which their unit belongs. That state of mind, which has strong structural, geographic, and historic roots, manifests itself in many ways and across a range of intensities. The CMAB believes it is essential to develop and nurture within the Trial Court a culture of interdependence, without losing the beneficial aspects of the currently dominant culture of self-reliance and independence.

Reflection on the intertwined roles of the HR Department and the Trial Court's numerous appointing authorities has led the CMAB to several conclusions about HR's role in facilitating the broader cultural outlook that the CMAB believes is both necessary and desirable. First, the central HR Department must play a significant role in hiring of all Trial Court employees. Second, the Trial Court must build a consensus around that principle. Third, the HR Department must be empowered and able to provide the kind of strategic, proactive, efficient, and transparent recruiting and hiring services that are deployed by the most successful competitive private sector employers, using the leadership, personnel, talent, energy and desire that is necessary to thereby add substantial value to the hiring process. It must also find innovative and effective ways to convince all hiring managers within the Trial Court that it can and will do so. This cannot be accomplished all at once or overnight, but determined efforts can ultimately change a longstanding culture of insularity into a culture of connectedness and mutual support, while maintaining an appropriate focus on local needs and expectations. A stronger hiring and promotion system that works better for all participants, and for the residents of the Commonwealth whom the Trial Court serves, will be among the beneficial results of this important cultural shift.

#### IV. MANAGING WITH DATA IN THE TRIAL COURT

In the fall of 2016, the CMAB prepared the charter for an external Visiting Committee on “Managing With Data,” which was established in consultation with and at the request of the Trial Court and the SJC.<sup>7</sup> This project, which involved an independent, targeted assessment of the uses of data analytics by a range of managers in different roles within the Trial Court, was a natural follow-up to the 2016 independent review of the Trial Court’s Judicial Information Services Department and use of information technology, which was conducted by a different external Visiting Committee, as detailed in the CMAB’s 2016 Annual Report. The CMAB also found it appropriate to focus attention on managing with data because the Trial Court’s decisions in many core administrative areas, such as budgeting, human resources, security, and support services, as well as in the development and implementation of judicial policies and practices, should be increasingly evidence-based and data-driven.

The members of the Visiting Committee on Managing With Data were chosen on the basis of their distinguished leadership and substantial experience with the topics and issues identified in the charter for the Committee. The group was led by former CMAB member **David G. Fubini**, a senior lecturer in the Organizational Behavior Unit at Harvard Business School and former Managing Director of the Boston office of McKinsey & Company, Inc. The other members of the Visiting Committee were Bradford Brown, Heidi K. Garner, and Arlene Zalayet. **Bradford Brown** is a Portfolio Director and Senior Advisor of MITRE Corporation in Alexandria, Virginia. He serves as the Senior Advisor for MITRE’s Center for Judicial Informatics Science and Technology, and for the Judiciary Engineering and Modernization Center, which is the federally funded research and development center that MITRE operates for the federal judiciary. **Heidi K. Gardner, Ph.D.**, is a Distinguished Fellow in the Center on the Legal Professional at Harvard Law School, and was previously on the faculty of the Harvard Business School, and previously held positions with McKinsey & Company and Procter & Gamble. **Arlene Zalayet** is the Senior Vice President and General Attorney for Liberty Mutual Insurance Company, where she oversees the management, organizational structure, and staff counsel in 67 offices in 38 states.

The Visiting Committee on Managing With Data began by reviewing court data reports and other reference materials, but the heart of its investigation consisted of a series of meetings and discussions with numerous stakeholders steeped in the Trial Court’s uses of data. These stakeholders included court personnel who supervise the case-related data collection and input process, those who manage the

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<sup>7</sup> The charter for the Visiting Committee on Managing With Data is included as Appendix 1 in the Visiting Committee’s Report, which is attached to this report as Appendix D.

technological platforms that allow the data collection, reporting, and analytics, those charged with the creation and reporting of the data, and the judges, clerks, and other managerial personnel who rely on that data to make resource allocation determinations and manage significant caseloads. The Committee began its meetings in January of 2017, and conducted panel interviews of these stakeholders over the course of five days during the late winter and spring of 2017. It also interviewed an outside management consultant from The Ripples Group, representatives of the National Center for State Courts, and data analytic specialists from other state court systems. The Committee's preliminary findings and recommendations were presented to Chief Justice Carey, Court Administrator Williams, and the CMAB in June of 2017. Following further discussions, the Committee's final findings and recommendations were memorialized in its November 2017 Report (**Appendix D**), which was presented to the Trial Court leadership, the SJC, and the CMAB.<sup>8</sup>

The Committee's Report organizes its findings and recommendations in terms of four broad categories, which echo the major themes that emerged through the Committee's stakeholder interviews: Governance, Data Collection, Analytics and Reporting, and Leadership Teams. The Report presents 16 recommendations, both in the form of a summary table (pp. 7-9 of Appendix D), and with some accompanying explanatory narrative (pp. 9-16 of Appendix D).

From the CMAB's perspective, an essential theme that underlies and links together all the findings and recommendations in the Committee's Report is the Trial Court's growing cultural imperative for more and better data. The Committee's Report confirms real and substantial progress in the evolution of the Trial Court's uses of data, from mere data collection and reporting to the increasingly sophisticated use of data analytics as a management tool, and the CMAB is encouraged by the reported evidence of this progress. Notably, the Committee found that Massachusetts is on par with, and in some ways several dimensions ahead of, many peer state court systems with respect to the use of data and data analytics to support its operations. As reported by the Committee, the Massachusetts state court system is well-positioned to leverage the demographic shifts that will be reflected in judges, clerks, and professional staff who are increasingly comfortable and facile with the use of modern technologies and their capabilities, and have direct experience in working with data and document management systems.

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<sup>8</sup> CMAB Chair Lisa Goodheart served as the CMAB liaison to the Committee and coordinated the Committee's meetings, with the substantial support and participation of Carol Lev, Mary Rafferty, and other court personnel. Attorneys Tristan P. Colangelo, of Sugarman, Rogers, Barshak & Cohen, P.C., and Caroline Donovan, of Foley Hoag, LLP, also provided valuable assistance to the Committee through its meetings and in the preparation of its report.

The Committee specifically recognized that the 2015 completion of the system-wide deployment of the Trial Court's case management system, "MassCourts," was a major accomplishment and a long-awaited milestone in the history of the Trial Court's operations.<sup>9</sup> At the same time, however, the Committee found that because the roll-out of MassCourts continued to be a central focus of attention and resources for more than a decade and until recently, some much-needed investments in cutting-edge technology and user platforms necessarily were deferred. In the Committee's view, this postponement of necessary investments in the Trial Court's technology infrastructure has, to some extent, constrained the pace of the Trial Court's progress in implementing an effective and efficient data-driven management system, though such progress has been real and is ongoing.

The MassCourts system, in its current form, focuses on case-based data about court events and the tracking and preservation of such data, for individual case management and record-keeping purposes. While that focus is critically important, the Trial Court's own expectations and strategic goals for its information systems now far surpass the collection of data for case-tracking purposes alone. Court leaders and personnel throughout the system currently find the existing technology systems and tools to be lacking in important ways, and inadequate for important purposes. So, while a positive and important cultural shift is taking place among court personnel towards embracing data and the analysis and insights it can offer as a useful tool for improving performance of essential functions, this shift is creating new challenges as well as new opportunities for the Trial Court.

In its Report, the Committee encouraged the Trial Court to capitalize on the positive growth that is now taking place with respect to the integration of data analytics in court operations, and to address with urgency the shortcomings of the systems and resources that are currently available to support the usage of data analytics. More specifically, the Committee urged Trial Court leaders to immediately, clearly, and insistently prioritize the need of court managers for direct access to pertinent, accurate, high-quality information, via user-friendly platforms that support their own direct queries of the data. Access to such data is necessary to enable and empower users, throughout the system, to garner greater insights about their courts.

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<sup>9</sup> See the timeline of the deployment of MassCourts in the Trial Court, "MassCourts Milestones," which is included as Appendix 7 to the Committee's Report (Appendix D to this report). MassCourts is a web-based case management and data system which replaced 14 different legacy systems that were previously used in different parts of the Trial Court. MassCourts is used to record and share case-related data, with a focus on tracking the status and progress of cases and the timeliness of case events and dispositions. According to the Trial Court's year-end report for fiscal year 2016, MassCourts contained data on some 22 million cases, 48.2 million calendar events, and 15.2 million scanned documents.

The Committee's recommendations present a number of compelling suggestions for achieving this goal. Of particular importance, from the CMAB's perspective, are (1) the recommendations aimed at enhancing data accuracy and emphasizing the importance of data accuracy, through communications, staff training, and data entry quality controls, both to ensure that the available data is reliable and to promote justified confidence in its use; (2) the recommendation aimed at enabling different operating units within the Trial Court to create "dashboard" displays of user-friendly, easily readable, operations-critical data on desktop computer screens, in formats that are tailored to the particular users' needs, in order to support smart triage decisions with respect to the utilization of scarce resources and promote useful insights with respect to caseload management; and (3) the recommendation to establish a functional "data mart" as soon as possible, to allow court managers direct access to the real-time results of customized data searches that are designed to identify and retrieve valuable information.

The CMAB strongly agrees with the Committee that it is "good news" for the Trial Court that its managers are insistently pressing for more and better data. This reflects a growing understanding of the value of data-driven court management decisions, as well as high aspirations and expectations for what is now becoming possible for the Trial Court, in terms of managing with data. The Trial Court's leadership is responding positively to this increasing receptiveness to and desire for more robust data analytics, and the CMAB fully supports its continued efforts in this regard. As stated by the Committee in the first of its 16 recommendations, "[t]he integration of data analytics into all aspects of the Trial Court's operations must be pushed collaboratively on all fronts, so that it becomes a widely shared cultural imperative."

The November 2017 Report of the Massachusetts Court Technology Visiting Committee has been received with appreciation by the Trial Court leadership and the SJC, as well as the CMAB. Chief Justice Carey and Court Administrator Williams have already met with the Justices of the SJC to discuss the report and plan for following up on its findings and recommendations. The CMAB is confident that the Committee's Report will be used by the Trial Court in setting priorities and to develop and strengthen the ability to collect and utilize data effectively in the management of all aspects of court operations. The CMAB hopes that the Legislature will also use the Committee's Report, as it considers the Trial Court's needs for additional funding for new information system functionalities and important investments in areas such as data intelligence and other software support.



## V. THE COURT USER EXPERIENCE

“Access to justice and the court user experience,” is one of the core organizing domains that defines and shapes the goals of the Trial Court’s Strategic Plan 2.0. This domain is well-aligned with the CMAB’s 2014 recommendation that **“the Trial Court should focus leadership responsibility and overall accountability for the experience of court users, and orient innovative practice strategies toward improvement of the court user experience.”** During 2017, and especially upon the completion of its projects on the subjects of hiring and promotion practices and managing with data, the CMAB determined to focus its own attention on the experience of court users, as well.

The CMAB believes that its consideration of the court user experience, now and going forward, may be particularly timely in view of the Trial Court’s current efforts to address race and implicit bias in the court system. Certainly, the CMAB recognizes that these issues have had, and continue to have, a profound impact upon the experiences of many court users. With this in mind, the CMAB is interested in the results of surveys conducted by the Trial Court for purposes of assessing the experiences of Trial Court users in various courthouses across the Commonwealth, in terms of certain measures of access and fairness, and will look for opportunities to support the Trial Court in responding to its survey results. Likewise, the CMAB is interested in learning more about the “Signature Counter Experience” that has been designed and is being implemented by the Trial Court’s Chief Experience and Diversity Officer, John G.C. Laing, Jr., to enhance the quality and effectiveness of interactions between court personnel and court “customers,” who are frequently under considerable stress. We anticipate that the subject of the court user experience will significantly shape the agenda for the CMAB’s work in the coming year.

## VI. CONCLUSION

The CMAB is honored to support the Trial Court in its ongoing efforts to improve its operations, in service of the mission of delivering access to justice with dignity and speed, and in light of the Trial Court’s expressly articulated goals, which are to

- Preserve and enhance the quality of judicial decision-making.
- Deliver justice with effectiveness, efficiency, and consistency in court operations and services.
- Ensure fair access to the court system.
- Respect the dignity of the judicial process and all participants and provide a safe environment.

- Support a high-performance organization with a well-trained, engaged, collaborative, and diverse workforce.
- Increase the transparency and accountability of court operations.
- Strengthen relations with the Legislative and Executive branches.
- Explore and expand collaborative and innovative approaches to delivering justice.
- Enhance public trust and confidence in the judicial branch.

We hope that our work during 2017 has been helpful. In particular, we hope that the findings and recommendations set forth in the CMAB's Report on Hiring and Promotion Practices in the Judicial Branch, and in the Report of the Visiting Committee on Managing With Data in the Massachusetts Trial Court, will be useful in supporting the positive shifts in the culture of the Trial Court that are recognized in both of these reports. We look forward to continuing to advise the Justices of the Supreme Judicial Court and the Chief Justice and Court Administrator of the Trial Court on matters of court management and administration.

## **APPENDIX A**

### **LIST OF CMAB MEMBERS AND SUMMARY OF CMAB ACTIVITIES DURING 2017**

## LIST OF CMAB MEMBERS AND SUMMARY OF CMAB ACTIVITIES DURING 2017

The SJC appoints 10 of the 12 members of the CMAB, and the other two members serve *ex officio*.<sup>10</sup> The appointed members serve for three-year terms. The SJC's use of staggered and overlapping terms of membership on the CMAB ensures a balance of continuity and new ideas.

The members of the CMAB during 2017 were the following:

- **Lisa C. Goodheart** (CMAB Chair) – Partner, Sugarman, Rogers, Barshak & Cohen, P.C. (filling the CMAB seat for a lawyer with significant experience in the practice of civil law)
- **Randy S. Chapman** – Until late August of 2017, Randy was a Partner of the law firm of Chapman and Chapman (and filled the CMAB seat for a lawyer with significant experience in the practice of criminal law). He resigned from the CMAB upon his appointment by Governor Baker to service as an Associate Justice of the Salem District Court, effective August 23, 2017.

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<sup>10</sup> The CMAB exists pursuant to General Laws chapter 211B, section 6A, which provides as follows:

There shall be an advisory board to assist the justices of the supreme judicial court, the chief justice of the trial court, and the court administrator. The board shall consist of the attorney general, or his designee, the executive director of the Massachusetts office of victim assistance and the following 10 additional members appointed by the supreme judicial court: 2 persons who have significant experience in public administration, 2 persons who have significant experience in business administration, 1 lawyer with significant experience in the practice of criminal law, 1 lawyer with significant experience in the practice of civil law, 1 lawyer with significant experience in the practice of probate and family law, 1 lawyer with significant experience in the representation of juveniles in the courts, 1 lawyer with significant judicial experience but not a current justice of the commonwealth or a retired justice serving the commonwealth pursuant to judicial recall, and 1 person who has significant experience in information technology. The board shall choose its chair. The appointed members of said board shall serve for a term of 3 years. The maximum amount of time that said members may serve on said board shall be 2 such terms. The chief justice of the trial court shall be the executive secretary of the board.

The board shall advise the justices of the supreme judicial court, the chief justice of the trial court, and the court administrator on all matters of judicial reform including, but not limited to, a proposal for the allocation of resources based on the demonstrated workload of each court.

- **Kathleen M. Donovan** – Senior Vice President & Global RPO President, Manpower Solutions Group (filling one of the two CMAB seats for persons with significant experience in business administration)
- **The Honorable Gail Garinger** (ret.) – Until her retirement on September 30, 2017, Judge Garinger was the Director of Child and Youth Protection Unit of the Office of the Attorney General. Previously, she served as the first Child Advocate for the Commonwealth, and as the First Justice of the Middlesex County Juvenile Court (filling the CMAB seat for a lawyer with significant experience in the representation of juveniles in the courts)
- **Scott Harshbarger** – Senior Counsel, Casner and Edwards, and former Massachusetts Attorney General (filling one of the two CMAB seats for persons with significant experience in public administration)
- **Richard Johnston** – General Counsel, Office of the Attorney General (designee of Attorney General Maura Healey, *ex officio* CMAB member)
- **Allen B. Kachalia, M.D., J.D.** – Chief Quality Officer, Vice President Quality and Safety, Brigham & Women’s Hospital, Boston; Associate Professor, Harvard Medical School (filling one of the two CMAB seats for persons with significant experience in business administration)
- **Liam Lowney** – Executive Director, Massachusetts Office for Victim Assistance (*ex officio* CMAB member)
- **The Honorable James F. McHugh, III (ret.)** – Former Associate Justice of the Appeals Court (filling the CMAB seat for a lawyer with significant judicial experience but not a current justice of the commonwealth or a retired justice serving the commonwealth pursuant to judicial recall)
- **Donald Oppenheimer** – Chief Information Officer, John F. Kennedy School of Government (filling the CMAB seat for a person with significant experience in information technology)
- **Denise R. Squillante** – Solo practitioner, Denise R. Squillante P.C. (filling the CMAB seat for a lawyer with significant experience in the practice of probate and family law)
- **Kenneth Turner** – Director, Diversity and Inclusion/Compliance, Massachusetts Port Authority (filling one of the two CMAB seats for persons with significant experience in public administration)

One of the Justices of the SJC customarily serves as the SJC’s liaison to the CMAB, and the Honorable Margot Botsford (ret.) fulfilled that role through the spring of 2017. Following Justice Botsford’s retirement from the SJC, the Honorable Scott L. Kafker became the new SJC liaison to the CMAB in September of 2017, at the start of the SJC’s 2017-2018 court term. The CMAB deeply appreciated Justice Botsford’s

commitment to excellence in all aspects of the management and administration of the Trial Court. Likewise, we have been delighted to welcome Justice Kafker, and we are grateful for his guidance, encouragement, and contributions to the CMAB's efforts.

During 2017, the CMAB held nine plenary meetings at which its members discussed a range of issues pertaining to the management and administration of the Trial Court. The CMAB's meetings were regularly attended by Trial Court Chief Justice Paula M. Carey, Court Administrators Harry Spence and Jon Williams, and the SJC Liaison (Associate Justice Margot Botsford in the first part of 2017 and Associate Justice Scott L. Kafker beginning in the fall of 2017). Featured speakers and other guests also attended from time to time, as warranted by the CMAB's meeting agendas. In addition, the Chief Justices and the Deputy Court Administrators of the seven judicial Departments of the Trial Court (the Boston Municipal Court, District Court, Housing Court, Juvenile Court, Land Court, Probate and Family Court, and Superior Court) were invited to attend and participate in some of the 2017 CMAB meetings. The schedule and principal discussion topics for the CMAB's plenary meetings during 2017 were as follows:

#### January 12, 2017

- The Work of the Massachusetts Center of Excellence for Specialty Courts (presentation by Ira K. Packer, Ph.D., the Director of the Center of Excellence), and
- Status Updates on the Court Administrator Search, CMAB Annual Report Communications, Visiting Committee on Managing With Data, and the CMAB Working Group on Hiring and Promotion Practices

#### February 27, 2017

- Trial Court & Budget Update; and
- Interim Update from the Working Group on Hiring and Promotion Practices, and Discussion of Emerging Themes and Proposed Next Steps

#### March 30, 2017

- Round-Table Discussion with the Departmental Chief Justices on Managing With Data (current challenges, current practices, and desired improvements); and
- Thank You to departing Court Administrator Harry Spence

#### May 11, 2017

- A Conversation with the New Court Administrator, Jonathan Williams (initial impressions, immediate priorities/current issues, CMAB focus areas and support);
- Update on Current CMAB Activities (Visiting Committee on Managing With Data, Working Group on Hiring and Promotion Practices, and Meeting with Deputy Court Administrators on the subject of managing with data); and
- Thank You to the departing SJC liaison to the CMAB, Justice Margot Botsford (ret.)

#### June 14, 2017

- Draft CMAB Report on Hiring and Promotion Practices

#### June 26, 2017

- Draft Report of the Visiting Committee on Managing With Data (discussion led by Visiting Committee Chair David G. Fubini, with Visiting Committee member Bradford Brown)

#### October 26, 2017 Meeting

- Draft CMAB Report on Hiring and Promotion in the Judicial Branch; and
- Other CMAB Projects and Current Business, including proposed 2017-2018 work on the “Court User Experience”

#### November 13, 2017 Meeting

- Revised Draft Report of the Visiting Committee on Managing With Data; and
- Other CMAB Business (including discussion of court leaders’ remarks at the Annual State of the Judiciary Event, recent meetings with court leaders and court staff, and planning for CMAB work on the court user experience)

#### December 6, 2017 Meeting

- The Court User Experience – draft results of the 2017 Access and Fairness Survey, and comparison to results of the 2009 Access and Fairness Survey (presentation by Director of the Trial Court’s Department of Research and Planning, Lee M. Kavanagh)

Beyond these plenary CMAB meetings, the Chair and several members of the CMAB participated in various other discussions with court leaders about the CMAB’s work and current areas of interest. These discussions included the following:

- (a) meetings and discussions with Chief Justice Carey and Court Administrator Williams, for planning, development, and follow-up with respect to various CMAB projects and initiatives;
- (b) meetings and discussions with the Trial Court's Director of Human Resources, Mark Conlon, and several days of meetings with the Probation Commissioner, First Deputy Commissioner, and Personnel Manager of the Probation Department, different groups of judges, Clerks, and Registers, the Deputy Court Administrators, various directors of the Office of Court Management, the Trial Court's General Counsel, labor counsel and other HR attorneys and managers, probation officers and court officers, union representatives, and other Trial Court employees who have a role in the hiring and promotion process;
- (c) meetings and discussions with the members of the Visiting Committee on Managing With Data, and participation in the Visiting Committee's five days of meetings with the Chief Justice of the SJC, the Executive Director of the SJC, the Chief Justice of the Trial Court, the Court Administrator, numerous judges, clerks, and registers, the Commissioner and staff of the Probation Department, several Departmental Administrative Office management teams, a court management team from the Roxbury Division of the Boston Municipal Court, the directors and staff of the Information Services Department and the Department of Research and Planning, the Director of Facility Management, and outside consultants from The Ripples Group and the National Center of State Courts;
- (d) a meeting with SJC Chief Justice Ralph D. Gants, regarding the status and substance of the draft Report on Hiring and Promotion in the Judicial Branch and the draft Report of the Visiting Committee on Managing With Data;
- (e) a meeting with the full SJC, to discuss the findings and recommendations of the Visiting Committee on Managing With Data;
- (f) a meeting of the Departmental Chief Justices and Deputy Court Administrators, regarding the CMAB's Report on Hiring and Promotion in the Judicial Branch;
- (g) a meeting with the Clerks of the Trial Court, regarding the CMAB's Report on Hiring and Promotion in the Judicial Branch; and
- (h) two meetings with the Trial Court's Chief Experience and Diversity Officer, John G.C. Laing, Jr., regarding the court user experience.



## **APPENDIX B**

### **EXECUTIVE SUMMARY OF THE DRAFT COURTS CAPITAL MASTER PLAN (APRIL 2017)**



# EXECUTIVE SUMMARY OF DRAFT REPORT



## EXECUTIVE SUMMARY OF DRAFT REPORT

### INTRODUCTION

Started in the summer of 2014, the Courts Capital Master Plan (CCMP) is the result of a focused planning effort by the Massachusetts Trial Court, assisted by the Division of Capital Asset Management and Maintenance (DCAMM) and consultants with national expertise in courthouse planning, design and operations. It was developed through a comprehensive planning process involving: consensus planning considerations, facility condition assessments, and regular stakeholder workshops. Data collection regarding staffing, courtroom utilization, court user geographic data, caseload, and financial analysis provided key information for establishing priorities.

The CCMP builds upon and complements the Trial Court's Strategic Plan 1.0 issued in 2013. It seeks to remedy the varying levels of deterioration and risk found across the State's 97\* court facilities, and to align these buildings with the operational goals and priorities of the Strategic Plan. Together, these two plans provide a comprehensive approach for a more sustainable and efficient Trial Court system for the future of the Commonwealth.

***Over the past five years, the Trial Court has been actively implementing initiatives through technology to greatly improve operational efficiency while expanding judicial services to the public, including:***

- video conference hearings and bail reviews
- state of the art digital court recording
- phased implementation of e-filing
- The establishment of six court service centers to assist pro se litigants
- archive and records digitization
- expansion of Specialty Courts as an alternative to incarceration
- updating the statewide database of facility statistics
- increasing utilization of existing Regional Justice Centers

***The cumulative effect of these initiatives is a court system that is more responsive to both public users and partner agencies. They allow the Trial Court to be more flexible in terms of capital investment alternatives and more agile in its responsiveness. In the fall of 2016, the Trial Court completed the Strategic Plan 2.0 which continues to raise the performance bar for the Judiciary.***

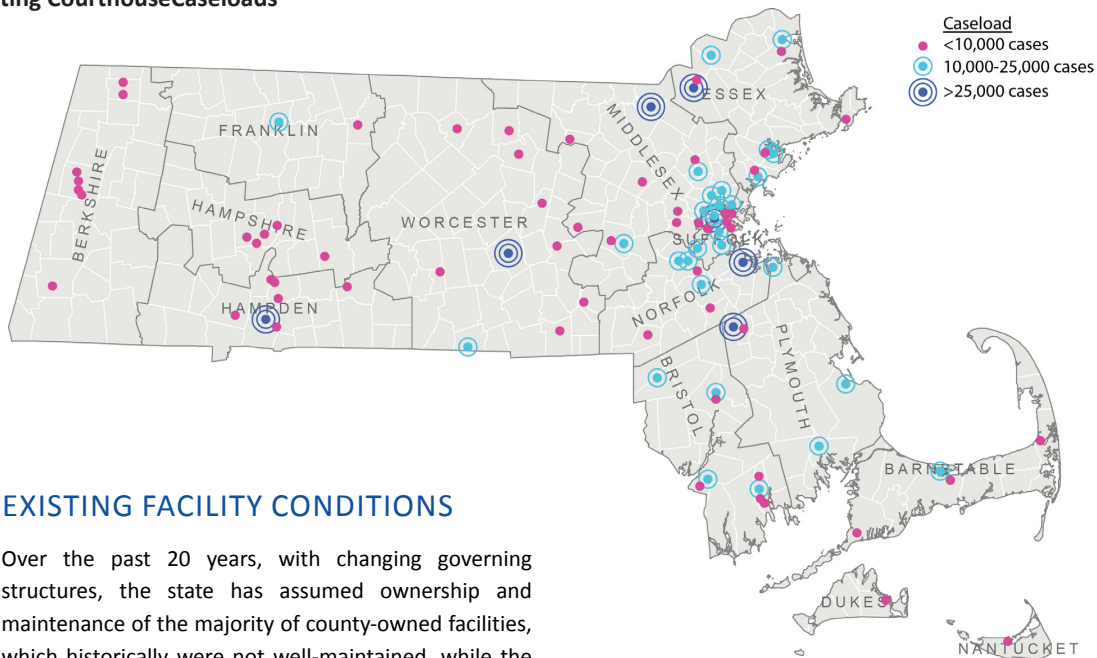
### BACKGROUND

The majority of the courthouses in Massachusetts are in a state of disrepair due to inadequate major repairs and capital investment over the past few decades. While attentive management has improved the maintenance of the courthouses in the past three years, this alone is proving insufficient to eliminate the backlog of facility issues. Public court users and staff regularly conduct the business of the Massachusetts Judiciary in circumstances that prompt significant liability risk and contradict the assertion that we are a Commonwealth honoring the rule of law and access to justice. Leaking building envelopes, water damage, failing building systems, unsafe operating conditions, inadequate fire safety, prisoner holding and circulation: these are the issues which impede judicial processes statewide and need capital investment.

AGE OF MASSACHUSETTS COURTHOUSES					
Year Built	1805 - 1900	1901 - 1950	1951 - 1979	1980 - 1999	2000 - 2017
# Court Houses	17	22	28	10	5
# Courtrooms	50	96	101	73	63
% Courthouses	21%	27%	34%	12%	6%

65% of courthouses in MA  
are older than 50 years

*\*1 Currently, there are 100 courthouses. With the completion of Greenfield and Lowell projects, there will be 97 courthouses.*

**Existing Courthouse Caseloads****EXISTING FACILITY CONDITIONS**

Over the past 20 years, with changing governing structures, the state has assumed ownership and maintenance of the majority of county-owned facilities, which historically were not well-maintained, while the volume and nature of court business has expanded greatly throughout the state. Due to the comprehensive nature of problems in many of these buildings, a variety of state and federal code thresholds are triggered, thus mandating significant capital investment as part of any repair or renovation. In many cases, even with comprehensive renovations, the facilities will likely still be unable to meet modern court security and safety standards due to layouts from a historic judicial era.

As part of the CCMP, Facility Assessments were developed to provide a planning-level evaluation of overall condition, building systems, space adequacy, security, code compliance, barrier-free accessibility, and life safety. These assessments were used to prioritize the urgency of the repairs, determine which require major repair, modernization or replacement, and identify critical issues that could pose a life safety risk or result in emergency building closure.

Rather than investing in these outdated facilities that may or may not have workable solutions, the planning group focused on replacing aging facility clusters with modern Regional Justice Centers (RJC). RJC's are a national design standard for justice systems that result in multiple court departments consolidating into one building, thus providing more efficiency for staffing and security, while bringing public access to government services up to modern trial court standards for safety, technology and access. It also streamlines the system into fewer buildings, which improves facility operations. While these RJC's have greatly improved the statewide infrastructure in strategic locations, the lack of investment in the remaining courthouses has left the system with serious infrastructure needs.

Of the 97 facilities statewide, 65% are over 50 years old and at the juncture of needing substantial repairs and modernization. These older facilities provide significant challenges to court operations due to intractable layouts, high costs to renovate, lack of secure circulation, lack of accessibility, inadequate space, poor adjacency of functions, and confusing wayfinding. Investing piecemeal capital into buildings that may still not lend themselves to modern justice standards results in ongoing inefficiencies which drive up staffing and operating costs, create security risks, and frustrate the public users who are already appearing at the courthouse under stress.

## EXECUTIVE SUMMARY OF DRAFT REPORT

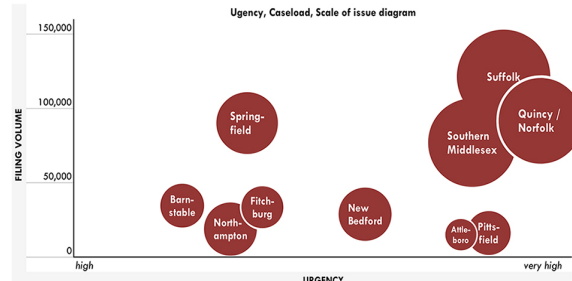
### PLANNING CONSIDERATIONS

While Facility Condition Assessments provide a foundation for establishing investment priorities, the following items are integral to the mission of the Trial Court and were considered in the development of the CCMP design and construction solutions:

**Access to Justice** – the planning process ensured court users will not be adversely affected by any court location changes, and in fact access will improve for the system as a whole. Particular consideration was given to courthouses and vulnerable populations in Gateway Cities and those repairing public transportation access.

**Regional Equity** – the nature and volume of court business is directly proportional to population demographics; the highest caseloads tend to be in population centers. However, investments have been phased such that they are spread across the state, without one particular region benefiting disproportionately per capita.

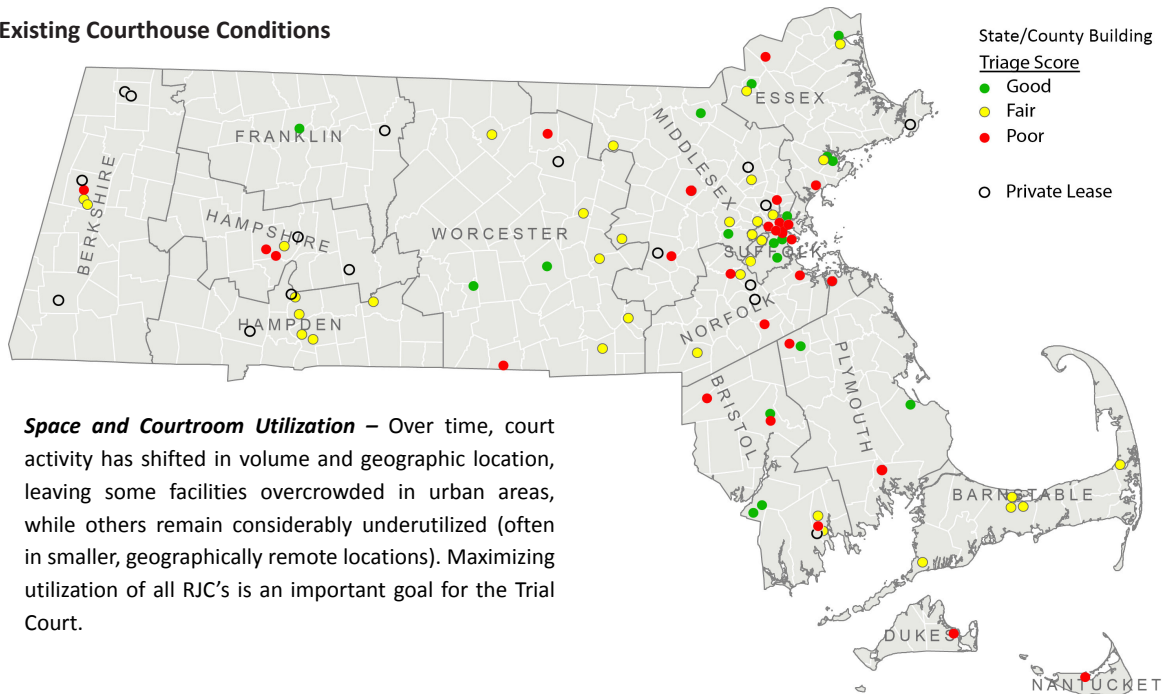
**Justice Trends** – Evolution of court practices and laws have facility impacts. These include increasing case complexity, growth of Specialty Courts, victim



and juvenile rights mandated by federal statutes, and significant growth in the number of pro se (self-represented) litigants who need assistance, among others. New and modernized facilities have very flexible layouts that lend themselves to adaptation as judicial services continue to evolve.

**Historic Properties** – A number of courthouses represent centuries of presence in their communities and occupy architecturally significant buildings. However, the challenges to renovating these intractable structures to modern standards within reasonable budgets must be considered. Where feasible, monumental historic structures have been maintained in the system with planning for non-criminal business.

CCMP				Totals	
	Phase 1	Phase 2	Phase 3	#Projects	2015 Cost (TPC)
Replaced	2 \$486M	4 \$565M	3 \$304M	9	\$1.36B
Modernized	4 \$250M	6 \$242M	2 \$84M	12	\$576M
Repaired	62 \$266M	6 \$243M	27 \$529M	72	\$1.04B
Temporary Leases & Land	\$56M	\$98M	\$32M	\$186M	
Total Project Cost	\$1.06B	\$1.15B	\$949M	\$3.16B	
Total Courthouses	91	82	75		

**Existing Courthouse Conditions**

**Space and Courtroom Utilization** – Over time, court activity has shifted in volume and geographic location, leaving some facilities overcrowded in urban areas, while others remain considerably underutilized (often in smaller, geographically remote locations). Maximizing utilization of all RJC's is an important goal for the Trial Court.

**Technological Transformations** – Technology advances continue to have a big impact on court operations and space needs. While forecasting the nature of technology over twenty years is not possible, extrapolating the current trends for likely outcomes is one method to integrate technological transformations in the judiciary. The capacity for existing buildings to adapt to new developments in technology, including electronic filing and case processing, video conferencing and arraignments, digital record storage, digital presentation of evidence in courtrooms, real-time language translation, online jury call, and other transformative changes varies significantly across the court system.

**Occupied Buildings** – Renovating occupied courthouses poses significant added costs in the form of limited work days, extended schedules, limited bid competition, overtime costs for court security/ facility personnel, and difficult site staging. To avoid interruption of judicial proceedings, repair and renovation projects often result in relocating courts to costly temporary leases. To avoid added costs, the Trial Court has worked to relocate court business within existing jurisdictions, however, this is not

feasible at all locations or where the existing caseload volume is high. Where replacement vs. renovation costs were similar, replacement and consolidating is favored in the CCMP due to simplified logistics and schedules, as well as providing operational efficiency.

**Consolidations and Co-locations** - Two types of consolidations: Several smaller facilities in the same city/town consolidated into one larger facility in the same city/town ("colocated"), or, a small facility consolidated and relocated into a larger facility in a nearby city/town. Consolidation from 97 facilities to approximately 75, as outlined in the CCMP solution framework, provides much greater operational efficiency and allows the Trial Court to more effectively manage state assets. With fewer, larger facilities, each location can offer more robust and complete services to court users, efficient staffing, and greater utilization.

## EXECUTIVE SUMMARY OF DRAFT REPORT

**Total System Cost** – detailed financial analyses were performed to evaluate multiple options for capital investment and included operating budget impacts to ensure the development of a long-term, financially sustainable system.

### THE COURTS CAPITAL MASTER PLAN

The CCMP is first and foremost a statement of need and urgency for the judiciary. It provides a framework for the repair, modernization, and replacement of state assets system-wide to bring the court infrastructure into the 21st century. The framework presents one approach, based on extensive stakeholder input and financial analysis, to address security, life-safety, work environment, and modern court operational standards. The approach outlines phased colocation and consolidation into Regional Justice Centers over twenty years; thus maximizing existing state assets and replacing those that are obsolete, low volume, in need of major capital investment, or where repair alone cannot correct risk, security and liability. The primary purpose of the plan is to clearly outline the statement of need for Trial Court facilities; the proposed solutions contained in the framework are flexible with alternative approaches integrated (e.g. renovate a facility in lieu of replacement) based on available capital, legislative and executive considerations, and competing capital interests statewide.

#### Key Features

Full implementation of the CCMP would:

- Significantly reduce or eliminate liabilities (including life safety and security risks) and address physical needs at all deficient facilities, including universal design.
- Prioritize and phase capital investment based on investment urgency, public users and business volume.
- Consolidate the court system from 97 to 75 facilities, locating courthouses where the caseloads

are being generated. Potential consolidations that would have significant negative access implications to the public were rejected. Facility closures are under the direct control of the Legislature and the CCMP remains flexible to adapt to these decisions.

- Provide a mix of new, modernized, and repaired courthouses, facilitating increased consolidation/replacement of deficient buildings.
- Retain the most significant historic buildings, but consider their limitations for criminal business, particularly regarding security and circulation.
- Spread investment over three phases stretching twenty years, balancing the scope and cost for each phase with planned investment. The most urgent projects are also the largest; the planning group did a focused analysis to phase large projects over the three phases to stabilize spending.
- Improve the overall dignity of court facilities
- Provide flexibility in the solution framework and cost analysis to adapt to changes in funding and capital planning priorities, demographics, technology and populations that shift over time.
- Update the Court's Design Guidelines using national "benchmarks" for best practices & provide consistency throughout the system.

#### Cost & Phasing

All construction costs contained in the CCMP were professionally estimated to anticipate funding requirements. At the commencement of a Project Study, the scope and budget will need to be detailed, validated and updated, and utilization analyses performed to establish final space and staffing needs. The complete implementation of the CCMP as outlined in the proposed solution framework would require approximately \$3.16 Billion Total Project Cost (TPC).



## EXECUTIVE SUMMARY OF DRAFT REPORT

**PHASE 1:** The first phase (\$1.06 B) prioritizes building two new high-urgency courthouses in Quincy and Boston; provides for the modernization of approximately 5 locations; and stabilizes the rest of the system with renovations, critical repairs, life-safety and accessibility improvements. The major projects in Phase 1 are prioritized because they address the most deficient and overcrowded buildings in the system.

**PHASE 2:** This phase (\$1.15 B) outlines investment to address the next layer of critical facility improvements. A new facility in Southern Middlesex County would permit consolidation of several facilities in the immediate vicinity, while addressing critical infrastructure improvements. A new medium-sized courthouse in Springfield would address operational issues between the Springfield Hall of Justice and the historic Springfield courthouse.

**PHASE 3:** Projects planned in this phase (\$949M) complete construction of the long-range needs. Solutions in Fitchburg, New Bedford and Barnstable stabilize state assets that maintain steady caseload volumes in substandard facilities. The listed renovation and modernization projects address overcrowding issues, while the repairs anticipate completing maintenance for newer courthouses and large justice centers built after 1988, which will be over 40 years old in this later phase.

### PHASE 1A DETAIL

Should the spending capacity of the Commonwealth not accommodate the full cost of Phase 1, the Trial Court has worked diligently with DCAMM to sub-phase the scope. Therefore, this "Phase 1A" prioritizes the most critical sites but also allows for forward planning at other strategic locations.

Completion of the CCMP as outlined in the solution framework would result in safe, accessible, and dignified facilities across the Commonwealth. The primary goal for the Massachusetts Trial Court is a long-term, operationally sustainable court system with fewer, more efficient and flexible buildings. Where costs for new/replacement facilities and modernization in the CCMP were similar, the group analyzed the return on both capital and operating investments and selected 'replacement' as the solution to enable the continued use of existing facilities during construction, and to consolidate failing buildings into fewer modern justice centers. Alternative construction solutions can be assessed in the Building Study phase with input and direction from the Legislature and Executive Administration.

The Trial Court recognizes the current competing interests and capital spending constraints across the Commonwealth and has spent the past year reviewing the plan, assessing alternative solutions, implementing operational shifts, and updating statewide judicial data in order to verify investment priorities.

The major projects included in the CCMP Phase 1A, totaling \$500M, are necessary to address critical issues in the highest volume state assets, and these sites remain priorities for the Trial Court. While the specific construction solution and scale of investment are flexible based on available capital, the assessed need, risk and vulnerability are not.

The goals for the Trial Court investment strategy are:

- data-driven ranking of capital investment priorities for effective management of state assets
- address public safety and security in high volume locations for both public and staff
- improve government services and performance
- continue to foster collaboration with partner agencies



## EXECUTIVE SUMMARY OF DRAFT REPORT

Using data-driven rankings of critical issues in the system allows the Trial Court and DCAMM to efficiently define those larger projects with feasible solutions and the scope for further building study. In support of this effort, the Trial Court operational database was updated from FY12 to FY16 data so that usage statistics, populations, and caseloads are up to date and reflect current justice trends.

Phase 1A: FY18-22				
replaced or expanded facility		facility repairs - (3) levels		
Replacement	Modernization	Renovation 1 (est. \$10-\$15M ea)	Renovation 2 ( est. \$2-\$10M ea)	Deferred Maintenance (under \$2M)
<u>Building</u> Quincy/Norfolk  <u>Feasibility Study</u> Suffolk Hi Rise S. Middlesex Charlestown	Malden DC Brockton SC Lynn DC Attleboro DC Northampton	Fitchburg DC Framingham DC East Boston Pittsfield DC Hingham DC	Concord DC Cambridge Third West Roxbury South Boston Woburn DC Wareham DC Dudley DC	<u>Envelope</u> (7) projects <u>Life Safety Sys</u> (2) projects <u>HVAC Systems</u> (2) projects <u>Holding/Security</u> (6) projects <u>Cross Circulation</u> M, R1, R2 <u>Egress</u> M, R1, R2
\$155 M	\$150 M	\$75M	\$60M	\$60M

**APPENDIX C**

**COURT MANAGEMENT ADVISORY BOARD REPORT  
ON HIRING AND PROMOTION IN THE JUDICIAL BRANCH  
(OCTOBER 2017)**

# **Court Management Advisory Board Report on Hiring and Promotion in the Judicial Branch**

**Lisa C. Goodheart, Chair  
Randy S. Chapman  
Kathleen M. Donovan  
The Honorable Gail Garinger (ret.)  
Richard Johnston  
Scott Harshbarger  
Allen B. Kachalia  
Liam Lowney  
The Honorable James F. McHugh (ret.)  
Donald Oppenheimer  
Denise R. Squillante  
Kenneth Turner**

**Chief Justice Paula M. Carey, Executive Secretary**

**October 2017**

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# **COURT MANAGEMENT ADVISORY BOARD REPORT ON HIRING AND PROMOTION IN THE JUDICIAL BRANCH**

## **I. BACKGROUND**

In May, 2010, the Boston Globe published a series of articles describing hiring and promotion practices in the Trial Court's Probation Department. The articles alleged that, although presented internally and externally as the product of merit-based decision-making, the practices were in reality rigged so as to curry legislative favor and funding.

The Supreme Judicial Court reacted swiftly. Working with Robert Mulligan, the Trial Court's Chief Justice for Administration and Management, it suspended the Commissioner of Probation and appointed Paul F. Ware, Esq., a former prosecutor and respected Boston trial lawyer, to investigate and prepare a report on the allegations the articles contained. In November, 2010, Mr. Ware issued a three-hundred page report in which he detailed with exacting specificity events, practices and policies supporting his conclusion that the Probation Department's "hiring and promotion [had] been thoroughly compromised by a systemic rigging of the interview and selection process in favor of candidates who have political or other personal connections."

After a prompt review, the Supreme Judicial Court approved Mr. Ware's report and, among several other things, appointed "a task force to undertake a comprehensive review of the hiring and promotion procedures in the Judicial Branch and to make recommendations designed to ensure a fair system with transparent procedures in which the qualifications of an applicant are the sole criterion in hiring and promotion." Over the ensuing year, the Task Force met on 29 occasions, interviewed numerous Trial Court employees, consulted myriad documents and issued six reports. Five of those reports contained findings and recommendations regarding hiring and promotion practices in specific Trial Court departments and the sixth contained a series of overall findings and a recommended action plan applicable to the Trial Court as a whole.<sup>1</sup>

The overall recommendations and action plan were explicitly designed not simply to address deficits in what were then the current hiring and promotion practices but to go beyond remediation and install best HR hiring and promotion practices as a major component of the Trial Court's approach to personnel management. Briefly summarized, the recommendations involved creation of mission statements for each of the Trial Court components, creation of well-defined job descriptions and competencies for all Trial Court positions, routinely enhancing the applicant pool for

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<sup>1</sup> The Sixth and final report of the Task Force was issued on December 11, 2011 and is available at <http://archives.lib.state.ma.us/handle/2452/265212>.

all open positions through aggressive outreach, using for all job applicants an objective candidate review that included behaviorally-based interviews and candidate assessments and use of a single, robust applicant tracking system for all Trial Court hiring. In urging adoption of those recommendations, the Task Force also noted the critical role that shared attitudes, values, goals and practices, spoken and unspoken, play in maintenance of a high-performance organization, and urged the Trial Court to adopt, with a sense of urgency, measures designed to cultivate a high-performance culture.

The Supreme Judicial Court accepted the findings and recommendations of each of the reports and urged their prompt implementation. Since then, as a result of legislation enacted in late 2011, the entire management structure of the Trial Court has changed. A Court Administrator appointed by the Supreme Judicial Court now heads the administrative side of the Court and the Chief Justice of the Trial Court, also appointed by the Supreme Judicial Court, heads the judicial side. Each holds a five-year, renewable term. For the past five years, inaugural Court Administrator Harry Spence and inaugural Chief Justice Paula Carey have worked side-by-side to create and implement the management framework that the legislation envisioned. In the process, they, and particularly Court Administrator Spence, have spent considerable time implementing recommendations contained in the Task Force reports.

Six years now have passed since the court reorganization legislation became effective. Court Administrator Spence recently completed his five-year term of service and has retired. To fill his position, the Supreme Judicial Court selected Jonathan S. Williams, an experienced administrator with extensive judicial management experience in North Carolina. The Court Management Advisory Board, several current members of which were also members of the Task Force, therefore decided that it would be helpful to examine and evaluate changes in personnel policies and practices that have occurred since the Task Force reports were written and to report its findings and recommendations in accordance with the Board's statutory mandate to "advise the justices of the supreme judicial court, the chief justice of the trial court, and the court administrator on all matters of judicial reform." G.L. c. 211B, § 6A. What follows are those findings and recommendations.

## II. OBJECTIVES AND METHODOLOGY

In conducting its review and making its recommendations, the Board had three primary objectives. Briefly stated, the first was to determine whether the steps taken by the Trial Court adequately addressed the Task Force recommendations. The second was to determine whether those steps are working efficiently and have had the intended effect, including whether those steps have led to the timely filling of open positions with qualified, diverse, talented and motivated employees. Third and finally, the Board sought to determine whether hiring and promotion policies and procedures beyond those the Trial Court already has implemented would help

to create and maintain the multitalented workforce the Trial Court will need in the future to fulfill its mission and retain public confidence. The third objective, therefore, goes beyond the exploration of measures necessary to prevent recurrence of the activities described in Mr. Ware's report. Instead, it looks to the future and to the high-performance workforce the Trial Court needs and desires to deliver the services the public expects.

To carry out those objectives, a panel of Board members appointed by the Chair ("Panel")<sup>2</sup> conducted interviews with Trial Court employees at all levels, particularly those who have a role in the hiring and promotion process. The Panel also reviewed pertinent documents, including the Trial Court's Personnel Policies and Procedures Manual ("Personnel Manual")<sup>3</sup> which contains the policies and procedures governing all trial Court hiring and promotion. The Panel then prepared a draft report that was discussed, revised and ultimately approved by the entire Board.

The Board is grateful to all those who took the time from their busy schedules to meet and provide the Panel with their observations and recommendations regarding personnel practices. We welcome as well comments on this Final Report.

### III. OVERVIEW

From a policy standpoint, the changes the Trial Court has made to hiring and promotion practices that existed in 2011 are an adequate response to the Task Force action plan the Supreme Judicial Court endorsed. Together with other factors, implementation of those changes has created a substantial reduction, if not an elimination, of hiring pressure from public officials, both the pervasive and highly-leveraged pressure that led to the dramatic problems uncovered in the Probation Department and the more subtle pressures that were at one point an environmental backdrop to most Trial Court hiring. That reduction has produced a significant increase in merit-based hiring and promotion accompanied by a substantial improvement in overall employee quality and morale. To be sure, there have been instances in which personnel matters have gone awry and a few of those have

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<sup>2</sup> The panel members were Randy Chapman (who participated as a member of the panel until he was sworn in as an Associate Justice of the Salem District Court toward the end of the Panel's work), Kate Donovan, Lisa Goodheart, Scott Harshbarger and James McHugh.

<sup>3</sup> The Personnel Manual is a compilation of substantive and procedural standards issued by the Court Administrator pursuant to statutory authority and obligation to "establish and promulgate standards for the appointment, performance, promotion, continuing education and removal of all personnel within the trial court, except judges, clerks and registers of probate" G.L. c. 211B, § 8. In establishing those standards, the Court Administrator is advised by the Advisory Committee on Personnel Standards which is composed of the "chief justice of the trial court or his designee; the chief justices of the trial court departments, or their designees; the court administrator or his designee, who shall serve as chair of the committee; the commissioner of probation; and a clerk of the superior court, a clerk of the district court and a register of probate who shall be appointed by the chief justice of the trial court." *Id.*

commanded public attention. In the main, however, those instances appear to be the result of unique circumstances and are not the product of subverted hiring or promotion systems.

The Trial Court has approximately 6,300 employees including Judges, Clerks and Registers of Probate. Those employees are located in more than 100 locations throughout the Commonwealth. Collectively, they hold 317 different positions and titles, each with its own job description. Changing the Court's hiring and promotion practices, therefore, was and is no small feat. Indeed, the changes reflect effective and sustained leadership both centrally and in courthouses throughout the Commonwealth. Implementation of those changes also reflects a desire by many members of the Trial Court workforce to create and maintain an environment in which provision of high-quality public service is a daily objective.

That said, and without diminishing the importance of what the Trial Court has achieved over the last six years, the Board has identified certain areas in which it believes that specific further improvements are desirable for the creation, maintenance and expansion of the multi-talented, diverse, high-performance workforce the Trial Court needs and seeks. In developing the following findings and recommendations, the Board has found it most useful to look separately at the Office of Court Management ("OCM"), which has direct hiring and oversight responsibility for many Trial Court employees and the offices of appointed or elected Trial Court Clerk-Magistrates ("Clerk"), elected Registers of Probate ("Register") and the Land Court Recorder ("Recorder") who have significant hiring and oversight responsibility for the remainder. A separate look is appropriate because, despite the Legislature's reorganization of Trial Court management, the Trial Court outside of the OCM remains in very real senses a federation rather than a single, fully integrated operating unit, a reality that continues to pose challenges to uniformity, consistency and oversight in court administration and management.

Structurally, this Report begins with a focus on four of the OCM's nine departments. Those Departments were chosen for the reasons described in the next section. The Report contains findings specific to each Department and recommendations that flow from the findings. The findings are based on the Panel's interviews and its review of documents. Because the recommendations flow from the findings they, too, are Department-specific.

The Report then turns to the offices headed by Clerks, Registers and the Recorder. Again it contains a series of findings based on interviews and documents and recommendations that flow from the findings. The number of offices headed by a Clerk or Register is too great to permit specific focus on particular offices, so the findings and recommendations are designed to deal with generalized issues that arose from the Panel's inquiry.



The Report concludes by focusing on the need to prioritize culture, i.e., the shared values, attitudes and goals that pervade every organization and drive organizational behavior to a greater degree than any specific set of policies and procedures ever will. The Task Force made observations about aspects of the Trial Court culture in its final report six years ago. Since then, the culture has evolved in many salutary and important ways and further evolution now should be encouraged.

By design, this Report does not deal with the important subject of career paths and talent development, but is focused more specifically on policies and procedures relating to hiring and promotion within the Trial Court. That design flows from two principal reasons. First, the sense of the Board has been that it is important to conduct a detailed review of the Trial Court's response to the 2011 Task Force recommendations before undertaking an examination of a new, albeit clearly related, topic. Second, and perhaps more importantly, the Trial Court's Strategic Plan 2.0, which was created in 2016, includes "Talent & Career Development" as one of its six key focus areas. The Strategic Plan outlines an overall approach to talent and career development that is organized around eight tactical goals. To achieve those goals, the Court has created an action plan containing concrete steps, responsibilities and deadlines for implementing the goals set out in the Strategic Plan by the end of FY 19. The Board is keenly interested in the success of the action plan, looks forward to following its progress and stands ready to offer its assistance and advice as appropriate, as implementation proceeds. At the same time, however, the Board believes that it is important to let the Trial Court leadership move forward with the process it has created for supporting career paths and managing talent development before the Board begins to voice opinions about the direction or efficacy of that process.

Also by design, the Report does not focus on whether there is racial, ethnic, gender or other discrimination in the hiring and promotion processes, though it does stress repeatedly the need for diversity in those processes and in their results. Once again, that limitation flows from the Board's desire to explore the Task Force reports before exploring areas on which the Task Force made no comment. Moreover, the Board understands that aspects of those issues are now being explored by other organizations and did not think it appropriate to begin inquiries that might interfere with those that were in progress. Nevertheless, the Board is also keenly interested in the outcome of those inquiries and, after reviewing the results, will decide whether and to what extent its own inquiries, findings and recommendations may be helpful.

## IV. FINDINGS AND RECOMMENDATIONS

### *A. OFFICE OF COURT MANAGEMENT*

The Trial Court's Office of Court Management consists of the following nine Departments, each headed by a director or, in the case of Probation, the Commissioner:

- Capital Projects Department
- Facilities Management Department
- Fiscal Department
- Human Resources Department
- Judicial Information Services Department
- Probation Department
- Department of Research and Planning
- Security Department
- Support Services Department<sup>4</sup>

The following discussion focuses particularly on the Human Resources, Probation, Security and Information Services Departments. Human Resources has the capacity to play a significant role in all Trial Court hiring, but it operates in a highly complex administrative environment. Probation, with 1,800 employees, is the largest of the Departments. It has made enormous strides in the past six years but also operates in a very complex administrative environment. Security, with 1,000 employees, also has made significant strides but faces challenges in terms of overall staffing. Information Services has some unique issues that merit individualized attention.

#### a. Human Resources Department

##### *1. Findings*

According to its mission statement, "[t]he Human Resources Department partners with management to create and maintain a talented, qualified workforce by recruiting a diverse applicant pool, by facilitating the fair merit-based selection for appointment of the most qualified candidates, by developing appropriate workforce training, by fostering positive management-employee relations, by promptly addressing workplace issues, and by developing performance based measures to ensure the continued excellence of the workforce. The Human Resources

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<sup>4</sup> The Office of Jury Commissioner provides all jurors to all trial sessions throughout the Commonwealth. Nevertheless, it is not a Trial Court Department. Instead, the Office operates under the supervision and control of the Supreme Judicial Court. G.L. c. 234A, § 5. The Supreme Judicial Court also appoints the Jury Commissioner, who is the executive head of the Office. G.L. c. 234A, § 7. Like the reports issued six years ago, this report focuses exclusively on hiring and promotion in Trial Court Departments. Consequently, the Office of Jury Commissioner is not included.

Department will use best practices to ensure that this collaborative effort advances the mission of the Trial Court.”<sup>5</sup>

That mission statement places the HR Department at the very center of Trial Court recruitment, hiring and promotion. The Task Force reports mentioned earlier and the Personnel Manual place it there as well, not simply in an aspirational sense but with the expectation that, like counterparts in the private sector, it would have a major role in recruiting, hiring and promotion throughout the Trial Court.

Nevertheless, many of the OCM directors view HR primarily as an administrative body whose primary function is ensuring that job openings are posted, that applicant resumes are received and sent in timely fashion to departmental hiring managers for their consideration, and that job offers are extended, again in timely fashion, to successful applicants. That view, which is widely (though not universally) shared by hiring managers outside of the OCM, reduces the role of HR Department employees to that of “recruiting administrators.” The requirements of this role differ significantly from, and are lower than, the professional expectations commonly associated throughout private industry with individuals who perform the functions of a “Recruiter.”

While HR personnel can continue to function merely as hiring and recruiting administrators, doing so will likely mean that the talent acquisition process within the Trial Court will remain sub-optimized. In today’s environment, where there is great competition for largely scarce talent, the Trial Court should carefully consider the role HR currently plays versus the role that it could play, if it were brought to industry standards for the talent acquisition function, i.e., the process of recruiting, reviewing, interviewing, hiring and promoting members of the Trial Court workforce.

When used by competitive private sector employers, the Recruiter’s primary function has two components. The first is to aggressively seek and find talented candidates from other organizations who may not even be looking for new positions – these candidates are called “passive” candidates. Secondly, Recruiters develop strategies to “post” positions where active job seekers are most likely to be found – such as job boards like Monster and Career Builder or many specialty sites frequented by job seekers. Recruiters then “screen” for the best candidates who have applied. Recruiters manage their work through an Applicant Tracking System (ATS), a highly configurable automated system that is capable of recording all aspects of the Trial Court recruitment and hiring processes. The ATS also enables workflow and provides transparency to the recruiting process for all open positions.

The Trial Court has deployed an ATS made by one of the leading producers of ATS software. All applicant resumes for open Trial Court positions are captured in that system, as is the progress of each applicant through the hiring process including

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<sup>5</sup> Personnel Manual §1.301: Human Resources Mission Statement.

whether or not the applicant was hired. However, at present, the Trial Court's hiring administrators do not perform active "searches" for passive candidates. Instead, they rely solely on the talent pool created by individuals who respond to job postings with applications filed in the ATS. Consequently, there can be a huge difference in the size and quality of the self-identifying candidate pool for open positions. For some positions, there may be more than 100 applicants who are minimally qualified. For more difficult roles to fill, such as IT roles, there may be none.

ATS technology provides the ability for a first "screen" based on "key words" found in resumes. Based on the appearance of key words specific to the open position, the ATS identifies the candidates who are "minimally qualified" for the role.<sup>6</sup> Next, the Trial Court's HR personnel review the initial screen done by the ATS of the candidates who are "minimally qualified," based on the information the candidate has provided. HR personnel then make copies of all the information supplied by those candidates and send that information to the hiring manager, regardless of the size of the qualified candidate pool. Additionally, departmental hiring managers – typically the top or other high-level employees in the department where the new employee will work – understand that the screening process takes place in the ATS and many don't trust that this will net the highest quality candidates. Therefore, they may ask to see information about all of the candidates who have applied for a position, which in some cases may be over 100 people. As a result, the Trial Court's HR personnel are very busy but their time is taken up on low value activity, including printing and sending out resumes to hiring managers.

After receipt of the resumes, the departmental hiring manager takes over the process and moves forward by reviewing resumes, interviewing some or all of the candidates, and ultimately making a hiring decision. In discussions with Trial Court leaders, the Panel learned that, at least for personnel hired outside of the OCM, many hiring managers routinely interview more than 25 candidates for non-managerial roles. Once the manager makes a hiring decision, the HR Department is so informed and again, after reviewing the decision as to form, takes charge of the administrative process by creating an offer letter, confirming the acceptance and on-boarding the new hire.

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<sup>6</sup> ATS's have long been used to perform automatic screening of resumes, using key word searches to identify relevant experience, educational qualifications, and other criteria. An ATS is quite capable of doing the "first screen" of an applicant pool, in order to identify all minimally qualified candidates. Efficient recruiting organizations use this functionality widely, and upgrade its search criteria constantly to make it better at identifying the highest qualified candidate profiles. Indeed, it is common practice for recruiters to use the ATS to manage all facets of their work, as these systems provide tracking not only by position, but by each stage of the recruiting process, from initial job posting through offer letters and onboarding. All of the background information (applications, resumes, assessment results) is also kept in the system. The ATS allows for efficiencies in communicating with candidates. Properly configured, the ATS will also allow hiring managers to see the status of their open positions and where each candidate is in the overall hiring process.

The process just described does vary to a considerable degree, depending on the preferences of the particular hiring manager. Some hiring managers partner more closely with HR and may involve them in the hiring decision. Others manage the hiring process without seeking any input or guidance from HR personnel regarding the experience, skill sets and relevant attributes of the applicants they are considering for open positions. As a consequence, the quality of the employees they hire is wholly dependent on their personal judgments and hiring goals, which may or may not fit tightly with overall goals of the Trial Court. In both cases, however, HR's value is sub-optimized. The process could be much more efficient, create a better experience for both applicants and hiring managers, and more reliably ensure that only the *most* qualified candidates become Trial Court employees.

Specifically, HR's role in the recruiting process could be greatly enhanced and brought to a more commonly accepted industry standard, with consequent savings of both time and money. Indeed, most organizations track and understand their "cost per hire," "time to fill open positions" and "candidate and hiring manager satisfaction" and, armed with that data, continually seek improvements in process and efficiency. Currently, such metrics are not widely and systematically tracked and routinely utilized to improve the hiring processes across the Trial Court.

If industry standards and best practices were employed, Recruiters would in appropriate cases search for passive candidates. They would also actively screen for the most qualified candidates who responded to job postings. When appropriate, that active screening could involve live interviews and testing to ensure that the applicant's skills are what the applicant represented them to be. Inexpensive tools that can test for skill level, e.g., proficiency with computer programs such as Excel, PowerPoint or Word, are now available on-line. If language skills are required, tests also exist for verbal and written fluency. Other tests for math and accounting skills, or for such things as detail orientation or customer service aptitude, are available as well. If the Recruiter engaged in any or all of those activities, then he or she would also prepare for the hiring manager a comprehensive written assessment of each candidate or applicant and a ranking of those whom they felt were the best fit for the position and why.

Whether or not the Recruiter performed all of those tasks, the goal would be for the Recruiter actively to interview and assess a diverse array of candidates for an open position and then provide the hiring manager with at least 3 but no more than 8 highly qualified individuals in every case where doing so is consistent with applicable requirements aimed at promoting workforce diversity. Each of those individuals should be someone whom the Recruiter believes, based on his or her knowledge of the hiring manager's vision of the successful candidate profile and the culture of the hiring manager's department or work unit, would be a great fit for the role.

At present, the HR Department consists of twenty positions, one of which is vacant. Of the twenty, four are engaged in "hiring, applicant tracking and onboarding." The

others are engaged in activities that relate to existing employees, although none is routinely or directly involved in the promotion process. Transition to a more value-added role for HR in the recruiting process thus will take some time and training, and perhaps some personnel with different skills. Nevertheless, that transition would be well worth the investment, both in terms of the hours saved in the recruiting process and in terms of ensuring that only a diverse group of objectively evaluated and qualified candidates make it to the hiring manager's desk. With a manageable number of qualified candidates in play, the "time to fill" metric for open positions would likely improve. A more active HR role would likely improve the candidate experience as well.

The Trial Court hires approximately 400 people each year, which, with an effective and more efficient process, could be managed by 3 or 4 professional Recruiters assisted by a few recruiting coordinators. Successful execution of those functions would require Recruiters to have a deep understanding of hiring manager needs, departmental culture and fit. They would also have to develop trusted relationships with the hiring managers they support. That understanding and that relationship are common ingredients of Recruiter success.

In addition to its role in hiring, HR plays a major role in negotiating collective bargaining agreements with the two primary unions that represent Trial Court employees. It also negotiates with the unions regarding appropriate job descriptions for each category of Trial Court employee, a process that has become overwhelmed by the volume of changes produced by automation and other Trial Court advances. The volume of those stale job descriptions can have a serious adverse impact on Court-wide hiring of personnel with the background and talent the Trial Court needs and will continue to need in the near and long term.

The HR Department also has a role in providing advice for graduated discipline and for the conduct of grievance proceedings after discipline has been imposed. In that area, however, two problems are sometimes encountered. The first, and more frequent, is structural. Many supervisors and those whom they supervise are members of the same union. Union and management employees whom the Panel interviewed were in agreement that combining supervisors and supervised in the same union sometimes made day-to-day management more difficult and disciplinary proceedings more difficult still.

The second has to do with those rare cases in which a discharge from employment is warranted. The 2011 court reorganization legislation removed from G.L. c. 211B, § 8, a provision stating that all Trial Court employees, union and non-union, could be discharged only for "cause." In place of that standard, the 2011 legislation provides that employees not covered by collective bargaining agreements containing a "cause" standard can be "removed by the[ir] appointing authority, in accordance with the standards promulgated by the [advisory] committee [on personnel standards] provided, however, that any such removal is not for arbitrary or

capricious reasons and, if the employee so requests, is approved by the committee.” G.L. c. 211B, § 8.

The Court’s Personnel Manual fully adopts that standard for all non-union employees.<sup>7</sup> Moreover, a recent decision by the Supreme Judicial Court confirms that the “arbitrary and capricious” standard is to be applied in the employment context just as it is in other contexts, and permits discharge unless the discharge decision “lacks any rational explanation that reasonable persons might support.” *Perullo v. Advisory Committee on Personnel Standards*, 476 Mass. 829, 836 (2017), quoting *Doe v. Superintendent of Schools of Stoughton*, 437 Mass. 1, 5 (2002).

Both the revised statute and its recent interpretation by the Supreme Judicial Court are important because the difficulty of discharging employees under the older “cause” standard in effect infused most Trial Court jobs with security akin to life tenure, and led to a practice of moving difficult and sometimes even unfit employees to different courthouses around the state, where they remained until they wore out their welcome and required another transfer. The *Perullo* case itself involved transfers of that sort, and other instances where the practice has been employed, sometimes with disastrous results, have surfaced from time to time, even after the Legislature adopted the “arbitrary and capricious” standard. The durability of the practice and the “for cause” approach to termination is a testament to the power of established organizational culture and the difficulty of making significant changes to it within a relatively short period of time. Nevertheless, the practice of transferring problem employees was difficult to justify even when a “cause” standard governed the employer-employee relationship, and it is completely unjustifiable where the “arbitrary and capricious” standard applies. The Trial Court, acting through the HR Department and otherwise, should no longer tolerate or approve transfers of that sort. Instead, it should emphasize the necessity for managers at all levels to meet serious performance deficiencies promptly and head on, with appropriate internal remedial measures followed by termination if they fail.

## 2. Recommendations

- a. With the advice of the Advisory Committee on Personnel Standards and in a clear and unequivocal fashion, supported at all Trial Court leadership levels, charge HR with the authority and clearly understood responsibility for implementing, overseeing and enforcing best hiring practices throughout the Trial Court and clearly and unequivocally support HR’s execution of that charge. Those best practices include, but are not necessarily limited to:

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<sup>7</sup> Personnel Manual § 16.800. Union employees are covered by termination provisions of their collective bargaining agreements.

- i. Hiring experienced Recruiters so that HR can play a more active and effective role in recruiting, assessing and hiring the diverse and talented employees the Trial Court needs now and in the future;
  - ii. Using more of the ATS functionality to enable Recruiters to manage the full recruiting process, and also to enable transparent, efficient reporting of candidate applications and dispositions;
  - iii. Reconfiguring application tracking software to make it more user friendly to job applicants and easier for hiring managers to use to access information about their open requisitions;
  - iv. Ensuring that HR undertakes more active personal screening and use of online resources to create a qualified and appropriately diverse candidate pool; and
  - v. Deploying the resources necessary to update and keep current all relevant job descriptions.
- b. Take whatever steps are necessary or appropriate, through collective bargaining or otherwise, to separate supervisors and supervised from the same union.
  - c. Through HR and/or otherwise, implement the training, oversight and other processes needed to end the *de facto* use of the “for cause” standard for discharge, where the “arbitrary and capricious” standard is now the operative rule.
  - d. End the process of transferring difficult or unfit personnel from courthouse to courthouse (or from position to position) as a method of dealing with poor performance, and adopt appropriate procedural measures to ensure that all personnel transfers are made for appropriate reasons, and not as a way of dealing with difficult or unfit employees.

#### b. Probation Department

##### *1. Findings*

Under new and dedicated leadership, the Probation Department has dramatically improved its hiring processes. As far as the Board can determine, Probation hiring is now predominantly merit-based, and it is clear that the pervasive external influences that characterized the Departmental hiring six years ago have dissipated. The promotion process, too, has improved significantly and there, too, the pervasive external influences of the past are no longer present.



Nevertheless, two significant problems remain. The first involves the lack of training for participants in promotion interview panels. Panels assembled by the appointing authority, usually the first justice of the division where the promotional opportunity exists,<sup>8</sup> generally interview candidates for promotion. The panels typically have three members, two of whom are directly associated with the office in which the opening exists and one of whom is not. But there has been no consistently enforced requirement that all panelists be properly trained in order to participate in interviews, and the resulting conduct of interviews by insufficiently trained panels can lead to flawed and uneven results.

Lack of interview or evaluation training and corresponding flawed results are not phenomena unique to the Trial Court. Indeed, employers of all kinds, public and private, are constantly seeking to ensure that those who make hiring and promotion decisions base those decisions on a clear understanding of relevant job requirements. They also make an effort to understand the “success profiles” for particular positions, based on understanding the relevant backgrounds and skills of incumbents who are high performers in those roles. The challenge faced by all employers is exacerbated by the fact that many managers make hiring and promotion decisions infrequently and without appropriate training, so they are not optimally experienced and skilled at the interview and selection process.

Best practice in this area requires that all decision-makers in the promotion process are trained. Customized training, therefore, should be required of all promotion interview panelists prior to their participation in the process. While this training must be customized, it can be scalable and easily delivered – even on-line. Indeed, HR has developed interview guides and score sheets which, if properly deployed, updated when necessary, explained and used, could greatly enhance the interview and decision-making process. The guides were developed by the HR Department in conjunction with the various appointing authorities. They are designed to get at the core functions of the position and the majority of the questions are framed in a behavior-based framework. Appointing authorities are required to use these guides when conducting the structured oral interview.

Nevertheless, deciding how to score or rate the answers to the questions the guides contain is not an intuitive process in the Probation context or generally. To deal with that problem, many organizations have implemented “hire right” training programs. While the programs may differ in content based on the specifics of the positions being filled, the focus of all such training is to enable hiring managers to select the

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<sup>8</sup> G.L. c. 276, § 83(m) provides: “In any court having 2 or more probation officers, the first justice, subject to the approval of the court administrator and the commissioner of probation, may designate 1 probation officer to serve as chief probation officer and may designate other probation officers to serve as assistant chief probation officers, as the first justice deems necessary for the effective administration of justice.”

candidates who are most predictably going to be successful in a given role. This type of training generally covers the following:

- Understanding the job description and the critical success factors for the role;
- Identifying the “success profile” for the role and the common attributes of high-performing incumbents;
- Learning how to ask the right questions to evaluate whether the candidate fits the success profile;
- If there is an assessment test for the role, learning how to evaluate the candidate’s scores and map those scores to the overall success profile, through an understanding of the scores that are common to high-performing incumbents;
- Identifying conscious and unconscious racial, gender, ethnic and other biases, including learning how to recognize such biases in oneself as well as in others; and
- Enhancing the candidate experience, including learning how to conduct the interview in a way that leaves a positive impression with the candidate, whether or not the candidate is ultimately selected for the position.

Most importantly, any “hire right” training must be endorsed and practiced from the top down. Leadership in the organization must hold itself accountable for best practice decision-making in hiring and promotions, in order to succeed in holding all managers in the organization to the same high standards. Where this is done, however, “hire right” training can yield great benefits.

The second, and more significant, continuing problem with respect to promotions in the Probation Department is that there is still a widespread belief throughout the Department that “who you know” is more important than merit. In part, that belief may be an artifact of a discredited system in which who you knew was not simply a factor in the process; it *was* the process. In part, that belief may result from a continuing reluctance to provide unsuccessful candidates with information about why they were unsuccessful, due to the fear that such feedback may be sought primarily for purposes of commencing and supporting employee grievance proceedings. And in part, that belief may flow from the fact that, by statute, the First Justice of the pertinent division has a primary role in deciding who is promoted. Whatever the causes, the belief is deeply held and deeply corrosive.

To counteract that belief, use of regional “assessment centers” instead of locally assembled interview panels would be enormously helpful, at least until the widespread mistrust of the current process is dispelled. Indeed, the Probation Department, with the assistance of the HR Department, has begun planning for creation and use of assessment centers in connection with promotions and the Board fully supports its decision to do so.

An assessment center is not a place, but rather a standardized method for evaluating behavior most relevant to a particular position based on job-related simulations, interviews and/or tests. In an assessment center, a group of trained and experienced assessors observe candidates for promotion as they perform individual and group activities that simulate activities they would perform in the position they are seeking. The assessors could be chosen in a variety of ways by a variety of Trial Court employees but would not be selected by the local hiring authority, nor would they be employees of the office with which the hiring authority was affiliated. Chosen and operating in that fashion, the assessment panel would have the opportunity to observe all candidates as they perform similar activities. Based on their observations and ranking, they would recommend to the appointing authority a limited number of applicants and the appointing authority would make the promotion from that group. However executed, the overall objective of the assessment center process would be creation of a merit-based subset of the entire applicant pool from which the appointing authority would make the promotion. As a result, all promotion recommendations and decisions would be based in large part on common sets of data unaffected by local loyalties or influences. As a result, use of assessment centers would create consistency in promotions, thereby reducing both grievances of and skepticism about the promotion process. In any event, the use of assessment centers, at least for some period of time, would provide the First Justices responsible for promotions with demonstrably merit-based groups of finalists, and so would be a very helpful step toward building a deep, Department-wide confidence that merit is the essential component of all promotion decisions.

Providing feedback to unsuccessful applicants for promotion, at least to those who request it, would also help to dispel the belief that the “who you know” system continues to operate. If assessment centers are used in connection with all promotions, then the candidate rankings the centers produce would greatly facilitate the feedback process. Providing feedback of that kind will not always be easy and those who provide it should be trained in techniques that will be most helpful to the inquiring applicant before any feedback program is undertaken. Nevertheless, in addition to dispelling notions that discredited systems remain in play, the potential need to provide feedback can help with the promotion decision itself by requiring the hiring manager to think in truly concrete terms about the way he or she will explain the decision to those who were not chosen. Moreover, providing feedback to those who seek it gives them helpful information about their chances for future success and the opportunity to look for employment elsewhere if they conclude that future success is unlikely.

## *2. Recommendations*

- a. Use assessment centers in lieu of locally assembled interview panels in connection with all promotion decisions in the Probation Department at least for the next five years, or until Department personnel are generally convinced that all promotions are merit based.

- b. Authorize HR to play a major role in selecting and providing standardized “hire right” training for all members of interview panels and/or assessment centers.
- c. After appropriate training, provide feedback to unsuccessful applicants for promotion who request it along with any constructive suggestions for improvements needed to enhance their chances for success in future applications.<sup>9</sup>

#### c. Security Department

##### *1. Findings*

There is universal agreement that the quality of training for security personnel – chiefly court officers – has improved dramatically over the last six years. Virtually everyone the Panel interviewed commented favorably on court officer professionalism and the quality of the training they are now receiving, which provides them with the tools necessary to defuse the often explosive situations that can quickly arise in a tension-filled courtroom.

Court officer hiring now is a multi-step process that includes, among other things, an entry exam, physical abilities test, behaviorally based interviews and background inquiries. When hired, the new court officer receives eight weeks of training at a nationally accredited training academy and continuing in-service training designed to help the officer deliver professional court security. Promotions are now the result of the competitive process involving independent screenings.

Two issues remain. The first is that hiring, at least in the view of some, has not kept pace with need, and the shortfall of experienced, well-trained court officers sometimes puts additional strain on those who have been assigned to particular courtrooms and courthouses. The problem appears to be a transient one and the Department appears to be committed to resolving it.

Second, there is no mandatory retirement age for court officers. Moreover, although there is a mechanism for testing a court officer’s physical ability to perform the duties to which he or she is assigned, that mechanism, provided for in the collective bargaining agreement, is available only in “extraordinary circumstances” and is no substitute for routine and periodic assessments of physical stamina and mental

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<sup>9</sup> The need for this type of feedback is most acute in the Probation Department, but it should be available throughout the Trial Court. Perhaps responsibility for providing it could be reposed in the HR Department and perhaps enhancing the requirements for delivering feedback based on periodic performance reviews would reduce the number of feedback requests following unsuccessful applications for promotions, as well as the surprises that the latter type of feedback might contain. Use of properly constructed hiring guides and score sheets by trained interviewers in all hiring and promotion decisions for all Trial Court positions would also greatly enhance the feedback process.

acuity.<sup>10</sup> By way of comparison, all Massachusetts police officers, many of whom perform duties similar to those performed by court officers, are by statute required to take and pass a physical examination at least once every four years.<sup>11</sup> The statute does not cover court officers and there is no mechanism for routine review of their physical ability to perform required duties, even though they routinely work in an environment where violence, though infrequent, can suddenly erupt.

## *2. Recommendations*

- a. Hire and train additional, qualified court officers and deploy them as rapidly as possible to the places where they are most needed.
- b. Seek statutory changes or changes to the applicable collective bargaining agreement in order to institute a mandatory retirement program, or a process for periodically assessing an officer's mental and physical ability to perform the requirements of a court officer job, or both.

### *d. Judicial Information Services Department*

#### *1. Findings*

Insofar as the Judicial Information Services Department ("JISD") is concerned, the entire hiring process is too slow and the salary structure is too inflexible to produce the caliber and quantity of job applicants that are needed to meet the Trial Court's IT and data management needs. While this critique may be equally relevant in other Trial Court departments, it has a more dramatic effect here. At the moment, and likely for the foreseeable future, talented IT professionals are in extremely high demand in Massachusetts, as they are nationally. In the IT area in particular, the Trial Court salary structure, including both entry-level salaries and periodic step increases, is widely perceived as insufficient to attract the talented personnel the Trial Court needs and will increasingly need in the coming years. In addition, the length of time between an applicant's response to a job posting and final action on that response is frequently so great that the applicant has accepted another job from a different entity before the Trial Court completes processing his or her application.

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<sup>10</sup> Section 13.07 of the collective bargaining agreement that governs court officers provides that "[i]n extraordinary circumstances, when the immediate manager ... [of a court officer] has sufficient reason to believe that [the officer] has a mental or physical incapacity rendering him/her unfit to perform his/her job or which jeopardizes workplace safety or stability, the immediate manager ... may authorize the removal of such [officer] from the workplace." The agreement provides that removal under those circumstances triggers one or more physical examinations to determine whether a disability exists and interferes with the officer's ability to perform his or her duties safely. Applicants for new court officer positions are now required to pass a physical examination. Periodic physical exams after hiring remain voluntary with an incentive in the form of a stipend provided for those who take and pass them.

<sup>11</sup> G.L. c. 31, § 61A.

More broadly, the length of time it takes to make the decision may well create an unfavorable impression of the Trial Court among members of the IT community whom the Trial Court would want to recruit in the future.

That is not to say that the IT professionals currently employed by the Trial Court are substandard. They are not. But most of them are attracted to Trial Court employment for reasons beyond the salary and benefits they receive, which may be just a fraction of what they could receive elsewhere. They are attracted because of their spirit of public service and their desire to participate in the Trial Court's overall mission. Nevertheless, as the Trial Court's needs change and as useful new hardware and software becomes available to meet those needs, there will be times when it would be enormously valuable, if not essential, for the Department to be able to move quickly and flexibly to hire the talented people needed to program, operate, maintain and configure the Trial Court's IT assets.

## *2. Recommendations*

- a. JISD and HR should work together to create time-sensitive goals and processes for filling key IT position vacancies.
- b. The Court Administrator should explore the extent to which the Trial Court can pay key IT professionals the salary and/or provide other benefits, including flex-time, part time, remote working locations, necessary to attract and retain them.
- c. If and to the extent that those salaries and benefits are inconsistent with statewide personnel requirements, the Court Administrator should explore whether those requirements can be modified.
- d. To the extent necessary, HR and the Trial Court's Judicial Institute should develop and subsidize internal and external IT training programs and other advancement opportunities for existing JISD employees.

### *B. CLERK-MAGISTRATE, REGISTER AND RECORDER OFFICES*

#### *1. Findings*

In contrast to the departmental directors within the OCM, who are appointed by and report directly to the Court Administrator, the Trial Court Clerks, Registers and the Land Court Recorder are local appointing authorities. Under the Massachusetts Constitution, the voters elect Registers of Probate and Clerks of the Superior Court every six years.<sup>12</sup> Clerks in all other Departments and the Recorder are appointed

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<sup>12</sup> Article XIX of the Amendments to the Massachusetts Constitution, as amended, provides: "The legislature shall prescribe, by general law, for the election of sheriffs, registers of probate, [commissioners of insolvency,] and clerks of the courts, by the people of the several counties, and

by the Governor, confirmed by the Governor’s Council and hold office during good behavior with no termination date.<sup>13</sup> Except for the possibility of removal for bad behavior, theirs are lifetime appointments. That kind of tenure exists nowhere else in the Massachusetts judiciary or elsewhere in the government of the Commonwealth. Among other things, it has led in many cases to a belief that the appointed clerks are accountable to no one.<sup>14</sup>

By statute, the Clerks, elected and appointed, Registers and the Recorder “have responsibility for the internal administration of [their] office[s], including personnel, staff services and record keeping”<sup>15</sup> and their authority in that regard was underscored in the 2011 Trial Court Reorganizing legislation.<sup>16</sup>

Their authority, though, is not unlimited. As noted earlier, the same reorganizing legislation gave the Court Administrator the power, with the advice of the Advisory Committee on Personnel Standards, to “establish and promulgate standards for the appointment, performance, promotion, continuing education and removal of all personnel within the trial court, except judges, clerks and registers of probate.”<sup>17</sup> The current version of the Trial Court Personnel Manual contains those standards.

The 2011 legislation also provided that “[a]ny appointment that is governed by standards promulgated under the provisions of this section shall forthwith be certified in writing for compliance with such standards to the court administrator. The court administrator shall have the power to reject any such appointment within 14 days after receipt of the certification of compliance by the appointing authority

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that district-attorneys shall be chosen by the people of the several districts, for such term of office as the legislature shall prescribe.” G.L. c. 217, § 24 and G.L. 221, § 3 create six-year terms for Registers and Superior Court Clerks, respectively.

<sup>13</sup> G.L. c. 185, § 6 (Land Court Recorder); G.L. c. 185, § 9 (Housing Court); G.L. c. 218, § 8 (District Courts and Boston Municipal Court); G.L. c. 218, § 58 (Juvenile Court).

<sup>14</sup> That issue was discussed at greater length in the fourth of the Task Force Reports, which was entitled *Action Plan for Hiring and Promotion of Trial Court Administrative Employees* and issued on August 9, 2011.

<sup>15</sup> G.L. c. 185, § 6 (Land Court); G.L. c. 185C, § 8 (Housing Court); G.L. 212, § 14A (Superior Court); G.L. c. 217, § 2 (Probate & Family Court); G.L. c. 218, § 8 (District Court); G.L. c. 218, § 51A (Boston Municipal Court); G.L. c. 218, § 57A (Juvenile Court).

<sup>16</sup> G.L. c. 211B, § 10C, which is part of that legislation, provides that “[t]he general superintendence and administrative authority of the chief justice of the trial court, court administrator, and the chief justices of the respective departments of the trial court and 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.”

<sup>17</sup> G.L. c. 211B, § 8.

but such power to reject any such appointment shall be limited to non-compliance with the standards for appointment.”<sup>18</sup>

The reorganizing legislation thus embodies a careful balance between local autonomy and central authority. The local hiring authority has the power to choose the person who is to be hired and promoted but the standards to be followed when he or she does so are the standards the Court Administrator has promulgated. Consequently, the Court Administrator currently has the authority for broad oversight of the hiring and promotion process and the power to implement the recommendations this Report contains.

The standards the Court Administrator has promulgated require every Clerk and Register and the Recorder to file a “job posting request” with the HR Department before attempting to fill any vacant position. The request is reviewed by the director of human resources, the chief financial officer and the Court Administrator or their designees and then approved or disapproved.<sup>19</sup> The HR Department advertises the vacancy and all applications are submitted electronically to it.<sup>20</sup> After receiving the applications, the HR Department is required to screen them to determine whether the applicants meet minimum qualifications and then is to send all applications to the appointing authority with its assessment of which do and which do not meet those qualifications.<sup>21</sup>

The Personnel Manual provides that “all applicants meeting the minimum qualifications for a position must be interviewed [unless] the appointing authority determines that interviewing all [of them] would be unduly burdensome.”<sup>22</sup> If interviewing all of the applicants would cause an undue burden, then the appointing authority and the HR Department are to work together to develop criteria for determining which of the qualified applicants will be interviewed.<sup>23</sup> The interviews “must include behaviorally-based questions and must be objectively tailored to measure the applicant’s ability to perform the position for which they applied.”<sup>24</sup> Panels convened by the appointing authority must conduct the interviews.<sup>25</sup> Finally, “[a]pplicants who have not met the position requirements, as determined by the HR

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<sup>18</sup> *Id.*

<sup>19</sup> Personnel Manual § 4.201(A).

<sup>20</sup> *Id.* §§ 4.201(D), (E); 4.301(A).

<sup>21</sup> *Id.* §§ 4.301(B), (E).

<sup>22</sup> *Id.* § 4.301(F.1).

<sup>23</sup> *Id.*

<sup>24</sup> *Id.* § 4.302(A.3).

<sup>25</sup> *Id.* § 4.301(A.4).



Department, may not be interviewed unless the appointing authority seeks and receives written permission from the HR Department.”<sup>26</sup>

Although the Personnel Manual sets out those procedures in a straightforward fashion, it is entirely unclear from the interviews the Panel conducted that they are being followed. Indeed, many of the appointing authorities who were interviewed had different understandings of what applications they were receiving and what the HR Department did before sending the applications to them, including the nature of any screening it performed.

While it appears the requisite interviews are usually conducted by panels, as the Personnel Manual requires, it is not clear how panel members are appointed, whether they have any training in conducting interviews, particularly in the behaviorally based interviews the Manual requires, and the extent to which the panels are diverse. There appears to be no tracking to determine how the panel system is being used or how the panels are composed, trained or instructed. Because no centralized, comprehensive record of the actual interview process is routinely created and systematically maintained,<sup>27</sup> it is not possible to know whether all panels in fact refrain from interviewing applicants whom HR has found to be unqualified.

More broadly, attitudes about the role the HR Department should play vary widely among the Clerks and Registers. Some enthusiastically support a role in which the Department screens out applicants who do not meet minimum qualifications. The support of these Clerks and Registers flows from their desire to spend their time interviewing and making judgments about those who have the potential to add value to their workforce. For some, it is also tied to their belief that active screening by the HR Department will help to deflect pressures or criticisms when a particular applicant recommended by a constituent does not receive an interview.

At the other end of the spectrum, a significant number of these appointing authorities share a view that the ideal role for the HR Department is simply to ensure that job postings are broadly disseminated, that applications are gathered in a timely fashion and that they are sent promptly to the appointing authority for all further processing. Those who hold that view believe that the role of the HR Department is to act essentially as a “post office,” and to ensure the speedy and efficient delivery of communications between appointing authorities and applicants, while making no judgments about the content of the communications they move along.

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<sup>26</sup> *Id.* § 4.301(A.5).

<sup>27</sup> The ATS captures the fact of the interview and its results but not the processes that were used to create the interview panels or other aspects of the interview process.

Where promotions are concerned, it appears that most appointing authorities are using panels to interview candidates for promotion and that many of those panels include at least one member who is outside of the organizational unit where the promotion opportunity exists. Again, however, records are not maintained in a comprehensive, systematic fashion to document how those panel members are picked, what training they receive, or what instructions they are given before the interview process begins. As a result, judgments about the quality of a given interview and selection process are difficult to make on an individual or generalized basis, trends are difficult or impossible to spot, and there is little or no basis for making sound judgments about whether, where or what kind of improvements are needed.

The very different ideas about the appropriate role of the HR Department reflect the fundamental lack of a common human resources philosophy throughout the Trial Court. What substitutes for that common understanding is, and must inevitably be, an idiosyncratic approach to identifying the best candidates to fill open positions. Lack of a common understanding also means that the hiring process is more time-consuming and expensive than necessary and that court-wide change in one direction or another is virtually impossible to achieve. Creating a common understanding designed to advance common objectives is critical if the Trial Court is to maintain the synchronous, agile workforce it will surely need as it moves into the future. But creating that understanding will require sustained and thoughtful leadership and repeated demonstrations of the benefits that active HR participation in all aspects of the hiring process can produce at all levels. Among those benefits surely will be the ability to redirect time and resources now consumed in the hiring process to other areas within the Trial Court where they can provide greater benefits.

As noted earlier, success in creating that understanding will also require Recruiters to develop and demonstrate a deep understanding of hiring manager needs, divisional culture and fit. Those Recruiters will also have to cultivate relationships of trust and confidence with the hiring managers they support. That understanding and those relationships are essential ingredients of Recruiter success and hiring manager satisfaction. Necessarily, therefore, HR's changed role should be introduced carefully. In that regard, hiring in the OCM Departments could provide an excellent opportunity to test and refine HR's changed role and function before those changes are applied to hiring in the offices headed by the Clerks, Registers and Recorder.

In the end, the careful balance between the role of the Court Administrator and local hiring managers set out in the 2011 reorganizing legislation reflects compatible goals. The local Clerks and Registers deal with different populations having different problems in different parts of the Commonwealth and they also interact with other local officials who have various expectations and philosophies. For that reason, different interpersonal skills may be in greater demand in one locality than in another, particularly in courts with a high percentage of self-represented litigants.

As recent events have shown, having a court staff that is fundamentally out of tune with the local population it serves can have disastrous results.

At the same time, as demonstrated by Trial Court Strategic Plan 2.0 and the vision of “Justice with Dignity and Speed” that Plan embodies,<sup>28</sup> the Trial Court is moving and will continue to move toward more standardized, automated, interconnected processes that will promote a better administrative environment for the swift and certain delivery of justice to all Massachusetts residents. That movement will increasingly require the deployment of common sets of skills for all Trial Court employees who perform similar functions in each and every Massachusetts courthouse. Those common skill sets do not exist today.<sup>29</sup> An effective central HR function must play a critical role in assuring that all employees possess the necessary common skills in the future.

## *2. Recommendations*

- a. Implement, as quickly as is consistent with proper preparation, testing and training, the recommendations for the HR Department contained in Section IV(A)(a)(2)(a)1-5 of this Report, i.e., hire and use experienced Recruiters, use the ATS to screen more actively the qualified candidate pool, reconfigure application tracking software to make it more user friendly, ensure that HR undertakes more active personal screening and use of on-line resources, and deploy resources necessary to update and keep current all relevant job descriptions.
- b. Hire and assign Recruiters to particular court divisions so that they can begin to acquire the local knowledge necessary to provide high quality services to the hiring managers with whom they work.
- c. Consider creation of regional recruitment plans and “rolling” application processes so that open positions can be filled quickly from a vetted pool of qualified applicants.
- d. Use updated, current job descriptions as the statewide source for screening criteria statewide.
- e. As recommendations 2a – 2d are implemented and proven, find ways to pilot new recruitment and hiring projects that demonstrate the value that enhanced HR functions can add to local hiring processes

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<sup>28</sup> Trial Court Strategic Plan 2.0 at 31–33. (October 2016).

<sup>29</sup> See Report of the Massachusetts Court Technology Visiting Committee at 3 (Spring 2016).

- f. Require appointing authorities to notify the appropriate Departmental DCA of the composition of interview panel members for prior approval, and participation in interview training.
- g. Provide the Department Administrative Office with the authority to appoint a member of an interview panel if necessary to increase diversity or ensure fairness.
- h. When reduction of the size of a qualified applicant pool is necessary prior to interviews, require appointing authorities to work with the HR Department to select objective and job-related screening criteria, with due regard for diversity considerations, for that purpose.
- i. Direct HR to screen candidates and send only a reasonable number of the most qualified candidates for interview, depending on position.
- j. The Court Administrator, after consulting with the Advisory Committee on Personnel Standards, should revise the Policy and Procedures Manual so that it embodies these recommendations.

### *C. SYSTEM-WIDE CULTURE*

In the final report it issued some six years ago, the Task Force made several observations about the role of an organization's culture in supporting its overall mission and objectives. Those comments included the following:

No strategy for merit-based hiring and promotion, however sound and well-conceived, can succeed unless it is deployed in a supportive culture. By "culture," we mean the shared attitudes, values, goals and practices, spoken and unspoken, that characterize an organization. Sometimes the culture is aligned with a formal statement of goals and values; sometimes it is not. Either way, the impact of culture on how the organization actually behaves cannot be overstated.

....

[For a culture supporting the organization's mission] to flourish, all employees must be united in a common understanding of the organization's purpose. They must have the skills necessary to assess and diagnose their own work and the work of their team in advancing those purposes. They must operate in an environment that supports and encourages development and exercise those skills. And they must be led by managers with the skills and judgment to create and maintain a culture in which those qualities flourish.

Today it can be said with confidence that the culture of the Trial Court largely supports and encourages merit-based hiring and promotion. In many quarters, that was always true. In some, however, it was not. Through sustained effort by many talented and committed Trial Court employees at all levels, those outlying quarters have been substantially reduced.

One aspect of the Trial Court's current culture, though, deserves further comment. Earlier, this Report referred to the Trial Court as a "federation rather than a single, fully integrated operating unit." To some extent, the Court's federated nature is the product of history. Although a single Trial Court, albeit a Trial Court with seven distinct judicial departments, has been in existence for 50 years, several of those departments are more than a century older. To another extent, that federated nature is the product of statutory divisions of responsibilities. And to some extent it is a product of geography.

More durably and more pervasively, though, that culture springs from a state of mind, at many levels, by which employees focus almost exclusively on their immediate operating unit and place in the background, often the deep background, the broader networks to which their unit belongs. That state of mind manifests itself in many ways and across a range of intensities. At its most extreme, it takes the form of ferocious resistance to any centralized role in the way any business, including hiring and promotion, is conducted within a particular operating unit. Milder, though perhaps more widespread, is an uncritical and automatic protection of idiosyncratic approaches to the way certain aspects of Trial Court business are conducted, an approach that leads employees to say "we do it differently here" even when the "it" is a routine and essential function performed in every single courthouse every single day. Milder still is a simple lack of any real sense of personal investment in and commitment to an integrated and comprehensive Trial Court system, of which the unit to which an employee reports to work each day is ultimately just one part.

Given its roots, the culture is understandable. Most of the seven Trial Court Departments perform significantly different work, the complexities of which necessarily resist homogenization with the work performed in other Departments. Statutes dispense, or at least appear to dispense, various kinds of authority and responsibility to a broad array of Trial Court officials in a manner that is not always fully synchronous or systemically consistent. And various units of the Trial Court operate in different communities across the Commonwealth, all of which have their own traditions and particular expectations about the way their local court should carry out its business and provide its services.

At the same time, the Trial Court as a whole is becoming an increasingly interconnected system, and the degree and intensity of that interconnection will continue to increase for the indefinite future. Accordingly, it is essential to develop and nurture a culture of interdependence that coexists with the beneficial aspects of the currently dominant culture of self-reliance and independence. Trial Court

employees need to feel, in a very real way, that many of the tasks they are performing have a direct impact on the work of the Trial Court as a whole. They need to understand that the way they perform those tasks has a direct impact on the quantity and quality of the information available to them and to all of their colleagues statewide, on the resources they are able to obtain and use, and on the quality of the services the Trial Court as a whole, and not simply the particular unit in which they work, is able to provide.

Some steps in that direction already are occurring. For example, cross-training is occurring in some courthouses where different Trial Court Departments hold court sessions so that clerical employees from one Department can help those in another Department when the latter is short-handed. Likewise, court officers are schooled in the needs of different Divisions so they can be deployed flexibly as needs arise. The Talent and Career Development component of Strategic Plan 2.0, referenced earlier, has a section that focuses on cross-training and the implementation plan calls for communicating internally a “panoramic view” of Trial Court operations. Moreover, the Plan itself is the result of an intensive and collaborative effort that involved employees from all areas of the Trial Court.

In many ways, a more pervasive role for the central HR Department in all hiring throughout the Trial Court would facilitate the broader cultural outlook that is both necessary and desirable. The tools to facilitate that greater role already exist. The Court Administrator’s statutory responsibility to promulgate hiring and promotion standards is broad enough to support such an increased role. The OCM could serve as a laboratory for developing Recruiter expertise and demonstrating to other portions of the Trial Court the benefits that reliance on an active and talented group of recruiters can produce. Undoubtedly, some Clerks and Registers would welcome participation in pilot programs designed to test the results of greater central HR involvement in both hiring and the new employee on-boarding process. And though it will take time, those efforts can ultimately change a culture of insularity into a culture of connectedness and mutual support, while maintaining an appropriate focus on local needs and expectations.

## V. CONCLUSION

This Report began by recognizing the enormous strides the Trial Court has made over the past six years to improve the statewide hiring and promotion processes. None of the findings or recommendations that followed should undermine or detract from the record of accomplishment the Court Administrator, Department heads, Clerk-Magistrates, Registers of Probate and the Recorder have made during that period. The myriad improvements were not always easy to make and they were sometimes accompanied by strong differences of opinion. The very difficulty of the task, therefore, is a testament to the diligence and energy with which those improvements were pursued. In the end, those improvements, and the effort by so

many at so many levels that it took to make them, underscore a Court-wide agreement that the Court's employees are its greatest asset.

In the main, the findings and recommendations of this report are forward-looking, not remedial in nature. The structure of the Trial Court has changed dramatically over the last six years. The Court's values are succinctly captured by its powerful mission statement: Justice with Dignity and Speed. And, as exemplified by the current Strategic Plan 2.0 and the many court employees who participated in the creation of that Plan, the Court is focusing on creating and maintaining a high-performance environment.

Reflection on the intertwined roles of the HR Department and the Trial Court's numerous appointing authorities produces several conclusions about HR's role in creating and maintaining that environment. First, the central HR Department must play a significant role in hiring of all Trial Court employees. Neither the "post office" model nor anything resembling it will satisfy the needs of the Trial Court as it moves into the future. Second, the Trial Court must build a consensus around that principle. Given the diffuse structure of responsibility for hiring and promotion throughout the Trial Court, the absence of such a consensus will simply lead to wholly unproductive conflicts about roles and authority each time the HR Department seeks to play a greater role in hiring decisions. Third, the HR Department must be empowered to perform the functions described in Section IV(A)(a)(1) of this Report and have the leadership, personnel, talent, energy and desire to do so, and thereby add substantial value to the hiring process. It must also find innovative and effective ways to convince all hiring managers that it can and will do so. All of that will take time, but the effort is essential, for the result will surely be reflected in a stronger hiring and promotion system that works better for all participants and for the residents of the Commonwealth whom the Trial Court serves.

**APPENDIX D**

**REPORT OF THE VISITING COMMITTEE ON  
MANAGING WITH DATA IN THE MASSACHUSETTS TRIAL COURT  
(NOVEMBER 2017)**



**REPORT OF THE VISITING COMMITTEE  
ON MANAGING WITH DATA  
IN THE MASSACHUSETTS TRIAL COURT**

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**NOVEMBER 2017**

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# **REPORT OF THE VISITING COMMITTEE ON MANAGING WITH DATA IN THE MASSACHUSETTS TRIAL COURT**

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## **I. Executive Summary**

On September 26, 2016, the Court Management Advisory Board (“CMAB”), in consultation with and at the request of the Trial Court and the Supreme Judicial Court, issued a charter for the creation of an external Visiting Committee on Managing with Data (the “Committee”).<sup>1</sup> The Committee members were appointed and charged with conducting an independent, targeted assessment of the uses of data analytics by a range of managers in different roles within the Trial Court.<sup>2</sup> To provide that assessment, the Committee met with numerous stakeholders steeped in the Trial Court’s uses of data, including those who supervise the case-related data collection and input process, those who manage the technological platforms that allow the data collection, reporting, and analytics, those charged with the creation and reporting of the data, and the judges, clerks, and other managerial personnel who rely on that data to make resource allocation determinations and manage significant caseloads.<sup>3</sup>

The work of the Committee was welcomed and consistently well-supported by the Trial Court leadership. Our work was also greatly assisted and enhanced by the candid, frank, and valuable observations made by the various stakeholders with whom we met – all of whom demonstrated their commitment to the core mission of the Trial Court and their willingness to seek out and implement best practices to reduce waste, maximize efficiency, and, ultimately, improve the Commonwealth’s judicial system. The Committee was impressed by the evolving and growing comfort of many court leaders with a management model that relies on the thoughtful use of data and analytics to make smart and effective use of the limited operational resources of the Trial Court, in order to advance systemic strategic goals. This commitment, and the clear evidence of an increasing receptiveness to and desire for more robust data analytics, is an encouraging sign of important progress within the management culture of the Trial Court.

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<sup>1</sup> The charter for the Committee’s work is attached as **Appendix 1** to this report.

<sup>2</sup> Biographies of the Committee members are included as **Appendix 2** to this report.

<sup>3</sup> The Committee convened for a kick-off meeting on January 13, 2017. It reviewed various reference materials and conducted panel interviews of various court stakeholders over five days between February 19 and May 10, 2017, following which the Committee conferred on several occasions. A list of the Committee’s meetings and interviews with court personnel is included as **Appendix 3** to this report, and, for general reference, the Trial Court’s organizational chart is attached as **Appendix 4**. The Committee presented its findings and recommendations to the Chief Justice of the Trial Court, Paula M. Carey, the Court Administrator, Jon Williams, and the CMAB, at a meeting on June 26, 2017. This report memorializes the Committee’s findings and recommendations.

Increasingly, managers throughout the court system do not view data collection and analysis as a deterrent or distraction, but rather as a critically necessary foundation of improvement in the timely and effective administration of justice. This potentially transformational shift has put Massachusetts on par with, and in some ways several dimensions ahead of, many peer state court systems. Our state court system is well-positioned to leverage the demographic shifts that will be reflected in judges, clerks, and professional staff who are increasingly comfortable and facile with the use of modern technologies and their capabilities, and have direct experience in working with data and document management systems. Significantly, however, the shift to embracing data and the analysis and insights it can offer as a managerial tool for improving performance of essential functions is creating new challenges as well as new opportunities for the Trial Court. Indeed, the increasing appreciation of the value of data analytics as a tool for driving operational improvements is not only a source of inspiration and positive motivation; it is also a source of considerable frustration for many data users who encounter difficulties and sometimes inexplicable obstacles to their efforts to obtain reliable and user-friendly data when they want and need it. Unless and until these obstacles are effectively addressed, many current opportunities for achieving a consistently evidence-based and data-driven culture of Trial Court management and administration will remain at risk.

Addressing these concerns effectively will require an immediate, clear, and insistent prioritization of the need for access to pertinent, accurate information in a quality fashion, in an accessible form, and in a timely manner that allows court managers to undertake their own direct queries of the data. Such access is necessary to empower users, throughout the system, to garner greater insights on their own court actions and to enable operating units to create “dashboard” displays of user-friendly, easily readable, operations-critical data on desktop computer screens in formats that are tailored to the particular users’ needs, as well as other accessible data visualizations that support smart triage decisions with respect to the utilization of scarce resources and promote useful insights with respect to caseload management. Enhancing the systemic capacity for such granular usage of data analytics will also stem the nearly constant demands for the central information technology and research operations to provide individually-tailored reports that fail to provide system-wide benefits and are heavily resource-dependent. The Committee offers the findings and recommendations contained in this report with the hope that they will be useful to the ongoing efforts by court leadership to move all parts of the judicial system further and faster in the direction of making effective use of data analytics to gain new insights that will enhance the management of court operations. We also hope that this report will highlight the need for net new investments (beyond any that can realistically be achieved by reallocating existing budget resources) in areas such as data intelligence and other software support that is readily available in today’s IT marketplace.

## **A. Key Findings**

The more than decade-long effort to install and operationalize the Trial Court’s case management system, “MassCourts,” combined with the pace of acceptance of the use of data analytics to manage individual courts in the face of consistent budget constraints, has prevented the Trial Court from making much-needed investments in cutting-edge technology and user

platforms.<sup>4</sup> In turn, this has constrained the implementation of an effective and efficient data-driven management system. The Trial Court’s October 2016 Strategic Plan 2.0 is laudable for its vision and thorough analysis of the myriad systems of the Trial Court, including those at issue here concerning the use of data. However, it does not—and perhaps cannot—prescribe all of the steps necessary to implement that strategy through an effective use of system-wide data analytics. Throughout the Committee’s meetings with court leadership and staff, certain aspects of the Trial Court’s desire for and current use of data analytics and related analytic tools were apparent, including the clear technological limitations of existing tools and systems. For example, there has been a nearly three-year effort to create a functional “data mart” – a subset of a data warehouse (which is common to all large enterprise-wide data IT systems) that is designed to provide users with direct, primary access to the specific sets of data they need to view most often for their business functions. The data mart development has not only been far from a “best practice” process; its delays and complications have hampered individual courts and personnel within the system from easily accessing key data in a timely manner to manage their own operations. The data that is available is often considered inaccurate or otherwise unreliable, and it exists in a form that cannot be readily accessed and conveniently used.

The 2015 completion of the system-wide deployment of MassCourts was a major accomplishment and a long-awaited milestone in the history of the Trial Court’s operations.<sup>5</sup> But the MassCourts system, in its current form, focuses on case-based data about court events and the tracking and preservation of such data, for individual case management and record-keeping purposes. While this is critically important, the Trial Court’s own expectations and strategic goals for its information systems now far surpass the collection of data for case-tracking purposes alone. Court leaders and personnel throughout the system currently find the existing technology systems and tools to be lacking in important ways, and inadequate for important purposes. For example, the evolution from mere data collection and reporting to the use of data analytics as a management tool has been hampered by an absence of widely-implemented computer-screen dashboards that display essential operational data that can be used to impact decision-making and drive behavior in real time. As a consequence, and especially in our increasingly tech-savvy society, many court users remain frustrated with the shortcomings of the data that is readily available to help them do their jobs.

Through the course of its interviews, the Committee heard recurring concerns and comments that can be loosely grouped under the headings of Governance, Data Collection, Analytics and Reporting, and Leadership Teams. Our findings are presented in terms of those same categories. We must paint with a broad brush, as these findings reflect generalizations on the basis of an inherently limited assessment of a large and complex constellation of variegated managerial units. For that reason, the following findings should be understood *not* as assertions

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<sup>4</sup> MassCourts is a web-based case management and data system which replaced 14 different legacy systems that were previously used in different parts of the Trial Court. MassCourts is used to record and share case-related data, with a focus on tracking the status and progress of cases and the timeliness of case events and dispositions. According to the Trial Court’s year-end report for fiscal year 2016, MassCourts contained data on some 22 million cases, 48.2 million calendar events, and 15.2 million scanned documents.

<sup>5</sup> For historical reference, a timeline of the deployment of MassCourts in the Trial Court is attached to this report as **Appendix 7**.

of monolithic facts, but rather as the Committee’s distillation of recurrent themes that emerged through our discussions with various stakeholders.

Governance	<ul style="list-style-type: none"> <li>• While there has been a marked increase in judges who recognize a managerial component to their judicial duties, some have not embraced this recognition, and as a result, judges have not uniformly accepted the notion that data can assist them in their work. To quote one stakeholder, more needs to be done by way of “informing the judges” to enable their thoughtful use of data in all aspects of their jobs.</li> <li>• The data-driven management model is not widely understood to be among the highest values that the top court leadership is insistently and urgently prioritizing as a cultural imperative.</li> <li>• MassCourts remains a continuing source of frustration. Its rollout was long and uneven, with some Departments having obtained a more robust, feature-rich form of MassCourts while others are still working with earlier iterations or are unaware of more recent enhancements. This has led to angst and frustration within and between the Departments, and there is a noted and widespread lack of awareness concerning some of the more advanced features, particularly as they pertain to desired reporting.</li> <li>• The user community has been understandably frustrated with their experiences of the process by which funding allocations and priority-setting decisions concerning new IT spending decisions have been made. They have experienced this process as lacking in transparency and not clearly based on widely understood principles for prioritization among competing IT needs.</li> <li>• Training for MassCourts and the updated functionality has been sporadic and insufficiently comprehensive, which has left many users unsure or unaware of the system’s current full potential.</li> <li>• The Probation Department’s technology needs vary dramatically from those of seven Trial Court Departments, and in some respects, the Probation Department is more advanced in its utilization of data to drive its daily work. The technology tools identified by the Probation Department as best suited for its purposes have not been smoothly or fully integrated with MassCourts, however, which is a systemic shortcoming.</li> </ul>
Data Collection	<ul style="list-style-type: none"> <li>• Data entry accuracy is inconsistent. Staff responsible for entering and coding raw data have been trained differently at different times, and/or do not always understand the data’s future uses or its importance for strategic decisions of consequence. Because of doubts about data integrity, reports of aggregated data are viewed</li> </ul>



	<p>with some skepticism. While efforts to address these training challenges are underway, the complexities of the user interface for inputting data continue to pose challenges.</p> <ul style="list-style-type: none"> <li>• Distrust of the accuracy of various case metrics exists at the level of the top leadership within some Trial Court Departments, as well as within courthouse leadership teams. This distrust can feed into a general reluctance to rely on data in making operational decisions.</li> <li>• The need for more training and the need for a more intuitive, user-friendly interface for data entry are among the many areas where investments of additional financial resources are needed.</li> <li>• At the local courthouse level, there is varying appreciation of the utility of data collection and analytics, and varying degrees of constructive collaboration within courthouse teams to optimize the collection and harnessing of useful data. Some understand that data and analytics can improve efficiencies, reduce the need for institutional resources, and beget free time for use elsewhere. Others have not embraced this view.</li> <li>• Some court staff fear that advanced data analytics will lead to greater efficiency, fewer staff requirements, reduced budget needs, and reductions of force. This fear, which reflects a failure to appreciate that “when we work smarter, we can reallocate resources to higher priorities,” creates negative incentives that demotivate staff to accurately collect and report data.</li> </ul>
Analytics and Reporting	<ul style="list-style-type: none"> <li>• The Department of Research and Planning (“DRAP”) is capable of responding to analytical inquiries, but is insufficiently staffed to fulfill all inquiries as needed.<sup>6</sup></li> <li>• DRAP functions to a considerable degree as a service bureau that is expected to respond to requests for information. It has not been effectively required and/or sufficiently staffed to assume a primary responsibility to define and pursue research and planning work proactively, independently, and strategically. This arrangement does not take full advantage of DRAP’s unique and critical vantage point at the intersection of many streams of information.</li> <li>• Similarly, the Judicial Information Services Department (“JISD”) functions to a considerable degree as a service bureau that solves IT problems and acts in response to IT requests.<sup>7</sup> This expectation, which has been driven for many years by immediate</li> </ul>

<sup>6</sup> The DRAP organizational chart is attached to this report as **Appendix 5**.

<sup>7</sup> The JISD organizational chart is attached to this report as **Appendix 6**.

	<p>and pressing needs, does not promote the opportunity for JISD to work collaboratively with DRAP to be more forward-thinking and proactive in developing new system functionalities for the court system of tomorrow.</p> <ul style="list-style-type: none"> <li>• In the Superior Court, some judicial managers and court staff feel that they had better access to necessary case-related data and more control over important reporting features with their prior program (“ForeCourt”) than they now have with MassCourts. Other court departments did not use ForeCourt, but many still miss the perceived advantages of “old systems,” despite their obvious limitations, as MassCourts presents users with new challenges.</li> <li>• Many Trial Court managers feel that the current version of MassCourts does not support the generation of data reports that sufficiently focus on individual courts, judges, types of cases, types of case events, etc., in a manner that is sufficiently timely, reliable and useful. A similar concern exists pertaining to the quarterly data reports that are received from the Trial Court’s Office of Court Management. In some cases, greater aggregation of data is desired, while in other cases, greater data granularity is desired.</li> <li>• The lack of a truly functional data mart means the system lacks adequate means to assess and report real-time performance, most notably in the absence of dashboards configured to provide visualizations of current information and to allow users to generate reports based on ad hoc inquiries. It also means there is insufficient support for predicting future court staffing and resource allocations based on past needs.</li> <li>• The development and deployment of a functional “data mart” has been persistently delayed for reasons that remain opaque to many affected court data users, which has strained the patience of many people and contributed to a continuing skepticism about the Trial Court’s systemic facility with data.</li> </ul>
Leadership Teams	<ul style="list-style-type: none"> <li>• Both at the Departmental leadership level and within each courthouse, leadership teams seek increased functionality of the Trial Court’s information system in order to conduct the work of the court system better and more efficiently. Tools for assessing and managing caseloads on a Department-wide basis in real time, creating real-time calendars for allocating courtroom resources, and enabling better or additional interfaces with information systems outside the Trial Court, such as Registry of Motor Vehicles records, were among the desired functionalities identified to the Committee. Many of these functionalities will require additional funding, but these should be manageable</li> </ul>

	<p>investments that could yield large benefits to the system.</p> <ul style="list-style-type: none"> <li>• Throughout the system, there are tensions and differing views as to who is entitled – and who needs – to create, control, and have direct access to what court data. Office of Court Management staff (including DRAP and JISD), the Chief Justices and Deputy Court Administrators (“DCAs”) of various Departments, the Probation Department, First Justices, elected and appointed Clerks and Registers, and other court staff expressed a range of sometimes competing perspectives on this point, some of which were linked to opinions about public access to data.</li> <li>• The role of the DCAs in supporting progress towards an enhanced ability to manage with data has not yet been fully optimized. Most DCAs consider themselves to be primarily accountable to their Department Chiefs and are focused on the needs of their individual Departments, and while this Departmental focus is essential, it is equally essential for the DCAs to work collaboratively with one another as cross-Departmental partners and as direct reports to the Court Administrator. This kind of matrix organizational structure with dual reporting relationships, while not unusual, requires clarification and reinforcement of the need to focus on system-wide as well as unit-specific goals.</li> </ul>
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## **B. Key Recommendations**

The Committee’s recommendations are aimed at facilitating the Trial Court’s ongoing transition from the stage of collecting data and tabulating and reporting metrics to the more sophisticated uses of data analyses to gain insights that will guide management decisions, which many Trial Court leaders already expect and increasingly require.

Governance	<ol style="list-style-type: none"> <li>1. The integration of data analytics into all aspects of the Trial Court’s operations must be pushed collaboratively on all fronts, so that it becomes a widely shared cultural imperative. Judges, clerks, and staff should all be expressly encouraged to work together with urgency to embrace and enhance the collective gathering, reporting, and utilization of data, in service of the goal of better managing the business of the courts.</li> <li>2. The IT Governance Committee overseeing technology purchases, modifications, and investments should build on its recent reorganization to become more transparent, be driven by the business needs as determined by court leadership, and produce prompt decisions on IT requests that are explained to the requestors on the basis of well-understood principles.</li> </ol>
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	<p>3. The efforts to tailor systems to the Probation Department’s unique needs, relative to the trial courts, should be intensified and appropriate resources should be devoted to quickly interface those technologies with the MassCourts system. Due to the difference between the Probation Department’s technological needs and those of the rest of the Trial Court, the Court Administrator should consider oversight and investments for Probation Department technologies separately, but with an eye towards integration with MassCourts.</p> <p>4. The Court Administrator should focus attention on the delivery of tangible benefits to and enhancements of existing information systems, particularly in regards to future modifications to MassCourts, even if doing so requires forceful action, such as terminating relationships with persistently underperforming vendors.</p>
Data Collection	<p>5. The importance of data accuracy should be clearly communicated to all staff responsible for inputting raw data—to promote understanding of why data accuracy is important to the long-term goals of the court system and how data affects important decisions—and quality controls should be implemented to ensure data accuracy.</p> <p>6. The Chief Justice of the Supreme Judicial Court, the Chief Justice of the Trial Court, and the Court Administrator should consistently emphasize the importance of data collection and analytics in their overall messaging, both within and outside the court system, and continuously make the case for the importance of enhanced data analytics to the mission of the Trial Court.</p> <p>7. The long-promised data mart should receive far greater priority and urgent focus, as the Trial Court must enable users to obtain real-time, customized data search results, in order to support and foster a data-driven management culture.</p> <p>8. Court leaders should reform vendor management systems to improve and ensure vendor accountability for the effective and timely delivery of technological solutions. Failure to timely provide promised solutions or meet important deadlines should not be accepted, and may warrant replacing a non-performing vendor.</p>
Analytics and Reporting	<p>9. Court leaders should take the necessary steps to build confidence in the court system’s data, to engender managers’ trust, and to ensure that all functional units within the system embrace and rely on data analysis in their administration of the courts’ business.</p> <p>10. Leadership teams should have access to clean, updated, and easily digestible data that can be displayed on a user-friendly</p>

	<p>computer-screen “dashboard” and captured in user-generated reports.</p> <p>11. MassCourts’ functionality should be consistent throughout the various Departments and functional units of the Trial Court, permitting each to access data and shape reports to serve its specific needs.</p> <p>12. The user interface of MassCourts should be improved to increase usage, user confidence, and efficiency.</p> <p>13. DRAP should be encouraged, supported, and required to expand its role from responding to data requests to proactively helping to shape the Trial Court’s research agenda and supplying court leadership with insights drawn from analysis.</p> <p>14. JISD’s role should be expanded to empower it to proactively and strategically advise Trial Court leaders as to current technological functionality, develop advanced reporting tools, and make specific recommendations aimed at supporting the Trial Court of the future.</p>
Leadership Teams	<p>15. Court leaders should be equipped with integrated tools that give them the ability to seamlessly schedule events and allocate resources in real time.</p> <p>16. Deputy Court Administrators should be encouraged to work more collaboratively across Departments and more directly with the Court Administrator, as well as with their Departmental Chief Justices, to promote systemic improvements in the use of data to guide managerial decision-making.</p>

## II. Detailed Recommendations

### A. Governance

1. The integration of data analytics into all aspects of the Trial Court’s operations must be pushed collaboratively on all fronts, so that it becomes a widely shared cultural imperative.

Judicial leaders are keenly aware that their management decisions are constrained and impacted by budgetary realities. However, there appears to be untapped potential for increasing efficiencies throughout the system. Court management should place greater emphasis on the areas of needed collaboration as these efforts will free up resources that can be deployed to other areas in need. A primary aim of managing with data is to tie decisions to related data — the data must be relational. The use of data analytics for purposes of case management and the deployment of judicial resources must go hand in hand with the use of data analytics for administrative operations throughout the court system.

2. The IT Governance Committee overseeing the Trial Court's technology purchases, modifications, and investments should become more transparent, be driven by the business needs as determined by entire court leadership, and produce prompt decisions on IT requests that are explained on the basis of well-understood principles.

Resource decisions should be driven by the business needs of the Trial Court. In 2016, the Massachusetts Court Technology Visiting Committee called for a governing structure to direct JISD's overall activities, including decisions around which technologies to purchase, modify, upgrade, or customize across requests made by varying departments. However, the decisions of the Trial Court's IT Governance Committee, at least as it has operated until very recently, have widely been seen as opaque, causing many personnel to seek independent work-arounds rather than pursuing formal requests through the committee. Those who submit requests frequently seem to lack a clear sense of how competing IT requirements are ranked, and why some requests are approved while others are denied. And the process has often taken too long, at times for reasons that are attributable or attributed to the vendors with which the IT Governance Committee works, and at times for other reasons.

The Visiting Committee understands that the Trial Court has recently undertaken to expand the membership and revise the procedures of the IT Governance Committee, with the goal of providing more robust inputs and greater transparency in the decision-making. Certainly, the need for such a change was apparent. The IT Governance Committee should operate in a way that openly prioritizes the business needs of the Trial Court. Court leaders, in particular the Chief Justices and Deputy Court Administrators, should be charged with determining asset allocation and choosing capital investments on the basis of increasing workflow and efficiencies, with an eye towards technology available to the public and private sectors. In the process, JISD and DRAP should play integral roles by providing insight and advice concerning the current state of the system's technology. Most important, however, is the need for the IT Governance Committee to clearly and promptly convey its decisions directly to the person making the request. That communication must explain the reasons for the committee's decision. The process for submitting requests, the factors considered in determining whether to grant the request, the status of a pending request, and the timeliness of and basis for the response to a request should all be easily understood and followed by the relevant stakeholders.

3. Systems tailored to the Probation Department's needs should be identified and the appropriate resources devoted to quickly interface those technologies with the MassCourts system.

The Probation Department requires technologies that are distinct from those used by the seven judicial departments of the Trial Court, largely because of the Probation Department's responsibilities to monitor individuals after the resolution of their criminal cases. The MassCourts system focuses on tracking pending cases rather than individual litigants, whereas the Probation Department's reporting system focuses on the post-case progress and status of individuals. As a result, different technologies are required to efficiently input, track, and analyze the necessary data.

Probation Department leaders have proactively taken steps to identify appropriate technologies that will enhance and improve their work in an efficient manner. They should be encouraged to continue to do so, especially to identify those technologies that will allow them to prioritize higher-risk individuals. Initially, the Probation Department's current technologies should be integrated into MassCourts. In the future, the Trial Court leadership should pay particular attention to the different technological needs of the Probation Department and ensure that any oversight or investment decisions take into account the interfacing issues that may arise between MassCourts and newer technology.

4. The Court Administrator should focus attention on the delivery of tangible benefits to and enhancements of existing information systems, particularly in regard to future modifications to MassCourts, even if doing so requires forceful action.

The new Court Administrator, Jonathan Williams, must use the occasion of his hiring and his experience from outside Massachusetts to forcefully accelerate the Trial Court's ability to deliver timely data management solutions. The Court Administrator must shepherd the Trial Court through a series of changes designed to ensure that Massachusetts is a leader in managing with data. To do so, forceful action may be necessary. The groundwork for change has been laid by his predecessor, Harry Spence, who invested significant time and energy in corralling support for these changes. Now is the time to take advantage of the cultural alignment and the stage-setting that has been achieved over the past ten years. The pace of change simply has to be dramatically accelerated.

## **B. Data Collection**

5. The importance of data accuracy should be clearly communicated to all staff responsible for inputting raw data—to promote understanding of why data accuracy is important to the long-term goals of the court system and how data affects important decisions—and quality controls should be implemented to ensure data accuracy.

Many end-users of the data do not trust that the data has been properly coded in MassCourts. User confidence depends on working with trustworthy data sets, which require established quality control procedures. Notably, the concern is generally not with capturing *more* data. Rather, users did not have confidence in the quality of the data, and many users described circumstances in which they knew the data was wrong, but they could not readily identify the source, nature, or extent of the error, much less the solution. As one person explained, "It's hard with MassCourts to find out where the data went wrong."

JISD should take a proactive role in regularly working with data entry staff to ensure their ability to fully and effectively enter various data points and to understand the eventual use and importance of the coded data. Due to staff changes and the recent roll-out of MassCourts, these trainings should be considered an evolving process allowing users to initially grasp the basic functions of MassCourts and later develop more advanced skills once they have acquired a basic familiarity with the program. Such trainings could be used to enhance the quality of data entry in terms of completeness, correctness, and consistency, with appropriate attention to the

clarification of potentially ambiguous or confusing coding options, and the promotion of specific data entry procedures that will minimize opportunities for error.

6. The Chief Justice of the Supreme Judicial Court, the Chief Justice of the Trial Court, and the Court Administrator should consistently incorporate and emphasize the importance of data collection and analytics in their overall messaging, both within and outside the Trial Court, and explain their importance to the mission of the Trial Court.

It is essential that top court leaders effectively communicate their expectations and goals relating to data-driven management. The message must go beyond general pronouncements that statistical analysis is important to the mission of the Trial Court. Court leaders should articulate and demonstrate, with specific examples, that the efficiencies gained through data-driven management will increase the time and resources that can be expended on high-priority projects and improve the quality of the services provided by the Trial Court. Court leaders should emphasize the point that managing with data will free up judges and staff to focus on the most important aspects of their jobs. This is not a matter of simply telling the hard-working and under-resourced Trial Court personnel in courthouses across the Commonwealth that they can and must do better, of course. To the contrary, the recommended “messaging” by leadership on the subject of managing with data should amount to the effective sharing of a fundamental vision and strategy for how working differently and more deeply with data can be used to address operational burdens and so help the courts to “produce more justice,” together with the offering of related encouragement and concrete support.

7. The long-promised data mart should receive far greater priority and urgent focus, as the Trial Court must enable users to obtain real-time, customized data search results, in order to support and foster a data-driven management culture.

It is essential that the Trial Court have a functional data mart that will allow users direct access to the real-time results of customized data searches that are designed to isolate helpful information. To effectively manage with data, managers must have ready access to recent, reliable, pertinent data. Currently, MassCourts does not have the capability to provide decision-makers with this information, and this shortcoming substantially reduces the ability of court managers at all levels to respond quickly and appropriately to changing circumstances. Generating one’s own data sets is well within the purview of a normally-functioning data mart, and this functionality must be made available to the Trial Court. The lack of a functional data mart has been a problem of several years’ standing that has discouraged and eroded confidence in the Trial Court’s information technology and systems. An immediate solution should be a top priority.



8. Court leaders should take the necessary steps to reform vendor management systems so as to improve and ensure vendor accountability for the effective and timely delivery of technological solutions.

Part and parcel of the urgent need to create a data mart is the requirement that the vendor responsible for delivering the data mart is held accountable and managed effectively through the Trial Court's vendor management system. In the course of the Committee's interviews, it became clear that the current vendor management process is severely lacking. If a vendor is not able to provide a timely solution to a problem or deliver the contracted-for functionality, then the Trial Court must be able to review its vendor service arrangements and, where necessary, remove and replace non-performing vendors.

### **C. Analytics and Reporting**

9. Court leaders should take the necessary steps to build confidence in the court system's data, to engender managers' trust and ensure that all functional units within the system embrace and rely on data analysis in their oversight of the courts' business.

It is essential that court leaders have – and are justified in having – confidence in the Trial Court's data. Various stakeholders voiced to the Committee their concerns that data is not properly coded and that data entry is non-intuitive and difficult, thereby de-valuing the resulting data reports. Part of this concern stems from the lack of effective and systemically implemented data quality control and assurance measures. To assure court leaders of the integrity of the data, sufficient quality controls must be implemented, as was also noted in the Massachusetts Court Technology Visiting Committee Report of June 2016.

10. Leadership teams should have access to clean, updated, and easily digestible data that can be viewed on a user-friendly computer-screen "dashboard" and captured in user-generated reports.

Without access to current data, court leadership will not have the benefit of useful predictive analysis. Providing dashboards and visualizations displaying current statistics is important in order to allow decision-makers to understand the current state of their court and identify areas where additional resources would provide the best opportunity to improve efficiencies. The dashboard data should also be subject to ready capture in user-generated reports. Many users voiced their frustration at their inability to generate their own customizable data reports.

The creation of dashboards and visualizations should be addressed in conjunction with the creation and implementation of the data mart, as they are co-dependent. As discussed above, the lack of a data mart that allows users quick and timely access to current information is a major and obvious shortcoming of the Trial Court's current system. The inability of system users to access and create reports from relevant data, directly and immediately, must be a top priority for the Trial Court, because it is impossible to make good decisions based on stale data.

11. MassCourts' functionality should be consistent throughout the various Departments of the Trial Court, permitting each to access data and shape reports to serve its specific needs.

The extended roll-out of MassCourts to the different departments of the Trial Court caused each department to gain access to certain features of the program at different times resulting in considerable confusion between the departments as to the full capabilities of the program. The Committee recommends the following:

- MassCourts' functionality should be consistent between the Departments of the Trial Court;
- All Departments should have access to all MassCourts functions and features, and JISD should ensure that all users are aware of the full capabilities of the program by providing ongoing trainings to reinforce best practices and explain new features;
- Each Department should be permitted to access and manipulate the data to create individualized reports; and,
- Users familiar with the functions available in the predecessor system ForeCourt should be trained to use MassCourts in a similar manner, to ensure that they can continue to generate the types of reports on which they routinely depend.

12. The user interface of MassCourts should be improved to increase usage, user confidence, and efficiency.

The Committee heard from many people that the MassCourts system is dated, overly complicated, and tends to discourage use. In short, MassCourts is not user-friendly. Those working in the Trial Court want to “squeeze the best value out of MassCourts” and to “really tap all that MassCourts can do.” As it is currently configured, however, they cannot easily do so. One reason is that the current user interface makes MassCourts very tough to use. In today’s system-centric world, a clean and intuitively accessible user interface is a direct driver of both increased system usage and better data quality. It follows that one clear way to increase usage and better capitalize on the current workforce’s technological abilities would be to change certain aspects of the “front end” of MassCourts. While there is some understandable “MassCourts fatigue” and a legitimate need to move on after finally completing the system-wide deployment of MassCourts, the Committee believes that some user-driven adjustments to the current MassCourts user interface, if feasible, would produce valuable benefits.

13. DRAP should be encouraged, supported, and required to expand its role from responding to data requests to proactively helping to shape the Trial Court's research agenda and supplying court leadership with insights drawn from analysis.

Currently, DRAP is structured and staffed to be fundamentally responsive, producing data reports and answering queries upon request. However, DRAP is currently under-utilized, given its capabilities and potential. Court data has historically been collected not for analytical purposes, but for operational ends, and the Committee consistently heard, from a range of different stakeholders, that “there is plenty of data but not enough analysis.” Accordingly, DRAP’s role within the organization should be expanded. DRAP should be encouraged, supported, and staffed to actively provide analytical support, acting as an innovation and research arm of the Trial Court. DRAP should help drive the research agenda for the Trial Court, in light of articulated strategic plans and priorities. It should proactively identify relevant data points, create user-friendly data reports, explain the data to court leadership, and contextualize its findings and conclusions. For example, DRAP could assist the Trial Court to determine criminal recidivism rates, or evaluate the comparative efficacy of different kinds of specialty courts. And, in presenting its reports, DRAP could explain how it determined each figure, provide the definitions it used, and engage leadership in a discussion as to the implications of the results. DRAP could also assist individual courts with redesigning process flows and implementing efficiency measures, based on data derived from similarly situated courts. While many users ultimately yearn for the ability to perform and learn from their own independent analyses, DRAP can lead and assist other users in improving the Trial Court’s analytical capability.

14. JISD’s role should be expanded to allow and expect it to advise Trial Court leaders as to current technological functionality, develop advanced reporting tools, and make specific recommendations aimed at supporting the Trial Court of the future.

JISD currently understands its role within the Trial Court as being a responsive service provider. There is good reason for this perspective. The long-planned implementation and integration of MassCourts certainly required JISD to be responsive to the needs of various users as the system was rolled out in phases, over an extended period and not in an entirely seamless fashion. Now, however, JISD can and should assume a larger role. With MassCourts now available system-wide, JISD should be in a position to dedicate staff to work both independently and collaboratively with DRAP to identify and propose reporting tools, systems, and advanced technologies to the Trial Court leadership. And the Trial Court now can and should deploy JISD’s expertise and knowledge in new ways, to further advance its ability to manage with data and create greater operational efficiencies.

## **D. Leadership Teams**

15. Court leaders should be equipped with integrated tools that give them the ability to seamlessly schedule events and allocate resources in real time.

Leadership teams in courtrooms across the Commonwealth yearn for integrated tools that are capable of automatically performing certain basic functions, such as scheduling the use of courtrooms and allowing for more complete case docketing. To the extent that some in leadership positions are not as familiar or facile with new technologies and data systems, they should be trained on these resources, enabling all to make the best use of recent advances and the concomitant improvements in court management. The Committee recognizes that the Trial Court's technology budget is limited, but these basic functions are indisputably necessary to a 21st century justice system. Court leaders should have access to cloud-based scheduling of personnel and courtrooms, and automated notices of scheduled court events should be issued to the necessary parties.

16. Deputy Court Administrators should be encouraged to work more collaboratively across Departments and more directly with the Court Administrator, as well as with their Departmental Chief Justices, to promote systemic improvements in the use of data to guide managerial decision-making.

The purpose of assigning each Trial Court Department a Deputy Court Administrator is to ensure that each department's operations, including case management and personnel supervision, are efficient and effective. The current structure provides that the DCAs report directly to the Court Administrator as well as to their respective Departmental Chief Justices, although in practice the DCAs consider their primary accountability as being to their Chief Justice. It is important for the DCAs to continue to report to their Departmental Chiefs, of course, but it is equally important that they report to the Court Administrator, just as the Departmental Chiefs report to the Chief Justice of the Trial Court. The DCAs are particularly well-positioned to access and analyze court data (on their own or with the assistance of DRAP), to develop insights on the basis of that analysis, and to propose potential solutions that will lead to streamlined workflows and alleviate docket congestion. Some of those insights and solutions will have system-wide implications, which may not always be readily apparent from a Department-specific perspective. For this reason, the DCAs' direct and substantial engagement with the Court Administrator on issues pertaining to managing with data, as well as the DCAs' inter-Departmental collaboration with each other on those issues, should be actively cultivated.

## **III. Conclusion**

The assessment by the Committee is occurring in a time of disruption in what Lucien Karpik and Terence C. Halliday call the "Legal Complex" (*i.e.*, the "collective actor" and system of lawyers, legal academics, and judges). Paper has always been a part of the culture of the courts, but the "Paper Chase" era is rapidly coming to a close, and a legal data boom is now occurring. This is happening because the markets are demanding more efficiency and cost

effectiveness from all law-related services. The courts are part of this Legal Complex and as such, they are not exempt from the impact of the current data boom and its associated demands.

Stove-piped, inaccessible, stale, or unreliable data is simply unacceptable, for purposes of meeting the needs of the Trial Court and the public. Moreover, the days of collecting data merely to report on it are over. We are now in a new era of legal data innovation and data-driven court management. This brings with it new demands and expectations that our courts do far more with the data they collect than simply report on it, and that data be harnessed and used for predictive analytics, event prediction, cognitive assistance (that is, the utilization of smart technology to assist workers in the performance of everyday activities), and more. For the Trial Court, the bad news is that many court system stakeholders today find themselves still frustrated by various systemic shortcomings affecting the availability and usability of good data for purposes of court management and administration. They are dissatisfied with the quality of the data, the clunkiness of the program interfaces, the difficulty of accessing and retrieving data, and the various other constraints that limit their ability to use data effectively for purposes of analysis, development of learning, generation of insights, and improvement of court operations.

But this is only half of the story. The good news for the Trial Court is that these very same stakeholders, under the leadership of the Trial Court, are insistently pressing for more. They are doing so, of course, because of their growing understanding of the value of data-driven court management decisions, and because of their high aspirations and expectations for what is now becoming possible for the Trial Court, in terms of managing with data. The Trial Court should now accelerate and persist in its push towards a more consistently evidence-based and data-driven culture of management and administration. The Visiting Committee hopes that its findings and recommendations will assist the leadership of the Trial Court in doing so, in service of the Trial Court's mission of delivering justice with dignity and speed.

### **List of Appendices:**

**Appendix 1:** Visiting Committee Charter

**Appendix 2:** Visiting Committee Member Biographies

**Appendix 3:** Visiting Committee Meetings and Interviews

**Appendix 4:** Massachusetts Trial Court Organizational Chart

**Appendix 5:** Department of Research and Planning Organizational Chart

**Appendix 6:** Judicial Information Systems Department Organizational Chart

**Appendix 7:** MassCourts Timeline

*Final version, as approved*

**CMAB Review Charter for Massachusetts Trial Court  
Visiting Committee on Managing With Data**

**September 26, 2016**

This document provides the charter for the “Massachusetts Trial Court Visiting Committee on Managing With Data.” This Visiting Committee is being established by the Court Management Advisory Board (CMAB) in consultation with and at the request of the Trial Court and the Supreme Judicial Court. The Committee will conduct an independent, targeted assessment of the Trial Court’s uses of data analytics to shape its policies and practices. In addition, the Committee will develop specific recommendations for improvements in this area, and document its findings and recommendations in a written report.

**Background and Context**

This Visiting Committee review is based on the premise that the business of the Trial Court demands – and deserves – evidence-based, data-driven, and user-focused management discipline. The CMAB believes that the Trial Court’s use of data to shape its policies and manage its operations is particularly worthy of an independent review now in light of the following:

1. In 2014, the CMAB recommended that the Trial Court focus and clarify the leadership responsibility and overall accountability for knowledge management and decision analytics. The CMAB also urged the Trial Court to orient technology enhancement and work practices toward improvements in this area.
2. In 2015, the comprehensive rollout of MassCourts (the Trial Court’s uniform case management system) was completed. The Trial Court should now be able to track and analyze case-related data across all Departments in ways that were not previously possible.
3. In 2016, the CMAB organized an independent Visiting Committee review of the Trial Court’s Judicial Information System Department (JISD) and the use of information technology (IT) in the court system. That effort, which yielded nine recommendations concerning IT strategy, execution, structure and culture, has provided a solid understanding of the current state of IT in the Trial Court.
4. The Trial Court is now embarking on the implementation of a refocused strategic plan for the next three-year period, Strategic Plan 2.0. This updated plan offers an essential framework for organization of an independent analysis of the Trial Court’s utilization of data to shape its practices and improve its operations. Strategic Plan 2.0 identifies nine key goals, and the Trial Court’s success in pursuing those nine goals will depend in large part on its effective use of metrics and data analytics to

drive management decisions that serve those goals. Further, Strategic Plan 2.0 is organized in terms of six subject areas or “domains” (including caseflow management, next generation technology, and organization decision-making and support) and four probation-related task forces (including probation business processes & IT) that are substantially shaped by the Trial Court’s use of data.

#### **Case for Review**

To improve its operations, the Trial Court must make increasing use of data analytics and data-driven decision-making. This is true with respect to many core administrative functions, such as budgeting, human resources, security, and support services. It is also true with respect to the development and implementation of judicial policies and practices. Greater attention to the trends and patterns that available “big data” can illuminate will allow the Trial Court to improve the quality of its management decisions. It will also enhance the Trial Court’s ability to justify and support such decisions with evidence-based rationales. For example, new justice models such as Specialty Courts need aggressive learning capture, justification based on evidence evaluation, and sharing of best practices in a standardized, systematic way.

A Visiting Committee on Managing With Data can provide a focused, independent assessment of the Trial Court’s strengths, weaknesses, opportunities, and challenges with respect to knowledge management and data analytics. Such an assessment will be useful for several reasons. First, it will contribute to a better understanding of the Trial Court’s available capacities and existing practices with respect to the tracking of robust and reliable metrics that are aligned with the Trial Court’s current strategic goals. Second, it will enable the Trial Court to respond further to the CMAB’s 2014 recommendation concerning focused leadership responsibility and overall accountability for data analytics. Third, it will complement the foundational understanding of the Trial Court’s IT strategy, execution, structure, and culture that was provided by the Court Technology Visiting Committee’s 2016 Report. Finally, it will offer the Trial Court constructive suggestions about aspects of management and administration that lie at the core of the Trial Court’s Strategic Plan 2.0.

#### **Trial Court Coordination and CMAB Contact**

The Executive Office of the Trial Court will coordinate scheduling and information gathering for the Visiting Committee on Managing With Data. CMAB support for the review planning and process will be provided by Allen Kachalia, with back-up from Donald Oppenheimer and Lisa Goodheart, as needed.

#### **Committee Leadership and Membership**

The Visiting Committee will be comprised of external subject matter leaders who have experience in the topics and issues identified in this charter, and a CMAB liaison. David

Fubini, a Senior Lecturer at Harvard Business School and a former Senior Director of McKinsey & Company who served on the original CMAB, will chair this Visiting Committee. Allen Kachalia, a current CMAB member and the Chief Quality Officer and Vice President for Quality & Safety at Brigham & Women's Hospital, will serve as the CMAB liaison, with back-up from CMAB member Donald Oppenheimer and CMAB Chair Lisa Goodheart, as needed. David will be responsible for identifying and recruiting other members of the Visiting Committee, in consultation with Allen and Lisa.

#### **Process Overview**

This Visiting Committee will follow the model, structure, and process used for the Court Technology Visiting Committee's work. The CMAB is the entity that will sponsor and organize the Visiting Committee, with the understanding that the Committee's work and work product will be directed toward, and designed specifically for the benefit of, the Trial Court leaders. The SJC is a key stakeholder and will be consulted during the planning phase of the work.

The Visiting Committee may choose to request advance information and determine appropriate interviews or panels. Designated SJC and Trial Court staff will work with the CMAB liaison to coordinate the schedule for the Committee's meetings and interviews.

After its review, the Visiting Committee will formulate its findings and recommendations in a written report, which may also identify topics that warrant more in-depth investigation. The Committee will deliver its report directly to the Chief Justice and the Court Administrator of the Trial Court, with copies to the SJC and the CMAB.

#### **Timing**

We anticipate that the Visiting Committee's development and planning phase will be completed in the fall of 2016. The Committee's data and document review, in conjunction with the interview and meeting phase, will be scheduled to take place in January 2017. Delivery of the Committee's report is anticipated in March 2017.

#### **Focus and Scope**

This Visiting Committee will assess the current state of the Trial Court's operations with respect to data and decision analytics, and present recommendations for improvement in this area. The scope of the Committee's assessment should include attention to data integrity, analysis tools, key performance indicators, management practices, and transparency. In addition, the Committee should assess the extent to which the Trial Court's current metrics do or do not support the nine goals, and the ten supporting strategies and myriad of associated tactics, that are outlined in Strategic Plan 2.0. The Committee may also wish to suggest other subjects for further analysis.



The CMAB has identified a number of proposed areas of inquiry for the Visiting Committee, as follows:

1. Roles, Functions and Methodologies for Effective Use of Data Analytics
2. Current Utilization of Data-Driven Management Tools
3. Alignment of Tracked Metrics with Strategic Goals
4. Usage of Data to Drive Structural Changes and Process Improvements
5. Usage of Data to Support Fiscal Planning
6. Engaging Stakeholders in Evidence-Based Decision-Making
7. Overcoming Barriers to Systemic Implementation of Data-Driven Management Approaches
8. Discipline and Accountability

The CMAB anticipates that the Committee will develop a list of questions to address under each of these headings.

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**Visiting Committee Member Biographies**

**David G. Fubini, Chair**

*Senior Lecturer & Henry B. Arthur Fellow, Harvard Business School*

David is a Senior Lecturer in the Organizational Behavior Unit and co-leader of the Leading Professional Services Firm and Mergers & Acquisitions Programs for Harvard Business School's Executive Education. His teaching concentrates on teaching the Organizational Behavior, Marketing, Leadership, Corporate Accountability and Ethics required courses.

Prior to his faculty position, David was a Senior Director of McKinsey & Company where he worked for over 34 years. He was McKinsey's Managing Director of the Boston Office, and the past leader of the North American Organization Practice as well as the founder and leader of the Firm's Worldwide Merger Integration Practice. During his tenure, David led, and/or had been a member of, every Firm Personnel Committee, as well as a participant in a wide cross-section of McKinsey's governance forums and committees.

David previously served as a member of the Court Management Advisory Board for two consecutive three-year terms.

**Bradford Brown,**

*Portfolio Director and Senior Advisor, MITRE Corporation*

Brad presently serves as Portfolio Director and Senior Advisor for MITRE's Center for Judicial Informatics Science and Technology (CJIST) and the Judiciary Engineering and Modernization Center (JEMC) which is the Federally Funded Research and Development Center (FFRDC) that MITRE operates for the Federal Judiciary. The portfolio includes domestic and international judicial systems. Prior to this role he served as Principal Strategist and Senior Advisor for the JEMC. He is currently the Co-Principal Investigator on a research project with the Stanford Law School focused on computational law.

Prior to MITRE, Brad served as a Managing Director in CIO Solutions practice at Protiviti – the global consulting firm. He led the firm's Global Public Services Practice (government, education and non-profit.) After acquiring Enspire Technologies, he also served as President and CEO of PGS, the firm's government focused subsidiary.

At George Mason University, he founded the National Center for Technology and Law (Tech Center) at the School of Law. He served as its Chairman and as Associate Dean for Technology for five years.

Earlier in his career, Brad served as Chief Counsel for Technology at the United States Department of Commerce. He was nominated for the Commerce Gold Medal for his work on the National Technology Initiative.

He has written or co-written forty-six published articles on topics relating to technology and the law.

**Heidi K. Gardner, Ph.D.**

*Distinguished Fellow & Lecturer on Law, Harvard Law School*

Heidi is a Distinguished Fellow in the Center on the Legal Profession at Harvard Law School. She was previously on the faculty of the Harvard Business School and has been awarded an International Research Fellowship at Oxford University's Said Business School. Heidi is an expansive author, having written or co-written more than fifty book chapters, case studies, and articles. Her research concentrates on leadership and collaboration in professional service firms.

Heidi previously held positions with McKinsey & Co. and Procter & Gamble, and served as a Fulbright Scholar.

**Arlene Zalayet, Esq.**

*Senior Vice President & General Attorney, Liberty Mutual Insurance Company*

In her capacity as the Senior Vice President and General Attorney for Liberty Mutual, Arlene oversees the management, organizational structure, and staff counsel in 67 offices in 38 states. She is admitted to the New York and Florida bars. She is an author, columnist, and editor, who has written several books including *Modern New York Discovery*, *Civil Trials in New York*, and *New York Examination Before Trial and Other Discovery Devices*.

Arlene began her legal career as a litigator in New York City before moving into management positions, first with Royal & Sun Alliance as its regional managing attorney, and now with Liberty Mutual. She also serves as a visiting faculty member at the University of Miami School of Law, and previously held adjunct faculty positions at Hofstra Law School and Touro Law School.

**Visiting Committee Meetings and Interviews**

January 13, 2017

- Introductory meeting of the Visiting Committee and its members

February 9, 2017

- Executive Director of the Supreme Judicial Court
- Director of Facility Management
- Probation Department

April 18, 2017

- Chief Justice of the Supreme Judicial Court Ralph Gants
- The Ripples Group
- Judicial Information Services Department
- Department of Research & Planning
- On-Site Visit to Offices of the Department of Research & Planning

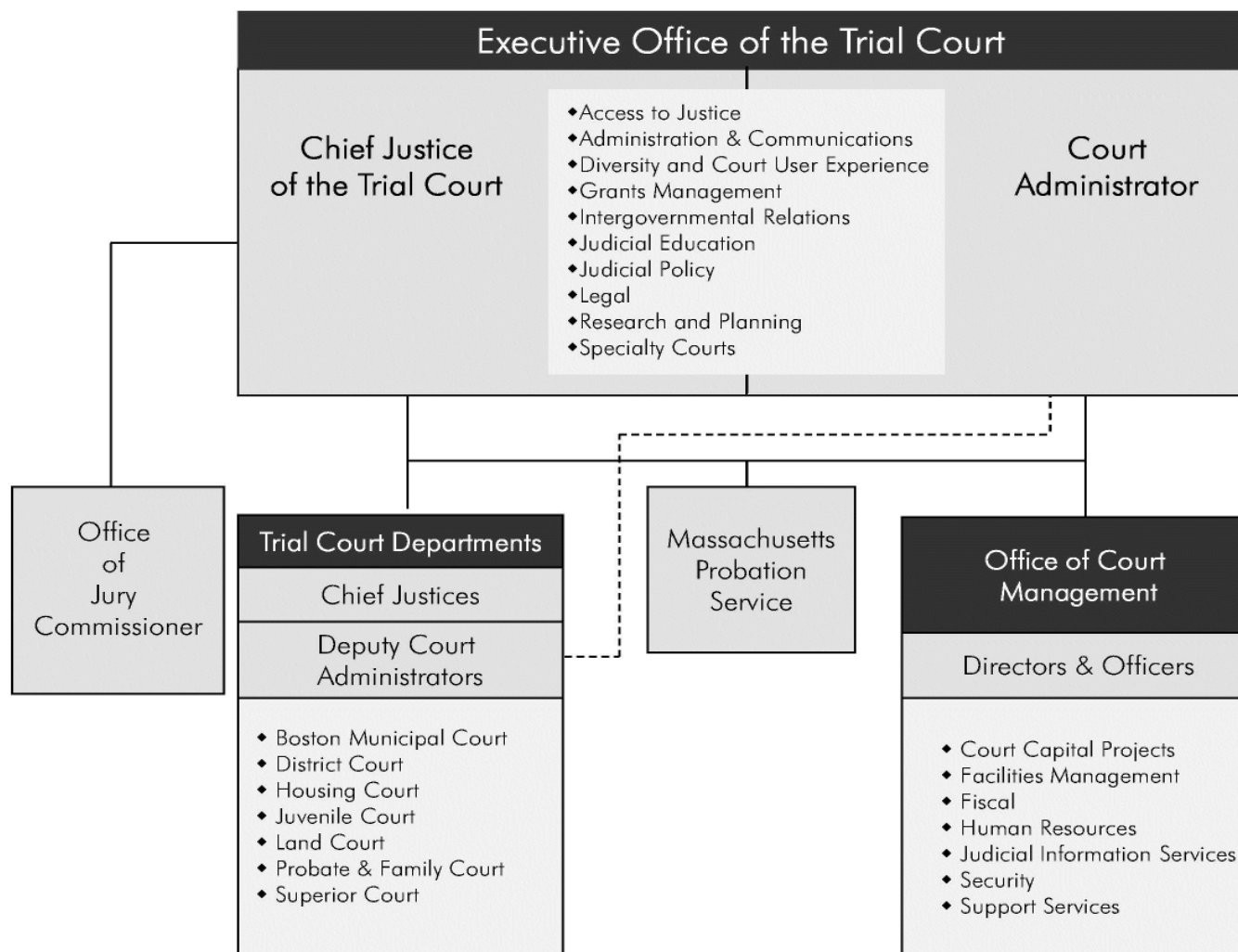
May 2, 2017

- Court Department Administrative Office Management Teams:
  - Representatives from the District Court, Superior Court, Probate and Family Court, and Housing Court.
- Local Court Management Team
  - Representatives from the Roxbury Division of the Boston Municipal Court
- Chief Justice of the Trial Court Carey and Court Administrator Jon Williams
- Clerks/Registers
  - Representatives from the Land Court, Probate and Family Court, Superior Court, Juvenile Court, District Court, and Boston Municipal Court.
- Judicial Panel
  - Representatives from the Land Court, Superior Court, and District Court.
- National Center for State Courts

May 10, 2017

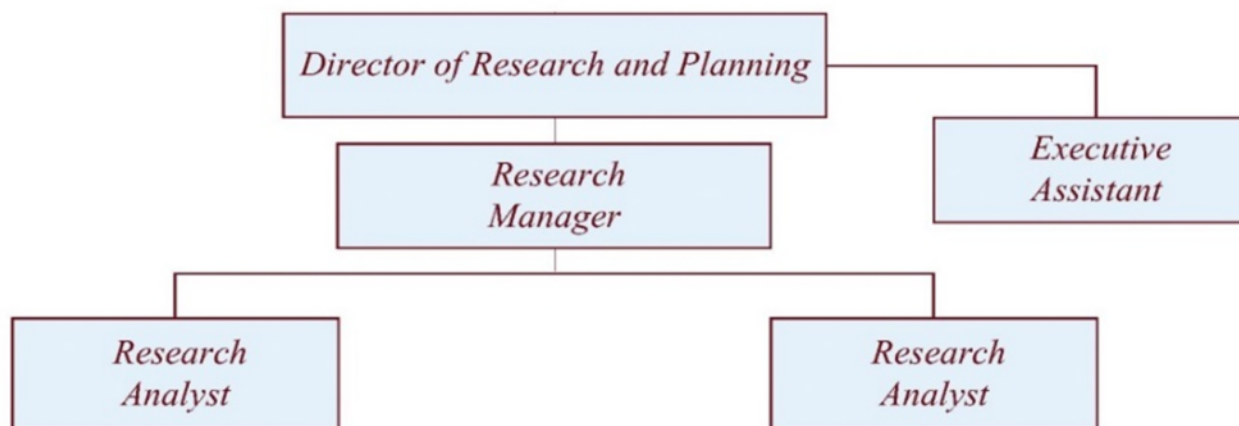
- The Ripples Group
- Judicial Information Services Department
- Probation Department

# Massachusetts Trial Court

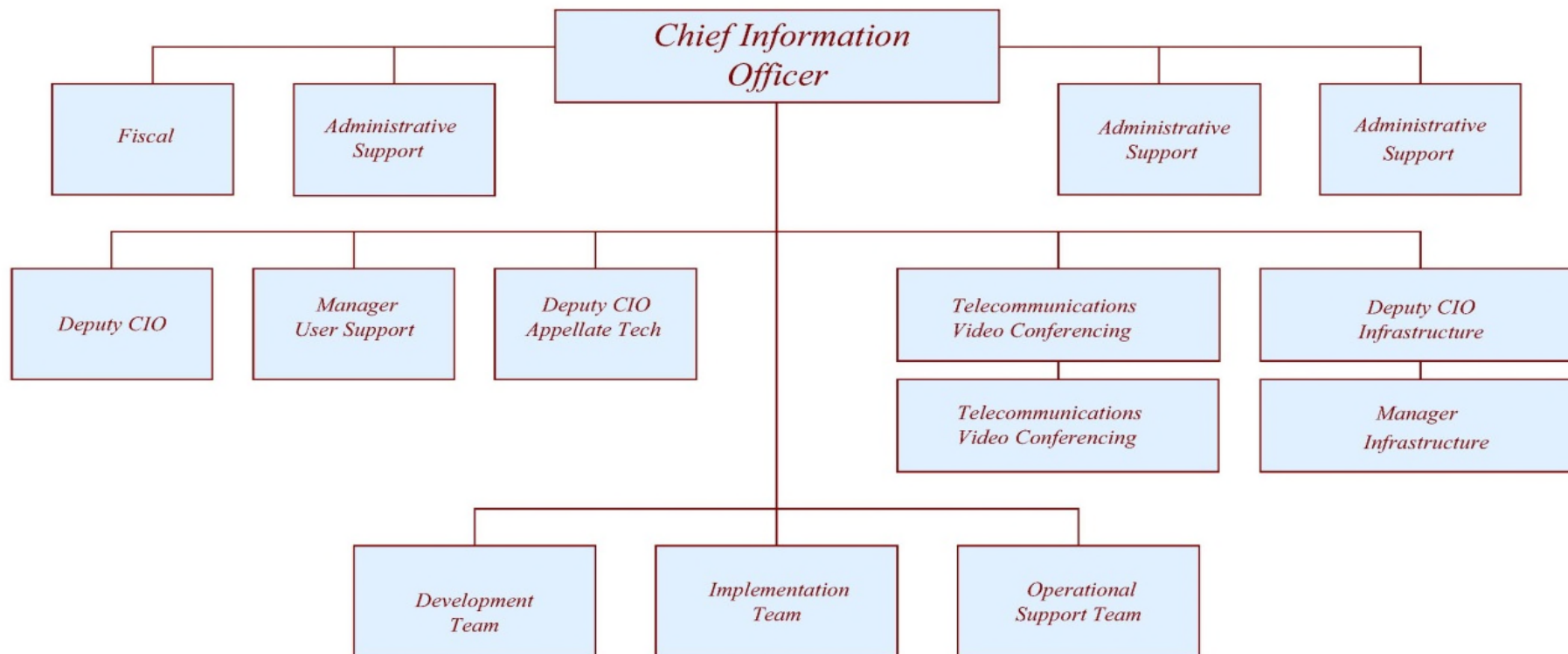


Revised: January 2017

## Massachusetts Trial Court, Office of Court Management Department of Research and Planning Organizational Structure



## Massachusetts Trial Court Judicial Information Services Organizational Structure





The Trial Court – Office of Court Management  
Judicial Information Services  
*MassCourts Team*

## **MassCourts Milestones**

### **2003**

January

- Contract executed with Maximus for Courtview Product.

February - December

- Gap analysis performed to determine the scope of development effort needed to begin implementation on web based application
- Web application development began with specification review groups. Process on-going until departmental implementations began in January 2005

November

- First and only implementation of Courtview's client server application in the BMC Central Division.

### **2004**

- Application development continued with the regular deployments
- MassCourts Project Team was created with new project implementation plan introduced
- Infrastructure designed and built
- Identity Management Policy developed

### **2005**

February

- Land Court implementation, the first court to use MassCourts (Courtview 3 which is the web version of the application)

September - December

- Application development, setup and preparation for the next court department continues throughout the year.

### **2006**

February - December

- MassCourts Lite implemented in the District Court and BMC departments (excluding the BMC Central Division but including Adult Probation)



- CARI and WMS interface developed and implemented
- Application development, setup and preparation for the next court department continues
- Identity Management Policy implemented

## **2007**

January – April

- BMC / DC implementation of MC Lite continues
- “Model office” sessions for the Housing Court begins

July - October

- Housing Court department implementation

September - December

- Application development, setup and preparation for the next court department continues
- “Model office” sessions for the Probate & Family Court begins

## **2008**

January – May

- “Model office” sessions for the Probate & Family Court (including Probation) continues
- Application development, setup and preparation for the next court department continues

June - December

- Probate & Family department implementation

## **2009**

January – December

- Probate & Family department implementation continues
- 4 remaining BMC & DC moved from criminal BasCot to MC Lite
- Application development, setup and preparation for the next court department continues
- “Model office” sessions for the BMC / DC civil begins

## **2010**

January – May

- Application development, setup and preparation for the next court department continues
- “Model office” sessions for the BMC / DC civil continues

June – December

- BMC / DC civil full implementation begins

## **2011**

January – December

- BMC / DC civil full implementation continues
- Application development, setup and preparation for the next court department continues
- “Model office” sessions for the Juvenile Court (including Probation) begins

## **2012**

March – December

- Juvenile Court department implementation begins
- Application development, setup and preparation for the next court department continues
- “Model office” sessions for the Superior Court (including Probation) begins

## **2013**

January – December

- Juvenile Court department implementation continues
- Application development, setup and preparation for the next court department continues
- Northpointe contract signed for portion of application
- “Model office” sessions for the Superior Court continue

## **2014**

June – December

- Superior Court implementation begins
- Application setup and preparation for the conversion of CARI data to MassCourts
- Specification and development of MassCourts interface with Northpointe application
- Internet and Attorney e-access setup and deployment for Superior Court

## **2015**

January – September

- Superior Court implementation continues
- Application development, setup and preparation for the remaining 3 BCM / DC court conversions
- Application development, setup and preparation for E-filing
- Specialty Court pilot in Norfolk county courts

September – November

- MassCourts full implementation for BMC Central / Brockton & Barnstable DC conversion from Courtview client server and JMS
- E-filing pilot court go-live Essex County P&F, Worcester DC & BMC Brighton

## **2016**

January – December

- Application development, setup and preparation for E-filing continues
- Various efforts to upgrade functionality in various court departments and Probation post implementation

## **2017**

January – December

- E-filing expansion continues
- MC full docketing in BMC / DC
- New approach to piloting Northpointe fully functional application