

► *First of a three-part series;*
Page A9: Details of the problems

By Elaine McArdle
Standard-Times staff writer

The Massachusetts court system is in shambles, wrenched by mismanagement, poor structure and in-fighting, a two-month investigation by The Standard-Times has found.

In some courts, criminal defendants wait more than a year — sometimes two — to come to trial. A small business owner seeking payment for a past due bill won't get her day in court for eight months or longer.

And the court system is so fragmented that the state can't even tell how many cases were handled last year.

Judges and others believe Gov. Michael S. Dukakis' cherished court reform bill of 1978, touted as the answer to a system rife with problems, instead created a top-heavy bureaucracy, widespread inefficiency, low morale and even more delays.

"What we have now is a judicial organization that has no system to it at all," said Judge William H. Carey,

"What we have now is a judicial organization that has no system to it at all. We're disunified, we're inefficient, we're frustrated."

— Judge William H. Carey,
who administers six
Superior Courts

who administers six Superior Courts in a four-county region. "We're disunified, we're inefficient, we're frustrated."

A \$150,000 private management study released last month by the Massachusetts Bar Association found the state's courts among the worst managed in the nation.

The report, prepared by the Boston-based consulting firm Harbridge House, echoed what judges and lawyers have been complaining about for years — that the system is bogged down by unclear lines of authority, poor communication, and legislative control.

And that 80-page study didn't even touch upon the problem of patronage, which many say seriously hinders attempts to manage the system well.

Judges say that under present conditions the business of the courts — the efficient and just disposition of cases — cannot be accomplished.

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DISORDER in the COURTS

'ON THE BRINK OF DISASTER'

Wide array of problems threatens to topple the pillars of justice

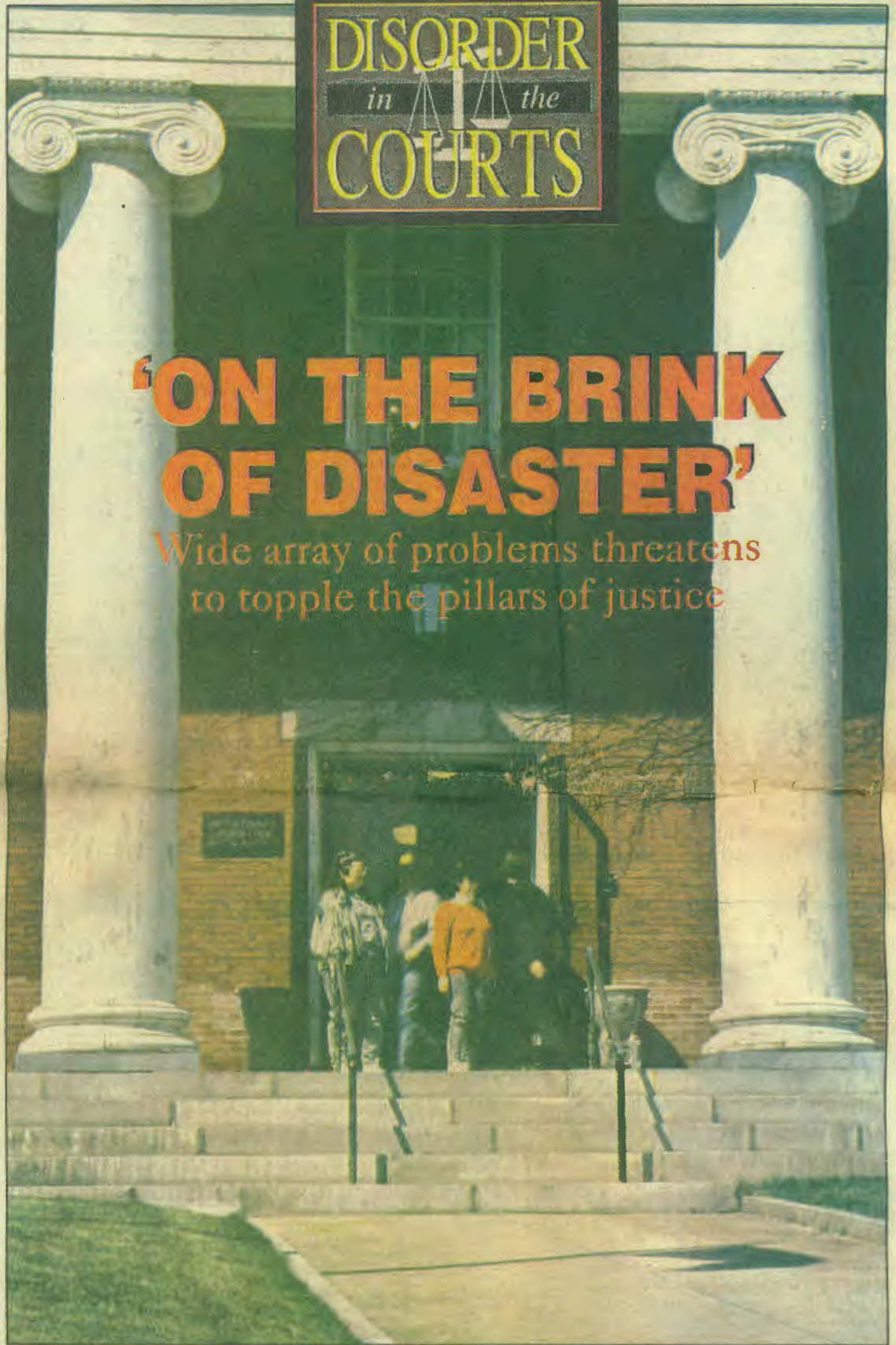


Photo by Dana Smith

Business is brisk at the Bristol County Superior Court on County Street in New Bedford.

■ Courts

(Continued from Page 1)
Exacerbated by the state's financial woes, "there is no doubt in anyone's mind we are on the brink of disaster," said Judge Carey, who predicts that some courts soon may be shut down.

Added former District Attorney Ronald A. Pina, now in private practice, "The entire system is breaking down. As a defense lawyer now, you can get away with a lot of things just by delays and stalling. It's tragic."

□
Robert Hodge, 51, is a retired Coast Guardsman living in New Bedford. A thoughtful, articulate man, Mr. Hodge was shocked when he offered to help navigate a young neighbor, charged with a minor crime, through the local court system.

Because the Fall River jury of six sessions was canceled in February and March for lack of a single court officer, the judge continued the case again and again — and Mr. Hodge and his neighbor returned to court again and again. No one told them court wasn't operating because it was short of employees.

"The average citizen has the notion that you go into court, and your case is handled. You can get on with your life," Mr. Hodge said. "That's our system, that's the American way. But in this case, the system isn't functioning."

Endless delays — the case has been going on for two years — miscommunication, and disorganization are not what he expected.

"Courts are what keep the country civilized, and when you tamper with the courts, you're tampering with the civilizing process of this nation," Mr. Hodge said.

Judges say delays will only worsen.

It currently takes six to eight months after someone files a small claims action for the matter to come up for trial at 3rd District Court in New Bedford. However, with as many as 250 other small claims matters set for each Friday — the only day they are heard, due to the overwhelming criminal case backlog — a case could be delayed again for months.

Criminal cases fare little better. It can take up to seven months after someone is charged with a crime for the matter to reach a district court trial in New Bedford. If the case is appealed to the Fall River jury session — which now has a backlog of about 1,000 cases — it could be another seven or eight months.

In the Bristol County Superior Court, a defendant will wait about a year to a year and a half after arraignment for a trial. Judges predict an increasing number of cases will be dismissed for violating the speedy trial rule.

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It's not that Massachusetts doesn't

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of New Bedford

spend money on its courts. The budget of the courts, per resident in the state, is among the highest in the nation. But results are among the worst because, critics say, the state continues to throw good money into a bad setup.

The Massachusetts Trial Court had a budget in FY 1991 of \$233 million, or about \$40 per resident. Because the seven departments of the court compile their own statistics, it is difficult to tell how many cases were handled in that time period.

An additional \$61 million, or about \$10 per resident, was spent on the Appeals Court and the Supreme Judicial Court; \$50 million of that went to the Committee for Public Counsel Services, the state's public defenders.

Meanwhile, with a budget of \$126.6 million, or \$39 per capita — the Connecticut judicial system, which underwent major reforms a decade ago, handled about 300,000 cases.

And the New Jersey court system, considered by analysts as one of the best-managed in the nation, handled 549,900 cases with a budget of about \$90 million, or \$12 per resident.

Carol Colman, co-author of the Harbridge House study, said dollar comparisons between states can be misleading because different factors go into judiciary budgets. For example, Massachusetts spends about \$32 million a year leasing court buildings from the counties; other states own their courthouses.

However, there is no dispute that 21 states pay their judges more than Massachusetts does; and there are 47 states with more judges per resident.

And despite the dollars spent, the state lacks many of the basics of a well-run court system, such as unified automation of court records. Only a small fraction of the courts are computerized, and the systems are not compatible with each other. Without computers, clerks are deluged with paperwork that is often misfiled or lost, court officials say.

Other problems abound, including lack of cooperation among court departments, and an overall sense of "a ship without a captain," as Ms. Colman described it.

These problems aren't new; and to those who have been in the system for a while, the recent clamor for

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— Ronald A. Pina,
former district attorney

court reform sounds distressingly familiar

In 1976, the Governor's Select Committee on Judicial Needs, chaired by Archibald Cox, former Attorney General of the United States, stated that the justice system in Massachusetts "stands on the brink of disaster."

The state faced "a stark but simple choice: either reorganize the judicial system or allow a breakdown of justice," the Commission reported.

Under the Court Reorganization Act of 1978, the state assumed the costs of running county courts, and the jury sessions for misdemeanors were made part of the district instead of superior courts.

But many of the commission's recommendations — such as computerization of records and unification of the courts — were ignored by the Legislature.

And instead of a limited centralized administration, the Legislature created a massive bureaucratic monster in Boston, the Office of the Chief Administrative Justice, where dozens of staff work in air-conditioned comfort but judges complain it takes forever just to buy a law book.

□
Spurred by recent media reports and resulting private studies of the system, at least six separate proposals for reform have emerged in recent months. Many observers fear actual improvements will be swallowed by political jockeying for power among the various proponents.

Most prominent among the reform plans is a bill submitted by Chief Justice Paul J. Liacos of the Supreme Judicial Court, which seeks to wrest control of the courts from the Legislature. But the state's judges, many of whom have prospered under the current system, recommend against the Liacos bill and seek more autonomy from the SJC.

Without consensus for a well-considered plan, observers fear a crazy-quilt of reforms that will wreak more havoc on the courts.

"They passed a hybrid in 1978," said Justice Robert L. Steadman, chief justice of the state's superior courts, referring to the 1978 Court Reorganization Act. "And that's my fear now."

DISORDER the COURTS

TRACKING COURT REFORM

In 1978 the Governor's Select Committee on Judicial Needs (Cox Commission) outlined a broad series of reforms to improve the state's judicial system, but the Court Reorganization Act of 1978 implemented few of the recommendations.

Recommended

Consolidation of the seven trial courts into two courts — one of general jurisdiction for major criminal and civil cases, and one of limited jurisdiction, for misdemeanors, juvenile matters and smaller-level civil cases.

Centralized authority for court administration be placed with the chief justice of the Supreme Judicial Court.

Professional administrator, not a judge, manage courts under the supervision of the SJC.

Chief Justice submit one budget for the entire judiciary; court to determine how to use funds.

Chief Justice of SJC have authority to transfer cases and judges, clerks and other personnel, among courts.

Chief justice have authority to appoint district court clerk-magistrates, court officers and probation officers.

Computerization of courts be made a priority.

Instead

Created single Trial Court with seven separate court departments.

Created the Office of Chief Administrative Justice, separate from the SJC.

Chief justice has authority to appoint chief administrative judge for seven years.

Legislature votes on individual budget items for each court.

SJC can transfer judges, personnel, but only with numerous approvals.

Governor still appoints district court clerks; others by presiding judge.

Disjunctive and minimal efforts at computerization.

Adopted

State assumes funding of courts from the counties.

Abolished part-time judges.

Established Judicial Conduct Commission.

“
There are some very good people over there. But it's something about the climate over there. Everything is, 'We can't, we can't.'

”
— A lawyer,
on 3rd District Court

DISORDER in the COURTS



Staff photo by Ron Rolo

A police officer endures a wait at 3rd District Court, New Bedford.

Postponements, chaos called rule, not exception, in 3rd District Court

By Elaine McArdle
Standard-Times staff writer

Two years ago, George Juhl, a hard-working employee of a hardware store, found himself ensnared in the web of confusion, inefficiency and delays that mark New Bedford's misdemeanor court.

Mr. Juhl, 47, witnessed a car accident in downtown New Bedford and offered to testify at the trial of former city assessor Michael K. Kearney, who was charged with drunken driving. Mr. Juhl showed up in 3rd District Court. He

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showed up again. He returned a third and fourth and fifth and sixth time. Nothing happened.

All told, the case was postponed at least eight times and passed through the hands of several assistant prosecutors.

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DISORDER the COURTS

■ Court

(Continued from Page 1)

Mr. Juhl and other witnesses even showed up at court twice after the case had been decided. It seems no one notified them that Mr. Kearney had changed his plea to guilty.

"It just seemed as though there was a tremendous amount of the left hand not knowing what the right hand was doing," he said.

The postponements and confusion in the Kearney case are the rule, not the exception, at 3rd District Court, a Standard-Times investigation has found.

Files are lost. Witnesses are directed to the wrong courtroom and sometimes miss trials. Defendants are told to wait in the crowded halls during recesses, then defaulted if they don't figure out court has resumed.

Bail petitions to the Superior Court — in which a jailed defendant seeks release pending trial — are regularly days late, in violation of state law. Clerks and court officers frequently are rude and unhelpful to lawyers and the public, many say.

In interviews with dozens of local lawyers, judges and other personnel, almost no one had a positive comment about the court.

"This is my least favorite court in the world," said a New Bedford lawyer, echoing a sentiment expressed by many others. Like most interviewed, he requested anonymity, noting, "I have to work here, and they'll make it even worse for me."

"Judges don't like to go to New Bedford. Lawyers don't like to go to New Bedford, and defendants don't like to go to New Bedford," said another lawyer with years of experience in the court.

One of the few defenders of the way the court operates is Clerk-Magistrate John A. Stellato, who said, "I feel the New Bedford District Court is a well-run court and has a reputation as a well-run court..."

Mr. Stellato noted that 3rd District is swamped with cases — 33,865 during this fiscal year — and hampered by dwindling resources as the Commonwealth falls further into debt.

Critics note that other district courts with similar or greater caseloads — and, in some cases, less money — move their cases more quickly, collect fines more efficiently and don't lose files.

A two-month investigation by The Standard-Times has found that the problems at 3rd District Court are more complex and subtle than a simple lack of resources.

Among the defects: a lack of computers, poor management and leadership in certain departments, and a state court system that discourages cooperation.

Most of the blame is aimed at the clerk's office.

Files are frequently lost or mislaid, which delays hearings and trials. Dockets — which record what happens on a case — are often inaccurate.

Appearance slips, in which a lawyer officially notes that he is representing a particular client, often are not placed with the files, thereby making it impossible to learn who represents the defendant, one defense lawyer said.

Without a computer and with delays in filing paperwork, the office cannot tell if a person arrested for a crime failed to show up for a court date on an earlier matter. As a result, defendants sometimes are released from custody when they should be held on a default.

Lawyers tell of waiting 10 or 15 minutes at the clerk's window before a clerk will look up from her desk and saunter to the counter. And unlike many other courts, the New Bedford criminal clerk's office won't give case information to lawyers over the phone.

Sometimes the list posted on the bulletin board, noting cases to be heard that day, is outdated. Defendants who don't see their names listed leave court — and are defaulted.

"An enormous amount of time is spent there just trying to correct their snafus," an experienced defense lawyer said.

The clerk's office also suffers from a lack of effective leadership, several sources said.






One source intimately involved with the regional court system said Mr. Stellato is unable to engender esprit de corps in the office.

"The object is to get the stuff out of here, rather than to do a good job," said a lawyer with many years of experience in the court. "There are some very good people over there. But it's something about the climate over there. Everything is, 'We can't, we can't'; why something can't work, as opposed to why it can," he said.

At least 10 lawyers said clerical workers in the clerk's

NOT ALL COURTS ARE CREATED EQUAL

Budgets and personnel levels are set by the state Legislature, and often have little connection to the number of cases handled.

	NEW BEDFORD	FALL RIVER	QUINCY	WAREHAM	ATTLEBORO
Authorized personnel	59	56	123	36	26
Actual number	56	47	106	35	22
Percentage of unfilled positions (white)					
Budget	59	56	123	36	26
Cases	59	56	123	36	26
Activity by person	56	47	106	35	22

SOURCE: Office of Judge Charles E. Black, administrator of the region's district courts

Staff / George Patinoas

No matter how you add it up, it's a lot of work

What does it mean when officials at 3rd District Court in New Bedford say they handled 33,865 cases last year?

"We mean every type of activity the court handled," said Michael Chadinha, court administrator, who gathers statistical data for the region's district courts.

District courts handle a variety of matters, including collecting fines for motor vehicle infractions, such as speeding.

On the criminal side, they have jurisdiction over misdemeanor and minor felony cases; on the civil side, they handle contract and tort cases, small claims, mental health petitions, and — at some courts — jury of six sessions.

Each time a defendant is charged with a set of crimes involving a single incident, a case file is opened and assigned a docket number.

A single case may include charges for several crimes, such as drunken driving, failure to stop for a police officer, and assault and battery. But it's still counted as a single case, no matter how many times it's continued.

If the defendant is arrested again the next day, the new charges constitute a separate case.

On the civil side, every time a litigant sues someone else — or several different people arising from one set of circumstances — that constitutes a single case.

Some cases, such as collecting speeding fines, are quickly and simply handled. However, others may linger on court dockets for years.

office are generally rude and unhelpful.

However, after The Standard-Times began inquiries, office workers became noticeably more helpful, several sources said.

Rose Espinola, first assistant clerk-magistrate, said she is disappointed to hear that the public has had problems with the clerks. She said she believes most workers are helpful, but admitted that one or two "bad apples" unfairly color the office.

"It's not fair to us who put in a good day's work, and there are others who don't," said Mrs. Espinola. "I really think we run a good ship here. We have a good crew now."

Ilene Souza, third-in-charge after Mr. Stellato, was cited by many sources as an excellent worker, unflinchingly helpful and hardworking. But after 39 years at the office, she will retire in June, and many fear the office will deteriorate further.

Edward J. Harrington is one New Bedford lawyer who said he finds the office workers "very conscientious and very helpful." He attributes problems to the fact "they have to work with a ridiculously outdated system. It's outrageous."

And Mr. Stellato, who was appointed clerk-magistrate by Gov. Michael S. Dukakis in 1976, said morale problems are recent and due only to a heavy workload for clerks.

"The general inability to do all the work that's been presented to them, I'm sure it wears on nerves and wears on tempers," he said.

Mr. Stellato complained about lawyers who "expect us to be at their beck and call. The telephone drives us nuts. We have to take the position we won't give information over the phone (because) it might take the girl away from the work she has to do for 15 or 20 minutes. A lot of people resent the fact they can't get the work over the phone."

But other courts in the state routinely give information over the phone, lawyers said.

State Sen. William Q. "Biff" MacLean agrees that the clerk's office struggles along with too few employees battling an overwhelming tide of paperwork. "That may be my fault, or the Legislature's fault," he said.

But, he added, "Attleboro, Wareham, those are good courts. They work because of the leadership there."

The court has other problems.

It takes six to eight months for a small claims case — where one person is suing another for an amount less than \$1,500 — to be scheduled for a court date, versus six weeks in Barnstable County, for example. However, because as many as 250 small claims cases are set for each Friday, the only day they are heard, many cases are postponed for another several months.

Proceedings in the main session, where arraignments and bails are held each morning, are usually inaudible. Unlike other courthouses, there are no microphones for the judge, clerk or defendants, which makes it harder for newcomers to understand what to do.

Court officers yell at the public to leave the courtroom during recess — an unusual rule, lawyers say — and promptly lock courtroom doors at 4 p.m., even though the court is officially open until 4:30.

"They have all kinds of rules like that," said an experienced defense lawyer. "Nobody knows how they got started, what they are for, and why they remain."

Twenty years ago, following a summer of racial unrest in New Bedford, a private study by a group of local Quakers offered suggestions to improve 3rd District

Court. A recommendation for bilingual signs was ignored. Signs in the New Bedford courthouse are in English only, despite the large number of Portuguese and Hispanic litigants.

Another recommendation — that proceedings in the main courtroom be announced on a public address system so that defendants standing outside won't miss their cases — still has not been adopted. Court officers insist on quiet in the courtroom, but defendants who step outside to talk to their lawyers often are defaulted for not answering the call of their cases.

And until the new district attorney took office, prosecutors often were assigned cases the day before trial, leaving little time to contact witnesses or otherwise prepare. As a result, trials have been postponed time and again, increasing the court's backlog.

"It's very frustrating," said a defense lawyer.

By contrast, 2nd District Court in Fall River is an efficient and pleasant place to work, lawyers and others say.

"The difference between Fall River and New Bedford is like night and day," said a local defense lawyer.

"Everybody over there is, 'Hi, can I help you?'"

Many sources were under the impression that Fall River is a slower court, with fewer cases and employees who, therefore, have time to assist others.

By numbers alone, however, "Fall River is the busiest court in our region," said Michael Chadinha, regional coordinator of the district courts. New Bedford actually handled 10,000 fewer matters last year than Fall River, he said.

But a much larger percentage of the New Bedford court business includes drug charges, which involve more overnight arrests and put heavier demands on the probation department and district attorney's office than larceny or other misdemeanors, Mr. Chadinha noted.

"We're pretty much stretched out because of drug cases," said presiding Judge John A. Markey.

But drugs and caseloads alone do not explain the abysmal working conditions at the New Bedford court — a court that, ironically, is housed in a relatively new and attractive building that includes kitchen and shower facilities for top employees.

A failure of the statewide court system to encourage coordination among departments is manifestly apparent at 3rd District Court, say a number of sources who have worked there. The various departments — probation, judges, clerks and prosecutors — don't operate in a cohesive manner, which leads to delays, mistakes and an overall atmosphere of chaos.

Sources say that even the best-intentioned of newcomers are quickly absorbed into the status quo.

"Everybody is set in their ways, and nobody wants to rock the boat," said another longtime defense lawyer.

"New people get sucked into a system already in place."



Staff photo by Ron Rolo

3rd District Court Judge John Markey wishes he had more time to try to help some of the defendants he sees.

Judge puts his focus on human suffering

Markey satisfied with court staff cooperation

By Elaine McArdle
Standard-Times staff writer

NEW BEDFORD — Judge John A. Markey, presiding judge at 3rd District Court, says his interest lies in the many wretched souls who stand before his bench each morning.

A former city mayor who has presided over the court for eight years, Judge Markey believes that the basic structure of the court is "fine," although he would like to see one person placed clearly in charge.

And he sees no lack of cooperation among departments.

"If the clerk doesn't have a file, the probation officer does, and will readily make it available," Judge Markey said. "I know of places where they'd hold it back, and say, 'Let them go find it.'"

In his opinion, what the court needs in order to operate better is not massive structural reform but more programs for the drug- and alcohol-addicted.

And he wishes he had more time to try to help some of the defendants he sees.

"I can handle the first session, which has well over 125 cases a day," Judge Markey said. "But what I can't do and would like to do, is to see somebody who is very salvageable right now, and have a long colloquy with them. I'd like to invite them back here (to his chambers), and say, 'Let's have a cup of coffee and see what you want to do with your life.'"

Everything else — personnel shortages, mislaid paperwork and the like — is manageable, he said. Even in the face of cutbacks, the court will continue its daily work.

"I don't see anyone around here dying from exhaustion," Judge Markey said, smiling.

Judge Markey is generally described as someone less interested in administration than in the individual cases in his courtroom, and in aiding young drug addicts.

A defense lawyer who has worked in the courts for two decades said he thinks it is unfair to expect a judge to administer justice in the courtroom and also administer

personnel outside.

"If the judge is interested in that, fine. But it really shouldn't be part of their job," the lawyer said.

In contrast to recently retired Judge Milton R. Silva who kept a firm rein on all aspects of the highly regarded 2nd District Court in Fall River, observers say Judge Markey has a more relaxed management style.

Judge Silva "ran one of the best courts in the state said a high-ranked court system employee. "Judge Markey is a good judge, but he's just not as interested in running a tight ship."

Lines of authority blurred by the state's judicial structure may be affecting operations at 3rd District Court, some believe.

As Justice Paul J. Liacos, chief justice of the Supreme Judicial Court, said that because clerks are appointed lifetime terms by the governor, "there are two power bases in every court" — clerks and judges.

"John Stellato (clerk-magistrate) doesn't want to let Judge Markey run the ship," a defense lawyer who has worked there for more than a decade said. "In Fall River, (Clerk-Magistrate) Tommy Kitchen is happy to let Judge Silva be in charge."

Added another defense lawyer, "Milton Silva was going to let one segment of his court screw up the world. There was a greater recognition on the part of each of us that one person — Milt Silva — was running the court that the presiding judge sets the policy."

Judge Markey said he has no problems with Mr. Stellato. However, he agrees that the court needs one chief, not two.

"The problem is, no one person is in charge," Judge Markey said. Mr. Stellato is "in charge of his department. I'm not supposed to be in charge of his department."

"There's no one definitively in charge of the court. They want to make the chief custodian in charge, then I respond to him."



Staff photo by Ron Rol

With lawyers, defendants, witnesses and others milling about, the corridor of 3rd District Court in New Bedford is a busy place during court sessions.

DA tackles 'chaos' of 3rd District Court

By Elaine McArdle
Standard-Times staff writer

As a former defense attorney, Paul F. Walsh Jr. knew where to find the dirty corners in the courthouse. Now he's spring cleaning.

The new Bristol County District Attorney is following through on a campaign promise to improve 3rd District Court, which he called "the most chaotic of the courts" in the region. He has made changes he believes will streamline prosecutions, help victims of crime, and cost taxpayers less.

"People keep saying, 'You can't do it. It's too built-in there. But I absolutely guarantee improvement,'" Mr. Walsh said recently.

As head of the county's district court prosecutors, Mr. Walsh hired Robert L. Goodale, a former Suffolk County prosecutor most recently in private practice in Boston. "We inherited the problems" at 3rd District, Mr. Goodale said, "and it's our job to fix them. If down the road nothing has changed, then we're responsible for that failure."

Sources said Mr. Goodale has already made significant inroads in improving case-flow management, prosecutor accountability, and case organization. Mr. Goodale said it will be another several months before improvements are manifest.

"Much too much was being done at the last minute, which added to the chaos" of the busy court, Mr. Walsh said. "We are generally trying to be more efficient."

Under the Pina administration, special police officers — not assistant district attor-

neys — handled arraignments, many bails and some dispositions, according to Owen Murphy, administrator of the district courts for Mr. Pina.

Prosecutors frequently were assigned drunken driving and other cases — which they may never have seen before — the night before trials were scheduled, Mr. Murphy said.

It was a system that defense lawyers say encouraged postponements and frustrated victims and witnesses.

Mr. Murphy said the more serious cases were assigned immediately, and that the other cases did not require much preparation. He said prosecutors were encouraged to take the files home with them the night before trials.

Of that system, Mr. Goodale said, "to say there was a system at all is to give it too much credit."

Now, each day of the week a different prosecutor handles all arraignments. He or she then continues with those cases through the trial stage.

Several defense attorneys praised the change. "I find it to be very good. It's too early to really see how it's going to work, but for my purposes, it's going well so far," said Edward J. Harrington, a New Bedford lawyer.

Mr. Goodale said that the previous administration "didn't give sufficient priority to the administration of prosecution in the district courts in general, and New Bedford in parti-

cular, which resulted in a lack of efficiency.

"In a court with a caseload like that, you can't afford to be prosecutorially inefficient. While I don't pretend we are now proficient, we're making progress and we're committed to that goal."

Mr. Pina, now in private practice as a defense lawyer, responded: "Obviously, he doesn't know what he's talking about. We tried a number of systems, and you keep trying things until one works."

"The problem with 3rd District Court is the volume of cases, which reflects the drug problem here," Mr. Pina said. "The sheer volume takes any system and breaks it down."

"Did our system work?" asked Mr. Murphy. "I don't think anything works well at 3rd District Court, given the number of cases."

Mr. Walsh is trying other innovations. Because the office needs more prosecutors, but cannot hire any because of budget shortfalls, Mr. Walsh is trying a program already in practice in Plymouth County: volunteer prosecutors.

J. Mark Treadup, a New Bedford lawyer, begins this week as the county's first "pro bono" prosecutor.

"It's going to give us an extra set of legal hands. It gives us free legal help, and could be a major change if it snowballs," Mr. Walsh said.

The district attorney also has beefed up the role of the victim/witness advocates, who are responsible for guiding victims and witnesses through the court.

Now, as soon as a defendant is arraigned, a victim/witness advocate contacts the victims in a case and informs them when the next court date is set.

"There is more accountability regarding who they can talk to," explained Mr. Walsh.

But Mr. Pina predicts that one of his successor's changes — fewer direct indictments in Superior Court — "will backfire" on Mr. Walsh.

Mr. Pina favored removing serious cases from district court by seeking direct indictments of defendants by a Superior Court grand jury.

Instead, Mr. Walsh schedules those cases for probable cause hearings in the district court, to determine if there is enough evidence to seek an indictment in the high court.

"That will really bog things down," Mr. Pina said.

But Mr. Walsh said that the huge backlog of cases in Superior Court "argues more screening cases and disposing of them in district court, where prosecutions are faster, more efficient and much less expensive."

Since taking office, Mr. Walsh has cleaned house among the assistant prosecutors at 3rd District Court. There has been 100 percent turnover since December.

One prosecutor was not rehired by Mr. Walsh in January. In the last month and half, of the four remaining prosecutors hired by Mr. Pina, two were transferred to other courts and two resigned.

Mr. Goodale described the changes as a chance to "inject new blood" into 3rd District Court, a place he described as stressful for prosecutors.

Added Mr. Walsh, "People were so used to doing things a certain way, and even if they tried to change, they couldn't do things a new way."

By bringing people with "a new enthusiasm" aboard as prosecutors, Mr. Walsh hopes to see a ripple effect throughout 3rd District Court.

"If we're working hard, I think it makes the job easier for other departments," said. "If we are doing all we can to help the victims, I think that other offices will be more responsive."

Of the Walsh administration changes, Mr. Murphy said, "I wish them the best of luck because I live in Bristol County, and if they can improve things, I tip my hat to them."

New Bedford's court has own special problems

While 3rd District Court staggers under its own unique problems, it also is saddled with the defects that afflict the entire state judicial system.

■ Because the state Legislature, instead of the judiciary, decides how much money each court receives, certain courts — such as New Bedford's — are relatively understaffed.

New Bedford has about the same caseload as the district court in Quincy. Yet the Quincy court has more than twice the budget, and more than twice the number of authorized employees, including clerks.

"It's a failure of the state to give New Bedford the resources it's given other courts," said Owen Murphy, who administered the district court for former District Attorney Ronald A. Pina. "It's not to say the people in New Bedford aren't nice, but everybody is really hard-pressed. They're just grossly understaffed."

■ Because of a lack of state-level leadership, according to a recent private study issued by the Massachusetts Bar Association, the New Bedford court, like most of the state's courts, still isn't computerized.

With its paper system, it takes one of the six workers in the criminal clerk's office four to five hours a day to type the list of 200-plus cases to be heard that day, said Ilene Souza, assistant clerk-magistrate. In Fall River's district court, a clerk hits a button and the list is produced in seconds.

"If we're not computerized soon, we're going to be in very serious trouble," Clerk-Magistrate John A. Stellato said.

Several sources said the office has attempted for years to get a computer system; but it either had too little political clout or didn't make the issue a top priority. Now that the state is broke, chances are slim.

Sen. William Q. "Biff" MacLean, D-Fairhaven, said New Bedford won't see computers for at least a couple of years.

■ Patronage also is part of the problem, some believe.

Sen. MacLean, who concedes he has helped many employees get their jobs at 3rd District Court, insists, "I just get them in the door. It's up to them to stay there."

But the public perception remains that employees who are underproductive and unfriendly keep their jobs because of their political connections.

Said a defense lawyer, "What I see in New Bedford is the classic profile of these lifetime state employees, who got their jobs because they know somebody. When something goes wrong, they draw together as an oppressed minority and blame everything on the lawyers. They're the last ones to see themselves as the sources of the problem."

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Selfless action would make the difference between justice and a joke

By Elaine McArdle
Standard-Times staff writer

Modern society laughs at the notion of dunking people in a river to determine their innocence or guilt.

Analysis

But today's legal system, in its own way, is just as much a joke as that ridiculous precursor to the jury system — and some wonder if it is any better in meting out justice.

In Massachusetts, the courts have become a comedy of errors: employees have fistfights in open court, clerks toil like

▶ *Last of a three-part series;*
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trolls in offices under stairwells, and cases are delayed because office workers cannot find the files.

With growing frequency, criminals will go free because they have waited too long for trials; meanwhile, the courts are crowded with lifetime patronage jobs.

A hundred years from now, historians may look with bemusement on our court

system, just as we shake our heads at the public dunkings to which suspected witches were submitted.

But courts should not be a laughing matter.

Besides New York, Massachusetts has produced the most U.S. Supreme Court justices. Yet some of the state's courts are so backlogged that trials are delayed for years.

There are more lawyers per capita, and more cases overall, in this state than any other. Yet many courts have no computers,

and judges work without law books.

Even though the courts, like the rest of the state, are struggling with budget cuts, money is not the biggest problem. Of the \$294 million that Massachusetts spent on the judiciary last year, much was wasted on an unresponsive bureaucracy and on underused courts kept open for political reasons.

Everyone is discouraged — judges, court employees and, most importantly, the public.

(See COURTS, Page A5)

DISORDER
in
the
COURTS

which he notes disperses power among the seven justices.

Experience on the bench said the success of Justice Liacos' bill depends on unity among the judiciary.

idea, but others who understand something must be done to change the system.

nothing with human power is going to make this into a completely different institution overnight," he said.

Courts

(Continued from Page 1)

Once again, court reform is on a lot of minds.

Six distinct reform packages have emerged in recent months. Now the House Ways and Means Committee has seized control of the issue, with a court reform plan it has submitted as part of its recommended state budget for fiscal 1992.

Quite simply, this bill will lead the courts further down the path of failure.

As happened in 1978, when the Cox Commission made sweeping recommendations that were not adopted, and as many critics feared this time, the legislation proposed by the House leadership is a piecemeal amalgamation of the other reform plans. It adopts some important changes — such as eliminating the practice of double district court trials — but ignores other, more essential ones — such as removing legislative controls of the court budget.

If Massachusetts is to have a court system that is functional — let alone efficient and just — the supporting players behind the various plans, especially the Legislature, must give up individual gain in favor of a common goal: better courts.

The seeds of a good reform plan already have been planted — a plan that would include a unified court, with easy transfer of personnel and funds; less legislative control; clear lines of authority; and computerized record-keeping.

It is not too late — yet.

The Legislature, as well as the proponents of the other reform packages, have a historical opportunity to act selflessly. In throwing their weight behind a comprehensive reform package, these factions can ensure that court reform is effected.

Lawyers have been the first group to demonstrate that selflessness.

Two weeks ago, the Massachusetts Bar Association voted to adopt the radical restructuring of the courts recommended in a private study prepared by Harbridge House, a Boston-based consulting firm.

Among the recommendations was the elimination of the de novo trial system, a costly anachronism that gives defendants two chances at a not-guilty verdict. The de novo system also means that lawyers get to try a case twice — and make more money. This double-dip has contributed greatly to the clogged court system, critics say.

Until now, defense lawyers have opposed dropping the two-trial system — in part, because they felt the court system was so rife with problems that justice was better served that way. Leo V. Boyle, president of the MBA, said this change of heart shows how strongly lawyers feel about court reform.

If the other factions genuinely want better courts, they also must throw their support behind the Harbridge House study.

First, it is the only reform plan that proposes a comprehensive set

The supporting players behind the various plans must give up individual gain in favor of a common goal: better courts.

of solutions to the major problems faced by the courts.

The authors of the Harbridge House study spent five months interviewing more than 70 people involved in the courts. They compared the Massachusetts courts with the better-managed systems of Connecticut and New Jersey. They looked at courthouse facilities and personnel needs.

The report mirrors many of the recommendations made by the Cox Commission, including that for a unified court system, so that judges, other workers and funds could easily be transferred from court to court. It recommends removing legislative control of the court's budget. It gives the Supreme Judicial Court more power to run the courts, but also creates an independent board to advise the chief justice on policy matters.

It suggests that the judiciary, not the governor, appoint clerk-magistrates, so that authority in each court would be with one person: the judge. And it recommends immediate automation of court records.

The Harbridge House study has a major advantage over the other plans: It was prepared in what appears to be an objective manner. To greater or lesser degree, the other plans — most notably, last week's proposal by the House Democratic leadership — are self-interested, to the ultimate detriment of the courts.

Unfortunately, the Harbridge House report sidestepped the issue of patronage, which has some people questioning its objectivity — or thoroughness.

Carol Colman, co-author of the report, responded, "We think that problem is part of a larger performance management problem. It's not so terrible if the people hired are qualified. The real problem is having strict, definitive standards for hiring, and performance standards."

Well-intended as the other plans may be, their proponents give the impression that they are more interested in gaining control of the courts than in improving them.

The bill submitted by Chief Justice Paul J. Liacos of the SJC seizes control of the courts from the Legislature, but does not address other important needs, such as a unified trial court.

Gov. William F. Weld's bill, which mirrors the Liacos plan, lets him keep the political plum of appointing clerk-magistrates. But almost everyone agrees that method encourages division in the courts.

Rep. Salvatore DiMasi's plan creates an independent court administration board controlled in part by the Legislature. For that reason, it does not help the judiciary shake the shackles of legislative control.

A proposal by the Judges Conference, a voluntary organization of the state's judges, says the Legislature should remain in control of the courts, but says judges should get more independence from the SJC.

Daniel F. Pokaski, clerk-magistrate in Suffolk County, recommends drastic reduction of bureaucracy, including abolishing the Office of the Chief Administrative Justice. He wants clerk-magistrates to run individual courts.

Now the House has come up with a plan that keeps the Legislature's fingers firmly wrapped around the neck of the judiciary.

Adoption of that plan would spell disaster for the state's courts.

Only the Harbridge House proposals combine sound management practice with a sensitivity to the

courts' needs. It gives Justice Liacos what he rightfully seeks — judiciary self-determination — without the drawbacks of his plan — unfettered power for the SJC, which even his own judges oppose.

In 1976, the Cox Commission made sweeping recommendations to streamline a system it said was close to collapse.

Only a few were adopted, and the commonwealth's judicial system now stands upon the wreckage of those failed reforms.

The Harbridge House report reiterates the importance of much that the Cox Commission proposed. This time, the state can see the changes to completion.

In that quest, Justice Liacos has the opportunity to prove himself as a dynamic visionary. He could provide sorely needed leadership and muster the support of judges and legislators — if he throws his support behind the more complete package as offered by Harbridge House.

In so doing, the Legislature might be willing to abdicate power over the courts, because legislators will not see the Liacos reforms as simply a power play by the SJC.

In 1978, the Legislature was unable to put the public good ahead of political gain in order to create an efficient court system.

Thirteen years later, the issue of court reform provides the various factions — judges, legislators, the SJC, lawyers — an opportunity to work together for a court system that reflects Massachusetts' proud legal tradition.

The courts are, in theory, the last bastion of democracy and civilization.

If the judicial system does not stop playing like a comedy, it could soon be billed as a tragedy.

NOT ALL COURTS ARE CREATED EQUAL

Figures in this chart, which compares resources and caseloads in several district courts, were incorrect in *The Standard-Times* Monday. The chart was designed to accompany a story about the level of activity in 3rd District Court in New Bedford, which handles more cases annually than Quincy District Court, which has a larger budget and more staff.

	New Bedford	Fall River	Quincy	Wareham	Attleboro
Authorized personnel	59	56	123	36	26
Actual number	56	47	106	35	22
Budget	\$1,638,796	\$1,495,474	\$3,539,508	\$1,076,462	\$771,417
Cases	33,865	43,612	41,117	35,665	22,845
Activity per person	605	928	388	1,019	1,038

SOURCE: Office of Judge Charles E. Black, administrator of the region's district courts

Staff

TS

Justice resolute on reform

Foes puzzle man with mission

By Elaine McArdle
Standard-Times staff writer

The chief justice of the Supreme Judicial Court calls himself a missionary in the quest for court reform.

But with many of the state's judges opposing his plan, and a Legislature reluctant to relinquish power over the courts, Justice Paul J. Liacos may be a missionary without a flock.

Still, the chief justice vows to fight for his reform package.

"I'm going to take this to the people" through a series of public hearings around the state, he said in a recent interview with The Standard-Times.

In an effort to streamline management and improve accountability in a system criticized as one of the worst in the nation, Justice Liacos seeks to wrest fiscal control of the courts from the Legislature and place it with the Supreme Judicial Court.

Yet less than 10 percent of the 140 judges responding to a survey of the Judges Conference support Justice Liacos' entire plan, according to a report issued April 8 by the conference.

The report recommends against giving the SJC "unfettered power" over spending, closings of courthouses and other policy-making decisions.

Such powers should remain with elected officials, it says, or else the public will demand that judges be elected.

Justice Liacos said he is not certain why the judges oppose the bill, which he notes disperses power among the seven justices.

Last fall, the executive committee of the Judges Conference endorsed a bill submitted by Gov. Michael S. Dukakis that placed power square in the hands of a single person — the chief justice.

"I don't know why they're more worried about this bill, when it seems to have less centralization of power (in me). I don't know," Justice Liacos said.

Some say the chief justice's mistake was in not building a consensus before he proposed his legislation. The report notes that judges were not consulted when the bill was drafted.

Justice Liacos claims he simply did not have the time to talk with judges before the bill was due at the Statehouse in December.

There is "a lot of misinformation and a lot of paranoia" swirling about, primarily the contention that the bill is a power-grab by the SJC, he said.

It is those judges who have fared well in their particular courts, due to strong legislative support, who oppose the change, he believes.

"I'd probably be more worried if (the judges) were all supportive," Justice Liacos said, adding, "There are a lot more of them quietly supporting me than you would think."

But even among those supporters there is doubt about whether he is the kind of rough-and-tumble leader who can face the judges, the bureaucrats and the legislators head-on in this important battle.

A judge with many years experience on the bench said the success of Justice Liacos' bill depends on unity among the judiciary.



“
I'd probably be more worried if (the judges) were all supportive. There are a lot more of them quietly supporting me than you would think.”

”
— Paul J. Liacos,
chief justice,
Supreme Judicial Court

"To an extent, it's an article of faith in the current leadership," he said.

"The leadership is potentially there. I just don't think it's been exercised."

A retired Superior Court judge, noting that Justice Liacos stirred dissent when he refused to allow judges to participate in a state workers furlough plan to avert layoffs, said "the jury is still out" regarding the chief's leadership skills.

Unless Justice Liacos can unify the court, the new reform effort may be as feckless as the old, observers say.

Justice Liacos maintains he also has underground support among many legislators.

"There are people in the Legislature who obviously do not like this idea, but others who understand something must be done to change the system.

"They're caught between their local communities," in which residents hope to keep courthouses open, "and budget shortfalls, and they'd like to have me as a fall guy," he said.

Some observers give him credit for taking an activist role in court reform — something his predecessors avoided — by speaking to bar associations, court employee gatherings, and to the media.

"He has provoked comment and discussion, and whatever comes of it will be an improvement of what is presently in place," said retired Superior Court Judge George N. Hurd.

Finally, Justice Liacos warns that improvements will be a long time in coming.

"One of the things people should understand is, if we are successful, nothing within human power is going to make this into a completely different institution overnight," he said.

REFORMING THE STATE'S COURT SYSTEM

Various proposals to reform the beleaguered state court system have emerged in recent months, including one released Thursday by the House Democratic leadership as part of its recommended fiscal 1992 budget.

That package does not remove legislative control of the courts, which many critics say is an essential part of any effective reform measures.

The Harbridge House report, prepared by an independent consulting firm at the request of the Massachusetts Bar Association, is the most comprehensive reform package and seeks to address most of the ills facing the court system.

The other plans are more limited in scope.

■ Harbridge House report

- The existing seven departments of the Trial Court should be consolidated into a single, unified court by 1996 (same as Cox Commission recommended in 1978).
- The chief justice of the Supreme Judicial Court should be the chief executive officer of the trial court (same as Cox Commission).
- A new Office of the Court Administrator would replace the Office of the Chief Administrative Justice. A professional court administrator, not necessarily a judge, would set overall policies and standardize procedures (same as Cox Commission).
- An administrative board of internal and external members would advise the chief justice on administrative matters — including selecting the court administrator — and review administration of the trial court.
- The chief justice, with approval of the board, would appoint the chief administrative justice of the unified trial court for a five-year term. The chief administrative justice would work with the court administrator as a team; specifically, he or she would handle judge assignments and matters relating to judge performance.
- Court administrator would appoint clerk-magistrates for five-year terms, and could dismiss them for cause.
- Legislature would approve three court budgets — for the SJC, the Appeals Court, and the trial court — but not line items for individual courts.
- Computerization is a priority (same as Cox Commission).

■ Supreme Judicial Court 1991 Reform Legislation (Liacos plan)

- Basic structure of judicial system would remain the same.
- SJC would appoint the chief administrative justice or a non-judge court administrator to serve at its pleasure. Currently the SJC must appoint a judge to serve as chief administrative justice for a seven-year term.
- The SJC could transfer judges and other personnel to courts where they are most needed, within reasonable distances. Currently, elected clerks and Registers of Probate cannot be reassigned without their consent.
- The SJC could transfer appropriated funds among all budgetary line-item accounts within the judiciary.
- The SJC could close any court no longer needed, 60 days after providing plan and justification to the governor and Legislature.
- The SJC would appoint the chief justices of the Trial Court to serve at its pleasure. Currently the SJC appoints the administrative justices to five-year terms.
- The administrative justices of the Trial Court would appoint district court clerk-magistrates to serve at the pleasure of the justices.
- The administrative justices of the Trial Court would appoint the presiding judges of the various courts to serve at their pleasure. Currently the presiding judges are placed by seniority.
- The SJC could impose discipline on judges and court employees, including dismissal or suspensions, subject to collective bargaining agreements. The Commission on Judicial Conduct would not be affected by the legislation.
- The chief justice must submit an annual written report on the state of the judiciary to the Legislature.

■ Gov. Weld's bill

- Basically the same as the SJC bill, except the governor would

of the judiciary to the Legislature.

■ Gov. Weld's bill

■ Basically the same as the SJC bill, except the governor would retain the power to appoint district court clerk-magistrates.

■ Judges' Conference

■ Recommends further study rather than adoption of the SJC bill.

■ Recommends against giving the SJC power to transfer funds among the courts without legislative approval.

■ Recommends that the Legislature approve an operating budget for each of the seven trial court departments and the higher courts. The heads of these units would spend the funds as they see fit.

■ Recommends against giving the SJC power to close courts.

■ Recommends against allowing SJC to appoint and remove administrative justices of the trial court departments at will.

■ Recommends against allowing SJC to appoint and remove the chief of the administrative office at will. Unlike the SJC bill, says only judges should be eligible to serve as chief administrator.

■ Agrees with SJC bill that court clerks should be appointed by judiciary.

■ Agrees with SJC bill that personnel should be easily transferable, and that cases should be easily transferred among courts.

■ Daniel F. Pokaski, Clerk of Courts, Suffolk County Criminal Court

■ Abolish Office of Chief Administrative Justice.

■ Offices of administrative justices of the seven court departments would be abolished. Instead, SJC would appoint a chief justice for each department.

■ Administrative duties would be assumed jointly by an SJC court administrator, court department administrators, and, on local level, clerks of individual courts.

■ SJC would have control over all budget, courthouse and personnel decisions.

■ District court department would become a circuit court, incorporating the Boston Municipal Court.

■ Permanent Commission on Judicial Administration would be created to report annually on judicial administration.

■ Rep. Salvatore DIMasi, Chairman of House Judiciary Committee

■ A nine-member Court Administration Commission, various members to be appointed by the governor, chief justice of the SJC, and legislators, shall set court policy.

■ Office of chief administrative justice and the offices of the seven trial court administrative justices would be abolished.

■ The commission would appoint an administrator of the court system, to serve at its pleasure.

■ Court administrator could transfer funds and personnel, including judges, among courts. He or she would also be able to close courts after submitting a plan and justification to the governor and Legislature.

■ Court administrator would issue an annual report on the judiciary.

■ The administrator, with approval of the commission, could remove a court clerk, including elected clerks, for cause. The administrator also could remove a county commissioner, county treasurer, sheriff or district attorney.