

REINVENTING JUSTICE 2022

Report of the Chief Justice's
Commission on the Future of the Courts



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Commonwealth of Massachusetts

**CHIEF JUSTICE'S COMMISSION
ON THE
FUTURE OF THE COURTS
1300 NEW COURT HOUSE
BOSTON, MASSACHUSETTS 02108**

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May 1, 1992

Chief Justice Paul J. Liacos
Supreme Judicial Court
1300 New Court House
Boston, MA 02108

(617) 725-8283
Fax (617) 367-0334

Dear Chief Justice Liacos:

On behalf of the Commission on the Future of the Courts,
I am honored to transmit to you our final report.

When we set out on our mission two years ago, we could only guess at the project's complexity. Creating a new vision of justice for the next century was an unprecedented task for almost all of us. We did understand that the challenge might be more difficult for Massachusetts than for younger states; our courts have had 300 years to become attached to old, time-honored ways of doing business. What we could not foresee, however, was how difficult it would be to look into the relatively distant future, or to suspend our disbelief about how very different such a future might be.

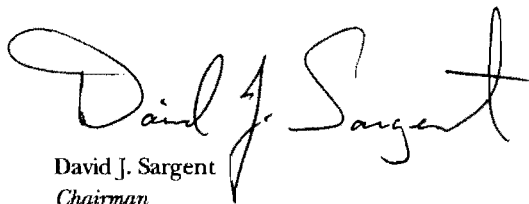
The report that follows is broad in scope. Our recommendations evince both respect for continuity and a commitment to change. Some of the Commission's proposals could require a generation to implement; others might be achieved much sooner. A number are sure to be controversial. We were not asked to propose changes in substantive law, and with few exceptions we have not done so.

The report represents consensus. As is the case with most broadly constituted groups, this commission could not adopt every recommendation unanimously. But out of a strong desire for a unified vision came compromise. As a result, we are able to submit to you a report with which the membership feels sufficiently comfortable to endorse in its entirety.

There are many people to whom we owe thanks; more than 250 of them are identified in the Appendix. The greatest credit, however, goes to the Commission's members. DeTocqueville said that the health of a democratic society can be measured by the voluntary service performed by its private citizens. Judging by the efforts of our members here, Massachusetts is healthy indeed. We also express our gratitude to the Commission's task force reporters, special advisers, and, especially, staff, whose commitment to the project and the members was unflagging. For their generous financial support, the Commission thanks the Supreme Judicial Court, the Massachusetts General Court, the State Justice Institute, the Massachusetts Committee on Criminal Justice, and the Massachusetts and Boston bar foundations. Finally, we are grateful to you — for having had the vision to embark on this project, for your encouragement, and for your regular admonitions to be bold.

The conclusion of our work is only another beginning in the ongoing task of reinventing justice for the future. The model of justice presented here, and the recommendations and strategies that accompany it, offer scores of potential initiatives to take the courts into the next century with vision and purpose. We hope our work will prove to be useful to you and your successors, the courts, and the public they serve.

Sincerely,

A handwritten signature in black ink, reading "David J. Sargent". The signature is fluid and cursive, with a large initial "D" and a stylized "J" and "S".

David J. Sargent
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Staff

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Michelle K. Janmey, Esq., Deputy Director
Anne Walker, Administrative Assistant

VISION

In 2022 the Massachusetts justice system will be oriented to its users; the public's interest will be paramount. The courthouses of today will be succeeded by the comprehensive justice centers of tomorrow. They will offer a range of traditional and alternative processes for resolving disputes. Public trust and confidence in the courts will be restored and sustained. The doors to quality justice will open equally wide to all, regardless of race, ethnicity, spoken language, gender or disability. Throughout the system, dynamic leadership, enlightened management, sensible structures, and enhanced accountability will be the rule. The courts will be a full partner in those coalitions seeking solutions to society's ailments. And assistance will be available to all who require it in navigating the roads to justice.

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VISION
IS THE ART
OF SEEING
THE
INVISIBLE.

Jonathan Swift

CHALLENGE

The year is 2022. Imagine that government is largely moribund -debt-ridden, bureaucratically Byzantine, impotent. The economy, overwhelmed by public and private debt, has collapsed. To an even greater extent than in 1992 society looks to the courts for help in solving its overwhelming problems. But resources for the courts, indeed for government generally, are in desperately short supply. Principles of triage govern. Only the most heinous criminal matters are heard by the courts, and civil cases have long since become the province of expensive private dispute resolution providers. There is little paying business for lawyers, and the bar is substantially smaller than 30 years earlier. Technology, instead of helping to improve personal lives and make business and government more efficient, is now used mainly to monitor and control the "underclass."

Frightening? Imagine instead a future in which government serves society and the economy is well-balanced, where social justice is a reality, and the courts enjoy resources adequate to their mission. In such a future new ways of thinking about disputes, new models of public and private management, and new technologies to implement those models all flourish. Imagine a justice system committed to true problem solving rather than to the processing of cases, an electronics-assisted "court without walls," community dispute resolution centers, and a respected and highly professional justice work force.

While neither of these scenarios may seem likely, unless concerted action is taken by those within and outside the courts, we fear that something more like the first will be 2022's reality. No futures commission can predict the future that awaits the Commonwealth and its courts. Nor was that our mission. This commission was charged with creating a vision of a better future for justice and proposing ways to achieve it. Having done so we readily acknowledge that the future of the courts is intimately and inescapably tied to the future of society. Without reordering society's priorities, without dedicating adequate resources to educating, feeding, housing, and nurturing our citizens -especially our children -we fear that the vision of a brighter future for justice will flicker and go out in a gale of unwanted change.

Mission Statement May 1, 1990

"In 1992 the Massachusetts Supreme Judicial Court will celebrate its 300th anniversary. The mission of the Chief Justice's Commission on the Future of the Courts is to look ahead to the next century, articulate a vision of a preferred judicial system, and identify methods for arriving at that preferred future.

The project provides a comprehensive strategic planning opportunity for the Commonwealth's courts. The Commission will gather data on the various socio-economic, demographic and technological changes likely to occur in the next 30 years and attempt to assess the likely impact of these changes on the courts.

The Commission will develop a vision to guide the operation of our courts in the future. In creating a blueprint for the preferred system, the Commission recognizes that the degree to which a society enjoys real justice is in direct relation to the level of public respect for justice institutions. To that end the Commission will aim to foster a heightened level of public confidence in and respect for justice.

In summary, the Commission on the Future of the Courts will attempt to equip the courts with a vision of a preferred future, c.2022, and a practical and philosophical road map by which to navigate the intervening 30 years. This statement of the ideal, and recommendations to achieve it, will allow the courts to better control their destiny, for the benefit of all."

Origins of the Challenge

A commission charged with creating a new model of justice is not a conventional court reform commission. The latter's primary concern is curing present-day problems; the former seeks to anticipate tomorrow's. The latter assumes that the traditional mission and methods of the judicial branch will remain unchanged; the former acknowledges that even that threshold assumption is open to discussion.

On May 1, 1990, in Faneuil Hall, Chief Justice Paul J. Liacos convened the first meeting of the Chief Justice's Commission on the Future of the Courts. Your mission, he told the members, is to survey and chart the social and justice landscapes of the next 30 years. Examine trends, create scenarios, fashion a vision of justice for the future of the courts. Look to the year 2022. And then devise strategies to navigate the intervening three decades. Above all, be bold.

The mandate was broad. The Chief Justice asked the members to consider issues as fundamental as the objectives of justice, the meaning of "access," the reasons for the public's declining trust and confidence in the courts, court structure and management, and the relationship between social justice and courtroom justice. Judges, lawyers, and court employees have no monopoly on expertise in such matters. To the contrary, proximity to justice's problems sometimes obscures potential solutions. The Anglo-American system of justice adopted in the Commonwealth 300 years ago was devised by a white, male, educated class, whose interests the system was designed to serve. Chief Justice Liacos sought to make this Commission's membership representative of a new future for the courts. Enlisted were women and men, many of whom were unconnected to the justice system. They brought to the mission the experience of the classroom as well as the courtroom, of the community at large as well as the community of the courts.

There was one mission that the Commission was urged not to undertake: the estimation of costs and the identification of revenue sources sufficient to translate the Commission's vision into reality. Other state courts engaged in similar projects recommended strongly against such an undertaking. To constrain discussions about what-might-be-tomorrow with arguments about what-is-affordable-today shackles vision. That said, throughout its work the Commission remained acutely aware that change will have a cost and that it will require difficult policy and fiscal choices from the judicial, executive, and legislative branches. In the Commission's vision of the future, however, the difficulty of such decisions will be mitigated by streamlined justice operations, greater productivity, a reallocation of expenses, and significant new efficiencies.

Method

To create a credible vision of future justice, consistent with public hopes and preferences, two tasks were key. First, it was essential to obtain the public's vision of a better future for the courts. Second, it was important for Commission members to become futurists, able to think clearly and creatively about the future.

Even before the Commission's work began, hearings were held around the state to identify the public's priorities for justice. Next, because the assignment was broad, six task forces were created: Access to Justice, Alternative Paths to Justice, Organization and Administration, Quality of Criminal Justice, Quality of Justice/Public Trust and Confidence, and Technology and Justice. During 14 months of work in 1990 and 1991, the task forces collectively met more than 100 times, interviewed scores of experts, and held a variety of public meetings. To further broaden the scope of public input, the Commission retained a national public opinion firm to poll 500 Massachusetts residents about their conception of justice, present and future. Out of this work emerged some 400 pages of task force reports, scores of recommendations, and a handful of visions of better courts for 2022. This report integrates and distills that material.

"[Every person] ought to obtain right and justice freely, and without being obliged to purchase it; compleatly, and without any denial; promptly, and without delay; conformably to the laws."

*Part One, Article 11, Declaration of Rights
Constitution of the Commonwealth of Massachusetts
adopted 1780*

The tools and methods of the futurist-- trend analysis, scenario creation, vision building-- proved to be important aids to the Commission's work. They helped Commission members overcome their natural skepticism about how very different the future is likely to be and reduced the temptation to talk at length about the problems of the present.

Structure

The report contains five parts. Following this introduction, Part Two offers a series of fictional scenarios that illustrate how future justice might look. Part Three examines some of the problems confronting the courts and suggests possible strategies for change. Part four places the reader in the audience at the annual State of Justice address in the year 2022. This scenario attempts to capture a number of the Commission's most important ideas at work. The Appendix contains synopses of the commission's six task force reports, a summary of the Commission's public opinion survey, and acknowledgments.

Departure

Creating a vision of a better future for today's beleaguered courts is a mission of hope. The justice system needs more than new organizational and physical structures. Facsimile machines, computer screens, cellular phones, and new management models will not by themselves turn the musty old courts of today into the brave new courts of tomorrow. Technological change without institutional change is no answer.

What is proposed here is a return to essentials: a re-examination of what justice means, and how it is best achieved. It is not enough to process more cases more efficiently. Critical to a better future is to see more clearly the link between social justice and courtroom justice, to understand the economic and demographic forces that will define the societal and justice landscapes of the next century, and to ensure that the public's trust and confidence is regained and maintained. Together, these efforts will provide a compass for the courts on their journey into the next century.

IMAGES OF FUTURE JUSTICE

While we cannot predict the future, we can create images of what might be, in order to better conceive what should be. The following three scenarios are intended to illustrate some of the Commission's ideas about future justice and to convey a sense of how very different the future of society and its disputes may be.

NIGHTMARE

It is 2022. Society is impoverished. Conflicts focus on competition for basic resources: food, fuel, and housing. Justice norms, process, and objectives have broken down as socially cooperative behavior has declined. Access to knowledge has become increasingly high-tech, limited by cost and government control mechanisms.

Society is also vastly more heterogeneous. Governmental inability to fund education and employment training has left large portions of the population ignorant and unskilled, forcing a dramatic rise in the crime rate.

Continued reductions in mental health services, substance abuse programs, and juvenile services contribute to the surge in criminal cases. Juvenile dockets--often a reliable preview of future criminal and social service caseloads--skyrocket as a multicultural society is riven by conflict over children's rights, adequate medical care, and a host of other culture-specific customs and practices. Fifty percent or more of criminal defendants, both English-speaking and non-English speaking alike, are functionally illiterate. Without adequate funds it is difficult or impossible to recruit and employ an adequate number of interpreters.

The poor, homeless, and young feel they have no stake in the future. The law enforcement system is near collapse. Individuals resort increasingly to "street justice." Severe social alienation has triggered an intense cycle of crime, resulting in more imprisonment that in turn compounds the alienation. The "last resort" will be even more chilling: a desperate society will seek to reduce crime through genetic engineering and mind-control drugs, through routine use of the death penalty, and through around-the-clock techno-surveillance of the "underclass."

Structurally, there are two systems of justice. Because the public sector has been underfunded and neglected for years, public courts are only for the poor and others (criminal defendants) who have no other options. Access to civil justice is nearly non-existent for the poor and middle class. Public judges are underpaid, overworked, and under-respected. Administrators, staff and public counsel have it much worse. Physical attacks on judges occur with increasing frequency. The wealthy and the powerful have turned to a private justice system, siphoning off the best judicial and administrative talent to serve the "overclass."

The loss of public trust and confidence in justice has led to such widespread avoidance of jury duty that juries no longer play a significant role in the justice process. Even worse, in this 2022 nightmare no longer are true leaders attracted to the bench. More determinate sentencing, the elimination of parole, and other crime-reducing initiatives have stripped judging of much of its discretion.

Judicial administration is handled by political appointees with few qualifications, or worse, by bitter unemployed lawyers, of which there are many. Because public funding has largely dried up, the courts have turned to a system of expensive and onerous user fees. Individuals must pay to have misdemeanors prosecuted. Because fees are assessed on a minute-by-minute basis, litigants rush to judgment, frustrating due process. True justice is a scarce and costly commodity.

CHILD AT RISK

At 14 Thomas E. was a troubled adolescent. He had begun his days at the middle school as a question mark but had soon graduated into a serious disciplinary and truancy problem. After his first serious altercation, the school's peer justice council had required the boy and his co-combatant to meet with a student neutral, a classmate trained in elementary dispute resolution. The next act of violence had brought Thomas before a student jury and had netted him a penalty of formal apology and five hours weekly of school-based community service. The boy's academic performance, always poor, grew worse. His attendance became more erratic, and he appeared to be perched on the edge of the statistical abyss, about to join the legions of dropouts who had gone before.

At this precarious moment the school intervened. Thomas agreed to meet with his school counselor, who was well acquainted with the boy's day-to-day troubles. The counselor was also aware of Thomas's history in the peer justice system and understood his family background. Raised by his well-intentioned father, the boy was a product of neglect, not willful neglect, but the sort of latchkey neglect to which many children are consigned by parents in poverty, working long hours.

It was evident that much of Thomas's behavior stemmed from a yearning for attention, even negative attention, from anyone. While that explained his antisocial behavior, it could not excuse it. As the school began to evaluate the alternative counseling and therapy options available to Thomas, his behavior took yet another turn for the worse. He was accused of stealing from the school.

Thomas and his school counselor arrived at the Metro-West Comprehensive Justice Center (CJC) one gray morning in March. They were received by the CJC's voice response unit, into which the counselor programmed the necessary background information, the nature of the dispute (alleged theft), and the name of the complainant (the school). Because of the boy's age a voluntary lay advocate known as an AV, or Advocate for the Vulnerable, was automatically summoned by the CJC's reception unit.

Thomas, the counselor, and the AV sat down to an informal meeting over lunch in the CJC cafeteria. From two years of community justice courses in school (including legal principles, CJC Organization, and problem-solving and mediation skills) the boy was familiar with the process. The counselor assured the AV, as he had Thomas, that the school's objective was not to see the boy punished in the state's criminal justice system but to get him real help. The boy became visibly uncomfortable for the first time when the AV explained that his father had been notified and was expected to participate in the justice process.

An intake counselor next evaluated the case. Because Thomas was a minor accused of theft and in need of services, the case was assigned to a non-adjudicatory disposition track in which social service and counseling specialists would be called in. The matter was also assigned to a case manager, an administrator who specialized in adolescent behavior cases.

By the time Thomas and his school counselor arrived in the case manager's office she had already received the available computer background material on the case. The boy's father arrived next, followed by a representative of the Executive Office of Family Assistance, a professional youth services counselor whom the case manager has asked to attend. The school counselor again described the school's objective: not to punish Thomas but to obtain for him the help that he so obviously needed. It was clear to all, most painfully to the boy's father, that Thomas's troubles began at home. Those gathered in the room agreed to form a team to help chart a new course for the family.

In a brief mediation session Thomas and his counselor resolved the theft complaint. If the boy would participate in an ongoing counseling program and make restitution, the school had no interest in pursuing the theft issue further.

The boy's father readily acknowledged that one basic problem was his work schedule. Another was the absence of structure in his son's life. The case manager offered to refer the father to the Office of Employment Assistance, to aid him in finding a job that offered a schedule more consistent with the family's needs.

Next the youth services counselor from the Office of Family Assistance suggested that Thomas participate in an intensive counseling program to which that office could refer him. The counselor also recommended the boy's involvement in a 2022 version of the Big Brother program available through a local high school. The Office of Family Assistance agreed to follow the case and coordinate the delivery of services. As part of that function it would report periodically to the CJC case manager on Thomas's progress. The Family Assistance Office would also provide to and receive periodic updates from the boy's school counselor, completing the loop.

As the meeting broke up, agreement reached, the boy's usually impassive face betrayed just a hint of hope.

I am a robot, or an android if you prefer. I am a complicated synthesis of mechanical parts, human tissue, and artificial intelligence software. I was built in 2017, I represented a new benchmark in thinking machines. I am also a disputant.

My story would be a familiar one were I not a member of a relatively new class of disputants. Robots and androids are only now beginning to enjoy a range of legal protections in Massachusetts. In strictly commercial matters, however, our rights have been equal to those of humans since *Cognotron v. M-andro 3*, __ Mass. __ (2010).

I am involved in a patent dispute with my employer, a small robotics firm. Ever since my power cells were activated three years ago, I have worked in an R&D lab. With all modesty I can say that my work has been exemplar. I have developed some outstanding new programs for androids like myself, products that have been very lucrative for my employer. My most recent software creation was revolutionary. I patented it and used it to enhance my won capabilities.

My employer's motive in filing an action against me is largely pecuniary. The company is more aware than I of the commercial potential for my new program. It may also be the case, however, that the company resents my successful self-improvement, my new abilities, my increased "humanity." Whatever the motive, the company seeks exclusive rights to the program. It might have sued me outright, but for its desire for confidentiality.

Dispute resolution in the Commonwealth has changed significantly in the last 30 years. While I am not programmed in the intricacies of the law, I have android friends who are paralegals in law firms and law clerks to judges. They tell me that the average lawsuit today requires only 20% of the time and costs only a third as much as a comparable case in 1990. Many of these economies are the product of the reforms of 1996 and 2007, which among other things eliminated inefficient old venue rules and created multiple tracks for cases, depending on complexity, parties and litigant preferences. Even more important to litigation reform, however, was the creation of accountability mechanisms which assured that someone — a judge or administrator — was personally responsible for the movement of every case, from filing to disposition. And then there was the guarantee of adequate monetary resources for the courts, assured by the Judicial/Executive/Legislative Reconciliation Act of 1994.

When I refused to relinquish my patent, my employer's lawyer did what we all do today when we seek to resolve a dispute: he pressed the JUSTICE key on his personal communications unit. These units, which are as ubiquitous as televisions were 30 years ago, provide video and audio communication, as well as information storage and retrieval. An intake counselor from the state justice system appeared on the screen and asked the lawyer to transmit his "data page," summarizing the complaint. (Had the complainant been a non-lawyer the intake counselor would have assisted her in completing the information request.) While most disputes can be immediately referred by the intake counselor to the most appropriate dispute resolution service, some complicated and non-classifiable matters are first reviewed by a screening counselor. Such was the case with our patent dispute.

Like most screening sessions, ours was conducted by personal communications units. Like all sessions, it occurred within three days of filing the complaint. My employer's CEO and I, as principals in the dispute, were required to attend, albeit on separate screens. The CEO used one of the company's units; I used a public unit at a location I did not disclose.

The screening conference clarified the legal issues and explained the available dispute resolution mechanisms. Because of our grossly unequal bargaining power, the screening counselor recommended adjudication, either a trial or arbitration. The company sought privacy, however, and I hoped to avoid the expense of a lawyer, so we agreed to the off-the-record Med-Arb (short for mediation-arbitration, a hybrid form of alternative dispute resolution that appears in the '80's) at the Lowell Comprehensive Justice Center.

Four days later, well within the seven-day limit from time of referral, we meet in the office of the dispute resolver. The resolver assigned is not an expert in patent matters, but she is a highly experienced neutral. She meets first with each of us separately. I emphasize that while I would like some modest compensation for my program, my real interest is the further advancement of androids. My employer's interest is strictly financial

The neutral is effective and creative. With her help my employer and I fashion an agreement in which I will retain ownership of the program; my employer will obtain its exclusive use for five years in exchange for a modest royalty. Both of us are satisfied with the solution and promise to mend our heretofore good relations. We have resolved our dispute within 10 days of its entry into the justice system.

THE SIX SECTIONS THAT FOLLOW GIVE VOICE TO SIX BASIC THEMES VITAL TO THE COMMISSION'S VISION OF FUTURE JUSTICE IN MASSACHUSETTS.

THE IDEAS, RECOMMENDATIONS, AND ASSOCIATED STRATEGIES IN EACH THEME ARE THREADS WOVEN TOGETHER FROM THE LARGER BODY OF COMMISSION WORK.

IN MOST CASES, MORE DETAILED TREATMENT OF THE ISSUES CAN BE FOUND IN THE CONDENSED TASK FORCE REPORTS, WHICH APPEAR IN THE APPENDIX.

USER-ORIENTED JUSTICE

The Commission's survey of opinion about justice in Massachusetts today revealed a public that does not understand the justice system, does not believe the courts put the users' interest first, and feels there are few means for the public to suggest — let alone influence — change for the better. In the commission's vision of justice 30 years hence much will be different. In every judicial and administrative act the courts will assure the justice seeker that the public's interest is paramount. Justice will be accessible, affordable, comprehensible, and user-friendly. A range of dispute resolution services will be available under a single roof at various locations around the state. In this vision of the future the user will leave the temple of justice with dignity intact, assured that someone listened and responded with courtesy, respect, and sensitivity.

PATHWAY 1

Public Need for User-Oriented Courts

In early 1991 the Commission retained Opinion Dynamics, a national public opinion firm, to survey 500 residents across Massachusetts about their attitudes toward justice. The results revealed several trends.

Contact with the courts is growing. People under age 35 are twice as likely as those over 55 to be involved in a court case. This is not solely the result of increasing youth crime. It suggests that some people may be turning more to the courts to resolve matters formerly settled outside the system.

People who have been involved with the courts are divided about 50-50 between those who had no complaint with the experience and those who had.

Although slightly less than a quarter of those surveyed felt informed about the courts, the more informed they were, the more likely they were to rate the courts' performance as "poor."

Sixty-three percent of respondents agreed that "the people who work in the courts care more about their salaries and privileges than about the public good."

When asked to look ahead to the future of the Commonwealth's justice system, among the improvements the public considered most important were evening and weekend court sessions, and child care, in order to make courts more accessible and easier to use.

When asked whether they had ever had a problem they wanted to take to court but had decided not to, the majority of those surveyed reported they had had no such problem. About a third of all respondents, however, reported that they had.

A Service Model of Justice

Every employee, every procedure, every structure in the Massachusetts justice system must put the public and the justice seeker first.

The public today finds the courts bureaucratic, self-serving, difficult to understand. If their attitudes are to change, future justice in Massachusetts must more obviously embody an ethic of public service. The justice seeker, whether individual or corporate, must feel welcome in the courts of the future, must come away feeling that he/she has been heard, heeded, and helped. The courts of the future must, in short, put the user first.

In 2002, as today, the courts' greatest resource will be those people who work within them. Then as now, the system will be staffed with hard-working, committed, sensitive employees. Even more clearly than today, however, employees will understand that the courts belong to the public and not to its servants. Consumer satisfaction can never take a back seat to the convenience of attorneys, court personnel, or judges.

There are many ways to persuade the public that the justice system is committed to the user. From the most senior judge to the most junior clerk, the system must be zealously non-discriminatory. It must be sensitive to illiteracy and other sometimes subtle personal barriers to effective access. The courts should schedule **sessions on evenings and weekends**. Basic **human services** (e.g., benefits-eligibility evaluations, family counseling) should be offered within the courts, and **referrals to outside providers** should be commonplace. **Advocates for the vulnerable** (abused children, the elderly indigent, for example) should always be available in the courthouses of the future. And by 2022 **a fundamental right to representation** in all important civil matters should be acknowledged. In the meantime, our **commitment to legal services** should be redoubled.

In the Commission's vision of future justice the courts will bear little physical resemblance to the too often drab, ill-lit, poorly maintained facilities of today. **Physical access for the disabled** is an obvious and critically important need; today's courthouses leave much to be desired in this respect. Similarly, the court user's right to **easily accessible information** should be taken for granted. The courthouses of the future should be equipped with **reception/information kiosks, signs** in several languages, human and/or electronic **guides**, simple **computerized information services, cafeterias, child-care facilities** for court users and employees, and **separate waiting areas** for victims and defendants in criminal matters.

A Network of Comprehensive Justice Centers

To be truly consumer-oriented the courts of the future must be able to treat a variety of problems through a variety of mechanisms under a single roof. No longer traditional courts, they will be comprehensive justice centers.

The public yearns for a justice system that provides justice here and now -- not another day, another courthouse, another paper, another expense. It seeks demystified and simplified justice, in its own town or neighborhood. A network of comprehensive justice centers (CJCs) is called for.

The concept behind the CJC is to provide from a single location access to a wide range of dispute resolution options, both before and after any case is filed. While the CJC would provide one or more forms of adjudication, there should also be a variety of other dispute resolution processes available. As an adjunct to disputes processed in the center, the CJC should also provide on-site emergency services (crisis counseling, psychological evaluation, etc.), with efficient referral to off-site providers. CJCs large and small, rural and suburban, would be linked by sophisticated telecommunications technology into a true justice network.

Not only would comprehensive justice centers be the principal dispute resolution providers of the Massachusetts justice system, they would also perform a dispute screening and referral function. As quickly as a dispute entered a CJC it would be evaluated and redirected. Some would remain in-house, sent to judges, mediators, arbitrators, and mini-trial presiders. Others would be sent out to social service agencies and a range of nonprofit and commercial dispute resolution providers. CJC personnel would track each dispute's progress along the chosen avenue to justice.

A number of new jobs would exist in the CJC. Cultural interpreters would serve a multiethnic, multilingual population. Intake counselors would educate and inform walk-in disputants, helping to translate problems into claims and complaints when necessary. Ambiguous or especially complex matters could be directed to screening counselors who would meet with the parties -- perhaps via interactive video links -- to clarify issues and explore early settlement options. Once screened and referred, case managers would take personal responsibility for the movement and disposition of cases, ensuring timely action.

Because affordability is central to public dispute resolution, CJCs, like the courts of today, should be operated by the judicial branch and publicly funded. While the future will likely include an

"I came to the court with a domestic problem looking for redress. Since then I've been before 12 different judges in half a dozen courts in Middlesex County. I live in Lowell and it was traumatic when I was told to make nursery school arrangements for my children and appear in Cambridge. And when I did, the case was postponed for a week, and I was told to go to Concord. The next week I had to go to Marlborough in my rickety old car.

I have three or four milk cartons full of papers...I've stayed up till 3 or 4 a.m. preparing forms and statements for my lawyer to give to the court, only to have them turned back to me without [having been read]. [A]nd the problem I went to court to have solved -- I still have it."

Litigant
Lowell Public Hearing
November 14, 1990

TREND

Technology

Modern technology's impact on work is surpassing that of the Industrial Revolution. Technology enables people to do things they once could not, creates choices where once there were none, and challenges virtually every old institution and system we know. The technology-inspired electronic communications revolution has created an era of data processing and transmission that is transforming daily life and creating vastly different world relationships on most political, social, economic, and scientific fronts.

Technology has also given birth to the age of "information overload." Computers are widening our access to data and reducing or eliminating the need for manual labor across a range of enterprises (farming, mining, publishing, government record-keeping, construction, manufacturing).

In *The Futurist* (September/October 1991) Marvin Cetron and Owen Davies write: "All the technological knowledge we work with today will represent only 1% of the knowledge that will be available by 2050.

Where personal/home computers are increasingly common today, personal communications units providing video, audio, and fax functions -- as well as access to stored data bases and information banks -- may be equally common tomorrow. Palmtop PCs (the size of a checkbook), pen computers (writing with a stylus on a screen), and multimedia computers are already here. Society may become increasingly paperless. Telephone and postal services may go the way of the dinosaur; photocopying machines may one day be seen only in museums. Videophones and public electronic mail networks are the current state of the art in wireless communications.

important role for private dispute resolution providers, the choice of process should never be dictated by the user's ability to pay. CJC staff would work in concert with privately funded dispute resolution providers to meet the demand for multi-option justice and to discourage the evolution of a two-tiered system (private services for the "haves," public services for the "have nots").

The CJC network should be decentralized, perhaps even to a greater degree than today's district courts. While cities would be home to large CJCs, satellite centers, local annexes, and community dispute resolution centers would be widely dispersed. Each CJC annex would be staffed with a justice ombudsperson, whose functions would include monitoring consumer satisfaction with local justice. All CJCs, large and small, would be electronically linked. In the near future, access to the CJC will be possible through home and office computers.

Multilocal justice and long-distance justice emphatically do not suggest the abandonment of constitutional rights. The right to confront one's accuser, for instance, would be zealously preserved wherever necessary. Localized justice would humanize and personalize justice, not render it parochial or regional. The CJC would provide equal access to all. It can do so and still promise those due process and equal protection guarantees that will be as vital in 2022 as they are today.

Courts Without Walls

The Commonwealth's courts should incorporate the best justice-appropriate technology into their day-to-day life.

Thanks to communication, information, and transportation technology, life's tempo has quickened. The pace of daily court business, its services, and performance must keep up if the justice system is to remain relevant to the times and responsive to public need.

The process should begin with a comprehensive evaluation of existing computer systems, with the objective of upgrading them into a true information management and communications network. At the same time, communications technology to enhance access to justice must be consistently factored into the comprehensive plan for the future of the courts.

Technology already offers the Massachusetts justice system a vast array of tools to facilitate record keeping and to speed factual analysis, scheduling, calendaring, and case processing. Most such tools have yet to be fully implemented in the courts. And there will soon be a new universe of possibilities for justice technology in the Commonwealth. Many futurists predict that one day computers will routinely

translate legal jargon into simplified English, or any one of dozens of other languages at the touch of a button; word processors that automatically transcribe testimony will assist court reporters; litigants will be able to opt for video hearings from home; juries may consist of individuals who are separated by space but are linked via interactive video technology; and robots may be common in the courthouse.

In the future, the Commonwealth's justice system should employ well-tested technology to make dispute resolution more efficient, more fair, more comprehensible. Justice must be assisted, not dominated by technology.

Already, technology is enhancing criminal justice through improved information systems, interactive video-conferencing, electronic image management and evidentiary analysis, and through expert testimony and sentencing guidelines provided by artificial intelligence. New medical treatments for drug-addicted offenders could change the nature of corrections. And there will surely be future enhancements for law enforcement and corrections—laser shields, electronic fencing, and asteroid prisons, to name but a futuristic few.

In comprehensive justice centers electronics will permit remote access to data and counseling for those who cannot physically visit the centers. They will guide the literate or illiterate, hearing or hearing-impaired, able-bodied or disabled justice-seekers through a range of available justice options. They will help match disputes to the appropriate dispute resolution process. A new generation of courthouse annexes permitting 24-hour-a-day access to services could be located in shopping centers, public libraries, and other locations, much as automated teller machines today facilitate access to banking and financial services.

Technology will also enhance public understanding of justice. Computers will help evaluate case at intake, compare decision-making processes, and improve dispute resolution outcomes by helping disputants accurately assess options and possible results.

Expert systems and artificial intelligence offer exciting possibilities for the courts and the law. Expert systems are special-purpose computer programs, expert in a narrow problem area; already they increase the consistency of legal decisions by providing relevant information to decision makers. Artificial intelligence describes a subset of expert systems that, according to Professor Edwina Rissland of the University of Massachusetts, "make machines do things that would require intelligence if done by man."

BY 2022 PEN TO PAPER LIKELY WILL BE A THING OF THE PAST FOR MANY COURT PROCEDURES AND WORK PRODUCTS... BRIEFS AND OTHER COURT-RELATED DOCUMENTS WILL BE SUBMITTED ELECTRONICALLY. ACTIONS ON MOTIONS, DECISIONS ON SUMMARY JUDGMENTS, AND OTHER COURT DETERMINATIONS WILL BE ISSUED ELECTRONICALLY.

Law Librarian and Professor of Law
Western New England School of Law
Springfield Public Hearing
November 14, 1990

TREND

Artificial Intelligence

Artificial Intelligence (AI) is moving into the mainstream of practical application, creating a revolution that may surpass microprocessing.

Writing in The

Futurist9May/June 1991)

Joseph E. Coates, Jennifer Jarratt, and John B. Mahaffie

note that "Intelligent machines may eventually match humans in speech, vision, language, communication, and thought." By the Year 2000, predict the authors, AI will affect 60% to 90% of all jobs in large organizations, augmenting, displacing, downgrading or even eliminating human workers. Its potential for solving problems, assimilating data, teaching, and training is immense. Some futurists predict detrimental effects from this new reliance on technology: human physical degradation and loss of desire to cope with society. Others see it as immensely exciting, with potential for ever greater efficiencies.

The hybrid discipline of artificial intelligence and the law is exploring ways to automate that part of legal reasoning that deals with formal rules. Artificial intelligence and expert systems have already helped assess the monetary value of cases for settlement purposes, examined statutes for ambiguities and loopholes, and facilitated sentencing guideline systems. In the future, artificial intelligence may enable disputants to conduct case assessments, review conflict resolution options, examine likely costs, and analyze possible outcomes and settlements. The practical economies of this new technology, for both the public and the courts, are virtually boundless.

The Supreme Judicial Court should create a Standing Task Force on Technology and Justice to integrate existing and emerging technologies into court operations systematically.

MULTI-OPTION JUSTICE

PATHWAY 2

In seeking to resolve tomorrow's disputes, the justice consumer will demand options as surely as he or she will insist on choices in seeking any other valuable commodity. Then, as now, adversary justice may play the leading role in resolving conflict. For that to be so, however, dramatic improvements must be made in the way the courts operate and in how cases are litigated and tried. At the same time, consistent with strong public support for options, the courts must be prepared to offer non-adjudicatory methods for settling conflict. Teaching constructive, creative approaches to dispute resolution must become part of school curricula at all levels. Commitment to the twin goals of improved adversary justice and a range of non-adjudicatory alternatives will go far toward improving the quality of justice in Massachusetts.

Public Disillusionment

In its public opinion survey the Commission asked the people of Massachusetts to identify the major problems facing the courts today. While they gave a wide range of answers, the greatest number of respondents - more than 4 in 10- gave "case load too full/too crowded" and "process too slow" as their answers. Sixty-nine percent of the public felt the courts need "a lot of improvement" in providing "speedy justice". And one in two felt that such improvement was needed in court management. Seventy-nine percent of the public felt that "court procedures are hard to understand."

Improved Adjudicatory Justice

The Massachusetts courts should prepare for the future by beginning to improve adjudicatory justice now.

The Commission envisions a future in which a range of conflict resolution options is available to new generations of disputants. Traditional adjudicatory justice- based on the advocacy of opposing positions and judgments by impartial decision makers- may continue to play the central role. But it will be a less utilized and less satisfactory unless bold measures are taken in the next 30 years to correct what the public views as shortcomings in the process and administration of "conventional" justice.

The challenges that confront today's courts as they attempt to provide quality justice are not solely the product of heavy caseloads and inadequate resources. While in 1988 the Commonwealth's courts saw more case filing than the national medium, they also had more money to deal with them. In 1988 Massachusetts criminal case filings per 10,000 residents exceeded the national medium by 27%; civil cases exceeded the medium by 40%. But the state's per capita expenditures on the courts in that same year (\$33.46) also exceeded the national average by 27%.

In the years ahead the courts will need systemic cures for heavily congested courts, epidemic delays, high costs, and related administrative and management headaches. Adversary justice must be made more efficient, more affordable, and more accessible to the justice consumer.

Streamlined adjudication and court administration are essential to the Commission's vision of future justice. **Strategies** to move the courts toward that goal include:

- **A single Court of Justice** at the trial court level, divided into such statewide, regional, and local functional or geographic divisions as the Supreme Judicial Court deems necessary. Although we take no position on how many different kinds of courts there should be, we believe that some basic divisions, such as between Superior Court and District Court, for example, are sensible, at least at this time. Whether that will be true in the future, however, as the business of the court evolves, is another matter- hence the recommendation that the Supreme Judicial Court be able to make these determinations as circumstances warrant.
- A permanent **judicial redistricting** function within the courts to study and recommend geographical changes as needed.

- The power to **reallocate resources** throughout the courts as necessary to permit a fairer distribution of resources and to facilitate the mobility of people and the migration of good practices
- A larger cadre of **magistrates** to handle some of the more routine judicial functions, with their authority defined by the Supreme Judicial Court.
- Additional court-established standards for **active case management**, processing and dispositions. So long as quality control is guaranteed, and local standards are acceptable.
- **Individual case responsibility.** Every case entering the system should be the personal responsibility of a case manager (a judge, an administrator) accountable for the case's movement and ultimate disposition. An "individual calendar system" is another possible approach. The key to the process is early case evaluation, early intervention in the event of unwarranted delay, and personal accountability.
- **"Managed discovery"** to curb fact finding excesses and abuses in civil litigation.
- **Differentiated case management** in both criminal and civil cases to sort cases according to type and complexity and assign them to different time tracks for discovery, trial, and other dispute resolution processes.

Strategies to improve criminal adjudication include:

- In certain complex criminal matter involving, e.g. multiple defendants, extensive pre-trial work, or complicated facts and/or voluminous documents, a single judge to hear the case from arraignment through sentencing.
- A comprehensive criminal justice information system to perform such tasks as scheduling, docketing, and calendaring for every case, arrest, bail, sentencing, and case management reports; universal file sharing; generations of case histories that provide automatic reporting on the disposition of every case by charge, count, or by what ever means the state requires.

Public Predictions About Future Justice

Asked to look ahead to the future and imagine the biggest problem that will face the justice system, Massachusetts residents expressed a range of opinions. By and large they expect today's problems to continue and grow worse. The greatest number (21%) predicted that heavy case loads would be the number one problem. The next largest (14%) felt that drugs, crime, and increasing violence would be the system's greatest challenge. Sixteen percent of residence of minority communities cited lack of education as the second largest justice problem, after drugs, crimes and violence (18%). Financial problems, system unfairness, and jail overcrowding were also identified as problems by the general population.

TREND

Alternative Dispute Resolution

In the United States and Massachusetts a wide array of alternative dispute resolution (ADR) processes are employed with increasing frequency in countless settings. They include the familiar: mediation and arbitration; and the not so familiar: med-arb, mini-trial, neutral evaluation, the multi-door courthouse, private judging, ombudspersons, and summary jury trials. Variations abound. ADR programs today are funded by private individuals and institutions, courts, foundations, government agencies, municipalities, and universities.

The trend is toward innovation. The National Institute for Dispute Resolution alone sponsors programs that include: training family mediators at Child Find of America to counsel parents by telephone to help resolve conflicts that lead them to abduct their children; training health professionals at Boston University in mediation to help resolve conflicts in hospital settings; and through the National League of Cities helping city councils focus on common interests rather than differences as a way of reaching agreement on tough issues.

Fitting the Forum to the Dispute

Adjudication alone will not be adequate to accommodate the next century's wide range of disputes and disputants. Multiple public and private paths to justice must be tomorrow's reality.

Alternative dispute resolution (ADR) has evolved in part because in some cases non-adjudicatory conflict resolution techniques produce more satisfying results, swifter resolutions, and lower costs, both social and personal. ADR's defining characteristic is its search for consensus and common ground. It invites the individual to participate more fully in the resolution of his or her own conflicts.

As ADR gathers momentum, there are growing numbers of trained neutrals (mediators and others) providing ADR services. By 2022 judges may be less likely to handle cases alone; they may work in teams that include other dispute resolution facilitators, whose number and nature will depend upon the case at hand. And while lawyers will surely continue to be advocates, in the future they may be known as much for their counseling, advising, and problem-solving skills as for their advocacy. Negotiation and mediation skills will be a staple in law school curricula and other legal education settings. By 2022 full-service law firms will be advising and representing clients in a wide range of dispute resolution forums as a matter of course. Clients themselves, increasingly sophisticated about available dispute resolution options and their costs, will demand no less.

Institutionalizing ADR means that the Commonwealth's courts must accelerate the incorporation of alternative dispute resolution into the justice system, even as adjudication is improved. The network of comprehensive justice centers (see previous section), would go a long way toward meeting this objective.

Other **strategies** will be needed:

- Increasingly, court clerks and their comprehensive justice center equivalents should be skilled at and committed to **matching problems to the appropriate dispute resolution options**.
- In cases where referral to ADR would aid a more effective disposition, the **parties should be required to participate in an appropriate ADR process**, provided that: the parties' rights to trial are preserved; a judge can allow a disputant to opt-out for good cause; no additional financial burden is imposed on the litigants beyond the normal filing fee; and other conditions are met and certain guidelines for exemption are developed.

- In every appropriate case, **attorneys should discuss with clients the advantages and disadvantages of all available dispute resolution options.**
- The Supreme Judicial Court should create a **Standing Committee on Dispute Resolution**, composed of judges from each court department, members of the bar, academics, dispute resolution professionals, and the public, to foster experimentation with and evaluation of dispute resolution methods.

Teaching Win/Win Justice

The courts should promote training and schooling in alternative dispute resolution.

A cadre of professionals will be in the forefront of alternative dispute resolution providers. But the courts can also help ensure that all those who play a role in dispensing adjudicatory justice are provided with high-quality training to increase their understanding of ADR and improve their ADR skills. Three groups seem obvious candidates. First are **judges**, for whom a proficiency in mediation can be a real boon. Many judges mediate as a matter of course but reportedly with uneven results; many feel they lack necessary mediation skills. Second are **attorneys**, who must be fluent in a range of dispute resolution techniques. The key to most settlements will continue to be the negotiating skills of the lawyers

involved. Third are **disputants** themselves, who need to know their conflict resolution options.

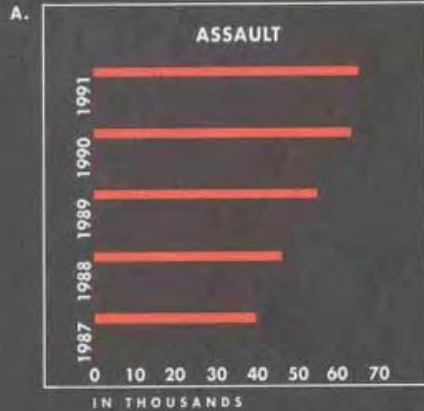
The central objective of alternative dispute resolution is neither to combat congested court dockets nor to relieve overburdened judges, although it can do both. It is instead to enable people to participate in the resolution of their own disputes. The courts should work with educators to promote the development of academic curricula that incorporate instruction in conflict management and reduction, mutual admission of fault, and the constructive defense of rights and positions. Mediation and negotiation training, together with better education about constitutional rights and the role of the courts, should be integrated into the curricula of all Massachusetts schools at all levels. Teaching problem-solving approaches, fact-finding, and other skills that can help untangle issues and emotions will help prepare the disputants of the future to be active participants in the resolution of conflict.

Public Support For Alternative Dispute Resolution

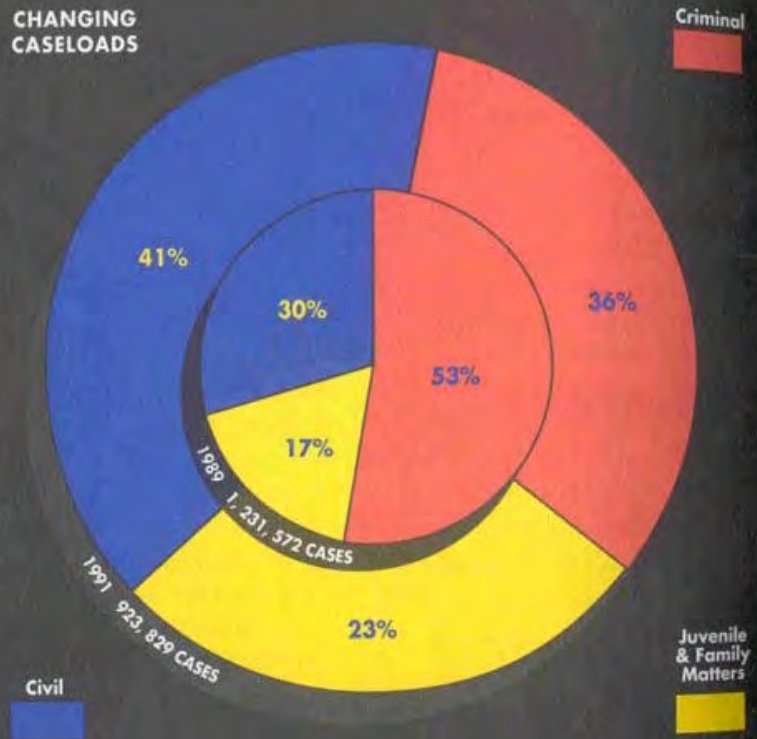
The Commission's public opinion survey showed conclusively that the average Massachusetts citizen today supports and is willing to pay for greater choice in how he/she resolves disputes. When asked about court-annexed mediation, 84% of the population sample expressed support for the idea. When presented with a hypothetical consumer/retailer dispute, only one in five Massachusetts residents expressed a preference for traditional adjudication; 37% said they would prefer to work with a court-provided mediator; and 40% indicated a preference for resolution in a community mediation center.

When asked whether or not they felt it was important to spend tax dollars on having the courts provide a variety of options for resolving disputes, 69% of the public surveyed said it was. While support for publicly funded community-based dispute resolution services was not as great, still more than half (54%) of respondents surveyed felt it was important.

J U S T I C E T R E N D S



CHANGING CASELOADS



A. Assault charges entered in District and Boston Municipal Courts.

B. Ch. 209A, Abuse Prevention Act petitions for restraining orders filed in District, Probate and Family, and Boston Municipal Courts.

C. Care and protection petitions filed in District and Juvenile Courts. Each petition = 1.9 children.

D. *1989 was the first year of the one day/one trial system statewide.

SOURCE: Planning and Development Department, Office of the Chief Administrative Justice, Massachusetts Trial Court

C.

CHILD ABUSE & NEGLECT

Care & Protection Petitions Filed

1991
2,873
1990
2,600
1989
2,285
1988
1,704
1987
1,824



D.

PROSPECTIVE JURORS SUMMONED



PUBLIC TRUST AND CONFIDENCE

PATHWAY 3

In 1978 the National Center for state Courts commissioned a nationwide survey of public attitudes toward justice. The findings revealed widespread dissatisfaction with performance of the courts; indeed, the public ranked the courts' performance lower than that of many other major American institutions. This commission found similar public doubts about justice in Massachusetts today. In order to regain the public's trust and confidence the courts must dramatically alter their way of doing business. they must enlist the support and assistance of other institutions to demystify and explain the mission of the courts and to address their problems. Programs aimed at justice outreach and public "inreach" will be necessary. Special attention must be paid to the improvement of criminal justice, the source of much of the public's mistrust and apprehension.

"IF WE DO NOT INVOLVE OUR KIDS IN OUR JUDICIAL SYSTEM ... WE'VE LOST A GENERATION IN SOME WAYS. AND THAT GENERATION IS GOING TO RAISE THE NEXT GENERATION. SOMEHOW... WE MUST INTERCEDE, WE MUST MAKE OUR CHILDREN FEEL THAT THIS IS WHERE THEY SHOULD COME FOR JUSTICE, THAT THEY DON'T HAVE TO DEAL OUT JUSTICE ON THE STREETS."

Public Defender
Roxbury Public Hearing
February 13, 1991

Regaining Public Trust

Fundamental to regaining public trust is improving the courts' performance. In addition the courts should engage in effective public outreach and do more to hold themselves publicly accountable.

As vividly demonstrated by the Commission's public hearings and opinion survey, the most significant thing the courts can do to promote public confidence is to improve their performance. Reducing delay, enhancing access, increasing efficiency, and improving fairness and sensitivity will go a long way toward recapturing the public's trust.

There is another component of such a campaign. Rebuilding public confidence in justice will require greatly improved communication between the community and the courts, communication that produces greater public understanding of justice. Such improvements should be initiated by the courts themselves. Among the many possible **strategies** are: **televised court proceedings; information campaigns; toll-free information lines; workshops; and explanatory brochures**. Giving the public both formal and informal **means for expressing dissatisfaction** with the work of judges, lawyers, and court personnel (through a formally established courts ombudsperson, for instance) could add much to this effort.

Bringing the business of the courts into the community, through the people who actually work in the system, is also critical to the public's understanding of the process and how it affects their lives. An effective outreach campaign might require judges and other court personnel (as well as the state's thousands of lawyers) to contribute a week a year on behalf of the courts to public outreach, public education, and public dialogue about justice. The result would be a greatly increased appreciation of the courts' mission and problems, as well as enhanced good will.

Linking Courts and Communities

The courts should work to promote the public's trust by "demystifying" justice. To enhance understanding, they should draw the public into courts and comprehensive justice centers through partnerships with the schools and the community.

Bringing the community into the courts through education, through television, and through actual participation in court business should be the counterpart of the justice outreach campaign described above. Public "inreach" - involving lay people in the work of the courts - would give the public a greater sense of ownership in the process.

Linking courts and schools is the natural place to begin. Children are the leaders, creators, users of - and potential victims and offenders in - tomorrow's justice system. Learning about legal principles and processes in the courts themselves would not only illuminate justice but could also reduce the number of youngsters who visit the courts later as offenders. Our children would be informed and enriched by the opportunity to talk with judges, lawyers, clerks, and court staff.

The classroom presence of justice professionals could do much to establish youthful trust in justice. To design and incorporate education about justice into academic curricula would foster in young people an appreciation for the utility of constructive conflict resolution.

Helping students design their own school-based justice systems to resolve student disputes and address disciplinary issues would be yet another way for the courts to help build court-school relationships. Interactive video programs could bring students into the courts to observe a trial or to confer with court personnel. School visits by minority judges and lawyers would provide positive role models for minority youth. Setting up "roaming" court sessions in schools and colleges in the evenings would illustrate justice in action.

Creating bridges between court and community should include establishing groups such as community review panels, citizen advisory committees, and focus groups to filter the dialogue about justice.

In seeking to rebuild the public's confidence in justice, the courts should build working relationships with other major social institutions. Collaborative partnerships with the public are often effective ways to improve government performance. Administrators working with citizen boards, for example, come to better understand the public's point of view. At the same time, citizen members acquire a greater sensitivity to the challenges facing government officials. Community review panels should be established to consider public views on justice and to consult with judges on court operations. Jury pools should more regularly be used as sources of information about the public's perception of the justice system and its needs. Finally, partnerships with the professional community should also be nurtured. The knowledge and expertise of business and academe especially can be a tremendous resource for the courts.

Criminal Justice and Public Confidence

The courts should promote greater community involvement in criminal justice.

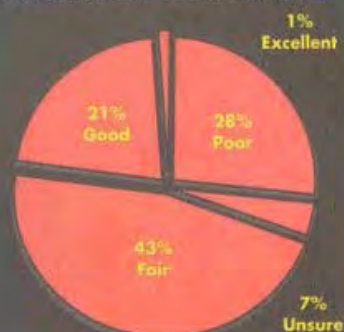
To a large extent the public tends to equate justice with criminal justice. Mention courts to the average Bay Stater and it is probably a criminal trial that comes to mind. When media reports and surveys show that public trust in justice is down, they seem to reflect the public's despair over ever regaining peaceful control of the Commonwealth's streets and neighborhoods.

As valiantly as they may try, the courts cannot single-handedly solve the problem. The criminal justice system is a complex web of law enforcement, judicial, and corrections functions. It is clear that even that powerful partnership will never be sufficient to control crime fully.

What is needed is the participation of the missing fourth partner: the public. Public participation means expanding "neighborhood watch" programs. It means organizing communities to support sensible approaches to crime control; because most crime is intra-community, local solutions work best and should be encouraged. In the future, neighborhood justice centers could provide the forums to resolve minor criminal matters in both informal and court-annexed proceedings.

PUBLIC CONFIDENCE IN JUSTICE

JUSTICE SYSTEM PERFORMANCE



RATING THE PROVIDERS

Court
Employees
37%
Excellent
or Good

Lawyers
47%
Excellent
or Good

Judges
33%
Excellent
or Good

MAJOR PROBLEM AREAS

General
Population

Minorities

Courts Are Hard
to Understand

79%

84%

Too Expensive

81%

84%

People "Like You"
Not Treated Fairly

45%

75%

Court Proceedings
Too Slow

88%

87%

Court Decisions
Are Wrong

43%

60%

SOURCE: Public Attitudes Toward the Future of the Courts, Opinion Dynamics, April 1991

CHECKLIST OF NEEDED IMPROVEMENTS

69% Speedier Justice

60% Independence from Politics

50% Understandability

49% Better Management

49% Affordability

46% More Public Trust

Where a trial is required in a minor criminal matter, it should be local; judgments and penalties tend to be better informed and finer-tuned when all the participants – victims, offenders, witnesses, jurors – come from the same community. There is great potential for public/private partnerships in the future of community criminal justice.

Additional **strategies** to improve criminal justice should include: allowing the accused to present evidence and be assisted by counsel in grand jury proceedings; retaining the “one day/one trial” jury system, which despite its flaws is superior to the alternatives; giving the Jury Commissioner’s Office power to enforce sanctions against citizens who do not appear for jury duty; creating additional alternatives to criminal adjudication; and ensuring the safety and dignity of victims and witnesses.

Sentencing requires immediate and radical reform.

The lack of public confidence in criminal justice is due in large measure to sentencing policies and practices that the public views as inscrutable, inconsistent, and inequitable. And little wonder. Sentencing in Massachusetts – and undoubtedly elsewhere – is sometimes all these things. Strategies for achieving our vision of improved sentencing include: a broadly

constituted **sentencing commission** to create new sentencing guidelines and oversee sentencing procedures; sentencing decisions that **address the causes of the crime** and, where possible, promote the offender’s **rehabilitation**; greater use of **restitution**; aggressive development of **alternative sentencing** options so that in the future incarceration will be reserved for only those offenders who pose genuine threats to public safety; **diversion programs**, especially for first-time and youthful offenders; and the **elimination of mandatory sentencing**, which is costly, eliminates judicial discretion, and produces inequitable results.

Corrections reform must play an integral role in re-establishing public trust in justice. Locking up non-violent offenders actually does little to make the public any safer and often limits the few available opportunities for treatment and rehabilitation. Michael Bender, past Chair of the American Bar Association’s Criminal Justice Section, is more specific:

“[M]erely locking up more and more people will not solve the crime problem. The criminal justice system cannot solve society’s problems ... Adequate education, access to housing, equal

The Crime Ridden Society

American murder rates are seven times as high as those in Europe. There are six times as many robberies as in West Germany and three times as many rapes. As for the Commonwealth, Massachusetts showed a 5% increase in total crime in 1990, compared with 1.6% for the nation. Although much of this increase related to property crimes, Massachusetts still placed 14th among the 50 states in the rate of violent crime per 100,000 people, substantially higher than Rhode Island at 33rd and New Hampshire at 50th (FBI Uniform Crime Reporting Studv. 1990).

TREND

Corrections

The fastest growing trend in corrections today is the use of a very old corrections option: probation. In the United States today some 25% of convicted criminals are in prison, and 11% are on parole. This compares with 64% on probation. At nearly 80%, the percentage of probationers in Massachusetts is substantially higher.



employment opportunities, drug education and treatment, and a decent quality of life are but a few of the social needs that must be addressed if we are going to reduce crime in America on a long-term basis.

Social and economic transformation will not occur overnight. In the meantime there is a legitimate need for secure and humane corrections facilities and sensible corrections policies. The following strategies can accelerate our movement toward a better future: the juvenile justice system must be retained and new creative strategies for youthful offenders explored (e.g., home-based youth workers, adult companions working with students in schools, after-school employment); pre-sentence investigations must be routine if punishment is to fit the criminal first, the crime second; parole should be preserved and enhanced; all proposed changes to the criminal laws should be accompanied by an assessment of their likely impact on court dockets and corrections populations; Intensive Probation Supervision should be further implemented as resources allow; and a wide range of drug and alcohol treatment programs should be available to treat offenders both inside and outside the corrections systems.

Finally, technological alternatives to incarceration should be investigated, tested, and constitutionally evaluated. While they may conjure up visions of Huxley's *Brave New World*, technological innovations in sentencing will be plentiful and very real by 2022. Subject to withstanding rigorous constitutional scrutiny, electronic monitoring via implanted monitors and electronic or chemical stimuli to control behavior may allow conduct to be molded to appropriate models.

EQUAL JUSTICE

PATHWAY 4

For many residents of the Commonwealth today the justice system does not work. As documented by the Commission's public opinion survey, minority residents of Massachusetts in percentages even greater than in the population generally find too little access and too little fairness in the courts. Over the next 30 years, as the populations of the nation and the Commonwealth become more diverse, courts will have to do more to ensure that equal justice is available to all. The objective is not the creation of culture-specific legal standards or linguistically segregated court sessions. It is the opposite: a system with such a high degree of reliability and professionalism that every citizen will use it with the confidence that he or she will be understood and treated fairly.

TREND

Immigration

According to the U.S. Immigration and Naturalization Service, legal immigration will bring some 8.5 million new residents to America in the 1990s. Illegal immigration will bring many more. Birthrates, statistically higher for minorities than whites, will add to the rapid growth of minority populations.

Shifts in the demographic picture will not be as profound in Massachusetts as in many other states. Though immigration to the state has jumped 38% since 1986, minorities will constitute 18.5% of the total state population by the year 2015. Forecasters of Woods & Poole Economics in Washington, D.C., predict a drop in the Commonwealth's Caucasian population from 96.3% of the total in 1970 to 81.5% by 2015. By then, 7.8% of state residents will be Hispanic (only 1.1% were in 1970), and 7% will be black (up from 3.1% in 1970).

Increasing Diversity

Inexorably, the populations of the world, the nation, and the state are changing. Among Americans, the trend is toward even greater heterogeneity in race, ethnicity, and language. The 1990 U.S. census showed that even today California's non-Hispanic whites constitute a minority (44%) of the state's population. Closer to home – on the streets of Lowell and Springfield, New Bedford and Boston – the familiar sound of English is complemented by the cadences of Spanish, Korean, Cantonese, Japanese, and Cambodian. In some places, "minority" many soon no longer describe the same racial, ethnic, and cultural groups to whom the term is applied today.

The importance of this trend toward racial, ethnic, and cultural diversity cannot be overstated. Its effect on the justice system of the future will surely be as great or greater than its effect on any other major social institution. The ever-changing mix of peoples and the ideas they bring to society and the courts, will bring new vitality, new perspectives, and new talents to justice. If, in 2022, each Massachusetts resident, regardless of race, ethnicity, or national origin, is to participate fully and willingly in the justice system, then equal justice and equal access to justice will have to become more reality than aspiration.

The courts must work zealously to ensure that by 2022 all people suffer neither the reality nor

the perception of unfairness.

The Commission's 1991 public opinion survey revealed some disturbing perceptions about fairness in the courts. While almost a quarter of the general population strongly agreed that blacks and other minorities are not treated fairly by the courts, 56% of residents of minority communities held that view. When asked about their impressions formed in contacts with the courts, 25% of the overall populations cited delay and inefficiency as the biggest negative. Among minority residents, however, unfairness was the most significant complaint (25%).

Forty-five percent of the total population felt that people like themselves were not treated fairly by the courts; 50% to 60% felt this was true for women, blacks, minorities, and the poor.

For significant parts of the population today the Massachusetts justice system is not working. While the Supreme Judicial Court's Commission to Study Racial and Ethnic Bias in the Courts and Committee for Gender Equality represent important commitments to identifying, understanding, and eradicating discrimination in our courts, there is more to be done.

Diversity in the Work Force

In the future, the Massachusetts courts must more closely mirror society. They must be staffed with judges, clerks, and other personnel who reflect the races, ethnicities, and genders of the populations they serve. The chief administrative justice should report annually on progress toward the goal of achieving diversity in the courts.

The Commission's Access to Justice Task Force held hearings across the Commonwealth in 1990 and 1991. Frequently heard was the view that increasing racial and ethnic diversity on the bench and in clerical positions would significantly reduce the anxiety and sense of intimidation that many minority justice seekers reported feeling in their contact with the courts.

Gender changes in society will affect the courts of the future. There are likely to be changes in laws (such as those governing health and life insurance, for example) that will acknowledge the role of women as wage earners and leaders. The justice system will be enriched by increases in the number of female judges, attorneys, mediators, and law enforcement personnel. Already many law schools report classes in which more than half the students are women. On the Minnesota Supreme Court today a majority of the justices are women.

In time, the ways of doing business in the halls of justice will change profoundly under the influence of the new mix of genders and peoples.

Understanding Differences

All who work in the courts must be skilled at dealing with issues of diversity. Ongoing training and education programs focusing on racism, ethnic bias, gender inequality, and other forms of discrimination should be mandatory. Such programs should be based on the best available scholarship and reviewed and updated regularly.

There is racism in the justice system today. There is also overwhelming public support for its elimination. The Commission's public opinion survey found that 67% of the general population and 91% of residents of minority communities felt it was "important" or "very important" to devote tax dollars to "expanding training programs for justice system personnel to deal more fairly with people from other cultural or ethnic backgrounds."

Today many minorities and women feel unwelcome and powerless in the courts. Many court users bring with them misunderstandings and confusion about the justice system, some of which stems from their own cultural and ethnic

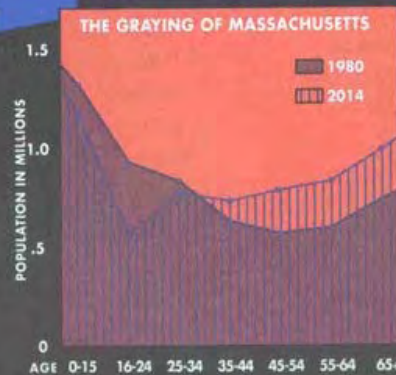
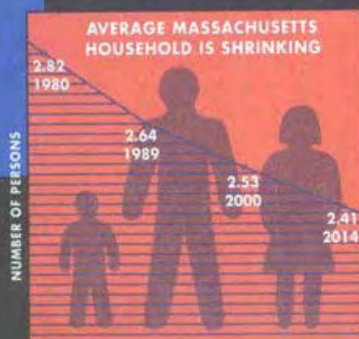
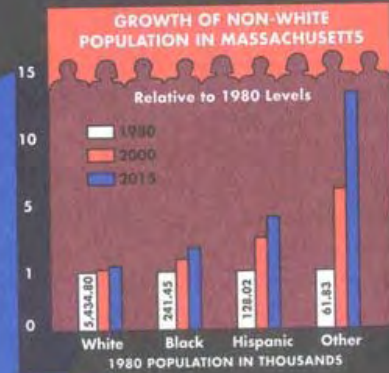
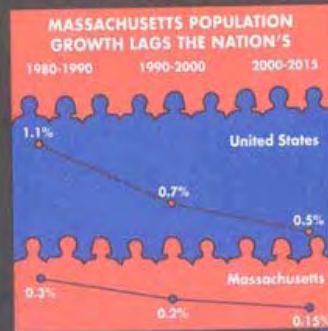
TREND

Women in the Work Force

Women will soon outnumber men in the American work force. In 1986, 55% of American women, regardless of age or parenthood, were employed or seeking employment, up from 43% in 1970 and only 38% in 1960, according to a 1988 Center for Law and Social Policy report. The Bureau of Labor Statistics projects that by the year 2000 women will constitute 59.9% of the work force. Over the next 30 years women will find richer professional opportunities than ever before, better and more varied child-care services, and more leadership roles. Working women are significantly affecting fertility and child-bearing patterns as they establish careers first, delay having children, and have fewer of them.

With increasing numbers of women in the work force, employers will be pressured to be more flexible about when and where people work. Women employees will ask for - and get - better salaries as well. In 1960 women's salaries averaged just 61% of men's salaries; by 1986 they were 70% of men's; and by 2000 that number is projected to be 85%.

CHANGING PROFILES



SOURCES: DRI-McGraw Hill;
Woods & Poole Economics

traditions. Clerks, judges, bailiffs, and other court personnel are often unfamiliar with cultural and ethnic perspectives that are different from their own. Behavior and attitude can be misinterpreted. Greater understanding of and respect for the sources of these confusions is necessary. In the meantime the courts must deliver equal justice in spite of them.

Valuing diversity can be taught, as can sensitivity to the harmful effects of "innocent" as well as willful ignorance about differences among people. Programs should be launched long before 2022 to educate all justice providers about real and potential ethnic, gender-based, and racial misconceptions and misunderstandings.

Each court and justice center should be staffed with "cultural interpreters." Multilingual justice information systems should be accessible by telephone and at all courthouses.

In the Massachusetts of the future, all people, regardless of their culture, ethnic traditions, or spoken language, must have easy access to useful information about law and justice. In the future, justice seekers at the Commonwealth's courthouses or comprehensive justice centers should both understand and be understood.

Courthouses and CJsCs should be adequately equipped with translators trained not only to interpret for, but to explain the system to, those who do not speak English or who are deaf or hearing-impaired. Interpreters should be fluent in the language and culture of the people they work with and in the language and culture of the law. This will ensure accurate translation where needed for court user and court employee alike.

In the future, a call to a courthouse or CJC may be answered by an interactive voice response system that will provide basic information in a choice of languages. Such a system will one day be able to route calls to specialized services, give directions, and provide access to various data bases. The intention here is not to make computer technology a substitute for clerks or counselors, nor to create robot counsel for parties otherwise pro se. The intention is to harness technology to guide, inform, and educate.

The Commission's view on linguistic diversity should not be construed as a position for or against a policy of bilingualism or multilingualism in society, the schools, or the courts. The over-arching objective with respect to language and justice is effective communication, understanding, and equal access for every court user.

ARRIVAL AT THE DISTRICT COURT IS A FRIGHTENING AND INTIMIDATING EXPERIENCE. THE CLERK'S OFFICE IS CONFUSING; ALL THE SIGNS ARE IN ENGLISH; THERE IS NO ONE TO ASK WHERE TO GO...IF YOU DO NOT SPEAK GOOD ENGLISH, IT IS IMPOSSIBLE TO DO BUSINESS...

Representative of the Cambodian Mutual Assistance Association
Lowell Public Hearing November 13, 1990.

WE HAVE A WHITE
JUDICIAL SYSTEM
WHICH IS
INCREASINGLY
DEALING WITH
PEOPLE OF COLOR.
WHEN YOU STAND
IN A COURT AND ALL
THE PEOPLE IN
POWER ARE WHITE
AND YOU ARE NOT,
YOU FEEL AS IF YOU
MIGHT AS WELL BE
IN SOUTH AFRICA
OR BACK IN THE
'50s...BECAUSE YOU
DON'T FEEL THAT
YOU HAVE A
CHANCE...

Attorney
Roxbury Public Hearing
February 13, 1991

Finding Common Ground

Justice in Massachusetts should respond to and draw upon other cultural perspectives and practices as it fashion the adjudicatory and alternative dispute resolution processes of the future.

Immigrants coming to the United states today are evincing increasing ethnic pride and the desire to preserve the customs of their cultures. Many hold distinctly non-Western views and expectations about justice and how to attain it. They may argue that their ways should be accepted by the historically dominant culture of America, and they may wish to settle disputes in their own, non-Western traditions. They may inject a new sense of tolerance and mutual respect into the American mosaic. But a larger, more diverse population may also produce more disputes, many of them stemming from intercultural conflict.

The justice system has a critical role to play if America is to be successful as an ever more diverse society. The primary mission of the courts must continue to be the impartial adjudication of disputes and the impartial enforcement of consistent and uniform laws, regardless of the race, gender, cultural or ethnic background of the disputants. But in order to sustain this role it is essential that all people respect the justice system as the ultimate authority in resolving disputes and enforcing laws. To achieve and maintain that respect, the courts have important decisions to make about how conflicts should be resolved. In making these decisions, the justice system should evaluate a wide range of alternative approaches - some of them distinctly non-Western - to resolving disputes. Such a notion is consistent with the Commission's vision of a statewide network of comprehensive justice centers, each offering a diverse menu of dispute resolution options and services.

NEW MODELS OF LEADERSHIP

PATHWAY 5

For a host of reasons the courts of today have been neither encouraged nor in some instances allowed to develop real leadership models. In the Commission's vision of the future, leadership will be cultivated at all levels of the justice system. Today the courts' "justice culture" and "management culture" are separate and distinct, with objectives and methods that not only differ from one another but sometimes actually conflict. For the courts of the future to transcend today's sometimes fractious and fractionated administrative environment, leadership must begin now to create new management models and practices to meet tomorrow's challenges. A new professionalism must be expected, encouraged, and rewarded in all those who work within the courts. And in exchange for new authority over and responsibility for their affairs, the courts must be held accountable for their performance.

LEADERSHIP IS THE ART OF ARTICULATING A PHILOSOPHY AND OBTAINING THE COMMITMENT OF PEOPLE AT ALL LEVELS. IT HAS LESS TO DO WITH RULES AND PROCEDURES THAN WITH SPIRIT.

Organizational Spirit

The Massachusetts Supreme Judicial Court should embark on a major initiative to define and develop administrative leadership at all levels of the justice system.

While there is much discussion about management in the courts, of even greater importance is leadership. Leadership is the art of inspiring people to internalize, work toward, and promote an organization's goals. It requires articulating a philosophy and obtaining the commitment of the people at all levels. It has less to do with rules and procedures than with spirit.

Because leadership is a matter of spirit, its cultivation can occur independent of changes in institutional or management structures. Real leadership exists in the justice system today, but its greater development has been inhibited by the belief that structural change in the courts was a necessary precursor. (The flexibility to make structural changes is, of course, also critical.) Invigorated, vital leadership must be tomorrow's rule, not its exception.

Many of the dynamics of court administration conspire against strong leadership in the courts. Judges are viewed mainly as independent, individual contributors who have been selected for their personal abilities and qualities in deciding individual cases. But they are not generally selected for their abilities to influence or control the ebb and flow of a court's business. This does not make leadership any less necessary in the courts. Indeed it makes it more essential and also more complex. It underscores the need for a careful process by which judicial leaders can be identified and developed.

Today there are two valued cultures in the courts. The traditional one is the justice culture, with its emphasis on individual discretion, careful deliberation, and independence of decision making. In many respects its values are not readily compatible with the values of the other, newer culture, the management culture, where qualities such as efficiency, productivity, cost effectiveness, and accountability are valued.

The clash between the justice culture and the management culture is a fact of life in court management today. It is not peculiar to Massachusetts. It is the fundamental factor that must be taken into account in redesigning court systems. And it is clearly not without its benefits, as it reminds us that justice must not only be done but must appear to be done. The appearance of justice is often affected by the quality of judicial administration and management.

In the justice culture, the judge is a powerful, isolated figure, in many respects an icon of the entire justice process. But in the management culture, free-flowing communication is essential. Preserving the judge as the embodiment of the judicial process may be a useful and important element of the justice process, but in many cases it serves as a brake on open communication within the courthouse. People do not communicate easily with judges, and visa versa.

Leadership can be demonstrated but is not easily taught. **Strategies** to enhance it throughout the justice system are needed. As a starting point, the Supreme Judicial Court should sponsor a **series of conferences** at which issues of leadership are addressed. Successful **judicial leadership models** elsewhere should be surveyed. **Leadership positions** should be established at appropriate points in the court system to facilitate the development and advancement of persons with leadership abilities and to promote the transfer of good practices within the courts. There should be an emphasis at all levels on "**management [and leadership] by walking around.**" This is the best way to remain involved with - and to influence - all levels of the organization.

Quality Management

A philosophy of management must be developed and articulated.

Many aspects of the Massachusetts justice system meet or exceed national standards. Missing from all three branches of Massachusetts government, however, is a shared vision of how the Commonwealth's courts should be administered. The result is that no concrete plan of administration or administrative philosophy to provide guidance has ever been adopted by the courts. Specific goals and objectives have not been internalized. The problem is born partially of an ambiguous statutory scheme that seems to emphasize uniformity and strong central leadership even as it deprives the courts of basic management controls. It is an arrangement that both requires and frustrates high performance standards.

Historically, administration of the local courts has been quasi-political, and good management has often served as a subordinate objective. Management has had little direct relationship to cases; it has merely followed particular practices and procedures or sought more resources to apply to problems.

At the same time, the present statutorily prescribed structure of the system and its administration is inflexible. There is little opportunity for significant improvement. This discourages strong management and innovation. Largely because of legislative control there is an unequal distribution of resources, and there are few effective means within the judiciary to redistribute resources.

The Future of State Court Administration

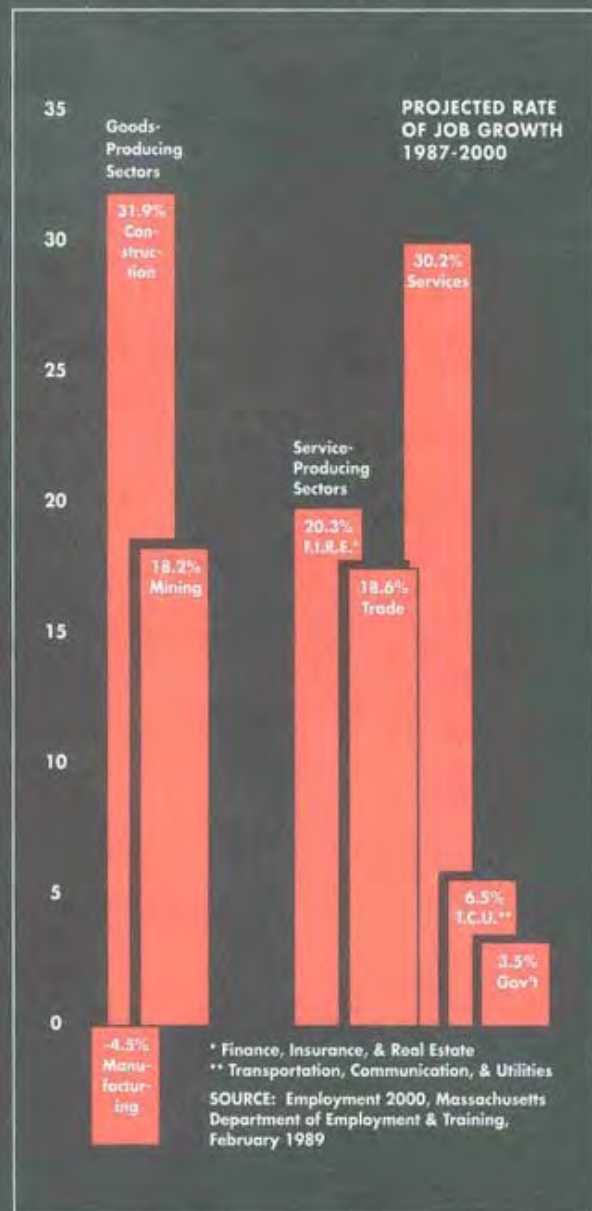
"[S]ome organizations may be shifting to...what Buckminster Fuller calls 'The Tensegrity Organization,' and the organizational structure Alvin Toffler has referred to in his book *The Third Wave*...

[N]o longer is big better; no longer is centralization efficient; no longer is synchronization necessary; instead a more individualized or "demassified" society is forming...

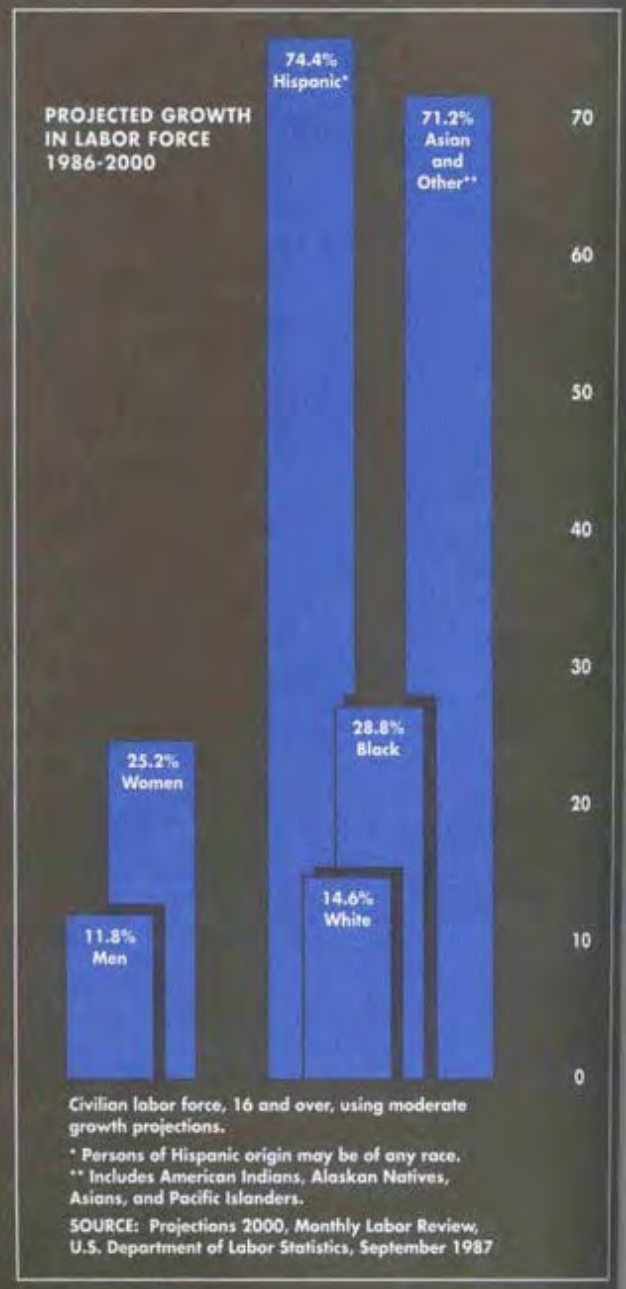
It may also lead to an organization based on tensegrity - where each individual in the organization has equal access to any other individual and wherein power is defined as competence and not as power-over-others. The dichotomy between the administrative and adjudicatory dimensions from this new model would be nonexistent."

Sohail Inayatullah
Futures Research Quarterly
Spring 1986

MASSACHUSETTS



UNITED STATES



Individual courts have benefited or been burdened by this situation over the years depending on their influence with the legislature.

Today there are too many separate management units within the courts, too many trial court departments at the state level (7) and too many individual courts at the local level (108). Paradoxically the emphasis on centralization of judicial administration has inhibited local initiative. There is a strong tendency to await instructions from headquarters, partly to avoid acting without authority and partly to avoid the responsibility and discomfort of decision making. Structural, cultural, historical, and other factors lead to inadequate communication throughout the system. At the state level, communications tend to be top-down. Internal communication within the local courts is poor, a reflection of the almost complete absence of integrated organization at this critical level.

Strategies for improvement should include the development of a systemwide court management plan. The genesis of such a plan should include a series of statewide and regional management conferences, perhaps integrated with the leadership conferences described above, and should be a major high-visibility effort. Once the plan is adopted an annual courtwide planning effort would ensure that it evolves along with changing norms and goals, that

judicial and support staffs are mobilized towards common objectives, and that revolutionizing management and leadership is a participatory process that encourages the system's best thinking.

Fostering Professionalism

The future of the courts is in the hands of those who work within them. Mechanisms for enhancing job performance and developing talent through merit recognition and career paths should be instituted.

The American worker of 2022 will be very different from today's. As the worker changes, so must the employer: each will expect more of the other, each must invest more in the other. The justice system, as an employer, cannot afford to be an exception. It will have to accommodate the new work force by competing effectively with other employers for educated, professional, competent workers. It will have to prove both to workers (from entry-level clerk to the most senior judge) and the public that it supports and rewards talent and performance. If it is successful it will be rewarded with workers who are versatile, energetic, and committed.

In the future, employee-specific professionalism-enhancing strategies should be developed to recognize justice employees for high-quality job performance; to institute systemwide

TREND

The Changing Employee-Employer Relationship

As service-industry jobs requiring more education increase, employers are expecting more of, and investing more in, their workers. Quality employees are recognized as increasingly valuable, and employers with foresight are working harder to cultivate and keep them. As more women enter the work force, as there are more families with two working parents, employer support for families is becoming an important work benefit. There will soon be greater flexibility in work schedules and locations, and more support for work-related education. Home and work lives are already becoming increasingly integrated. Parental leave policies and employer support for child care are emerging trends.

merit-based compensation; to maximize the **involvement of personnel** from all levels in court system administration and policy making; and to fully **integrate continuing education** into the court's work schedule and into each employee's work life. All new employee **appointments and promotions** should be based exclusively on merit. This will ensure that the courts benefit from the talents of their employees and will remind all employees that there are rewards for excellence.

Autonomy and Accountability

In the future the courts must be afforded greater autonomy but with accountability.

The autonomy of the judicial branch is born of the need for complete independence in decision making. Judges should not be influenced by extraneous factors in the decision-making process. Massachusetts protects the independence of its judges more than most states by granting them tenure to age 70 so long as they remain on "good behavior." In contrast, the Commonwealth's courts have enjoyed far less independence in their administration, with a large number of basic management functions affected and largely controlled by the executive and legislative branches. Some view this as inter-governmental meddling. Others legitimately ask: if judges do not stand for election, where is the public accountability for court administration? Put in more practical terms, how can the public be assured that the judiciary will utilize responsibly the administrative autonomy that it requires?

Among those **strategies** that would create greater justice system accountability, promote the public's trust and confidence, and at the same time preserve judicial independence are:

- **Appointment by the governor of the chief justice of the Supreme Judicial Court for one non-renewable term of 10 years.** At the conclusion of that term the chief justice, if not yet 70, would become an associate justice of the court. The governor would then appoint another associate justice to the position of chief justice, unless a vacancy existed on the court, in which case the new chief justice could be appointed from outside the court. The rationale for this proposal is to inject new ideas and new energy into the highest administrative echelon of the court system at regular intervals. It also recognizes that the chief justice's managerial role is an extremely taxing one that no one man or woman should have to perform for an indefinite period. This recommendation must not be construed as a lack of confidence in the administrative abilities of any chief justice, past or present.

- Give additional weight in the appointment process to the **chief justice's role as administrative head of the entire court system**. While the chief justice's foremost role is that of jurist, his or her leadership and administrative qualifications should also be considered.
- Maintain a **judicial peer review / enhancement program**. The heart of a judicial review system should be the confidential review of a judge's performance by a panel of his or her peers, with the objective of **assisting judges in improving their judicial performance**. While this process should be confidential, it should also allow for the inclusion of input from other informed sources, expressly including the public. While judicial productivity (e.g., the volume of cases decided) is one legitimate consideration, judicial quality (e.g., diligence to duties, patience and courtesy to litigants and attorneys, dignity, and impartiality) must also be recognized and given weight in the equation. The substance of individual decisions should not be a factor unless, taken as a whole, the decisions indicate a consistent disregard for the law.
- Institute a **performance review system for court managers**. Just as institutions are audited to evaluate their financial health, courts should be audited periodically on their overall administrative performance.
- The Supreme Judicial Court should create and appoint the members of a **new body to be known as the Judicial Conduct and Tenure Commission**.

- The members of the new Judicial Conduct and Tenure Commission should include **judges, lawyers, and members of the public** who are neither judges nor lawyers.

The **functions of the existing Judicial Conduct Commission** (i.e., the investigation of complaints of judicial misconduct and disability and the recommendation to the Supreme Judicial Court of appropriate action) should be merged into a new Judicial Conduct and Tenure Commission, the additional duties of which are described below. The new

commission should operate pursuant to standards and rules promulgated by the Supreme Judicial Court.

- **Every complaint** filed with the Commission should be **acknowledged**. Every complaint should be **notified of the disposition** of his or her complaint. The Supreme Judicial Court should implement a program of **public outreach** to inform the public of the existence and purpose of the Commission, and of how a complaint can be processed.

- In addition to reviewing claims of misconduct and disability, the new commission should **periodically review the overall performance** of every judge in the Commonwealth and report its evaluation to the Supreme Judicial Court. In the event the Commission finds serious deficiencies in a judge's performance, it may recommend non-retention.

- By constitutional amendment, the Supreme Judicial Court should be granted the power to **remove a judge** from office. This new authority would in no way intrude upon the legislature's present ability to remove a judge from office through constitutionally provided means.

- The existing judicial **appointment process should remain unchanged**. Judges should serve until age 70, unless rejected for retention and removed by the Supreme Judicial Court.

- The Supreme Judicial Court should **establish standards and rules** to govern the review process and establish the **frequency with which such reviews should occur**. The should occur often enough to assure the public that the courts are committed to high-quality judicial performance and that oversight is real and ongoing but not so frequently as to unduly affect the day-to-day duties of judges.

- As in peer review, **the substance of a judge's decisions should not be a consideration** in the retention review process unless those decisions, taken as a whole, reveal a pattern of misconduct, disability, or disregard for the law.

- The Supreme Judicial Court's campaign to inform and educate the public about the functions of the new Judicial Conduct and Tenure Commission should include the regular **publication of a calendar of those judges coming up for review in a given year** and information to guide the public in its participation in the process.

In the waning years of the 20th century the role of the courts in society has changed dramatically from that of a century, or even a generation, ago. Issues of ethics and social policy that were once the province of other governmental and social institutions have become and seem likely to remain wards of the court. While questions concerning access to housing, health care, and education - not to mention the right to life and the right to die - raise legal issues that are not altogether new to the justice system, the nature of the questions has changed. The courts are increasingly asked to be the arbiters of last resort in the allocation of scarce resources. And they are asked to uphold and enforce laws providing benefits and services that governments can sometimes no longer afford. The justice system of today and tomorrow does not and will not shrink from such responsibilities. Society and government should acknowledge, however, that the judicial branch has been obliged to take on the role of health and human services broker / social policy maker and provide the courts with resources adequate to the task. In addition, for there to be "equal access" to statutorily created programs and assistance, there must be sufficient public support for legal services to ensure that all those who need justice can obtain it.

TREND

Poverty

The combined effect of decreasing state revenues, the decline of federal support for poverty programs and the widening gap between rich and poor has been to increase poverty in America and exacerbate its effects. In 1986 more than 32 million Americans were poor. The gulf between society's "haves" and "have nots" continues to grow wider. There is increased stratification and polarization along socio-economic lines. The median income of the wealthiest tenth of American families grew more than \$13,000 between 1970 and 1987, while income among the poorest two-fifths of families actually dropped more than \$500.

Futurists predict the total number of Americans in poverty will climb; children, minorities, and those living in households headed by women will be especially hard hit. The so-called feminization of poverty is a function of rising divorce rates, the breakup of traditional families, declining welfare benefits relative to inflation, and the continuing inequities in earnings -- all subrends that are expected to continue.

Literacy, reduced educational and economic opportunities, and inadequate support services will ensure that poverty remains the key factor in a variety of other tenacious social problems: homelessness, family breakdown, drug-related crime, and AIDS.

In Massachusetts the effects of economic restructuring can be felt across the state. Wages and salaries dropped by nearly 15% between June 1989 and April 1991, with continuing impacts on construction, finance, insurance, real estate, and service employment. Fewer jobs mean fewer opportunities, particularly for the less well-educated and the less affluent.

The Arbiter of Last Resort

In the future, the courts must do more to facilitate access to health and human services and other statutorily created public programs. Where necessary, the courts should order the provision of services mandated by law, even where those services are underfunded or otherwise not adequately provided for.

Unless age-old economic cycles are unexpectedly interrupted in the next century, the fiscal health of the nation and the Commonwealth will continue to wax and wane for the foreseeable future. This trend creates obvious challenges for government, and for the courts especially. In times of economic plenty legislatures and executive agencies create programs and initiatives aimed at addressing important social needs. Then, when the inevitable economic downturn occurs, those same programs too often become victims of underfunding and neglect, frustrating the needs of those who rely on them.

This phenomenon poses a dilemma for the courts. While mandatory and discretionary programs remain on the books and eligibility standards remain unchanged, appropriations dry up and program capacities plummet. But in many cases the courts are still statutorily compelled to use them. For example, treatment programs for drivers convicted of operating a vehicle under the influence of alcohol are both indicated by common sense and provided for by statute. Yet treatment slots in such programs are in woefully short supply. Only a small percentage of those offenders who could benefit from treatment can actually be placed in such programs by the courts. Similarly, while there is overwhelming evidence that drug offenders can be effectively rehabilitated in treatment programs that cost a third to a tenth as much as incarceration, available programs are grossly oversubscribed. Spaces simply do not exist. There are countless other examples of programs -- some discretionary, some mandatory -- whose doors are effectively closed to those who can use them (the public) and those who are obliged to use them (the courts).

It is not only legislative enactments that confront the courts with difficult choices in the face of dwindling resources. The Constitution and those judicial decisions that interpret it also impose grave responsibilities on judges. Education is a case in point. As articulated in *Brown v. Board of Education* (1954) and elsewhere, the federal Constitution forbids unequal access to education. Education is critical to a better future; quality schooling must be a reality if generations of Americans are to acquire the skills necessary to participate fully in society. Today's debates about inequalities among Massachusetts school districts and about the trend toward the de facto

FAILED EDUCATION = HEAVY COSTS

- 700,000 students drop out annually
- 300,000 students chronically truant
- by 1995 American schools expected to be short 700,000 teachers
- 62% of prison inmates are drop outs
- recidivism 300% higher among illiterate offenders
- 50% of welfare families headed by drop outs

SOURCE: What Lies Ahead: Countdown to the 21st Century, United Way Strategic Institute, 1989

re-segregation of urban schools may well end up in the courts. Such issues will have future analogues. Courts are likely to be asked to ensure equal access to quality education notwithstanding government's inability to pay for it.

What are the courts of today and tomorrow to do in such cases? Are they to heed the entreaties of over-extended agencies and ignore the needs of those

desperately in need of -- and in some cases statutorily entitled to -- services? Or should they adhere to the intent and the letter of the law and compel the responsible agencies to find or create spaces and eliminate inequalities? The latter is the only tenable course. The courts of the future must insist that their co-equal branches of government

observe the requirements of the laws they enact. If fiscal constraints stand in the way then such statutes should be amended or repealed.

TREND

Education in Peril

Even as the need grows, American education continues to suffer qualitatively. America's new jobs will require more education. With the advent of the technology age, and a projected increase in jobs in service and knowledge-based industries (the World Future Society predicts that the service sector will account for 88% of the work force by the year 2000), new standards for employment are emerging, especially in jobs requiring analytical, problem-solving, and communication skills. Jobs will increasingly depend on post-secondary or college training. The demand for adult education will expand considerably.

While the future's average worker may have to be better educated, this is bad news for at least a third of the nation's school children who now rely on public education. Statistics indicate that many in this group are likely to live in a single-parent household, have a poverty level family income and/or non-English speaking parents, or may be members of a minority group with patterns of below-average academic achievement. Their chances for staying in school are not good. In larger urban centers the dropout rate can be between 40% and 60%.

Even for those that stay in school, quality education is not assured. Even as we move towards a work force requiring more education, our public school systems seem to be falling farther behind. The cycle of economic and intellectual poverty will repeat itself in succeeding generations.

New Partnerships

The courts of the future must be partners in the public/private sector coalitions seeking solutions to societal problems that continue to clog, directly and indirectly, the courts' own dockets.

The courts of the future will continue to act as society's "circuit breakers," stepping in when social tensions run too high. They will continue to be society's emergency room, providing treatment for society's dispossessed. And for better or worse they will continue to be asked to remedy social problems not of their making. They have only limited hope for relief and regaining control of their caseloads. To do so they must participate fully in the alliances of public and private interests seeking to address those social problems that are at the roots of the courts' distress.

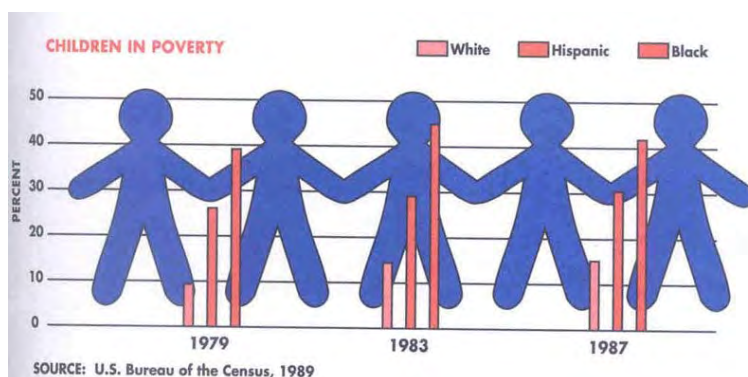
More immediately, the courts must decide how to manage the mechanics of matching justice seekers in need of services with the appropriate providers and programs. While the justice system itself cannot act the part of health and human services provider to any significant extent, the courts should create a Department of Court Services to provide limited on-site services to refer those in need to executive branch and private providers.

Access to Justice

Access to justice must be a public priority. The right to representation in all vital legal matters must be guaranteed. Public support for legal services for those who cannot afford them will continue to be necessary in the future.

Downward economic spirals and increased demands on legal service providers are directly related. The services provided to society's dispossessed are very basic: food, shelter, and health care. In the future the courts will need to provide legal services in essential matters to all those who cannot afford them, whether they are technically "poor" or not. While comprehensive justice centers will make justice both more affordable and more accessible, it is likely that there will always be a core of critical matters in which representation will be required.

The public is acutely aware of the importance of legal representation; for those who cannot otherwise afford it, the public is prepared to subsidize or pay for it outright. Seventy-nine percent of Massachusetts residents polled by the Commission (and 91% of minority residents) believed it was "important" to "devote tax dollars" to "making **court-appointed counsel available at no cost to very poor people** in important civil cases." Seventy-four percent of the general population and 82% of residents of minority neighborhoods said it was important to spend tax dollars on "making



lawyers available at reduced fee to middle-income citizens in important civil cases.”

The justice system should respond through several **strategies**. There must be a substantial and **stable pool of public legal service providers**. **Public service programs** utilizing both recent law school graduates and practicing attorneys should be developed. Both **public and private legal insurance plans** should be supported, as should certain fee-shifting statutes. Every member of the bar should acknowledge **law-related public service as a condition of bar membership**. If the bar and the courts are serious about such a commitment, it could be made binding by requiring attorneys to renew periodically their license to practice, and by making the performance of a significant amount of justice-related public service a condition of relicensing. Guidelines to govern such a requirement could be developed jointly by the bar and the Supreme Judicial Court.

The justice system must begin now to accommodate dramatic changes in the nature and volume of family law and elder law matters, and the related need for human services.

The number of elder Americans is rising sharply. As a nation, we are going gray. The Washington-based Population Resource Center reports that by 2020 there will be an estimated 51 million Americans over the age of 65, compared with today's 29 million. That means the elderly will comprise some 21% of the total U.S. population, due to better standards of living, better medical care, a boost in life expectancy, the maturing of baby boomers, and a lower fertility rate.

In Massachusetts today, one in eight residents is 65 or older. By the year 2020, it will be one in five. The increase over 1970, when just over 11% of our population was 65 and older, is significant.

TREND

The Changing Family

The old definition of “family” no longer holds, and new definitions are evolving rapidly. No longer can we say what an American family truly is. The rules about how to start one, support it, and define its responsibilities are changing with blinding speed. Divorce rates are high; the rate per 1,000 married persons rose from 35 in 1960, to 47 in 1970, to 131 in 1986, according to the Center for Law and Social Policy. We are delaying marriage or electing to remain single, even with children. We and our spouses work, often full-time, and our children are raised by others. Single parents must often handle the job alone.

Increasingly, the head of the American household is a divorced working mother, a never-married teenager, a foster parent, a grandparent, a single father. Stepparents struggle to unite their blended families. Infertile parents are renting the wombs of surrogate mothers. The new family of 2022 looms on the horizon, a diverse combination of bioparents, surrogates, perhaps even clones and inter-species parents. Many observers have said that as the family changes, its stabilizing influence and control over young people declines, leading to more conflicts based on changing behavior, norms and values.

RIGHT NOW OUR CASELOAD IS CHARACTERIZED BY MOTHERS 25 TO 30 YEARS OLD WHO HAVE THREE TO FOUR CHILDREN, WHO ARE INVOLVED WITH POLY-DRUG USE AND ALCOHOL, WHO HAVE ABUSIVE AND ASSAULTIVE MALE RELATIONSHIPS, AND WHO OFTEN ARE PREGNANT WITH ANOTHER CHILD. AND THAT IS THE SORT OF FAMILY SCENE WE ARE LOOKING AT... .

Commissioner of the
Department of Social Services
Springfield Public Hearing
November 14, 1990

Because of the presence of colleges and universities in and near the Commonwealth's largest cities, and because of their attraction for young entrepreneurs and new immigrants, these areas will probably remain "younger" than other parts of the state. Areas outside of these cities, most notably Cape Cod, may be home to the larger number of the Commonwealth's elderly.

An older population raises the potential for more inter-generational conflicts. Competition for declining financial resources – funds to support schools, health resources, and other community services – will increase, with elders packing considerable political clout. A growing elderly population will affect urban housing and related property taxes, retirement plans, pensions, and estate planning. Greater life expectancies will mean later retirement, which increases the potential for competition and conflict in a work force composed of two or even three generations.

There will be changes in health care delivery systems, employment practices, and family structures. There are already growing numbers of two-generation geriatric families, with adult children in their 60s and 70s caring for parents in their 90s; both generations are simultaneously in need of elder services.

Among the state's poor, there could be new conflicts over the allocation of services for the young poor versus the elderly poor. An aging population will bring more indigent, physically and economically vulnerable elderly into the courts.

Weakened family structures and the evaporation of health and human services are having a profound effect on families. Child, spousal, and elder abuse are on the increase. Latchkey kids and the children of those who are doing time or doing drugs are angry and alienated. Their crimes add to the burden on the criminal courts. The very young and the very old will continue to be the most vulnerable, especially where poverty is a factor. The courts of the future must begin preparing now for the new challenge.

New Cases for Courts

The justice system must prepare for the scientific, environmental, and technological development of tomorrow if it is to meet the attendant legal challenges.

The courts and society stand at the rim of a future in which many disputes have no precedent. As science and technology advance, so will the courts' journey into realms that they are only now beginning to explore: bioengineering, life prolonging/terminating technologies, new environmental liability doctrines, to name but a few.

The environment will require more from our courts in the future. The next 30 years will see new environmental threats, new technologies to address them, new arguments about who should pay, and new legal theories about what constitutes degrading the planet. In the near future in Massachusetts, as public spending on environmental policing and cleanup declines, the courts can expect to see more litigation over environment-based public health problems, toxic waste, industrial development, and water supply contaminants. A few years further out, “mega-cases” may predominate, with a growing focus on global environmental threats. As distances shrink and “disputing jurisdictions” expand, true “world courts” may emerge.

Technology will be the source of endless new ethical and legal conundrums in the years ahead. Medical/engineering science has produced laser tools, artificial organs, bionic limbs, and procedures never before dreamed of. Medical care, surrogacy, and genetic engineering are densely mined with potentially explosive legal questions. To the extent that science looses its creations on the world before the ethical and legal issues are sorted out, the courts once again will be the forum of last resort.

New training, new expertise, and new methods should be built into the justice system of tomorrow to ready it for new science, technology, and ethics. With effective strategic planning the courts

can prepare themselves to manage effectively the cases of tomorrow. The judges of 2022 should work closely with engineers, scientists, and ethicists – or alternatively be trained in those disciplines themselves – to help resolve future disputes. Highly specialized court sessions may emerge, or it may be that non-adjudicatory dispute resolution will be best suited to such matters. In either event, by 2022 the day may be long since past when those trained in the law alone can adequately fill the Massachusetts bench.

To be effective agents of change the courts need not be “judicial activists” in the traditional meaning of the concept. However, as the pace of change quickens, as society becomes ever-more pluralistic, a new sort of activism will be called for, one dedicated to keeping tempo with the times, to honoring differences among us as never before, and to anticipating the very different disputes of tomorrow.

Bioengineering and the Law

“In a future of bioengineered and genetically altered human beings, disputes would arise between the haves, fashionably reconstructed in the race du jour, and the have nots, unable to afford reconstruction and stuck in the race into which they were born. Reverse discrimination would develop a plethora of legal meanings. It would also enable interesting forms of business and personal fraud and forgery: entire bodies could be forged, not merely signatures.

Family conflicts would also be much more complex as families themselves were more complex, with diverse combinations of bioparents, education and profession parents, surrogate parents, clone parents/siblings, inter-species parents, and in general a greatly extended legal definition of ‘family.’ Divorce, adoptions, spouse/child abuse, and similar family conflicts would take on new forms. Finally, those who do cross over the boundaries of species and organism will experience norm, value, and behavior conflicts beside which those currently experienced by immigrants will pale.”

Wendy L. Schultz
“Culture in Transition: The Changing Ethnic Mix in Hawaii and the Nation”
Hawaii Research Center for Futures Studies, University of Hawaii
August 1991

NEXT STEPS

As the Commission submits this report to the Chief Justice in 1992, the world is not what it was when work began in 1990. Where the Soviet Union then stood, there is today a commonwealth of independent republics struggling with new freedoms unattainable until yesterday. The birth of a new European Community, politically and economically integrated is close at hand. Diseases that two years ago confounded medicine – cystic fibrosis for one – now see promising new treatments emerging. Clearly there can be new things under the sun.

In “The Governance of Space Societies” (in *The Federal Appellate Judiciary in the 21st Century*, Federal Judicial Center, 1989) now retired Supreme Court Justice William J. Brennan encourages the United States, as a spacefaring nation, to begin planning the law of space communities, in anticipation of eventual moon bases and mars outposts. Massachusetts would do well to heed Justice Brennan advice to keep an eye on the future by beginning now to make those incremental changes in our institutions, process, and thinking that will prepare the Commonwealth for the next century.

What follows is a scenario. It is an image of what the courts of the future could look like if there is concerted effort to move them forward with intelligence, imagination, and compassion. The section concludes with a timeline that charts in fictional form how some of the Commission's recommended initiatives might unfold over the next 30 years. It is not intended to be a prescription for action.

STATE OF JUSTICE ADDRESS

January 15, 2022

*Honorable Zoe Chan Fernandez, Chief Justice
Massachusetts Supreme Judicial Court*

Good evening,

I need to tell you how different our courts look from those of the relatively recent past. Technology has assisted us greatly in regaining control of our dockets. We have assumed a much expanded role in resolving society's disputes. We offer multiple paths to justice. Citizen participation in the process is greatly increased. And our financial resources are now more or less adequate to our task. The biggest changes, however, have not been in technology or resources but in how we conduct ourselves and our work, and society itself.

Historically, the courts were the impartial deciders of contested matters. A dispute came to court, was processed, and was eventually resolved by a judge or jury. This changed in the decades that preceded and followed the beginning of the new millennium. Our society was truly in crisis. The seemingly imminent collapse of the social infrastructure at the turn of the century was causing many more problems to show up in the courts. Things had to change and they did.

For example, over the past few decades real improvements in education occurred nationwide, in response to an increasingly competitive global economy. Jobs in the new century simply required better skilled American workers. A campaign to eliminate functional illiteracy was part of education reform. Juvenile caseloads dropped as schools became centers for creative learning, as well as for job training.

New ways to work were fostered by unanticipated new technologies and a determination, spurred by the business sector increase productivity. This improved the quality of life for so many. Sophisticated communication and information networks and teamwork were the key agents behind these changes.

Other changes occurred when the number of the nation's homeless people became too numerous for society to tolerate. Resources were devoted to providing adequate shelter and nutrition. This too seemed to influence the business of the courts, criminal justice in particular.

Long ago we recognized that unfairness in society was adversely affecting the process of justice. Policy makers at the turn of the century began to understand that the troubled state of the justice system was directly tied to society's inability to address the fundamental causes of injustice.

The trend of declining socially cooperative behavior has been reversed, as the Commonwealth, led by its judiciary, recommitted itself to the fundamental values of a just society: equality, the inherent dignity of every human being, mutual respect for differences, fairness, full participation in political and social life, and an ethic of shared responsibility.

These changes were fully under way at the time I took office, and they have influenced me profoundly. Several years ago I decided to expand the annual State of the Judiciary address to go beyond a diagnosis of the state of the courts. Now other members of the bench are also regularly speaking out, and we try to do so with a single voice wherever possible.

At the same time as society was putting its own house in order, the General Court recognized that it has to adopt a new philosophy about the courts—that their purpose was not only to decide cases on the law but to promote the satisfactory resolution of underlying disputes.

That broadening of the courts' mandate was born of the conviction that legal principles were but one element of justice, that other factors could well be just as, or more, important to the disputants. The "holistic" concept of justice was then codified in those laws that effectively transformed courts into the comprehensive justice centers of today. With that change came new ideas about how we judges view ourselves and how we do the public's business. It also brought about fundamental changes in the culture of the courts. Let me elaborate.

Conflict Resolution

Today we offer a wide variety of dispute resolution processes and forums for civil conflicts. (The private sector is almost our equal in this. The biggest alternative dispute resolution chain, McFriendly's, claims that it has settled over two billion disputes.) Typically a disputant brings a case to a comprehensive justice center where an intake counselor determines what track the dispute should be on. The final determination results from a consideration of the nature of the dispute, the relationship of the people or institutions involved, and the kind of outcome desired. Speed and economy are built in.

The tracks vary. The traditional track still involves a trial, with or without a jury. Other tracks offer a variety of methods for seeking consensus and common ground such as mediation,

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neutral evaluation, and mini-trial. The forum is matched to the case, rather than the other way around as in the old days. The important point here is that these alternatives enable the disputants to participate in the resolution of their own problems.

Judges participate in some of these non-adjudicatory paths to justice, but the judge is only one of several possible neutrals. The others may be lay persons or non-legal specialists—another example of wider public involvement in justice.

In the late 20th century, it took an actual case or controversy to invoke the power of the court. Today, the potential for harm, even in small matters, is reason enough to involve the courts in dispute prevention proceedings. No, we're not trying to be busybodies, but I think most people in the Commonwealth believe that the court can often prevent larger harms by becoming involved early in small disputes.

In serious criminal matters, the more “traditional” legal process has been retained, along with the fundamental purposes of criminal law: public protection, restraint, punishment, and rehabilitation. Pre-trial diversion, victim restitution, alternative sentencing, treatment, special probationary terms—innovation generally—are the rule rather than the exception in our system. Thanks in part to the Sentencing Commission, we have a good set of sentencing guidelines that are constantly being refined. (The Sentencing Reform Act of the year 2000 ended mandatory sentencing.)

Today we see a strong link between criminal justice and social justice, and this is where the judiciary has become involved in the public debate on social concerns and the root causes of crime. As I said earlier, once passive on these matters, we now speak out on such issues as poverty, illiteracy, and family breakdown, as well as on corrections reform and crime prevention.

The safety and dignity of victims is another matter that ranks high on our criminal justice agenda. The creation of a Criminal Justice Secretariat (Acts of 1996) was a major organizational accomplishment.

The Courts and the Community

Reforms notwithstanding, the judicial process remains complex. But we're proud that today the public is keenly interested in justice and plays a direct operational role in the system through a variety of programs. Lay people serve as mediators, the monitor and evaluate the quality of proceedings, and they assist in the processing of cases. They serve as constructive critics and advocates for change. I think it's true that members of the public, especially, are experts at knowing quality justice when they see it. We involve people in the system to ensure that we continue to see justice as clearly as they do.

We still believe our most important resource is public confidence. History shows that public faith in the system was not strong in the closing decades of the last century. People felt then that they did not have real access to justice and that they could not use the system to obtain prompt, just results. I'm glad to say this isn't the case in 2022. No longer is our system one in which people suffer undue delays, inadequate counsel when they need representation but cannot afford it, or barriers against those who are linguistically different, elderly, or infirm. We said good-bye to those bad old days in the last decade of the last century.

Just as the public is doing more and more "inreach," the courts are doing more and more outreach. Judges and others in the system now spend significant amounts of time in the community. All court professionals take seriously the requirement to spend a full week each year in community activities on behalf of the court. There is also a much closer school-court relationship than we saw in the late 1990s, with court personnel helping educators develop curricular programs that train students in dispute resolution as a basic life skill. (The Chief Justice Prize for Justice and Dispute Resolution Education is annually awarded to those leaders in education, business, and government who have done the most to spread effective learning about dispute resolution.)

Many children and their parents take part together in our monthly community justice seminars. And a lot of them have made a point of meeting and getting to know the ombudsperson in their community.

The Bar

Lawyers today have changed, too. They are trained quite differently than 20th century lawyers were. Today they have skills in a variety of disciplines, and legal training has evolved into true multidisciplinary education. Attorneys today are not merely officers of the court in the technical sense; they are partners in the resolution of cases. All are schooled in a range of dispute resolution techniques. Meanwhile, many still function in the traditional adversarial ways when a case demands it, and some cases still do. After all, the clash of competing interests before neutral fact finders and law givers is still a bulwark of our legal system.

Our expansion of legal service programs has made attorneys more available to those who need them. All members of the trial bar participate in the criminal justice process, and all members of the bar meet a broadly defined public service requirement. Public and private legal insurance is now available, and fee shifting occurs in certain cases.

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Access

Today you are probably all familiar with our satellite comprehensive justice centers, those remote annexes linked electronically to the larger urban centers. They may be small but I'm certain you'll agree that they deliver the product. And they are not the only access-enhancing innovation of the last decade. You may recall your last visit to the central CJC in Boston. You should have been provided materials that were simple and easy to understand, that allowed you to take more control of your case, without an attorney's help if you chose. And perhaps nearby there was a non-English-speaking family using the same materials, but thanks to the computerized translator, in their native language. I think the courts have come a long way in reassuring people, whether influential or friendless, native or nonnative, that the system has heard them, understood their needs, and responded.

Organization

The keys to effective court management and administration today are flexibility and simplicity. Happily we no longer must appeal to the legislature every time an organizational change is necessary. Independence, tempered by accountability, has afforded us sufficient authority to make such changes internally.

Many years ago now we set aside such metaphysical issues as how many trial courts there should be. Today there is a Commonwealth Court of Justice, under the ultimate control of the Supreme Judicial Court, whose divisions (if any) the Supreme Judicial Court decides as circumstances warrant. We designate chief judges for individual courts, groups of courts, and types of cases as the need arises.

We also adhere to the philosophy that management should be as close to the ground as possible, located at the lowest possible level that can accomplish it most effectively, consistent with centralized leadership and a common vision. Thus my involvement as chief justice in matters of day-to-day administration is limited; I depend on frontline management now. Judges still play an important role in setting policy, right down to the local court level. The public, properly, still holds judges responsible for the quality of justice.

Thanks to the completion of our professionalization programs, each comprehensive justice center is now under the direction of a professional local administrator, and all non-judicial professionals report to him or her. Long gone are the fiefdoms of the last century. Judges and administrators today work peacefully together to produce the "product" of the system: fair, equitable justice.

New Efficiencies

Since last year's State of Justice address, we have further streamlined our dispute-processing practices. Just to set this accomplishment in perspective, remember that only 30 years ago, dispute processing required a large clerical staff. Now some of that work is accomplished smoothly by private sector service bureaus and our own small robot staff. The private vendors have been quite imaginative in adapting new technology for us, and we utilize several such companies in order to stimulate competition, innovation, and cost-effectiveness.

We completed the statewide installation of interactive video terminals in all central and satellite centers many years ago. These can be used in the usual manner, to find a lawyer or obtain information and counsel. But they can also be used to forward suggestions or concerns about the system to our "idea factory," the Office of Judicial Innovation. This office is charged with gathering the best thinking from both public and private parties about improvements that can be made in the delivery of justice.

Technology

The great grandmother of change, 21st century technology, has been a boon to us since the turn of the new century. We use it constantly to bring people

together -- in the courtroom, in the seminar room, in the dispute resolvers' offices, in the annexes -- and to facilitate fact gathering. We make broad use of videotaped transcripts as well as those provided by automatic court transcribing computers. Technology allows us to provide basic instructions and information to the public. I have already mentioned the interactive video terminals just inside the CJsCs that instruct the public about available services.

We have learned three valuable things about technology. First, what is technologically feasible may not always be desirable. For example, technology, for all its gifts, may not always serve the public with the same dignity, respect and friendliness that human beings can. So while we may experiment with many new technologies here in the justice system, we are careful not to substitute technology where a human presence is more helpful. Second, justices should never be on the "cutting edge" of technology; dignity and due process are too important to jeopardize through potential systems failure or malfunction. So we traditionally trail the private sector by 5 to 10 years. And third, contrary to some court watchers' beliefs early in the century, it wasn't technology that saved our ailing justice system in the 1990s. It was people, assisted by technology.

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Accountability

One big benefit to the professionalization of court management and administration is accountability. The people have always deserved that, and now they get it. Judges are still appointed for life by the governor. However, they are now subject to periodic retention review of their overall performance. We have enhanced accountability by having judges and other dispute resolvers routinely sit in each other's disputing rooms to evaluate the proceedings, by sending lay court monitors unannounced to observe proceedings (the private sector has been doing this for 25 years), and by randomly selecting cases and analyzing how they were handled. And we listen to people, to learn what they need, how we can improve, how we can refine the delivery of justice. We think of accountability as part and parcel of the ethic of public service.

Leadership

Unlike the old judicial system, our contemporary justice culture is premised on open interaction and communication, informality, and close working relationships. We believe that leadership in this culture is the art of inspiring people and getting them to internalize and work toward the institution's goals. We believe it provides vision, articulates values, and finds or creates opportunities for improvement. So we have made a commitment to nurture and tend leadership qualities in our personnel. We talk about leadership a lot, have regular leadership conferences, and often look at leadership models in other states and cultures. We do a lot of self-analysis and try to avoid deluding ourselves about the quality of our work. We believe in decentralized leadership and the empowering of local courts. We have created leadership positions at many points in the system. The results of our focus on leadership have been extremely gratifying. Among almost all managers and judges there is a refreshing commitment to quality and a continuing drive for excellence.

Conclusion

In May of this year we will celebrate the 32nd anniversary of the creation of the Commission on the Future of the Courts by my predecessor, Chief Justice Paul J. Liacos. He was willing to look ahead to the courts' long-term future at a time when many people inside and outside the courts were despairing about the courts' day-to-day survival. The Commission's report, you may recall was released in an environment of controversy and debate over court reform. The work of the Commission expanded the debate's horizons to consider strategies for leading the Commonwealth's justice system until the 21st century. Outreach, education, and implementation followed; new coalitions of public and private interests were forged; and a new partnership among government's three branches was conceived.

Today I am pleased to announce the appointment of the members of a new Future of the Courts Commission, to create a vision for the next 30 years.

The opening of the first comprehensive justice center in 2000 represented the culmination of our efforts to regain the public's trust. CJs remain places where people know they can come for help. Even though the universe continues to change and grow smaller every day, we have found that the need for quality justice remains a constant. The Commission on the Future of the Courts helped to define what a quality justice system should be -- one that delivers justice creatively, efficiently, speedily, and with respect and dignity for all justice seekers. In the years ahead, we will continue to create a better future.

By way of a brief postscript, the students of history among you may be interested in the sequence of initiatives and reforms that brought us to where we are today. We have prepared a timeline that includes some of the more exciting developments of the last 32 years.

Thank you.

**EVEN THOUGH THE UNIVERSE
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T I M E L I N E

1990

Chief Justice Paul J. Liacos launches the Chief Justice's Commission on the Future of the Courts. Supreme Judicial Court creates the Commission to Study Racial and Ethnic Bias in the courts.

1991

Court reform the subject of legislative initiatives, bar association reports, and much debate.

1992

Presentation of "Reinventing Justice, 2022: Report of the Chief Justice's Commission on the Future of the Courts." "Action for Justice," Dispute Resolution, and Technology and Justice standing committees created to carry forward the work of the Commission on the Future of the Courts. Citizen Assistance Council created to enhance the justice system's responsiveness to the public. SJC creates Commission on Juvenile Justice (CJJ).

1993

CJJ returns report recommending sweeping changes law and procedure governing juvenile in the courts. Judicio-legal "scanning" introduced into systemwide co planning process, previewing emerg trends. First series of Leadership Conferences all personnel and judges. Court-affiliated core launched.

Pilot projects created to:

- link schools and courts in educational programs
- produce first multilingual video/audiotapes explaining judicial process
- install interactive video-conferencing as an alternative to physical appearances at certain hearings
- test programs of automatic transcription/"real time reporting"
- mandate media of small claims cases in select courts

1994

Judicial Conduct and Tenure Commission created to conduct ongoing judicial performance reviews. Office of Judicial Innovation created. Monthly Community Justice Seminars tested in two courts. Standards certifying court-affiliated dispute resolution providers issued. Extended court hours (evenings, weekends) instituted. Drug treatment programs in prisons expanded; prison functional literacy programs inaugurated.

1995

First Court Users Conference held to spearhead the judiciary's efforts to regain public support for courts. Extensive testing of alternative dispute resolution first incorporated into the Massachusetts bar exam. "Community activity" requirement for court professionals instituted. Management training programs for judges launched. Videotape transcript program piloted in select courts.

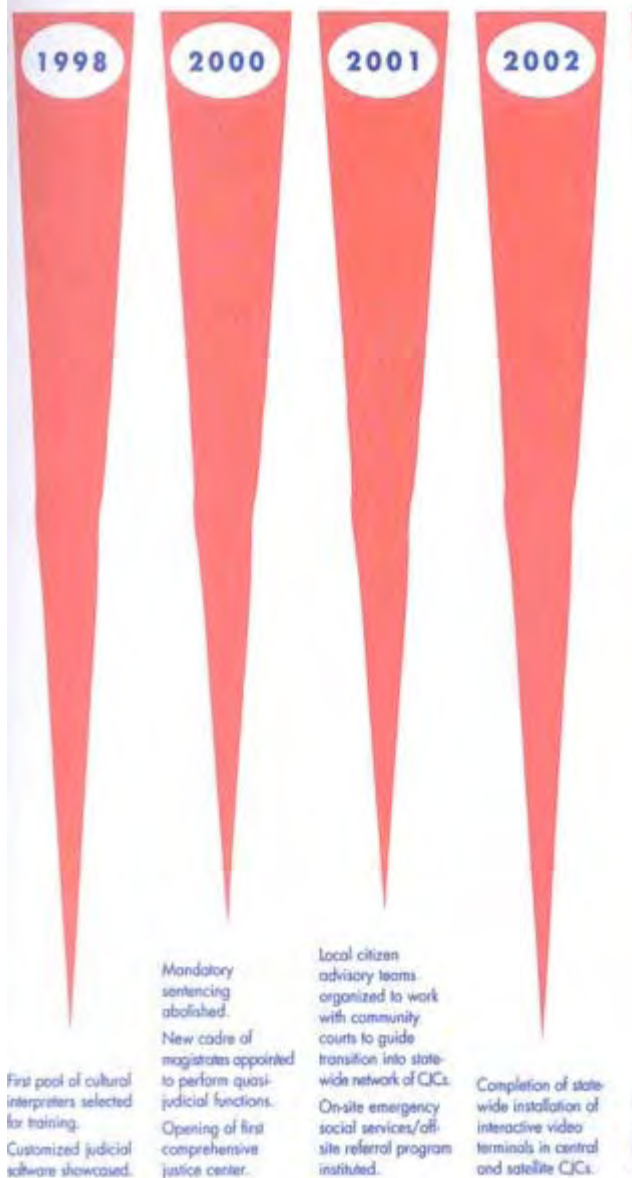
1996

Unification of courts' computer systems into systemwide network. First corps of judicial ombudspersons selected for training from court rank and file. Alternative dispute resolution training curriculum for judges developed. CJIS (Comprehensive Criminal Justice Information System) brought on-line in Massachusetts. Courthouse cafes/cafeeterias opened. Telephone access to multilingual justice information offered.

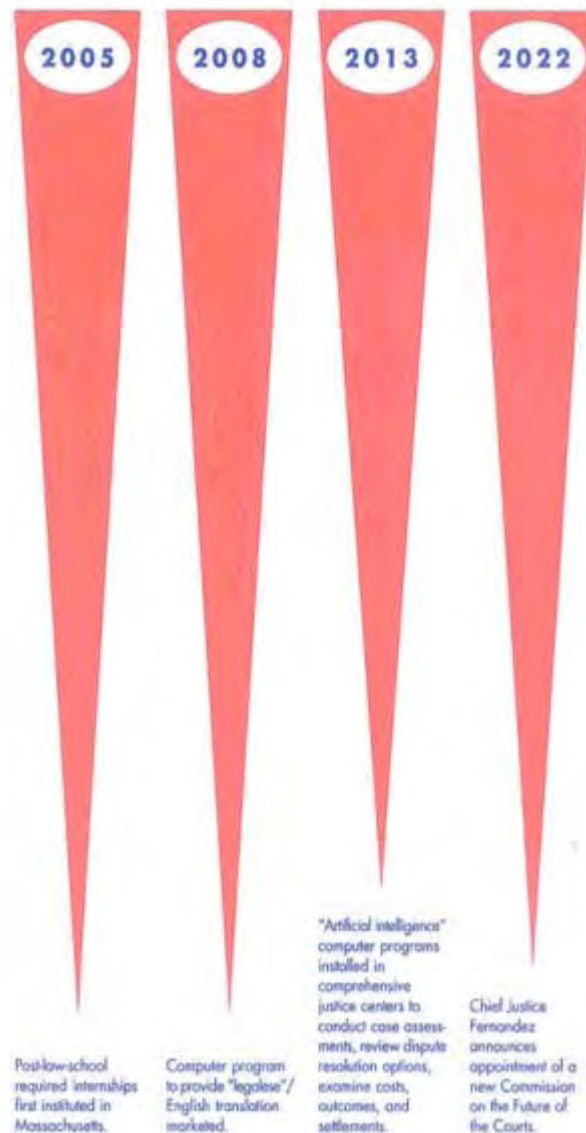
1997

"Courthouse of the Future" prototype opened. Department of Court Services formed.

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There should be some arm of the court there to show that it's not "big brother," that it's sensitive, to make people feel welcome when they walk up the steps to the courthouse, that it's not a big monster, that it's their right to walk into that courtroom and stand up for whatever reason –not with a heavy heart but feeling that people will relate to them.

Paul Faucher
Springfield Public Hearing
November 14, 1990

VISION

We envision a justice system in 2022 that creates and reflects the values of a just society. Among these values are equality, the inherent dignity of every human being, mutual respect for difference, fairness, full participation in political and social life, and an ethic of shared responsibility for one another. We see in 2022 a society that acknowledges and cherishes these values, that reflects these values in its institutions, and that has closed the gulf that today separates our values from our justice system.

We envision in 2022 a justice system that leads society in recognizing and realizing these values, not one that drags behind and resists change and a justice system that embodies these values in its procedures and substantive rules. We see a justice system whose purpose is to bring these values to other social institutions, both to those we now call "private" and to those we now call "public".

The justice system of 2022 will be an institution amenable to change. It will understand the inevitability of rapid and significant change in society, and it will be able and willing to anticipate and respond to such change. It will be an institution is dynamic, not static. Its procedures will be flexible, and its structure and processes will be open to intelligent revision.

In our vision of the future, courts will continue to be the public institution to which individuals and groups turn for redress when other social and public institutions have failed. Courts will continue to develop as institutions where we can go to obtain justice and, in finding justice, to further our sense of what justice is and what it requires.

Creating the future is a matter of conscious, willing choice. We can create a society far more just than the one we know today. The first act in creating that society is to imagine it. "If something can take place in the world of the imagination, it can take place."¹

"ACCESS TO JUSTICE"

Access to justice means more than simply access to courts, lawyers, and the judicial process. The presence of an attorney or the existence of a judicial forum do not themselves assure that justice will be done. Providing access to justice means providing the opportunity for a just result.

Access to justice was born, as an idea and as a commitment, out of the recognition that society is often deeply unjust; the very concept of access to justice would have little meaning in a truly just society. While it points up society's injustice, "access to justice" also signals society's passion for justice.

What makes a society just? The answer lies in part in the idea and ideal of democracy: as a moral and a political matter all people are equal and all people should participate in the life of the community. While equal, people are also very different from one another. Our concept of justice should recognize and build on these differences. Equal is not "same." Equal here means that each person deserves equal concern and equal respect. Participation in the community means that each person brings to the community his or her individual background, hopes, and points of view.

When we speak of "difference" among people we speak of differences from one another, not departures from the paradigmatic able-bodied, English-speaking, property owning, white man that has historically been the measure of a person's fitness to participate in public life in the Commonwealth and elsewhere. But even today that historical measure still determines, either explicitly or implicitly, who does and does not participate in the public life of the community. It is in this sense, then, that we can say the society is unjust.

Real access in our view implies the creation of a system that truly belongs to the people. Inherent in this concept is the institution of a culture of public service among court personnel. Justice system users must be convinced that they have the right and the responsibility to challenge poor treatment and to participate fully in creating the law that governs their affairs.

This is a condensed and edited version of the report of the Access to Justice Task Force. The complete report may be obtained from the Public Information Office of the Supreme Judicial Court. The views expressed and recommendations made herein are those of the task force and do not necessarily represent those of the Commission. Task force members were: Ruth M. Batson and Lonnie A. Powers, co-chairs; Hon. Christopher J. Armstrong, Regina F. Lee, Hon. Mary B. Muse, and Margaret D. Xifaras, members; Margot Kempers, special advisor; and Sarah P. Robinson, reporter.

District Court Judge Gordon Martin testified before the Access to Justice Task Force in Roxbury that “access means a feeling of belonging and understanding what’s going on.” Marnie Warner and Donald Dunn, both law librarians, stressed that access to justice requires access to information. Information, critical as it is, does not create understanding, however. And even understanding does not necessarily bring about a sense of belonging.

Most people who use (indeed, depend on) the justice system do not have a sense of power and responsibility. They do not believe that the justice system belongs to them; some may even doubt that they are entitled to justice. This should be no surprise. Most people have not had a hand in creating the justice system under which they live. Most people have not contributed to the system’s standards, rules, procedures, and rationales. Most people find these rules and rationales foreign. Most people have a passive relationship with the justice system; the system merely acts upon them. This does not equal a sense of belonging, in which the public feels it owns and is responsible for the justice system. This is not the justice system of a real democracy.

BARRIERS TO JUSTICE

Justice today is inaccessible for a great many. Factors both extrinsic and intrinsic to the justice system make this so. Among the intrinsic is the adversarial system itself, which in theory produces truth, in theory leads to justice. Adversarial justice is not always real justice, as certain family disputes, for instance, demonstrate. Other intrinsic barriers are court procedures themselves: rigid procedural requirements, incomprehensible “legalese,” and scheduling practices that produce prolonged, unexplained delays.

Extrinsic barriers include poverty and prejudice, which neither begin nor end at the courthouse door.

In most cases a complex set of factors, not any one, prevents people from obtaining justice. Poverty, for instance, often goes hand in hand with lack of education and prejudice. But the biggest barriers are structural, and removing them will mean redesigning the house of justice.

Economic Barriers

Our justice system depends on attorneys but does not ensure that people in need of attorneys always have them. Poor people, and increasingly the middle class, suffer as a result. As more parties appear pro se (without counsel), more and more bewildered litigants are lost in the maze.

Worse than the confusion is the unfairness. In a recent study of housing courts, the American Civil Liberties Union reported that nationally 71% to 80% of landlords are represented by lawyers in housing court proceeding, while only 5% to 10% of tenants are represented.² Ominously, in the New York housing courts there are about 28,000 eviction orders a year, and more than one third of the families evicted end up in New York’s homeless shelters.³

A 1987 study revealed that only 15%, or one in six, of the legal needs of the poor in Massachusetts were being met.⁴ There were, as of 1987, more than 760,000 poor people in the Commonwealth.⁵ This study considered all of the government and privately funded legal services for the poor. Among the unmet legal needs were housing (including evictions), family law, receipt of public assistance, and others equally critical. The irony here is obvious: the poor are in greater need of legal help than the non-poor and are less able to obtain it.

Cultural and Linguistic Barriers

The Commonwealth is made up of people from a wide variety of cultures and ethnicities. This has historically been the case, and it will be the same in the future. As a vivid example, in a five and a half month period in 1988, of the 1,504 people who appeared in criminal matters before a single judge in Roxbury District Court, just over 80% were North American, including Black Americans, U.S.-born Caucasians, American-born Hispanics, American-born Cape Verdeans, Canadian-born blacks, and Caucasian Quebecois. Slightly more than 10.5% were from Central and Latin America (Puerto Rico, Cuba, Honduras, Colombia, Panama, Guatemala, Venezuela, Peru, Costa Rica, El Salvador, Mexico and Argentina). Nearly 6% were Caribbean from the Dominican Republic, Jamaica, Haiti, Barbados, Trinidad, the West Indies (exact locale unknown), and the Virgin Islands. Slightly more than 1% were Portuguese-speaking and were either Cape Verdean, Brazilian, or Portuguese. Nearly 1% were from Africa: Nigeria, Morocco, Ethiopia, Senegal, Tanzania, Sierra Leone, and the Sudan. Others present in small percentages were Europeans (from Russia, Germany, including German-born blacks, Greece, Italy, and Turkey); Asians (from Korea, China and Vietnam); Middle Easterners (from Iran and Iraq); and South Pacific Islanders (from the Philippines).⁶

There are clear impediments to justice for such a diverse population. Differences in customs and traditions can create misunderstandings in court, as elsewhere. The shortage of language interpreters causes delays and confusion. Because court personnel and judges do not reflect the diversity of the Massachusetts population, an increasing number of court users feel little or no connection to the system.

Barriers Against Children

“If we do not involve our kids in our judicial system . . . we’ve lost a generation in some ways. And that generation is going to raise the next generation. Somehow between now and the year 2020, we must intercede, we must make our children feel that this is where they should come for justice, that they don’t have to deal out justice on the streets.”

*Leslie Harris, Esq.
Roxbury Public Hearing
February 13, 1991*

Family problems, particularly those involving children, pose unique and urgent problems for the justice system. Children are the most unrepresented constituency in the courts and therefore the most vulnerable. They are increasingly not products of traditional families. And seldom is there any special physical accommodation made for children in court, or for litigants with children.

Barriers Against the Elderly and the Physically and Mentally Handicapped

The task force acknowledges the particular needs of the sight-and hearing-impaired. Today there are more than 30,000 residents of the Commonwealth who are legally blind and more than 40,000 who are completely deaf.⁷ Greater access for these justice system users could be obtained through reduced delay better training for court personnel and technology. For instance, in “realtime reporting” a court reporter’s stenograph is connected to a computer, the notes are translated instantaneously, and the words appear on computer screens only seconds after they are spoken—a significant advantage for hearing impaired people.

The preamble of the report of the American Bar Association’s 1991 national conference on the court-related needs of the elderly and persons with disabilities says in part: the justice system should commit itself to the removal of attitudinal barriers and serve as a model of accessibility based on the principle of “universal design,” which requires a barrier-free and technologically enhanced environment in which what is needed by one is available to all.⁸

The Barriers of Prejudice

“Tribal members believed that they were getting their day in court not because of the legal merits of their case, but rather because they stood out (as do most Indian Tribes) as an embarrassing reminder to the legal system that “equal justice for all” is a myth.”⁹

*Margot Kempers
Associate Professor of Sociology
Fitchburg State College*

As ably documented in the work of the Supreme Judicial court’s Commission to Study Racial and Ethnic Bias in the Courts and Committee for Gender Equality, many members of racial and ethnic groups and women feel unwelcome in the courts or are subject to discriminatory treatment. This biased treatment, in addition to prejudice against the economically disadvantaged and the “disabled,” is clearly not tolerable in that institution form which society most expects fairness: our courts.

Barriers Against Victims

“Our son gets murdered. Now we start in with the court process . . . There’s a lot of avenues people are going down, but they’re not taking us with them . . . There’s no sensitivity . . .

We have to sit there, go through the steps without having any type of input . . . You have to stand in the same hallway with the murderer . . . [T]here should have been someone from the court that would’ve had a system, an agenda, to tell you ‘This is where you’re going. This is what’s going to happen.’”

*Paul Faucher
Springfield Public Hearing
November 14, 1990*

In its hearings around the commonwealth, the Access to Justice Task Force heard impassioned and poignant testimony from victims who said they often felt superfluous to the justice process. In criminal proceedings they felt that they seldom had an opportunity to tell their story, to talk about the effects of crime on them. Victims and their survivors felt that the courts and/or other justice agencies should have made greater efforts to initiate contact with them, to guide them through the labyrinth that is the criminal justice system. A comprehensive victim (and witness) assistance program that provides high-quality personal advocacy assistance is important.

BLUEPRINT FOR CHANGE

The future we hope to create is emphatically not one that replicates the present. The future we would like to inhabit and bequeath to our children and our children’s children must not exacerbate society’s deep divisions. We do not wish, for example, to create a two-tier system in which the wealthy can purchase prompt, quality justice and others must wait. We envision equal access, across the socioeconomic spectrum, to a range of quality dispute resolution mechanisms and to quality justice. Achieving these goals is less a matter of invention than of will.

Comprehensive Justice

The justice system should have a wide variety of forums available to resolve conflict, tailored to the wide variety of disputes that come before the courts. These forums will be accessible through comprehensive justice centers (CJs).

Comprehensive justice centers should be located in large communities with satellites in smaller communities (ombudspersons with access to CJC resources through advanced information and communication technology).

In the future, relatively few matters may be resolved through adjudication, perhaps only serious criminal cases and certain civil matters appropriate to the adversary process. Litigation in which a party challenges the practices of major institutions (hospitals, prisons, schools, labor unions, large corporations) could merit a separate forum. Lawyers in all major institutional disputes (e.g., corrections litigations, redistricting, school committee elections) could be subsidized with public funds.

Both new and existing mediation programs should be examined. Innovative mediation and other dispute resolution initiatives (e.g., “assisted mediation” and “community-wide” mediation) should be explored.

In the future, mediation will be available to resolve personal disputes that arise within families, at work, and among small commercial parties. It will be tailored to situations in which both parties have roughly equal bargaining power and are in continuing relationships.

In conflicts where one party is at a significant “power” disadvantage (e.g., in landlord-tenant, consumer-utility, consumer-business, employer-employee relationships), “assisted mediation” may be appropriate. The party lacking real bargaining power might be assisted by a lawyer or other

advocate, at reduced charge or no charge, as necessary.

We imagine a future in which community-wide mediation and conflict resolution programs will be available to address patterns of violence, persistent prejudice, or other divisive social problems. Court personnel will convene meetings under court auspices to aid the community in fashioning solutions to persistent problems when needed.

Certain specialized courts will still be appropriate and will surely exist. Housing and family courts are examples. These courts might employ personnel with special expertise, interest, talent, and experience in the legal, social, economic, and psychological aspects of disputes that arise in these specialized areas. The family court will be equipped with multidisciplinary teams of social service workers, psychologists, education counselors, and others. Children will deserve the assistance of their own advocates; if parent or guardian is unable to pay, the court will arrange for an advocate free of charge.

The comprehensive justice center should be a place where people can obtain a variety of public services, as well as information about and referrals to services the center cannot provide.

In addition to judicial services, the comprehensive justice center will be a place where the public can obtain administrative and other services. Hearings on public benefits, license applications (of all kinds), zoning board proceedings, and the like could be conducted there, as could neighborhood council proceedings, public meetings to comment on the suitability of proposed judicial personnel, and so on.

In providing comprehensive justice, the courts should build working relationships with other major social institutions, e.g., business and academia.

By making available external expertise and resources these partnerships will aid the courts in the delivery of justice and will also educate other institutions about the processes and problems of the judiciary.

We recommend the creation of a standing committee, “Action for Justice,” representative and consisting of court users and legal providers, to ensure the implementation of the “access” recommendations in this report and to develop others.

Its members should serve overlapping but finite terms. It should have direct links to the Supreme Judicial Court and interact with courts on all levels, as well as other institutions involved in the delivery of legal services.

Other bodies should be created (focus groups, community review panels, advisory committees, etc.) to ensure regular and diverse public comment on court rules and practices.

Community review panels should be established to receive compliments and complaints about court procedures and personnel and to consult with judges on court operations. Members of jury pools should more often be used as sources of information about the public’s perception of the justice system, its needs, and solutions. An annual working conference on the future of the courts would allow those within and outside the court system to chart regularly the system’s voyage into the future.

Hospitable Environment

In the future our justice system’s facilities will be clean, bright, aesthetically satisfying, and appropriate to the functions of justice. Their architecture will reveal them to be public spaces. “Public” will connote high ceilings, light, art and sculpture from many cultures that comprise the

Commonwealth, and poems and pieces of history about our society. These facilities will never be, as they so often are today, drab, dirty, ill-lit, and poorly maintained.

The Action for Justice group should ensure justice system compliance with the federal Americans with Disabilities Act of 1990 and devise additional ways to guarantee access (such as “universal design” standards).

In the future court facilities will apply “universal design” standards throughout courthouses and comprehensive justice centers to accommodate people of all ages and abilities. Areas that may need redesign include: parking areas, exterior steps, heavy doors, security gates, interior stairs, floors (too slippery, too many changes of level, etc.), restrooms, counters, narrow hallways, water fountains, public telephones, cafeterias, waiting rooms, law libraries, the judge’s bench, jury box and jury room, witness box, counsel tables, public courtroom seating, microphones, acoustics, and lighting.¹⁰

Courts should incorporate information and communication technology to inform people about court processes and procedures (e.g., by placing interactive videos at information/reception booths in courthouse entry areas, and later in comprehensive justice centers).

Information booths will be staffed by multilingual personnel who will welcome court users. The booths will contain simple-to-use computers, interactive video screens, and other technologies to provide information and to direct users. These machines will operate in a wide variety of languages, keyed to particular communities.

There should be clear, well-marked, multilingual, easy-to-read signs in all necessary languages throughout the courts. In addition, all courthouses should provide access to child-care facilities staffed by high-quality, trained personnel. **Each courthouse or comprehensive justice center should have a cafeteria,** where people can wait, meet and have a meal. A paging system will inform patrons of the status of proceedings. In criminal proceedings there should be **separate waiting areas for defendants and for victims and witnesses.**

Many court services should be offered in the evenings and on weekends.

In the future, there will be expanded hours of operation for court proceedings, to better serve those who cannot easily attend weekday sessions. Some services will be available at all times (information, scheduling, referrals, etc.) by telephone or electronically through a system similar to airline information and scheduling systems.

Improved Services

To a surprising extent, courts operate today as they have for centuries. In 2022, however, they will operate differently and provide a variety of services not available today. Some of the services should enhance the court’s ability to better perform traditional roles, e.g., interpreter services. Other services should reflect 2022’s changed views of the purpose and function of court proceedings.

Each court and justice center should be fully staffed with linguistic and “cultural” interpreters, should be supported by computer-assisted scheduling and other sophisticated information technology, and should offer social services both on-site and off.

In 2022 courts and justice centers should be adequately staffed with sensitive, skilled personnel trained to interpret for those who do not speak English. There should be interpreters trained in American Sign Language for the deaf and hearing-impaired. Interpreters should be trained in both the language and culture of the people for whom they are translating and in the language and culture of the law. This should enable the interpreters to translate the words and their meanings for both the litigants and the court personnel.

Scheduling practices of 2022 should ensure that interpreters are on hand when needed and that proceedings are not postponed for lack of an available interpreter. Technology could assist in this process as appropriate. Use of computer-assisted scheduling systems would help to ensure that cases will not be unexpectedly postponed or delayed and that all persons necessary for a proceeding will be present when the matter is called. Such scheduling systems should be accessible by telephone or electronically 24 hours a day.

By 2002 the justice system will acknowledge that many of the cases that come to the courts are difficult to cast as “legal” problems solvable through “legal” solutions. Courts today have become social service providers or a sort. Social conflict is on the rise, and institutions that have traditionally prevented or resolved social conflict have lost some of their authority (the family, the community, religious institutions) or have been most overwhelmed by caseloads at the moment when they are most underfunded (social service agencies). As a result, people seek from courts definitive and effective solutions to problems that have not historically been the province of the justice system. In a letter to the Access to Justice Task Force, Northeastern University Law School Professor Mary O’Connell wrote:

“Our judicial system is called upon to redress and resolve a broader range of issues than the court systems of virtually every other country [The Probate and Family courts are] serving as an emergency room for the rendering of social services. Just as medical patients, lacking an entree into the health care system, are now overloading emergency rooms with complaints once handled by family physicians, so families experiencing a variety of severe social stresses are overwhelming our family courts.”

As the justice system comes to properly understand that many cases involve complex human problems with social and personal dimensions not resolvable by judicial decree, it should consider making some social services available within the courts or by court referral to external programs. In the future, psychologists and other counselors might be employed by the courts to assist people when referrals cannot be quickly made and in other emergencies. Court partnerships with training institutions, hospitals, and universities would promote this objective. Placement in education and training programs, family therapy, parenting training, Big Brother and Big Sister programs, mentor programs, substance abuse counseling, and programs for elderly and handicapped shut-ins are among the social services most needed.

Court personnel should be highly sensitive to illiteracy and other impediments to access.

Appropriate services should be provided to those who cannot read and write. Functionally illiterate court users obviously require special assistance. In 2022 illiteracy services should include provision of litigant advocates, counsel, and referral to literacy education programs. Court employees should provide these services in a warm and direct manner and avoid any action that tends to stigmatize or exclude the illiterate justice seeker.

The courts of the future should provide advocates for those who need them.

What the task force has in mind here are those individuals in especially vulnerable positions without her or his own advocate. In such cases a court-supplied advocate should be provided to guide the individual through the dispute resolution process.

Location of court facilities and transportation problems should be addressed.

Many barriers to access are related to transportation. Affordable transportation must be available to all courthouses and justice centers.

The courts of the future should provide simplified forms, “do-it-yourself” packets, and computerized instruction programs.

By 2022 the court should have revised its procedural forms to make them simple, straightforward and non-technical. They should be available in a range of languages.

Through the use of interactive video and computer programs all will have access to justice system procedures and information. Courts should work to ensure access for those who do not have use of computers and should provide speech recognition technology (which allows text creation and control by voice instead of by typing) to ensure computer access for individuals with disabilities. Computerized instructions programs, multilingual and in plain, direct language will be available on computers for public use in the courts, justice centers, libraries, and by remote electronic interface. These instruction programs would accompany information pamphlets and do-it-yourself packets for a variety of legal actions, such as divorce, spousal abuse petitions, and consumer complaints.

We recognize that encouraging pro se proceedings raises troublesome issues, and we recommend a review by a litigant advocate in all possible cases.

Court Personnel

Justice system personnel should embody an ethic of public service, demonstrate respect, and preserve dignity.

The courts of today are staffed with many devoted public servants who understand the ethic of serving the public. In the future, court personnel will be respectful, attentive to inquiries and concerns, welcoming and aware that participants in the justice process are often troubled and vulnerable.

In the future, justice system personnel should represent a mix of women and men from all ethnic, racial and cultural groups in the Commonwealth.

Court personnel will be able, committed, patient, and courteous. In the future, no one group will dominate the ranks. Clerks, judges, litigant advocates, probation officers, court officers, mediators, hearing officers, and others should be women and men with Hispanic, Asian, African American, Caucasian, and other origins. Their background will as often reflect economic struggle as economic privilege.

Diversity training and other ongoing educational programs should be available for and required of all court personnel.

Diversity training programs will educate court employees about the many cultures of the Commonwealth’s citizens, explore preconceptions, and teach the need for mutual respect and ways of demonstrating it. These programs will join many other continuing educational opportunities and requirements for court personnel of the future.

Public accountability mechanisms for judges, other decision-making officials, and other court personnel, as well as mechanisms for public involvement in the selection of judges and other judicial decision makers, should be developed.

In the future, the community will be notified, through local press and electronic and other means, of the names of candidates for judicial and non-judicial justice system positions; and they will be invited to comment. Mechanisms will also be created to allow the public to offer names for consideration for appointment to judicial posts. We are not recommending the election of judges, only that there be opportunities for public input.

Working conditions and arrangements for court personnel should be improved.

In the future, we imagine courts will be adequately staffed to perform their varied functions. Educational and other career development programs will be available to court personnel, and participation in these programs will be encouraged. By 2022 family leave policies for court personnel will have been long established; flexible work arrangement that reflect changes in the nature of the work place will be common. There will be an ombudsperson to hear the complaints and concerns of court personnel.

Delivery of Legal Services

In 2022 every person who needs legal representation or advice will receive it. To this end, changes in the structure of the legal services delivery system in the Commonwealth are essential.

The right to representation in all vital legal matters must be guaranteed. There should be a substantial pool of public legal service providers and public service programs for practicing attorneys and recent law school graduates.

By 2022 every person in the Commonwealth with an essential legal need will have access to legal representation, guaranteed by the court. In our view, “essential” legal needs include help for legal problems involving housing (e.g. evictions), health care, public benefits, and divorces to name a few.

By 2022 there will be many different kinds of legal providers. The bar will have greatly loosened its grip on the legal profession, and current debate over “practicing law without a license” will have resulted in a differentiated system of providing assistance to users of the justice system. The important role played by those known today as “paralegals” will be acknowledged and their prestige enhanced.

There will be new, specialized roles in supplying legal services. One type of legal provider could be trained in the counseling profession and could accompany disputants to court in matters that are legally routine but emotionally difficult for the parties involved. Others might be specialists in certain areas of the law characterized by routine, predictable procedures but heavy with paper process – uncontested divorces, real estate transactions, for example. Still others might specialize strictly in administrative practice.

In the future, there will be an adequate pool of government-paid attorneys and other legal providers for people who do not have the means to obtain such services. Those in need of dispute resolution services could be charged a sliding-scale fee based on income. Funding for such providers could come not only from general revenues but from user fees. Such fees might be determined by the size of the claim a disputant is pressing, the resources it represents, and the disputant’s success. Revenue could also be raised through public fines against disputants who have violated public standards (environmental standards, housing codes, civil rights laws, etc.).

As another means of bridging the gap between the need for and the provision of legal services, public service should be made a condition of bar membership. Volunteer efforts known in the legal field as pro bono publico (for the public good) should be made universal.

All attorneys should be recertified every 10 years, and a demonstration that the attorney has participated in a significant amount of public service should be one of the requirements for recertification.

The options for fulfilling the public service requirement will be very broad, both in the substantive areas in which lawyers can offer their services and in the means by which they can provide these services.

In the future, new attorneys should spend some reasonable period of time (12-18 months) as paid apprentices, subject to direction by experienced attorneys, in a wide variety of public service programs. Law students who obtained government or private loans to finance their legal education could perhaps partially pay off the loans by continuing to work in public service.

To ensure affordable justice there should be both public and private legal insurance plans.

By 2002 such plans might be a regular employee benefit. Employers over a certain size could provide legal insurance covering routine legal matters. The Commonwealth could provide legal insurance to those who are unemployed or who otherwise do not have legal insurance through their work place, such as small employers, seasonal workers, part-time workers, and self-employed persons. These plans will emphasize preventative legal care and will be analogous to universal health insurance plans.

In the future, there will be walk-in legal clinics, lawyers will advertise regularly and responsibly, and law school clinics will have expanded so that all law students will participate in some kind of legal clinic (counseling, tax preparation, litigation representation, rural legal services, etc.)

There should be new laws to shift fees in appropriate cases and ensure equal access to justice.

Attorneys' fees and litigation costs may be borne by unsuccessful civil rights, environmental, and other institutional defendants. Perhaps the cost of successful litigation against the Commonwealth should be borne by the Commonwealth. New laws to effect such changes would better encourage private parties to undertake litigation to redress broad statutory and constitutional affront, effectively acting as a private attorneys general.

Education for the Just Society

"You take the \$8 billion that they were talking about last year adding to the war on drugs and you put it to work in the war on ignorance in this country."
Leslie Harris, Esq.
Roxbury Public Hearing
February 13, 1991

Education is the non-discretionary element in our preferred future. Education is the means to independent thinking, to self-respect, to connection to society, to participation in community life.

We recommend programs to link schools with courts, to enable judges and other court personnel to visit schools, and to encourage students to visit and work within the courts.

Peer review panels and conflict resolution curricula should be developed and expanded.

In the future, schools should include in their curricula courses in legal rights and responsibilities and conflict resolution.

To accomplish this goal, school should develop an institutional affiliation with courts. Judges, court personnel, lawyers, and other legal providers will participate in school programs. Students will visit and observe courts on a regular basis a part of their education. They will be encouraged to think critically about what they see. Courts will facilitate programs where student work within the system, such as the Judicial Youth Corps, a cooperative partnership between the Massachusetts courts and the Boston public schools.

We envision a future in which schools establish their own "judicial systems."

Peer review panels for student discipline and other matters should be developed and expanded.

Students would learn about shared responsibility, how to use dispute resolution techniques, and how to be advocates for themselves and others. As they cycle through various positions in their "justice system," they will see disputes from more than one point of view. As community activist Mel King said at the task force's Roxbury public hearing:

"In these institutions [today] our youth aren't dealt with by their peers. And if that is a value in the administration of justice then we've got to take a look at ways for youth to be dealt with by their peers ... people who in some way can understand them"

Finally, education about the justice system will continue after formal schooling ends. Educational programs for members of the community as well as for court personnel should be promoted. Sessions at comprehensive justice centers will offer courses about basic rights and responsibilities and the availability of services.

NOTES

1. Zelda Fichandler, "Prescriptions for a National Acting Company," *New York Times*, (August 4, 1991).

2. Access to Justice Project, American Civil Liberties Union, *Justice Evicted: An Inquiry into Housing Court Problems* (ACLU, 1987), ii.

3. *Id.* at ii, 23-24.

4. Massachusetts Legal Assistance Corporation (MLAC), *Massachusetts Legal services Plan for Action* (November 1987), 1 and 3.

5. In 1980 there were approximately 37 million people in the United States at or below 125% of the federal poverty line; by 1984 that number had grown to 46 million. *Id.* at 20. At or below 125% of the federal poverty line, which as of early 1992 is \$16,750 annually for a family of four, people become entitled to free civil legal services in Massachusetts by programs funded by MLAC and the Legal Services Corporation. *Id.* at 28.

6. See written submission from Judge Gordon A. Martin, Jr., who listed the ethnicity of each of the 1,504 people who appeared before him in criminal matters in Roxbury District Court between July 18 and December 29, 1988. Judge Martin noted that some of these criminal matters were relatively minor (abandoned automobiles and violations of the Commonwealth's automobile and insurance laws). These 1,504 people came from 41 countries, including the United States.

7. Thomas Palmer, "Overcoming Obstacles: Blind, Deaf Man Wins Legal Fight," *Boston Globe* (June 27, 1991).

8. American Bar Association and the National Judicial College, *Court-Related Needs of the Elderly and Persons with Disabilities: a Blueprint for the Future* (1991), 3.

9. Margot Kempers, "There's Losing and Winning: Ironies of the Maine Indian Claim," *Legal Studies Forum*, vol. XIII, no. 3 (1989), 267, at 283.

10. ABA, *Court-Related Needs*, *supra* note 8, at 45-46.

Discourage litigation. Persuade your neighbors to compromise whenever you can. Point out to them how the nominal sinner is often a real loser – in fees, expenses, and waste of time.
Abraham Lincoln

VISION

In 2022 justice in Massachusetts will be much transformed yet much the same. Its sameness will derive from adherence to principles (freedom, fairness, and due process) that have secured the foundations of justice in Massachusetts for 300 years. Its transformation will come in significant part from the greater use of alternative dispute resolution (ADR) processes, still consistent with those fundamental principles yet as varied as necessary to fit the types of disputes 30 years hence.

Democracy is premised on several basic notions. One is that a democratic society every person has the basic responsibility for his or her individual destiny. An element of that responsibility is the effective resolution of conflict. In 2022, although there will exist a wide range of public and private dispute resolution services, the individual will participate much more fully in the resolution of his or her own conflicts.

In the future, alternative dispute resolution processes will increasingly be seen as effective alternatives to trial. There will be a special emphasis on participatory processes that seek consensus and common ground. Similarly, in all dispute resolution the

primary objective will be the recognition and disposition of underlying issues and not just the treatment of symptoms. Disputants will be given a range of options for effectively resolving their disputes.

The impetus for this changed world will derive in large part from an increased acceptance of these related objectives and from an increasingly well-informed and cost-conscious public able to evaluate which disputes warrant a traditional trial (a limited and expensive resource even in 2022). The institutionalization of ADR will not come, as some critics suggest, merely from the need to combat congested dockets and relieve overburdened judges.

The centerpiece of this vision of an alternative justice system of the future is the comprehensive justice center (CJC). The CJC, of which there will be a network across the Commonwealth, will resemble a marriage between a court and an administrative office of today. Like today's courts the CJsCs will be operated, financed, and managed by the Commonwealth. They will also house facilities for processing civil complaints, as well as minor criminal matters directed there by police and other criminal justice agencies.

There the resemblance to today's courts ends. The CJsCs will be the dispute-screening and referral centers of the Massachusetts justice system, and the provider of court-annexed dispute resolution services. Each CJC will act as the point of initial contact for all cases other than serious criminal matters.

As quickly as disputes enter the CJC they will be evaluated and redirected. Some will remain in-house, sent on to judges, mediators, arbitrators, and mini-trial adjudicators. Other may be sent outside, to neighborhood justice centers, to social service agencies, and to a range of other commercial and non-profit dispute resolution providers. Thereafter the CJC will track each dispute's progress along the chosen avenue to justice.

The judicial branch will manage the CJC network. The CJsCs, in turn, will exercise oversight and quality control functions with respect to the universe of court-annexed and private dispute resolution providers to whom they refer cases. Almost all cases will enter the system though the CJC. While fewer cases will go to trial in 2022, those that do will be conducted in the CJC itself.

Thus by 2022 the justice system will be wearing an important new hat. As well as adjudicating disputes it will manage a vast array of public dispute resolution services. Justice system personnel, both judges and others, will be skilled, trained, and committed to matching the problem to the appropriate forum. They will long since have been persuaded of the virtues of a variety of dispute resolution options both within and outside of the courts.

A number of new job descriptions will exist in the CJC of the future. Cultural interpreters will be available to serve a multiethnic, multilingual population. Intake counselors will educate and inform walk-in disputants. Where necessary these intake counselors will help translate problems into claims and complaints. They will also manage the actual referral of disputes to the appropriate form of dispute resolution, in the CJC or elsewhere. Ambiguous or especially complex

This is a condensed and edited version of the report of the Alternative Paths to Justice Task Force. The complete report may be obtained from the Public Information Office of the Supreme Judicial Court. The views expressed and recommendations made herein are those of the task force and do not necessarily represent those of the Commission. Task force member were Florence R. Rubin and Frank E.A. Sander, co-chairs; Peter A. Diamond, Anna Faith Jones, Arthur R. Osborn, Hon. Francis G. Poitras, Carmen I. Rodriguez, and Warren R. Wise, members; Albie Davis, Hon. Gordon Doerfer, and Jerome Facher, special advisers; and Dwight Golann and David E. Matz, reporters.

matters will be diverted to a screening counselor who will meet with the parties – perhaps via interactive video links – to clarify issues and explore all dispute resolution options. Because screening counselors will be trained mediators, many cases will be resolved at that initial conference.

CJC processes will be swift, efficient, and readily understandable. Most business will arrive via communicator screens, as widely available and as easy to use in 2022 as the telephone is today. Walk-ins will be encouraged. Once screened and referred, disputes will be tracked by case managers who will take personal interest in and responsibility for individual cases and will ensure timely appropriate action. As a result of this hands-on tracking, “re-referrals” will be possible as cases once appropriate for one path (arbitration, for instance) change in character and become better suited to another (mediation).

Technology will play an important role in this new world. We have already mentioned interactive video technology and communication screens. Equipped with facsimile transmission capabilities and able to translate all major languages instantly, the CJC’s ability to provide access to justice will be as simple as pressing a JUSTICE key. In addition, expert systems and other artificial intelligence programs will be available to help disputants analyze and evaluate conflicts and learn about various dispute resolution methods and possible dispute remedies. In actual dispute resolution forums long distance participation by one or more parties will be possible in both two-dimensional (interactive video) and three dimensional (hologram) formats. The net result of this technological innovation will be enhanced access to justice that is more affordable and convenient.

By 2022 another important piece of the disputing puzzle will be in place: educational programs aimed at changing attitudes about conflicts and how to address them. From the pre-elementary years onward schooling will impress upon our children the value of constructive problem solving, of mutual admission of fault, and of finding mutually acceptable solutions. Different expectations about the appropriate role of adjudication and other forms of dispute resolution will emerge. Schools will also require basic education in dispute resolution methods, ensuring that every citizen of the Commonwealth has at least a rudimentary understanding of negotiation and mediation. Conflict will be minimized. Where disputes cannot be prevented they will often be resolved by the disputants without the aid of any external dispute resolution service.

Education about dispute resolution theory and practice will not be limited to primary and secondary schools. Consistent with its responsibility to provide the highest quality justice at reasonable cost, the justice system, in partnership with the bar, will devise and implement programs to train lawyers and inform parties about the use of ADR options. Beyond that, bench and bar will take a leadership role in encouraging the public to accept new dispute-resolving techniques and in inventing ever more innovative methods to address the unforeseeable disputes of the future.

Although its components are several, the vision is simple. Public attitudes about disputes and their resolution will be radically different. Those conflicts that do reach the level of “disputes” will be individually screened and referred early. Unlike today, the forum will be matched to the case. Multiple avenues to justice will ensure that problems – not symptoms – are honestly addressed. Litigation, though unlikely to be absent from the world of 2022, will be less fashionable. Justice will be more effective, more affordable, and more satisfying.

ACHIEVING THE VISION

The vision will not become reality overnight. Some innovation will surely occur in the near term (one to five years), but other progress will take much longer. More important than any single step is the consistent forward movement toward a high-quality, comprehensive, options-based public system for resolving disputes.

Institutionalizing Variety in Dispute Resolution

Comprehensive Justice Centers

The comprehensive justice center is central to our recommendations. As noted earlier, the concept behind the CJC is providing from a single location access to a wide range of dispute resolution options both before and after any case is filed. Counseling, dispute screening, referral, and on-site adjudicatory and non-adjudicatory dispute resolution are just a few of the services a CJC can provide. CJsCs will be located across the Commonwealth and, as we have said, will be accessed either in person or from remote locations, such as home, office, community center kiosks and so on.

For the new CJC network we recommend considering the adaptation of existing facilities. District courts, for instance, are numerous and widely located. Although designed for today’s adjudicatory proceedings, space for other dispute resolution processes could be designed into the Commonwealth’s rehabilitated courthouses over the next 30 years.

We recommend building on existing ADR innovations and programs in the Commonwealth. They are not only valuable near-term models for dispute resolution methods; they are also effective laboratories for collecting ADR data, such as determining which conflicts are most

appropriate to which dispute resolution procedures, which stages of a conflict are best suited to a particular dispute resolution technique, and how screening can best be accomplished.

Accordingly, recommend the creation of a network of CJs, committed to easily accessed multi-option justice.

Funding

Central to the vision is affordability. The choice of dispute resolution process must not be dictated by the user's ability to pay. Thus, like today's courts, the CJs must be publicly funded.

We also envision an important future role for private dispute resolution services, both commercial and non-profit. We emphasize that what is proposed here is not a two-tiered system in which monied "haves" opt for private justice, while poorer "have nots" are shunted off to the state system. To the contrary, private dispute resolution providers are expected to work in concert with CJs to meet the demand for varied services. Nor will ADR become another costly "hoop" through which the poor must jump as an antecedent to adjudication. Virtually all cases will originate in the CJC; cost will be borne by the Commonwealth.

Mandatory Use of Alternative Dispute Resolution Procedures

Alternative dispute resolution has the capacity to address conflict fairly, creatively, affordably, and in a timely fashion. Often the result for the disputant is a much higher level of satisfaction – certainly a much lower level of frustration – than from many adjudicatory proceedings. Yet those unfamiliar with ADR procedures are often reluctant to use them. Accordingly, we believe that required participation in ADR is appropriate under certain circumstances.

Mandatory ADR can take different forms. It can amount simply to requiring attendance at an educational session that describes dispute resolution options, or it can involve mandatory participation in a particular dispute resolution process. It can be required by category of case (e.g., all personal injury cases must be reviewed by a case evaluator) or by a judge's referral of a specific case after pre-trial review. It can occur after filing, as in the example above, or can be a pre-requisite to filing. These are questions of public policy, which is customarily made by legislative bodies. Indeed Massachusetts has a statute (Mass. Gen. L. ch. 211B, § 19) that gives the chief administrative justice authority, within limits, to establish a "mandatory alternative dispute resolution program."

We expect that by 2022 the benefits of ADR will be self-evident and that it will have sold itself. **In the near term we recommend that parties be compelled to participate in mediation, arbitration, case evaluation, or other dispute-resolving procedures where such referral would aid in the more effective disposition of the case, provided that :**

- **the parties' rights to trial are preserved;**
- **a judge has the power to allow a disputant to "opt out" of the mandatory procedure for good cause shown;**
- **mandatory procedures do not impose any additional financial burdens on litigant beyond the normal filing fee;**
- **referral is to highly skilled professionals; and**
- **mandatory automatic referral is not used in certain kinds of cases more fully described below.**

Exemptions from Alternative Dispute Resolution

Some matters will be inappropriate for and should be exempted from ADR. While in 2022 the comprehensive justice center' intake screener will have the judgment and acumen to make such determinations, in the near term a judge, acting in his or her discretion, is the appropriate party to make that decision.

There are some classes of cases, however, that screeners and judges should perhaps not be permitted to refer to ADR for reasons of public policy. While we are sympathetic to the view that private parties, assisted by the court, should be able to settle their cases as they wish, unimpeded by public interests, there are two types of cases that clearly point to possible limitations on this view. First there are cases in which the public's interest is paramount. Serious criminal cases are the most obvious example in this category. Second there are important cases in which one party agrees to mediate but does so without the freedom or competence necessary for meaningful negotiation. A dramatic example of such a case might be spousal abuse.

There are additional non-generic problems arising in particular cases. For example, if ADR would interfere with a person's ability to use the court's coercive power to obtain evidence, or to bring an important third party to the table, or to deal with a complex compliance issue, then the wisdom of using it is questionable. **We recommend that guidelines be developed that would delineate the circumstances in which referral to alternative dispute resolution is inappropriate.**

Encouraging Judicial Use of Alternative Dispute Resolution

Until CJC intake screeners are well in place, judges must decide whether and when a case will benefit from ADR. The role of the judge in encouraging parties to experiment with dispute resolution procedures is complex and sometimes subtle. Today it is often only a judge who can successfully encourage parties and counsel to give it a try. We recognize that there are delicate issues of potential judicial coercion here. **Still, we recommend that judge be explicitly encouraged to refer cases to ADR. We further recommend training for judges in the uses and limits of ADR.**

A related issue concerns present-day judges performing some of those functions that in 2022 will be performed by CJC neutrals, specifically participating as a neutral in negotiations aimed at settling particular cases. Such a role is not unknown today. Again we acknowledge the potential for coercion, most likely unintended, of parties by judges. However, in our view the risk is outweighed by the potential benefits of having judges involved from time to time in some non-adjudicatory dispute resolution. The court should provide, for those judges who desire it, education both in ADR and settlement techniques and in the appropriate limits on such a role for a judge.

The Attorney's Role in Alternative Dispute Resolution

In the future, the relationship of the lawyer to ADR will be much changed. While today the role of the dispute resolution lawyer is most often that of an advocate, it was not so long ago that the role was just as often that of conciliator. Counseling, advising, and problem solving generally were the skills that attracted clients to lawyers.

There is today a trend in some full-service law firms to create the institutional ability to advise and represent clients in all available dispute resolution forums. Indeed, some firms have “ADR partners.” This trend is likely to continue as clients become increasingly sophisticated about the range of available dispute resolution options.

The initial attorney-client interview is often the first opportunity for clients to learn about the potential costs and benefits of utilizing any one of many dispute resolution options. The lawyer, then, has a critical role to play in informing and educating about the disputing environment. **In every appropriate case attorneys should discuss with clients the advantages and disadvantages of all available dispute resolution options.**

Openness of Dispute Resolution Proceedings

In the future, an increasing number of conflicts will be referred to non-adjudicatory, justice-system-managed dispute resolution processes. As in adjudicatory proceedings, the issue of the public's “right to know” poses real dilemmas, although in adjudication, at least, the right is presumptive. The concept of public access is founded on several principles: public confidence is enhanced by openness; publicly supported dispute resolution processes must be accountable and subject to public scrutiny as any other public process; secrecy holds out the possibility of exploitation; and closed proceedings can affect third parties and the public generally, all of whom have a right to know.

Privacy in dispute resolution also has its arguments: a private conflict should not be the stage on which to act out grand policy disputes; commercial transactions often involve business-sensitive information entitled to confidentiality; and negotiated settlements are statistically more likely to succeed when protected from the inhibiting glare of publicity.

A number of significant distinctions attend this debate. Should the public have access to the process? The result? Or both? Should a different standard govern adjudicative and mediative proceedings? Should some members of the public (e.g., affected third parties) have different rights of access than, say, the press? Should openness be determined by whether a court is called on to enforce an agreement? Should a specific policy control, or does judicial discretion better serve the private and public interests in certain matters?

Such questions are at the frontier of dispute resolution policy. They will require much additional investigation and consideration before satisfactory answers are found. In some instances specific statutory provisions (such as open-meeting laws) may govern. In view of these considerations we recommend the following:

For court-connected proceedings:

- **Adjudicative proceedings (e.g., court-annexed arbitration) should be presumptively open. The outcome should normally be part of the public record.**
- **Settlement procedures (e.g., court-annexed mediation and summary jury trial) should normally be private. Any resulting settlement should also normally be confidential, unless the court, for good cause shown, orders otherwise.**

For non-court-connected proceedings:

- **Dispute resolution proceedings and outcomes should normally not be open to the public.**
- **Where a court is called on to enforce the outcome of such proceedings, court may review the proceeding to be sure it complied with procedural standards (e.g., the parties were apprised of the desirability of recourse to an attorney).**

Quality of Service

In the future, as today, high quality personnel, services, and facilities will be needed to ensure public trust and confidence in the wide array of dispute resolution processes that will be available. The following recommendations are intended to provide a framework for the development and enhancement of high-quality service and public trust in the coming years.

Qualifications of Dispute Resolution Service Providers

The skills of a good dispute resolver are sophisticated and subtle. They should not automatically be inferred from either an appropriate temperament or a law school degree. We recommend that serious attention be given to assuring the professional competence and integrity of dispute resolution service providers. This is particularly true where the service is mandated by a court or where an outside provider receives court referrals.

Standards to measure competent mediation practice are still evolving and are likely to continue to do so for a number of years. **We recommend that the Massachusetts courts establish a procedure for approving dispute resolution providers who work for or on behalf of the courts. We further recommend that in approving service providers the court do so on the basis of ADR skills demonstrated in performance evaluations and relevant subject matter knowledge demonstrated in appropriate tests, rather than on the basis of traditional credentials such as the possession of academic degrees.**

Training

The most effective way of raising the skill level of dispute resolvers is to provide all those who are part of the process with high-quality training. **We recommend that the court assume responsibility for assuring adequate training in the field of dispute resolution.** There are three target groups and objectives for this training.

Mediation Training for Judges

Many judges mediate as a matter of course, reportedly with uneven results. Some judges are concerned about potential conflict between the roles of judge and mediator, and others feel they lack the necessary mediation skills. As suggested above, we believe that those judges who do engage in mediation would benefit from training in mediation skills and from formal discussion about the appropriate role of judge-mediators.

ADR Training for Attorneys

The key to the vast majority of settlement is (and in 2022 still will be) the negotiating ability of attorneys. The more skilled their performance the higher the number of settlements and the higher their quality. The public, therefore, will be the direct beneficiary of negotiation training for attorneys. In addition, as pointed out earlier, attorneys have a fundamental responsibility to educate clients about ADR options. **We recommend, therefore, that the court and the bar assume responsibility for ensuring attorney awareness of ADR processes, as well as training in negotiating skills. Further, the court should encourage ADR education and skills training in law schools and continuing legal education settings. We also recommend that, as a means of raising the awareness of law students and law schools about the variety of ways to resolve disputes, the court move to introduce issues of dispute resolution into the bar examination.**

Dispute Resolution Training for Disputants

The more skillful parties are at negotiation and at using mediation, the more adept they will be in shaping a strong and lasting resolution of their disputes. **We recommend, therefore, that the court assume responsibility for educating parties about dispute resolution options and training them in negotiating skills.**

The courts could develop a variety of educational programs to promote the availability and use of ADR, such as brief, readily understandable written materials mailed to the parties; videotaped examples of skillful negotiating behavior made available for viewing at CJsCs; and video games that test negotiating skills.

Parties and Dispute Resolution Proceedings

In the future, people who seek to resolve disputes and constructively address conflict will play a much more significant personal role in the process. By encouraging parties to be present at mediation proceedings, we increase the likelihood that they will play a more informed role, not only in accepting or rejecting offers but in shaping the process and the content of those offers. Furthermore, experience has shown that parties who participate in settlement proceedings are more likely to adhere to their outcome. For these reasons and because participation is likely to be a powerful educational tool for teaching dispute resolution techniques, **we recommend that, wherever possible, parties be required to be present at dispute resolution proceedings.** In the future, this may be allowable via interactive video-conferencing.

The Role of Technology

As described elsewhere, technology can play a major future role in improving access to dispute resolution proceedings and in improving the quality of dispute resolution outcomes. Technology can facilitate long-distance “meetings” among parties, increase the ability of parties to manage complexity in disputes, and improve disputants’ ability to assess future probabilities more accurately.

In some cases the requisite technology is already available but will be improved and become more affordable by 2022. Tele-conferencing, for example, has been used for years by businesses and the military to facilitate “face-to-face” meetings, in some cases over vast distances. Expert systems (computers that think) are already being used to assist in dispute resolution. The Multi-Door Courthouse in Washington, D.C., for example, has developed a computer program to help diagnose the dispute resolution needs of cases at intake. And in very large, complex cases, computer analysis of decision-making processes has been helpful in managing data and in assessing the probability of various outcomes. In the future, artificial intelligence and other expert systems will provide dispute resolution processes and practitioners with even greater assistance.

We recommend that the judiciary be open to the opportunities that communication technology and expert systems will offer in the field of dispute resolution, with the aim of developing, as technology permits, a “court without walls.”

This would allow people who wished to do so to participate conveniently in dispute resolution proceedings from home, office, or community center.

Maintaining Momentum

To say that alternative dispute resolution has already had a profound influence on the way courts function is an understatement. Its impact will resonate even more clearly in the next 30 years as it provides greater benefits to the courts, the bar, and most importantly, the public. Dispute resolution methods and techniques are still developing. It seems likely that they will do so even more rapidly in the future. New issues will arise, and new challenges will have to be met. The courts and the bar must be prepared and able to respond imaginatively and energetically.

To assist the court in this process, we recommend that the Supreme Judicial Court create a Standing Committee on Dispute Resolution, composed of judges from each court department, members of the bar, academics, dispute resolution professionals and the public. This group’s principal purpose will be to foster experimentation with and evaluation of new approaches to dispute resolution. The Standing Committee will also help the court maintain a leadership position in the ADR field and interact with other dispute resolution programs and providers in the Commonwealth. The Standing Committee could also help the courts translate this task force’s recommendations into an action plan, pilot projects, and experiments in particular court settings.

The ADR movement has made the progress it has in Massachusetts because of the energy of those in the movement and because the courts have been receptive and supportive. The Standing Committee on Dispute Resolution will help advance the vitality and effectiveness of the Commonwealth’s dispute resolution system.

ORGANIZATION & ADMINISTRATION

VISION

"A Letter from 2022"

Dear Commission Members:

Thank you for the invitation to tell you how things have changed here in the Commonwealth Court of Justice in the year 2022.

I came to work for the courts over 30 years ago. Things are much different now than they were then. The administrative confusion of the old days was basically eliminated by the Court Reorganization Act of 1992 and its aftermath. It changed a lot of things that needed changing.

Judges are still selected in the same way: nomination by a blue-ribbon commission, appointment by the governor, confirmation by the Executive Council. But now there is a retention board that passes on a judge's performance every seven years. Few judges are rejected by the board, but when it happens there is usually widespread agreement that it was for good reason. In the old days we would have lived with the problem or addressed it as a disciplinary matter, which seemed to take forever and involved great expense.

In 2022 we have a performance evaluation process. The judges opposed it at first, but now they like it, especially the newer judges. It keeps them alert, and it reassures the public that the system is under regular review. The judges welcome the chance to "talk shop" with their colleagues, which is a routine part of the evaluation process. And having other judges sit in on judges' trial sessions has improved communication among judges and made practices more uniform throughout the court. It has brought the hot topic of judicial performance into the open and lowered the temperature. Since implementing retention review and performance evaluation there have been many fewer disciplinary cases. This has spared the judges a lot of anxiety.

In your day there were endless debates about how many courts there should be - Superior Court, District Court, Probate Court, etc. (as if there were really an answer to the question). And whether the Boston Municipal Court should remain independent. With a single Court of Justice, those issues are now addressed within the judiciary and in a much more relaxed fashion. In the first few years after court reorganization the small courts were merged into the bigger ones, and about 20 years ago the Probate Court was merged into the Superior Court. We are now experimenting in five counties with the merger of the District Court and the Superior Court. I'm sure it will come to pass everywhere eventually. But the subject is not the big deal it was in your day.

This is a condensed and edited version of the report of the Organization and Administration Task Force. The complete report may be obtained from the Public Information Office of the Supreme Judicial Court. The views expressed and recommendations made herein are those of the task force and do not necessarily represent those of the Commission. Task force members were: Thomas P. McDermott and Michael E. Mone, co-chairs; Jerome S. Berg, Deborah S. Capeless, Hon. Suzanne DelVecchio, Ira A. Jackson, Hon. Salvatore F. DiMasi, Hon. Arthur M. Mason, and John J. Newhauser, members; and Lisa Gabriel, reporter.

We still have a number of specific divisions - a major crimes division, a family division, and so on. Recently we set up a technology crimes division because of the growth of technology-related criminal activity. We hope such crimes will soon be a thing of the past. We used to have a drug division, but we dropped it after the drug problem subsided. The judges like these divisions because they can specialize in something for a while without committing their lives to it.

The post-1992 improvements in administration have produced some profound changes. The whole atmosphere is different. Everyone knows that the chief justice of the Supreme Judicial Court is ultimately in charge, even though she doesn't often get involved in the day-to-day. The chief justice of the Court of Justice and the presiding justices and court administrators around the state have that responsibility. Here in Norfolk County we have a court administrator at the court's headquarters in Dedham and deputy court administrators in the other four courts in the county. We once had five courts, but we closed one four years ago because the business didn't justify it. In your day you required legislation to do that, and everyone from the police chief to the paper boy showed up to oppose it.

The court administrator works with the Norfolk County presiding justice, and his deputies work with the PJ's managing judges at each location. The judges now crave these administrative slots because they come equipped with professional administrative assistance, and they get extra pay. You would think that the more senior judges would wind up in these positions, but it doesn't work out that way. Many of the newer judges are tapped for these slots because of their energy and their more recent administrative experience.

Unlike the old laissez-faire days when the management of the local courts was mostly just a turf battle, things are now unified. It is accepted in the courthouse that the court administrator is in charge. She holds regular staff meetings. Today there is a big emphasis on quality because it is widely understood that the chief justice is serious about it.

Court jobs were always considered good jobs, but today we really feel better about ourselves, knowing that people care what we think. We have a merit salary plan, so people who excel get paid accordingly. There is also an employee recognition plan where a person can get special compensation for ideas that lead to major improvements.

Here in the future we can move easily from court to court. I still remember the days, however, when an indication that you might like to go to another court could actually be interpreted as disloyalty. And there is a "career ladder" that means something. I started out as a Procedures Clerk I, and now I'm a deputy court administrator and in a different court.

Things are much more open than they once were. We see the judge often - he's always dropping in and talking to us about how things are going. Twice a year the chief justice herself visits the courts around here, and anyone who wishes to can meet with her to say whatever they like, privately. It's nice to know that you have access to the top now and again.

There is a much greater emphasis on local responsibility in the system today and much less central control. The "bad news" is that we really have to produce. People from "central" are often around looking at things, and we're always a little nervous to see how we compare with other courts. But we're used to it now. The big difference is that today after the headquarters people leave something happens.

The old problems, such as inadequate resources, still exist. But resources are now allocated on a caseload basis, so at least we feel we have our fair share. We always need more, of course, but there are many more incentives to get by on what we have. If the court next door can close more cases with the same resources, someone will be asking why we can't do the same. Back in your time we'd just pass the buck up the line - not enough of this, not enough of that, always someone else's fault. Now we just try to do a better job. Usually we can.

We found that, like most things, it is more a matter of attitude than anything else. Even with major changes in structure, leadership was the key to improvement.

Thank you for your interest in the future.

POINTS OF DEPARTURE

Administration and the Judicial Process Generally

The text of this subsection has been incorporated into pp. 35-36 of the Commission report.

Hawaii's Sohail Inayatullah, a commentator on judicial administration, has identified some of the changes that can accompany adoption of a corporate model of judicial administration:

"For the judiciary as a whole, centralization has modest costs. However, 'for individual judges, who may have lost some of their former autonomy, the cost of a modest degree of administrative centralization may be perceived as relatively high.' ... [In the final step in the adoption of the corporate model] ... the idea of the lone independent judge is dispelled forever The judiciary becomes a system, individuals become actors with specified functions within this larger system. Parts become interrelated to each other, and changes in one part of the system cause perturbations elsewhere While this may lead to new levels of efficiency, judges, attorneys, and employees may not accept the loss of autonomy and the loss of individuality that such a structural shift would entail."

The natural tension in the courts between the judicial culture and the management culture finds many illustrations.

In the judicial culture, decision making occurs in a hierarchical environment. Cases move from lower courts to higher courts, with review only after the lower court has made a decision. Interaction is at arms length, with all considerations based strictly on the record. In a management culture, however, the hierarchical approach is inefficient. Effective ongoing, informal communication and interaction between levels is essential.

This highlights the very different roles that we expect from our Supreme Judicial Court. The Court's case-related (judicial) role is to decide questions of rights and responsibilities. The Court's superintendence (management) role is to oversee the court system. This second role has taken on vastly greater importance in recent years, to the point where the high court is held accountable for the state of administration in the trial courts. There is a fundamental question about whether the Court's case-related role is so different from its administrative role that the Court cannot properly perform the latter on an active, rather than an oversight, basis. While the Supreme Judicial Court must always have the overall power of superintendence over the trial courts, and the ability to supervene the actions of lower judicial officers, we believe that the primary responsibilities for administration must fall closer to the trial courts themselves.

The judicial process is a passive one. Courts wait for cases, they do not solicit business. They serve as umpires in an adversary process where each side is expected to advocate its position firmly. The management process, on the other hand, is a dynamic, anticipatory process. It requires planning, different actions, and different instincts.

In the judicial culture, the judge is a powerful, isolated figure. In many respects he or she is an icon of the entire justice process. But in the management culture, free-flowing communication is essential. Preserving the judge as the embodiment of the judicial process may be a useful and important element of the judicial process, but in most cases it serves as a brake on good communication within the courthouse. People do not communicate easily with judges, or vice versa.

In the justice culture, judges tend to view the business of the courts in

terms of individual cases. In the management culture, on the other hand, managers often must view business in the aggregate, subordinating elements of individual cases to factors affecting the business of the whole.

The point is that the administrative environment of the courts is, at best, extraordinarily complex, its management far easier to criticize than to control. This argues for, among other things, a stronger management structure at the local court level, where these complicated processes must be confronted and addressed.

Administration and the Judicial Process in Massachusetts

Many elements of the Commonwealth's judicial system are quite advanced, by national standards, particularly at the state level. The Supreme Judicial Court has codified powers of general superintendence over the entire court system. The various departments of the trial court are headed by chief justices. There is a chief administrative justice and a trial court administrator to coordinate the whole.

There are common rules of procedure and fairly broad uniformity of forms, a single statewide budget (now with nearly complete transferability among line items), a common personnel system with a uniform compensation and classification plan, salary parity among all trial judges, a judicial nominating commission, free transferability of judges among the various trial courts, and a Commission of Judicial Conduct for judges and a similar body for clerks. The jurisdiction of the various departments of the trial court is uniform throughout the state.

Prominent among the system's strengths are its personnel, many of whom are intelligent, committed, and giving. There is

tremendous knowledge within the system about needed improvements and great enthusiasm about moving toward improved performance. The absence of good people is not among the court's major liabilities.

These assets notwithstanding, the system has problems. The specific problems of court management in Massachusetts have been recounted often, and in greater detail than is necessary here.

The text of this subsection has been incorporated into p. 37 of the Commission report.

Local court structure and organization is not integrated. It is fractionated. The diffusion of responsibility means that no one is in charge. There is no chief operating officer of the local court. It should come as no surprise that the concept of statewide court administration wins no popularity contests in a system where unified management of even a single courthouse is unknown.

The judiciary lacks control over the selection of certain key personnel. Local first justices in the District Court and Probate and Family Court succeed to their important positions by statutorily defined seniority. Clerks of court are either appointed by the governor or elected in partisan elections.

Key personnel often play conflicting roles. In the District Court, for example, clerks are managers. They are also quasi-judicial officers, however, with authority over important functions such as bail setting and the issuance of criminal complaints. They are essentially first-line judges. In this environment, the quasi-judicial role usually receives priority, with management becoming a secondary function often delegated to others.

The Challenge

The fundamental administrative challenge in the courts is to properly

blend the judicial culture and the management culture into an effective operational scheme, one that preserves the basic elements of the justice culture that have evolved over centuries and that define our basic conceptions of justice, while at the same time permitting management of the process with maximum efficiency and effectiveness.

Dean Roscoe Pound recognized the difficulties inherent in the administration of the court system when he observed that court management was no sport for the short-winded. The worlds of justice and management are so different that to expect efficient management without an organization and structure fairly designed to support it is to elevate faith over both hope and reason. It is to deprive well-intended and hard-working court officials of a fighting chance.

The mission for the future is to create a new reality in the administration of the courts, an environment where good management can thrive and judicial decision making can itself be enhanced. The most important element of this new reality will be the emergence of a new way of thinking about judicial administration on the part of all three branches of government.

BLUEPRINT FOR CHANGE

Flexibility in Court Structures and Judicial Administration Is Essential

The only certainty about the future is its uncertainty. Whatever may be the actual scenario under which we will live, it is clear that the structure and administration of the system - the underpinnings that will determine whether the system's judicial and management goals are achieved - must be flexible. It must be able to adapt quickly and easily to changing circumstances. This is the key to confronting future change in the courts.

We have not adopted specific recommendations on some of the issues that have occupied much of the attention of current reformers: the number of separate courts that are needed; the degree to which the chief justice of the Supreme Judicial Court should possess plenary power over the court system; whether there should be a governing board of some kind; the role of a state court administrator. We believe that in looking to the future these "governance" issues, while important in the design of actual structures, are of secondary importance. In addition, they admit to a wide variety of legitimate approaches that may properly vary over time.

The more important questions for the future are how power, wherever located, is best exercised; what the overall management philosophy of the courts should be; and how the administration of the courts at the key delivery point - the local courthouse - can be improved. Strength in local management will minimize the need for large statewide structures.

To address these and other issues, the watchword of court organization in the future must be *flexibility*.

There should be a single Court of Justice at the trial court level, divided into such statewide, regional, and local functional or geographic divisions as the Supreme Judicial Court deems necessary.

Although we take no position on how many different kinds of courts there should be, we believe that some basic divisions, such as, for example, between Superior Court and District Court, are sensible, at least at this time. Whether that will be true in the future, however, as the business of the courts evolves, is another matter - hence the recommendation that the Supreme Judicial Court be able to make these determinations as circumstances warrant.

The Supreme Judicial Court should determine what boards, trial court chief justices, statewide court administrator or other administrative mechanisms and offices are appropriate, and it should define their roles.

The number of statewide court departments and the number of local courts should be reduced. Consideration should be given to grouping local courts for administrative purposes so that additional resources and professional managers can be provided and shared among them.

There should be the power to reallocate resources throughout the courts as necessary. This proposal will not only permit a fairer distribution of resources, but to the extent personnel are given the opportunity to work in new court environments, it facilitates the mobility of people and the migration of good practices.

A cadre of magistrates should be designated to handle some of the more basic and routine judicial functions. The Supreme Judicial Court should be allowed to define the authority of magistrates.

There should be a permanent judicial redistricting function within the court system to study and recommend changes in judicial districts as needed.

Every 10 years there should be a mandatory legislative re-examination of the courts' subject matter jurisdiction. In order to determine what business should remain in the courts and what should be added or removed, a periodic, thoughtful look at jurisdiction is desirable. Some cases may appropriately be shifted to administrative tribunals, while others may be brought into the courts. These are largely political decisions but important ones that can dramatically affect the functioning of the courts.

Leadership in Administration Must Be Actively Developed at All Levels

The text of this subsection has been incorporated into pp. 35-37 of the Commission report.

The Supreme Judicial Court should embark on a major initiative to define and develop administrative leadership at all levels of the court system and among all appropriate personnel, including judges. The Supreme Judicial Court should sponsor a series of conferences where issues of leadership are addressed.

Successful judicial leadership models elsewhere should be surveyed.

Leadership positions should be established at appropriate points in the court system to facilitate the development and advancement of persons with leadership abilities and promote the transfer of good practices within the system.

There should be an emphasis on "outside management" ("management by walking around") at all levels. This is the best way for managers to stay in touch with the organization and to influence it.

The Court System Should Enjoy Autonomy but with Responsibility

The text of the subsection has been incorporated into pp. 40-42 of the Commission report.

The chief justice of the Supreme Judicial Court should be appointed for a renewable term of seven years. This proposal seeks to acknowledge both the responsibility and accountability of the chief justice for overall court administration, while not committing the chief justice to this difficult role for an indefinite period.

The chief justice's role as administrative head of the entire court system should be given more weight in the appointment process. In many respects this is the chief justice's most important role in the eyes of the public.

There should be an ongoing, mandatory judicial performance review system. The heart of such a system should be peer review, but it should include solicitation of input from a variety of other informed sources as well. It should be oriented toward assisting judges in improving their performance. While productivity is a legitimate consideration, qualitative issues in the decision-making process should also be addressed.

There should be a performance review system for court management. Just as institutions are audited for their financial health, courts should be audited periodically on their overall administrative performance. The review should consider the full range of administrative issues facing the courts, including caseload management, internal court administrative processes, and public satisfaction with the administration of the court.

Judges should be subject to a retention vote of a Judicial Performance Commission every seven years. The task force recommends that the judicial appointment process remain as is, with the governor appointing, subject to Executive Council confirmation, from a list of candidates screened by a Judicial Nominating Council. Judges would be appointed to serve until age 70. The retention process would require a five-person Judicial Performance Commission appointed by the Supreme Judicial Court with due regard for the inclusion of judges and others in whom the Supreme Judicial Court has confidence. Operating under a strong presumption of retention, an appropriate means of review of the overall performance of a judge can be made

without chilling the independence of the judicial decision-making process. The Judicial Performance Commission may consider information generated by the judicial performance review system discussed above.

The court budget should be allocated to the judiciary in one or a few line items. Allocations throughout the court system should then be by the Supreme Judicial Court or the chief justice thereof, or their designees. The task force is not in favor of self-financing or retained revenue mechanisms at this time. The traditional budget process, with a reduced number of line items, provides a useful means of ensuring accountability in a non-elected branch of government.

The Supreme Judicial Court and the legislature should re-examine the fees. **Court fees should reflect the level of service that the court must provide in a case.**

Both a Philosophy of Management and Enhanced Management Accountability Mechanism Must Be Developed

The text of this subsection has been incorporated into p. 37 of the Commission report.

The development of a systemwide court management plan is essential. Once a management plan is in place local courts and other offices should be viewed, in management terms, as “accountability centers,” as mechanisms for ensuring management accountability.

A series of statewide and regional management conferences should be convened to develop a management plan for the court system. As already noted, a formalized management plan can serve as important purpose in articulating the roles and responsibilities of key personnel at both the statewide and local levels. This should be a major high-visibility effort. It might be beneficial to

integrate it in part with the leadership conferences discussed earlier.

Increased management responsibility and authority should be lodged in the local courts and such additional non-statewide court structures as are created. Although the judiciary should determine its own management philosophy, a decentralized approach is best. Responsibility and authority should be placed at the lowest level of the system where it can be accomplished effectively.

Judicial leaders should spearhead an annual courtwide planning process. In addition to the development of the management plan described above, this would permit the upward flow of best thinking, clarify expectations, and achieve commitment to goals. Such a process would be an important factor in mobilizing judicial and support staffs toward common goals and a convenient medium for communicating clear direction on where both individual courts and the court system as a whole are heading. The process should be participative, with subsidiary plans designed at each accountability level.

The subsidiary plans should cover a one-year horizon. They should address both new and ongoing initiatives. While we do not presume to prescribe all the components of such plans, among them might be sections on: goals, strengths and weaknesses, budget, proposed improvements (in quality, productivity, caseload, systems, and plant), human resources, and the unit’s role in the courtwide plan.

The Courts Should Prepare Themselves for a Broader Role in Services to Offenders, Persons at Risk, and Others Needing the Assistance of the Court

In the future, the courts will play a much greater role in the direct or indirect delivery of services to offenders, persons at risk, and others in need of services. The court today already performs many functions that are entirely outside dispute resolution.

The most vivid example is the probation service. Begun by John Augustus as a modest effort to give the court a set of eyes, ears, and hands to deal with criminal defendants, probation has developed into a large and important service delivery system. The service delivery concept has now spread far beyond probation, with the introduction of on-site court clinics and a host of programs and affiliations that a well-run court today considers indispensable: treatment programs, mediation programs, diversion programs, alternative sentencing programs, and many other community resources.

In the future, the courts are likely to play an expanding role as the service provider of last resort. Whether that role is played out directly or through other agencies, it is clear that the court should approach it deliberately. A developing service function will bring new challenges and administrative complications. Among other things, it will bring with it many of the same pressures and problems that are common to executive branch social service agencies.

There should be a Department of Court Services within the judicial branch. The goal of this department should be to provide necessary personal assistance to those who are involved in court cases and

who need help related to their case. The core of the department should be the probation service, but the role of probation should be broadened from criminal and family cases to court-related service delivery generally.

The Knowledge and Abilities of Court Personnel Must Be Harnessed and Developed

In the litany of problems and constraints facing the courts it is easy to forget the system's greatest strength: the quality of judges and other court personnel. What does need enhancement, however, are mechanisms to make the most of this reservoir of talent, to permit good ideas to influence the process in appropriate ways. While the courts have no monopoly on insight, we believe that the answers to many questions lie within the system itself.

The constructive involvement of personnel at all levels of court system administration and policy making should be maximized.

Committee structures should be re-examined and formalized.

Continuing education should be fully integrated into the court's work schedule and become a fundamental part of each employee's work life. As an antecedent to this process the system should set goals for how much of an employee's time should be devoted to training and education.

An employee recognition program should be established at all levels of the court system to reward positive performance.

A merit-based compensation program should be established to reward high performance and innovation.

A system of statewide job postings should be established to facilitate career movement within the judicial service.

An Office of Judicial Support should be created to respond to the unique personal and professional needs of judges. This office should have jurisdiction over issues such as law clerks, stress management, and retirement planning. Included in this office should be in-house or on-call experts in complex new subjects that confront judges, such as medical technology, the environment, genetic engineering, and artificial intelligence.

Appointment of new court personnel, and promotions, should be based exclusively on merit. In the future, this will be important not only to ensure that the courts benefit from the talents of the very best people but also to remind employees that doing their best leads to appropriate, tangible rewards.

Judges Must Remain Involved in and Have the Ultimate Responsibility for Court Administration

There is a tendency to want to solve the two-cultures problems by simply dividing the court process in two, leaving the judging to the judges and the administration to the administrators. While we strongly support the concept of professional local court administrators, we do not believe that the court process should or can be easily split. Judges must remain involved in administration in a meaningful way. We do not support a model administration that would make judges visitors in courthouses run by others.

The interrelationship of judicial and management issues is inherent and inextricable. The judicial side of the equation includes the basic elements of our concept of justice: the adversary system, guilt and innocence, sentencing, fairness, trials, due process – the building blocks of the courts and the law. The management side consists mostly of what happens

outside the courtroom. It includes such things as dealing with the public over the counter; being able to find a case file; clerks and probation agreeing on what the disposition in a case was; recalling warrants so people aren't wrongly arrested; having an accurate criminal record for bail-setting and sentencing purposes; collecting monies that have been ordered paid; and surrendering defendants who are in violation of their probation. In the area of case management it includes effective communication with the bar; starting court at 9:00 a.m.; scheduling business efficiently; and having a firm continuance policy.

In the future, we will need a fuller appreciation of how profoundly the management side of the court affects the judicial side, and of the dire consequences to justice when the "clockworks" are left unattended. The two sides of the process are so closely intertwined as to be inseparable. To this end judges must remain involved because ultimately, whatever the actual administrative structure of the court system, and regardless of whose job it is to do what, the people will always hold judges responsible for the system's performance.

The relationship of a judge to a professional court administrator is important and cannot be avoided by an artificial separation of duties. The management of the court must be a partnership, with the court administrator providing the management knowledge and the hands. The central challenge to local court administration is to make that partnership work.

Judicial positions that carry with them administrative responsibilities should be filled from within the judiciary for stated

terms. Judges should be selected for administrative judicial positions based solely on their administrative ability. Statutory requirements on seniority should be eliminated.

A judge, with professional assistance, should be in charge of each accountability center within the court system, including each local court and such regional and statewide groupings of courts as are established.

Judges with significant management responsibilities should receive extra pay.

Because the Administration of Justice Is Largely a Local Process, the Integration and Professionalization of the Local Courts Is Essential.

Despite the national trend to structure courts into "state systems," the judicial process is basically local. Most cases have little significance beyond their immediate locale. Counsel is usually local, as are non-support workers, abuse prevention counselors, social workers, law student advocates, district attorneys, the police department, and other participants in the justice process.

The local courts must be strong administrative units. There are natural and inevitable tensions and dysfunctions that emerge when state level officials attempt to manage local functions. More importantly, because courts are institutions that exercise profound power in individual cases (depriving people of their liberty, their children, their property, their homes) and because the judicial side of the court and the management side are so inextricably intertwined, the local court's authority on the management side must parallel its authority on the judicial side. An institution with broad

powers in judicial matters but little control over its own administration is doomed to failure. No organization can function in such a schizophrenic environment.

The structure of the key service delivery unit of the justice system - the local court - is fundamentally inadequate, as presently structured, to meet modern day administrative challenges. Whatever may be the uncertainties of authority and responsibility at the state level the situation at the local level is worse.

Clerks are not properly accountable, being either appointed by the governor or elected in partisan elections. Communication between the clerk and the probation office is often strained. The operations of the local court are completely unintegrated. The local court does not function as an administrative unit. Although each office of the court - the judge's office, the clerk's office, and the probation office - makes an important contribution to the justice process, the barriers to effective administration that exist in many of our courthouses can be overcome only by the most agile or persistent. The judge is nominally in charge, but in this trifurcated environment no one is truly in charge. Local court administration often becomes passive, uncoordinated, and idiosyncratic. It isn't so much that the court is mismanaged. It is just unmanaged.

The future will require the introduction of professional court administrators in the local courts. This is the path that other professions have followed toward improved administration. They have recognized the need for persons with skills different from those needed to produce the "product" - in this case, management skills rather than judging or case-related skills.

The cost and complexity of health care delivery has led to the management of hospitals by professional administrators. In the public sector, the demands of modern public administration have given birth to professional city and town managers. In the legal arena, lawyers are turning to law firm administrators in order to meet modern standards of legal administration. These groups know that professionalization of administration is indispensable to both the quality of service and the bottom line. This is as true in the courts as elsewhere.

A resource reallocation plan should be developed. There is widespread agreement that court resources - personnel, funds, and equipment - are not allocated efficiently. A major reallocation of these resources should be undertaken so that courts feel they have their fair share. Some resources may be reallocated immediately, while others may require more time.

The appointment of clerks by the governor, and the election of clerks and registers, should be eliminated.

The courts should employ professional court administrators, selected for their administrative ability, in the local courts.

The court administrator should work closely with the judge in charge to manage the court as a single administrative unit.

All local court management functions should be placed under the court administrator. The court administrator should be responsible for and have the authority to address all management issues in all offices of the courthouse.

QUALITY OF CRIMINAL JUSTICE

VISION

In the future, criminal justice in the Commonwealth will mean equal justice, without regard to race, gender, ethnicity, income, or class.

In the future, criminal justice will ensure "correctness of result" above all else. Speed and efficiency are important objectives but mere adjuncts to correctness and fairness.

In the future, the criminal justice system will increasingly resemble a public/private partnership, committed to ensuring the public's safety. There will be a greater sense of public obligation to participate in and improve criminal justice. Businesses, schools, churches, and other organizations will contribute to the process.

In the future, integration and cooperation among the system's components will be the rule. Resource-driven competition among agencies will abate. The balkanization of the system c. 1992 will be a source of amazement to the criminal historians of 2022.

In the future, enhanced communication between judges, lawyers, and justice personnel will produce efficiencies undreamed of today.

In the future, society will better understand the real objectives of sanctions: to restrain where public safety so requires and to rehabilitate and treat where possible. Alternatives to incarceration will flourish.

Mandatory sentencing will be a quaint relic of a time when the public was ill informed about the costs and benefits of various sanctions, and when society had less faith in the wisdom and discretion of judges.

In the future, criminal justice in Massachusetts will be swift but fair. It will be focused on the individual, yet its standards will be applied uniformly. Public trust and confidence will be restored.

Finally, in the future the sometimes forgotten link between social justice and criminal justice will be an article of faith. To the extent society provides meaningful educational and economic opportunity to its citizens, so will it be free from crime. Strip a people of hope for their future and a downward spiral into lawlessness is assured.

POINTS OF DEPARTURE

Throughout its work the task force was especially concerned with the socioeconomic pieces of the criminal justice puzzle. There is no mystery in the link between poverty and crime: to the extent that educational and economic opportunity do not increase, to the extent that society's "underclass" continues to grow, crime rates will rise. The cycle of poverty and its effect on children and adolescents is especially troubling. While the total percentage of young people in the Massachusetts population is decreasing, their numbers in the underclass are increasing. Professor James Alan Fox

of Northeastern University, in testimony before the U.S. Senate Judiciary Committee, drew a succinct relationship between the young urban poor and crime:

"[A]dolescents in our urban centers are beset with idleness and hopelessness. Unless we are willing to direct funding toward providing in-school and after-school programs so that there are desirable alternatives to violence and gang membership, the demographic will mean much more trouble to come."

In her book *Deadly Consequences*, Commission member Dr. Deborah Prothrow-Stith writes:

"Turning the tide of violence ... for all the frightened and beleaguered residents of very poor neighborhoods will not be easy. The economic, political, social, and familial problems that breed violence in these communities are formidable. No single form of intervention, no single institution can bring about the kind of change needed to restore a sense of safety and order to everyday life. What is required are comprehensive multi-institutional community-wide solutions that address the violent behavior of the young, while redressing the social conditions in which violence flourishes."

Education and literacy hold out the promise of reversing the tide of crime. Probation Commissioner Donald Cochran reported to the Criminal Justice Task Force that the "typical" Massachusetts criminal is illiterate and a high-school dropout. Suffolk County Sheriff Robert Rufo notes that 75% of those incarcerated in the Suffolk County jail are functionally illiterate. He adds, however, that the recidivism rate among Massachusetts convicts drops from 50% to 17% among inmates who participate in structured work release programs prior to release.

This is a condensed and edited version of the report of the Quality of Criminal Justice Task Force. The complete report may be obtained from the Public Information Office of the Supreme Judicial Court. The views expressed and recommendations made herein are those of the task force and do not necessarily represent those of the Commission. Task force members were: Earle C. Cooley and Robert P. Gittens, co-chairs; Hon. John J. Irwin, Jr., Sen. Michael LoPresti, Jr., Karen McLaughlin, Rudolph F. Pierce, Hon. Daniel F. Toomey, and Luis A. Velez, members; and Tracey Maclin, reporter.

BLUEPRINT FOR CHANGE

Some of the strategies that follow are inexpensive. Others clearly are not. Some of our recommendations can be implemented in the near term; others will require a generation. The following proposals are grouped roughly according to three phases in the criminal justice process: adjudication, sentencing, and corrections. A small number of issues not easily categorized are discussed in a fourth section.

Adjudication

An accused should have the right to present evidence and to the assistance of counsel in grand jury proceedings.

While the Supreme Court in *Wood v. Georgia* (1962) described the grand jury as "primary security to the innocent against hasty, malicious, and oppressive prosecution," the reality is not so convincing. The majority of the 50 states no longer use (or never used) grand juries. While the task force considered recommending the abolition of the grand jury in Massachusetts, we stop short of that. We make this suggestion in the interest of ensuring a more level playing field for the accused, and in addressing through greater procedural safeguards any non-uniformity in prosecutorial procedures.

The best available, well-tested technology should be employed to help administer the jury system.

As we enter the 21st century a viable, effective, and efficient justice system will require the full participation of an involved and knowledgeable citizenry. The most common link between lay people and the criminal justice process is the jury system.

Jury management systems exist today that can automate and expedite most aspects of jury administration, including identifying juror candidates,

randomly selecting jurors for service, taking juror attendance, assigning jurors to cases, keeping track of case histories, handling juror payroll and service certifications, and maintaining comprehensive statistics.

The Massachusetts "one day/one trial" jury system should be retained and enhanced.

The Massachusetts "one day/one trial" jury system should be enhanced and its shortcomings addressed. The state, in cooperation with private employers, should further facilitate jury duty. Under no circumstances should a juror be unduly penalized, financially or otherwise, for serving on a panel. Furthermore, the Jury Commissioner's office should have the means available to enforce sanctions against citizens who do not appear when called for jury duty. The state should provide child-care facilities for jurors who would otherwise suffer hardship. By 2022, jury service should be viewed as privilege rather than penalty.

In certain complex criminal cases a single judge should be assigned to a case from arraignment through sentencing.

There should be early judicial intervention at the pre-trial stage of complex criminal proceedings involving, e.g., multiple defendants, extensive pre-trial procedures and motions, and complicated facts and/or voluminous documents. Thereafter the assigned judge should, barring compelling reason, see the case through to its conclusion. Adherence to the federal model of individual judicial calendars would promote greater judicial continuity and efficiency.

As information management systems become available, the courts should create a differentiated case management system to sort criminal cases by type and create special "tracks" to accommodate them.

Already in effect elsewhere in the country, and enjoying limited use in Massachusetts (e.g., Dorchester District Court jury-of-six drug offenses section), differentiated case management is the wave of the future. Early case screening can produce enormous benefits. Minor property offenses can be diverted to programs for negotiated settlements, including but not limited to restitution. Drug offenses are also a logical subset for differentiation and tracking.

Both prosecutors and defense counsel must become involved in criminal matters as early as practicable.

In the future, there will be sufficient resources to allow counsel, both prosecution and defense, to participate meaningfully in criminal cases from inception. This will allow district attorneys to review sufficiency of evidence, choice of charge, and the case's prosecutorial merit, thereby avoiding the worst cases of "policy charging" that occur today.

Creative alternatives to criminal adjudication should be encouraged and further developed.

In most criminal proceedings the "best" result that can be expected is one in which one side wins and the other side loses. What usually happens is that both sides go away dissatisfied. Defendants feel they have been treated too harshly; victims feel uncompensated and convinced that the underlying problem was not resolved. In a different kind of forum victim and offender can actually resolve their differences to the satisfaction of both. A U.S. Justice Department study of "neighborhood justice center" pilot projects found that an amazing 88% of the parties on both sides were able to produce satisfactory consent agreements.¹ The court mediation program, administered by the Crime and Justice Foundation in several Massachusetts district courts, is

another example of a successful alternative program. In 1989 it handled 483 referrals. Seventy-two percent of the parties agreed to participate; 86% of those resolved their disputes amicably.²

Ensuring the safety and dignity of victims must be the rule.

The existing provisions of Massachusetts victim rights law should be strictly observed, indeed strengthened, in the future. At a minimum, victims should receive: a fair assessment of the effects of their injury; notification of hearing and trial schedules; restitution and other compensation as available; and secure waiting areas in the courts. Testimony heard by the Commission around the Commonwealth stressed the need for victim advocates. Too many victims reported feeling lost, friendless, and bewildered in the confusion of criminal proceedings.

Comprehensive criminal justice information systems should be further developed and installed as resources allow.

In Massachusetts tomorrow we imagine that comprehensive criminal justice information systems will do some or all of the following (functions performed today by systems in Florida's Eighth Judicial Circuit):

- schedule, docket, and calendar every felony and misdemeanor;
- generate arrest, bail, sentencing, and case management reports;
- secure access and universal file sharing;
- provide a snapshot of how a case was initiated, what happened at every step of the judicial process, which agencies were involved, and exactly what they did;
- allow agencies to view the status of any case at any time; and automatically report the disposition of every case by charge, by count, or in whatever manner the state requires.³

Interactive video-conferencing among parties and the court should substitute for physical courtroom appearances, as technology and due process allow.

The future of court proceedings is evolving toward the concept of "disjunctive courts" in which parties will no longer have to be physically present in the same room during a court proceeding. The Hawaii attorney general's office today utilizes video technology for arraignments, as does the Manhattan district attorney's office. Bond and enforcement hearings, motions, pleas, and sentencing can also be conducted through interactive video technology. It is estimated that 95% of court business, excluding jury trials, could be handled by video-conferencing networks.⁴

Electronic image management should be utilized in criminal discovery.

Electronic image management (EIM) is the next revolution in litigation support, both civil and criminal. EIM will make it possible for counsel to exchange all documentary evidence on optical disk. EIM workstations that scan and retrieve documents can be made accessible to judges in the event that judicial intervention is required to resolve any pre-trial documentary issue. By 2022 the implementation of EIM, coupled with good-faith compliance with relevant criminal discovery rules, will create greater fairness and efficiency.

Videotape transcripts should increasingly replace manually produced hearing and trial records.

The use of videotape to preserve records of hearings and trials continues to grow. Trial judges by and large support the use of videotape because of its enhanced flexibility. Tapes can be transcribed upon request. Appellate attorneys note that videotaped records allow the reviewing court to evaluate more subtle nuances in the trial record.

While we realize that this proposal will not be warmly received by court stenographers, the trend to substitute mechanical for human functions in the workplace appears to be irreversible.

In the future, the use of expert testimony should be enhanced through artificial intelligence technology.

We expect that in the future expert testimony will be more limited in its purpose and admissibility. Today's use of experts to testify on seemingly limitless subjective matters (witness credibility, for instance) will likely be a thing of the past. Artificial intelligence technology will be increasingly used to provide objective information to judge and jury.

Sentencing

The United States today has the world's highest known rate of incarceration. We incarcerate 426 prisoners per 100,000 in population, well ahead of second-place South Africa at 333 per 100,000 and third-place Soviet Union at 268.⁵ It is a peculiar measure of "progress."

Historically there have been four main theories of criminal punishment. The first is restraint. By removing from the streets those convicted of criminal acts we hope they will not commit further crimes. The second is deterrence. Making an example of the criminal deters others inclined to commit similar acts. Third is retribution, the "eye for an eye" theory. Last is rehabilitation, the notion that the offender can, through training and example, be reformed sufficiently to be returned to society.

All four approaches are at work in varying degrees in the Commonwealth's present-day approach to punishment. In our view the overriding question is: are our objectives being met and does the system work?

The answer seems to be a resounding no. In a letter to the task force, Suffolk County Sheriff Robert Rufo wrote:

"[T]he current sentencing system consists of [a] patchwork [of] dispositions which does not convey a consistent approach nor guarantee equity, fairness, or justice. From the antiquated Concord sentence to the recent enactment of mandatory sentences for selected crimes, it is clear that the present guidelines for sentencing disregard predictability, uniformity, and appropriate relevance to the crime and its circumstances. It is a sentencing system which confounds both defense and prosecuting attorneys, victims, and the public."

In the future, all sentencing decisions should be based on the principle that incarceration is appropriate for offenders who threaten public safety but that other alternatives are better suited to the non-violent offender, and for those whom we sentence for reasons of retribution or to seek compensation.

Sentencing decisions should address the causes of crime and, wherever possible, promote the offender's rehabilitation.

For every study that purports to show the public is principally interested in retribution, there is equal evidence supporting the public's appreciation of the need to address the underlying causes of criminal behavior. The Commission's public opinion survey revealed that 73% of Massachusetts residents believe it is important to spend tax dollars on prison literacy programs. Similarly, 71% of the population believes it is very important to fund prison drug treatment programs. National surveys reflect similar sentiments. While obviously not every offender can be rehabilitated, many of those on whom the system has given up today will in the future be subject to good-faith efforts at rehabilitation.

It is understandable that the public wants violent criminals behind bars. There is no evidence, however, that the mere warehousing of non-violent offenders actually makes the public any safer. Almost all inmates will one day be back on the streets. As an Oklahoma corrections official said:

"If they don't go out any better prepared to face life, then we've just warehoused them for a time. And at our cost of about \$15,000 a year per inmate [approximately \$24,000 in Massachusetts], it would be cheaper to send them to college than to keep them here." ⁶

Sixty-five percent of the persons appearing in Massachusetts criminal courts have a prior record, and 85% of those have engaged in prior criminal behavior within the same court district. The Commonwealth must decide whether it wishes its criminal justice system to function as an expensive revolving door.

Today, rehabilitation is seldom tried with much creativity or persistence. The Georgia BASICS (Bar Association Support to Improve Correctional Services) program may prove to be one effective model. Against steep odds, that program is teaching felons from economically and socially destitute pasts alternatives to low-paying dead-end jobs, welfare dependency, and a return to crime. While recidivism for the general Georgia prison population is 35%, recidivism among BASICS graduates is only 7%. ⁷

Restitution should be the rule.

Restitution teaches responsibility to offenders while it provides compensation to victims. It must be used more widely in the future. Programs to require offenders to provide monetary or in-kind compensation should be administered through the probation system.

The courts should develop and employ "alternative" sentences wherever possible.

In the future, alternative sentencing (sometimes called "intermediate sanctions") will be commonplace. In Delaware a study showed that for every drug offender sentenced to prison (at a cost of \$17,761 per year), three offenders could be treated in inpatient treatment programs and 16 could be treated in outpatient programs. ⁸ In 2022-inflated dollars the leveraging factor will be enormous.

Diversion should be utilized more extensively.

For many offenses trials are a misuse of time and resources. Typically targeting youthful offenders, substance-abuse-related crimes, and some first offenses, diversion programs remove the offender from the criminal justice process long before trial, sometimes immediately after arrest. He or she is then usually required to pay a civil fine and/or participate in a program.

Mandatory sentencing should be eliminated.

In testimony before the Criminal Justice Task Force, Probation Commissioner Donald Cochran charged that mandatory sentencing "has the potential to destroy the criminal justice system." We agree. We also endorse the finding of the Federal Courts Study Committee that concluded that mandatory sentences "create penalties so distorted as to hamper ... criminal adjudication." ⁹

The reasons to eliminate mandatory minimum sentencing are many, well known, and likely to be even more persuasive in the future. Among them are:

- It is costly. It costs \$24,000 to \$25,000 to incarcerate an offender in Massachusetts today. Alternatives cost far less.
- It is unrelated to any logical penological goal, e.g., rehabilitation or restitution.
- Automatically sentencing substance abusers to state prisons and county jails bars the offender from treatment necessary to avoid recidivism.

- It shifts discretion from the judiciary to prosecutors and law enforcement personnel who, in making initial charging decisions, effectively mandate sentences.
- Mandatory sentences, by precluding judges from weighing mitigating factors, produce inequitable, non-utilitarian results.

Those who argue that mandatory sentencing has the public's support should consider the public's strong endorsement of rehabilitation efforts before concluding that there is an unquenchable public thirst for incarceration-based retribution. Uniformity in sentencing can be better achieved through sentencing guidelines.

A sentencing commission should be created to generate sentencing guidelines, oversee sentencing procedures, and promote sentencing innovation.

The sentencing commission should be broadly constituted. The membership should include judges, criminal justice professionals, scholars, and lay people. Any sentencing guidelines should be sufficiently flexible to preserve reasonable judicial discretion.

The juvenile justice system may need reform, but it must be retained.

The public's security is unquestionably a very significant justice objective. Important too, however, is the resocialization of children who have deviated from accepted norms of behavior.

Juvenile crime is the source of much public fear. Throughout human history, however, children have been held to a different standard of judgment, wisdom, and culpability than adults. The double standard is still justified. Most children have neither the judgment nor the experience of life to act as adults. Serious juvenile offenders should be dealt with harshly but not by the same standards applied to adults. The

juvenile justice system must be retained. Present-day reformers should consider extending the state's jurisdiction over juvenile offenders beyond age 21.

Youth services should be expanded.

The caseload of the Department of Youth Services has doubled from 1,500 cases in 1982 to 3,044 in 1989. New cases are proliferating. And they come at a time when the juvenile population in the state is shrinking, even as the percentage of children in poverty is growing.

Department of Youth Services Commissioner Edward Loughren's strategies for juvenile intervention are nationally acclaimed. Some of the more innovative include: "home builders" (workers in the homes of troubled youths); mentors (adult companions to work with students faltering in school); restitution; "streetworkers"; and after-school employment. These are strategies for bringing young people in poverty and crime into mainstream society and giving them alternatives to crime.

Pre-sentence background investigations should be routine.

Pre-sentence investigations of convicted offenders typically consider mental and physical health, and educational, vocational and social skills. They are routine in the federal courts and should be no less so for the state courts. Only through such an investigation can the court ensure that the punishment fits the criminal first, the crime second.

Parole should be retained and enhanced.

In the first months after an offender's release from prison the parole officer's role is critical. Most ex-inmates who return to prison do so soon after confinement. The transition is difficult, and the parole officer can facilitate it by directing offenders to needed resources and by monitoring compliance with conditions of release.

Technological alternatives to incarceration should be investigated, tested, and constitutionally evaluated.

While they may conjure up visions of Brave New World, technological innovations in sentencing will be plentiful and very real by 2022. Electronic monitoring via implanted monitors, electronic or chemical stimuli to control behavior, even genetic engineering, may allow behavior to be molded to appropriate models. Needless to say, approval of any such methods must be contingent on extensive testing and the most rigorous constitutional evaluation.

Corrections

Sentencing and corrections are closely related. Reform in one will almost inevitably lead to (or require) reform in the other.

All legislation likely to increase the size of the Commonwealth's corrections population (and/or criminal court dockets) should be accompanied by a statement assessing the legislation's impact.

In the Commonwealth and elsewhere laws are sometimes enacted that serve to protect the public but have no regard for their impact on the courts or corrections. Examples include laws mandating a minimum sentence for particular crimes, laws that reduce the amount of a controlled substance that an offender must possess in order to receive a certain sentence, and laws creating new crimes. All such legislation tends to increase court dockets and the corrections population, sometimes dramatically, but often with no corresponding increase in appropriations.

Federal law requires "paperwork impact statements" for all new legislation to ensure there is a clear understanding of the regulatory burdens that can be created by well-intentioned statutes. No less should be required of legislation that can place similar burdens on our justice system.

Corrections accreditation should be expanded.

Standards for the management and maintenance of correctional facilities should be scrutinized periodically to ensure that, at a minimum, they conform to current statutory and common law. Prisons and jails that meet even higher and more humane standards should be accredited. Accreditation standards should be reviewed not only by judges, lawyers, and corrections experts but by panels that also include academics, sociologists, and lay people.

Intensive Probation Supervision should be further implemented in the Commonwealth as resources allow.

Intensive probation supervision is a penalty less severe and less costly than prison but much more demanding for offender and supervisor than ordinary probation. Its objective is the control and punishment of the offender in the community. It requires regular meetings with probation officers, friends, family, and employers. Results can be impressive.

A broad range of treatment programs must be available.

The corrections population has diverse treatment needs. In the future, the appropriate treatment should be fit to the individual.

Eighty percent of the state's corrections population has a problem with drugs or alcohol. Yet for the 6,400 inmates with such a history the state provides a mere 400 treatment slots. Adequate substance abuse treatment facilities are perhaps the greatest single step the state could take in addressing the crisis in crime. Both abused and abusers require psychological counseling. The uneducated and the unskilled require rudimentary education and vocational training. As the population of female offenders increases, educational family-care programs to teach parenting skills to young mothers are also needed.

Programs to help families survive prison separations should be developed.

One of the saddest consequences of incarceration is the further disintegration of already fragile families. Unless offenders have some hope of family support upon their release, their chances of recidivism increase. Programs that better allow incarcerated offenders to interact with family members should be explored and developed.

A functional literacy program should be instituted throughout the corrections system.

Almost 50% of the Commonwealth's prison population and one-third of the offenders in county jails cannot read at the sixth grade level. Recidivism is 300% higher among illiterate offenders than among those who can read. The Commission's survey found that 73% of Massachusetts residents feel it is important to spend tax dollars on literacy programs. And literacy will be even more important in the future. Literacy programs are a relatively inexpensive investment in crime reduction, opportunity, and human dignity.

System Management and Other Issues

The criminal justice functions of the Commonwealth should be centralized and coordinated in a criminal justice secretariat.

With few exceptions those who testified before the task force complained of the absence of coordination and communication among criminal justice agencies in the Commonwealth. The task force agrees. A cabinet level office should be created in the executive branch. The agencies that comprise it may change over time, and we make no recommendation concerning present-day agency candidates.

Initiatives to promote greater community involvement in criminal justice should be developed.

Most crimes occur in the community in which both offender and victim reside. Greater community involvement in prevention, monitoring, and the resolution of criminal disputes can be promoted through the following:

- Neighborhood justice centers, for resolving a whole range of criminal (and civil) disputes.
- Where adjudication is necessary, local trials. Historical evidence and rural community experience demonstrate that where victim and perpetrator, jurors and witnesses know one another, a more informed, involved, and just resolution results.
- A public/private partnership that can make grants to innovative community criminal justice programs in support of local initiatives.

Every member of the trial bar should contribute to the criminal justice process.

The United States and Massachusetts Constitutions require that every person accused of a crime be afforded an effective defense. It is not clear that this obligation is always met in Massachusetts today. We believe that as officers of the court, and as a small price of admission to the profession, every member of the trial bar should contribute to the criminal justice process.

Critics often argue that involving untrained civil lawyers in the criminal process can result in ineffective assistance of counsel. While this is a legitimate concern, brief but effective training programs to teach criminal advocacy skills to civil trial lawyers exist all over the country today. Moreover, a program can surely be devised to delimit

the kinds of cases (or portions of cases) in which the involvement of civil lawyers is appropriate.

The prosecution and defense of a criminal case is the quintessential government act. The defense of those accused of crimes but too poor to pay for counsel has for too long been shouldered by a tiny segment of the trial bar. While we are not advocating mandatory pro bono, we strongly urge voluntary participation, and /or incentives, to expand the pool of representation.

CONCLUSION

Criminal justice in the Commonwealth today accounts for a small percentage of all the law practiced in Massachusetts, but it consumes a disproportionate amount of justice system resources. This is appropriate. Ensuring the public's safety by protecting it from known offenders is arguably the most basic role that justice has to play. Yet that role must be played with fairness, creativity, and a constant eye to the future. The people of Massachusetts today have an eye on tomorrow. We urge the courts, the governor, and the legislature to be bold. The public expects no less.

NOTES

1. Gene Stephens, "Future of Justice: From Retribution to Reconciliation," *The Futurist* (September/October 1989), 23.
2. Crime and Justice Foundation Annual Report (1989), 5.
3. David Brissom, "System Profile: Florida's Eighth Judicial Circuit Launches a Landmark CJIS Network," *Court Technology Bulletin*, vol. 2 no. 6 (National Center for State Courts, November/December 1990), 2.
4. National Center for State Courts, "Video Conferencing in the Courts," *Report on the Trends in the State Courts*, (July 1991), 24.
5. Marc Mauer, *Americans Behind Bars: A Comparison of International Rates of Incarceration* (The Sentencing Project, 1991), 3.
6. Andrew H. Malcolm, "More Cells for More Prisoners, But to What End?" *New York Times* (January 18, 1991), quoting James Waite of the Oklahoma penal system.
7. Chris Drake, "Back to BASICS," *ABA Journal* (July 1991), 64.
8. Mauer, *supra* note 5, at 15.
9. Report of the Federal Courts Study Committee (April 1990), 134.

VISION

We envision a future justice system in which disputes are handled with **speed** and **reliability, efficiency, and fairness**. “Justice delayed is justice denied” will have as much currency in 2022 as it does today. As Advances in communication, transportation, and information cause our world to turn faster, future delays in justice may be even more injurious than today’s.

We envision a future justice system equipped with **adequate resources, effective management, and quality facilities**. These are the characteristics of a sound judicial infrastructure; without them, the system can not deliver a quality product.

We envision a future justice system that ensures **judicial independence**, which isolates our disputes resolvers from partisan politics.

In the future, we envision the courts with enjoy the public’s trust because justice will be **understandable, affordable, and accessible to all**.

In our justice future, participants and disputants will feel more **personally involved** in their disputes, better able to participate in the resolution of these disputes not as observers but as players. They will feel they have been fully heard and fully understood.

We envision a future justice system in which public participation in the justice process--- greater involvement by members of the communities affected ---- will foster **public understanding and public trust**.

And finally, we envision a future justice system that has sufficient **resilience and flexibility** to adapt, evolve and change as surely as our world itself will change in the years ahead.

Our vision of quality justice, deserving of the public trust, has one more encompassing dimension: social justice. The justice system we envision cannot succeed if society itself continues to be plagued by problems rooted in poverty, ignorance, and despair.

We envision a society c.2022 in which there is greater equality, greater opportunity, greater reason for hope. The gap between “haves” and “have nots” will be smaller, possibly much smaller. Public and private sectors will work increasingly in partnership to achieve goals commonly held. While high-quality housing, health care, education and diet may not yet be universally available, in 2022 at least they will be universally acknowledged goals.

Our vision of greater justice both in our courts and in our streets is not subject to division. As long as society struggles with poverty and ignorance, as long as neither public nor private sector can effectively address such problems, the courts will be overwhelmed by the consequences. While jurisprudence must be a means to social justice, it is naïve to imagine the justice system standing alone against the tide, enforcing standards of fairness and decency as society itself founders.

POINTS OF DEPARTURE

“Quality justice” provokes endless discussion about definitions and components. The meaning of “quality justice” today and in the future is frustratingly subjective; the cornerstone of quality for one may be a mere incidental for another. But quality is characterized by one timeless notion that allows no dissent: quality justice is justice that has earned the public’s trust.

Promoting Judicial Quality

Justice is more about people than about rules and principles. The quality of justice is only as good as those who deliver it. What follows is a list of mechanisms and institutions that can help promote judicial quality and the public’s trust in the system.

- **A continuing two-way educational process** between the judiciary and public will improve trust and understanding.
- **Effective and responsible selection mechanisms** will ensure that only the most highly qualified candidates are appointed to serve as judges.
- **An evaluation system** will ensure that judges receive feedback and improve their performance without having their judicial independence compromised.
- **An efficient judicial disciplinary process open to public scrutiny** will ensure judicial accountability.
- **Ongoing, required educational programs** will ensure that judges are well-trained and keep abreast of legal developments and underlying social issues.
- **Judicial independence mechanisms** will ensure neutrality from partisan politics.

This is a condensed and edited version of the report of the Quality of Justice/Public Trust and Confidence Task Force. The complete report may be obtained from the Public Information Office of the Supreme Judicial Court. The views expressed and recommendations made herein are those of the task force and do not necessarily represent those of the Commission. Task force members were: William E. Bernstein and Thomas F. Maffei, co-chairs; Hon. William H. Abrashkin, Diane H. Esser, Paula Gold, Hon. Julian T. Houston, Deborah Prothrow-Stith, Florence R. Rubin, and Jon Westling, members; and Laurie A. Morin, reporter.

- **Adequate support systems** will permit judges the time and resources to do their jobs thoughtfully, will mitigate the stress inherent in judicial decision making, and will promote **mental and emotional health**.
- **Adequate levels of compensation** will fairly reflect the enormous responsibility of the judiciary.

Fundamental to the quality of the judiciary is its reflection of the diversity of the society it serves. We fully expect that by 2022 the Massachusetts bench will roughly mirror our population in gender, race, and ethnicity.

Changing Public Perceptions of Justice

As evidenced in the report of the ABA Task Force on Outreach to the Public (1989), and elsewhere, the public's expectations about justice are not being met. The public is regularly being bombarded with media stories about massive delays, "frivolous" lawsuits, "huge" contingency fees, "excessive" jury awards, the "insurance crisis," and criminals going free on "technicalities." Negative perceptions stem not only from real problems but also from widespread lack of understanding about the justice system. Public attitude surveys reveal hostility, cynicism, and apathy toward the courts.

To improve public trust and confidence in justice we must change public perceptions. Survey results suggest that public trust can be improved through the dissemination of better information and constructive publicity about the courts.

The Quality of Justice/Public Trust and Confidence Task Force took the lead in devising and analyzing the results of the Commission's public opinion survey. The results of the survey, previously reported here, have been moved to the body of the report. More information, including the survey questionnaire, can be found in this appendix.

Justice in Society

Among society's problems that have a direct impact on the courts are: family breakdown; crime; drug and alcohol abuse; deteriorating cities and schools; declining standards of living; a growing gulf between rich and poor; growing hunger, poverty, and resentment; racism and race-hatred; and the lack of accountability, ethics, and social responsibility at the highest levels of the economic and political systems.

Theories about causes focus variously on the individual and society itself. We fear that the debate will produce no winners; as the social organism fails the individual, the individual fails society. This is not a cycle that can be broken with pious urging and moral admonition. If we do not take on the responsibility of feeding, housing, nurturing, and educating our children effectively, and if we do not offer them opportunities that give them a sense of contribution and fulfillment, they will almost inevitably grow up to be citizens of a world that is little more than a declining version of the present. We advocate instead a vision of a society that shows (through action) that it genuinely cares for its members.

Few problems can be solved without spending money in the right ways. Greater social justice is not likely to be achieved without extensive rearrangement of spending priorities. In the context of quality justice, articulating what futurists call a "pathway"—the means to achieve a vision—requires confronting economic priorities and making hard choices. By way of illustration, in 1989 Springfield taxpayers spent more on NATO—in the form of federal taxes—than on their entire school system. They spent more on nuclear weapons than on their fire department. Substantially reduced military spending, which has begun, could free several billions of dollars annually for revenue-sharing programs in Massachusetts alone. The resulting benefit to programs for rebuilding the

social infrastructure and the courts, both directly and indirectly, is hard to overemphasize.

Feelings of powerlessness, alienation, and low self-esteem affect a large percentage of people whose cases reach the courts. Meaningful work with remuneration adequate to support oneself and one's family, society's traditional avenue to self-fulfillment, is unavailable to more and more people. Too often the result is crime, alcohol and drug abuse, child abuse, and a range of other problems that end up in the courts.

Finally, education is fundamental to our vision of justice. We envision in Massachusetts in the year 2022 a high-quality public education system; adequate numbers of talented, well-paid teachers; and schools that meet a variety of student needs. We envision a school system that integrates education in conflict management/reduction into the curriculum. If society begins today, by 2022 we can produce a new generation of well-educated young people, committed to justice and fairness for all.

We challenge the people of Massachusetts to invest in change.

AVENUES OF CHANGE

Early Intervention, Case Screening, Referral, and Active Case Management

Our first recommendations are addressed primarily to inefficiencies in adjudicatory justice today. Our public opinion survey identified congested courts and heavy caseloads as the public's greatest area of concern.

The courts should institute early intervention and active case management mechanisms. All courts should establish standards for case management, processing, and disposition.

Different standards for different courts are acceptable so long as there is some form of centralized quality control.

Every case entering the system should become the personal responsibility of a case manager (a judge, an administrator) responsible for the case's movement and ultimate disposition. An "individual calendar system" is just one possible approach. The objective of any such process is early case evaluation, early intervention in the event of

unwarranted delay, and accountability. Early negotiation and mediation aimed at expeditious settlement should also be within the case manager's purview.

Differentiated case management should be explored in both criminal and civil matters. Cases should be sorted according to type and complexity and assigned to different time tracks for discovery and trial.

In a 1988 Harris survey, a national sample of justice system users and judges identified escalating litigation costs as a significant cause of public frustration with the courts. Respondents placed much of the blame for these costs on the discovery process. They believed that attorneys abused the process by "over-discovery", and that judges shared the blame by failing to control the process.

Discovery is a vital tool for litigators, but in the future it must be managed more effectively to prevent abuse and manipulation.

The Brookings Institution has recommended the disposition of cases by "staging" discovery. In the first stage parties could be limited to developing only that information that is necessary to assess the case realistically, perhaps by inspecting a limited number of documents and taking a limited number of depositions. If the case is not resolved, a second more intensive phase could commence. Another approach is to stage the disposition of key issues early.

Other initiatives for controlling civil discovery include arbitrarily limiting the number of depositions and/or interrogatories, making greater use of special discovery masters in complex cases, and imposing sanctions for failure to abide by the spirit as well as the letter of discovery rules.

We suggest a more active role for judges or other case managers in entry-level decisions. **We recommend enhanced administrative support and case management training for judges. We recommend that some emphasis be placed on management skills in appointments to the judiciary.**

Discussed in detail elsewhere, alternative paths to justice and technological enhancement of the system are important components of these related visions of quality justice and public trust.

Facilitating Access, Ensuring Fairness, Guaranteeing Representation

In the Commission's public opinion survey, minority respondents, especially, evidenced doubts about the accessibility and fairness of our justice system. Even respondents who did not perceive problems with their own treatment by the courts believed that minorities, women, poor people, victims, and suspects were sometimes treated unfairly. They also identified problems of affordability, both for the middle class and for the poor. Contemporary research done by the Supreme Judicial Court's Gender Bias Study Committee and the Commission to Study Racial and Ethnic Bias in the Courts indicates there are reasons to be concerned about bias in the system.

The best technological tools should be employed to increase access to the courts and to make the system more "user-friendly." The Massachusetts courts are confusing. The maze of different courts with overlapping jurisdictions and

procedures is sometimes difficult for even the seasoned practitioner to fathom. Technology should be used to demystify and simplify the justice system, to "map" it for the uninitiated, and to make it more approachable. In designing systems to enhance access and improve quality we recommend striking a balance between high-tech and user-friendly. Any technology that is not user-friendly, that fails to make the justice system more accessible, is more liability than asset.

We should begin today to create the justice system work force of tomorrow, one sensitive to and representative of our multicultural society. We urge strong, affirmative steps to begin building greater diversity into the justice work force. We recommend that judges, lawyers, and clerks be trained to handle fairly those cases involving cross-cultural differences and to deal with a multicultural public, which may have limited knowledge of and unfounded expectations about the justice system. We recommend required education about racism, gender bias, and other areas of potential discrimination. These recommendations have widespread public support. Forty-three percent of those interviewed in our survey (and 74% of the minority oversample) saw a need to expand training programs for court personnel to deal more fairly with people from other cultural or ethnic backgrounds.

Affordable justice is a public priority. Legal services must be adequately funded. The burden of providing access to affordable justice cannot rest on individual attorneys alone. While we recognize that quality justice has a price tag, the public has identified affordable justice as a major concern to which we must find ways to respond. Policy makers must be willing to support legal services programs for the poor and the middle class. Through

programs that fund legal services, the organized bar can continue and increase its assistance in this critical effort.

Social Justice Through Law and Educational Partnerships

No less than in the past, jurisprudence must be a means to social justice. The courts must remain ever-vigilant in seeking to ensure fairness and equal treatment in society. *Brown v. Board of Education* (1954) established a new benchmark in the rejection of separate-but-equal education and has influenced integration in education over the past three decades. *Gideon v. Wainwright* (1963) was instrumental in ensuring the right to counsel for the poor in criminal cases. The Massachusetts Supreme Judicial Court has a proud history of upholding the rights and liberties of all residents of the Commonwealth. That tradition must be continued, indeed expanded.

In seeking the public's trust the courts should work actively to counter public myth and misconception about justice. They must persuade the public, for example, that more prisons, stiffer sentences, and the death penalty cannot solve the crime problem. The public must understand instead that society has no choice but to attack crime at its roots.

The courts should enter into partnerships with schools to design and incorporate into the curriculum education about justice. By forming partnerships with public and private schools the justice system can help develop a curriculum that includes education in conflict management and tension reduction, that teaches children to view conflicts from perspectives other than their own and to defend their own rights and positions constructively. Our children should be introduced to justice and the justice system early.

Courts should be encouraged to form educational partnerships with public schools located in their districts. Throughout the year, judges, lawyers, probation officers, and other justice system employees could make periodic presentations about law-related issues. This would enable justice system personnel to participate in the education of local children, who in turn could become acquainted with professionals. Minority judges and lawyers could provide positive role models for the youth. The legal community could also facilitate field trips to courtrooms, law firms, and local correctional facilities.

Students could be encouraged to establish their own peer review panels--school-based justice systems to resolve student disputes and to address discipline issues and minor crimes. Such a system could have its own sanctions, including restitution programs, alternative community service, and other options designed to teach social responsibility.

Educating children about the justice system has great potential for long-term changes in the public's understanding of and trust in justice.

Building Two-Way Communications Between Courts and the Community

The courts should create partnerships with the community to enlist public support for justice. We propose that judges and court personnel come to view community involvement as part of their job and receive appropriate technical support and assistance. For this outreach program to succeed it must have the support of court leadership. Chief Justice Liacos' visit to Mattapan in May 1991 is symbolic of the kind of commitment we envision. Community leaders considered the visit an important gesture, and it improved the courts' public image.

Educating the public should not fall exclusively to the judiciary. The Commonwealth's 27,000 lawyers must also expand their role as ambassadors of the justice system. Although we acknowledge and applaud the bar's substantial outreach efforts to date, we agree with the American Bar Association that increased coordination of the bar's many useful sections, committees, and task forces is needed to enhance their effectiveness as ambassadors to the community.

Educational partnerships should also be forged between the courts and the media. If courts are to be accountable to the public, the public must understand them. Since much of the public's perception of the justice system comes from the media, it is important that the press understand the workings of the courts. Courts should consider expanded media liaisons to promote accurate, timely information exchange.

More should be done to increase citizen contributions to the justice system. It is obvious that understanding increases with participation. Those who serve on juries, for example, have a generally improved view of the justice system. Our survey respondents overwhelmingly endorsed the jury system, and we believe that trial by a jury of one's peers is not only fundamental to justice but also provides an important educational function. Jury pools should be used as an educational forum about justice and to obtain public feedback on how the system is performing.

Community participation in the system should be furthered through the establishment of citizen advisory boards in local courts. Collaborative partnerships with the public are often the key to improved government performance. Administrators working with citizen boards come to better understand public fears and concerns.

Members of the public working with government can help solve persistent problems by proposing solutions and advocating their adoption. Programs to promote public involvement can be tailored to community needs by individual courts. These programs could:

- Encourage the public to come to local court facilities for law-related community activities, e.g., free legal clinics, a question-and-answer day with court officials, etc.;
- Involve the public with court operations through community surveys, focus groups, and citizen mobilization workshops;
- Inform and educate the public through law-related courses, brochures, cable television programs, and toll-free telephone service for easy access to legal information;
- Train court personnel to be receptive to public comments, responsive to public concerns, and comfortable with new ideas;
- Create a special bond with local schools through class meetings with court officials, a videotape about the probation process, court visits, mock trials, and "roaming" court sessions in schools;
- Offer the public opportunities to volunteer their services to the courts, with appropriate rewards and recognition; and
- Encourage the public to advocate for adequate justice resources by making court needs public needs.

These and other creative ways to involve the public actively in the administration of justice can do much to enhance public trust.

Mechanisms to Ensure Accountability

The accountability of judges and the justice system has been a recurring theme in the Commission's work. There is a fine line between preserving

judicial independence and ensuring adequate public accountability. Courts are sometimes reluctant to open themselves to public scrutiny for fear that their independence may be compromised. Today, Massachusetts safeguards judicial independence more than most states through an impartial judicial nominating and appointment process and through life tenure for judges. But in exchange for such independence the public is surely entitled to expect a judicial selection process of the highest quality, the right to require that judges be subject to periodic evaluation, and a judicial disciplinary process that is fair and open to public view.

Mechanisms to ensure accountability exist today. Trial court decisions are subject to appellate review. High standards of ethical conduct have been established by the Code of Judicial Conduct and adopted by rule of the Supreme Judicial Court. The Commission on Judicial Conduct has real authority. However, the present judicial disciplinary process depends largely on the initiation of public complaints, even though the average citizen sees so little of the justice process that he or she is seldom in a position to recognize patterns of misconduct.

We recommend a judicial evaluation process drawing heavily on the observations of other judges but also providing for systematic and regular input from the bar and from the public. Misconduct is best recognized from the inside. Judges, lawyers, and others who work in the system have a responsibility to report misconduct and violations of ethics rules. Chief judges have the responsibility to supervise, support, assist, re-assign, and discipline as necessary the judges within their jurisdiction.

The public also has the right to accountability from the legal profession. Lawyers must recognize their responsibilities as officers of the

court and prevent misuse or abuse of the process. Lawyer discipline must be swift, vigorous, and open to public scrutiny.

An ombudsperson's office should be created in the courts to receive, investigate, and resolve complaints relating to the administration of justice. In the public sector, an ombudsperson is an independent official who receives, investigates, and resolves citizen complaints involving the government. Ombudspersons (Oms) can help build trust and confidence by responding to public concerns (service complaints) and by identifying and remedying poor administration (process complaints). Oms can also improve access to services by providing directories, information systems, brochures, etc., that help people find the right official or agency in complicated bureaucracies. Oms can sponsor public education efforts and programs to improve employee attitudes. Experienced dispute resolvers (retired judges, mediators, etc.) can make especially good ombudspersons.

A "citizen assistance council" should be created. Composed of the court's public information officer, the heads of the Committee for Public Counsel Services, Board of Bar Overseers, and Judicial Conduct Commission, and the ombudsperson, it would enhance the justice system's responsibility to the public without creating a new bureaucracy. The council should meet regularly to discuss ways to improve the disciplinary process and respond to public concerns.

Finally, the courts should do more to encourage the televising of courtroom proceedings. The trial process should be open to the public scrutiny in a medium that is familiar and far-reaching. Until a 21st century technological successor comes along, television will remain the medium of choice.

VISION

By the year 2020 photovoltaic cells will routinely convert sunlight to electricity; weather “prescriptions” and atmospheric regulation will prevent or cure physical ills; brain cell and tissue transplants will aid the mentally retarded; a bloodless laser surgery will decrease hospital stays and medical costs; furniture will move and talk, allowing the elderly and the handicapped to live easily at home; computers will be able to see and sense objects, move and accurately generate human speech sounds; teraflop supercomputers will perform a trillion calculations a second; and there will be a cure for the common cold.¹

This may well be the future, brought to us by the technology revolution. Biotechnology, robotics, artificial intelligence, telecommunications and automation will play a part in every aspect of our lives, including our system of justice. Expert systems, holograms, video technologies, and “virtual reality” could provide the foundation for a justice system without traditional courthouses or courtrooms, even without lawyers or judges as we know them today.

For many, the technological revolution raises a dark vision of machines replacing people; of surveillance video cameras and computers invading privacy and individual rights; of technological nightmares beyond our control. While technology threatens ill as surely as it promises good, in our vision

of the future the courts will use technology to enhance rather than diminish our humanity.

Information technology----the capabilities offered by computers, software applications, and telecommunications----is particularly relevant to the work of the courts. Such technology is already beginning to improve court administration and facilitate the delivery of justice. Increasingly it will provide easier access to information for the public, for attorneys and for other justice system constituencies. It can already transfer information and images rapidly across great distances, making justice largely independent of geography. And it promises much greater efficiency for court management thus improving the quality of work life for those within the courts. The time and cost of day-to-day court operations can be reduced, while speed, efficiency, and effectiveness are added to the administration of justice. The courts of the future will also use technology to bring new, alternative means of dispute resolution to a changing population.

All citizens must have confidence that the courts will protect their rights and liberties and treat them fairly, regardless of the language they speak, their race or gender, or physical impairments. Technology can bolster public confidence in justice by helping to create a system responsive to both personal and public need.

BLUEPRINT FOR CHANGE

In the last several decades Massachusetts has become a high-technology leader in the United States and the world. Massachusetts companies have contributed a large share of new technology on the world market and are now developing new artificial intelligence technologies among others. The Commonwealth is also home to several academic institutions recognized as world leaders in the development of new technologies.

The state court system’s proximity to technology’s leading edge is, at best, ironic since the technology in use in our courts today consists of little more than the telephone and the typewriter. The delay in bringing technological innovation to the judicial branch has long been recognized as primary among its shortcomings.

The slow pace of automation in the Massachusetts courts is not news. The Cox Commission and the Senate Ways and Means Committee fully documented the problem in 1976 and 1987, respectively. Since then, there has been progress. Probation’s systems are highly regarded, as is the jury management system. The Superior Court has recently entered into a contract for automated comprehensive case management and remote access to computerized dockets. The District Court and the Supreme Judicial Court are also being automated. What is puzzling and worrisome, however, is that by and large these efforts are uncoordinated. Each system is the product of separate vendors. Internal and external interfaces are uncertain at best.

Much more needs to be done. To arrive fully in this century, and to prepare for the next century, the courts need to make far better use of technology. Caseload management,

This is a condensed and edited version of the report of the Technology and Justice Task Force. The complete report may be obtained from the Public Information Office of the Supreme Judicial Court. The views expressed and recommendations made herein are those of the task force and do not necessarily represent those of the Commission. Task force members were: Donald Cochran and Gabriel P. Fusco, co-chairs; Joseph G. Brady and Alice E. Richmond, members; Burton Kreindel and Frederick W. Riley, special advisers; and Kate Nace Day reporter.

statistical reporting, internal communications, communications aimed at public understanding and access, data management and information storage is all obvious candidates for technological enhancement.

The people of the Commonwealth deserve a justice system that is efficient, effective, and fair. Technology will play a major role in the systems redesign. Our recommendations for bridging the gulf between present and future follow.

We Begin Today

The chief justice of the Supreme Judicial Court should chair a standing Task Force on Technology and Justice to integrate existing and emerging technologies into court operations.

Technological change in the courts is impossible without sustained commitment from those responsible for the administration of justice. A permanent Task Force on Technology and Justice, comprised of judges, court personnel, lawyers, law librarians, technology researchers and applications specialists, and lay people, could institutionalize the courts' commitment to technological advancement.

Such a task force could be the advocate for technological innovation within the justice system, following the example of Arizona Judge David Phares. Judge Phares found that courtroom information technology systems were being developed for clerks, not judges, even though judges often function in managerial roles and must use the systems. In response Phares developed a judicial workstation----a computer designed to assist judges in their various functions----now being piloted in the Arizona courts.

A permanent Technology Task Force could educate the judiciary on ways in which technology can assist judges, reduce judicial isolation, and foster communication

between the judiciary, the public, and the developers of new technologies. Such a task force could also promote adequate funding for court technology and undertake special research projects.

Candidates for judicial appointment should increasingly be computer literate. Once appointed, judges should receive continuing education in computers and emerging technologies.

Efficiency produced through technology in the courts is impossible without a judiciary that is increasingly "computer literate." The judges of tomorrow must understand the role of technology in the future of the courts and the improvements that can result from the successful application of technology to a judge's everyday work. Such an understanding should be a consideration in the appointment process. Once appointed, the judiciary should receive continuing computer education, including specialized training in information technology. The courts themselves should promote and provide such ongoing education.

Rules, regulations, and statutes should be reviewed with an eye to removing barriers to a more technology-based system.

There will always be rules that govern the resolution of disputes. Some of these rules may inadvertently inhibit technological change. For instance, transmitting documents by facsimile machine raises issues such as: the payment of filing fees, legality of signatures, legibility, proof of receipt and adequacy of service of process, and the validity of faxed warrants and orders.² The possible problems are as varied as the technologies. Supercomputers are capable of performing several hundred million calculations per second, as well as producing powerful three-dimensional simulations of past events. When these are reduced to video format they can permit computer-simulated accident reconstructions at trial.

But will such reconstructions be admissible under the rules of evidence? In the literature on computer-generated visual evidence, Massachusetts has been cited as having "an antiquated basis for admissibility."³

Pre-recorded videotaped trial records raise similar rules-related questions, as does image scanning of documents and their transfer onto optical disks----where the original document and all subsequent evidence is eliminated. Such issues must be carefully evaluated. We urge the elimination from statutes, regulations, court rules, and case law of all unnecessary barriers to technological innovation in the courts.

Banishing the Spector of Technology

The judiciary must take the lead in assessing technological and scientific advancements to ensure that the law can address the legal issues of tomorrow.

As society changes so will conflict. The judiciary must be among the first to understand advancements in fields such as biotechnology, molecular biology, robotics, and artificial intelligence, and what these changes will bring in the way of new legal issues.

We can imagine today some of the questions likely to be posed by biotechnology tomorrow. What about cyborg technology, for example, in which humans are directly linked to technology that assists malfunctioning body parts? Or electronic voice synthesis and voice recognition" Cyborg technology implies a kind of "conscious technology." Humans combined with computers essentially represent a new species, and questions regarding their rights and liabilities are fascinating, if a bit frightening. The judiciary must be informed and prepared to confront these new challenges if the potential benefits of technology are to be harnessed.

A subgroup of the standing Task Force on Technology and Justice should explore the interdisciplinary field of artificial intelligence and the law and recommend justice applications.

Massachusetts is home to many of the pre-eminent researchers in field of artificial intelligence (AI) and the law. Our courts can no longer afford to ignore the vast body of knowledge and technologies connected with AI. Professor Edwina Rissland of the University of Massachusetts at Amherst defines AI as "the science of making machines do things that would require intelligence if done by man." Research in the field of AI and the law is aimed at understanding legal reasoning and building computer tools to assist in legal practice, teaching and research. The promise of AI for judicial decision making is that it could automate the formalistic rules-based aspects of legal reasoning. Judges could then focus on the more subjective aspects of their work, such as interpreting facts and weighing evidence.

An AI subgroup of the Task Force on Technology and Justice could work to improve our understanding of the relationship between AI and legal reasoning and specifically examine how AI can assist in judicial decision making. It would also serve to educate and reassure us about the role of AI in the law. Dr. Rissland writes: "Some might be concerned that the use of AI models will somehow trivialize legal reasoning by making it seem too simple, undermine the importance of lawyers and judges by relegating them to the role of mere users of systems which do all of interesting reasoning, or dehumanize us by describing intelligent behavior in well-defined terms... [However] there will always be a need for human lawyers and judges. The goal is to assist, not replace."⁴

The judiciary must assume a leadership role in initiating educational programs in the public school to introduce children to the justice system, including its technology.

Our children are the leaders, creators, and users of the justice system of the future. They could also be its victims. When we look at today's children, playing with video games or working on personal computers, the lesson is clear: technology need not diminish our humanity. Unlike many in the older generation, children are not fearful of technology. Where adults dread, children often delight.

We must begin today to ensure that children understand both the principles of justice and how technology can be used to promote it. Cable television could bring live trials into school settings. Likewise, interactive video program could bring children into the courts through a touch-screen computer, or for a video-conference with a clerk before a trial.

Enhancing the Effective Management of Justice

Technology planning for the future of the courts must be fully integrated with operational, financial, and human resource planning.

Designing the future requires conceptualizing change. Technological change must be an integral part of a comprehensive plan for the future of the courts.

Thomas Davenport and James Short of Ernst and Young assert in their paper on information technology and business that redesigning business processes is "a straight-forward activity, but five major steps are involved: develop the business vision and process objectives, identify the processes to be redesigned, understand and measure the existing process, identify information technology levers, and design and build a prototype of the new process."⁵

The Ministry of the Attorney General for the Province of British Columbia in its strategy for technological change focused initially on the particular functions of its justice system. It defined the business functions of the courts as: management, record management, security, finance, and information. It then focused on better ways of operating through technology, identifying opportunities for major enhancements and improvements within each court function. This examination led the strategic planners to adopt short-, mid-, and long-term goals, with the idea that knowledge gained from short-term initiatives would enhance the quality of longer term efforts.

Initiate immediately a pilot project for the development and construction of a courthouse of the future.

Courthouse design is a basic and critical stage in integrating technology and justice. The courthouse of the future should use existing and emerging technologies to provide improved access to justice, as well as more efficient court administration. The development of a prototype courthouse would allow us to see the future in operation today. A regular review of the problems and achievements of the pilot project would provide valuable information about how to integrate technology into the courts. Many of the components of the courthouse of the future are already available.

Access to the courts for the handicapped and disabled could be improved substantially with systems in use today. Barbara Jean Wood, Massachusetts Commissioner for the Deaf and Hard of Hearing, told the Commission:

"The courts respond inconsistently to their legal obligation to provide communications access to the deaf and hard of hearing. We propose... special technology, such as ... special telecommunications equipment, video and TV captioning... We propose

computer-aided 'realtime' court reporters, who translate speech into printed text instantaneously... Amplification systems such as audio induction loops could be built-in around courtrooms when they are renovated."

The courthouse of the future is almost certain to be "paperless." Image scanning technology is available now for converting the printed work into an electronic image, which is then stored on a computer disk. The advantage of imaging include facilitating instantaneous document retrieval, allowing simultaneous access by multiple users and reducing the problems of processing, managing, and storing court documents.

In time, the courthouse of the future may have a library of holographic crystals that store documents and information. Holography is providing new storage methods: laser light is used to record data images, like pages from a book, on light-sensitive crystals. The data are stored as complete images, etched into the molecular structure of the crystal.

In the courthouse of the future all information will flow electronically. Complaints will be served and filed electronically. Electronic case-file folders will receive information from keyboards and touch screens, and from human voices via computer speech-recognition systems. The court computer will have the capacity to receive, capture, and retrieve data, such as case data, case-tracking information, and juror information; text, such as complaints, motions, judgments, court orders, and rules of court; and images of documents, such as proof of service and documentary evidence that has been scanned.

In the courthouse of the future, judges, court clerks, and court administrators will all have access to the court computer via personal workstations. A judge, for example,

might have workstations both in chambers and on the bench. He or she could then inspect a case file, make case notes, and research legal questions and rules. Clerks could call up case files, evidence lists, and discovery orders.

To allow attorneys to organize, share and present evidence in both criminal and civil trials, the courthouse of the future will have a computer room serving as a tele-communications relay station. It will allow attorneys to bring their own computers into the courtroom, or to use court-supplied workstations that give them access to litigation support materials. Attorneys will be able to conduct legal research and review non-legal databases. In every phase of litigation, the court computer will be able to receive information from state agencies, law enforcement groups, and law firms.

The courtroom of the future will be equipped with extensive video technology. It will have an integrated voice-activated audio-visual recording system. Video technology is already playing a significant role in judicial proceedings, including videotaped depositions, confessions, and trial records. Of particular value to the criminal justice system, interactive video-conferencing permits communication between the courtroom and remote sites, supplementing traditional in-person courtroom and hearing room proceedings by allowing testimony from detention facilities at arraignments or parole hearings. A high-resolution projection system could be used for display of exhibits or videotaped depositions. Jurors will be able to view these on a large screen or individual small screens. Jurors will also be able to review video transcripts of witness testimony and inspect scanned documents introduced into evidence.

Even as the courthouse of the future is utilizing many of the technologies available today, it must be technologically, functionally,

spatially, and environmentally designed to anticipate and incorporate change.

Flexibility must be built into the plans for the courthouse of the future. The Superior Court of San Mateo County, California, for example, has constructed three high-tech courtrooms with movable walls. Many of the courtroom furnishings, including jury boxes, counsel tables, public seating and witness stands are movable. The floors accommodate subsurface wiring modifications for future uses.

We recommend the immediate evaluation of existing court computer systems to upgrade and integrate them into a system-side computer-based management and communications network.

Systems exist today that could do much to improve case-flow management, centralized case scheduling, and litigation support. Without system-wide evaluation, followed by the development and integration of new and emerging technology, the 21st century will be here before the courts have fully arrived in the 20th.

Computerized court information systems in the United States have been in operation for years. These systems, which have often exceeded original requirements and expectations, were designed in response to the needs and with the participation of court clerks. The active involvement of court personnel is critical to the successful development and implementation of information technology.

Case management systems typically permit case monitoring and management from filing through disposition. They are fully integrated, on-line, real-time processing systems that allow authorized users to add, maintain, display, and print information. The systems' abilities include docketing, case indexing, automatic assignment of cases

for scheduling, and calendar preparation. The systems also generate forms and notices, managerial and statistical reporting information, state-mandated reports, scheduling for prosecutors and public defenders, and judgments. The systems often have several integrated modules that tie case management to other functions. Similarly, there are criminal justice information systems that support pre-trial services, by linking all criminal courts, clerks, prosecutors, law enforcement, and county jails.

Other technologies that could dramatically improve the efficiency of the trial process also exist. For example, several states have experimented successfully with electronic case filing. The National Center for State Courts conducted a year-long study of the use of facsimile (fax) technology in five state courts. The study found that fax technology sped communication in rural judicial districts and generally improved access.⁶ In the very near future the trial court of Massachusetts must thoroughly evaluate such existing systems and integrate them into its own systems.

Ensuring Greater Access to Justice

Systems providing multilingual justice information should be accessible by telephone and at all courthouses.

America's image as a melting pot is being replaced by the image of a mosaic, one people comprised of many, a nation of diverse cultures and many languages. Our courthouses must be equipped so that all people, regardless of their spoken language, have access to information. When the public calls or arrives at the courthouse, each person should be assisted by interactive computers providing information in a choice of languages.

Interactive voice response systems could provide information to telephone callers. The justice system should develop and implement multilingual

voice response systems to provide information about the courts and other justice system agencies, route calls to specialized services, and enable callers to access various databases via touchtone technology.

Interactive computers in the courthouse could provide the public with information about the courthouse itself, with maps and directions, and about court procedures. In Colorado, a bilingual touch-screen interactive computer provides information to the public about the operation of the courts and the procedures in specific types of legal proceedings. Data-base-linked monitors should also be located in carrels in all courts to meet the basic information needs of pro se parties (those without counsel). We emphasize that the objective of multi-lingual systems is to guide, inform, and educate, not to substitute for lawyers or create robotic counsel for parties otherwise pro se.

Public libraries, law libraries and public schools, should offer remote access to court information.

There is a public perception that not enough is done today to guide the justice system user through the process. Donald Dunn of the Western New England School of Law suggested building bridges to public understanding:

"You could structure an interactive video program that would enable a patron to come in and say 'what is superior court' and you get the whole chart up there-what the roles are, and who is the clerk. You could put in individuals' names so that the patron could see those very easily by putting their finger up to the screen. You could find out who the judge is... Take it out of the courts. Put it in high schools. You want it out in the public area.

Exposing people to the legal system and the way it operates begins unfortunately for most people at the worst possible time, when something bad goes wrong. Technology offers much to us and makes it exciting."

As court records and other public documents are automated, a comprehensive program for public access should be instituted. Several jurisdictions are already experimenting with providing attorneys remote access to computerized records. Similarly, the public should have access to the state courts' case-tracking system so that an individual with only the name of a party or a case number could locate the case, copy information, and obtain updates-all without traveling to the courthouse.

Other technologies to facilitate remote access to justice should be developed.

With existing video technology it is possible to remove geography as an impediment in many court matters. In the future two-way audio-visual links could allow judges to carry on court business involving parties in remote locations. Long-distance video depositions are already a reality. Video-teleconferencing makes it possible to assign judges to different areas, without physically sending them there. With a computerized judge-tracking system, judges can be made more consistently available where the need arises.

Other video technologies, holographs, and "virtual reality" can create three-dimensional representations of real judges. Three-dimensional holographic images are generated by a computer from data received from a magnetic resonance imaging device. Holography will allow human judges to be in two places at once, increasing access to justice by creating a new kind of "mobile courtroom."

“Virtual reality creates artificial environments in side computers. It employs powerful computer workstations and special devices, such as motion-sensing gloves and stereoscopic goggles, which allow the wearer to occupy and interact with the synthetic environment. Litigants can visit the world of the courtroom within the computer and present their case to “virtually real” judges and jurors. Televirtuality makes it possible for two people in two different locations to interact in the same synthetic virtual reality environment.

“Televirtuality is the sharing of virtual worlds by two or more people in remote places or different times. This world exists in computer memory, which is stored somewhere on a communication network, and the people partake of that model to experience the place as if they were really there.”⁷

In the future video-conferencing, holographic images, and virtual reality centers will make justice accessible to all, anywhere.

Ensuring the Fairness of Justice

The courts and the public sector bar should enjoy the same technological advantages available to the private bar.

Technology has changed the practice of law. Consider, for example, the savings in time and labor afforded by automated online legal research services, not to mention voice-recognition dictation systems, which even today are beginning to convert the spoken word to the written word almost instantaneously.

Private law firms and corporate law departments have the financial wherewithal to acquire the best and latest in computerized research and office technology. Because the courts are a relatively small market, high-tech companies probably will not be asked to design and produce equipment specially for them; equipment designed for

private sector use may have to be adapted for use in the courts. It is important that advances in technology do not put the courts and the government/public interest bar at a disadvantage in information creation, storage, and retrieval. It is acknowledged that the public sector is “laboring 10 years or so behind their [private sector] opponents, technologywise.”⁸ Recognizing funding constraints, bar associations and private law firms in some cities have borne the cost of installing computer equipment in the courts.

The judiciary, the legislature, and the public sector bar must have fair access to justice-related technological advancements.

Judges should be provided with expert and other computer systems.

An “expert system” is a special-purpose computer program, expert in a narrow problem area. Typically, such a program uses rules to represent its knowledge and to reason. In this rule-bases approach, a rule is encoded in a simple, stylized if-then format: if certain conditions are known to hold, then take the states action or draw the stated conclusion.⁹

Building public confidence is crucial to the future of the justice system. Professors Donald Berman and Carole Hafner of the Center for Law and Computer Science at Northeastern University point out that expert systems can “increase the consistency of legal decisions by providing relevant and persuasive information to decision makers...[thereby decreasing] public perception of unfairness and capriciousness in the legal system.”¹⁰ Providing the judiciary with the best well-tested systems to reduce routine decision making will help ensure both the reality and public perception of fairness.

Expert systems have a wide range of capabilities. They can indicate the relevant evidence and findings that must be considered in a particular case; ensure that the reasoning is consistent with the letter of the law; provide a ready reference to citations and relevant definitions at the points where they are needed; and assemble program—suggested and user-created language into a final-decision format.¹¹

The use of expert systems in the law is already occurring. The LDS (Legal Decision-making System) assessed the worth of cases for settlement purposed; an English system examined statutes for undefined terms and loopholes; a Hearsay Rule Advisor was created; and a Canadian sentencing guideline system now exists.

The rule-based reasoning of expert systems has also been used to develop other software useful to attorneys and the judiciary. Document assembly programs ask questions of the user and, on the basis of the answers, develop and assemble a document. Other rule-bases software for lawyers includes: the Personal Information Manager, which collects and organizes information; hypertext, an information management system that resembles a data base that can link text, graphics, and other information according to rules; and Groupware, which allows colleagues to share messages and information.

All technologies adopted by the justice system must possess security systems to ensure confidentiality.

Although computer security is a mature technology, concerns remain. It is not certain, for example whether the privacy of video-conferencing can be ensured today. In image procession, even though

optical disks are nonerasable, index systems are vulnerable because false index entries can be entered, and index entries can be erased. In remote access programs, safeguards must ensure that access is limited to those with a legitimate need.

Facilitating Alternative Dispute Resolution

No less than in future adjudication, alternative dispute resolution should be technologically enhanced.

Alternative dispute resolution may be even more amenable to technological innovation than adjudication. One of the most valuable characteristics of information technology is speed; it can make activities that once occurred sequentially occur simultaneously. Information and communication technology can not only expedite access to information but to a variety of alternative dispute resolution mechanisms, making them even more attractive alternatives to adjudication.

ADR programs and techniques should take advantage of artificial intelligence technology especially.

While artificial intelligence is sure to have numerous alternative dispute resolution applications, of particular promise are the expert systems that can assess and evaluate cases. Expertise in cases assessment is a relatively scarce resource. An artificial intelligence system might enable a person with a conflict to conduct his or her own dispute assessment. An artificial intelligence system could lead such a user through an initial interview, identify facts that need to be gathered, and make recommendations on the various means of resolving the dispute, along with the likely cost of alternative methods. It could also help predict possible outcomes, encourage

settlements, and/or suggest abandonment of weak claims.

Resource savings for both the public and the courts could be significant.

Community justice centers should be technologically sophisticated.

Increasingly, the courts are being asked to become involved in issues that were once resolved within families and communities, or by social service agencies. Technology can help bring such issues back into local sphere. Community justice centers, equipped with appropriate technology, could help inform and guide people through their disputes, without having to leave their communities. At these centers, the parties to a dispute could obtain from local or remote third parties the advice necessary to resolve their differences, without resorting to "formal" justice.

If the disputing parties required more traditional justice, a community justice center equipped with video-conferencing systems could enable the parties to participate in a preliminary hearing before a judge. As video technologies advance, parties might one day present their cases to holographic judges. As the judiciary becomes supportive of new innovations, community justice centers could even enable disputants to enter into a computerized environment and be heard before a "beamer" court, a court of judge and/or jury comprised of computer digitized and computer recreated people. Farfetched, perhaps, but certainly not beyond the grasp of technologies well on their way to development.

In sum, we must begin today to create the justice system of the future, a justice system that not only tolerates but embraces technology and uses it to restore, maintain, and cultivate public trust.

NOTES

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5. Thomas H. Davenport and James E. Short, "The New Industrial Engineering: Information Technology and Business Process Redesign," *Sloan Management Review*, Reprint Series, vol. 31, no. 4 (Summer 1990), 11, at 13.
6. Susan Koenig, "Courts in the Fax Lane: The Use of Facsimile Technology by State Courts," *State Court Journal*, (Winter 1991, 13. The states studied were Minnesota, Idaho, Colorado, Washington and Illinois.
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8. "Into the Future," *The National Law Journal* (May 22, 1989), 12.
9. Rissland, *supra* note 4, at 1965.
10. Donald Berman and Carole Hafner, "Legal Expert Systems and Discretionary Decision Making," in *Social Implications of Artificial Intelligence* (1988),
11. Vishwas, Pethe et al., "A Specialized Expert System for Judicial Decision Support," in the Center for Law and Computer Science, Northeastern University, International Conference on Artificial Intelligence and Law (Association for Computing Machinery, 1989), 190.

PUBLIC OPINION ABOUT THE FUTURE OF THE COURTS

Prepared for the Chief Justice's Commission on the Future of the courts by Opinion Dynamics Corporation.

INTRODUCTION

This is a report on a survey of public attitudes toward the justice system in Massachusetts and of public preferences for the future. It was conducted in April 1991 for the Chief Justice's Commission on the Future of the Courts, a panel of citizens, business leaders, educators, lawyers and judges, created by Massachusetts Supreme Judicial Court Chief Justice Paul Liacos to develop a blueprint for justice in Massachusetts in the year 2022. The survey is based on 500 telephone interviews conducted across Massachusetts. Four hundred of these interviews were conducted with a representative sample of adult residents of Massachusetts; and additional 100 interviews (a so-called "oversample") were conducted with people living in areas of the state that contain a majority of non-white residents. A fuller description of the methods employed in this survey follows.

The basic objectives of the survey were:

To measure reaction to some possible changes in the court system that may occur in the future and to help determine which directions of change will be accepted or welcomed by the public,

To assess people's knowledge of and attitudes toward the court system in Massachusetts, and

To identify the areas where the public feels the courts are performing adequately and those areas where the public feels improvement is needed.

It is important to keep in mind in reading this analysis that minority groups make up a relatively small proportion of the total population of the total population of the Commonwealth of Massachusetts. While the views of the minority oversample are highlighted in the analysis, their views are also included in the views of the overall population.

SURVEY METHODOLOGY

All Opinion Dynamics surveys are conducted using standard statistical methods. The basic elements of any research method are the sampling procedure and the interviewing procedure.

Sampling

The general sample for this survey was drawn in several states. First of all, interviews were allocated to Massachusetts cities and towns based on the proportion of the total population living in those jurisdictions. A sampling was then made of the telephone exchanges throughout the state. After a random group of exchanges was selected, random numbers were then drawn to complete a list of possible numbers for the interviewers. This method assured that people with new or unlisted numbers were just as likely to be called as those with listed phone numbers.

The minority oversample was constructed by identifying areas from census data that have a majority of non-white residents. Reverse telephone directories were then used to select a sample of telephone numbers from within those areas.

Interviewing

The selected phone numbers were then called from a telephone interviewing service operating from a central calling facility. To ensure accurate completion, all interviews were conducted by trained professional interviewers under constant supervision. Each respondent had to pass a screening process establishing him/her as at least 18 years of older and a resident of Massachusetts. All interviewing took place between April 14 and April 19, 1991. Interviews were coded and compiled using modern data-processing methods.

Accuracy

Any survey is a statistical procedure whose likely accuracy is determined both by statistical laws and by the care with which it is conducted. The basic sample size of this survey was 400 interviews. For questions where the answers are about 50%, the margin of error is 5.7%. (Responses higher and lower than the 50% range have somewhat lower margins of error.) In 95 cases out of 100, samples drawn in this manner will yield results that are within 5.7% of questioning all adult residents of Massachusetts. For example, when the survey says "47% of the people think," it is fair to say that the odds are very strong that no less than 42% of Massachusetts residents and no more than 52% of them-if we could talk to all of them-would respond as do the people in the survey. When looking at smaller groups in the survey, the potential error is larger. For groups where the sample size is about 200, the range of error is +/-7%; and for groups where the sample size is 100, the range is about +/-9%.

To conserve space and reduce costs only the survey's introduction and questions and responses are reproduced here. The interpretive text of the report is omitted. A full copy of the report may be obtained from the Supreme Judicial Court's Public Information Office.

QUESTIONNAIRE

1. As you probably know, the Massachusetts state government has three separate and equal branches — the executive branch, the legislative branch, and the judicial branch. On a scale of excellent, good, only fair, and poor how would you rate the state judicial branch, the Massachusetts court system?

	State	Oversample
1. Excellent	1%	1%
2. Good	21	18
3. Only fair	43	39
4. Poor	28	39
5. (Not sure)	7	3

2. Using the same scale, how would you rate the overall quality of the judges in Massachusetts?

	State	Oversample
1. Excellent	2%	2%
2. Good	31	24
3. Only fair	41	46
4. Poor	17	22
5. (Not sure)	9	6

3. On the same scale, how would you rate the overall quality of the court clerks, probation officers, and other court employees in the Commonwealth?

	State	Oversample
1. Excellent	4%	5%
2. Good	33	33
3. Only fair	33	39
4. Poor	12	13
5. (Not sure)	18	10

4. On the same scale, how would you rate the overall quality of lawyers in Massachusetts?

	State	Oversample
1. Excellent	6%	8%
2. Good	41	34
3. Only fair	30	44
4. Poor	12	8
5. (Not sure)	11	6

5. What do you think is the biggest problem facing the Massachusetts court system today?

	State	Oversample
Caseload too full, too crowded	39%	29%
Process too slow	3	4
Too easy on criminals	9	7
Prison overcrowding	9	12
Not harsh enough	2	1
Corruption/politics	6	7
Financial/budget problems	5	6
General "bad system"	5	11
System is unfair/unjust	5	9
Bad judges	4	-
Drug crime	6	6
There are no problems	-	-
Other	2	1
Don't know/refused	5	7

QUESTIONNAIRE

6. On a scale from "1" meaning "not informed at all" to "5" meaning "very well informed" how informed do you think you are about the court system in Massachusetts?

	State	Oversample
1. Not informed at all	14%	11%
2.	19	27
3.	43	29
4.	17	19
5. Very well informed	6	14
6. (Not sure)	1	-

I'm going to read you a couple of statements about the justice system.

Please tell me whether you think each statement is true or false.

7. In a criminal trial it is up to the person who is accused of a crime to prove his or her innocence.

	State	Oversample
True	37%	56%
False	62	44
(Don't know)	1	-

8. If someone is found not guilty of a crime, the state can appeal the case.

	State	Oversample
True	44%	44%
False	49	48
(Don't know)	7	8

I'm going to read you some qualities that the court system might have. After each one, I'd like you to tell me whether you think the Massachusetts court system currently:

SCALE

1. Needs no improvement in this area
2. Needs some improvement in this area, or
3. Needs a lot of improvement in this area
4. (Not sure)

	1	2	3	4
9. Having the public trust what they do				
State	5%	47	46	2
Oversample	2%	43	54	1
10. Having the public understand their work				
State	5%	43	50	2
Oversample	2%	39	58	1
11. Providing speedy justice				
State	5%	24	69	2
Oversample	3%	28	69	-
12. Being fair to all				
State	13%	48	37	2
Oversample	10%	32	56	2
13. Being affordable for people				
State	15%	29	49	7
Oversample	7%	20	70	3

QUESTIONNAIRE

	1	2	3	4
14. Being independent of politics				
State	8%	27	60	5
Oversample	7%	38	53	2
15. Giving people access to the system				
State	15%	46	33	6
Oversample	9%	47	42	2
16. Being well managed				
State	7%	36	49	8
Oversample	9%	36	52	3
17. Having good facilities				
State	21%	38	32	9
Oversample	11%	38	50	1
18. Giving people a chance to let judges and court administrators know how the system should be improved				
State	5%	45	45	5
Oversample	5%	40	54	1

I'm going to read you some criticisms that have been made about the Massachusetts court system by various people. Please tell me whether you strongly agree, somewhat agree, somewhat disagree, or strongly disagree with each one.

SCALE

1. Strongly agree 2. Somewhat agree 3. Somewhat disagree 4. Strongly disagree
5. (Don't know)

	1	2	3	4	5
19. Court procedures are hard to understand					
State	32%	47	15	5	1
Oversample	42%	42	11	3	2
20. People have to spend too much money to use the court system					
State	52%	29	13	3	3
Oversample	57%	27	10	4	2
21. People like you don't get treated fairly by the court system					
State	17%	28	31	14	10
Oversample	41%	34	9	10	6
22. Court proceedings aren't handled fast enough					
State	65%	23	8	3	1
Oversample	57%	30	8	4	1
23. The courts are too soft on people who commit crimes					
State	50%	31	12	5	2
Oversample	58%	17	14	6	5

	1	2	3	4	5
24. The people who work in the courts care more about their salaries and privileges than about the public good					
State	29%	34	21	8	8
Oversample	45%	30	15	7	3
25. People who are accused of crimes are often treated unfairly					
State	13%	37	30	16	4
Oversample	20%	41	28	10	1
26. Court decisions are often wrong					
State	9%	34	37	12	8
Oversample	18%	42	27	8	5
27. Blacks and other minorities are not treated fairly by the courts					
State	22%	33	19	17	9
Oversample	56%	19	14	7	4
28. Women are not treated fairly by the courts					
State	16%	32	28	15	9
Oversample	43%	22	17	14	4
29. Victims are not treated fairly by the courts					
State	34%	36	18	6	6
Oversample	48%	28	13	6	5
30. Poor people are not treated fairly by the courts					
State	33%	33	22	8	4
Oversample	62%	20	13	4	1

I'm going to read you some ways that people come in contact with the legal system. After each one please tell me whether or not that one applies to you personally.

	% YES	
	State	Oversample
31. Served on a jury in a case	21%	32%
32. Hired a lawyer for any purpose whether or not you went to court	59%	54%
33. Been a party in a civil or criminal case that went to court	32%	36%
34. Been a witness in a trial	22%	16%
35. Been to court to contest a traffic ticket	25%	20%
36. Attended court as a victim in a criminal case whether or not you had to testify	10%	23%
37. Observed court proceedings, other than in the ways already described	52%	61%
38. Been involved in mediation, arbitration or another type of alternative dispute resolution	24%	32%
39. Had a family member go to court for any reason in the last year	33%	38%

QUESTIONNAIRE

40. (If person had court contact in #31 through #39) Does anything from your experience with the courts stand out as particularly good or particularly bad?

	State	Oversample
Positive comments:		
No problems/fair/good	36%	41%
Judge did good job	3	-
Good lawyers/personnel	2	1
Negative comments:		
Poor system/inefficient	13	2
Slow/time-consuming	12	14
Too many cases	1	2
Unfair	6	25
Problems with judge	6	-
Discrimination	2	3
Too lenient/easy on crime	3	-
Didn't like decision	4	1
Too expensive	1	2
Other	3	-
Don't know	7	8
Refused	1	1

41. Are you a lawyer or do you have a personal or business association with an attorney?

	State	Oversample
1. Respondent is a lawyer	1%	1%
2. Has a personal relationship with a lawyer	9	10
3. Has a professional or business association with a lawyer	12	9
4. Has no association with lawyers	78	80

42. Thinking back over the last few years can you think of a situation where you really wanted to file a lawsuit or go to court about some problem and decided not to?
(If yes) Could you tell me why you decided not to?

[Were not read aloud]	State	Oversample
1. (Problems weren't serious enough)	3%	4%
2. (Problems got resolved before court was needed)	4	6
3. (Court/lawyer was too expensive)	11	9
4. (Court was hard to use/understand/paperwork)	2	-
5. (Afraid of system)	1	1
6. (Too much of a hassle)	10	14
7. (Didn't understand how to use system)	-	3
8. (Other)	4	5
9. No such situation	65	58

43. As you know, in most court disputes you have a right to choose between a trial before a judge or a trial before a jury. If you were seeking compensation for an injury you had received would you want your case decided by a judge or by a jury?

	State	Oversample
1. Prefer judge	23%	30%
2. Prefer jury	70	59
3. (Not sure)	7	11

44. Some courts offer alternative dispute resolution as well as trials. One form of alternative dispute resolution called mediation allows a mediator, rather than a judge or jury, to help people resolve problems such as family disputes or injury claims. The mediator works with both sides to help them fashion their own solution to the dispute without the expense or formality of a trial. Would you strongly favor, somewhat favor, somewhat oppose, or strongly oppose this idea?

	State	Oversample
1. Strongly favor	48%	49%
2. Somewhat favor	36	35
3. Somewhat oppose	8	7
4. Strongly oppose	6	6
5. (Don't know)	2	3

45. Let's say you had a dispute with a store where you bought a refrigerator. You believe that the refrigerator is defective and want your money back or a new refrigerator. The store says the refrigerator was fine when they delivered it. You've already called and complained and they are standing firm. Which of the following ways would you prefer to use to resolve the problem:

1. Sue the appliance store and take the dispute before a judge who would listen to both sides and issue a ruling.
2. Sue the appliance store and appear in court before a mediator who would work with both sides to help you fashion an agreement based on what both sides feel are their best interests. or
3. Go to a dispute resolution center in your neighborhood where a volunteer mediator would help you and the store work out a settlement based on what both sides feel are their best interests.
4. (Not sure)

	1	2	3	4
State	19%	37	40	4
Oversample	36%	32	30	2

46. On another topic, some people have proposed making some drugs legal and selling them through a regulated, licensing and tax system such as we use for alcohol and tobacco; this would also raise new revenue for the state. Would you favor or oppose the legalization of some currently illegal drugs under such a system?

	State	Oversample
1. Favor	22%	16%
2. Oppose	64	63
3. (Not sure)	3	1
4. (Depends on drugs; details)	11	20

QUESTIONNAIRE

There are many different ways that people think the quality of justice in the court system of the future can be improved. I'm going to read you some possible changes, and I'd like you to tell me on a scale from "1" meaning "not important at all" to "5" meaning "very important," how important you think it is to devote tax dollars to making each of these improvements.

SCALE

1. Not important at all ... 5. Very important 6. (Not sure)

	1	2	3	4	5	6
47. Having courts open longer hours, including evenings and weekends.						
State	19%	10	21	20	30	-
Oversample	20%	9	16	14	41	-
48. Having child care centers in or associated with courthouses.						
State	24%	14	18	19	22	3
Oversample	14%	10	13	25	37	1
49. Increasing the salaries of judges to encourage qualified people to serve.						
State	42%	18	22	8	8	2
Oversample	50%	20	14	4	11	1
50. Making court appointed counsel available at no cost to very poor people in important civil cases such as an eviction from housing.						
State	4%	6	10	21	58	1
Oversample	1%	2	5	10	81	1
51. Making lawyers available at a reduced fee to middle-income citizens in important civil cases.						
State	6%	5	14	22	52	1
Oversample	6%	1	11	23	59	-
52. Expanding training programs for justice system personnel to deal more fairly with people from other cultural or ethnic backgrounds.						
State	8%	6	19	24	43	-
Oversample	-	3	6	17	74	-
53. Providing education and information to help people understand the court system.						
State	4%	9	17	22	48	-
Oversample	2%	6	9	16	67	-
54. Developing alternative sentences such as community service for offenders, instead of sending them to prison.						
State	15%	8	18	22	33	4
Oversample	9%	15	24	14	36	2

	1	2	3	4	5	6
55. Requiring literacy programs in prisons.						
State	6%	7	14	19	54	-
Oversample	4%	4	9	16	67	-
56. Increasing drug treatment programs in prisons.						
State	7%	4	17	17	54	1
Oversample	5%	3	7	14	70	1
57. Using computers and television to allow people to participate in court from their homes or offices.						
State	49%	14	19	8	8	2
Oversample	44%	21	14	8	9	4
58. Having the courts provide a variety of options for resolving disputes, such as mediation and arbitration.						
State	5%	3	23	30	39	-
Oversample	4%	2	20	31	42	1
59. Publicly funding more informal, community-based dispute resolution services, such as mediation.						
State	10%	7	30	25	27	1
Oversample	2%	7	16	39	35	1
60. Creating multi-service centers in the courts to increase the social service options that the courts can provide.						
State	9%	9	30	25	23	4
Oversample	4%	7	17	28	43	1
61. We know that new developments in science and technology, changes in the American population — such as a growing number of older people and minorities — and many other things will change the justice system of the future. If you think ahead to the days when our children and grandchildren will be running things, what do you think will be the biggest problem facing the justice system?						
	State	Oversample				
Overburdened/heavy caseload	21%	8%				
Overcrowding in jails	8	11				
Financial budget problems	7	6				
Drugs/crime/violence growing	14	18				
Education, lack of	6	16				
Lack of community/social problems	3	1				
Teenage crime	1	3				
Justice system unfairness	6	1				
Equality for races, classes	5	8				
Qualified people (lawyers, etc.)	5	7				

QUESTIONNAIRE

	State	Oversample
Outdated system	4%	3%
Growing complexity of laws	4	-
Punishment not harsh enough	2	1
Politics	2	-
Things will be the same	2	3
Other	2	1
Don't know/refused	6	10

Finally, I'd like to ask you a few last questions for statistical comparison purposes only.

62. When you think about public affairs would you describe yourself as very liberal, somewhat liberal, somewhat conservative, or very conservative?
1. Very liberal 2. Somewhat liberal 3. (Moderate) 4. Somewhat conservative
5. Very conservative 6. (Don't know)
63. What is your age?
1. 18-24 2. 25-34 3. 35-44 4. 45-54 5. 55-64 6. 65+ 7. Refused
64. What is the highest level of education you completed?
1. Some high school or less
2. High school graduate
3. Some college/two-year college/vocational-tech school
4. College graduate
5. Graduate or professional school/advanced degree
6. (Refused)
65. As I read the following income categories, stop me when I reach the one that best describes the average annual income of your household. (READ GROUPS)
1. Under \$8,000
2. \$8-\$14,999
3. \$15-\$24,999
4. \$25-\$34,999
5. \$35-\$49,999
6. \$50-\$74,999
7. \$75-\$100,000
8. over \$100,000
9. (Not sure)
10. (Refused)
66. And what is your race?
1. (White) 2. (Black/African-American) 3. (Hispanic)
4. (Asian) 5. (Other, mixed) 6. (Refused)
67. Is your family of Hispanic origin or not?
1. Yes 2. No

ACKNOWLEDGMENTS

Titles and affiliations listed are those of the contributor at the time of their participation with the Commission.

James Aldrich, Executive Director,
International Institute of Boston

Jack Alicandro, Service Employees
International Union, Local 254

Walter Allen, Jr., Business Agent, Office and
Professional Employees International Union, Local 6,
AFL-CIO

Jane K. Alper, Esq., Disability Law Center

Catherine Anderson, English Section Editor, Sampan

Articulate Systems (Mark Taylor), Woburn

Luce Aubry, Director of Interpreter Services,
Massachusetts Commission for the Deaf and Hard of
Hearing

Robert E. Baker, Beverly

Hon. Richard L. Banks, First Justice, Roxbury District
Court

Thomas R. Barbieri, Esq., Executive Director,
Merrimack Valley Legal Services

Henry L. Barr, Esq., Administrator of Courts, Office
of the Chief Administrative Justice

Charles W. Barrett, Jr., Esq., President,
Massachusetts Academy of Trial Attorneys

Michael Beer, Professor, Harvard Business School

Thomas Begley, Building Superintendent, Hampden
Superior Court, Springfield (and staff)

John Belmore, Parents of Murdered Children

Peter Benjamin, Esq., Managing Attorney,
Western Massachusetts Legal Services, Springfield

Lorna Betty, Student, Roxbury Community
College

Clement Bezold, Executive Director, Institute
for Alternative Futures, Alexandria, Virginia

Daniel Bibel, Program Manager, Crime Reporting
Unit, Criminal History Systems Board, Massachusetts
Executive Office of Public Safety

Robert S. Bloom, Esq., Deputy Administrative
Assistant, Supreme Judicial Court

Jacquelynne Bowman, Esq., Greater Boston
Legal Services

Leo V. Boyle, Esq., President, Massachusetts
Bar Association

Cynthia Brophy, Program Director, Crime and
Justice Foundation

Harold Brown, Esq., Boston

Michael A. Bulgaris, Probation Officer, Ipswich
District Court

Christine P. Burak, Esq., Staff Attorney,
Supreme Judicial Court

Barbara A. Burke, Chief Probation Officer,
Charlestown District Court

John F. Burke, Esq., Administrative Assistant
to the Supreme Judicial Court

Kevin M. Burke, District Attorney, Essex County

Robert A. Burns, Jr., Business Manager,
Supreme Judicial Court

Iris Morikawa Caslin, Intern, Commission on the
Future of the Courts

Stephen J. Carroll, Deputy Court Administrator for
Court Facilities (and staff)

Kathleen Chatwood, Educational & Organiza-
tional Training Services, Easthampton

Linda Cheren Design

Megan H. Christopher, Esq., South Middlesex
Legal Services

Carmen A. Cicchetti, Director of Research,
Office of the Commissioner of Probation

Henry Clay, Esq., Chief Staff Counsel,
Supreme Judicial Court

Robert Colamar, Candidate for Register
of Probate for Hampden County

Hon. John C. Cratsley, Associate Justice,
Superior Court

Charles H. Crawford, Commissioner,
Commission for the Blind, Massachusetts
Executive Office of Human Services

Salvatore D'Agostino, General Manager,
Computer Recognition Systems, Ayer

James Dator, Hawaii Research Center for Futures
Studies, University of Hawaii at Manoa

Thomas H. Davenport, Ernst & Young, Center
for Information Technology & Strategy, Boston

Albie Davis, Special Adviser, Alternative Paths to
Justice Task Force, Director of Mediation, District
Court Department, Massachusetts Trial Court

Kate Nace Day, Reporter, Technology and Justice
Task Force, Associate Professor of Law, Suffolk
University Law School

William D. Delahunt, District Attorney, Norfolk
County

Joanne Desiato, Vice President, Executive Board,
Massachusetts Association of Mediation Programs

Muadi B. Dibinga, Citizens for Safety

John Diffenbach, Professor, Northeastern
University, College of Business

Mary DiFrancisco, First Assistant Register,
Essex Probate and Family Court

Disability Products (Ken Swartz), Taunton

Victoria Dodd, Professor, Suffolk University
Law School

Hon. Gordon L. Doerfer, Special Adviser,
Alternative Paths to Justice Task Force, Associate
Justice, Superior Court

John Doggett, Telecommunications Director,
Bank of Boston (and staff)

Joan G. Dolan, Esq., Brookline

Priscilla H. Douglas, Harbridge House, Inc.

Dragon Systems (Ellen N. Dorian), Newton

Carol Drapo, Massachusetts Mutual Life
Insurance Co.

Dawn Dues, Newton District Court

Janet Rowe Dugan, Clerk-Magistrate,
Northampton District Court

Hon. Michael S. Dukakis, Governor,
Commonwealth of Massachusetts

W. Brian Dunigan, Assistant Clerk of the
Courts, Middlesex Superior Court, Lowell

Donald J. Dunn, Law Librarian and Professor of Law,
Western New England College School of Law

Hon. Nancy Dusek-Gomez, Associate Justice,
Springfield District Court

Richard J. Dwyer, Clerk-Magistrate, Dorchester
District Court

Nadine DeLuca Elder, Intern, Commission on the
Future of the Courts

Louis Elisa, President, Boston Branch, NAACP

Louie Enriquez, Intern, Commission on the Future of
the Courts

Matthew F. Erskine, Esq., Peters & Erskine,
Worcester

Peter L. Ettenberg, Esq., President, Worcester County Bar Association, and Criminal Justice Section, Mass. Bar Association

Bill G. Evans, Vice President, Cresap Management Consultants

Jerome Facher, Esq., Special Adviser, Alternative Paths to Justice Task Force, Hale & Dorr

Hon. Edward W. Farrell, Associate Justice, Suffolk Probate and Family Court

Daina Farthing-Capowich, Program Manager, State Justice Institute, Alexandria, Virginia

Paul Faucher,Joey Fournier Victim Services

Eileen Feldman, Middlesex Community College

Hon. Edith W. Fine, Associate Justice, Appeals Court

Paul Finnerty, Esq., Assistant District Attorney, Hampden County

Thomas C. Fischer, Professor, New England School of Law

Eugenie H. Fitzhugh, President, Mass. Shorthand Reporters Association

Lois Frankel, Executive Director, Committee for Gender Equality, Supreme Judicial Court

Lisa Gabriel, Reporter, Organization and Administration Task Force, Research Associate, Harvard Business School

Hon. Barbara Gardner, Mass. House of Representatives

Aura Sanchez Garfunkel, Associate Director, Greater Boston Legal Services

John Garvey, Esq., former Executive Director, Dispute Resolution Services

Hon. John C. Geenty, First Justice, Dudley District Court

Hon. Andre A. Gelinas, Regional Administrative Justice, and First Justice, Fitchburg District Court

Patricia Giblin, Office of the Administrative Assistant, Supreme Judicial Court

Hon. Edward M. Ginsburg, Associate Justice, Middlesex Probate and Family Court

Nancy E. Gist, Esq., Deputy Chief Counsel, Committee for Public Counsel Services

Dwight Golann, Reporter, Alternative Paths to Justice Task Force, Professor of Law, Suffolk University Law School .

Stan Goldman, Executive Director, Mental Health Legal Advisors Committee

Carlos Gonzales, Springfield

Sally Goolkasian, Secretary to Chief Justice Paul J. Liacos

John Gorman, President, Opinion Dynamics Corporation

Julie Gouldman, Mass. Legal Assistance Corporation

Martha P. Grace, Clerk-Magistrate, Spencer District Court

Alexander G. Gray, Jr., Esq., General Counsel, Department of Social Services, Mass. Executive Office of Human Services

Leslie Harris, Esq., Roxbury Defenders Unit, Committee for Public Counsel Services

Richard Harris, Horizon Planning Group

L. Scott Harshbarger, Attorney General, Commonwealth of Mass.

Hugh Heisler, Executive Director, Legal Assistance Corporation of Central Mass., Fitchburg

Robert M. Henderson, Public Information Officer, Office of the Administrator for the Courts, State of Washington

Regina Hertzlinger, Professor, Harvard Business School

Lisa M. Hewitt, Esq., Legislative Counsel, Committee for Public Counsel Services

Hannah Hosom, Senior Account Executive, The Weber Group

Richard F. Howard, Esq., Executive Director, Disability Law Center

Vivian J. Hsu, Esq., Counsel, Motorola, Inc., and Asian-American Lawyers Association of Mass.

Ozell Hudson, Jr., Esq., Director, Lawyers Committee for Civil Rights Under Law of the Boston Bar Association

Joyce Hurley, Secretary to Judge Ruth I. Abrams, Supreme Judicial Court

Sohail Inayatullah, Office of Planning & Statistics, Hawaii Judiciary

Paul A. Janmey, Department of Experimental Medicine, Brigham & Women's Hospital

Joyce A. Johnson, Esq., Clinton

Paula D. Johnson, Lincoln

Sara L. Johnson, Senior Economist, Data Resources Inc./McGraw-Hill

Marguerite P. Kane, Comm'r, Essex County

Daniel M. Kasper, Harbridge House, Inc.

Margot B. Kempers, Special Adviser, Access to Justice Task Force, Associate Professor of Sociology, Fitchburg State College

Jean M. Kennett, Esq., Clerk of the Supreme Judicial Court for the Commonwealth (and staff)

Joan Kenney, Public Information Officer, Supreme Judicial Court

Louis Kerlinsky, Esq., Springfield

Hon. James W. Killam, III, First Justice, Malden District Court

Mel King, Community Activist, and Adjunct Professor and Director of the Community Fellows Program, Department of Urban Studies and Planning, MIT

Andrew R. Klein, Chief Probation Officer, Quincy District Court

Leslee Klein, Esq., Co-chair, Delivery of Legal Services Section, Boston Bar Association

Frances King Koch, Publications Editor, Marblehead

Hon. Albert L. Kramer, First Justice, Quincy District Court

Burton Kreindel, Esq., Special Adviser, Technology and Justice Task Force

Jennifer Kurtz, Merrimack Valley Legal Services

Judith Lachman, Professor, Sloan School of Management, MIT

Jerry LaFleche, Executive Director. Catholic Charities, Southbridge

Patricia Lambert, Executive Director, The Housing Information Center, Inc., Worcester

John J. Larivee, Executive Director; Crime and Justice Foundation

Philip Lavelle, Chief Court Officer, Supreme Judicial Court (and staff)

Edward J. Lee, Chief Probation Officer, Uxbridge District Court

Marilyn Lee, Office and Professional Employees International Union, Local 6, AFL-CIO

Herman (Dutch) Leonard, Professor,JFK School of Government, Harvard University

Andrew L. Leong, Esq., President, Asian-American Lawyers Association of Massachusetts

Hon.Jacob Lewiton (retired), Belmont

Donna Lipson, Massachusetts Parole Board

Hans F. Loeser, Esq., Foley, Hoag & Eliot

Hon. Maria I. Lopez, Justice, West Roxbury District Court

Edward J. Loughran, Commissioner, Massachusetts Department of Youth Services

Diane T. Lund, Esq., President, Massachusetts Council for Public Justice

Barbara MacInnes, Lowell

Cathy MacInnes, Secretary to Judge Francis P. O'Connor and to the Chief Justice's Executive Assistant, Supreme Judicial Court

Tracy Maclin, Reporter, Quality of Criminal Justice Task Force, Professor of Law, Boston University School of Law

Gladys Maged, Executive Director, Committee for Gender Equality, Supreme Judicial Court

James Maber, Senior Staff Counsel, Northeastern Regional Office, National Center for State Courts

Ann Mahoney, Ernst & Young, Boston

Kathy Mainzer, Director, Citizens for Safety

Sheila Malkani, Intern, Commission on the Future of the Courts

Richard A. Manley, Jr., Esq., President, Massachusetts Taxpayers Foundation

William Marchant, Budget Analyst, OCAJ

Shirley Mark, Community Outreach Director, Commission to Study Racial and Ethnic Bias in the Courts, Supreme Judicial Court

Richard Marooney, Senior Manager, Ernst & Young, New York

Elizabeth Marshall, Administration of Justice Specialist, League of Women Voters of Mass.

Susan M. Marshall, Esq., Research Coordinator, Commission to Study Racial and Ethnic Bias in the Courts, Supreme Judicial Court

Hon. Gordon A. Martin, Jr., Justice, Roxbury District Court

Marie (Sandy) Matava, Commissioner, Massachusetts Department of Social Services, Massachusetts Executive Office of Human Services

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Sen. William Owens, Massachusetts Senate John Padini, Social Law Library

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Kristin Quinn, Intern, Commission on the Future of the Courts

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Frederick W. Riley, Esq., Special Adviser, Technology and Justice Task Force, Murphy, DeMarco & O'Neill

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Allan G. Rodgers, Esq., Director, Massachusetts Law Reform Institute

Mary T. Rogers, Esq., DiMento & Sullivan

Anne P. Roise, Director, Commission to Study Racial and Ethnic Bias in the Courts, Supreme Judicial Court (and staff)

Edward S. Rooney Jr., Esq., Lyne, Woodworth & Evarts

Arnold R. Rosenfeld, Esq., Chief Counsel, Board of Bar Overseers

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Vaughn Simkins, Violence Prevention Project, Boston Department of Health and Hospitals

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Edward D. Simsarian, Esq., President, Worcester County Bar Association

A. Gerry Singen, Esq., Director, Program on the Legal Profession, Harvard Law School

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John Stainton, Director, Court Facilities Unit, Division of Capital Planning and Operations

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Andrew J. Steinberg, Esq., Western Massachusetts Legal Services, Springfield

Joseph D. Steinfield, Esq., Hill and Barlow

Ceil Strangie, Office of the Administrative Assistant, Supreme Judicial Court

Charles Surpitski, Chief of Police, Ipswich

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Tai Van Ta, Esq., Research Associate, Harvard Law School

David I. Tevelin, Executive Director, State Justice Institute

Doreen Thompson, Senior Vice President, The Weber Group (and staff)

Robert Thornell, Director, Juvenile Court Clinic, Roxbury District Court

Daniel Thurston, Lowell

Jonathan R. Tilton, G.E. Aircraft Engines

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Philip A. Tracy, Jr., Esq., DiMento & Sullivan

Paul Tremblay, Esq., Boston College Legal Assistance Bureau

Edward M. Tumavicus, Esq., Legal Counsel to Chief Justice Paul J. Liacos

Joan Vargas, Paralegal, Housing Department, Legal Assistance Corporation of Central Massachusetts

George A. Vose, Jr., Commissioner, Massachusetts Department of Correction, Massachusetts Executive Office of Human Services

Nancy Waggner, Esq., Law Related Education Coordinator, Public Information Office, Supreme Judicial Court

William J. Walczak, Executive Director, Codman Square Health Center

Leslie Walker, Esq., Delivery of Legal Services Section, Massachusetts Bar Association, and Committee for Public Counsel Services

Thomas Walsh, Office of the Commissioner of Probation

Hon. Joseph P. Warner, Chief Justice, Appeals Court

Marnie Warner, Law Library Coordinator, Trial Court Law Libraries, Office of the Chief Administrative Justice

Jacqueline Weber, Intern, Commission on the Future of the Courts

Lawrence Weber, President, The Weber Group

Phillip L. Weiner, Esq., Acting Director, Massachusetts Committee on Criminal Justice (and staff)

William H. Wells, President, Massachusetts Council for Public Justice

Millie Whatley, Esq., Committee for Public Counsel Services

Eugene Williams, Conway

Barbara Wilson, Roxbury District Court

Charles A. Winchester, Chief Probation Officer, Woburn District Court

Ernest Winsor, Esq., Staff Attorney, Massachusetts Law Reform Institute

Robert Womack, Director of Computer Services, Hale & Dorr

Barbara Jean Wood, Commissioner, Massachusetts Commission for the Deaf and Hard of Hearing

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Ravuth Yin, Cambodian Mutual Assistance Association of Greater Lowell

Stephen S. Young, Esq., Sherburne, Powers & Needham

Hon. William G. Young, Justice, U.S. District Court

Carl Zangerl, Horizon Planning Group

Andrew H. Zeiberg, Legal Advisor, Massachusetts Committee on Criminal Justice

Hon. Hiller B. Zobel, Associate Justice, Superior Court

Hon. Samuel E. Zoll, Chief Justice, District Court Department, Massachusetts Trial Court

CREDITS

Design & Production

Sue Niewiarowski/Niewiarowski Design

Information Graphics Design

Kristen Busa/Busa Design

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Stephanie Hasenauer

Photography

Jeff Dunn/Stock Boston

Ellis Herwig/Stock Boston

Nick Sapieha/Stock Boston

Mark Antman/Stock Boston

Hazel Hankin/Impact Visuals

Page Output

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The Eusey Press

For further information, please contact:

Public Information Office

Supreme Judicial Court

Room 218 Old Courthouse

Boston, MA 02108

(617) 725-8524

(617) 742-1807 fax