

ROTATION RIPE FOR REFORM

**THE REPORT OF THE BOSTON BAR ASSOCIATION COMMITTEE ON THE
SUPERIOR COURT CIRCUIT SYSTEM**

December 2003

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Executive Summary

Criticism of the Superior Court Circuit System is not new. The frequent rotation of Superior Court judges throughout different sessions of the Court has been described as an anachronism, a system lacking accountability and an inefficient use of scarce resources. The Circuit System is an inherited creature deeply ingrained in the culture of the Superior Court; one would not purposely design today a system where as many as nine different judges preside over different aspects of a case during its pendency.

Nearly all those who discuss the circuit system, including its supporters, recognize that the system is ripe for improvement. Because of the significance of the system to the culture of the Court and the lack of easily available data to measure performance, changes to the system may be implemented incrementally, but those changes should be significant. The Task Force notes that recently, the Chief Justice has increased use of judicial teaming and lengthened certain minimum sittings in some counties, as well as encouraged the increased use by judges of email and telephone conferences. The Task Force applauds the Chief's ongoing efforts to continually seek to improve the system.

After careful consideration of input from the bench, the bar and Court administration, the Task Force concludes that the system as currently configured results in inefficiencies that outweigh the system's advantages. The advantages of the rotation of judges include the avoidance of even the appearance of judicial entrenchment or "fiefdoms," and the exposure of judges to different types of cases and different lawyers. However, the circuit system imposes real costs on litigants and on the efficiency of the Superior Court as a whole. The disadvantages of the system include lost time at the beginning and end of each rotation, the need for multiple judges to educate themselves about a single case (particularly those cases requiring significant attention during the pretrial stage), inconsistent case management and approaches to discovery, delays in pretrial rulings and difficulty in obtaining reliable trial dates.

The Task Force's recommendations suggest modifications of the current system that are intended to retain as many of its advantages, and to minimize as many of its disadvantages, as possible. Individual recommendations are designed to promote greater accountability, more efficient use of scarce resources, improvement in management structure, and, most importantly, improvement in the quality of justice for all concerned. Because it cannot be known with certainty whether our proposals will achieve these desirable outcomes, some of our recommendations could be implemented on a pilot or experimental basis and then evaluated to determine if they have had the desired effect or if other changes should be made. Fear of failure should not prevent experimentation.

The Task Force believes that the needs of the different counties make a one-size-fits-all approach to judicial assignments impractical. In addition, the Chief Justice must retain flexibility to meet the changing and emergency needs of the system. The Task Force believes that all of its recommendations may be implemented by the Chief Justice of the Superior Court without legislative action.

A baseline recommendation of the Task Force is that, if a circuit system is to be maintained, the duration of sittings should be significantly increased over current

practice. In the long run, we believe that a system of permanent assignments in the majority of courts is worthy of detailed consideration. The specific recommendations set forth below are designed, in part, to test the viability of permanent or extended assignments and, in part, to address what we believe to be the minimum steps that should be taken in the short run to address the weaknesses of the circuit system as currently implemented.

The Task Force recommends:

1. The Superior Court should establish a pilot program in six sessions of the Court: four civil and two criminal sessions. One judge should be assigned to each of those sessions for a two-year period and should be fully responsible for the management of the cases in that session during that period. Similar “control group” sessions operating under the current system, or a judicial teaming system (see below) should be placed alongside the pilot sessions, and the effectiveness of the two approaches should be evaluated objectively (where possible) and subjectively.
2. The duration of a judge’s sitting in any one session should be extended significantly to minimize the inefficiencies created by judicial rotation. No judge should serve in a session for less than four months. This minimum sitting requirement will reduce the amount of lost time due to transitions.
3. Judicial teaming should be used to minimize disadvantages of the present system. Judges who follow one another through the same sessions will provide greater consistency in case management and increased judicial memory. They will be less likely to leave behind for a teammate difficult or time-consuming work.
4. Assignments should be based on the needs of the overall system rather than primarily on seniority. The Chief Justice and the RAJs should be free to make assignments based on criteria that take into account the system’s needs, such as a judge’s abilities and skills, administrative and subject matter experience, judicial preferences, needs of the sessions, availability and geographic circumstances.
5. A system of judicial districts should be created, each with its own RAJ, which would replace the present county-based system. Judges should rotate only within a single district. As presently configured, the RAJ’s role in the managerial structure is limited. A RAJ cannot exercise managerial control over a specific group of judges because judges move in and out of the jurisdiction of that RAJ, often on a monthly basis. To provide a structure for assisting the Chief Justice in setting goals and for measuring performance against those goals, each RAJ should have management responsibilities for one judicial district and for the group of judges assigned to that district. Individual judges should rotate only within the same district. The districts might be

determined geographically or might be organized by the use of some other criterion.

6. The Court should identify and monitor performance metrics, including analyzing relevant, simple and uniform data as a key component of improvement and change. These metrics can gauge any improvements of the proposed modifications to the system.

Introduction¹

I. The Circuit System, Past and Present

At the time of the creation of the Superior Court in 1859, the case volume did not warrant Superior Court sittings throughout Massachusetts on a permanent basis. The shire towns, which housed the Superior Court, were often one day's ride apart. A relatively small number of judges "rode circuit" in order to cover the geographic needs of the system, spending each month in a different county. Criminal cases took priority, and two civil juries tried civil cases, often several cases in one day. The judges continued civil cases that were not ready for trial until the next sitting in that county, which could take place six months or a year later.²

Today, 83 Superior Court judicial positions are authorized by statute, and there are 73 available courtrooms located in seventeen separate courthouses throughout the Commonwealth. Twenty-seven of these courtrooms are assigned to criminal sessions, 41 to civil sessions, and five to mixed or "swing" sessions.³ Superior Court judges reside throughout the Commonwealth.

An examination of the frequency of rotation within the present system will assist the reader in understanding the current circuit system. In 2002, on average, 5 different judges presided over each twelve-month session of the Superior Court. As many as 9 judges presided over a single session. In 2002, there were a total of 479 judicial assignments.⁴ Of those, 300 were one-month sittings, 88 were two-month sittings, 58 were three-month sittings, and 33 were sittings of four months or more. In other words,

¹ The Task Force is indebted to and would like to thank the following individuals for their hard work and input providing invaluable factual background, research, survey response analysis and tireless effort to this endeavor: Dana Leavitt, Patrick Quirk, Kara Millonzi, Barbara Chuang, Dianna Lamb, Bonnie Sashin and Justyn Baxley.

² Hiller B. Zobel, "The Circuit System: Musings of a Reverent Iconoclast," Boston Bar Journal, January/February 1986.

³ In simple terms, a "criminal session" is a courtroom devoted to a set of criminal cases. A civil session is a courtroom devoted to a set of civil cases.

⁴ A "judicial assignment," as used above, is a consecutive period of time during which a judge remains in a session. These data treat a return by a judge to the same session in a non-consecutive month as a separate assignment. Assignment periods are rounded to full months. Historical data were supplied by the Superior Court.

across the Commonwealth, approximately 63% of the assignments were for one-month sittings, and 81% were for one- or two-month sittings.⁵

In 2003, there were a total of 477 judicial assignments. Of those, 276 were one-month sittings, 102 were two-month sittings, 63 were three-month sittings, and 36 were sittings of four months or more. Consistent with the prior year, approximately 58% of the assignments were for one-month sittings, and 79% were for one- or two-month sittings.

The two largest counties taken together have some greater consistency in sittings, although the percentages of one- and two-month sittings are still significant. For Suffolk and Middlesex combined, 2002 saw 161 total assignments, with 44% of the sittings in those counties as one-month sittings, and 65% as one- or two-month sittings. In 2003, out of 158 total assignments, the percentage of one-month sittings in Suffolk/Middlesex was 34% and the percentage of one- and two-month sittings out of total assignments was 59%.

II. The Task Force's Mission And Work

As part of a sweeping and independent examination of management in the Massachusetts Judiciary, the widely publicized Monan Commission Report⁶ outlined several recommended steps for creating a culture of high performance and accountability within the judicial system. One of those recommendations addressed the Superior Court Circuit System. It said: “[t]hough we have not considered the organizational makeup of the Courts as part of our charge, there is one organizational unit within the system that has special importance for performance management. That segment is the Superior Court circuit system.” See Monan Report at 29. The Monan Report suggested that the present circuit system of assigning judges by seniority, and for as little as a month at a time, has valid historical roots but significant current drawbacks. According to the Monan Report, Superior Court judges often hear only parts of an ongoing case, and cases frequently have to be rescheduled to accommodate judge changeovers. The system makes it difficult to assign work equitably. The hardest working and most efficient judges carry an undue burden.⁷ To improve measurement and management of performance, the Monan Report

⁵ A one-month sitting was defined as a judicial assignment in which a judge sat in a session for one month only, including situations in which a judge was assigned for only part of one month (e.g., Weeks 2, 3, 4) and was the only judge assigned to that session. The one-month sittings also included situations in which a judge was assigned for one week only, but was the only judge assigned to that session in that month. Where two judges were assigned to the same session in a given month and “split” the session, the assignment was counted for the judge who sat longer (e.g., where Judge X sat for Week 1 only, and Judge Y sat for Weeks 2, 3, 4 only, the assignment was counted for Judge Y). Where two judges “split” a session in half (each sitting two weeks), the session was counted as a one month sitting. The exception to this rule was where one of the judges “splitting” the session was either continuing to sit from the previous month or was continuing to sit in the following month. In those situations, the “split” session was counted for the judge who was continuing, and it was noted with the other month’s assignment as a two-month sitting.

⁶ Reference is to the Report to Chief Justice Margaret Marshall by the Visiting Committee on Management in the Courts, dated March 2003 (hereafter, the “Monan Report”).

⁷ Monan Report at 29-30.

recommended “[t]he Courts should either abolish the circuit system entirely, rotate judges in teams to create shared accountability or, at a minimum, assign judges for periods of no less than one year.”⁸ The BBA Litigation Section commented that: “We support the view raised in the Report that the circuit system in the Superior Court is an anachronism and should be abolished or modified to permit greater continuity of judges in pending cases.”⁹

Because of the enormous importance of the Superior Court system, Boston Bar Association President Joseph Kociubes assembled a Task Force on the Superior Court Circuit System. In his letter of introduction to the Task Force members, Joseph Kociubes stated, in part, “While I believe that it is appropriate to review the Circuit System with an eye toward determining whether changes, if any, should be made, the issue is sufficiently complicated that the topic merits its own careful analysis.” This cautionary introduction was prophetic. The circuit system can only be considered in the context of other issues relating to the structure and resources of the Superior Court. An evaluation of the circuit system is complicated; accurate and balanced analysis can be elusive.

The Task Force convened for the first time in May 2003 and has met biweekly since then. In addition to the information-gathering work described below, the Task Force has invited knowledgeable persons to its meetings, has researched the practices in other jurisdictions and has reviewed past analyses of the circuit system. Because the Task Force’s experience is largely in civil matters, we consulted with criminal practitioners and experienced prosecutors, as well as judges, on issues relating to criminal cases within the circuit system.

The circuit system is only one aspect of an interrelated set of challenges that face the Superior Court. Changes cannot be made to the circuit system in a vacuum. And changes to the circuit system are only one step among several that would improve the efficiency of the courts and the quality of justice that they provide. The Court is faced with a crisis in resources. Continued funding of the Superior Court at current levels has imposed nearly impossible burdens on court personnel at all levels.¹⁰ The courts are hampered by illogical management structures and inadequate management information systems. However, the fact that improvements are needed in other areas does not suggest that an inefficient judicial assignment system should continue.

⁸ Monan Report at 30.

⁹ The Senate Ways and Means Committee’s proposed budget for Fiscal 2004 contained proposals mirroring those of the Monan Report aimed at court reform, and included one measure that would have extended to one year the minimum period during which Superior Court judges would preside in a session. See Massachusetts Lawyers Weekly, June 2, 2003, “Senate Committee’s Budget Released.”

¹⁰ To illustrate, while there are 82 Superior Court judges, there are only 38 law clerks, all of whom are first-year clerks. While there are 73 Superior Court sessions each day, there are only 52 Official Court Reporters. The transcript backlog exceeds twelve months. There are presently 25 Probation Officer vacancies. Secretarial support for judges is very limited. As these data suggest, the demands on the system exceed the resources allocated to meet those demands. For a more detailed discussion of the current crisis in resources facing the Superior Court, see Appendix 1, “Budget Reductions, Court Facilities Issues and The Impact on the Superior Court,” prepared by the Superior Court.

Information Gathered by the Task Force

I. Surveys and Interviews

The Task Force conducted surveys of (1) current and former associate judges of the Superior Court; (2) clerk/magistrates of the Superior Court; and (3) attorneys and district attorneys with experience in the Superior Court. The survey asked respondents, in a variety of ways, to identify the strengths and the weaknesses of the circuit system, and sought recommendations for ways to improve the system. Along with the respondents' opinions and suggestions, the survey requested certain demographic information.

The Task Force interviewed a large number of Superior Court judges in most geographic areas of the Commonwealth. Task Force members have received the advice of retired Superior Court judges, and former Superior Court judges who now sit on the Appeals Court, the Supreme Judicial Court and the United States District Court. The Task Force distributed letters and its survey to roughly seventy (70) bar associations across the Commonwealth, including all of the county bar associations as well as bar associations oriented by practice area (such as the Patent Law Association and Massachusetts Trial Lawyers Association) and by membership characteristics (such as the Asian-American Bar Association and the Women's Bar Association). Task Force representatives have met with the MBA Bench/Bar Committee and with the BBA's Administration of Justice Section and Litigation Section. The Task Force will continue to seek and encourage input, particularly from lawyers who practice in more rural parts of the state.

Some of the results confirmed the conventional wisdom about the circuit system. For example, the survey results indicate a distinct dissatisfaction with the current system among responding attorneys. *Over ninety-two percent of responding attorneys favor eliminating or changing the system.* A majority of responding attorneys favor eliminating the system altogether. By contrast, clerk/magistrates who responded were overwhelmingly in favor of maintaining the current system.

The judges were receptive to modifying the circuit system. As a group, judges had very strong feelings regarding the circuit system, but were not protective of the system. Although nearly all survey participants - judges, attorneys and clerk/magistrates - noted the many benefits to judges from the circuit system, many judges focused on the deficiencies of the system for litigants and for the decision-making process. For example, one judge wrote "there were many strengths from the standpoint of the judges," but "none from the standpoint of the public."

All respondents were asked to list strengths and weaknesses of the current system. The most common strength listed on the judges' responses was diversity. Many judges indicated that the variety of casework they receive under the current system "refreshes" them and prevents "judicial burnout." This strength was also mentioned frequently by attorneys and clerk/magistrates. The predominant problem with the circuit system, as noted by the judges themselves, is inefficiency. A majority of the responding judges, like

the majority of responding attorneys, believe that the circuit system is an inefficient way to manage cases.

Suggestions vary as to how to improve upon the current system. However, some modifications were consistently proposed. The most common suggestion from judges was longer judicial assignments. Lawyers who responded to the survey share this view. Over eighty percent of responding attorneys favor a system in which Superior Court judges would be assigned to a session for a minimum period, with nearly two-thirds of such respondents favoring a minimum assignment period of one year or more.

II. Comparison With Rotation Systems In Other Jurisdictions

The state court systems in virtually all fifty states, the District of Columbia and Puerto Rico vest authority in the chief justice, the supreme court, or an administrative officer, to assign judges, temporarily or permanently, within their respective court systems. In the vast majority of jurisdictions, however, judges do not rotate either among different districts or circuits or among different divisions within a district or circuit.

In states with rotations among different districts or circuits, the frequency of rotation varies. For example, in New Jersey¹¹, Florida¹² and Rhode Island¹³ judges rotate every two to three years. In other states, like Vermont, rotation occurs once a year. Other states use six-month rotations (North Carolina¹⁴ and South Carolina¹⁵), three-month rotations (Iowa) and two- to three-month rotations (New Hampshire¹⁶).

In the jurisdictions where judges rotate to different divisions within a district or circuit—civil, criminal, domestic relations, and probate—judges tend to rotate more frequently, with a couple of exceptions.¹⁷ Efforts are made in at least a few of the states,

¹¹ Rotation is not automatic in New Jersey; some judges do not rotate at all.

¹² Some judges within a multi-county district *may* rotate to different counties at the discretion of the chief judge, but it may be every 2-3 years.

¹³ Senior judges typically rotate every two years; however, younger judges may rotate more frequently.

¹⁴ See Joan G. Brannon, *The Judicial System in North Carolina*, Administrative Office of the Courts, 8 (2001).

¹⁵ Assignment length may be longer, however, depending on caseload within a circuit and anticipated complexity of cases.

¹⁶ There is not a regular rotation system in New Hampshire, some judges rotate from county to county every two to three months; other judges do not rotate at all.

¹⁷ In Delaware, for example, Superior Court judges rotate between the civil and criminal divisions on a monthly basis, and in Maine justices preside over civil matters for two months and then rotate to criminal matters for one-month intervals. In Milwaukee, Wisconsin, judges typically rotate every two years through criminal and civil divisions. In all other counties in Wisconsin, judges do not rotate or exchange cases at all, except in limited circumstances. Instead, all dockets involve a hybrid of criminal, civil, and family matters. In the District of Columbia judges rotate among the Superior Court divisions once a year, and in Michigan, some judges will rotate into the family division for 2-3 year periods and then rotate back in to

including Maine, North Carolina, and New Jersey, to balance the impact of rotations with the need to better manage cases by assigning all resident judges to their home districts more often, or by assigning one judge to hear all matters in a given case.

Advantages and Disadvantages of the Current Circuit System

I. Advantages

The perceived advantages of the current circuit system are largely intangible and therefore difficult to measure or quantify. The most frequently mentioned advantages are:

- 1) Minimizing local bias or prejudice, either real or perceived, which can result when a judge sits too long in a particular session;
- 2) The exchange of fresh ideas and perspectives resulting from the exposure of attorneys to different judges (and vice versa); and
- 3) Increased job satisfaction, morale and intellectual stimulation among judges which results from contact with a wide variety of cases, colleagues and litigants.

Not surprisingly, the perspective of the survey respondents strongly influenced their responses. The judges (who tend to favor some form of the circuit system in greater numbers than lawyers) were overwhelmingly more concerned about being exiled to a single-judge county for an extended sitting. By contrast—and perhaps predictably—the lawyer respondents fear a system that might condemn them and their cases to prolonged dealings with a judge who is inefficient, inexperienced or uninterested in a particular type of case.

The avoidance of favoritism and individual idiosyncrasies—a concern most common among lawyers who appear frequently in Superior Court—was expressed by one lawyer respondent as follows: “If judges are rotated at least you know that you have a chance at a fair trial or ruling unlike [another] Court, where judges become too opinionated and provincial, resulting in unfair rulings.” The Superior Court circuit system plays an important role in minimizing the development of too-close relationships between judges and the lawyers who appear before them constantly, in avoiding the perception of a “home-town” advantage, and in preventing the creation of judicial fiefdoms.

Several judicial respondents concurred and stressed the uniform nature of justice across the state that results from the movement of judges. Again, one respondent made an unfavorable comparison to another branch of the trial court: “I would hate to see the abandonment of the circuit system. Only election of judges would be worse than an entrenched judiciary. You need only to look to [another] court to see these abuses in rampant form.”

the general circuit division for civil and criminal cases. In some North Dakota districts judges rotate on and off civil and criminal calendars once a year, but judges do not rotate among different districts.

Judicial respondents also stated that the circuit system provides them with fresh perspectives and a much-needed respite from the unrelenting workload of busy time-standards sessions in the more populous counties. Almost without exception, judges felt that more than three or four months in a time-standards session resulted in judicial “burn-out” in the form of overwhelming paper backlog, physical and emotional fatigue and a detrimental impact on the quality of justice and the treatment of lawyers and litigants. One judge wrote in support of the circuit system: “It freshens the judge’s outlook and substantially reduces stress, especially when attempting to deal with overwhelming civil case loads in some counties.” Another wrote: “Don’t forget there are some one-judge courts. To sit there for many months would be death for many of us.” Despite the desire for some rotation, however, the overwhelming majority of judges feel that assignments of less than three months are inefficient and unproductive.

In numbers far greater than lawyers, judicial respondents also felt that the circuit system—given judicial rotations of reasonable length—works well for most types of cases.¹⁸ The feeling is that the rotation of judges allows crucial exposure to different ideas, management styles, and types of cases and creates a justice system, which, for all its inefficiencies, is truly statewide. A judge’s interest in doing both civil and criminal work can be satisfied by the circuit system, particularly in counties where civil and criminal cases are never mixed in a session.

There is no question that these advantages, while very real, come at some equally real cost to efficiency, accountability, predictability and consistency.

II. Disadvantages

Almost every judge responded that the system is inefficient in terms of both case management and case scheduling, and that it fosters a lack of accountability. In discussing lack of continuity, one judge remarked that “1-3 month assignments are ludicrously inefficient.” Many judges responded that they accomplish very little if anything during the first and last weeks of an assignment, because they must spend time catching up in the beginning and preparing to leave at the end. One judge indicated that up to nine judges may work on a single case, and that each judge must spend time familiarizing him or herself with a case. This turnover leads to delay and costs for the parties, and results in a tremendous waste of judicial and litigant resources. Overall, judicial respondents stated that their main concern is the poor quality of justice that can result from an inefficient system.

There is no incentive built into the circuit system for a judge to expend much effort on case management. A judge who devotes significant effort to case management, or to whittling down the caseload in a session, will often not be around to reap the benefits of his or her labor. Similarly, if a judge begins to try a complex case toward the

¹⁸ This difference is well-explained by the demographics of the lawyer-respondents who tended to be Suffolk and Middlesex practitioners who handle larger, more complex cases with extensive pretrial proceedings. Both lawyers and judges generally agreed that these types of cases benefit from the continuous attention of a single judge (or at least a small number of judges working together in a “team” approach to case management). The diversity of responses points out what many respondents noted—that there is no “magic bullet” or “one size fits all” solution to this difficult problem.

end of a session, she or he is rewarded with a series of scheduling nightmares for his or her next rotation and for the judge entering the session.

In terms of accountability, many judges commented that the current system allows judges to pick and choose the cases to which they will devote attention. Judges can leave undesirable work for others without any significant visibility or recourse. As a result, several judges remarked that those of their colleagues who want to avoid complicated cases are essentially free to do so.

Some judges also believe the circuit system encourages judge shopping by attorneys. Politics within the courtroom also reportedly affects the system, especially the relationship between the judge and the clerk. Many judges expressed their dismay that clerks, not judges, generally control sessions. One judge lamented a “lack of team spirit” between the judge, clerk, and court officer in the circuit system. And lastly, some judges noted the sometimes-burdensome distance and amount of travel required by the current system. One judge summarized the criticism as one based on perspective: “The issue should not be what is best for the judges, but what is best for the public. The circuit system does not work for the public.” Another judge characterized attempts at effective civil case management as “impossible” under the current system.

Attorneys responded in a similar vein, with nearly 25% of 171 respondents unable to find a single benefit to the circuit system. Attorney respondents indicated, in a variety of ways, that the current system unfairly burdens the most diligent judges and increases litigation costs. A substantial majority “strongly agreed” that the system is inefficient and fosters a lack of case management accountability. Lawyers were virtually unanimous that the system works poorly for complex cases involving extensive pretrial proceedings and is ill-suited to the resolution of discovery disputes. Only 13% believed these problems can be remedied through special assignments, while 73% took the opposite view.¹⁹ Unlike most judges and clerk-magistrates, a substantial majority of lawyers believe that an individual calendar system should be instituted.

Wide Range Of Suggestions For Modification Or Elimination Of Circuit System

As noted above, the most frequent suggestions for correcting the perceived problems with the circuit system were to scrap the system entirely in favor of an individual calendar system, or to extend judges’ session assignments, with most survey respondents suggesting three months as a minimum, and several proposing rotations as long as two or three years. The next most popular suggestion, which came principally from judges, was to create teams of two to four judges who would rotate together through a defined group of sessions. Such teams would encourage accountability for progress in a group of sessions and would promote greater familiarity with cases over time.

Apart from these popular ideas, however, the suggestions for change were almost as numerous as the respondents. The variety of those perspectives reflects the diversity

¹⁹ Clerk-magistrates were generally more supportive of the system. In general, they do not believe that the system increases the cost of litigation, nor do the respondents agree with the bench and bar that the system fosters inefficiency. Four of the seven respondents do not favor a minimum time period in a session.

of views about the current system and the lack of any obvious solution to the widely perceived weaknesses of the system.

I. Special Sessions

The Task Force inquired about the possibility of creating specialized sessions, modeled perhaps on the Business Litigation Session. Many respondents favored creation of specialized sessions by subject matter, including medical malpractice; employment cases; real estate, zoning and land use; drug cases; sexually dangerous person cases; environmental or toxic tort cases; insurance; tort cases; tax cases, and construction cases. Others supported specialized sessions based on case management considerations, such as sessions devoted to long or complex cases.

Others suggested sessions devoted to handling one phase of a case. Along with calls for settlement sessions, a number of judges and attorneys suggested dividing work into motion and trial sessions.

Some respondents, however (including two-thirds of the judges), objected vigorously to the idea of creating specialized sessions, or of giving priority to certain kinds of cases. They argued that cases should be treated equally regardless of their subject matter.

Many respondents who favored retaining the circuit system urged that the current system for special assignments of cases to an individual judge should be liberalized. Several attorneys complained that their requests for a special assignment had been rejected even when all counsel agreed. However, several respondents noted that special assignments become problematic when litigants and papers have to travel to follow a judge, and that the assigned judge often has little control over scheduling in subsequent sessions into which he or she is rotated.

II. Geography

Respondents were also divided about geographic circulation of judges. Some wanted judges to travel more widely, complaining that judges who usually sit in Boston almost never appear west of Worcester. These respondents said that although they generally favored longer rotations, they understood the burden on judges of sitting far from their homes and would be willing to accept shorter sessions if it meant greater circulation of judges. Many other respondents (including both lawyers and judges) disagreed, favoring less travel so as to encourage greater familiarity with, and accountability for, cases in a reduced number of sessions.

Others suggested that this balance ought to be struck as a matter of seniority, with junior judges expected to accept shorter assignments and greater travel – “have black dress, will travel,” as one respondent wrote.

III. Other Suggestions

Many respondents suggested ancillary changes to address problems that they perceived to be caused or exacerbated by the circuit system. One large bar association, responding as a group rather than individually, urged longer rotations, greater monitoring of judicial productivity in terms of pleas and trials, published statistics, and centralized monitoring of trial schedules (in particular to cut down on the practice of declining to take trials in the last week of a rotation).

Other respondents noted the delay in obtaining trial transcripts, coupled with the sense that transcripts become increasingly difficult to obtain once the trial judge departs from the session. Many urged that trial dates be firm and continuances sharply limited. Others criticized the practice of scheduling all motions for 2:00 p.m., requiring counsel to appear and wait for a case to be called.

The Task Force obviously could not adopt all of these often-contradictory suggestions. We have considered them all, however, and used them to better understand the needs and perspectives of the participants in, and users of, the system.

Recommendations

The Task Force concludes that the disadvantages of the circuit system as presently implemented call for modifications to that system. The Task Force recognizes that the type of cases filed, the size of the dockets, the physical plant and other factors vary from county to county; suggestions applicable to urban courts in Eastern Massachusetts may not apply in less-densely-populated areas of the Commonwealth. Certain of our recommendations are proposed as experiments. Other proposals are suggested as system-wide guidelines for both civil and criminal cases. The Task Force acknowledges that no single solution will address all of the drawbacks of the present system, but hopes that the Court will continue to be receptive to experiments that have a reasonable prospect of improving the system for the benefit of litigants, judges and lawyers.

A baseline recommendation of the Task Force is that, if a circuit system is to be maintained, the duration of sittings should be significantly increased over current practice. In the long run, we believe that a system of permanent assignments in the majority of courts is worthy of detailed consideration. The recommendations set forth below are designed, in part, to test the viability of permanent or extended assignments and, in part, to address what we believe to be the minimum steps that should be taken in the short run to address the weaknesses of the circuit system as currently implemented.

Specific Modifications

- I. The Superior Court Should Establish A Pilot Program In Six Sessions Of The Court: Four Civil and Two Criminal. One Judge Should Be Assigned To Each Of Those Sessions For A Two-Year Period And Should Be Fully**

Responsible For The Management Of The Cases In That Session During That Period.

There is a striking dichotomy between the views of the judges, and those of lawyers, with respect to the merits of the circuit system. As a generalization, the judges view the present system far more favorably than do the lawyers. However, both groups acknowledge the potential for improvement in the system and both agree that the system would be improved if judges were to remain in a session for somewhat longer than is present practice. To measure the effectiveness of lengthier or permanent tenure in particular sessions, the Task Force recommends that a pilot program be instituted in which single judge sessions are placed alongside sessions that are served by a series of judges, some operating in teams and some not. These alternate approaches would then be evaluated, both objectively (to the extent that objective measurement is possible) and subjectively (based upon the observations of the participants) during, and at the end of, the two-year period.

It is important that a sufficient number of experimental sessions be used so that, to the greatest extent possible, it may be determined whether the observed results are due to differences in case/docket management or due to the skill and propensities of the individual judges in the experimental and control sessions. Accordingly, we propose that four single calendar civil sessions and two single calendar criminal sessions be established and compared to four otherwise comparable “control” sessions in the same county or counties.²⁰

The judge in each experimental session would be entirely responsible for the docket in that session.²¹ In criminal sessions, the judge would be responsible for a case from arraignment to trial. In civil sessions, the judge would establish times for conferences, motions and trials, and would be free to schedule writing time so that prompt decisions could be rendered. Judges would participate in the experimental sessions on a volunteer basis, subject to the discretion of the Chief Justice. A judge could opt out of a single judge assignment at the end of the first year of the assignment. The Chief Justice would retain the flexibility to move a judge into an experimental session in the event of illness or other exigent circumstances, but the experimental session judge would not rotate into other sessions during his or her tenure in the experimental session.²²

²⁰ We repeat the observation that one size does not fit all. The disadvantages of a single calendar system (from the perspective of judges and litigants alike) are greatest in areas where only one judge sits in a courthouse. We doubt the utility of the proposed experiment in those areas.

²¹ One of the hypotheses of the Task Force is that more consistent judicial control over case management and better teamwork between the judges and the clerks will improve case management. The Task Force believes that significantly longer sittings by a judge in a session will provide a basis for that increased teamwork as well as an incentive for the judge to “own” the case load in the session, to manage it more efficiently and to be responsible to court management for the way the case load is handled.

²² An experimental session judge would be expected to take normal vacations, during which time trials would not occur in that session. Emergency matters would be handled or assigned by the RAJ or the RAJ’s designee.

II. No Judge Should Serve In A Session For Less Than Four Months.

The inefficiencies of the present system increase as the length of time when a judge is present in a session decreases. It takes a judge a period of time after arriving in a session to begin to operate efficiently. Time at the end of the judge's presence in a session is lost because new trials cannot be started. A judge's unfamiliarity with the cases in a session is greatest when his or her time in that session is the shortest. The more frequently judges move from session to session, the greater the loss of efficiency. Therefore, except in unusual circumstances (and excluding courts where the size of the docket is too small), no judge should sit in a session for less than four months.²³

III. Judicial Teaming Should Be Used To Minimize Disadvantages Of The Circuit System.

The present system appears to work best when a team of 2-4 judges rotates through a defined group of sessions. Judicial unfamiliarity with the cases in a session is reduced, and predictability for litigants is enhanced, if a judge returns, relatively frequently, to the same session. Cooperation among judges with respect to administrative matters and a sense of responsibility for the docket in the relevant group of sessions is increased if judges work in teams. Moreover, teaming affords an opportunity for judges to establish a consistent set of practices in a session and allows new judges to learn by exposure to more experienced judges.

IV. Assignments Should Be Based On The Needs Of The System Rather Than On The Seniority System.²⁴

At present, judicial assignments are driven by a seniority system. In general, the most senior judge receives whatever assignment that judge wishes. The most junior judge moves from session to session, often as frequently as monthly, to fill gaps in the system. This approach to scheduling makes efficient caseload management almost impossible.

We recommend a phased abolition of assignments based on seniority. We propose that assignments for all present judges who have served for less than ten years, and all future judges, be based on factors such as the judges' administrative and substantive skills, the needs of the session, judicial preferences, location and other

²³ In response to this minimum sitting recommendation, members of the Litigation Section Steering Committee and some members of the Administration of Justice Section expressed that in their view, the minimum sitting duration should be longer than four months. In formulating the four months recommendation, the Task Force also took into account the judges' view that, in some of the time standards sessions with dockets of over 1,100 cases, e.g., Suffolk and Worcester, longer sittings than four months would cause judicial "burn out." Several suggestions for reducing the case load in those sessions have been made, including the use of "swat" teams to temporarily attack the dockets.

²⁴ One Task Force member does not endorse recommendations IV and V as he believes they are less necessary and less reflective of survey consensus.

reasonable criteria. Judges who have served for more than ten years would remain under the present seniority system.

V. Judicial Districts Would Provide Better Managerial Tools For RAJs And For The System.

The present system makes management of the judges themselves virtually impossible. The Chief Justice alone cannot effectively supervise the more than 80 Superior Court judges located throughout fourteen counties. A RAJ's responsibilities have not traditionally included a managerial role, and indeed, under the current system, RAJs could not consistently manage a group of judges because each judge is within the jurisdiction of a particular RAJ for only one to four months. However, if given better tools, the RAJs could reduce many of the disadvantages of the circuit system discussed above. Their unique knowledge of the different sessions and characteristics of their regions could be used to deploy judges in an optimal fashion and otherwise to mitigate the inefficiencies of the system.

The Superior Court should consider replacing the existing, primarily county-based, RAJ system with an organizational structure based upon a smaller group of regional judicial districts. Each judge would be assigned to one district. Each district would be managed by one RAJ. Each RAJ would be accountable to the Chief Justice. Such a system would provide increased communication, information and greater accountability, one of the most significant complaints about the current system. Within a revised system, increased use of planning and goals could be implemented, and a measurement of performance against goals is more reasonable.²⁵

The key idea is that administrative subgroupings of manageable sizes be established. While we have suggested that groupings be established along geographic lines, other organizational structures might be implemented that are designed to achieve the same objective.

VI. The Court Should Identify and Monitor Performance Metrics.

Continuous measurement of relevant, simple and uniform data will be a key component of improvement and change. We recommend that metrics be established to gauge the improvements, if any, that result from the implementation of the Task Force's proposals. Although many qualitative aspects of judging are not susceptible of measurement, certain quantitative measurements are needed to analyze the effect of any modification to the circuit system.²⁶

²⁵ The Superior Court prides itself on the collegial nature of the judges. A greater role by the RAJs in the managerial process need not diminish the collegial nature of the bench; rather, it can assist the Court toward its goals of improved efficiency and quality in the administration of justice.

²⁶ Data gathering can, of course, induce undesirable behavior that is designed to make a person's statistics "look good." Moreover, in the short run, data can be misleading. A single complex trial can tie up a session for weeks, thus causing the session to appear "inefficient" statistically. All statistical data must

Such metrics could include:

- For criminal cases, length of time from indictment or arraignment to trial.
- For civil cases, length of time from filing to disposition.
- Length of time from filing to disposition of (a) motions to suppress in criminal cases, (b) civil discovery motions, and (c) civil dispositive motions.
- Number of joint, and number of unilateral, requests to extend tracking orders/number of extensions granted.
- Date Pretrial Conference initially scheduled vs. date actually held.
- Date trial initially scheduled vs. date trial actually held.
- Number of trial continuances requested/number granted.

Using these types of data points, one could evaluate the effectiveness of the experimental sessions as compared to control sessions and to the system as a whole.

The BBA's Continued Commitment To Support the Courts

It is an ancient army axiom that “to suggest is to volunteer.” The Task Force is not only making recommendations, it is volunteering to assist, in any reasonable way, as a resource in implementation and evaluation of these recommendations. That which makes sense “on paper” may not work in practice. And, any successful suggestion is likely to require refinement and modification. We offer to participate in that process, including reconvening during or at the conclusion of a pilot program to assist in evaluating the results and views of those in the system as to the pilot’s effectiveness.

therefore be tempered by management judgment. However, the Task Force believes that the risk that data may be misleading in some instances is not reason to fail to gather and evaluate relevant information.

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