

# A Declaration of Independence: Reaffirming the Autonomy of the Third Branch

by  
**James W. Dolan, Esq.**  
Former First Justice, Dorchester District Court

## Executive Summary

The Massachusetts court system is at a critical point in its history. In recent years, the court budget has doubled while the workload has decreased and the system struggles under significant staffing inequalities. Underlying these problems is the debilitating administrative weakness of the Massachusetts Trial Court. The principal reason for this lack of authority is the legislature's use of a line-item budget to add personnel to specific courts without regard to the administrative priorities of the Trial Court. This report explores the current budgeting and staffing process and the problems arising from it--striking productivity declines, rapidly rising costs, and, most importantly, systemic inequities in the distribution of resources.

### Patterns in Court Staffing

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

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

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

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

	1998	1999	2000	2001	Present Starting Salary
Assistant Clerks and Registers	21	44	15	31	\$68,280
Probation Officers	23	17	25	- <sup>a</sup>	\$41,008
Associate Probation Officers	176	4	3	13	\$29,335
Court Officers	-	3	-	41	\$37,107

<sup>a</sup> AOTC recommended 18 probation officers in various courts, none of which were approved. Instead, the legislature mandated 17 probation officer slots in the Commissioner of Probation's office: 16 probation-officers-in-charge and 1 chief probation officer position. None of these were requested by AOTC.

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

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

### **The Cost of Justice**

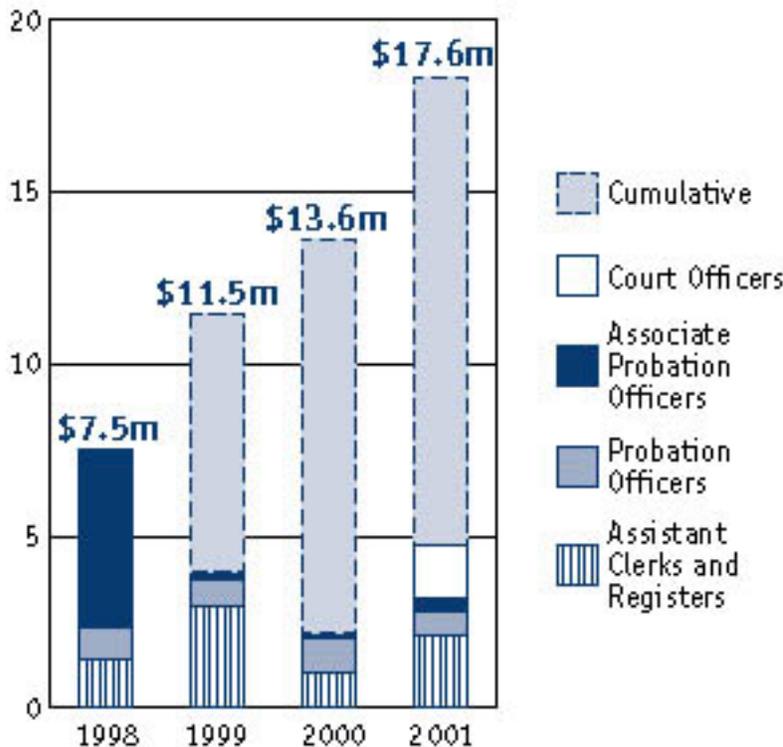
This lack of managerial authority has fiscal consequences. Figure 1 shows the large sums that are spent every year on positions that the court's chief managers do not want.

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

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

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

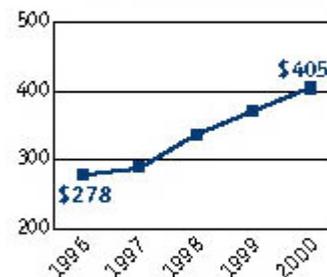
**Figure 1. Money spent on positions mandated but not requested, 1998-2001 (millions of \$)**



Note: Data calculated using 2002 salary levels.

Data: Internal Reports and Massachusetts budget

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



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

### Inequitable Allocation of Resources

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

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

### Recommendations

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

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

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

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

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

### **About the Author**

Author **James W. Dolan** was a District Court Judge for over 26 years, spending 20 years at the Dorchester District Court, where he served as First Justice. He later served as Acting First Justice of Lynn, West Roxbury, Roxbury, and New Bedford District Courts and was Regional Administrative Judge for the Greater Boston Region. Attorney Dolan is currently a principal at Dolan & Connly, P.C.

---