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Chapter 23: Administration of Justice

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CHAPTER 23

Administration of Justice

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Once again the focal point of concern for the administration of justice in Massachusetts is the continuing intolerable congestion in the Superior Court. The 1955 SURVEY year was in a sense discouraging because the backlog of pending cases again significantly increased and substantially nothing of a tangible nature was done to arrest this trend. On the other hand, the appointment by Governor Herter of a Judicial Survey Commission, composed of twenty-one jurists, lawyers, and laymen, to make a broad study of the administration of justice in the courts of the Commonwealth, held out more promise for the future than any step taken in recent years. Not unnaturally the very fact that this study was being made had a dampening effect on legislative proposals in the last session looking toward relief from congestion. In most instances, the legislature wisely chose to refrain from piecemeal bites at the problem until the Commission's report was in.

A. THE BUSINESS OF THE COURTS

§23.1. The Superior Court. The following table[1] demonstrates the increase in the backlog of pending civil cases in the Superior Court in the past five years:

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§23.1. [1] The statistics in the tables which follow have, except as otherwise indicated, been taken from the Reports of the Judicial Council of Massachusetts, which are published annually as Public Document 144.

TABLE I[2]

Superior Court Business

Year	*1950-51*	*1951-52*	*1952-53*	*1953-54*	*1954-55*
Undisposed of cases beginning of year	51,388	56,318	59,837	59,504	66,381
Entries during year	30,056	31,587	33,060	33,946	32,366
Dispositions during year	25,614	27,990	34,045	29,015	30,611
Undisposed of cases end of year	56,328	60,043	50,445	64,027	67,416

It will be observed that the number of cases pending at the close of the 1955 SURVEY year is 3389 more than the corresponding figure for the previous year.[3] The increase would have been even greater but for the rule, effective for the first time this year, reducing the period before the dismissal of an inactive case from six years to four years.[4]

As has been pointed out previously,[5] however, the size of the backlog of pending cases is not the true measure of congestion. The case that slumbers on the "Pending" docket until by lapse of time it is moved to the "Disposed Of" docket does not concern the litigant who wants a trial.[6] It is only when cases take up the court's time by appearing on a pretrial or trial list that their presence is felt. The significant statistics are those showing how long after entry it takes for a case to be reached for trial in the ordinary course. This information, not collected by the Judicial Council as a part of the official statistics, is as follows for the more populous counties:

2 The discrepancies in these compilations, pointed out in §27.2 of the 1954 SURVEY, still exist. For instance, the difference between the number of cases listed as pending at the end of 1954 and at the beginning of 1955 is 2273. This discrepancy comes almost wholly from the figures from Essex and Hampden counties, where increases of 637 and 1639, respectively, are shown. The Essex clerk's office reports that the increase in that court is an error resulting from the inadvertent counting of cases in one docket twice.

3 Possibly 745, the listed difference between 1954-1955 entries and dispositions, is a more accurate figure. See note 2 *supra*.

4 Superior Court Rule 85 (1954). Under this rule 3389 cases were dismissed in 1954-1955 as compared to 660 in the previous year.

5 1954 Ann. Surv. Mass. Law §27.2.

6 The clerk of the Superior Court for Suffolk County writes: "Of the twenty-two thousand odd cases shown in Box 8 of my report to the Judicial Council, I estimate several thousand of them as being non-triable cases, which for one reason or another remain undisposed of on my docket." It is fair to assume that similarly in other counties there are many cases technically pending which are for all practical purposes dead. For instance, there are in this category cases involving insurance companies in receivership the further prosecution of which is enjoined, cases which have been tried and remain pending only because of the theoretical possibility of a motion for costs, and the like. This makes the over-all total of pending cases meaningful only on a comparative basis.

TABLE II[7]

Average Number of Months' Waiting Period for Jury Trials

Worcester	48
Middlesex	38
Suffolk	28
Hampden	27
Norfolk	21
Essex	
Salem	27
Lawrence	30
Newburyport	4 (approx.)

It is plain that the Chief Justice of the Superior Court is forced to deploy his judicial manpower in a many-front war, and that a speeding up of the jury docket in one county is likely to be accompanied by an increased delay in another.[8] The shifting conditions during the year are reflected by Table III on the opposite page.

Thus it appears that there was a substantial speeding up of the list in Suffolk County[9] and a slight gain in Norfolk and Essex, but an increased delay in Middlesex and Worcester during the year. Worcester County now owns the dubious distinction of having the longest waiting period of any county in the United States.[10]

[7] These figures, speaking as of the end of the trial year ending June 30, 1955, and giving the average waiting period for the year, were furnished the writer by the clerks except for Hampden County. For Hampden County they are taken from Institute of Judicial Administration, State Courts of General Jurisdiction; Calendar Status Study — 1955 (June 30, 1955), but since they were compiled in the spring of 1955 they may not accurately reflect the average for the full year. In the computation of these figures cases advanced for speedy trial either by statutory mandate or on motion have been excluded. By way of contrast, the Institute of Judicial Administration shows the following waiting periods in months for other metropolitan areas: Los Angeles, 13; San Francisco, 9; Baltimore, 14; Detroit, 13; Minneapolis, 12; St. Louis, 11; Philadelphia, 10.5.

[8] The situation in the less populous counties shows sharp variations. The clerk in Berkshire County, for example, reports an average delay of 31 months, and the clerk for Franklin County an average of 15 months. Moreover, where the volume of litigation is small, average figures are likely to be deceptive. In Franklin County the average was distorted by two old land damage cases, each pending for about seven years, which were tried in May, 1955, just before they would have been dismissed under Rule 85. Actually, many other trials were well under a year after entry, some within four months.

[9] It is curious to note that this gain was achieved despite a reduction in the number of days of jury sessions from 1070 in 1953-1954 (when the waiting period increased) to 1022 in 1954-1955.

[10] The information was furnished by the clerks of the several counties. The Institute of Judicial Administration Calendar Status Study, the figures in which are subject to the possible infirmity referred to in note 7 *supra*, show for Hampden County an increase in average waiting period from 25 to 27 months in the past year.

TABLE III

Changes in Waiting Period for Jury Trials, 1954-55

Date of Entry of Most Recently Entered Case Tried in Ordinary Course During Year

	1953-54	*1954-55*
Suffolk	October 23, 1951	July 14, 1953
Middlesex	August 9, 1951	April 7, 1952
Norfolk	June, 1952	September, 1953
Worcester		
At Worcester	January 2, 1951	July 2, 1951
At Fitchburg	November 3, 1952	July 1, 1953
Essex		
At Salem	March 24, 1952	April 6, 1953
At Lawrence	November 1, 1950	October 27, 1952
At Newburyport	December 16, 1953	December 6, 1954

The allocation of Superior Court justices among civil jury, non-jury, and criminal sessions for the past year as compared to the year 1953-1954 was as follows:

TABLE IV

Days in Which Superior Court Judges Sat

	1954-55	*1953-54*
Civil Jury	2894½	2806
Non-jury	1452½	1573
Criminal	1272½	1120
	5619½	5499
District Judges in Superior Court	498	413

The most striking disclosure from these figures is the marked increase in the criminal workload. The 1770½ trial days devoted to the criminal docket was an increase of 237½ days over 1953-1954, or over 15 percent; and the 1953-1954 figure was itself notably higher than in previous years.[11] To handle this added volume, District Court judges were used in misdemeanor cases more extensively than in any year since 1942, but Superior Court justices nevertheless bore the brunt of the increase. This naturally contributed to the congestion of the

[11] The average number of days per year of criminal jury sessions from 1949-1950 through 1952-1953 was 1413.

civil dockets. The average number of days that Superior Court justices sat was 175½, or 35 five-day weeks.

Despite legislative authorization for District Court judges to be called to sit on motor vehicle tort cases in the Superior Court,[12] none were in fact called for such service during the year. The authorization was temporary only and expires on September 1, 1956, unless extended. While the merit of the legislation is open to debate, some experimentation with it in the coming year would seem desirable.

§23.2. **The District Courts and the Municipal Court of the City of Boston.** The statistics of the District Courts, collected by the Administrative Committee for the District Courts, continue to show a fairly stable volume of business, as the following table reveals:

TABLE V

District Court Business

	1954-55	*1953-54*
Civil Writs Entered	63,798	57,102
Removals to Superior Court	9,248	3,998
Motor Tort Removals	7,756	2,599
Criminal Cases Begun	202,126	202,334
Small Claims	70,877	73,182

The increase in civil entries, 6689, corresponds fairly closely to the increase in motor tort removals, 5157, attributable to the first year of operation under the re-enacted Fielding Act, which requires the entry of these cases in the District Court.[1]

An interesting innovation is the showing for the first time of the number of actual trials of the various types of civil cases in the District Courts. The ratio of trials to entries[2] in the current year is represented by the following percentages:

Summary Process	44 percent
Motor Vehicle Tort	18 percent
Other Tort	15 percent
Contract	7 percent
Other	17 percent

[12] Acts of 1954, c. 668. Perhaps unintentionally, this statute also had the effect of making temporary the existing authority for District Court judges to sit on misdemeanor cases in the Superior Court. Unless there is legislative action before September 1, 1956, this useful source of added manpower for the criminal docket will no longer be available.

§23.2. [1] Acts of 1954, c. 616.

[2] The figure representing "entries" for purposes of these percentages is arrived at by subtracting from total entries all cases removed to the Superior Court.

The over-all percentage is 16 percent. Here is another illustration of the truism that the proportion of cases tried is relatively small even in a court where a prompt trial can be had if a party so desires.

The Municipal Court of the City of Boston does not show a significantly different picture.

B. Congestion in the Superior Court

§23.3. The Judicial Survey Commission. Concern over the ever-increasing congestion in the Superior Court led to the appointment by Governor Herter, at the request of the Massachusetts Bar Association, of a Commission to consider this problem "as part of a much broader study of the entire administration of justice in all of the courts of the Commonwealth." [1] Recognizing that the administration of justice is not within the exclusive proprietorship of the bench and bar, the Governor included on this 21-man Commission civic leaders from business, labor, the press, and the clergy. The Commission and its several working subcommittees have met frequently, but no report was made before the close of the Survey year. Indeed, the only public pronouncement made by the Commission was a press release endorsing four specific recommendations of the Judicial Council then before the legislature.[2]

The forthcoming report of the Commission, expected early in the next legislative year, is likely to have far-reaching effect. The stature of its members and the thoroughness of their deliberations assure their recommendations of the respectful attention of the public, the legislature, and the courts themselves. It may be assumed that a major share of the Commission's concern will be for improvement of the efficiency of our existing judicial system. Management of the courts is big business, and the public should not be forced to put up with and foot the bill for a system the extravagance and inefficiency of which would not be tolerated in private business. It is to be hoped, however, that the Commission will not confine itself to matters of judicial housekeeping or even to such of the vital reforms as the grant of full rule-making power to the Supreme Judicial Court.[3] Increased efficiency can speed up the judicial process to a considerable degree, but it should be apparent by now that there can be no true cure for congestion which does not in some fashion reduce the inflow of jury cases which has engulfed the system.

§23.3. [1] Governor's Inaugural Address, Senate No. 1, p. 19 (1955).

[2] The following recommendations of the Judicial Council were specifically endorsed: (1) adoption of a moderate jury fee; (2) provision for oral depositions of parties; (3) amendment of G.L., c. 231, §147, concerning authority of the courts to prescribe forms of pleading; (4) extension of venue provisions in District Courts. None of the recommendations were adopted except the fourth, which was enacted in a greatly modified form. See §23.10 *infra*.

[3] 1954 Ann. Surv. Mass. Law §27.15.

§23.4. Jury fee. For years[1] the Judicial Council has recommended a moderate jury fee as a means of curtailing the volume of jury claims. This year, after the customary rejection of the proposal by the legislature, Governor Herter revived it by a special message to the legislature urging reconsideration, but it was again rejected despite a favorable report from the Judiciary Committee.[2] The Judicial Survey Commission released a statement to the press[3] recommending enactment of the legislation, but this release, which was not accompanied by argument in support of it, received scant attention at the time. If the Commission remains of the same mind and repeats the recommendation in its report, it may aid in overcoming the traditional legislative hostility to jury fees.

Perhaps, however, a different approach might have more chance of success. It is mainly the jury claims in small cases which cause concern. The Judicial Council has for the last two years collected statistics on the size of verdicts, and pointed out last year that in 1953-1954 the plaintiff received either nothing or less than $500 in more than half the cases tried to a conclusion.[4] It is somewhat misleading to lump defendant verdicts together with the low verdicts and treat them as small cases in which jury trials should be discouraged. It must be apparent that verdicts for the defendant often are rendered when the damages would be substantial if the plaintiff prevailed. Nevertheless, the Council's point remains sound. Considering only the 878 plaintiff verdicts in 1954-1955, the recovery was less than $500 in 216, or 24.6 percent of the total, and less than $1000 in 392, or 44.6 percent of the total. In motor vehicle tort cases, the chief source of congestion, the percentage of small verdicts was even higher. Of the 532 plaintiff verdicts, 28.2 percent were less than $500 and 50.4 percent less than $1000. It seems fair to assume, moreover, that the likely amount of the plaintiff's recovery in the cases he lost was at least as low as the actual recovery in those he won. Of course, these figures do not fairly reflect the amount involved in jury cases generally. There are no available records of the amounts paid in settlement of such cases, but trial lawyers will testify that the big cases are much more likely to be settled than the small ones. The fact remains that the public is paying for jury trials in a very large number of cases where the amount at stake between the litigants is substantially less than the cost of the trial to the taxpayer. Moreover, these cases clog the trial lists and delay the trial of important cases.

Pennsylvania has met the problem of the small jury case head on. A recent statute of that state provides that the courts may adopt a rule

§23.4. 1 Pub. Doc. 144, Thirtieth Report of the Judicial Council of Massachusetts 12 (1955); 29th Rep. 7 (1954), in which prior proposals of the Council are summarized.
2 House No. 2943 (1955).
3 See §23.3 *supra*, note 2.
4 30th Rep. 11a (1954).

requiring arbitration of all civil cases in which less than $1000 is in controversy except where the title to real estate is involved.[5] The members of the bar who are chosen as arbitrators are paid by the county in the first instance, but any party dissatisfied with the result of the arbitration must, as a condition precedent to a jury trial, reimburse the county for the arbitrators' fees. Moreover, these fees are not taxed as costs or otherwise recoverable if the party wins before the jury. This procedure has been upheld by the Supreme Court of Pennsylvania against the challenge that it violated the fourteenth Amendment of the Constitution of the United States and the Pennsylvania constitutional guarantee of jury trial.[6]

The Pennsylvania scheme has had the result in one county in that state of keeping 95 percent of these small cases off the jury list and thus reducing trial delay for the important cases from between three and four years to one year.[7] Possibly our Court might take a different view of the constitutional question if an adaptation of the Pennsylvania law were enacted here.[8] The results in Pennsylvania, however, at least suggest the wisdom of thoughtful inquiry into the merits of some comparable approach in Massachusetts, though perhaps a less drastic one.

§23.5. A year of the Fielding Act. The first year of operation under the re-enacted Fielding Act shows some reduction of motor tort cases in the Superior Court, but not enough significantly to affect Superior Court congestion. This act, requiring all motor tort cases to be entered in the District Court and then permitting either party to remove, became effective on October 1, 1954.[1]

In the twelve months preceding that date, there were 14,156 original motor tort entries in the Superior Court and 3384 removals, giving a total of 17,540 cases in that court. The first year under the Fielding Act, ending September 30, 1955, showed 1971 original entries[2] and 14,442 removals, a total of 16,413 cases. This is a reduc-

5 Pa. Stats. Ann., tit. 5, §30 (Supp. 1954).

6 Application of Smith, 381 Pa. 223, 112 A.2d 625 (1955), *appeal dismissed sub nom.* Smith v. Wissler, 350 U.S. 858, 76 Sup. Ct. 105, 100 L. Ed. Adv. Sh. 68.

7 Westwood, The Law's Delay and the Pennsylvania Arbitration Plan, 39 Am. Jud. Soc. J. 50, 53 (1955).

8 The Supreme Judicial Court has upheld the constitutionality of compulsory reference of motor tort cases to auditors, whose findings are prima facie evidence if a jury trial is subsequently claimed. See Fratantonio v. Atlantic Refining Co., 297 Mass. 21, 8 N.E.2d 168 (1937). The court did not, of course, have occasion to consider the constitutionality of requiring the payment of nonrecoverable costs of the first proceeding as a condition precedent to a jury trial.

§23.5. 1 Acts of 1954, c. 616.

2 Since G.L., c. 231, §13 permits a mamixum of ninety days between the date of the writ and the return day, October, November and December motor vehicle entries in the Superior Court were presumably properly returnable to that court. The eighty Superior Court entries of such cases after January 1, 1955, appear to be there through inadvertence or mistake. The propriety of an amendment allowing transfer of such cases to an appropriate District Court should be considered, since otherwise

tion of 6.4 percent from the previous year. To approach the figures from another angle, the total volume of motor vehicle torts entered in all courts was 33,228, of which 16,815, or 50.5 percent remained in the District Courts, as against 48 percent so remaining in the previous year.

§23.6. Pretrial conference. When the pretrial conference was adopted in Suffolk County in 1935,[1] following a study of the use of this technique in Detroit, it was widely acclaimed as a means of cleaning out deadwood from the trial lists, bringing about settlement of cases without taking up the time of jury sessions, and, by simplification of issues, shortening jury trials. This device has since spread widely, and the conventional view of the procedural reformer is to accord it unstinted praise.[2] There has developed, however, a growing sense of disenchantment toward pretrial among trial lawyers. It is said that it tends to become perfunctory, that most of the settlements in pretrial sessions would occur in any event before the commencement of trial, and that the notion that trial time is significantly shortened by pretrial stipulations is largely a delusion.[3] The point is made that competent counsel will commonly arrive informally at the same agreements reached in pretrial sessions under the prodding of the court and that there is no effective sanction against the attorney who comes to pretrial either unprepared or lacking in authority from his client to make concessions, or who is simply uncooperative.

The truth doubtless lies somewhere in between the extravagant statements of those claiming too much for the pretrial device and those condemning it as a waste of time. It would appear to have too much merit to be lightly abandoned, but attention surely ought to be given to means of strengthening it. The court does not lack power to require at least that counsel come to pretrial as fully prepared as they are when a jury is empaneled.[4] Connecticut adopted a rule vir-

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they may be dismissed for lack of jurisdiction over the subject matter after the statute of limitations would bar a new suit. See 1954 Ann. Surv. Mass. Law §27.6.

§23.6. [1] Instituted originally in Suffolk County by Judge Gray in 1935, and upheld in Fanciullo v. B.G. & S. Theatre Corp., 297 Mass. 44, 8 N.E.2d 174 (1937), it was established as Superior Court Rule 57A in 1938, and now appears in amended form as Superior Court Rule 58 (1954).

[2] See Vanderbilt, The Challenge of Law Reform 63 (1955).

[3] Judge Vanderbilt states, however, that in New Jersey "The cases that do go on trial are disposed of in from a third to a half less time than when there was no pretrial conference in our state." Note 2 *supra* at 64.

[4] While this chapter was in the process of writing, Chief Justice Reardon of the Superior Court issued an order designed to improve pretrial procedure. The order refers to the power of the court to enter nonsuits or defaults if counsel does not attend the pretrial call fully prepared and authorized to act in all matters pertaining to the case. In Fanciullo v. B.G. & S. Theatre Corp., 297 Mass. 44, 8 N.E.2d 174 (1937), the Supreme Judicial Court in dealing with Judge Gray's order establishing the original pretrial call held that promulgation thereof was within the power of the judge having charge of the jury list and that action by all the judges was not

tually identical to Rule 58 of our Superior Court Rules,[5] and under that rule plaintiffs have been nonsuited for not being prepared at pretrial. Such nonsuits have been upheld in Connecticut by the Supreme Court of Errors in two cases.[6]

These decisions came up procedurally in such a way that the only question considered by the court was the bare one of power to order a nonsuit for this reason. The court does not discuss the propriety of the use of the power in the particular cases, nor do the facts appear in the opinion. The writer is informed, however, that one of the cases was an action for damages from a fall on an icy sidewalk, and that the question of whether the sidewalk surface was or was not porous had a bearing on the negligence of the defendant in not preventing the formation of ice. When the plaintiff's attorney stated at pretrial that he had not investigated this aspect of the case, the judge entered a nonsuit.

§23.7. **Continuances for engagements of counsel.** A factor contributing materially to the delay of particular cases, as distinguished from the trial list as a whole, is the practice of granting continuances when one of the attorneys is actually engaged in the trial of another case. The appearance in a case of a busy lawyer who is trying in some court almost daily may lead to a succession of postponements for this reason, often at a substantial cost in time and money to parties and witnesses. This frequently leads to the unseemly spectacle of competition among the judges in charge of the trial lists in different counties for the attendance of such a lawyer who, when once reached for trial in one case, is likely to be ordered to follow himself in other cases on the list for that county while his cases in other counties stand in abeyance. Possibly a central handling of assignment for the counties with a common active bar, such as Suffolk, Middlesex, and Norfolk, would be an improvement, but there is no easy solution to the problem. The desire to have trial counsel of one's own choosing is entitled to respect, and yet the indefinite delay of a trial because of the conflicting engagements of a busy lawyer seems unfair.

It is clear that the matter is one of policy rather than power. The Supreme Judicial Court said in 1925, in a case dealing with the denial of a continuance in a capital case because of defendant counsel's engagement elsewhere:

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essential to its validity. Chief Justice Reardon also served notice upon the bar of the intention to take action with respect to continuances for engagements of counsel, discussed in §23.7 *infra,* and requested cooperation from the bar in arriving at a fair solution of the problem.

5 The Connecticut rule, like the Massachusetts rule, provided for a call of the pretrial list, "at which call continuances, non-suits, or defaults may be entered." Rules of Trial Court §144, Conn. Practice Book (1951).

6 Stanley v. Hartford, 140 Conn. 643, 103 A.2d 147 (1954); O'Brien v. Rome, 140 Conn. 649, 103 A.2d 150 (1954).

> There is no dearth of lawyers. There is congestion in the dockets of the Superior Court. No attorney can accept personal retainers for a larger number of cases than he can try as and when they are reached and expect courts to continue any case for his convenience or that of his clients. Unreasonable delay in the administration of justice can be avoided only by leaving continuances of cases because of conflicting engagements of counsel solely to the sound discretion of the court.[1]

This problem has been dealt with in Cook County, Illinois, where the Superior Court jury docket is one of the most congested in the United States. All motions for continuances in that county are heard by the assignment judge, and his denial of a continuance because of counsel's engagement was upheld recently by the Appellate Court of Illinois in an opinion describing at length conditions in the courts of Cook County strikingly parallel to those prevailing in Massachusetts. The court said, "There is no constitutional, statutory or other provision which gives a party the right to choose a particular lawyer, without regard to whether that lawyer has the time to try the case or not. Such a doctrine would have results that would be disastrous."[2]

C. The Year's Legislation

§23.8. Judicial salaries. There was a paucity of significant legislation in 1955 bearing upon the administration of justice. There was a merited increase in the salaries of justices of the Supreme Judicial Court and the Superior Court and of the judges of the Land Court and the Probate Courts.[1] An associate justice of the Supreme Judicial Court now receives a salary of $22,000, as compared to $18,500 in 1951, $17,000 in 1946, and $14,000 before the war.[2] The other increases have been roughly comparable. It is worth noting, however, that these increases have fallen well short of the increase in the cost of living[3] and that our judges are still less well treated financially than they were a quarter-century ago.[4]

The salaries of the chief justice and associate justices of the Municipal Court of the City of Boston were also increased to $16,000 and $15,000 respectively, an increase of $3000, and for the first time

§23.7. [1] Commonwealth v. Festo, 251 Mass. 275, 277, 146 N.E. 700, 701 (1925).
[2] Gray v. Gray, 128 N.E.2d 602, 606 (Ill. App. 1955).

§23.8. [1] Acts of 1955, c. 733.
[2] Acts of 1951, c. 742, §1; Acts of 1946, c. 544, §1. Prior to the 1946 increase, these justices had received $14,000 since 1928. Acts of 1928, c. 295, §1.
[3] The Consumer Price Index of the U.S. Bureau of Labor Statistics shows an increase in the cost of living in Boston of 84.3 percent between the base period 1935-1939 and October, 1955.
[4] In 1939, Congress removed the exemption of state officers and employees from federal income tax. Pub. L. No. 32, 76th Cong., 1st Sess. §1 (April 12, 1939), amending §22(a) of the Internal Revenue Code of 1939.

these justices were required to devote full time to their duties and were forbidden to engage in the practice of law.[5] Justices of the full-time District Courts have been barred from the practice of law since 1948,[6] but until this year the justices of the Municipal Court of the City of Boston, although their judicial service was substantially full time in fact, were free to practice law. It was this difference in their status, eliminated by this legislation, which was in past years one of the stumbling blocks to District Court reorganization.[7] There was also a minor increase in the jurisdiction of this court, which was empowered to review certain decisions of the Civil Service Commission[8] and to hear appeals from decisions of the board of appeal on motor vehicle policies and bonds.[9]

In addition, the salaries of District Court judges in six full-time courts were increased from $9900 to $12,000,[10] and there was a general increase in the salaries of the District Court judges in the part-time courts ranging from $300 to $900, the higher raises going to those judges whose prior salaries were in the lower brackets.[11] Since the salaries of the clerks and assistant clerks of the District Courts are fixed as a percentage of the judge's salary, they were automatically similarly raised by this legislation, a result which evoked some criticism in the press.[12]

The legislature continued to follow the pattern of making its own members ultimately eligible for salary increases voted during their terms as legislators for judicial positions to which they were appointed. The Constitution forbids a legislator from being appointed during his term to an office the emoluments of which are increased during such term.[13] The practice has developed when salary increases are voted to make them inapplicable to persons appointed thereafter, thus opening the door to the appointment of legislators. The succeeding legislature then corrects the disparity.[14] This "double play" technique, while it may seem a circumvention of the constitutional mandate, removes a political impediment to deserved increases in judicial salaries and gives the Governor an opportunity to consider a lawyer-legislator for judicial appointment.

§23.9. Compensation of jurors. The legislature also increased the compensation of jurors in first degree murder cases from $10 to $12 per day and all other jurors from $8 to $10 per day.[1] This is the

5 Acts of 1955, c. 748.
6 Acts of 1948, c. 656.
7 1954 Ann. Surv. Mass. Law §27.11.
8 Acts of 1955, c. 407.
9 Id., c. 412.
10 Id., c. 334.
11 Id., c. 741.
12 The Boston Herald, Sept. 16, 1955, p. 32.
13 Mass. Const., Articles of Amendment, Art. LXV.
14 See, e.g., Acts of 1955, c. 475.

§23.9. 1 Acts of 1955, c. 328.

second such increase since World War II,[2] and it makes the compensation as great as in any state in the country and much greater than in most.[3] While it adds appreciably to the already heavy cost of running the courts, the legislation offers some hope for improving the quality of jurors and reducing the incentive to seek excuse from jury duty.

§23.10. Venue in District Courts. The Judicial Council has for four years[1] recommended that plaintiffs in all actions of tort or contract be given the same choice of districts that is available in motor vehicle tort cases: namely, the district where the plaintiff lives, the district where the defendant lives, or a district adjoining and in the same county as the district where the defendant lives or has his usual place of business.[2] A variant of this proposal which passed the House in 1954 but was rejected in the Senate was approved by the Judicial Council as a satisfactory alternative to its own proposal.[3] The legislature left the general venue provision untouched but made a minor modification applicable only to motor vehicle torts,[4] which added to the choice of districts one in which a party has a usual place of business. The controversy over these piecemeal proposals and an examination of the present statutes point up the wisdom of a fresh approach to the whole venue problem.[5] Venue provisions ought to be designed with a view to trial convenience and fairness to the parties, a purpose which has been obscured in the present jerry-built structure of amendment on amendment. Might it not be wise, for instance, to consider making the district where the events giving rise to the action occurred a proper district for venue purposes?

§23.11. Speedy trial of removed cases. The legislature enacted a statute making mandatory the grant of a motion for speedy trial in a case removed from the District Court by the defendant where the ad damnum is not more than $2000.[1] This measure was endorsed by the Judicial Council,[2] and is a desirable deterrent to removal for purposes of delay. It overlaps to some degree the provision of the Fielding Act that a removed motor vehicle tort case "may" be advanced on motion, regardless of which party removed the case and of the amount

2 Acts of 1949, c. 335; Acts of 1945, c. 236, §1.

3 Only Delaware, some counties in Maine, and Rhode Island pay their jurors as well as Massachusetts. The daily stipend falls as low as $1 in Louisiana, $1.50 in New Mexico. A daily stipend of between $3 and $6 is common. Institute of Judicial Administration, Jury Costs (1955).

§23.10. 1 Pub. Doc. 144, Twenty-seventh Report of the Judicial Council of Massachusetts 34 (1951); 28th Rep. 21 (1952); 29th Rep. 11 (1953); 30th Rep. 17 (1953).

2 G.L., c. 223, §2.

3 House No. 2755 (1954).

4 Acts of 1955, c. 158.

5 See Stevens, Venue Statutes: Diagnosis and Proposed Cure, 49 Mich. L. Rev. 307 (1951).

§23.11. 1 Acts of 1955, c. 359.

2 Pub. Doc. 144, Thirtieth Report of the Judicial Council of Massachusetts 30 (1955).

involved. In this permissive form, the latter provision is merely declaratory of the inherent power of the court to determine the order of its business. Fortunately, the court has shown little disposition to act under this broad provision. Were it to do so, it would simply be discriminating against contract actions and other types of tort actions. In the first nine months of 1955, over 57 percent of the cases entered in or removed to the Superior Court were motor vehicle tort actions. Obviously no such portion of the total volume should be entitled to special consideration for advancement for speedy trial. The existence of such a provision emphasizes the need of a reappraisal of the statutory grounds for speedy trial.[3]

§23.12. Summary judgment in contract cases. Another Judicial Council proposal which became law was a statute providing for summary judgment in contract actions where it is shown that no genuine issue of material facts exists, but only questions of law.[1] This act is more guardedly drawn than Federal Rule 56, which applies to all types of cases, but it should cover the majority of cases where the dispute can be isolated to questions of law. Clearly the device has no usefulness in the typical tort case, but after a body of experience has developed under the present limited statute it may be worth while to consider broadening it to cover the admittedly rare situation where a tort claim stands or falls upon a clear question of law.

§23.13. Other legislative proposals. As usual a large number of bills dealing with the administration of justice were filed and failed of passage. Once more the meritorious Judicial Council proposal for the deposition of parties was shelved despite a favorable committee report.[1] Once more reorganization of the District Courts came to naught, although a halfway measure toward that end came close to passage.[2] The suggestion of Governor Herter, who has consistently favored reorganization, that the legislature await the report of the Judicial Survey Commission was finally followed. Proposals for six-man juries in the District Courts[3] and the Municipal Court of the City of Boston,[4] and for limited service for Superior Court justices over seventy years old with the appointment of full-time justices to replace them,[5] attracted considerable support but not enough for passage. The legislative ferment over the several proposals aimed to relieve congestion furnishes a sound basis of hope for favorable action upon such recommendations as the Judicial Survey Commission may make.

[3] 1954 Ann. Surv. Mass. Law §27.2.

§23.12. [1] Acts of 1955, c. 674.

§23.13. [1] House No. 2751 (1955).
[2] Senate No. 732 (1955).
[3] House No. 842 (1955).
[4] House No. 2831 (1955).
[5] Senate No. 312 (1955).