

**Justice Endangered:
A Management Study
of the
Massachusetts Trial Court**

**Executive Summary
of the
Final Report**

April 16, 1991

Prepared for the
Coalition for The Courts
by

 HARBRIDGE
HOUSE INC

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EXECUTIVE SUMMARY

In 1976 the Governor's Committee on Judicial Needs (the Cox Commission) began its Report with the following diagnosis: "The administration of justice in Massachusetts stands on the brink of disaster." Now, more than 14 years later, we are saddened to report that the Trial Court of the Commonwealth is, once again, facing a major crisis. The Court is today riven by internal divisions and paralyzed by a lack of trust. In many respects, it is a system in name only, operating on automatic pilot and carried forward more by past momentum than by any compelling vision of the future.

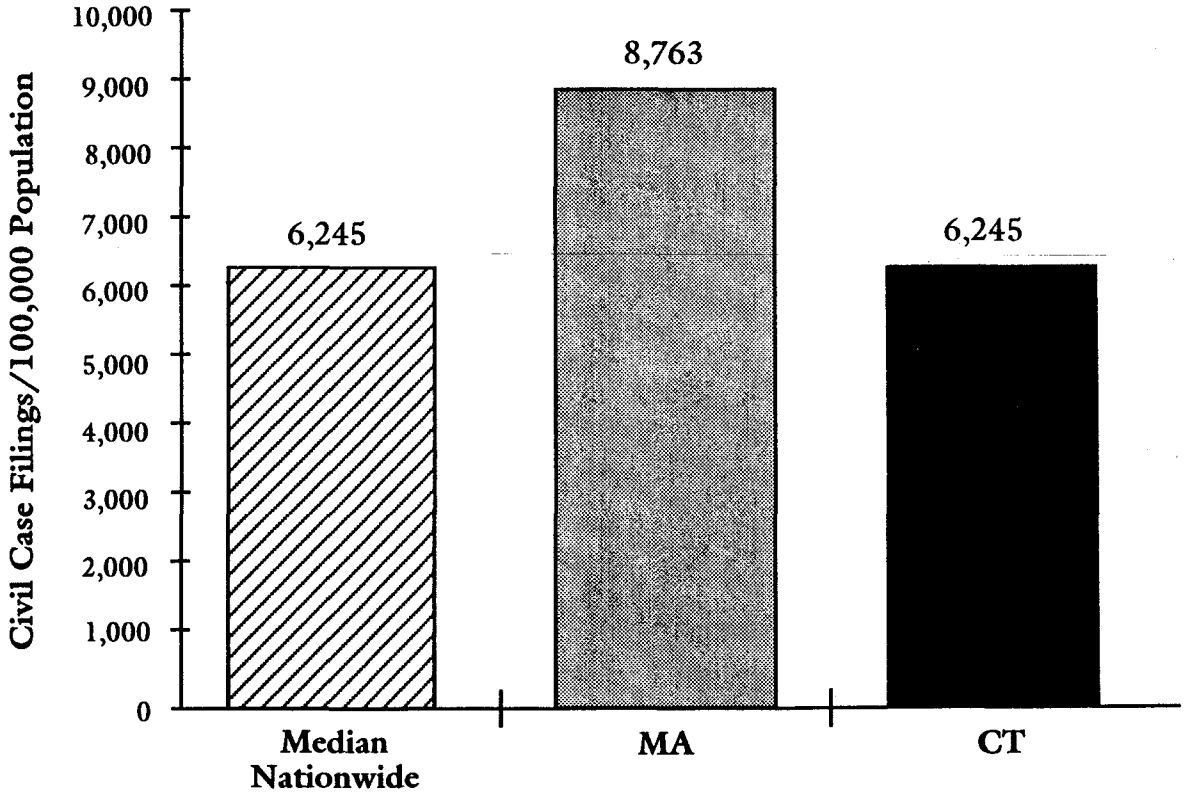
The present crisis exists despite substantial improvements in the administration of the courts since 1976 and notwithstanding the efforts of numerous court system employees, legislators, and others to make the court system work effectively, efficiently, and fairly. The Cox Commission identified a number of structural problems that inhibited effective management of the Trial Court. Like another, more famous road, however, the path from the Cox Commission Report to the present crisis is paved — at least in part — with good intentions.

In 1978 the Legislature responded to the Commission Report by enacting Chapter 478. Although the legislation adopted some of its recommendations, the legislature failed to adopt other, equally important recommendations. The legislation created a nominally unified Trial Court made up of seven separate court departments, but it also ignored a central Commission recommendation that the Trial Court operations be consolidated into two departments: one court of general jurisdiction and one of limited jurisdiction. The legislation allocated administrative responsibility over the entire Trial Court to the new Office of the Chief Administrative Justice (OCAJ) and to administrative offices in each of the Trial Court departments. The new structure in general, and the OCAJ in particular, have brought about significant improvements in the operation of the Trial Court system, particularly in the areas of financial management and controls and human resource management. Without some major changes brought about by the efforts of Chief Administrative Justice Arthur Mason and his staff, the Trial Court would have ground to a complete halt long ago.

Despite the efforts of the OCAJ, the problems currently plaguing the Trial Court make it clear that the 1978 legislation failed to resolve some fundamental problems facing the Trial Court. Although the trial court administrators must shoulder some of the blame for the present situation of the Trial Court, a number of the important contributing causes are simply beyond the ability of the court system to control. In particular, the Trial Court can control neither the increase in the number and complexity of cases filed before it nor the resources available to it.

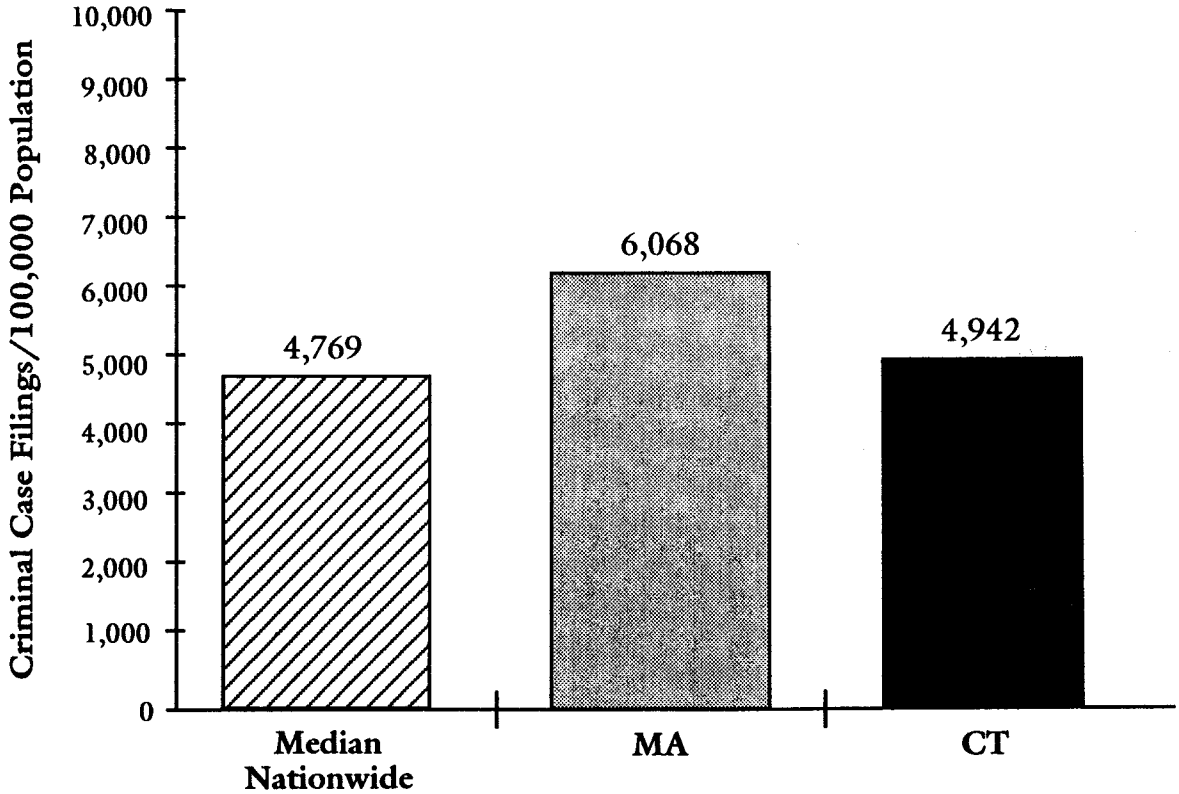
In comparison with other states, Massachusetts is a litigious state, which places large demands on a trial court system that has a disproportionately small number of trial judges (see Exhibits E-1 and E-2). Moreover, since the Cox Commission issued its findings, the jurisdiction of the Trial Court has been increased, particularly in areas that involve complex and emotionally charged issues and, hence, impose a large burden on the courts. For example, substantial changes in the Abuse Prevention Law, as well as the laws governing

Exhibit E-1
Comparative Statistics:
Civil Case Filings/Population
1988



Source: State Court Caseload Statistics Annual Report 1988, National Center for State Courts.

Exhibit E-2
Comparative Statistics:
Criminal Case Filings/Population
1988



1A.

Source: State Court Caseload Statistics Annual Report 1988, National Center for State Courts.

the trial and sentencing of drunk drivers, have added significantly to the Trial Court's workload. The Trial Court's burden has been further increased by mandatory annual reviews of children placed in foster care and the requirement of more detailed findings in divorce and child custody cases. Overall, the Commonwealth's commendable effort to protect juveniles have contributed to juvenile case filings per capita that exceed the national median by more than 70 percent (see Exhibit E-3). Compared to other states, however, Massachusetts ranks 48th in terms of trial court judges per capita (see Exhibit E-4).

Since the Trial Court can do little to affect either the external demands placed upon it or the resources available to it, when faced with an expanding caseload the Court must either improve its productivity or increase the delays experienced by litigants using the system.

Nonetheless, we believe it unlikely that additional resources will soon be made available to the courts. Given the Commonwealth's current financial condition and the decline in the public confidence in all branches of government, preserving the existing level of court funding should be considered a major achievement. We have thus assumed, for purposes of our analysis, that no additional funding will be available for the Trial Court in either the current or next fiscal year.

More important, we do not believe that additional resources alone can solve the most serious problems plaguing the courts because these problems do not result from a lack of resources. Unless these underlying problems are addressed, additional funding is unlikely to result in appreciable improvement in the functioning of the Trial Court.

We have found it useful to group the underlying problems of the trial courts into several broad categories described below.

PRINCIPAL FINDINGS

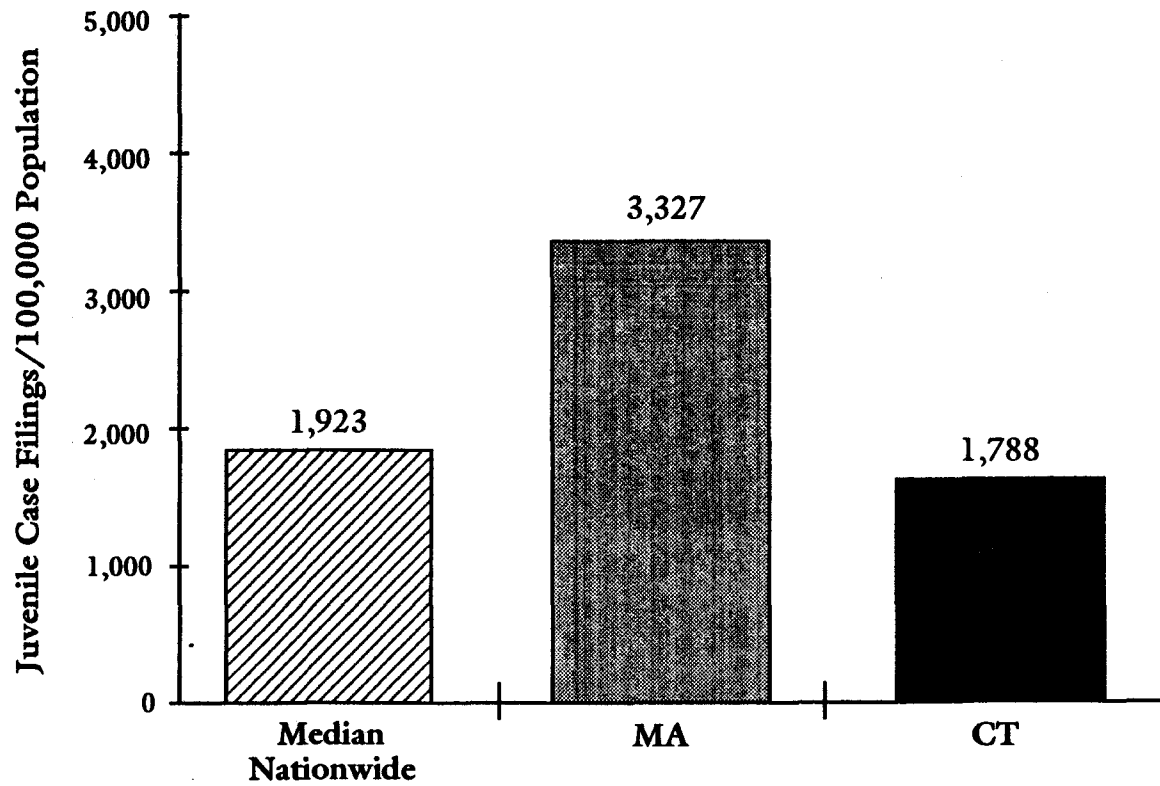
I. Organizational and Administrative Structure of the Trial Court

A. Efficient operation of the Trial Court is impaired by its existing fragmented and overly complex departmental structure.

Far from being the unified court envisioned by the Cox Commission, the Trial Court today bears more resemblance to a collection of medieval fiefdoms, each with its own rules and cultural norms, espousing varying degrees of fealty to the OCAJ. Overall, the departmental structure of the Trial Court promotes unnecessary administrative duplication, encourages wasteful administrative practices, and inhibits the effective utilization of both human and capital resources. It also encourages a "seven separate organizations" mentality that seriously impedes efforts to improve the functioning of the Trial Court.

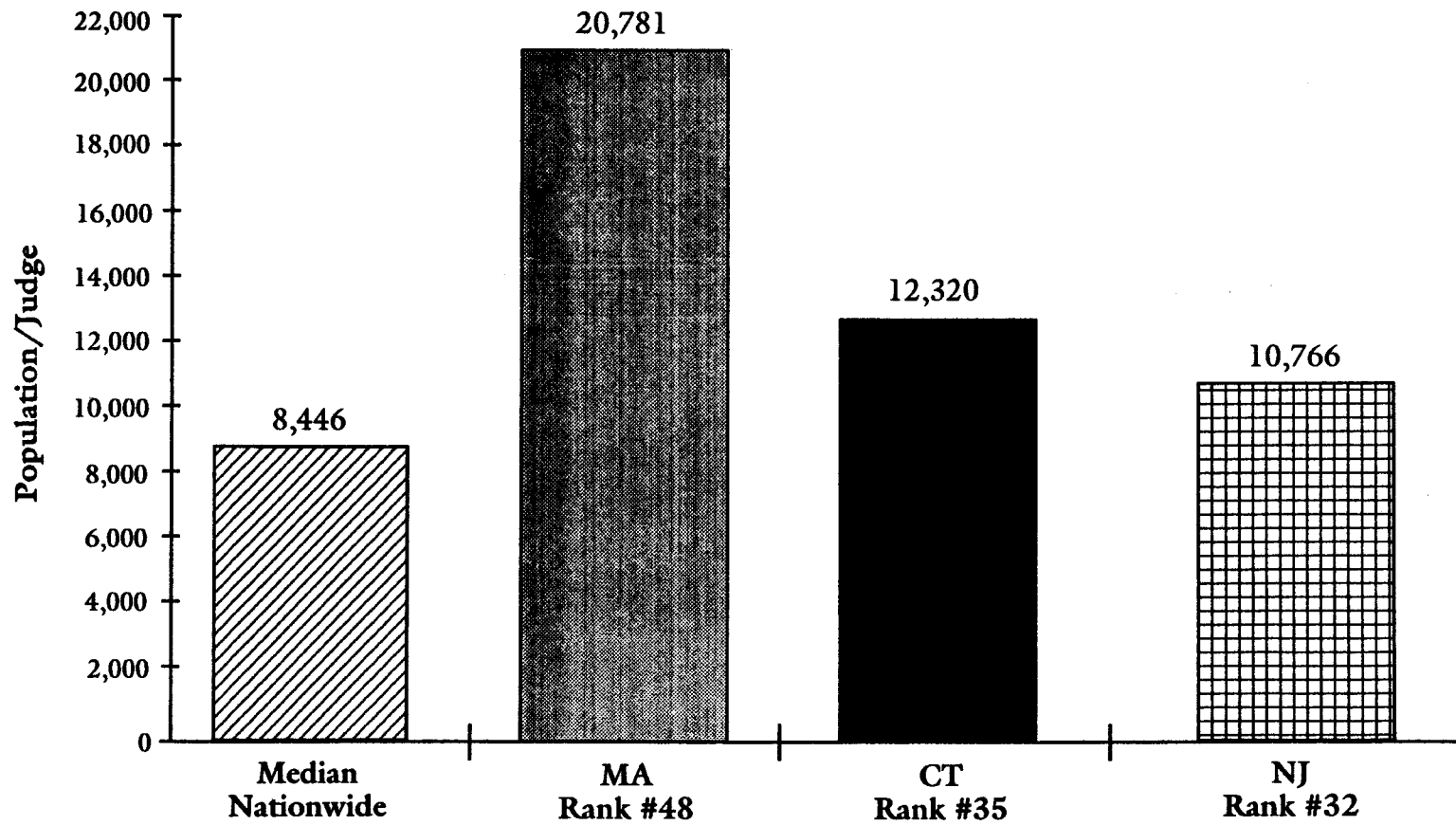
The administrative duplication inherent in the current departmental structure of the Trial Court causes the deployment of a disproportionate share of its available personnel to back-office activities rather than "closer to the front" where they could be better utilized to assist judges, clerks, litigants, and lawyers in carrying out the real business

Exhibit E-3
Comparative Statistics:
Juvenile Case Filings/Population
1988



Source: State Court Caseload Statistics Annual Report 1988, National Center for State Courts.

**Exhibit E-4
Comparative Statistics:
Population/Trial Court Judge
1988**



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Source: State Court Caseload Statistics Annual Report 1988, National Center for State Courts.

of the courts. Elimination of duplicative administrative structures would permit the Trial Court to redeploy personnel to better serve the public and more efficiently conduct its business.

B. Administrative authority within the Trial Court is misallocated.

The aim of a court system should be to decide all matters committed to its jurisdiction justly, promptly, effectively, and efficiently. The process by which courts "produce" justice is, by nature, highly decentralized, with the key units of production dispersed throughout the Commonwealth. But there is also a need to maintain high quality, consistent justice throughout the entire system. Under such circumstances, the local managers should have substantial control over — and accountability for — local operations. At the same time, the need for consistent quality and the economies of scale attainable in certain functions (e.g., procurement) require some centralization. The critical question is which functions, activities, and responsibilities should be centralized and which should be decentralized.

Currently, management authority over Trial Court operations is too often placed at the wrong level with the result that the administration of the Trial Court is fundamentally inconsistent with sound management of the Court's decentralized "production process." Under M.G.L. Chapter 211, the Supreme Judicial Court (SJC) has the power of "general superintendence of all courts of inferior jurisdiction," but, at least in the area of administration, this power has remained largely unexercised. This result is unsurprising for several reasons. First, Supreme Judicial Court Justices have all been trained as lawyers, not as administrators, and were selected on the basis of legal rather than managerial skills. In addition, ambiguities resulting from the legislature's attempt to specify the allocation of administrative authority over Trial Court operations has reinforced the judicial tendency — on the part of both the SJC and the departmental Chief Administrative Justices — to avoid difficult administrative decisions. Finally, the legislature's retention of authority over certain key decisions that would, in other settings, be reserved to management precludes those responsible for managing the Trial Court from controlling significant aspects of the Court's operations.

Whether by design or default, administrative decision making in the Trial Court has too frequently been assigned to an inappropriate level of management, so that some decisions and activities that should be undertaken by a central administrative office are being carried out by individual courts while decisions that should be made at the individual court level are instead being made by the OCAJ. Examples of the latter problem can be found in a number of areas where the OCAJ currently exercises centralized control over a number of decisions that would be better made at the local courthouse level. The selection and retention of interpreters, or the use of masters, investigators, and psychiatrists, for example, are decisions that are more appropriately made by individual courts. Likewise, certain financial management practices adopted by the OCAJ also appear to have created a dysfunctional degree of centralization. Although Chapter 211 makes the Trial Court departmental Chief Administrative Justices responsible for "the administrative management of the personnel, staff services, and business of their departments, including financial administration and . . . purchasing . . .", in practice certain monies (e.g., travel, printing,

and postage) are controlled in centralized accounts by the OCAJ which must approve all expenditures. As a result, court operations are sometimes disrupted by a lack of funds to cover such basic necessities as postage or printing.

The procurement and implementation of computerized information technology systems illustrates another aspect of the misallocation problem — inappropriate allocation of authority below the level of the OCAJ. The ability of a central administrative staff to effectively coordinate and monitor the activities of a large, decentralized operation such as the Trial Court is critically dependent on access to reliable, consistent, and timely information. The experience of a plethora of private and public sector organizations makes it crystal clear that a strong element of centralized management both in the development of system standards and in the procurement of information technology systems is essential to insure that the systems provide managers with cost-effective access to the necessary information. But the design and acquisition of information systems in the Trial Court currently takes place under the effective control of individual court departments and offices with neither a system-wide plan for the use of information technology nor a set of common standards to insure compatibility.

In addition, the legislature has centralized control over a number of aspects of Trial Court operations under its own authority through the extensive use of line-item budgeting. Legislatively imposed restrictions on transfer of personnel, for example, deprive the Trial Court of important managerial authority that could be used to better match staffing to workload. Likewise, strict legislative control over the construction and consolidation of court facilities deprives management of valuable flexibility and results in increased operating costs for the Trial Court.

The creation of the Office of Chief Administrative Justice was an attempt by the legislature to address some of these problems. The OCAJ was designed to provide specialized support services and managerial oversight for the Trial Court system as a whole while the department administrative offices were designed to be the focus of mid-level, day-to-day management activities. But lack of clear authority in some areas, blurred lines of managerial responsibility in others, reservations of authority by the legislature and a general judicial reticence in administrative affairs have combined to paralyze the administration of the Trial Court. Despite the profusion of administrative responsibility — or perhaps because of it — there is a widespread feeling inside and outside of the system that no one is truly in charge of or accountable for the performance of the Trial Court.

C. The operations of the Trial Court are further impaired by poorly defined, ambiguous administrative relationships within the Trial Court.

According to an analysis prepared by the Senate Ways and Means Committee, "Vague or apparently conflicting provisions of the laws governing Trial Court Administration raise serious questions about the ability of the management system to hold accountable or discipline local managers." This results in a cumbersome and generally ineffective administrative structure where "lack of coordination appears to be the rule rather than the exception, especially in courts with elected clerks."

Thus, although the presiding judge is nominally the administrative head of the court, local court management in practice is impeded by a welter of conflicting statutory authority spread among one or more judges, clerks, and officers. Clerks who are nominally subject to the administrative authority of the presiding judge are either elected (Superior and Probate Courts) or appointed by the Governor. Since clerks enjoy substantial organizational and personal independence from the management of the Trial Court system, it is difficult for judges with administrative responsibility to exert control over operations performed by the clerk's office even though they are essential to the smooth functioning of the court for which the judge is administratively responsible. Based on our interviews, it is clear that tensions arising between clerks and judges over administrative matters are common. Lack of coordination between judges and clerks appears to be endemic.

The chief probation officers, in contrast, are appointed by presiding justices, but they must also report to the Office of the Commissioner of Probation. The position and responsibilities of the probation department are also replete with ambiguities. Although the probation officers are appointed by presiding justices, the Commissioner of Probation is responsible for "executive control and supervision of the probation service." Accountability of chief probation officers is so ambiguous that some chiefs feel they report to five separate supervisors.

II. Inadequate Management Systems and Processes

A. The failure to develop modern, computer-based information systems has crippled Trial Court operations.

The successful management of any complex organization depends on prompt access to reliable, timely information regarding both the internal performance of the organization and the external demands placed on it. But reliable information regarding the critical elements of the Trial Court's performance is virtually nonexistent. In particular, there is a serious lack of consistency in statistical reporting and case tracking methodologies within and across Trial Court departments. As a result, the Trial Court lacks reliable measures for both the volume and disposition of cases pending before it. Without that information, it is impossible to effectively manage the movement of cases through the Trial Court system.

Bureaucratic turf disputes (between the departments and the OCAJ) and poor management appear to be the principal reasons for the sad state of automation within the Trial Courts. The absence of overall policy, principles, and architecture and standards for Trial Court automation and the lack of coordination across Trial Court departments has resulted in separate procurements by individual departments. Although these procurements may produce substantial benefits for the individual departments' operations, the systems are often incompatible and rarely networked. As a result, the Trial Court has exploited fully neither the benefits of automation nor its investment in computer technology.

The failure to automate Trial Court operations has resulted in massive inefficiency, delay, and waste within the Trial Court. All too often, paperwork falls through the cracks or files are misplaced, contributing significantly to the problem of delay and imposing unnecessary costs on lawyers and litigants. In addition, literally hundreds of court employees are required to operate the current, paper-based system while other important Trial Court

functions suffer from inadequate staffing. It is no exaggeration to describe the Trial Court's continued reliance on a paper-based system as comparable to an airline attempting to serve today's market using the "Spirit of St. Louis."

B. Significant improvements could be made in the operation of the Trial Court in the area of caseflow management.

Most departments of the Trial Court have made major progress in reducing backlogs since 1978. In this regard, the establishment of time standards for processing cases has been particularly successful. Nonetheless, the Trial Court still falls well short of recognized standards for effective caseflow management.

As discussed earlier, the problem is due, in part, to the lack of timely information, But the single factor that is most responsible for the Trial Court's deficiencies in caseflow management is its continuing tolerance of the "cult of the continuance." Failure to control continuances is perhaps the largest single source of delay and frustration in the Trial Court; it imposes significant costs on the Trial Court as well as on taxpayers, litigants, and lawyers. The key appears to lie in shaping the expectations of the system's users, particularly lawyers. Federal courts, for example, strictly limit the grant of continuances. Since Federal judges are known to be unlikely to grant continuance requests, fewer requests are made and lawyers appear in court on time and prepared to try their cases. Where individual Trial Court judges have taken an aggressive approach to managing caseflow by strictly controlling continuances, the productivity of their courts has also improved significantly.

C. Poorly managed scheduling of cases and judges is also a major source of waste and inefficiency in the Trial Court.

Poor scheduling imposes large costs on Trial Court users. Because the ability of a judge to hear and decide cases depends on an efficient scheduling system, the effective utilization of Trial Court resources is significantly hampered by poor scheduling of cases and judges. Indeed, poor scheduling helps to explain the continued existence of underutilized courtrooms and judges within the Commonwealth's apparently overburdened Trial Court system.

Case scheduling is handled largely through clerks' offices except for criminal cases in Superior Court, which are handled by the local District Attorney's office. There is little consistency in the management of case scheduling. Scheduling in all departments of the Trial Court is currently a manual, paper-intensive process.

In fact, court business is scheduled largely for the convenience of the Trial Court and its employees rather than the public. All parties are often required to appear first thing in the morning despite the fact that the sheer number of cases called means that their cases will not be called until much later in the day. Such a system imposes enormous time and financial costs on the litigants, lawyers, the courts, and, ultimately, the public. In contrast, much of the business in Federal courts is scheduled at 15-minute intervals and generally operates on schedule, saving time and aggravation for all parties concerned.

D. The Trial Court could more effectively manage its caseload by expanding the use of Alternative Dispute Resolution (ADR) techniques.

Although the Trial Court can do little to control the volume of cases filed before it, some changes could be implemented which would improve the performance, efficiency and cost-effectiveness of the Court. In this regard, we believe that far greater use could be made of alternative dispute resolution programs. Examples include programs such as the Middlesex Multidoor Courthouse (MMDC), the Superior Court Mediation Program (SCMP) in Suffolk County, and the Hampden County Superior Court ADR program. The District Court also offers a range of ADR services. In both Massachusetts and other states, when ADR programs like these have been adopted, they have improved case management by moving cases from the court room to the most appropriate, cost-effective forum for resolving the matters involved.

ADR covers a variety of mechanisms, either voluntary or mandatory, for resolving disputes outside of the courtroom. These include mediation, arbitration, case evaluation, case screening; it can also include the use of court-appointed special masters to conduct minitrials or other abbreviated procedures. All attempt to resolve disputes without the use of the court system's scarcest resource — judicial time. Some are conducted under the auspices of the Court while others (e.g., arbitration) are typically arranged by the disputants. Recently, a growing number of disputes have been tried outside the court system. These cases are typically tried before retired judges chosen by the parties and normally involve disputes between businesses that are willing to pay the added costs in order to obtain a speedy trial.

The principal virtues of ADR are threefold: First, because the financial and psychological costs of obtaining a judicial resolution of dispute are frequently very high, judicial resolution is often not in the best interests of the litigants or the court system. In such cases, referral to less costly, more appropriate forums can benefit both the disputants and the Court. Second, ADR provides litigants with their "day in court" and a neutral, third-party opinion as to the merits of the case. Often this is sufficient to satisfy the parties or to encourage a negotiated settlement. Finally, ADR programs such as those which mandate arbitration for certain disputes before a case is entitled to a jury trial, can be used to control the substantial costs imposed on the courts by jury trials.

E. Elimination of de novo trials would improve the operation of the Trial Court.

The issue of trial de novo has been extensively evaluated and debated. Virtually every major study that has examined the system — including the Cox Commission report, a 1976 study by the Massachusetts Bar Association Committee on Court Reform, and the February 1991 Report of Special Master and Commissioner Dean Paul Sugarman — has recommended the abolition of trial de novo. We agree with those who recommend its abolition. In our view, a system which entitles certain defendants to impose on the Courts and the Commonwealth's taxpayers, the economic burden of conducting two trials on the same facts and issues is indefensible. We are convinced that the level of professionalism in the District Court is sufficient today to assure defendants a fair trial without entitling them

to a "second bite at the apple." The number of de novo trials has been declining in recent years and we do not believe that its elimination is likely to result in an increase in jury of six trials sufficient to offset the benefits to the system of eliminating trial de novo.

III. Human Resource Management

Based on our interviews with lawyers, litigants, clerks, probation officers, jurors, and knowledgeable independent observers of other state judiciaries, as well as our own observations, we believe that the overall quality of the judiciary in Massachusetts, in terms of both professional qualifications and performance, compares favorably to other states.

Improvement in the judicial selection process, particularly the use of a Judicial Nominating Council, was frequently cited as a significant reason for the improvement in the quality of the Commonwealth's judiciary. A second reason often mentioned is the increased professionalization of the judiciary, particularly noticeable in several Trial Court departments, that resulted from the adoption of many recommendations contained in the Cox Commission Report.

Nonetheless, a number of problem areas must be addressed if these improvements in the quality of the judicial performance are to be maintained and future performance enhanced.

A. Initial and recurrent judicial training is insufficient to sustain the quality of the existing bench.

Despite the improvements in judicial quality over the past decade, several problems pose serious threats to both the quality of the bench and its performance. One is the inadequacy of both pre-bench and recurrent training. In the Trial Court today, most pre-bench training largely consists of sitting with an experienced judge for a limited period of time. Due to the large number of vacancies in the District Court, however, there is strong pressure on new judges to begin hearing cases immediately upon appointment. Based on our interviews, we are convinced that no amount of courtroom experience provides sufficient training for the role of a trial judge and that insufficient judicial training inevitably has a negative effect on the quality of justice.

The Flaschner Judicial Institute provides continuing education and training of the highest quality, but as a nonprofit organization with limited resources, Flaschner's ability to provide training is limited. Legislation enacted in 1988 established the Judicial Institute under the direction of the OCAJ to provide training for both judicial and non-judicial personnel. The Institute appears to have gotten off to a slow start and, to date, has done little to close the training gap. Finally, judges have little training in administration and management despite the importance of these skills to the functioning of the Trial Court.

B. Judicial performance evaluation is inadequate.

Our interviews revealed the fact that proposals designed to improve the administration of the Trial Court by granting more power to the top managers of the Court are being undermined by significant concerns about the judiciary's perceived lack of accountability. These concerns were raised by judges, legislators, clerks, officers, and lawyers practicing before the Court. Indeed, the breadth and depth of these concerns are such that we believe the issue of judicial accountability must be addressed if any meaningful reform of the Trial Court is to succeed.

Most of those we interviewed felt that, on the whole, judges work hard and conduct the court's business with integrity and fairness. Most also felt that the Judicial Conduct Commission has been effective in dealing with cases involving allegations of serious misconduct or ethical violations. But even those most sympathetic to the plight of the judiciary expressed serious concerns about the lack of systematic feedback to judges on their courtroom performance.

Although a number of judges we interviewed acknowledged that a well-constructed evaluation could be valuable in helping them to improve their performance, we were also struck by the apparent depth of judicial opposition to performance evaluation, particularly among administrative judges. Under instructions from the OCAJ, each Trial Court department is currently developing a judicial performance evaluation system. Until these systems have been fully implemented, it is not possible to evaluate their adequacy.

A number of people also suggested that judicial accountability might be improved by eliminating life tenure. All judges in Massachusetts are currently appointed for life terms. The Commonwealth is one of only four states that appoint judges for life, and in one of those states, judges must serve a multi-year "probationary" term before becoming eligible for life tenure. The reason most often cited in support of life tenure is the independence it gives judges to make difficult and, perhaps, unpopular decisions without undue concern about job security. Based on our interviews, we found continued — but far from unanimous — support for retention of life tenure. We found considerable support for a system that granted life tenure only after an initial probationary term, and also for a system of renewable appointments with relatively long terms. (Connecticut, for example, provides for renewable eight-year terms.) We found little support for the popular election or retention of judges.

C. Training and performance evaluation for non-judicial personnel are also inadequate.

Currently, there is almost no training provided for non-judicial personnel in the Trial Court, and effective performance evaluation is non-existent. Poorly trained employees make the task of improving the operation of the Trial Court far more formidable under the best of circumstances, while the lack of a performance evaluation system invites poor performance. Without standards for job performance, it is easier for personnel to shirk responsibilities, abuse sick leave policies, and add to the burden already borne by the many honest and hard-working employees of the Trial Court.

IV. Inadequate Communication

- A. An appalling lack of internal communication severely impedes the ability of the Court System to manage its own operations and has contributed to a breakdown in employee morale. It has also created a widespread perception that the Court is a ship without a rudder.**

There is little substantive communication between the SJC and the Trial Court leadership on administrative matters. Strongly inculcated judicial behavior patterns — patterns that are entirely appropriate for handling legal matters — apparently have been carried over to the realm of administration where such behaviors are clearly dysfunctional. Even when faced with a compelling need to find solutions to problems of common concern, such as the current budgetary crisis, there have been few attempts at consultation between the SJC, the OCAJ and the administrative justices of the Trial Court departments; nor has there been sufficient, ongoing consultation among administrative justices, clerks, probation officers, and employee representatives. According to a number of people we interviewed, the OCAJ and the Chief Justices of the Trial Court departments knew in August of 1990 that layoffs would be necessary for the Court to operate within its budget. Yet the clerks were not notified until one week before they were required to submit final recommendations.

Unfortunately, judges too often make administrative decisions in the same way that they make judicial decisions — alone and with a degree of detachment that is both inappropriate and counterproductive for the sound management of an organization as complex as the courts. The negative reaction of those affected by such decisions is exacerbated by the lack of accountability on the part of the judges making these decisions since judges are appointed for life.

- B. OCAJ has failed to provide information necessary to effectively manage the Trial Court.**

Trial Court administrative justices are also hamstrung in managing their departments by the failure of the OCAJ to provide timely and reliable case management, personnel management, budgetary and expenditure data. In some cases, the failure to provide information to the departments appears to be a form of bureaucratic politics based on the premise that information is power. In other cases, it appears to result from a failure of OCAJ — and in many cases, departmental administrators — to recognize the importance of such information to effective management of the departments. In other instances, the data needed for sound management does not exist even within the OCAJ or has not been provided to it by the Trial Court departments.

- C. The Trial Court does a poor job of communicating with its "customers" — the general public, lawyers, litigants, and jurors.**

Based on our interviews, surveys, and first-hand observation of courthouse operations around the Commonwealth, it clear that the court system, its managers, and employees focus almost exclusively on the internal operations of the court with little or no attention to the needs of the users of the system. Unlike successful businesses in other service sectors of the economy, the courts have made few efforts to better understand and meet the needs of their users. Instead, it is often users such as public interest groups or

lawyers that initiate communications with the court in order to raise issues of concern. It would be inaccurate to suggest that the courts are any more culpable in this respect than other monopolies or government agencies. But it is also clear that the judicial branch could do a far better job than it has to date, both in actively seeking to understand user requirements and in communicating its own needs to users, the legislature, and the general public.

PRINCIPAL RECOMMENDATIONS

The Trial Court's ability to resolve the underlying problems plaguing its operation is impaired by its own structural and managerial deficiencies and by legislatively imposed restrictions. In some respects, the Court is caught in a proverbial "Catch-22" situation: Attempts to operate the Trial Court under a highly centralized, "command and control" model of management are fundamentally inconsistent with the decentralized nature of the Trial Court's business. For the Trial Court system, like the economies of Eastern Europe, over-centralization will surely lead to the collapse of the Trial Court system. But successful management of a decentralized organization cannot be accomplished without effective management at the local level, proper allocation of both managerial authority and accountability, and reliable systems for information, financial control, human resources, and procurement.

In order to effectively manage its operations and deal with the problems it faces, the Trial Court needs more autonomy and less legislative management of court affairs. But the legislature is reluctant to grant additional autonomy to the Court for at least two reasons: First, some members claim that the Court's management to date gives them little confidence that additional powers will be used wisely and fairly. Second, many legislators argue that the Court system lacks sufficient accountability to justify the grant of largely unfettered authority over the expenditure of "taxpayers' money." According to the legislators and based on our own interviews, these concerns are shared by a significant number of judges and other court system employees.

The recommendations summarized here are part of a comprehensive, integrated reform package. It has been designed to resolve the Trial Court's current dilemma by substantially strengthening the administrative and management capabilities of the court, restructuring the court to better meet the demands being placed upon it, and by increasing the accountability of the management for the administration of the Trial Court system. Because the reform package is intended to be both comprehensive and integrated, we believe that it would be a mistake to pick and choose from among the major recommendations only those favored by one particular interest. For Trial Court reform to become a reality, we are convinced that all affected interests will have to surrender something they value in the current system. But we are also convinced that, with the changes we recommend, the benefits to all will far outweigh the costs.

- A. Consolidate the existing seven departments of the Trial Court into a single unified Trial Court by 1996.**

In our view, any program to improve the management of the Commonwealth's Trial Court runs a high risk of failure unless it includes substantial unification of the seven separate departments that now constitute the Trial Court. The current structure of the Trial Court is unnecessarily fragmented and complex, resulting in substantial administrative duplication and waste. It also produces an organizational ethos inconsistent with the sound administration of justice, one that puts the interests of individual Court departments over those of the Court as a whole.

The adoption of a unified Trial Court would simplify and improve the management of the Trial Court and, equally important, would reduce the level of court resources required for administration. As recognized by the American Bar Association and the numerous states that have already adopted unified trial courts, unification can attain these goals while retaining, as appropriate, the benefits of specialization within a unified Court.

The transition to a unified trial court will require careful planning and coordination among a wide range of constituent interests. Thus, the legislature should allow sufficient time for the Court to plan and execute the necessary changes. Likewise, the transition must involve the widespread and active involvement of all component elements of the Trial Court — judges, clerks, court and probation officers, administrative personnel, and so forth — as well as representatives of the organized bar.

To facilitate the transition, we suggest that, as an interim step, unification begin with the adoption of a two-tiered Trial Court — one court of general jurisdiction and another of limited jurisdiction — for implementation by year end 1993. Full unification should be accomplished not later than 1996. The proposed organization of the Trial Court is shown in Exhibit E-5.

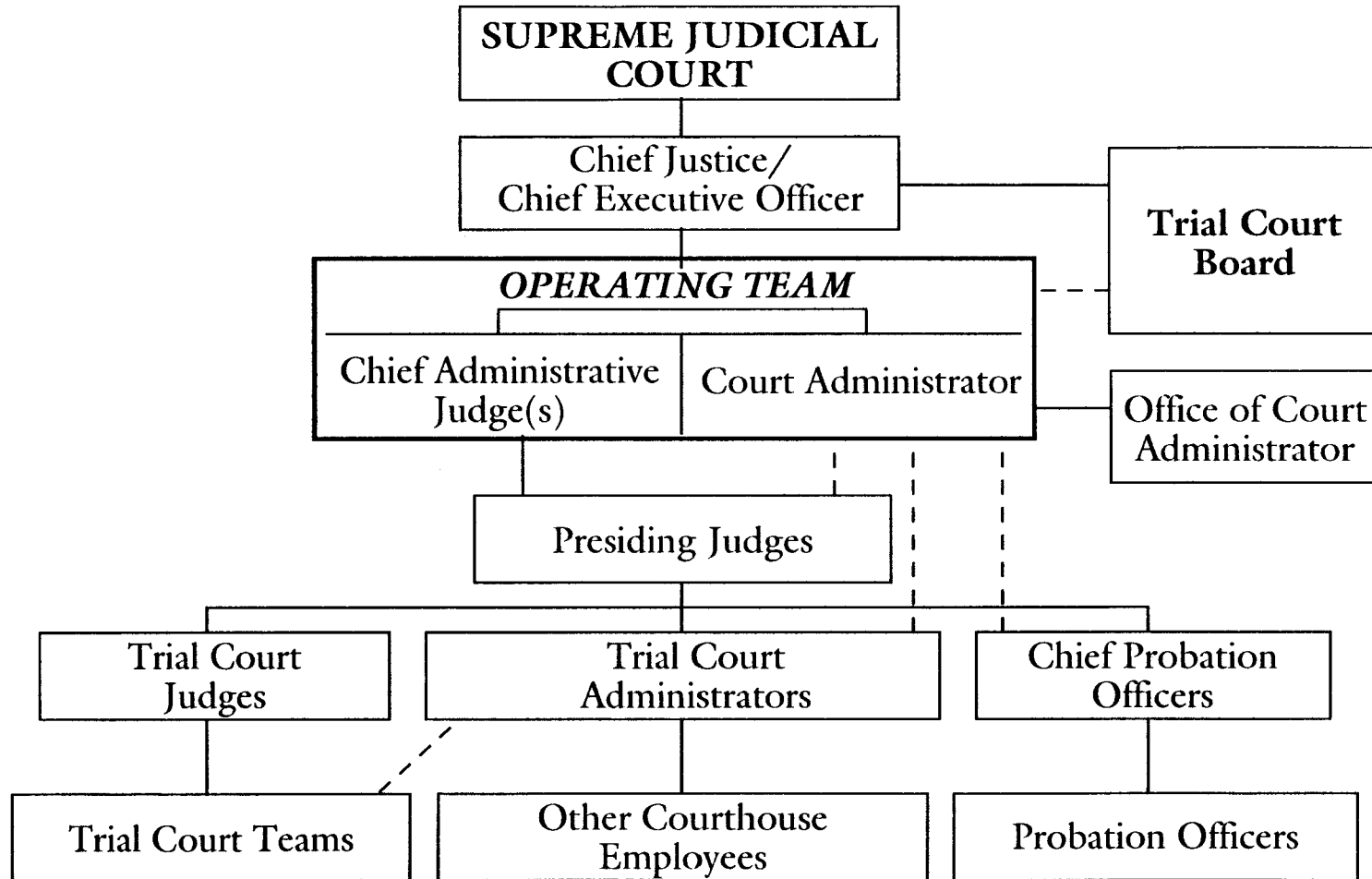
- B. Establish the Chief Justice of the SJC as the Chief Executive Officer of the Trial Court.**

One of the principal problems plaguing the Trial Court is the lack of clear authority and accountability. In the case of the Trial Court, the problem of a lack of authority and accountability starts at the top — with ambiguity about the role of the Chief Justice. To remove this ambiguity and clarify questions of management authority and accountability, we recommend that the Chief Justice be designated as the Chief Executive Officer of the Trial Court under the general superintendence powers vested in the SJC.

- C. Replace the current, duplicative administrative systems within the Trial Court with a single, unified administrative structure under the direction of a newly appointed professional Court Administrator (CA).**

The Court Administrator would be charged with identifying the administrative functions best performed centrally and those better carried out elsewhere in the organization. The Court Administrator would also be charged with creating immediately a single administrative structure so that even during the transition period, the court would not have duplicative administrative structures.

**Exhibit E-5
Proposed Trial Court Organizational Structure**



- D. Establish an Administrative Board, composed of both internal and external members, to advise the Chief Justice of the SJC on administrative matters and to review and oversee the administration of the Trial Court, under the general superintendence powers granted to the Supreme Judicial Court.

We recommend an initial Board of 11 members. In addition to the Chief Justice, the Board would include the two Chief Administrative Judges and the Court Administrator, plus one justice elected from among the judges sitting in the court of general jurisdiction and one from among the judges sitting in the court of limited jurisdiction. The remaining five members would be citizens of the Commonwealth selected principally upon the basis of their ability to contribute to sound administration of the Trial Court. These members could be appointed either by the Governor or the SJC. When the courts are unified into a single Trial Court in 1996, the membership of the Board will be 10, including the Chief Administrative Judge of the Trial Court and two elected judges.

The use of boards of directors, governors, and trustees is well-established in both law and practice, and there is a considerable body of literature, by scholars and practitioners, analyzing both the theoretical and practical reasons for the use of such boards by organizations in the private, public and non-profit sectors. While there are many specific reasons why organizations establish such boards, two underlying, fundamental reasons recur consistently: First, boards are used to strengthen the capabilities of organizations in areas critical to their success. Second, because boards are separate from the management, legally responsible for advancing the best interests of the organization, and accountable to the appropriate constituents of the organization, they provide the essential mechanism for protecting the interests of the organization and its constituents, while granting management the broad autonomy needed to successfully administer the organization. We believe that both of these reasons are applicable to the Commonwealth's Trial Court.

A properly constituted Board will strengthen administration of the Court by providing its management — the Chief Justice, administrative justices, and court administrators — with a high level of management expertise and support. That the functioning of the Trial Court is plagued by serious management problems is beyond dispute; it has been widely recognized both within the Court itself and by those outside of the system. Although a number of factors — including some beyond the control of the Court — have contributed to these problems, based on our analysis and the views of virtually everyone we interviewed, ineffective management ranks high on any list of factors contributing to the Court's current problems.

Other organizations utilize boards to add strength in areas critical to the performance of their organizations. Examples abound in the private sector, but are also found in the public and non-profit sectors, as well, including health care and human services. In the case of the Trial Court, improved management is perhaps its most critical need, and it is a shortcoming that a Board could help remedy.

The task of reinvigorating and the Trial Court and motivating its 5,000-plus employees is gargantuan. It would be a serious mistake under any circumstances to underestimate the amount of managerial time or the level of management skills and organizational insight necessary to successfully accomplish the task. It would be particularly

inexcusable in circumstances where those with the ultimate authority for the operation of the Court consist principally of full-time jurists with neither significant training nor extensive experience in managing a large, complex organization like the Trial Court.

In addition, a Board will facilitate the grant of greater autonomy to the Trial Court by establishing a greater degree of accountability for the expenditure of public funds and by increasing both public and employee confidence in the management of the Court. Although there is widespread agreement that the management of the Trial Court needs substantial improvement, we found an almost equally pervasive concern about proposed solutions which are perceived as further concentrating administrative powers in the hands of unelected judges who are appointed with life tenure. In short, the underlying issue is one of accountability. Concerns ranged from inadequate accountability for the expenditure of public funds to a lack of safeguards for individual employees — both judicial and non-judicial — against the abuse of administrative authority.

We have also found that successful management of the Trial Court will require substantial autonomy — more than it currently enjoys. But the management record of the Court has been such that neither the legislature, its employees, nor the general public is anxious to vest still greater authority in the hands of judges appointed for life. In our view, the establishment of a strong Board would address legitimate concerns regarding accountability, thereby facilitating the grant of expanded management authority needed to reinvigorate the Trial Court.

One of the primary functions traditionally served by a board has been to help ensure, on behalf of the organization's relevant constituent interests, that management is acting in the best interests of the organization; in return, the organization's management is granted expanded power by its constituents. In the case of private sector corporations, stockholders are the principal constituent group represented by a board. In public and non-profit settings, boards are typically accountable to a somewhat broader group of constituents. But in all cases, the use of a board permits the management of an organization to exercise broad powers with the assistance and under the oversight of a body charged with responsibility for advancing the best interests of the organization. That is precisely the role we envision for a Board in the Trial Court. A detailed listing of the proposed duties and responsibilities of the Board, as well as the responsibilities delegated to others with major administrative roles under the new structure, may be found in Appendix I.

Finally, in considering the creation of a Board for the Trial Court, we have been sensitive to possible concerns regarding the separation of powers and have shaped our recommendations to meet such concerns. Based on the opinion of independent, outside counsel (see Appendix II), we believe that our recommendations are on firm ground both constitutionally and managerially.

- E. Consolidate the functions of the OCAJ into a new Office of Court Administrator. The Administrator will be selected by the Chief Justice of the SJC subject to the approval of the Board.**

The Trial Court is far too large and complex an organization to be operated without an administrator trained and experienced in court administration. The Court Administrator could be removed by the Chief Justice with the concurrence of the Board. The CA would be responsible for the administration of the Trial Court in cooperation with the administrative justices of the Trial Court.

- F. Provide that Trial Court Chief Administrative Judge(s) be appointed for renewable five-year terms by the Chief Justice of the SJC with the advice of the Board. A Chief Administrative Judge could be removed from that Position by the Chief Justice, subject to the concurrence of the full SJC.

One of the major administrative flaws in the existing legislation is the lack of clear lines of managerial authority and accountability between the Chief Justice and the Supreme Judicial Court on the one hand, and the heads of the Trial Court departments on the other. The position of Chief Administrative Judge is a purely managerial one and, if the Chief Justice lacks the ability to hire and fire (subject to SJC concurrence) the managers reporting to him/her, it would be difficult to hold the Chief Justice accountable for the performance of the Trial Court. Nor would it be reasonable to expect any significant improvement in the operation of the Trial Court unless the Chief Justice of the SJC is given such authority. Chief Administrative Judges either removed from their positions or whose appointments were not renewed would, of course, retain their judicial appointments.

- G. Provide that the authority for administration of individual courts be delegated by the Court Administrator to Trial Court Administrators (TCAs) located in those courts.

TCAs would be hired by the CA from a list of qualified candidates and would report to the appropriate Presiding Judge(s). Working in conjunction with Presiding Judges, TCAs would be responsible for managing the operations of individual courts. Evaluation of TCA performance will be conducted jointly by the CA and the appropriate Presiding Judge(s).

- H. Provide that all Clerks would henceforth be appointed by the Court Administrator for five-year terms from a list submitted by the Governor containing the names of not fewer than six qualified residents of the area served by the court where such vacancy exists. Clerks would be accountable to the Court Administrator who could dismiss them for cause. Incumbent clerks and registers would receive life tenure in their current positions and, where qualified, should be considered for appointment as Trial Court Administrators.

Except for the clerks themselves, virtually everyone we interviewed believed that the election of clerks no longer serves any useful purpose and, in fact, has contributed in a number of counties to significant problems in the operation of the Trial Court. As in the case of Chief Administrative Judges and Court Administrators, the lack of clear authority by administrative judges over elected clerks and registers too often impairs the court operations. The experience of other states, the District Courts, and the Federal Courts lend substantial support to arguments in favor of eliminating the election of clerks and registers. Nonetheless, we found a number of clerks and registers doing an excellent job under very difficult circumstances. It was clear in such cases that these clerks (or registers) were highly effective managers, capable of playing a major role in the management of individual courts. Others appear to have management potential if provided with some basic management training. A few clerks appear to have little to offer the Trial Court in terms of management or efficient administration.

I. Make court automation a top priority issue for the Court Administrator.

The Administrator should review departmental information systems with a view to accelerating implementation schedules and ultimately integrating them into a fully automated case management system.

J. Adopt and have in place by 1 January 1993 a performance evaluation system for all Trial Court judges.

The performance evaluation system would be used for counseling judges to improve their performance. It should provide for input from a variety of sources including other judges, lawyers, jurors, court employees, and representatives of the general public such as victims and litigants.

K. Institute immediate steps to improve internal communication within the court system.

These steps should include regular working meetings between the Chief Justice, the Court Administrator, and the Trial Court Chief Administrative Judges, as well as meetings involving the Administrator and the managers reporting directly to him/her. Additional steps should include the establishment of periodic forums for judges, and meetings held at court facilities throughout the Commonwealth where local employees could communicate directly with the Administrator and other top-level managers.

L. The budget for the Court system should have four sub-categories, one each for the Supreme Judicial Court, the Appeals Court, the Trial Court, and the Committee for Public Counsel Services. The budgets for each of these entities would be allocated among three line items — personnel, facilities, and other. The budget for the Trial Court should include the budget for the Office of the Court Administrator, the Jury Commissioner, and the Commissioner of Probation. The budget should be submitted directly to the legislature by the Chief Justice.

At the request of the appropriate legislative committee(s), the Trial Court would provide to the legislature more detailed budgetary data including estimated expenditures for all accounts exceeding \$500,000. Prior to the submission of its next budget, the Trial Court would be required to report to the legislature any transfers of funds between such accounts when the amount transferred to or from an account exceeded \$50,000.

Sound administration of the Trial Court is not possible so long as the legislature continues to micro-manage the Court through specific, detailed line item budgeting. Bluntly stated, such detailed legislative intervention results in a serious misallocation of Trial Court resources and severely restricts the ability of the Court to deploy its limited resources in the most cost effective and efficient manner.

At the same time, the legislature has a legitimate interest in ensuring that tax dollars are not wasted by the judicial branch. It can fulfill that responsibility only if it has access to reliable budget estimates and ex post facto reviews. For many states and the Congress of the United States, such measures are considered sufficient for the legislature to forego detailed, line item budgeting.

Our recommendations are designed to provide the legislature with the information needed to oversee the expenditure of state funds while providing the Trial Court with sufficient managerial flexibility to make the most effective use of those funds.