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A DECLARATION OF INDEPENDENCE

Reaffirming the Autonomy of the Third Branch

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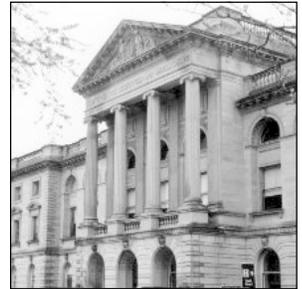


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PREFACE

The struggle of state courts to control their own administration is an important part of American history and a natural corollary of the struggle for judicial independence. A court is not truly independent if its internal affairs are micromanaged by another branch of government, as is the case in Massachusetts. James Dolan, under the sponsorship of Pioneer Institute, has provided an insightful, penetrating and empirically impressive insight into this problem. The experience of James Dolan as a judge of the Massachusetts District Court adds a practical dimension sometimes lacking in studies performed from an academic perspective.

The study graphically documents the wildly uneven distribution of resources caused by a patronage system that has led to overstaffing of courts that are politically connected and understaffing of those that are not. The documentation is compellingly clear, one of the best existing analyses of the effects of patronage in a court system. The legal maxim “*res ipsa loquitur*” captures the self-evident nature of the presentation. There was no need for editorializing.

The empirical section is followed by a series of suggestions for improvement that reflect an understanding of Massachusetts and the art of the possible. The study is a wonderful blend of sound scholarship and “street” knowledge. Pioneer Institute and the author have made an important contribution to the literature on court administration and have ventured into an area where there has been little previous work. I hope that the article has the catalytic effect that was intended.

—**Robert W. Tobin**
National Center for State Courts

ACKNOWLEDGMENTS

A special thanks to Elena Llaudet, James Stergios, and Albert Keith Whitaker who were all a vital part of this project. Also, I would like to thank the many persons who contributed to this endeavor who prefer to remain anonymous and shall remain, like the unknown soldier, “known only to God.”

—J.D.

EXECUTIVE SUMMARY

This report explores the current budgeting and staffing process and the problems arising from it—striking productivity declines, rapidly rising costs, and, most importantly, systemic inequities in the distribution of resources.

The Massachusetts court system is at a critical point in its history. In recent years, the court budget has doubled while the workload has decreased and the system struggles under significant staffing inequalities. Underlying these problems is the debilitating administrative weakness of the Massachusetts Trial Court. The principal reason for this lack of authority is the legislature’s use of a line-item budget to add personnel to specific courts without regard to the administrative priorities of the Trial Court.

This report explores the current budgeting and staffing process and the problems arising from it—striking productivity declines, rapidly rising costs, and, most importantly, systemic inequities in the distribution of resources.

Patterns in Court Staffing

Every year the statutory administrator of the Trial Court, the Chief Justice for Administration and Management, forwards a budget for the entire court system to the governor to be included in the state budget. Within that budget are requests for new staff positions, calibrated to the needs of the court system. But every year the legislature approves a budget that largely ignores these specific requests, mandating instead specific positions that the Administrative Office of the Trial Court did not request.

This practice is well known and has its roots in a system that was a county-funded, loosely knit “confederation” of largely autonomous courts until 1978 when the legislature passed budgetary and structural reforms. Since that time, the court has struggled to define its role and its relationship to the other branches. In its 1987 study of the court system, *Agenda 90: Modernizing The Judiciary*, the Senate Ways and Means Committee found, “The continued existence of appropriation accounts specific to individual courts poses an obstacle to effective budgetary management by the Office of Chief Administrative Judge (OCAJ) and the departmental offices.”

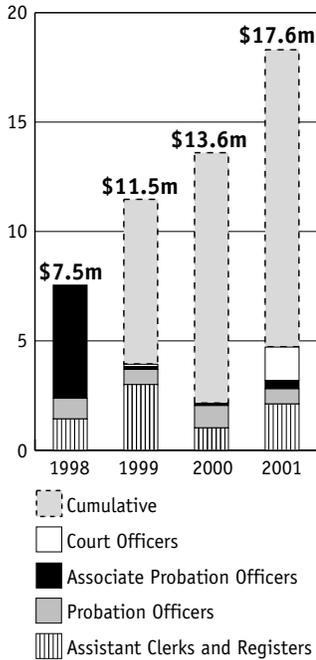
Table 1 shows the number of positions created by the legislature, without a request by those charged with administering the system, between fiscal year 1998 and 2001. In total, 111 new and unrequested

Table 1. Positions mandated but not requested by the Administrative Office of the Trial Court, 1998-2001

	1998	1999	2000	2001	Present Starting Salary
Assistant Clerks and Registers	21	44	15	31	\$68,280
Probation Officers	23	17	25	- ^a	\$41,008
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Court Officers	-	3	-	41	\$37,107

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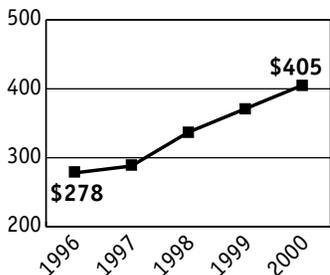
Figure 1. Money spent on positions mandated but not requested, 1998-2001 (millions of \$)



Note: Data calculated using 2002 salary levels.

Data: Internal Reports and Massachusetts budget.

Figure 2. Cost per case entry (total appropriations per annual case entries), 1996-2000 (\$)



Data: Annual Reports on the State of the Massachusetts Court System, 1994-2000.

assistant clerk and assistant register of probate, 65 probation officer, 196 associate probation officer, and 44 court officer positions were mandated by the legislature in just four years.

The same pattern, at least with respect to assistant clerks and registers, would have continued in fiscal year 2002 had the collapse of the state's revenue stream not forced the House and Senate to assume a more fiscally prudent posture. The Administrative Office of the Trial Court requested only one assistant clerk (register), while 19 such positions were originally approved by the House and 17 by the Senate.

The Cost of Justice

This lack of managerial authority has fiscal consequences. Figure 1 shows the large sums that are spent every year on positions that the court's chief managers do not want.

In cumulative terms, the positions mandated but not requested from 1998 to 2001 translated into additional costs of \$7.5 million in 1998, \$11.1 million in 1999, \$13.4 million in 2000, and \$18.1 million in 2001, or a total of \$50.1 million over the four years. These costs will continue to be borne by the system even as we head into difficult budgetary times.

Every citizen knows that justice costs money. Jury service, obeying the law, supporting the police, and paying taxes all require sacrifice. Figure 2 depicts the most basic way of measuring the cost of justice: cost per case entry. In Massachusetts the cost of justice has been growing steadily. In 1996 state taxpayers paid \$278 per case entry. By 2000 the cost was \$405 per case entry, a jump of 46 percent.

The cost increase is partly attributable to improved technology and/or facilities. But the main story behind this cost increase is declining productivity in the court system. Over just the four years from 1996 to 2000, the number of case entries per court employee dropped from 190.6 to 142.3, a decline of 25.3 percent. Put another way, it took 5.25 employees to deal with 1000 cases in 1996, while just four years later it took 7.02 employees.

Inequitable Allocation of Resources

Disregarding the judiciary's own requests costs more than money. The current allocation of resources across courts and regions is grossly inequitable. A comparison of district court budgets for Suffolk County (population 689,810) and counties in the western part of the state (Berkshire, Franklin, Hampden, and Hampshire—combined population of 814,970) is particularly telling. In 2002 the district courts of the western counties had a combined budget of \$13.3 million, while the Boston Municipal Court and Suffolk County district courts received a total of \$26.1 million.

Analysis of staffing and caseloads in 14 district courts (Springfield, Worcester, Quincy, Brockton, New Bedford, Dorchester, Lawrence, Lynn, Cambridge, Roxbury, West Roxbury, Chelsea, Wareham, and Holyoke) reveals little correlation between the two. Courts with twice the workload, in some cases, have half the staff of other courts. Analysis of staffing in clerk-magistrate's offices shows Springfield and Brockton to be understaffed among urban district courts, while Chelsea, Charlestown, and Somerville are overstaffed. Among suburban district courts, Attleboro and Waltham do more work with less staff in the clerk-magistrate's office, while Winchendon, Hingham, and Nantucket have less work and far more positions. Considerable disparities exist in probation office staffing across the state as well, affirming the need for more reasoned human resources management.

Recommendations

Today the Commonwealth's judicial branch is plagued by declining productivity, stalled leadership, and inequities in the allocation of personnel. Resolving these problems will require both legislative action and internal judicial reforms.

The legislature, for its part, should appropriate judicial branch funds through a single line item for the entire system or a line item for each department. To sharpen the legislature's role in the setting of priorities and oversight, legislators and their agents should meet regularly with judicial leaders to discuss the goals of the judicial branch and apply to the courts sound performance measures to hold those leaders accountable for outcomes.

To build its administrative strength, the judiciary should make a conscious effort to promote to its command judicial leaders who have administrative and political experience and give every consideration for administrative positions to non-judicial, professional managers, as often happens in other states. Court staffing levels must be based on a sound formula that determines the system's needs in a fair and reliable manner. Both a "weighted caseloads" approach and policy-based budgeting should be considered as options.

Finally, to aid in maintaining the openness of the court, the Commonwealth's judicial branch should consider creating an Office of External Affairs similar to the one created in Connecticut. Such an office could facilitate communication between the judiciary and the legislature and also act as a reasonable control on patronage in the judicial system.

Ultimately, reforms should encourage a strong administrative authority within the Trial Court in exchange for greater accountability. Releasing the judicial branch from administrative bondage would advance the process the legislature itself began in 1978 and fulfill an implied promise, that the judiciary would at last become an independent branch of government.

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INTRODUCTION

“In the government of this commonwealth, the legislative department shall never exercise the executive and judicial powers, or either of them...to the end it may be a government of laws and not of men.” So declares Article 30 of the Massachusetts Declaration of Rights, thus establishing the doctrine of separation of powers and laying the foundation for one of the oldest and best judicial systems in the United States.¹

For two centuries the Judiciary of the Commonwealth has built a reputation for excellence. The devotion and care of the judicial staff have enabled the court to administer justice to the citizens of the state in a wide variety of venues. Driving this dedication are the core values of a just court system: due process, equal protection, and fundamental fairness. Those qualities, so prized in the courtroom, cannot be abandoned in court administration. That spirit must be reflected in financial and administrative operations that assure coherence, discipline, and a fair distribution of resources within the system.

The Path Taken

A multitude of courts does not make a judicial branch. From the late nineteenth century the fragmented Massachusetts courts fostered few habits of cooperation with one another on administrative matters such as budgeting, hiring, firing, and procuring. Until the late 1970s, each separate court submitted its budget to the local county commission, and the county commissioners then sent their county budgets to the legislative committee on counties for review. In effect, local officials ruled the courts, determining who would be hired, what buildings would be built (or fixed), and what items would be purchased. A few courts were well supported under this scheme; many were not. Across the state there was no planning for or uniformity in the administration of these courts.

“Implicit in the constitutional grant of judicial power is the authority necessary to the exercise of that power. Such authority ...includes certain ancillary functions, such as rule-making and judicial administration, which are essential if the courts are to carry out their constitutional mandate.”

For endnotes to the *White Paper*, turn to page 25.

No one would have called the old county-based courts a true system, let alone an independent branch of government. Functioning virtually independently of one another, it was each court for itself in the competition for funding. Fragmented and subservient, with little direct political power, the courts relied on local political influence to secure benefits. Judges or clerks had to horsetrade with county commissioners and local legislators, who determined how many assistant clerks or probation officers were necessary at a particular court. The legislature's habit of intervening in court management has deep roots.

Nonetheless, court reform in Massachusetts has so far proceeded mainly through political rather than judicial channels. The impetus for statewide reform came from the local governments, the counties, as they found themselves fiscally swamped by a bad economy and rapidly increasing court costs in the early 1970s. Local politicians looked to the state to take over the expense of running "their" courts; but if the state were to pay, it would also demand changes in how "its" courts were to be run. The work of the 1976 Governor's Select Committee on Judicial Needs (known as the "Cox Commission") led to legislation in 1978 to reform the entire judiciary. This enormous reform had several important consequences. The most striking was budgetary unification: the entire court system was henceforth to be funded by the state and not the counties, with salaries and benefits paid at uniform levels. Other reforms were structural: the Superior Court, the District Court, and the five other courts of limited jurisdiction were organized as departments of one Trial Court.² Finally, some attempt was made at administrative reform: each department of the Trial Court was given a Chief Justice for Administration, and a single Chief Administrative Justice was given statutory authority over budget and personnel for the entire system.

The court system literally does not have the power to manage itself. The principal reason for this lack of authority is the legislature's practice of using a line-item budget to add personnel to specific courts without regard to the administrative priorities of the Trial Court.

These reforms have had to operate within a system still managed by the legislature through the line-item budget. Local judges and clerks found it easier to continue making personnel requests to sympathetic legislators rather than justify them within a new administrative chain of command. Imposing structure, order, and discipline on often reluctant participating units proved more difficult than anticipated. The transfer of power from the periphery to the center is not likely to be accomplished easily under any circumstance. It is particularly difficult when many of those at the edge are "connected," enjoy permanent job status, and are therefore invulnerable to administrative pressures that would normally prompt subordinates to cooperate for the greater good. This historic marriage of convenience between local court officials and legislators serves to undermine meaningful court reform efforts.

So, while court reform has brought the Massachusetts Judiciary more money, the promise of meaningful administrative reform went unfulfilled. As time has gone on, the complaints of court mismanagement have continued unabated. Many of the criticisms that the Cox Commission made of the Trial Court in 1976, before court reorganization, were echoed in the Senate Ways and Means Committee's study, *Agenda 90: Modernizing the Judiciary* (1987) and by both the Massachusetts and Boston Bar Associations in separate reports released in 1991. All these documents called for unification of the Trial Court's structure and administration. The legislature responded in 1992 with some minor administrative improvements.

In 1994, the Supreme Judicial Court itself published *Reinventing Justice: 2022*, which envisioned a streamlined court system, liberated from past restrictions, and thus better able to adapt to future needs. Finally, in 1998 Pioneer Institute published *Justice Delayed*, a report written by District Court Judge Daniel Winslow, calling for a more sensible distribution of resources, improved operating standards, and greater efficiency within the Trial Court. The overall conclusion of these reports is that while the current system may be structurally stronger and better funded than before, administratively it is nearly as weak and restricted as the county-bound courts.

A Critical Point in the Judiciary's History

While the history of the Commonwealth's courts explains the current legislative intervention in judicial management, it cannot justify continuation of that interference. The court has precedents on which it could base an appeal in order to assert its administrative independence. That appeal would occur, of necessity, in a judicial rather than political forum—an event that could mark a constitutional crisis.

One possible outcome of a court challenge is foreshadowed in a case decided in 1972 involving small items but a large principle. When the Worcester County treasurer refused to pay for a tape recorder and three tapes ordered by a judge for courthouse use, the Supreme Judicial Court erupted in indignation. *O'Coins, Inc. vs. Treasurer of the County of Worcester* (362 Mass. 507) remains the most important Massachusetts case dealing with separation of powers and the inherent power of the judiciary. In it Chief Justice Tauro wrote, "Under our constitution, the courts of the Commonwealth constitute a separate and independent department of government entrusted with the exclusive power of interpreting the laws." The Court held that "implicit in the constitutional grant of judicial power is the authority necessary to the exercise of that power." It also ruled, "Such authority is not limited to adjudication, but includes certain ancillary functions, such as rule-making and judicial administration, which are essential if the courts are to carry out their constitutional mandate."³

The Massachusetts court system is at a critical point in its history. The system has long suffered from difficult funding and personnel problems, but in the last decade the troubles have spiraled out of control. In recent years, the court budget has doubled while the workload had decreased, and the system still struggles under significant staffing inequalities. These problems have various causes, but the one common to them all is the debilitating administrative weakness of the Massachusetts Trial Court. The court system literally does not have the power to manage itself. The principal reason for this lack of authority is the legislature's practice of using a line-item budget to add personnel to specific courts without regard to the administrative priorities of the Trial Court.

According to the National Center for State Courts, the use of a line-item budget to create positions in specific courts is unique to Massachusetts. Within the state budget it is also used exclusively with respect to the court system. Executive departments are not broken down into individual operating units for budgeting purposes and thus have a far greater degree of fiscal independence and administrative autonomy. The University of Massachusetts' budget, for example, with operating costs almost as high as the court

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system, is one line item. The primary reason for this discrepancy, according to observers, is patronage. In his 1998 book, *Creating The Judicial Branch: The Unfinished Reform*, Robert W. Tobin of the National Center for State Courts remarks, “In states where the legislature has traditionally micromanaged the courts, legislators may become quite involved in the internal affairs and allocations for ‘their judges’. When Massachusetts went to state financing, legislators passed a budget that had a separate line item for every minor division of the Trial Court system. The obvious purpose was to deny the judiciary the freedom to reallocate freely and to give legislators a say in the resources of each component of the court system. This control was largely motivated by patronage considerations but had the unfortunate effect of making the courts look like an extension of the legislative political machinery.”⁴

This practice is well known and has its roots in the historical development of a system that until 1978 was a county-funded, loosely knit “confederation” of largely autonomous courts. Now, as the third branch of government, the court struggles to define its role and its relationship to the other branches. In its 1987 study of the court system, *Agenda 90: Modernizing The Judiciary*, the Senate Ways and Means Committee found, “The continued existence of appropriation accounts specific to individual courts poses an obstacle to effective budgetary management by the Office of Chief Administrative Judge (OCAJ) and the departmental offices.”

Addressing problems in the funding and administration of the court system will become even more pressing in the current economic climate, as budget constraints will require greater efficiency. This report explores the current budgeting and staffing process and the problems arising from it—striking productivity declines, rapidly rising costs, and, most importantly, systemic unfairness in the distribution of resources.

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Data and Methodology

This report makes use of data on civil and criminal caseloads, case types, employment (requested by the court and mandated by the legislature), and budget levels gathered from the 1994-2000 *Annual Report on the State of the Massachusetts Court System*, as well as correspondence with and some internal reports from the Administrative Office of the Trial Court (AOTC).

The data have been employed for the following analyses: cost per case entry, productivity on the basis of annual case entries per employee, dynamic analyses of caseloads and budgets, filings of various types relative to specific positions, and a comparison of the number and kind of positions requested by the court to those mandated by the legislature. Analyses have been performed at various levels: systemwide, countywide, and among specific courts. The majority of the court-specific comparisons concern the Commonwealth’s 69 district courts. In all cases we have used same-year data in single analyses (tables and figures). In some cases, however, due to limited data availability, we have data from previous years in contiguous tables or figures.

We have supplemented our own analyses with materials and observations obtained in interviews with officials in Massachusetts and other states, as well as with experts associated with the National Center for State Courts in Williamsburg, Virginia.

CURRENT PRACTICE AND ADMINISTRATIVE INCAPACITY

The principal cause of the weakness of the Administrative Office of the Trial Court is the legislative use of line items to fund individual courts within the judicial system. The House's fiscal 2002 budget recommendation for the judiciary was enumerated in 183 line items and the Senate's in 172. Extensive micromanagement of the court system is not necessary by quirk or culture: the Governor's 2002 budget recommendation for the judiciary had only 30 line items. While the Governor had one line item each for the Trial Court Central Administration, the Superior Court, the District Court, and the Probate Court, the House had 26, 8, 71, and 21, respectively. In the final 2002 budget there were 179 line items in the judiciary section.

Of those states funding their court systems principally through state budget appropriations, Massachusetts is an anomaly. A 1998 report by the National Center for State Courts showed that 25 of the 26 states with substantial state-level funding for the court system did not have an extensive line item budget for the judicial branch (see Appendix A).⁵ New Mexico, which is the other exception, makes no pretense to having a unified court, as its individual courts prepare their respective budget requests.

In the Commonwealth, every year the statutory administrator of the Trial Court, the Chief Justice for Administration and Management, forwards a budget for the entire court system to the governor to be included in the state budget. Within that budget are requests for new staff positions, calibrated to the needs of the court system. But every year the legislature approves a budget that largely ignores these specific requests. That does not mean that the court system does not receive new staff. (As will be seen in figure 7 below, the overall court staff has increased by over 40 percent in the last six years.) What happens, instead, is that the legislature mandates specific positions that the Administrative Office of the Trial Court did not request.

Table 1 shows the number of positions created by the legislature, without a request by those charged with administering the system, between fiscal year 1998 and 2001. These numbers were obtained by comparing the systemwide position requests from the judiciary to the total number of positions mandated by the legislature in each job category. In total, 111 new and unrequested assistant clerk and assistant register of probate, 65 probation officer, 196 associate probation officer, and 44 court officer positions were mandated by the legislature in just four years.

The number of unrequested but mandated positions in table 1, however, underestimates the extent of the problem. Given the court system's limited ability to transfer positions between courts, it is more reasonable to calculate these disparities on the basis of where the legislature's mandated positions do and do not match up with the judiciary's court-specific

In total, 111 new and unrequested assistant clerk and assistant register of probate, 65 probation officer, 196 associate probation officer, and 44 court officer positions were mandated by the legislature in just four years.

Table 1. Positions mandated but not requested by the Administrative Office of the Trial Court, 1998-2001

	1998	1999	2000	2001	Present Starting Salary
Assistant Clerks and Registers	21	44	15	31	\$68,280
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^a AOTC recommended 18 probation officers in various courts, none of which were approved. Instead, the legislature mandated 17 probation officer slots in the Commissioner of Probation's office: 16 probation-officers-in-charge and 1 chief probation officer position. None of these were requested by AOTC.

requests. Viewed in this manner, the discrepancies are worse, with a total of 122 unrequested assistant clerk and register, 87 probation officer, 196 associate probation officer, and 46 court officer positions mandated by the legislature. (See table B-1 in appendix B.)

The Administrative Office of the Trial Court requested only one assistant clerk (register). The House originally approved 19 such positions and the Senate 17.

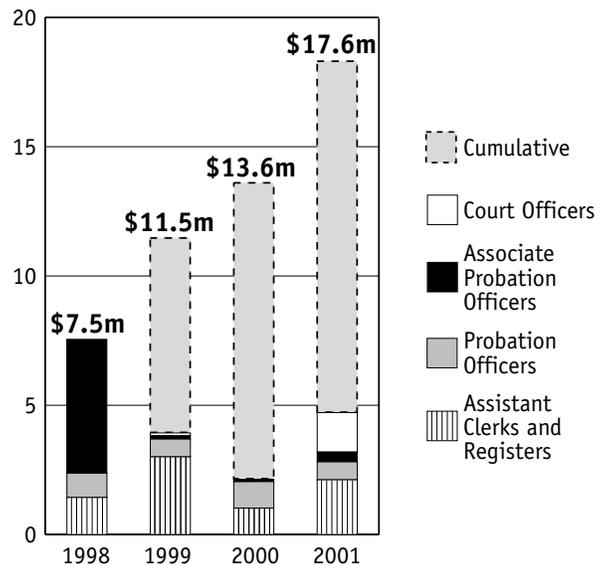
The same pattern, at least with respect to assistant clerks and registers, would have continued in fiscal year 2002 had the collapse of the state's revenue stream not forced the House and Senate to assume a more fiscally prudent posture. The Administrative Office of the Trial Court requested only one assistant clerk (register), while 19 such positions were originally approved by the House and 17 by the Senate. Overspending when times are good and cutbacks with inevitable layoffs when times get bad generates a "boom or bust" climate unsuited for sound management. In addition, the pattern indicates just how little authority AOTC has over the system. (See table B-2 in appendix B.)

This lack of managerial authority has fiscal consequences. Figure 1 shows the large sums that are spent every year on positions that the court's chief managers do not want.

In cumulative terms, the positions mandated but not requested from 1998 to 2001 translate into additional costs of \$7.5 million in 1998, \$11.5 million in 1999, \$13.6 million in 2000, and \$17.6 million in 2001, or a total of \$50.2 million over the four years. These costs will continue to be borne by the system even as we head into difficult budgetary times. Again, if one takes into consideration the judiciary's limited authority to transfer personnel among courts and calculates the costs on the basis of court-specific requests, the additional costs of these hires rises to a cumulative total of \$53.4 million over the four years.⁶

This lack of managerial authority has fiscal consequences. Positions mandated but not requested from 1998 to 2001 translate into a total of \$50.2 million.

Figure 1. Money spent on positions mandated but not requested, 1998-2001 (millions of \$)



Note: Data calculated using 2002 salary levels.

Data: Internal Reports and Massachusetts budget.

The costs go beyond the estimates in figure 1, as the practice of mandating positions not requested by the judiciary pervades the entire court system. For example, a review of Probate Court appropriations shows that the positions created in this manner from 1998 to 2002 now costs \$650,000 annually. These positions are often created in the face of opposition from First Justices of these courts. (See Appendix C.)

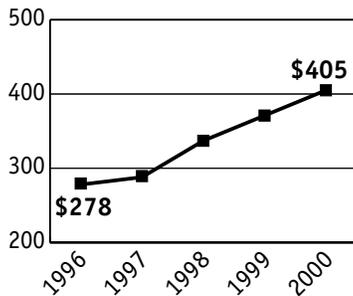
Not content with the power it exercises over court personnel through the line-item budget, the legislature in 2001 extended its grip over the judicial branch by enacting outside sections of the budget that restrict judicial hiring. The measures, passed without a hearing, eliminate judicial “obstacles” by shifting hiring authority of probation officers from first justices and eliminating the right of the Chief Justice for Administration and Management to approve the appointment of assistant clerks and assistant registers. By transferring these important personnel decisions to the more compliant commissioner of probation and clerk-magistrates respectively, the legislature has further curtailed the administrative role of judges in the system for which by law they are responsible.

In summary, even though it is charged with managing the system, the AOTC’s annual budgetary requests can be and are regularly ignored, its power to transfer personnel and

funds is limited, and it has been stymied in its efforts at long-range, systemwide planning. While this report does not assume that eliminating all patronage is possible (or even necessary), the range of evidence on staffing requests that follows demonstrates that the practice has gotten out of hand. Legislative micromanagement of the court system’s human resources raises the cost of justice in the Commonwealth, undermines overall productivity, and arguably demoralizes the court system’s many dedicated professionals.

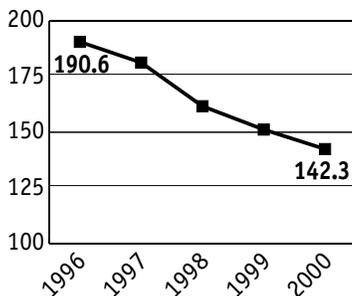
While this report does not assume that eliminating all patronage is possible (or even necessary), the practice has gotten out of hand.

Figure 2. Cost per case entry (total appropriations per annual case entries), 1996-2000 (\$)



Data: Annual Reports on the State of the Massachusetts Court System, 1994-2000.

Figure 3. Productivity (annual case entries per filled employee position), 1996-2000



Data: Case entries: Annual Reports on the State of the Massachusetts Court System, 1996-2000; filled positions: Internal Report, Trial Court Filled Positions, AOTC, report dated August 7, 2001. Data collected in July 2001.

Productivity

Every citizen knows that justice costs money. Jury service, obeying the law, supporting the police, and paying taxes all require sacrifice. Figure 2 depicts the most basic way of measuring the cost of justice: cost per case entry. In Massachusetts the cost of justice has been growing steadily. In 1996 state taxpayers paid \$278 per case entry. By 2000 the cost was \$405 per case entry, a 46 percent increase.

The cost increase is partly attributable to increased appropriations to improve technology and facilities. But, as figure 3 suggests, the main story behind this cost increase is declining productivity in the court system. Over just the four years from 1996 to 2000, the number of case entries per court employee dropped from 190.6 to 142.3, a decline of 25.3 percent. Put another way, it took 5.25 employees to deal with 1000 cases in 1996, while just four years later it took 7.02 employees.

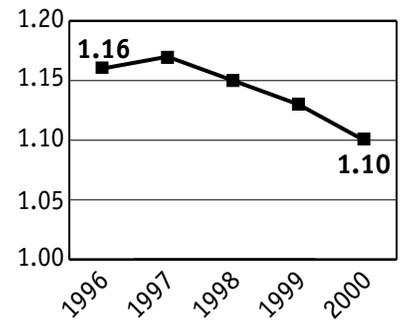
The cost of justice has been growing steadily. In 1996 state taxpayers paid \$278 per case entry. By 2000 the cost was \$405 per case entry, a 46 percent increase. The main story behind this cost increase is declining productivity in the court system.

This decline in productivity is especially striking given the gains of the 1990s' economy, which are widely ascribed to giant leaps in worker effectiveness. Despite upgrades in technology, the Massachusetts Judiciary has not enjoyed similar increases in productivity.⁷

Workload Goes Down, Budgets Go Up

This decline in productivity reflects a more basic fact: the Massachusetts court budget has increased while the judicial workload has shrunk. As figure 4 shows, the court's own summary of cases entered from 1996 to 2000 indicates a significant decrease in overall court business over the last five years. While in 1997, new case entries had risen slightly to 1.17 million, they then declined in each of the following three years. Annual case entries declined by 6.6 percent from 1996 to 2000.

Figure 4. Decline in total case-load (in millions), 1996-2000

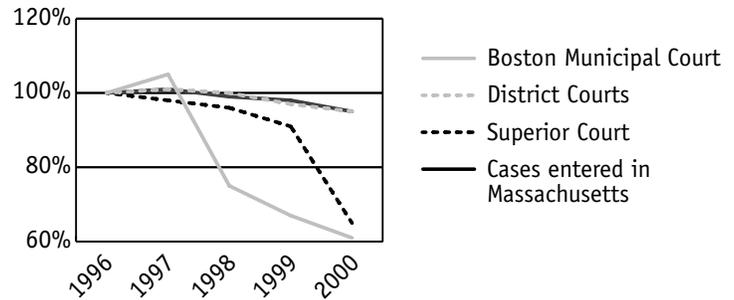


Data: Annual Report on the State of the Massachusetts Court System, 1996-2000.

This general decline in workload coupled with improved information technology would be expected to stabilize the court budget. But during these same years the overall court budget increased significantly.

The decline in cases holds true for three of the most visible departments in the Trial Court: the Boston Municipal Court (BMC), the District Court, and Superior Court. Figure 5 uses 1996 figures as the baseline to peg caseload changes through FY 2000. In addition to a steady decline in total cases,

Figure 5. Total cases entries relative to 1996, in the BMC, District Courts, Superior Court, and systemwide, 1996-2000



Data: Annual Reports on the State of the Massachusetts Court System, 1996-2000.

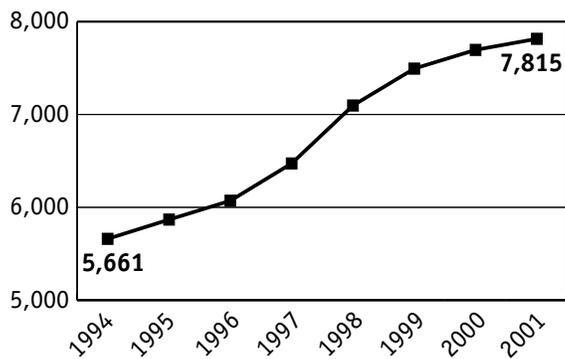
there was a precipitous drop in BMC and Superior Court case entries (both nearly 40 percent) over the last four fiscal years reported. (See appendix D for a breakdown of the case make-up for the BMC, the District Court, and Superior Court.)

This general decline in workload coupled with improved information technology would be expected to result in at least the stabilization of the court budget. But, as figure 6 shows, during these same years the overall court budget increased significantly. From FY 1994 to FY 2001, funding for the court system jumped from \$261.6 million to \$475.7 million, or 82 percent. In FY 2002 the budget request was for \$599 million, which represents a 129 percent increase from FY 1994.

Finally, these bigger budgets accompany a burgeoning of personnel in the court system. As figure 7 shows, employment shot up from 5,661 positions in 1994 to 7,815 in 2001, an increase of 38 percent. From 1996 to 2000, the years in which the number of case entries declined by 6.6 percent, the creation of new positions increased employment in the judiciary by nearly 27 percent.

It seems fair to conclude that the reason for the court's increasing budgets, and for its decreasing productivity, is the significant addition of staff with little or no regard for the volume of work to be done.

Figure 7. Employment growth (filled positions), 1994-2001

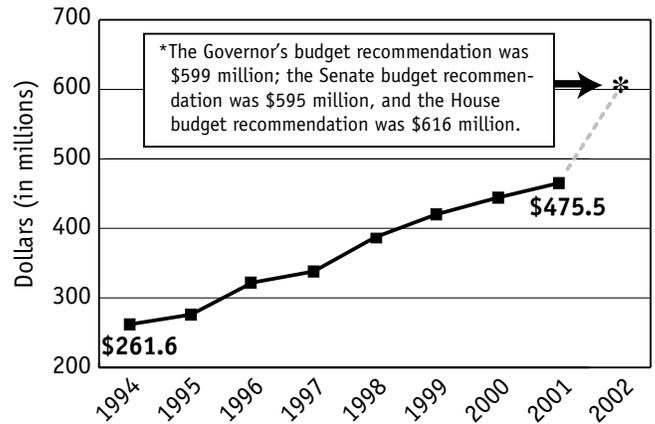


Data: 1994-2001: Internal Report, Trial Court Filled Positions, AOTC, report dated August 7, 2001. Data collected in July 2001

ants recommended a modest increase of only 159 positions. Instead, 2150 new positions have been created since 1992. It cited deployment of personnel as a serious problem but one under the “primary control” of the legislature.

This confirms a fundamental conflict of interest in the legislature’s control over specific personnel allocations through its use of the line-item budget. The pressure to secure good jobs for supporters prompts the creation of positions that court administrators have not requested. The need for direct access to these jobs overrides any serious consideration of their necessity, allowing patronage to trump planning.

Figure 6. Growth in funding, appropriations, 1994-2002 (millions of \$)



Data: Annual report on the State of the Massachusetts Court System, 1994-2000. 2002 House, Senate, and gubernatorial budget recommendations (for Supreme Judicial Court, Committee for Public Counsel Services, Appeals Court, Trial Court, Superior Court Department, District Court Department, Probate and Family Court Department, Land Court Department, Boston Municipal Court Department, Housing Court Department, Juvenile Court Department, and Office of the Commissioner of Probation): House No. 4101, May 7, 2001 (House, 4100, printed as amended); Senate No. 1901, June 13, 2001 (reprint of Senate, No. 1900 as amended); and House 1, Fiscal Year 2002.

While comparisons with the private sector are sometimes questionable given different goals and objectives, it is doubtful that a private corporation faced with a declining or stable business environment would double its operating budget and add large numbers of new employees. The legislature has continued to “grow the business” despite declining demand in the Trial Court. For example, in a comprehensive management study done for the court system and completed in 1993, Cresap Management Consult-

From 1996 to 2000, the number of case entries declined by 6.6 percent while employment the creation positions in the judiciary increased by nearly 27 percent.

INEQUITABLE RESOURCES

Disregarding the judiciary’s own requests costs more than money. The current allocation of the resources of the state’s court system to specific courts and regions is grossly inequitable. The following analyses have been grouped into court-specific and cross-county comparisons.

In fiscal year 2002 the Boston Municipal Court’s budget stood at \$8.57 million, or two and a half times the budget of the Springfield District Court, the state’s busiest district court.

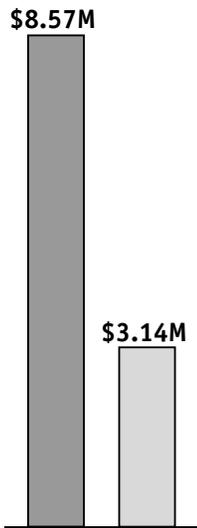
District Court Comparisons

The Boston Municipal Court vs. the Springfield District Court

Figures 8, 9 and 10 compare funding, employment, and caseloads in the Springfield District Court (SDC) to those in the Boston Municipal Court (BMC). In fiscal year 2002 the BMC’s budget stood at \$8.57 million, or two and a half times the budget of the SDC,⁸ which is the state’s busiest district court.⁹

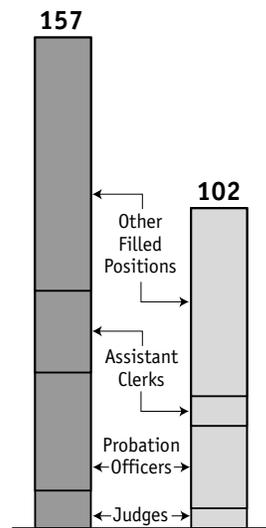
As figure 9 shows, the BMC has far higher staffing levels than the SDC. According to an internal report from AOTC on Trial Court Filled Positions, on July 2001 the BMC had 157 total filled positions while the SDC had 102.¹⁰

Figure 8. SDC and BMC budget, 2002 (millions of \$)



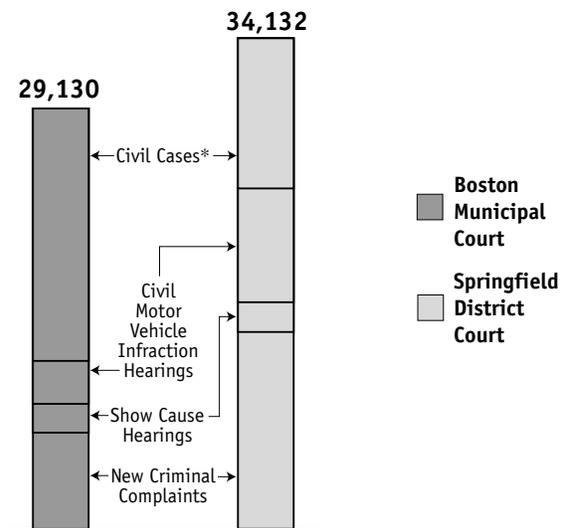
Data: Massachusetts Budget, 2002.

Figure 9: SDC and BMC employees, 2001



Data: Judges, probation officers and assistant clerks figures: 2002 Massachusetts Lawyers Diary and Manual Bar Directory, Newark, NJ: Lawyers Diary and Manual, 2002. Total filled positions as of July 2001: Internal Report, Trial Court Filled Positions, AOTC, report dated on August 7, 2001. Total filled positions as of July 2000: BMC: 164, and SDC: 105.

Figure 10: SDC and BMC caseload, 2000



Data: Annual Report on the State of the Massachusetts Court System – Fiscal Year 2000.

Note: For the BMC, the following cases are not included in the graph: small claims supplementary process (6,947), small claims jury appeals (48), civil supplementary process (264), removed before trial to superior court (147), removed after trial to superior court (16). For the SDC, “Other Civil” cases filed (57) are not included.

*Civil cases include regular civil, abuse prevention petitions, mental health petitions, civic remands, summary process, and small claims.

One would expect that a higher level of financial and human resources would be attributable to a higher workload. But even though it boasts 55 more employees, the BMC has fewer total and far fewer serious cases than the SDC. The BMC is essentially a district court with limited criminal business, but it remains a separate court department with its own Chief Justice and an administrative staff that rivals that of the Chief Justice of the District Court, who is responsible for the administration of 69 courts statewide, including seven in the City of Boston. The BMC's abundant resources speak more to its favored status than to need.

The BMC in 2000 has the lowest number of cases per staff member in the state.¹¹ This is reflected in the number of judges (12), probation officers (37), and assistant clerks (27) it employs. In contrast, the Springfield District Court (SDC), which has a significantly higher cases-to-staff ratio¹² and serves the entire City of Springfield and four surrounding communities, operates with six judges, 26 probation officers, and 10 assistant clerks. In fiscal year 2000, Springfield had 13,612 new criminal complaints (defendants), while the BMC had 6,630. Springfield held 2,157 show cause hearings, while the BMC held 2,033.¹³ Only 161 abuse prevention petitions and 117 mental health petitions were filed at the BMC in fiscal year 2000, while Springfield had 1,565 and 334 respectively. Springfield held 7,753 civil motor vehicle infraction hearing, while the BMC had 2,915.¹⁴

Criminal charges at the BMC also tend to be less severe than those in the busiest district courts. A comparative survey of criminal offense volume in fiscal year 1998 listed the BMC among the top ten courts in four less serious categories: disturbing the peace, destruction of personal property, larceny and fraud, and general miscellaneous cases. Springfield was in the top ten in 11 out of 13 categories. Worse still was the position of Worcester District Court, which was listed in every category and yet still had a budget of about half that of the BMC.¹⁵ (See appendix E.)

The disparities in financial and human resources mean that certain Massachusetts citizens are likely to experience fewer delays in the processing of their cases and a greater level of safety due to the better supervision of defendants. As a result, it is arguable that, by virtue of where they reside, some citizens are being denied equal protection of the law. Those served by the Springfield District Court, for example, are being shortchanged by a justice system that places substantially more resources in courts doing much less overall business and less in particularly sensitive categories like criminal, abuse prevention, and mental health cases.

A Closer Look at District Court Staffing

The story of staffing patterns unrelated to the specific needs and priorities of the system is not limited to the BMC. The following sections examine the results of the current budgeting/staffing process at the individual district court level by looking at the two most important offices, the office of clerk-magistrates and the probation office. The analyses will focus on key positions: assistant clerks and probation officers and the support staffs assigned to each office. As the numbers reveal, the entire district court system suffers from startling inequalities in the allocation of critical personnel.

The Boston Municipal Court's abundant resources speak more to its favored status than to need.

Those served by the Springfield District Court are being shortchanged by a justice system that places substantially more resources in courts doing much less overall business and less in particularly sensitive categories like criminal, abuse prevention, and mental health cases.

Startling inequalities in the allocation of critical personnel pervade the entire district court system.

The Clerk-Magistrate’s Office

Analyses are based on caseload-to-position ratios. We have made use of gross case volumes rather than a “weighted” caseload measurement that would attempt to estimate the work associated with specific case types because neither the court system nor academicians have settled on a correct methodology.

The clerk-magistrate together with the first justice and the chief probation officer decide on the annual budget request and plan for each court. While the first justice by statute is the administrative head of the court, in most instances management decisions are made in consultation with the heads of the other operating units. Since the judge spends much of his or her time on the bench hearing cases, many of the day-to-day operating decisions are delegated to the department heads. The clerk-magistrate and the assistant clerks manage the court dockets, civil and criminal. In addition, they are authorized to issue complaints, conduct show cause hearings, and preside at small claims sessions. They staff the sessions, record entries, and collect all case-related statistics. These staff members hold important, managerial positions and are paid accordingly. Clerk-magistrates are currently paid \$89,676, and assistant clerks earn \$68,280.

Table 2 compares caseloads and the number of assistant clerks at 14 district courts. Springfield and Worcester, the two busiest district courts, have 10 and 9 assistant clerks, respectively, a level equal to or less than the number in Cambridge (10) and Roxbury (12), district courts with half and even one-third of the caseload. New Bedford, Lawrence, and Lynn—all significantly busier district courts than Cambridge and Roxbury—have five each. Quincy, Brockton, and Dorchester have eight assistant clerks each, the same number as in West Roxbury, a court with half the caseload. Wareham, with a caseload comparable to that of Holyoke (if anything Holyoke has a more difficult caseload given its high proportion of criminal complaints), has seven assistant clerk positions while Holyoke has a mere two.

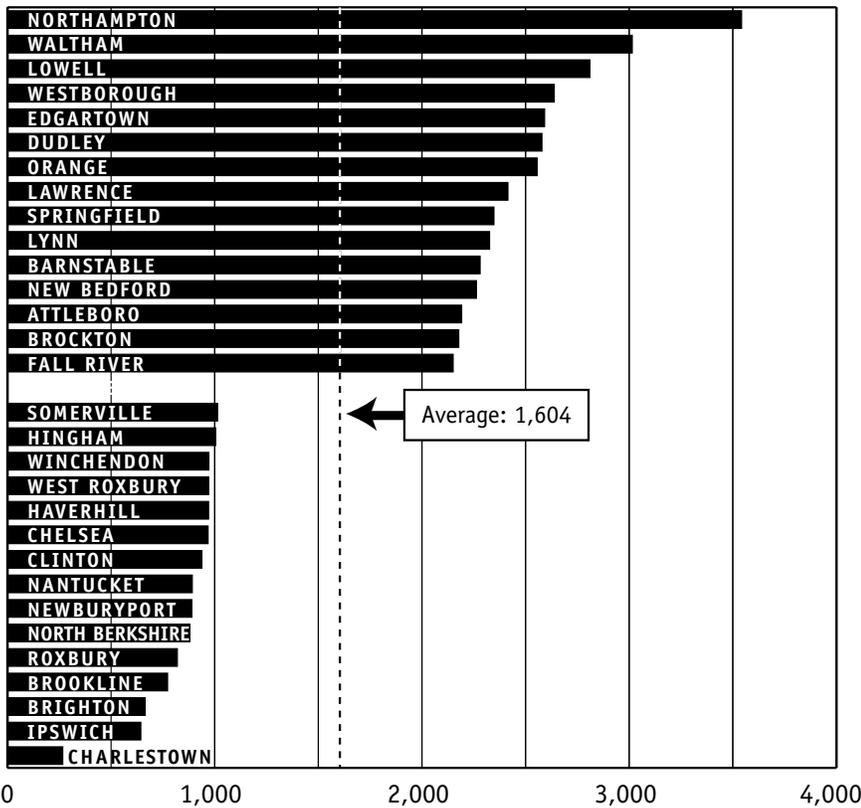
Table 2. Criminal and civil filings relative to assistant clerk positions, 2000

Court	Criminal Complaints Entered	Civil Filings	Total Filings	Assistant Clerks	
<i>Quincy, Brockton, and Dorchester have eight assistant clerks each, the same number as in West Roxbury, a court with half the caseload. Wareham, with a caseload comparable to that of Holyoke, has seven assistant clerk positions. Holyoke has two.</i>	Springfield	13,612	11,148	24,760	10
	Worcester	12,349	7,518	19,867	9
	Quincy	8,042	11,307	19,349	8
	Brockton	10,009	8,549	18,558	8
	New Bedford	8,734	8,414	17,148	5
	Dorchester	8,537	6,848	15,385	8
	Lawrence	8,618	5,809	14,427	5
	Lynn	7,032	6,392	13,424	5
	Cambridge	4,744	7,094	11,838	10
	Roxbury	6,637	2,256	8,893	12
	West Roxbury	4,456	3,984	8,440	8
	Chelsea	3,968	4,390	8,358	7
	Wareham	3,040	3,466	6,506	7
	Holyoke	4,675	1,781	6,456	2

Data: Annual Report on the State of the Massachusetts Court System 2000. Assistant clerk figures: Authorized District Court Assistant Clerkships as of July 2000, Internal Report, District Court Administrative Office.

Figure 11 shows extremes in the distribution of clerks and assistant clerks in the courts across the state in terms of the number of cases they deal with. On average, there are 1604 annual case entries per clerk and associate clerk, but this number ranges from a low of 267 in Charlestown to 13 times that in Northampton. With two courts above 3000 case entries per position, 20 courts above 2000, and 13 courts with under 1000, there is clearly no relation between the number of these positions and caseload. The upper half of

Figure 11. Annual case entries per clerk and assistant clerk, 1999



With two courts above 3000 case entries per position, 20 courts above 2000, and 13 courts with under 1000, there is clearly no relation between the number of clerk and assistant clerk positions and caseload.

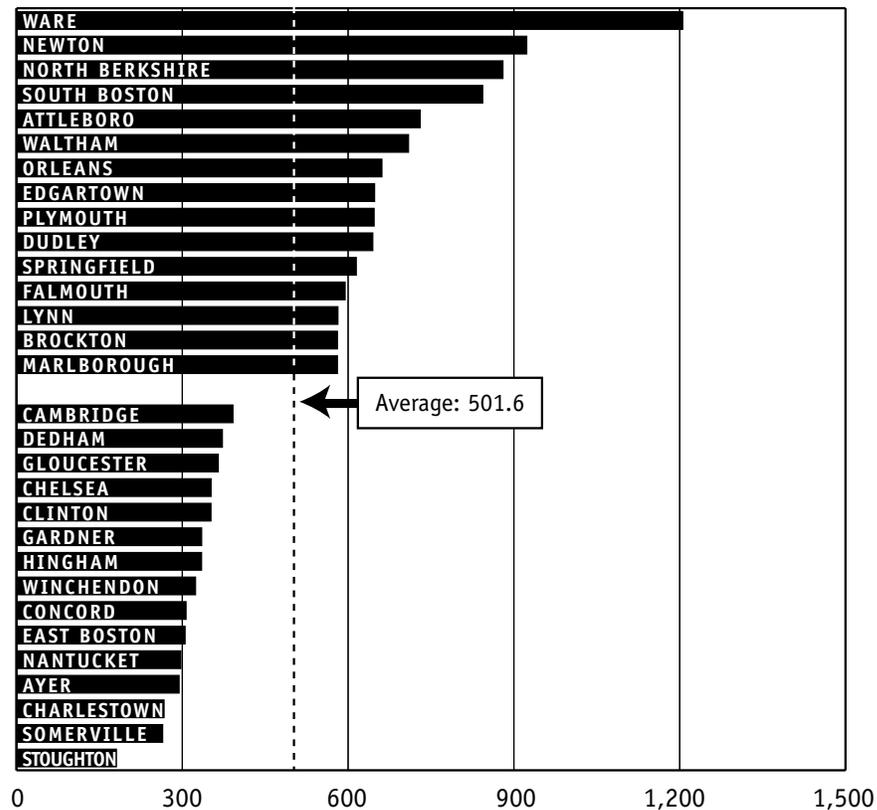
Data: Internal report, Comparison of District Court Total Case Entries and Clerk-Magistrate Office Support Staffing, FY 1999, Office of the Chief Justice of the District Court Department. Annual case entries include criminal complaints issued, small claims entered, abuse prevention orders, regular civil entered, and all other civil case types entered.

the chart represents the 15 most efficient (or understaffed) courts, with the number of case entries per clerk and associate clerk ranging from 2151 in Fall River up to 3543 in Northampton. The lower half of the chart represents the 15 most inefficient (or over-staffed) courts, with the number of case entries per clerk and associate clerk ranging from 1014 in Somerville down to 267 in Charlestown.

As is the case with the clerks themselves, great inequities exist in the clerical support staffing of the various Massachusetts courts. On average, there are 502 annual case entries per support position, but the number ranges from a low of 181 in Stoughton to nearly seven times that in Ware.

Of course, the clerk-magistrate and the assistant clerks alone do not do the work of the clerk-magistrate’s office. The clerks manage a support staff composed of secretaries, clerk typists, and record managers. As is the case with the clerks themselves, great inequities exist in the clerical support staffing of the various Massachusetts courts. Figure 12 shows extremes in the distribution of total clerk-magistrate support staff in the courts across the state in terms of the number of cases they handle.¹⁶ On average, there are 502 annual case entries per support position, but the number ranges from a low of 181 in Stoughton to nearly seven times that in Ware. With four courts above 800, 11 courts above 600, 16 courts under 400, and five courts under 300 case entries per staff position, there is again no relation between the number of support staff and the court’s caseload. The upper half of the chart represents the 15 most efficient (or understaffed) courts, with the number of case entries per clerk-magistrate support position ranging from 581 in Marlborough to 1206 in Ware. The lower half of the chart represents the 15 most inefficient (or overstaffed) courts, with the number of case entries per support position ranging from 392 in Cambridge down to 181 in Stoughton.

Figure 12. Annual case entries per clerk-magistrate support staff position, 1999

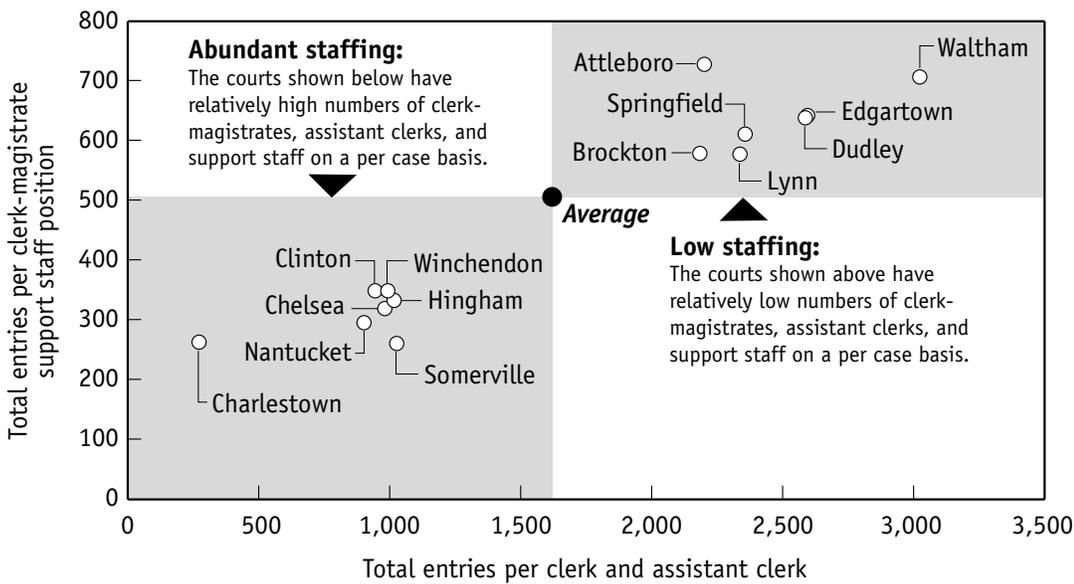


Data: Internal report, Comparison of District Court Total Case Entries and Clerk-Magistrate Office Support Staffing, FY 1999, Office of the Chief Justice of the District Court Department. Annual case entries include criminal complaints issued, small claims entered, abuse prevention orders, regular civil entered, and all other civil case types entered.

Figures 11 and 12 demonstrate that there is no systemwide correlation between clerk and clerical staffing at the individual court level. Still, some courts consistently have extra staffing at all levels, while other courts consistently do with less. Figure 13 cross-references figures 11 and 12. In the upper right quadrant are the courts with the highest number of entries both per clerk-magistrate support staff position and per clerk and assistant clerk. In the lower left quadrant are the courts with the lowest number of entries both per clerk-magistrate support staff position and per clerk and assistant clerk. Among the urban district courts, Springfield and Brockton are consistently understaffed across these two position categories, while Chelsea, Charlestown, and Somerville are overstaffed. Among suburban district courts, Attleboro and Waltham do more work with less total staff in the clerk-magistrate’s office, while Winchendon, Hingham, and Nantucket have less work and far more positions.

There is no systemwide correlation between clerk and clerical staffing at the individual court level.

Figure 13. Extreme workload-to-staffing ratios, case entries per clerk-magistrate office position, 1999



Data: Internal report, Comparison of District Court Total Case Entries and Clerk-Magistrate Office Support Staffing, FY 1999, Office of the Chief Justice of the District Court Department. Annual case entries include criminal complaints issued, small claims entered, abuse prevention orders, regular civil entered, and all other civil case types entered.

Probation Office

The probation office is charged with providing information to the judge and enforcing the court’s dispositions. Each court has a chief probation officer who manages the entire office and its staff, conducts community outreach, and oversees compliance with performance standards. Probation officers meet with probationers in the court; they perform regular site visits at probationers’ homes and workplaces, oversee the testing of probationers, and record their progress or lack thereof. They also initiate and prosecute probation surrenders.

Maintaining accurate probation information, often including reports from other courts, mental health experts, and alcohol or drug and domestic violence programs, requires significant clerical support. Without adequate supervision, probationers can avoid being held accountable for failing to comply with terms designed to punish, control behavior, and promote rehabilitation. If the clerk-magistrate’s office manages the business of the court, the probation department is the guardian of its credibility.

If the clerk-magistrate’s office manages the business of the court, the probation department is the guardian of its credibility. As is the case in the clerk-magistrate’s office, considerable disparities exist in probation office staffing across the state.

As is the case in the clerk-magistrate’s office, considerable disparities exist in probation office staffing across the state, indicating the need for more reasoned human resource management. Table 3 highlights the probation offices in four district courts—Dorchester, New Bedford, Quincy, and Worcester—as examples. In fiscal year 1999 New Bedford had nearly 1.4 percent more criminal complaints than Quincy District Court, and yet New Bedford had 18 probation officers compared to Quincy’s 25 and 10 probation clericals to Quincy’s 32 clericals. With 57.4 percent more criminal complaints (5,000 more in raw terms) than Dorchester, Worcester had 36 percent fewer probation officers and 10 percent fewer probation clericals.

Table 3. Criminal complaints entered and probation office staff, 1999

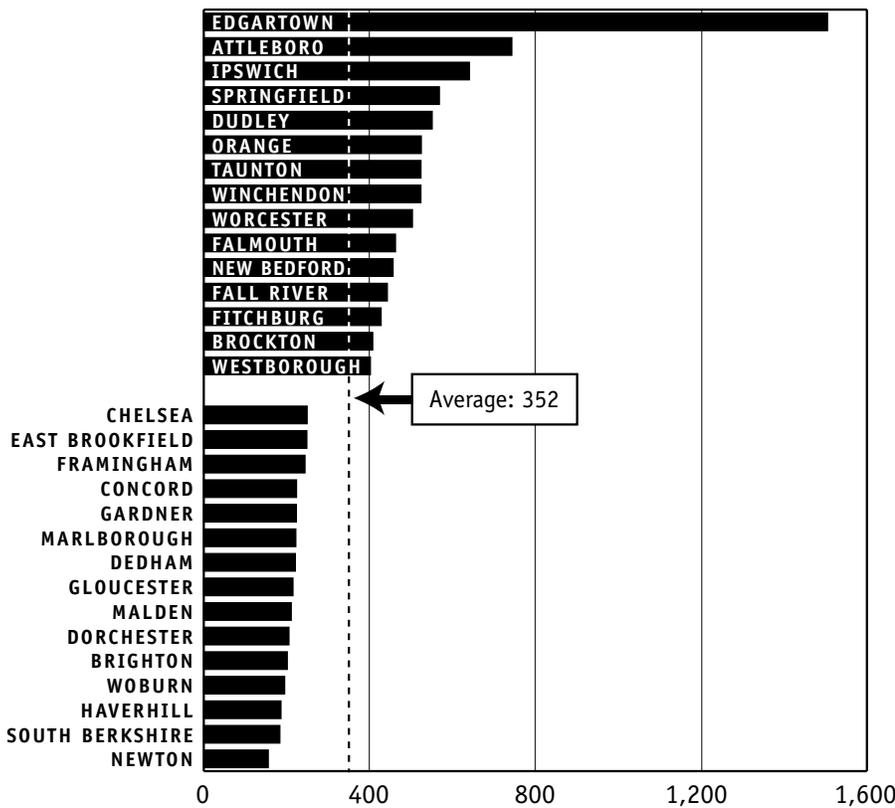
Court	Criminal Complaints Issued	Probation Officers	Probation Clericals
Worcester	13,595	27	18
Dorchester	8,636	42	20
New Bedford	8,223	18	11/10
Quincy	8,110	25	32

Data: Internal report, Comparison of District Court Criminal and Abuse Prevention Orders Issued and Probation Office Support Staffing, FY 1999, Office of the Chief Justice of the District Court Department.

Note: In 1999 New Bedford had only 10 probation positions filled out of the 11 mandated.

Figure 14 shows extremes in the allocation of probation officers in terms of the number of criminal complaints entered at their respective courts. On average, there are 352 annual criminal complaints per probation officer, but the number ranges from a low of 156 in Newton to over nine times that in Edgartown. With three courts above 600, nine courts above 500, fifteen courts above 400, 28 courts under 300, and four courts under 200 complaints per officer, no relation obtains between the number of officers and the court’s workload. The upper half of the chart represents the 15 courts with the highest number of complaints per probation officer, with the range running from 402 in Westborough up to 1505 in Edgartown. Either these courts are staffed by highly efficient probation officers or they are, relatively speaking, understaffed. The lower half of the chart represents the 15 courts with the lowest number of complaints per officer, with the range running from 249 in Chelsea down to 156 in Newton. These courts are the most inefficient or overstaffed in the state.

Figure 14. Criminal complaints per probation officer, 1999



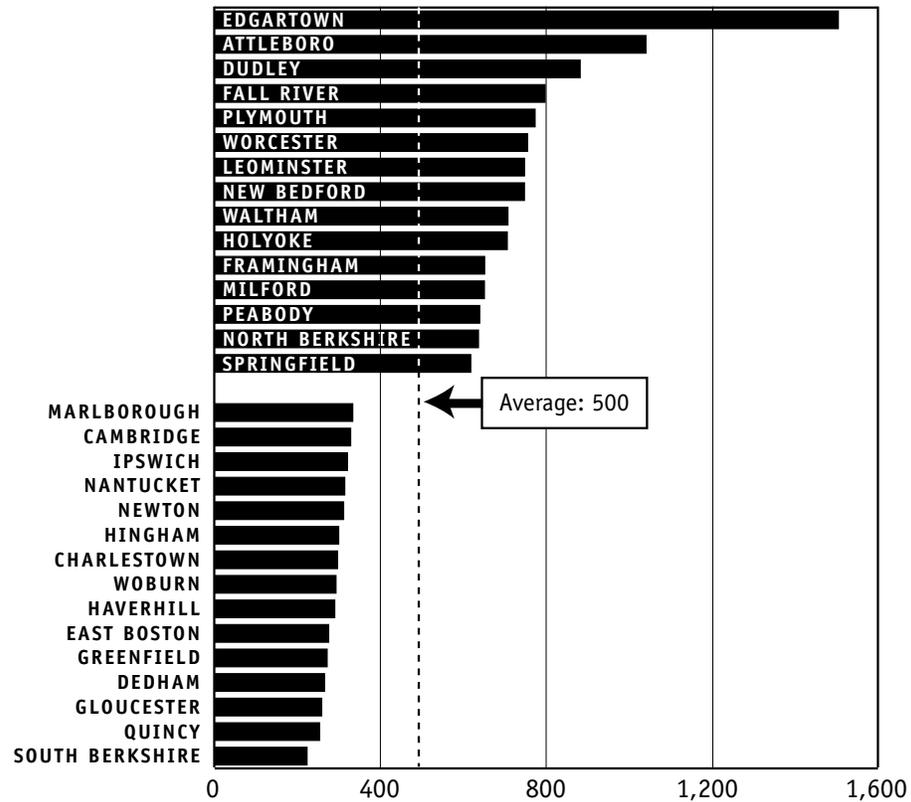
The upper half of the chart represents the 15 courts that are staffed by highly efficient probation officers or are, relatively speaking, understaffed. The lower half lists the 15 courts that are staffed by the least efficient probation officers or are overstaffed.

Data: Internal report, Comparison of District Court Criminal and Abuse Prevention Orders Issued and Probation Office Support Staffing, FY 1999, Office of the Chief Justice of the District Court Department.

Similar discrepancies exist in the allocation of probation support personnel throughout the state. The number ranges from a low of 223 in South Berkshire to nearly seven times that per position in Edgartown.

Similar discrepancies exist in the allocation of probation support personnel throughout the state. Figure 15 depicts the extremes in the distribution of probation support staff in terms of the number of criminal complaints they handle.¹⁷ On average, there are 500 annual criminal complaints per probation support position, but the number ranges from a low of 223 in South Berkshire to nearly seven times that per position in Edgartown. With 10 courts above 700, 16 above 600 and 10 under 300 complaints per staff position, there is again clearly no relation between the number of staff and the court’s workload. The upper half of the chart represents the 15 most efficient (or understaffed) courts, with the number of complaints per probation support position spanning from 618 in Springfield up to 1505 in Edgartown. The lower portion of the chart represents the 15 most inefficient (or overstaffed) courts, with the number of complaints per support position ranging from 333 in Marlborough down to 223 in South Berkshire.

Figure 15. Criminal complaints per probation support staff position, 1999

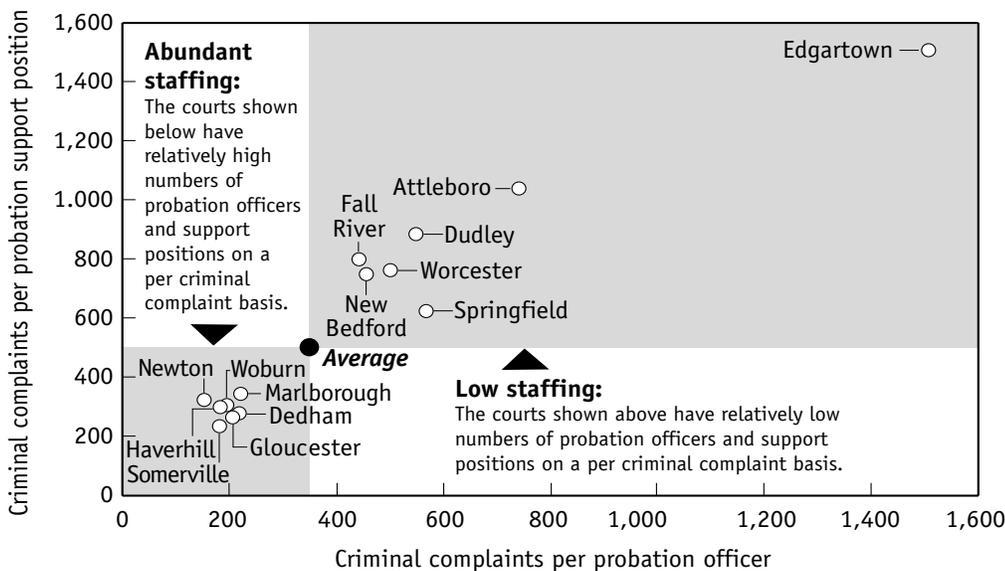


Data: Internal report, Comparison of District Court Criminal and Abuse Prevention Orders Issued and Probation Office Support Staffing, FY 1999, Office of the Chief Justice of the District Court Department.

As with clerk-magistrate offices, there is no correlation between high numbers of probation officers and a large probation support staff at the individual court level. But, again, some courts do manage to get more in all probation position categories, while other courts consistently fall short. Figure 16 cross-references figures 14 and 15. In the upper right quadrant are the courts with the highest number of criminal complaints both per probation officer and per probation support staff position. Springfield and Brockton, for example, are two urban communities that are staffed at consistently lower levels than average—and have far lower staffing levels than, for example, urban communities like Chelsea or Somerville. In the lower left quadrant are the courts with the lowest number of complaints relative to both position categories.

Springfield and Brockton are two urban communities that are staffed at consistently lower levels than average—and have far lower staffing levels than urban communities like Chelsea or Somerville.

Figure 16. Extreme workload-to-staffing ratios, criminal case entries per probation office position, 1999



Data: Internal report, Comparison of District Court Criminal Complaints and Probation Office Support Staffing, FY 1999, Office of the Chief Justice of the District Court Department.

A comparison of the Boston Municipal Court to Taunton District Court underscores the point. In fiscal year 2000, the BMC had only 6,630 criminal complaints and 161 abuse petitions, about the same total as Taunton in 1999. Yet the BMC now has 34 probation officers and 16 clerical employees in the probation department, while Taunton had 11 probation officers and 10 clerical employees. Certainly it is true that almost all courts have received more staff in recent years. But the relative inequalities, in both probationary and clerical offices, are still simply too great to ignore.

In 2000, the Boston Municipal Court had about the same total of criminal complaints and abuse petitions as Taunton District Court in 1999. Yet the BMC now has 34 probation officers and 16 clerical employees in the probation department, while Taunton had 11 and 10, respectively.

Finally, it is worth highlighting courts in tourist destinations like Edgartown, which experience seasonal spikes in the number of both civil cases and criminal complaints they deal with. Providing the court system with greater leeway to transfer personnel across individual courts, even temporarily, would promote a more efficient distribution of resources.

Countywide Comparisons

This section compares Suffolk County District Courts, defined as the eight district courts (including Chelsea) plus the BMC, to the 12 district courts in four western counties: Hampden, Hampshire, Franklin, and Berkshire counties.

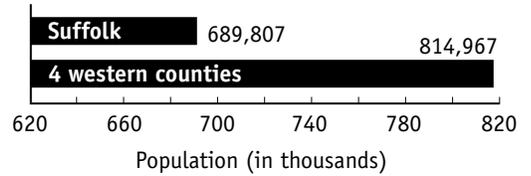
At the county level, a comparison of the population, financial and human resources, and caseloads in Suffolk County to the same data in the four western counties (Hampden, Hampshire, Franklin, and Berkshire) prompts the same conclusion. As figure 17 shows, Suffolk County has about 125,000 fewer people than the total population of the four western counties.¹⁸

Yet, as figure 18 shows, in 2002 the BMC and the eight district courts in Suffolk County received almost twice the funding for the cumulative total as the 12 district courts in the western counties.¹⁹

Figure 19 indicates that there is a similarly lopsided distribution of human resources between Suffolk County and the four western counties' district courts. A fiscal 2002 comparison of employment in the BMC/Suffolk County District Courts to employment in the district courts of the four western counties reveals that the former have 90 more probation officers, 56 more assistant clerks, and 65 more clericals.²⁰

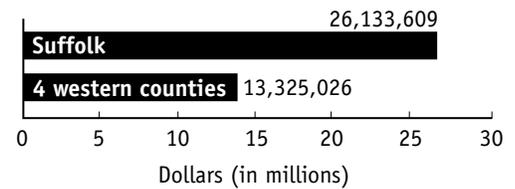
These differentials in budget and staffing are not in response to a larger caseload. Figure 20 compares the criminal and civil caseloads in Suffolk County district courts to those in district courts in the four western counties. The total criminal caseload at the BMC and the district courts of Suffolk County in fiscal 2000 was 36,956 compared to 38,754 in the western counties' district courts. Small claims cases for the same period totaled 14,160 for Suffolk County and 16,230 for the western counties. Civil motor vehicle infractions, which like small claims are heard by assistant clerks, totaled 32,482 in Suffolk County and 29,364 in the four western counties.

Figure 17. Population in four western counties vs. Suffolk County, 1999 (100s of thousands)



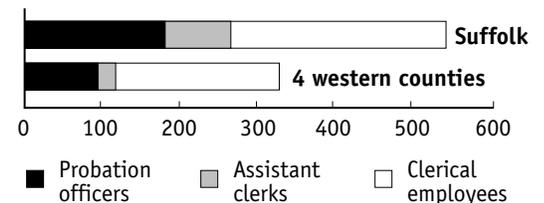
Data: U.S. Census Bureau, www.quickfacts.census.gov/qfd/states/25/25003.html.

Figure 18. District court budgets, four western counties vs. Suffolk County, 2002 (millions of \$)



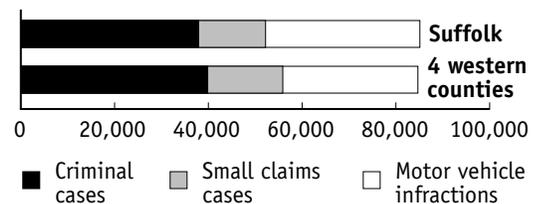
Data: Massachusetts budget, 2002.

Figure 19. Probation officers, assistant clerks, and clericals in four western counties vs. Suffolk County, 2001



Data: 2002 Massachusetts Lawyers Diary and Manual Bar Directory, Newark, NJ: Lawyers Diary and Manual, 2002. District Court Records, 2001

Figure 20. Caseload in four western counties vs. Suffolk County, 2000



Data: Annual Report on the State of the Massachusetts Court System, 2000.

In 2002 the Boston Municipal Court and the eight district courts in Suffolk County received almost twice the funding as the cumulative total for the 12 district courts in the western Massachusetts counties of Hampden, Hampshire, Franklin, and Berkshire.

Suffolk County District Courts do, in fact, substantially more civil business than the four western counties, which explains to some extent the different levels in staffing and funding. The enormity of the resource disparity, however, can only be understood as a result of the mechanism by which funding is distributed. Given that in the past decade many legislative leaders have come from Suffolk County, it should be no surprise that the county's courthouses in particular and greater Boston courts in general have benefited disproportionately from the legislature's largesse.

Similarly, at the superior court level, the Suffolk Superior Court budget is just over \$9 million, while the superior courts in the four western counties receive a total of \$2.9 million. Suffolk Superior Court had 46 assistant clerks while the four superior courts in the western counties have 13, even though in fiscal 2001 Suffolk Superior Court had 347 fewer criminal complaints, which require more attention, and 76 percent more civil cases entered than in the western counties.²¹ The number of probation officers was more equitable, with the Suffolk County Superior Court having 18, while the superior courts in Berkshire, Franklin, Hampden, and Hampshire Counties had a total of 21.²²

The fundamental cause of this administrative inadequacy is the state legislature's direct interference in court management.

THE ROADS TO INDEPENDENCE

Today the Commonwealth's judicial branch is plagued by declining productivity, stalled leadership, and inequities in the allocation of personnel. These problems all arise from the administrative impotence of the Trial Court. The fundamental cause of this administrative inadequacy is the state legislature's direct interference in court management, an interference manifested by its perennial dismissal of the court administration's budget requests. There are alternatives.

A Rational, Systemwide Staffing Model

As long as the Massachusetts legislature mandates and allocates most court personnel positions through its use of the line-item budget, the court cannot take its rightful role as a responsible and accountable third branch of state government. Clear lines of administrative authority that cut across department boundaries and reach into each courthouse must be established and enforced. Judicial leaders must be able to assure the legislature and the public that staffing decisions are based on a sound formula that determines the system's needs in a fair and reliable manner. Among staffing formulas that might be used are the following two:

- A **"weighted caseloads" formula** calculates workload on the basis of caseloads and case types. This approach, used in several states to determine the need for judges, takes into account "the differences in case mix...and make[s] it easier to determine the extent to which caseload equals workload."²³ By 1993, sixteen states "forecast caseloads as part of their effort to determine judgeship needs."²⁴ And there is no reason that such a formula could not be applied to other personnel. "Work measurement formulas as an objective means of determining the number of supporting personnel" are used by the federal system for all court personnel; these formulas assist administrators in determining the level of funding necessary to keep up with varying workloads.

There are alternatives to the legislature's mandating and allocating most court personnel positions through its use of the line-item budget.

The use of performance or policy-based budgeting would allow the judicial and legislative leadership to cooperate in an effort to identify goals of the court system and to assure adequate funding to meet those goals.

- **Policy-based budgeting** takes into consideration systemwide policy, performance evaluation, and cost analysis to determine staffing and funding needs. This is a more sophisticated “process that involves the precise identification of public policy objectives, delineation of the means and resources for accomplishing them, and an accurate account of court departments’ accomplishments.”²⁵ This complex system is designed to permit “funding sources to make decisions concerning the expenditure of public funds by contemplating a particular level of performance for the courts’ ancillary and non-adjudicatory functions.”²⁶ Such a model was developed in the operations study issued by Cresap Management Consultants in 1993, but it has not been implemented. Whatever form it takes, the explicit use of performance or policy-based budgeting would allow the judicial and legislative leadership to cooperate in an effort to identify goals of the court system and to assure adequate funding to meet those goals.

Both managerial tools would allow for more rational determination of funding and staffing needs than is possible under the court-by-court funding and personnel management of the legislature. Reasonable standards of organizational management are necessary to demonstrate that judicial funding requests are based on a plan rather than a whim. As an advisory committee to the National Center of State Courts, composed of judges and court administrators, wrote, “Judicial independence will be guaranteed less by mandate than by enhancing court managerial credibility to the point where the other branches will accord a wide latitude to courts in financial and budgetary management.”²⁷

Reconsidering Judicial Leadership

The judicial branch has been remarkably restrained in its efforts to achieve parity despite the significant issues at stake. The judiciary’s inability thus far to voice its need for independence has a number of causes, among them fear of retaliation and court leaders’ apparent discomfort in exercising their “political” role. Comfortable in the controlled atmosphere of the courtroom, where rules and process provide order and purpose and decisions are based on the merits, some judicial leaders find the unstructured world of public administration and politics daunting. In addition, the other branches have had more than two centuries to evolve and develop as independent partners in governance. The third branch is only now emerging from its adolescence, trying to define itself and gain the confidence necessary to fill the complex role of full partner.

The judiciary should make a conscious effort to promote to its command judicial leaders who have administrative and political experience.

But administrative strength is what the judiciary needs most at this time. Even strong, confident, and experienced court administrators find it next to impossible to bring some order out of the chaotic heritage of what was until 1978 a county-bound system. To build its administrative strength the judiciary should make a conscious effort to promote to its command judicial leaders who have administrative and political experience. A strong judicial leader must be political not in order to cut private deals with the legislature but to guard the line that separates the branches, ever mindful of the prerogatives of those branches and their respective leaders and ready to deflect incursions that could erode the inherent powers of the courts.

Creating an Office of External Affairs

At the same time, the judiciary needs to guard against its tendency toward insularity. The state of Connecticut has developed a tool to maintain communication with the other branches, while also regulating that communication in the interest of the whole system rather than letting individual judges cut court-specific deals with the legislature. Through the Office of External Affairs (OEA), Connecticut's Chief Administrative Justice interacts with the legislature on court-related issues, alerts legislators to significant programs or events planned in local courts, and invites their participation. This outreach permits legislators to share in the development and launching of useful and politically beneficial programs, while acknowledging the legislators' stake in what may be the most important public institution in their districts. Giving public credit both to individual legislators and to the legislature as a whole for improvements in the judicial system serves to counteract the discomfort that can develop when judges appear too remote. "Legislators and executive branch officials (often) regard this as a sign of arrogance."²⁸

In Connecticut, the Office of External Affairs also acts as a reasonable control on patronage in the judicial system. In a system where judges and clerks are appointed, sponsorship is unavoidable. "Judges like to think of themselves as the nonpolitical branch of government but know this is pure fantasy."²⁹ Patronage is an inescapable part of popular government, but if regulated justly it need not be a liability. The OEA's legislative liaisons keep the House of Delegates informed of job opportunities and accept recommendations of qualified candidates. Giving due consideration to sponsored candidates does not erode judicial independence, nor is it inconsistent with the system's obligation to be fair, provided the job is necessary, the candidate is qualified, and other qualified candidates are not excluded from consideration.

Patronage is an inescapable part of popular government, but if regulated justly it need not be a liability.

RECOMMENDATIONS

Resolving the problems discussed in this report will require both legislative action and internal judicial reforms. Ultimately, reforms should encourage a strong administrative authority within the Trial Court in exchange for greater accountability. The legislature should act as follows:

- **Protect the administrative independence of the judiciary** by appropriating judicial branch funds in the form of one single line item for the entire system or a line item for each department. Through its use of literally hundreds of budget line items, the legislature has incapacitated effective judicial administration. The judiciary's independence hangs upon the elimination of court-by-court budgetary micromanagement. Releasing the judicial branch from administrative bondage would advance the process the legislature itself began in 1978 and fulfill an implied promise, that the judiciary would at last become an independent branch of government. If the legislature does not modify the present funding mechanism, it will continue to retard the judiciary's development and undermine its reputation for fairness. Though critical, this step is hardly extreme. Most other states fund their courts through single or limited line items.

The judiciary's independence hangs upon the elimination of court-by-court budgetary micromanagement.

The judiciary should be accountable to the legislature, just as executive agencies and other recipients of appropriations are.

In addition, in Massachusetts, many executive agencies enjoy a single budgetary line item. The judiciary—an equal to the legislature and the executive in our tripartite form of government—should at the very least be accorded the same level of budgetary freedom given to executive offices.

- **Sharpen the legislature’s role in the setting of priorities and oversight.** By the same token, the judiciary should be accountable to the legislature, just as executive agencies and other recipients of appropriations are. For example, the House Committee on Post Audit and Oversight exercised its powers recently by correctly criticizing the judicial branch’s use of information technology funds. Legislators and their agents should meet regularly with judicial leaders to discuss the goals of the judicial branch and apply to the courts sound performance measures to hold those leaders accountable for outcomes.
- **Give the AOTC clear authority to shift personnel and funds both within and between departments.** Such a grant of authority would permit court administrators to respond to the current fiscal crisis by moving personnel from overstuffed to understaffed courts and distribute more evenly existing resources. “Doing more with less” is likely to be the mantra of state government for the foreseeable future. As the Cresap study found, the Trial Court has enough personnel; unfortunately many are in the wrong places.

Judicial leaders need to work with the legislature in a constructive manner to promote accountability within the judiciary. The judiciary should implement the following internal reforms:

- **Ensure the public trust** by adopting a rational, systemwide staffing model. Once freed from political micromanagement, the judiciary must show that it will make staffing decisions on the basis of sound staffing formulae, ones that determine the system’s needs fairly and reliably. The “weighted caseloads” approach and policy-based budgeting should both be considered as options. Such managerial tools would allow the judiciary to persuade the public and its representatives that legislative mismanagement will not be replaced by judicial mismanagement.
- **Require broad qualifications of judicial leaders.** If the judiciary is to be an equal branch of government, it must
 - promote to command positions judges who have administrative and political experience
 - give every consideration for administrative positions to non-judicial, professional managers, as often happens in other states.

The judiciary must show that it will make staffing decisions on the basis of sound staffing formulae, ones that determine the system’s needs fairly and reliably.

In addition, it would be appropriate for judicial leaders to improve their ability to communicate with *and* be responsive to concerns of the Commonwealth’s elected officials. This report does not assume that all employment recommendations from elected officials are frivolous. Many outstanding court employees have had legislative sponsors. If regulated justly, sponsorship need not be a liability and can in fact bring to the judiciary suitable job candidates. To aid in maintaining the openness of the court, the Commonwealth’s judicial branch should consider creating an Office of External Affairs similar to that in Connecticut.

CONCLUSION

Implementing these recommendations would put the judicial house in order—an end worthy in itself—and improve the relations between the Trial Court and the General Court, thereby perfecting Massachusetts’ tripartite form of government. Given the political nature of the problems—and recommendations—outlined in this report, we recommend the assembling of a constitutional convocation to discuss and define the proper relations between the three branches, with a special view to identifying and reconciling the needs of the judiciary and of the legislature. This convocation could take the form of an independent, inter-governmental commission, composed of leaders from the three branches along with constitutional scholars and administrators who could provide expert advice. Honest dialogue would no doubt be the best way to resolve the underlying political difficulties.

We recommend assembling a constitutional convocation to discuss and define the proper relations between the three branches, with a special view to identifying and reconciling the needs of the judiciary and of the legislature.

ENDNOTES

¹ “The judiciary particularly benefits from this concept of countervailing power, because the judiciary, in comparison to the executive and legislative branches, is the weakest component of government and needs a constitutional shield to preserve judicial independence,” according to Robert W. Tobin of the National Center For State Courts in *Creating The Judicial Branch: The Unfinished Reform* (Williamsburg, VA: National Center for State Courts, 1998), 10.

² The seven departments, which continue to this day, are Boston Municipal Court, District Court, Family and Probate Court, Housing Court, Juvenile Court, Land Court and Superior Court. Localism was largely rooted out of the court system (except for the BMC), but it is still partitioned into statutory enclaves of limited jurisdiction. The structural unity of the Massachusetts court is, then, only partial.

³ From the principle of the separation of powers, advanced in *O’Coins*, flows another, that of inherent powers. This principle holds that the judicial branch has the right to exercise whatever powers are necessary to perform its essential functions. While that right is generally recognized and accepted by the other branches as it applies to the court’s adjudicative functions, it has not been accepted by the legislature as applied to “court governance.” By establishing a state-funded system with a central administrative structure in 1978, the legislature gave birth to the judicial branch as a single, unified entity charged with managing itself. See Felix F. Stumpf, *Inherent Powers of the Courts: Sword and Shield of the Judiciary* (Reno, Nevada: National Judicial College, 1994), 31.

⁴ Robert W. Tobin, *Creating the Judicial Branch: The Unfinished Reform* (Williamsburg, VA: National Center for State Courts, 1998), 44-45.

⁵ Based on materials assembled by David Steelman, Principal Court Management Consultant, National Center for State Courts, from discussions with Robert Tobin and the information in Table 17 in *State Court Organization 1998* (Washington, DC: Bureau of Justice Assistance, U.S. Department of Justice, June 2000), NCJ 178932.

⁶ The costs break down to \$7.6 million in 1998, \$11.7 million in 1999, \$14.7 million in 2000, and \$19.4 million in 2001.

⁷ The analyses are based on created rather than filled positions. It is worth noting that the budgets include money for positions created but not filled at the time of data collection. For example, in 2000, 7696 out of the 7817 created positions were filled. In 2001, 7815 out of 8003 created positions were filled. 2001 employment numbers taken from Internal report, Fiscal Year 2002 Funding Comparisons as of March 9, 2001, column “FY 2001 Spending Plan,” subcategory “Positions.” 2000 employment numbers obtained by subtracting positions mandated in the FY 2001 budget. AOTC Internal memo.

⁸ In fiscal year 2002 the budget for the district court of Springfield was \$3,140,660, while the budget for the Boston Municipal Court was \$8,568,913.

⁹ In FY 2000 the SDC was one of the state’s busiest courts, handling 24,703 total cases (criminal and civil cases entered, not including “other civil” cases). *Annual Report on the State of the Massachusetts Court System*, Fiscal Year 2000.

¹⁰ Internal report, Trial Court Filled Positions, AOTC, dated August 7, 2001.

¹¹ In FY 2000 the BMC had a cases-per-staff-member ratio of 149.33 (on the basis of 24,490 total cases, which includes criminal cases entered and the following civil caseloads: civil remand, regular civil, summary process, small claims, and abuse prevention petitions filed). If one includes show cause hearings held, civil motor vehicle infractions hearings held and mental health petitions, the ratio increases to 180.21 cases per staff member (on the basis of 29,555 total cases). In 2000 the BMC had 164 filled positions.

¹² In FY 2000 the SDC had a cases-per-staff-member ratio of 235.27 (on the basis of 24,703 total cases, which includes criminal complaints entered and the following civil caseloads: civil remand, regular civil, summary process, small claims, supplementary process filed, and abuse pre-

vention filed). Other civil cases are not included (total: 57). In 2000 the SDC had 105 filled positions.

¹³ There may be minor redundancy in including show cause hearings. Criminal complaints are the result of either an arrest summons or a show cause hearing. Clearly, not all show cause hearings result in the issuance of a criminal complaint; many do not. We include show cause hearings because the number of these hearings is an important measure of a court’s activity. They are also labor intensive since an assistant clerk is assigned to hear each case and when a complaint is denied, the complainant has the right to appeal for a hearing before a judge.

¹⁴ Some would argue that the BMC carries a heavier regular civil caseload than any district court. It is true that between small claims, summary process, and regular civil cases, the BMC received 17,435 new cases in fiscal 2000, while Springfield had 8,768. The BMC has citywide civil jurisdiction and often for the convenience of counsel, civil matters are brought downtown to the BMC. But the high raw number of civil defendants is misleading, because a large proportion of these defendants default, thereby reducing the workload. For example, according to a July 23, 1998 report to the Chief Administrative Judge, there is “an eighty-five percent default rate among Small Claims defendants” in the BMC.

¹⁵ Also a very busy district court, Worcester has four judges, 29 probation officers and nine assistant clerks.

¹⁶ The analysis is based on total clerk magistrate support staff positions, rather than filled positions.

¹⁷ The analysis is based on total rather than filled probation support staff positions.

¹⁸ County population figures for 2000: Berkshire 134,953; Franklin 71,535; Hampden 456,228; Hampshire 152,251; or 4 counties 814,967. Suffolk County population amounted to 689,807.

¹⁹ In fiscal 2002, the BMC and the eight district courts in Suffolk County (including Chelsea) received \$26,133,609, while the 12 district courts in the western counties received \$13,325,026. The 12 district courts in the four western counties are North Adams, Pittsfield, Great Barrington, Greenfield, Orange, Chicopee, Holyoke, Palmer, Springfield, Westfield, Northampton, and Ware. The eight district courts included in Suffolk County are Brighton, Charlestown, Chelsea, Dorchester, East Boston, Roxbury, South Boston, and West Roxbury.

²⁰ In fiscal 2002, the district courts of Suffolk County and the BMC have a total of 177 probation officers, 80 assistant clerks and 275 clericals, while the district courts in the four western counties have 87 probation officers, 24 assistant clerks, and 210 clericals.

²¹ Suffolk SC budget: \$9,002,013; four western counties budgets: \$2,928,134. Criminal complaints entered in FY01: Suffolk: 952; Hampshire: 114; Hampden: 887; Franklin: 85; Berkshire: 213. Civil cases entered in FY01: Suffolk: 5,619, Hampshire: 283; Hampden: 1,200; Franklin: 146; Berkshire: 410 Source: Superior Court Department, fiscal year 2001 statistics, criminal caseload analysis and civil caseload analysis.

²² Berkshire County had 3 probation officers, Franklin 2, Hampden 14, and Hampshire 2. These data do not include chief probation officers.

²³ Victor E. Flango, Brian J. Ostrom, and Carol R. Flango, “How Do States Determine The Need For Judges?” in *State Court Journal*, Summer/Fall 1993, 9.

²⁴ *Ibid*, 10.

²⁵ John A. Bozza, “Performance-based Budgeting: Performance and Fiscal Accountability in the Courthouse,” in *The Justice System Journal*, Volume 20 Number 1 (1998), 63-93.

²⁶ *Ibid*.

²⁷ R.W. Tobin and K.G. Pankey, Jr., *Managing Budget Cutbacks* (Williamsburg, VA: National Center for State Courts, 1994), ix.

²⁸ Tobin, *Creating the Judicial Branch*, 47.

²⁹ *Ibid*.

Appendix A: Trial Court Budget Preparation, Review, and Line Items

APPENDIX

Table A-1 summarizes the preparation, review, and extent of the line item budget for the judicial branch in states (other than Massachusetts) that provide substantial funding to courts through state appropriations.

Table A-1. Trial court budgets in states with substantial state-level funding for courts (excluding Massachusetts)

State/Territory	Who Prepares Budget?	Who Does Judicial Branch Review?	Extensive Line Item Budget for Judicial Branch?
Alabama	AOC	AOC	No
Alaska	AOC	COLR	No
California	AOC	AOC and COLR	No
Colorado	AOC	COLR	No
Connecticut	AOC	AOC	No ^a
Delaware	Individual Courts	CJ through AOC	No
District of Columbia	AOC	Joint Committee on Judicial Administration	No
Hawaii	Individual Courts	AOC	No
Iowa	AOC	COLR	No
Kentucky	AOC	COLR	No
Maine	AOC	AOC	No
Maryland	AOC	AOC	No
New Hampshire	AOC	COLR	No
New Jersey	AOC	AOC	No
New Mexico	Individual Courts	Chief Judges Council	Yes ^b
New York	AOC	AOC	No
North Carolina	AOC	AOC	No
North Dakota	AOC	COLR	No
Oregon	Individual Courts	AOC	No
Puerto Rico	AOC	AOC	No
Rhode Island	Individual Courts	AOC	No
South Dakota	AOC	COLR	No
Utah	Individual Courts	Judicial Council	No
Vermont	AOC	COLR	No
Virginia	AOC	AOC	No
West Virginia	AOC	COLR	No

AOC = State-level Administrative Office of the Courts

COLR = Court of Last Resort

CJ = Chief Justice of Court of Last Resort

^a About 15 percent of the Connecticut Judicial Department budget is earmarked by the Legislature for specific programs.

^b In New Mexico, the legislature requested in 2001 that a single unified budget be submitted for all general-jurisdiction trial courts, rather than having to set priorities among line items for individual courts.

Data: Based on materials assembled by David Steelman, Principal Court Management Consultant, National Center for State Courts, from discussions with Robert Tobin and the information in Table 17 in *State Court Organization 1998* (Washington, DC: Bureau of Justice Assistance, U.S. Department of Justice, June 2000), NCJ 178932.

Appendix B: Miscellaneous Figures

Table B-1 is a restatement of table 1 in the body of the report, except that table B-1 calculates the disparities between positions mandated by the legislature and those requested by the AOTC on the basis of where the mandated positions do and do not match up with the judiciary’s court-specific requests. This is a more reasonable manner of calculation, as the court system’s authority to reallocate personnel resources is limited.

Table B-1. Court-specific positions mandated but not requested by the Administrative Office of the Trial Court, 1998-2001

	1998	1999	2000	2001	Present Starting Salary
Assistant Clerks and Registers	21	47	23	31	\$68,280
Probation Officers	23	17	31	16	\$41,008
Associate Probation Officers	176	4	3	13	\$29,335
Court Officers	2	3		41	\$37,107

Table B-2 exhibits the House and Senate recommendations for new positions in 2002, comparing them to requests from the judiciary.

Table B-2. Judicial, House, and Senate position recommendations, 2002

<u>Assistant Clerks and Registers</u>			<u>Probation Officers</u>		
R	H	S	R	H	S
1	19	17	26	14	20
<u>Associate Probation Officers</u>			<u>Court Officers</u>		
R	H	S	R	H	S
0	0	1	61 ^a	0	0

R = Positions requested by the Judiciary
 H = Positions recommended by the House
 S = Positions recommended by the Senate

^a Includes 25 assistants of court officers.
 Data: Internal Reports and Massachusetts budget.

Appendix C: Budget Appropriations from FY 1998 to FY 2002 Benefiting Registers of Probate

- Suffolk Probate Community Outreach administered by the Register of Probate increases over 55% between 1998 and 2002 from \$150,000 to \$233,500 including an increase this year (FY 2002) of \$33,500. Note: The Community Outreach program, a separate line item in the budget, has an appropriation for FY 2002 exceeding the line item appropriations for Dukes Probate and Family Court (\$230,022) and Nantucket Probate and Family Court (\$174,632).

Increase = \$83,500
- Fiscal Year 2000 budget outside sections created a new position, that of Administrative Deputy Register, in four counties: Essex, Franklin, Suffolk, and Worcester (one position in each county except Suffolk, which received two positions). Five First Justices wrote to the legislative leadership in opposition to the creation of these new positions. Salary for each position is \$63,700 totaling \$318,500 for five positions. These positions are the appointments of the Registers of Probate and appointees may be removed at the pleasure of the Register.

Total Cost = \$318,500
- Fiscal Year 2001 budget outside sections expanded the creation of the new Deputy Administrative Register positions adding two additional positions, one each in Barnstable and Hampshire Counties. These positions are appointments of the Registers of Probate. The total is now seven Administrative Deputy Registers. With an initial salary for each position of \$63,700, these seven positions cost a total of \$445,900 each year.

Total Increase = \$127,400
- Fiscal Year 2001 budget outside sections provided for the change in authority designating Deputy Assistant Registers from First Justice to Register of Probate in Suffolk County only. This section also provides for the appointment of one additional Deputy Assistant Register by the Register of Probate with a stipend of 15% of the Register’s salary or \$13,301.48 in addition to that employee’s regular salary. These designations are now also terminated at the will of the Register.

Total Cost = \$13,301.48
- Fiscal Year 2002 budget outside sections create a new designation, that of Associate Deputy Register in Suffolk County only. Legislation provides for five such designations with a stipend (in addition to the employee’s regular salary) of 7.5% of the Register’s salary or \$6,650.74. Total cost for the five designations will be \$33,253.70 when funded.

Total Cost = \$33,253.70
- Fiscal Year 2002 budget outside sections provide for a salary increase for the recently created Administrative Deputy Registers to 83.5% of the Register’s salary. The salary will be increased from \$63,700 to \$74,044.88, an increase of \$10,344.88. The total increase in salaries for the seven existing positions will be \$72,414.16 when funded. The total annual cost of these seven positions at the newly increased salary is \$518,314.16.

Total Increase = \$72,414.16

Total annual cost to the taxpayer resulting from legislation benefiting Registers of Probate from FY 1998 to FY 2002: ***Total Annual Increase = \$648,369.34****

*Does not reflect expenditures for employer contributions to medical and life insurance and other administrative expenses.

Appendix D: Breakdown of the Case Make-up for the Boston Municipal Court, the District Courts, and the Superior Courts

Figure D-1: Summary of cases entered in the Boston Municipal Court, 1996-2000

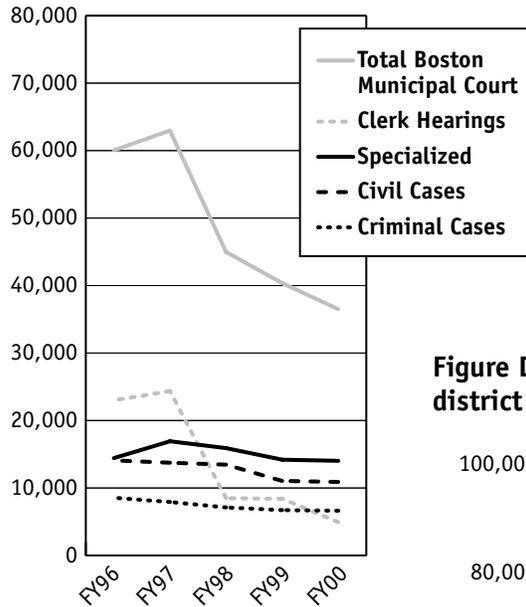


Figure D-2: Summary of cases entered in the district courts, 1996-2000

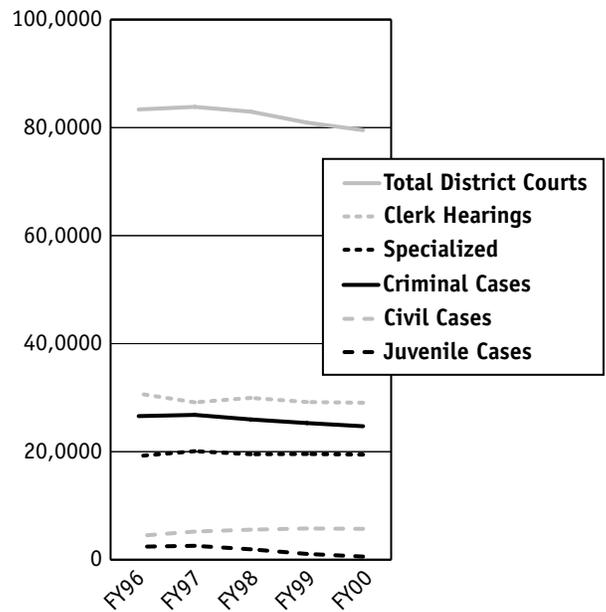
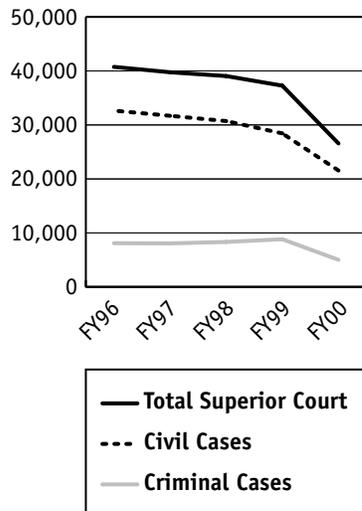


Figure D-3: Summary of cases entered in the superior courts, 1996-2000



Data for each graph: Annual Reports on the State of the Massachusetts Court System, 1996-2000.

Appendix E: Seriousness of Caseload

Understanding with absolute precision the workload entailed by specific caseloads is not possible. Some reasonable observations, however, can be made. Total civil and criminal caseloads and charges are one indication. Table E-2 shows the top ten district

Table E-1. Total criminal case-load and charges

Court	Total Cases	Charges
Worcester	13,722	26,405
Springfield	11,463	28,282
Brockton	10,203	21,933
Lowell	9,465	17,834
Dorchester	9,155	17,315
Lynn	8,787	17,478
Quincy	8,677	17,643
Roxbury	7,913	14,231
New Bedford	7,704	20,131
Lawrence	7,525	17,053

courts in terms of criminal caseloads in 1998. For this and the following graphs, we use 1998 data, the most specified data obtainable. Worcester and Springfield have the greatest amount of work by this measure, as they do when calculating the workload by the number of charges. Although it is a court with far more funding and human resources than any of the other courts, the BMC does not even appear on the list.

Probably more illustrative is a comparison of criminal charge volumes by category. While some argument is possible as to the difficulty of civil case types, on the criminal side, of the 13 case types provided by the AOTC, clearly assault, narcotics, firearms, and breaking and entering charges are among the most challenging, labor-

intensive criminal charges. Tables E-2 through E-5 show the district courts with the highest number of criminal charges in the categories of assault, narcotics, firearms, and breaking and entering. Springfield tops the list in two categories and is present in all four. The BMC does not place in the top ten on any of the measures.

Table E-2. Assaults

Court	Total Charges
Lowell	4,427
Worcester	4,357
Brockton	3,626
Lynn	3,421
New Bedford	2,979
Fall	2,809
Dorchester	2,788
Roxbury	2,713
Springfield	2,547
Lawrence	2,210

Table E-3. Narcotics

Court	Total Charges
Springfield	4,220
Worcester	3,106
Roxbury	2,878
Dorchester	2,834
New Bedford	2,589
Lawrence	2,476
Lynn	2,097
Brockton	2,047
Lowell	1,924
Holyoke	1,630

Table E-4. Firearms

Court	Total Charges
Springfield	409
Brockton	234
Roxbury	199
Dorchester	191
New Bedford	181
Worcester	163
Lawrence	133
Lowell	92
Uxbridge	82
Lynn	78

Table E-5. Breaking and Entering

Court	Total Charges
Worcester	1,430
Lawrence	715
Roxbury	594
Springfield	582
New Bedford	548
Brockton	537
Lowell	503
Fall River	486
Lynn	458
Dorchester	428

As a cursory reading of tables E-6 through E-14 shows, Worcester is present in all 13 categories, and Springfield is present in 11. The BMC is present in four. Only in one category (destruction of property charges) does the BMC place higher than Springfield.

Table E-6. Disturbing the Peace and Disorderly Conduct

Court	Total Charges
Worcester	2,216
Springfield	1,164
Brockton	1,064
Lawrence	965
BMC	951
Roxbury	817
Lowell	701
New Bedford	655
Attleboro	650
Fall River	625

Table E-7. Destroying Personal Property

Court	Total Charges
Lynn	824
Worcester	657
New Bedford	644
Brockton	549
BMC	539
Springfield	458
Dudley	453
Lawrence	447
Lowell	442
Dorchester	366

Table E-8. Larceny & Fraud

Court	Total Charges
Quincy	3,222
Worcester	3,156
New Bedford	3,080
Brockton	3,025
Lawrence	2,299
Springfield	2,173
BMC	2,169
Barnstable	2,022
Holyoke	1,929
Taunton	1,837

Table E-9. Operating Under the Influence

Court	Total Charges
Quincy	1,135
Northampton	822
Woburn	793
Worcester	767
Barnstable	667
Wareham	658
Springfield	642
Attleboro	594
Taunton	520
Plymouth	511

Table E-10. Motor Vehicle Homicide

Court	Total Charges
Wareham	49
New Bedford	23
Pittsfield	9
Wareham	8
Palmer	7
Taunton	7
Worcester	7
Fall River	6
Lynn	6
Malden	6

Table E-11. Serious Motor Vehicle

Court	Total Charges
Quincy	933
Fall River	905
New Bedford	869
Taunton	766
Attleboro	750
Wareham	651
Worcester	641
Brockton	638
Springfield	570
Charlestown	526

Table E-12. All Other Motor Vehicle Charges

Court	Total Charges
Springfield	9,665
Worcester	7,610
Brockton	7,304
Quincy	6,578
Lowell	6,443
New Bedford	6,356
Dorchester	6,075
Lawrence	5,820
West Roxbury	5,814
Lynn	5,271

Table E-13. Non-Support Charges

Court	Total Charges
Lawrence	155
Pittsfield	64
Haverhill	38
Chelsea	36
West Roxbury	29
Worcester	27
Roxbury	24
Malden	22
Lowell	20
Greenfield	16

Table E-14. All Other

Court	Total Charges
Springfield	5,848
Worcester	2,359
Dorchester	2,427
Lynn	2,293
Brockton	2,192
Quincy	1,874
New Bedford	1,793
BMC	1,728
Northampton	1,592
Plymouth	1,408

Another indication of workload is the total civil caseload. As table E-15 shows, in 1998 the BMC's nominal total of civil cases was far higher than that in other district courts. The BMC had 21,796 total civil cases compared to 11,231 in Springfield, and under 10,000 total civil cases in Quincy, Lowell, Waltham, New Bedford, Brockton, Newton, Worcester, and Fall River. But, again, the civil caseload numbers provided by the BMC tend to be "soft" since so many of them result in defaults, settlements, or are otherwise resolved. The explosion of private and out-of-court mediation and arbitration is evidence of the overstatement of the caseload. (See endnote 14.)

Table E-15. Ten top district court civil caseloads, including the BMC, 1998

Court	Civil Remands	Regular Civil	Summary Process	Small Claims	Supplementary Process	Abuse Prevention	Total
Boston Municipal Court	962	12,495	184	7,678	320	157	21,796
Springfield	31	2,842	193	6,003	729	1,433	11,231
Quincy	25	2,174	1,261	4,643	790	1,086	9,979
Lowell	40	1,933	802	4,056	568	1,834	9,233
Waltham	4	866	318	7,218	240	426	9,072
New Bedford	100	1,238	112	5,157	225	1,198	8,030
Brockton	247	1,804	273	3,861	522	1,186	7,893
Newton	5	6,081	128	1,330	145	185	7,874
Worcester	88	2,180	61	3,746	548	795	7,418
Fall River	96	1,135	107	4,481	263	1,055	7,137

Data: Annual Report on the State of the Massachusetts Court System, 1998.

Note: Not included in the caseload total for the BMC are 24 mental health cases and 226 removals; for the district courts "other civil cases" are not included.

ABOUT THE AUTHOR



James W. Dolan is a graduate of Boston University, Boston College, and Boston College High School. He has been a member of the Massachusetts bar since 1965. A District Court Judge for over 26 years, Attorney Dolan spent 20 years at the Dorchester District Court, where he served as First Justice. He later served as Acting First Justice of Lynn, West Roxbury, Roxbury and New Bedford District Courts. Attorney Dolan also served as Regional Administrative Judge for the Greater Boston Region. In 1999, his colleagues and the Massachusetts Judges' Conference honored him with the award of District Court Judge of the Year. He received the Boston Bar Foundation Public Service Award in 1991 for his work in the Dorchester District Court.

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