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## Chapter 21: Administration of Justice

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## C H A P T E R 2 1

# Administration of Justice

ALAN J. DIMOND

**§21.1. General.** The 1959 SURVEY year saw no significant structural or administrative changes in the Massachusetts judicial system. Judicial administration continued to be generally efficient and able to meet current demands within the existing framework and procedures with more than adequate results.<sup>1</sup>

### A. THE SUPREME JUDICIAL COURT

**§21.2. Business of the Court.** Between September 1, 1958, and August 31, 1959, the full bench of the Supreme Judicial Court decided 292 cases, against 268 for the preceding year and 254 and 248 for the years next preceding. The Court also rendered one advisory opinion. All cases argued or submitted before the end of June, 1959, were decided before the summer recess, 49 cases being disposed of by rescripts without opinions.

Of the 292 full bench cases, 235 (81 percent) were briefed and argued by both sides, 33 (11 percent) were briefed and argued by only one side, the other side submitting on its brief or not appearing, and 24 (8 percent) were submitted on brief by one or both sides but not argued by either. The decision of the lower court was affirmed in 159 cases (54 percent), affirmed with modification in 8 cases (3 percent) and reversed in 94 cases (32 percent). Thirty-one cases (11 percent) came up on report without decision by the lower court.

The average time between the entry of a full bench case in the Supreme Judicial Court and the consultation of the Justices was 123 days, from consultation to decision 63 days, or a total time of 186 days between entry and decision.

**§21.3. Superintendence of the lower courts.** One of the chief results of the work of the Judicial Survey Commission in 1956 was the

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**§21.1.** <sup>1</sup> Statistics used in this chapter have been obtained from the offices of John A. Daly, Esquire, Executive Secretary to the Justices of the Supreme Judicial Court, Chief Justice Paul C. Reardon of the Superior Court, and Hon. Kenneth L. Nash, Chairman of the Administrative Committee of the District Courts.

enlargement of the jurisdiction of the Supreme Judicial Court by conferring upon it "general superintendence of the administration of all courts of inferior jurisdiction."<sup>1</sup> The first case involving this provision and certain allied clauses was presented in 1959 in *County Commissioners of the County of Bristol v. The Judges of Probate of the County of Bristol*.<sup>2</sup> This was a bill for declaratory relief brought in the Supreme Judicial Court and heard upon a stipulation to determine rights to the use of a courtroom built and financed by the Bristol county commissioners under special legislation passed in 1950 and 1951 providing, among other things, for a Probate Court courtroom as part of an addition to the "Superior Court building" in New Bedford. For many years before the erection of the addition, the county commissioners had managed and controlled the courthouse and had assigned its rooms. They claimed like authority over the addition and sought to assign the new courtroom at various times to the use of the Superior Court. The probate judges, on the other hand, objected to certain of these assignments, claiming that the commissioners' authority over the new courtroom was subject to the determination of the probate judges that the room was not needed for the business of the Probate Court.

Treating the controversy as essentially a dispute between the Superior Court and the local Probate Court, the Supreme Judicial Court drew on its new source of administrative power under the legislation of 1956 and declared that the ultimate power as to the use of the courtroom was in neither the county commissioners nor the probate judges but rather in the Justices of the Supreme Judicial Court. Since, however, there was no issue presented respecting the use of the courtroom on any specific future date, the high court merely declared its possession of the ultimate power over the use of the courtroom and refrained, temporarily at least, from entering further into what was essentially a family quarrel. With a declaration of its readiness to assign dates for use of the courtroom if another conflict arose, the Supreme Judicial Court expressed the "hope that a reasonable spirit of cooperation will resolve any future question of the sort."

## B. THE SUPERIOR COURT

**§21.4. Centennial.** Augmented by eight additional justices, seven of whom were in office during most of the 1959 SURVEY year, the Superior Court became one hundred years old on July 2, 1959, and observed its centennial on Law Day, May 1, 1959, with a reception by Governor Furcolo in the Hall of Flags, a Senate-House convocation in the House chamber, followed by a luncheon and then a banquet in the evening. Subsequently exercises were also held in the various counties.

§21.3. <sup>1</sup> Acts of 1956, c. 707, §1, amending G.L., c. 211, §3.

<sup>2</sup> 338 Mass. 738, 157 N.E.2d 245 (1959).

§21.5. **Business of the court.** The Superior Court, for the third successive year, continued to keep ahead of its new business by again reducing its inherited backlog, as the following table shows.

TABLE I

## Superior Court Business

	1955-56	1956-57	1957-58	1958-59
Undisposed of cases beginning of year	66,483	68,739	61,681	56,974
Entries during year	31,586	35,619	39,030	36,883
Dispositions during year	32,923	42,209	43,660	42,455
Undisposed of cases end of year	67,529	59,673	56,972	51,783
Undisposed of law cases end of year	61,105	52,356	49,185	43,765
Remaining triable law docket end of year	48,702	40,473	36,267	30,294

The interval between entry and trial in the regular course of jury cases achieved stability in most counties near the one year mark. The losses in 1959 in counties such as Barnstable, Berkshire and Hampden are attributable to the statutory priority given to a large number of eminent domain cases which were placed at the head of the docket. The following table shows conditions as of July 1 for the past three years.

TABLE II

## Average Number of Months Interval Between Entry and Trial of Jury Cases

	July 1, 1957	July 1, 1958	July 1, 1959
Barnstable			
Original	24	20	29
Removed	20	9	10
Berkshire			
Original	29	9	21
Removed	30	9	21
Bristol			
Taunton			
Original	20	8	9
Removed	20	10	11
New Bedford			
Original	21	18	11
Removed	20	18	11
Fall River			
Original	24	12	12
Removed	21½	12	7

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	July 1, 1957	July 1, 1958	July 1, 1959
<b>Essex</b>			
<b>Salem</b>			
Original	15	12	14
Removed	17	9	14
<b>Lawrence</b>			
Original	18	12	15
Removed	20	12	16
<b>Newburyport</b>			
Original	6	6	9
Removed	6	6	9
<b>Franklin</b>			
Original	7	8	8
Removed	9	4	13
<b>Hampden</b>			
Original	16	9	11
Removed	13½	9	11
<b>Hampshire</b>			
Original	10	10	11
Removed	10	6	7
<b>Middlesex</b>			
<b>Cambridge</b>			
Original	31	23	16
Removed	26	11	12
<b>Lowell</b>			
Original	24	16	14
Removed	26	7	12
<b>Norfolk</b>			
Original	15	12	13
Removed	19	12	14
<b>Plymouth</b>			
<b>Plymouth</b>			
Original	7	11	12
Removed	9½	10	11
<b>Brockton</b>			
Original	10	10	12
Removed	11	11	11
<b>Suffolk<sup>1</sup></b>			
Original	30	12	12
Removed	15	12	11
<b>Worcester</b>			
<b>Worcester</b>			
Original	11	9	10
Removed	13	11	11
<b>Fitchburg</b>			
Original	28	12	19
Removed	29½	12	22

§21.5. <sup>1</sup> In Suffolk County, the category of removed cases seems to include only motor vehicle torts. These torts, however, make up the bulk of removals.

A valuable source of temporary manpower for the Superior Court has been provided by District Court judges assigned to sit on motor tort and misdemeanor cases in the Superior Court. The contribution of these judges is shown in the following table.

TABLE III  
Number of Days That District Court Judges  
Sat in the Superior Court

	<i>1955-56</i>	<i>1956-57</i>	<i>1957-58</i>	<i>1958-59</i>
Motor tort		1,411	2,068	1,087
Criminal	558	537	600	603
Totals	558	1,948	2,668	1,690

Because of the refusal of the 1959 legislature to provide funds to compensate District Court judges for their Superior Court service, District Court judges will not sit in the Superior Court during the 1960 SURVEY year unless funds are appropriated promptly upon the convening of the 1960 legislature.

§21.6. **The Transfer Act.** As the result of the Transfer Act,<sup>1</sup> which became effective on September 1, 1958, the Superior Court was authorized, "after determination that if the plaintiff prevails, there is no reasonable likelihood that recovery will exceed one thousand dollars," to transfer any tort or contract action to an appropriate District Court for trial by a full-time justice. A party aggrieved by a District Court finding may have the case retransferred to the Superior Court where the District Court finding will be entitled to prima facie weight. The following table shows the results of the Transfer Act through June 30, 1959. It should be read with the realization that it includes about two thousand cases which were already on the docket of the Superior Court on September 1, 1958, when the Transfer Act became effective.

TABLE IV  
Transfer Act Cases

	<i>District Courts (Other than Boston Municipal Court)</i>	<i>Boston Municipal Court</i>
Remanded from Superior Court	3,788	1,342
Tried in District Courts	816	365
Retransferred to Superior Court	266	95
Pending in District Courts	1,310	655

§21.6. <sup>1</sup> Acts of 1958, c. 369, §2, inserting G.L., c. 231, §102C. See 1958 Ann. Surv. Mass. Law §23.6.

§21.7. **Three-judge panels in labor matters.** Chapter 600 of the Acts of 1959, a broadly drawn statute, requires the convening of a panel of three associate justices of the Superior Court to preside at hearings upon applications for injunctions in labor disputes and also at trials of other types of employer-employee controversies.

C. THE DISTRICT COURTS

§21.8. **The full-time District Court system.** During the 1959 SURVEY year, the presiding justices of the Newton District Court and the Second District Court of Plymouth at Hingham and Abington were made full-time judges.<sup>1</sup> The Second District Court of Barnstable sitting at Provincetown and Harwich was added to the courts whose major civil cases must be tried by a full-time justice,<sup>2</sup> thus leaving the District Courts at Nantucket and Edgartown on Martha's Vineyard as the only District Courts not included in the full-time system.

§21.9. **District Court business.** The business of the District Courts, other than the Boston Municipal Court, is shown in the following table.

T A B L E V

District Court Business (Other than Boston Municipal Court)

	1955-56	1956-57	1957-58	1958-59
Civil writs entered	73,868	75,993	79,817	73,988
Removals to the				
Superior Court	13,569	14,409	16,100	7,020
Criminal cases begun	201,730	223,760	236,519	242,208
Small claims	68,153	68,546	68,281	68,192
Juveniles under 17	8,169	9,204	10,235	9,153
Parking tickets returned	751,606	817,488	865,912	798,983

The 1958-1959 reductions in the numbers of civil writs entered and removals to the Superior Court can be attributed to the repeal, effective September 1, 1958, of the Fielding Act, which had required all motor tort actions to be started in a District Court. Despite these reductions, there was a net increase of over 3000 civil cases, exclusive of Transfer Act cases, remaining in the District Court.

§21.10. **Uniform Reciprocal Enforcement of Support Act.** Experience with the Uniform Reciprocal Enforcement of Support Act is shown in the following table.

§21.8. <sup>1</sup> Acts of 1959, cc. 568 (Newton), 586 (Plymouth).

<sup>2</sup> *Id.*, c. 77.

TABLE VI

## Uniform Reciprocal Enforcement of Support Act Cases

	1956-57	1957-58	1958-59
Number of cases initiated	826	977	1,070
Number of cases received from other states	345	396	456
Amount collected	\$601,371	\$822,163	\$1,018,258

§21.11. **Six-member juries.** For the past two years, six-member juries have heard cases, upon consent of the parties, in the Central District Court of Worcester. During this period, 635 such cases were entered and 90 were tried to a verdict. Of these, 55 verdicts were for the plaintiff and 35, of which 4 were directed verdicts, were for the defendant. There were 100 cases pending as of June 30, 1959. The largest verdict was for \$5525 in a contract action for services.

The six-member jury appears to have gained the acceptance of the Worcester bar. Originally established on a two-year temporary basis until June 30, 1959,<sup>1</sup> the legislature in 1959 extended the use of this jury until June 30, 1961.<sup>2</sup>

## D. JUDICIAL PENSIONS

§21.12. **Earnings after retirement for disability.** As the result of a referendum in 1958, "Every person other than a judge" who is gainfully occupied after retirement "under any general or special law for disability" was required to credit his earnings above a prescribed amount against his pension.<sup>1</sup> The exemption of judges from this requirement was due, at least in part, it seems, to the constitutional provision which prohibits the "compensation" of judges from being the subject of a referendum.<sup>2</sup>

The 1959 legislature sought to put judges on the same footing as others by striking out the judicial exemption in the language quoted above.<sup>3</sup> But it is extremely doubtful, both by way of statutory construction and constitutional law, whether the legislature succeeded in its aim. Retirement of judges for disability is not made "under any general or special law" but rather under Article LVIII of the Amendments to the Constitution, which makes judicial retirements for disability "subject to any provisions made by law as to pensions or allow-

§21.11. <sup>1</sup> Acts of 1956, c. 738, §§1A, 14.

<sup>2</sup> Acts of 1959, c. 277.

§21.12. <sup>1</sup> Acts of 1958, c. 684, §1, amending G.L., c. 32, §91A.

<sup>2</sup> Mass. Const. Amend. Art. XLVIII, Pt. 2, §2.

<sup>3</sup> Acts of 1959, c. 504.



ances payable to such officers upon their voluntary retirement." No provision of the law respecting a judge's voluntary retirement requires him to credit any post-retirement earnings against his pension.<sup>4</sup> It would therefore seem to be beyond the power of the legislature to attach such a condition to the pension of a judge retired for disability as long as the pensions of judges who retire voluntarily are not subject to a like condition.

<sup>4</sup> G.L., c. 32, §§65A, 65B.

