

**MASSACHUSETTS BAR ASSOCIATION COURT STUDY
TASK FORCE
REPORT TO THE HOUSE OF DELEGATES**

NOVEMBER 2003

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I. INTRODUCTION AND EXECUTIVE SUMMARY

The MBA Court Study Task Force was appointed in January 2003 by former President Joseph Vrabel.¹ The Task Force was requested to review the Massachusetts Bar Association policy positions regarding court organization, administration and funding. We were further requested to determine whether changes should be made to such positions and to recommend initiatives which should be undertaken by the Association to improve the Massachusetts Courts.

The Task Force began with a review of the reports of most committees which have analyzed the Massachusetts court system during the past thirty years. These included :

- “Res Gestae” (MBA Committee on Court Reform)(1976),
- “Report on the State of the Massachusetts Courts” (Cox Commission)(1976),
- “Conference Report: Court Reorganization: Three Years and Counting”(Massachusetts Council for Public Justice) (1982),
- “Agenda 90: Modernizing the Judiciary" (Massachusetts Senate Committee on Ways and Means)(1987),
- “ Justice Endangered: Management Report on Massachusetts Courts” (Harbridge House Report)(1991),
- “A Declaration of Independence: Reaffirming the Autonomy of the Third Branch”(Dolan Report)(2002) and
- “Report to Chief Justice Marshall” (Monan Report)(2003) .

Following this review and consideration of the of the present status of the Massachusetts

¹Warren Fitzgerald, Co-Chair, Boston; Francis T. Talty, Co-Chair, Lowell; Hon. Herbert P. Wilkins, Chief Justice Massachusetts Supreme Judicial Court (Ret.); Ronald A. Cass, Dean Boston University School of Law; Martha Coakley, District Attorney, Middlesex County; Florence R. Rubin, Newton; Richard C. Van Nostrand, President, Massachusetts Bar Association; Joseph P.J. Vrabel, Immediate Past President, Massachusetts Bar Association; Veronica Fenton, Lenox; Patricia A. Wynn, CPCS, Boston, Leo V. Boyle, Past President, Massachusetts Bar Association, Martin Healy, General Counsel, Massachusetts Bar Association.

Courts, the Task Force determined that its objectives would be to: (1) identify and focus upon the most important areas in which changes to our courts might realistically be made as immediate goals for Association support and (2) review the policy positions of the Association regarding Court organization, administration and funding established as long term goals and suggest any changes to them which should be adopted by the Association. We determined that it would not be prudent or necessary to invest substantial resources of the Association in another study of the Courts.² Further, we decided that it would not be necessary to create *ab initio* a new model for the court system given the existence of the numerous well-reasoned recommendations provided by earlier reports of court study committees. Rather, the proposed initiatives would be focused upon the most pressing needs of the courts and recommended by the Task Force after consideration of the practicalities involved in affecting change in the identified areas. The policy positions recommended for the Association would be intended as a plan for an improved court system for the Commonwealth and would provide the Association and its leaders with guidance in addressing issues relating to the courts.

We reviewed in detail the 1991 MBA Report "Justice Endangered: A Management Study of the Massachusetts Trial Court (Harbridge House Report). This report and its recommendations were approved by the House of Delegates in 1991 and remain the last approved policy positions of the Association regarding court reform. Nine of the twelve "Principal Recommendations" of the Harbridge House Report were deemed relevant in light of changes in our courts since 1991 and worthy of further discussion by the Task Force.

We voted to endorse generally, these nine recommendations of the Harbridge House Report as discussed more fully in part III of this report. The Task Force does not suggest any changes in the Association's policy positions regarding court reform stated in the principles contained in those recommendations.³

²This report need not begin with a statement regarding the state of the Massachusetts Court system which has been addressed by most prior reports and is well known not to have changed sufficiently in many years. "The administration of justice in Massachusetts stands on the brink of disaster." (Cox at p.1) "The present system of financing and administering the court system is ... both illogical and unproductive, the end result being the inability of the Commonwealth to resolve the many problems facing the courts." (Res Gestae at p. 127) "[T]he administration of justice in Massachusetts is still suffering because Massachusetts courts are handling twenty-first century problems with nineteenth century resources and management systems." (Agenda 90 at p.5-1) "[T]he Trial Court of the Commonwealth is, once again, facing a major crisis." (Harbridge House at p. iv) "Today the Commonwealth's judicial branch is plagued by declining productivity, stalled leadership, and inequities in the allocation of personnel." (Dolan at p. ix) "Today, the courts of Massachusetts are mired in managerial confusion." (Monan at p. 2)

³ The Task Force's general endorsement of the Harbridge House recommendations recognizes that some of the details of the suggestions outlined in that report are not necessarily

We considered at length the fiscal, political and administrative challenges posed by the Harbridge House recommendations. Although, these recommendations provide a framework for a substantially improved Massachusetts court system, we found that they established goals which could not all be reasonably attained in the foreseeable future given fiscal and political conditions presently existing in the Commonwealth.

Each of the recommendations endorsed by the Task Force poses foreseeable difficulties and problems with respect to implementation. However, we believe that it is imperative that steps be taken to improve the condition of the Massachusetts court system. Accordingly, we considered the relative value each of the recommendations would have in improving our court system and the relative likelihood of successfully implementing each recommendation. We concluded that the efforts of the Association would best be directed toward effectuating three changes in the Massachusetts court system as soon as practicable: (1) providing the Supreme Judicial Court with authority over the administration of the Trial Court and changing the authority of the Chief Justice for Administration and Management; (2) providing the Judiciary with greater control over its budget; and (3) creating an Advisory Board to assist the SJC in its administrative duties.

The Task Force noted that some of the recommendations of previous committees which have studied our court system are either overly detailed or unduly vague. Additionally, we are aware of too many incidents in the past where an attempt to implement a good idea through administrative or legislative change has failed because of a proponent's insistence upon particular non-essential detail or a particular method of implementation. All of the methods by which the proposed initiatives might be accomplished involve processes into which there will be input from multiple parties and in which there will be decision making by multiple persons or authorities. We are certainly not without preferences as to various details or preferred methods of implementing the several recommendations in this report. However, we believe that obtaining some significant change in the areas of the three court reform initiatives is more important than insistence upon a particular set of details. Accordingly, we have attempted to sufficiently describe the primary objective of each of our recommendations while allowing for various methods of implementation. This report contains no specific directive to any section or group of the Association nor any specific formula for reaching desired goals. We have proposed the initiatives so that the Association may determine the best method for it to work with the

the only or best means for providing an optimal court system. Consistently with our approach to suggesting court reform initiatives, we believe that certain key elements of a plan for an improved court system may be created by different means and may ultimately have slightly different attributes than those which might be proposed by any single detailed plan. Further, there are some differences between our proposed initiatives and certain recommendations of the Harbridge House Report although the objectives sought to be attained by the two are the same.

public, other interested groups and organizations, and the Judicial, Legislative and Executive branches of government. The Task Force does recommend involvement and coordination by the Association with other groups and organizations interested in improving the Massachusetts Courts.

II. RECOMMENDATIONS FOR COURT REFORM INITIATIVES

1. **The Supreme Judicial Court should be established as the Administrative Head of the Trial Court and the Administrative Structure of the Trial Court should be modified.**

A. The Administrative Structure of the Trial Court should be modified.

The Task Force believes that the SJC should manage the Trial Court. For the SJC to do so effectively, statutory changes to the position of the Chief Administrative Justice for Administration and Management (CJAM) must be made. Presently the CJAM is appointed by the SJC Justices for a five year term and removable only for cause as specified by statute. It is essential to the administration of the court system by the SJC that the CJAM be fully accountable to that Court. Accordingly, the Task Force recommends that the CJAM be appointed by and serve at the pleasure of the SJC.

The Harbridge House plan proposed that a Chief Administrative Justice of the Trial Court (two during the transition stage) would be appointed by the Chief Justice of the SJC. The appointment would be for a five year term and would be with the “advice” of the Administrative Board. The Chief Administrative Justice would be subject to removal by the Chief of the SJC with the “concurrence” of the other SJC justices.

The Cox Commission recommended that there be Chief Justices of the Superior and District Courts and that there be regional administrative justices for designated regions who would oversee the Presiding Justice in each court or district.

The Res Gestae plan would have had chief justices, not to exceed seven, of the judicial “districts” appointed by the Chief Justice of the Unified Trial Court. The “district” chief justices would have had two year terms with possible reappointment for one term.

The Monan plan suggested Department Chief Justices for each of the Trial Court departments.

We believe that a single Chief Administrative Justice at the level of the present CJAM is necessary to the establishment of a clear vertical line of authority through the court system. The ultimate authority must, however, reside at the top with the SJC. Accordingly, we believe most of the details of the Harbridge House recommendation are closest to the best suggestion for the position of the CJAM.

B. The Supreme Judicial Court should be provided with Administrative Authority.

The Task Force recommends that the Supreme Judicial Court by statute be established as the management authority of the court system and act as the administrative head of the Trial Court. The SJC presently has general powers of superintendence over our courts pursuant to the Massachusetts Constitution, common law and statute. We believe that administrative authority over the Trial Court be provided to the SJC by clear statutory mandate.

We assume that the Chief Justice of the SJC, in day to day activities, would act as the individual through whom the SJC would exercise its administrative duties. The Task Force, however, recognizes that the constitutional authority of the SJC to govern the courts rests with all of the Justices and does not recommend statutorily providing for the Chief Justice to be designated as a Chief Executive Officer as did the Harbridge House Report.

Harbridge House recommended that the Chief Justice of the SJC be designated CEO of the Trial Court to establish clear lines of authority and accountability throughout the system. The report urged a much stronger administrative role for the SJC under its powers of "general superintendence." G.L.c. 211 sec.3.

The Cox Commission recommended that the Chief Justice of the SJC be designated by statute as the chief executive of the courts. The authority of the Chief Justice in this regard was thought clearly to be "subject to the general superintendence and rule-making authority belonging to the Supreme Judicial Court" (Cox at p. 20)

The Res Gestae committee recommended that "the unified trial court be headed by a chief justice with a chief administrative justice under his direction". (Mass. Law Quarterly at p.136) Although there is little explanation, it appears that the committee envisioned the creation of a new position of "chief justice of the unified trial court". The chief justice was to be appointed by the Governor for a non-renewable eight year term. The SJC was to retain its "present general supervisory powers". (Id.) The committee also recommended that the Chief Justice of the Supreme Judicial Court be appointed by the Governor for a nonrenewable eight year term and returned to

Associate Justice status thereafter.

Agenda 90 called for the study of the management structure of the Trial Court without making specific recommendations above the level of the local courts.

The Monan Committee recommended that the SJC, “under the leadership of the Chief Justice”, be more active as the leader of the Trial Court. The report was not specific as to allocation of authority between the Chief and Associate Justices.

We believe that the SJC, acting through the Chief Justice in the course of the ongoing operations of the Trial Court and acting by majority vote of the Justices for major administrative decisions and appointments, should be the designated administrative authority of the Trial Court. The collective wisdom and talent of all of the Justices would provide a measure of balance to management by the Court and, at the same time, a clearly identifiable leader for the Trial Court.

C. A position of Court Administrator should be created.

The Task Force recommends that the role and duties of the CJAM also be changed. The business operations and functioning of the courts should be managed by a Court Administrator. The Court Administrator should be a trained, experienced, professional manager qualified in business or institutional operations.

Harbridge House recommended the elimination of the Office of the Chief Administrative Justice and the creation of an Office of the Court Administrator. The Court Administrator was to be someone trained and experienced in court administration. The Court Administrator was to be appointed by the Chief Justice of the SJC with the concurrence of the Advisory Board. The Court Administrator was to be responsible for the administration of the Trial Court with “the cooperation of its Chief Administrative Justice”.

The Cox Commission recommended a Court Administrator to assist the Chief Justice of the SJC in carrying out his or her executive responsibilities. The function of the Administrator was to “provide expert staff assistance to the chief justices, to other justices with administrative duties, and the operating personnel actually conducting the business of the court”. (Cox at p. 24) The functions of the Administrator were also to include record keeping, statistical monitoring, budgetary requisitions, personnel, policy and procedure standards, and advice to the justices on needs within the courts and recommendations for improvements within the system. The Court Administrator’s office was intended to replace the Office of the Executive Secretary.

Res Gestae recommended a system of central administration and the creation of the position of Chief Administrative Justice but the report did not present detailed recommendations regarding the management structure for the unified court system.

Agenda 90 made particular recommendations for the Chief Administrative Justice such as providing that office with the authority to transfer personnel and increased personnel and support. The committee did not suggest restructuring the management system in any substantial way.

The Monan report highlighted the need for a Chief Administrator to replace the CJAM. The Chief Administrator would be appointed by the SJC, report directly to the SJC and be removable at will by the SJC. Using authority delegated by the SJC, The Chief Administrator would appoint the "Directors" of the Trial Court offices, the commissioners and the Trial Court Department Chief Justices.

The Court Administrator whom we propose need not be a judge or judicial officer. The Court Administrator should be appointed by the SJC and also serve at its pleasure.⁴ We, unlike some other groups which have recommended the appointment of a professional administrator, believe there is also a need at this level of authority within the court system for a judicial officer. The CJAM should retain authority over the Justices of the Trial Court with respect to judicial matters such as trial conduct, assignments and handling of cases. The new Court Administrator should manage the business operation of the courts. The SJC would further define and coordinate as necessary the respective roles and duties of the CJAM and Court Administrator as the interaction and cooperation of the two would be continually necessary.

2. The Judiciary should be granted greater control over its Budget

The Task Force believes most strongly that any significant improvement of our court system requires that the Judiciary have greater control over the management of its budget. All major studies conducted of the Massachusetts Courts have found the budgetary restraints which have prevailed in the funding of our courts to have been one of the, if not the greatest, barrier to meaningfully increasing the efficiency and effectiveness of the Trial Court's administration. Of particular importance is the authority to manage both judicial and non-judicial personnel within the system. The Massachusetts Courts cannot be efficiently managed and operated if personnel designations continue to be imposed as part of the budgetary process. The Judiciary must have the ability to determine the need for personnel positions and the appropriate assignment of personnel.

Harbridge House suggested a budget with categories for the SJC, the Appeals Court, the Trial Court and the Committee for Public Counsel services. Each category would have three

⁴The Task Force believes that it would be acceptable, but not preferable, for the CJAM, serving at the pleasure of the SJC, to appoint the Court Administrator.

subcategories for personnel, facilities and other. The Trial Court category would include funding for the Trial Court Administrator, the Jury Commissioner and the Commissioner of Probation. The Legislature could request more detailed budgetary information for the Trial Court for accounts exceeding \$500,000 and the Trial Court would be required to report transfers of \$50,000 or more "between accounts".

The Cox Commission noted that there were then 417 separate budgets submitted by the courts. Most courts were funded by both state and county. The commission recommended the coordination of all budgets into a single budget for the judicial system to be prepared and submitted by the Chief Justice of the SJC. The commission also recommended the state's assumption of all of the costs of the judicial system. The commission did not further specify the details of the budget to be submitted by the Chief Justice of the SJC.

Res Gestae recommended that the Commonwealth assume full fiscal responsibility for the courts, that (for the then existing system) unified budgets be prepared for the SJC, Appeals Court, Superior Court, District Courts, Probate Court, Land Court, Juvenile Court, and Housing Court, and the Chief Justice of the SJC consolidate these budgets into a single comprehensive state court budget for transmittal to the Governor. The report further recommended that the Governor be permitted to make only "lump sum" recommendations and that the Legislature be permitted to make only "lump sum" appropriations. Line item recommendations and appropriations were to be prohibited.

Agenda 90 referred to 121 line items in the budget for Trial Court appropriations and recommended that they be consolidated into departmental line items. The committee further recommended the creation of single line items in the budget for each of the seven Trial Court departments to remedy the problems created by the inability of the OCAJ to transfer funds among accounts.

The principal recommendation of the Dolan report was that the budget for the courts have a single line item or a line item for each of the court departments and that the Administrative Office of the Trial Court have the authority to transfer funds within and between departments.

The Monan report noted 131 line items for the Trial Court and a total of 156 for the Judiciary overall in the 2003 budget. The committee recommended decreasing the number of line items as the courts become more skilled at managing resources. The report expressly stated: "[w]e do not believe the Judiciary is ready for a single-line budget". (Monan at p. 41) The committee proposed a phased plan for reducing the number of line items with the Legislature providing greater flexibility to the courts for the transfer of funds and staff within the system. The plan proposed by the Monan committee emphasized the need by the Judiciary to improve its financial and staff management capabilities to permit it to properly handle its finances.

The Task Force recommends that the Legislature increase the budgetary control and flexibility exercised by the Judiciary by significantly reducing the number of line items and

significantly relaxing restrictions on the transferability of funds within the budget. Provisions in budget legislation within the last year have provided some measure of increased transferability of funds and personnel by the Judiciary. We regard this as a step in the right direction but believe that significant additional moves must be made. We are not providing a detailed recommendation for a particular number of line items, measures to increase transferability or an assessment of the Judiciary's ability to manage greater budgetary authority. The substantial restrictions historically placed on the Court's fiscal authority and the absence of an integrated management structure make any evaluation of the Court's past financial performance unreliable. We are confident that the implementation of a more effective management structure as recommended in our first and third initiatives will enable the Judiciary to operate much more effectively with full accountability for its increased fiscal responsibilities.

3. An Advisory Board should be created to assist the Supreme Judicial Court in its Administrative role.

The Task Force believes that the increased role of the SJC in the administration of the courts should be accompanied by the creation of an Advisory Board. The Advisory Board should be composed of members from inside and outside of the Judiciary so as to reflect the views of the Judiciary, the bar, the Legislature, the Governor and the general public. The Advisory Board members should be appointed by the SJC so as to adequately represent these views. The Advisory Board would provide assistance to the SJC regarding administration, perspectives of various interests outside of the Judiciary and an element of accountability to the Legislature, the Governor and the public.

Harbridge House recommended the creation of a Board which, after a transition stage, would be composed of ten members: The Chief Justice of the SJC as chair, the Chief Justice of the Trial Court, the Court Administrator, two justices elected from amongst the judges, and five members of the public appointed by the Governor or the SJC.

The Cox Commission did not suggest the creation of an advisory board or similar body.

Res Gestae did not contain a recommendation for an advisory board. It should be noted that the committee apparently envisioned the SJC "continuing" its then present supervisory role while it suggested vesting substantial management authority in the new position of "Chief Justice of the Unified Trial Court". The committee did state the it "recognizes the need for citizen input to the process of administering the Unified Trial Court System but makes no recommendations regarding its implementation."(Mass. Law Quarterly at p. 136)

Agenda 90 called for the study of the management structure of the Trial Court without making specific recommendations above the level of the local courts.

The Monan Committee suggested the creation of a permanent advisory board composed of members from within the judicial system and from the private sector. The role of the board apparently would be to advise the SJC and “help it manage the Courts more effectively”.(Monan at p. 23)

Our recommendation for an Advisory Board is in conformity with most of the recommendations of previous court study groups. We do not recommend a particular size for the board or a prescribed number of appointments. We do emphasize that the board be configured so as to meet its several intended purposes: to effectively assist the SJC with management advice from inside and outside of the Judiciary, to objectively and adequately inform the SJC of the varied interests of other branches of government and the public and to provide a measure of accountability for the SJC’s administrative actions .

III. RECOMMENDATIONS REGARDING POLICY POSITIONS FOR THE ASSOCIATION

The Task Force reviewed the principal recommendations contained in the Harbridge House report and found the majority of them to be of continuing value in planing an improved court system for the Commonwealth. Although we believe that some of the Harbridge House recommendations may not be attainable in the immediate future, we have generally endorsed the following recommendations and suggest that they remain part of the Associations’s comprehensive policy position on court reform.

1. **The Trial Court should consist of a single unified Court.**

The Harbridge House Report recommended that the seven departments of the trial court be consolidated into one Court without regard to subject matter jurisdiction. A transitional step for a period of four years consolidating the Superior, Housing, Land and Probate and Family Courts into a Court of General Jurisdiction and the Boston Municipal Court, District Courts and Juvenile Court into a Court of Limited Jurisdiction was suggested.

The unification of the courts was viewed by Harbridge House as essential to the reduction of administrative duplication and waste . The unification of the courts would permit transfer of judicial and administrative personnel throughout the system for more effective operation.

The Cox Commission had also recommended unification of the Superior, Land, Housing and Probate Courts and the merger of the District, Juvenile and Boston Municipal courts. The Chief

Justice was to be empowered to establish divisions within the two consolidated courts for effective administration. As with Harbridge House, the Cox Commission viewed unification as necessary to reduce “the waste, imbalance of workloads, inflexibility in the allocation of human and material resources, and delay”. (Cox at p.15)

The MBA Committee on Court Reform recommended unification of the Trial Court into a single court of general jurisdiction in *Res Gestae* (1976). The Committee found essentially all major court studies to have supported unification as well as the ABA, the National Conference on the Judiciary. As of that time, twelve states which had fully unified systems and eighteen more had partially unified systems.

The Monan committee made no specific recommendations regarding structural unification but did comment that under an improved management structure that “reduction in the number of trial court departments should also be considered to minimize administrative redundancy (maintaining different jurisdictional departments if desirable)”. (Monan at p. 20)

The Task Force believes that unification of the Trial Court would provide substantial benefits to the administration and delivery of justice in the Commonwealth. The practicalities of undertaking this effort, however, suggest that this be a future goal of court system improvement.

2. The Chief Justice of the SJC should act as Chief Executive of the Trial Court.

The Task Force supports the principle of this recommendation that the Chief Justice exercise a leadership role as explained in the first proposed initiative above.

3. An Administrative Board, comprised on judicial and nonjudicial members should oversee and review the administration of the Trial Court and advise the Chief Justice on administrative matters.

The Task Force supports the principle of this recommendation that an Administrative Board be created to provide advise to the SJC as explained in the third proposed initiative above

4. The Trial Court should have a single administrative structure .

Harbridge House recommended replacing the multitude of administrative structures existing within the seven Trial Court departments with a single system for the entire Trial Court. The new Court Administrator would be the head of the administrative structure and initially charged with its

creation.

The administrative structure proposed by the Cox Commission envisioned the Chief Justice of the SJC at the head, under whom would be the Chief Justice of the Superior Court and the Chief Justice of the District Court, under whom would be the Presiding Justices of the Superior Courts and the Presiding Justices of the “divisions” of the District Courts. A Court Administrator would be appointed by the Chief Justice of the SJC with the consent of the SJC.

The Res Gestae committee proposed a central administration and noted that “administrative unification”, “financial unification” and “structural unification” were all necessary to reforming the court system. The committee suggested the creation of a Chief Justice of the Unified Trial Court who would appoint a Chief Administrative Justice to serve at his or her pleasure. The Chief Justice of the Unified Trial Court would appoint Chief Justices of the “judicial districts” for a two year period with the possibility of one reappointment.

Agenda 90 apparently made specific recommendations only as to changes regarding the roles and authority of Presiding Justices. The committee did note that the circuit system prevailing in the Superior Court department hindered effective administration and suggested that the fixed assignment with presiding justice system of the District Courts was preferable. The committee also noted that the Office of the Chief Administrative Justice had been created since the Cox Commission report and that it had made some progress improving the effective management of the system.

The Monan committee made recommendations that the management of the courts be streamlined and unified. The committee strongly suggested the need for more professional management expertise in the administration of the courts. The Monan recommendations include rewriting legislation to clarify that all authority within the system originate from and be delegated by the SJC. The committee suggested the replacement of the CJAM with a Chief Administrator to whom “Directors of Trial Court Offices” and Commissioners would report. The Trial Court departments would have Chief Justices and within each “division” there would be a “First Justice” overseeing Clerk-Magistrates and a Chief Probation Officer.

The Task Force supports the principle of this recommendation as a natural complement to the unification of the Trial Court. The Task Force believes that the changes in its first proposed initiative are the first and most important moves toward simplifying and restructuring the court system

5. The Trial Court should be managed by a professional Court Administrator.

The Task Force supports the principle of this recommendation as explained in the first proposed initiative above

6. **A Chief Administrative Justice should be appointed by the Chief Justice of the SJC**

The Task Force supports the principle of this recommendation that a Chief Justice be appointed by the SJC as explained in the first proposed initiative above

7. **The authority of the Court Administrator should be delegated within each court to local Trial Court Administrators.**

Harbridge House recommended that the Court Administrator hire Trial Court Administrators "TCA"s to manage the operations of individual courts. The TCAs would "report to" and "work in conjunction with" the Presiding Justice of each court .

The Cox Commission did not make specific recommendations at the individual court level regarding administrative positions. The Commission did clearly state that all non-judicial personnel should be appointed, authorized, controlled, transferred and dismissed by the authority of the Chief Justice of the SJC. The commission did make recommendations that the Chief Justice of the SJC should establish job classifications policies, uniform hiring policies and periodic evaluation procedures for non-judicial personnel.

Agenda 90 recommended the establishment of a pilot program in ten District Courts to be chosen by the CJAM in which a Court Administrator for each court would be appointed by and report to the Presiding Justice. The Court Administrator would be responsible for the management of the court.

The Monan report includes provision for "management teams" at the "division" level. The team would be headed by the First Justice who would oversee Clerk-Magistrates appointed by the Governor and Chief Probation officers who would be appointed by the First Justice.

The Task Force has not considered administration of the courts at this level and makes no suggestion for changing this existing policy position.

8. **Court Clerks should be appointed by the Court Administrator**

Harbridge House recommended the abolition of the position of elected clerk. Clerks would

be appointed by the Court Administrator for five year terms from a list submitted by the Governor. Clerks would be “accountable to” the Court Administrator who could dismiss them for cause . There may be an irregularity in the Harbridge House Report. The executive summary refers to the abolition of elected clerks and the appointment of clerks who would be accountable to the Court Administrator . However, the body of the report refers to “Magistrates” who would appointed by the Governor, accountable to the judges in the courts in which they were assigned and removable by the Chief Administrative Judge.

The Cox Commission also recommended the abolition of elected clerks and noted that it would require a constitutional amendment. The commission saw the political realities relating to the election of clerks and the attendant distraction and disruption to underlying personnel as inconsistent with the professionalization of the court system . The Cox commission did not specify a recommended procedure for appointing clerk-magistrates but clearly it would be by a manner determined by the Chief Justice or SJC in which the commission would place the authority for controlling all nonjudicial positions within the Judiciary.

The Monan committee, without much elaboration, apparently envisions Clerk-Magistrates appointed by the Governor “based upon managerial aptitude and knowledge of the law and court procedure”. (Monan, exhibit 8, at p. 21)

This proposal would require a constitutional amendment. Although the Task Force suggests no change in the principle contained in this policy position we believe that this proposal would require substantial resources better directed at present to the above initiatives which should be given priority.

9. The Funding for the Courts should be provided by a budget with four subcategories.

The Task Force supports the principle of this recommendation that budget line items be decreased and that the ability to transfer funds among departments be increased as explained in the second proposed initiative above.

IV. CONCLUSION

The Task Force’s proposed initiatives were designed to begin the move toward meaningful change in the operation and administration of the Massachusetts Courts. Although simple in form, and similar to those proposed in numerous previous court reform reports, when these measures are in place, they will substantially improve the operation of the Courts of this Commonwealth. We believe that the policy positions which we have endorsed describe further improvements to the court

system and are hopeful that future conditions within the Commonwealth will permit their realization.