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Chapter 21: Administration of Justice

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CHAPTER 21

Administration of Justice

ALAN J. DIMOND

A. THE SUPREME JUDICIAL COURT

§21.1. **Business of the full bench.** The work of the full bench of the Supreme Judicial Court is reported in the following table.¹ A gradual increase in the number of cases during the past four years is shown. For the 1961 SURVEY year there was also an increase in the number of dispositions by rescript without opinion. With a vacancy in the Court's membership existing from December, 1959, until December, 1960, the average number of days between the entry and decision of cases was longer than in the two preceding years. By the time of the summer recess, however, the Court was current with its work.

TABLE I

Full Bench Business of
the Supreme Judicial Court

	1957-58	1958-59	1959-60	1960-61
Cases decided	277	292	303	314
Advisory opinions	4	1	2	0
Rescripts without opinion	38	49	31	53
Decision of trial court affirmed	183	159	192	199
Decision of trial court affirmed with modification	6	8	12	6
Decision of trial court reversed	78	94	81	84
No decision by trial court	10	31	18	25
Average interval between entry and consultation		123	120	98
Average interval between con- sultation and decision		63	57	142
Average interval between entry and decision		186	177	240

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§21.1. ¹ Statistics used in this chapter have been obtained from the offices of Joseph K. Collins, Esquire, Executive Secretary to the Justices of the Supreme

§21.2. **Sitting of the full bench outside Boston.** Although a proposal to abolish all sittings of the full bench outside Boston was first presented to the legislature over a century ago,¹ complete acceptance of the recommendation did not result until 1961. By Chapter 106 of the Acts of 1961 the times and places of all full bench sittings are now to be fixed by rule of the Court. Legislatively required sittings in the western counties are thus abolished. Under its new authority, the Court has amended Rule 26 of its full bench rules to provide that henceforth all full bench sittings shall be held in Boston. A reservation in the rule, not likely to be invoked, enables the Court also to sit elsewhere if it sees fit.

B. THE SUPERIOR COURT

§21.3. **Business of the court.** Again denied the services of District Court judges in both motor tort and misdemeanor cases because of the failure of the legislature to appropriate the necessary funds, the Superior Court had considerable difficulty in maintaining the gains of recent years. So serious was the accumulation of misdemeanor appeals that in June, 1961, civil sessions were drastically reduced to allow the court to concentrate its efforts on criminal matters. The following tables show the business of the court.

T A B L E I I

Superior Court Business

	1957-58	1958-59	1959-60	1960-61
Undisposed-of cases beginning of year	61,681	56,974	51,774	53,891
Entries during year	39,030	36,883	39,233	39,878
Dispositions during year	43,660	42,455	36,774	38,085
Undisposed-of cases end of year	56,972	51,783	53,834	55,648
Undisposed-of law cases end of year	49,185	43,765	45,544	47,521
Remaining triable law docket end of year	36,267	30,294	35,975	37,912

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. The statistical year of the Supreme Judicial Court ends on August 30. All other statistics in this chapter are for years ending on June 30 unless otherwise stated.

§21.2. ¹ House Doc. No. 120 (1859).

TABLE III

Average Number of Months Interval Between
Entry and Trial of Civil Jury Cases¹

	<i>July 1, 1958</i>	<i>July 1, 1959</i>	<i>July 1, 1960</i>	<i>April 1, 1961</i>
Barnstable				
Original	20	29		
Removed	9	10	10	14
Berkshire				
Original	9	21		
Removed	9	21	28	27
Bristol				
Taunton				
Original	8	9		
Removed	10	11	11	16
New Bedford				
Original	18	11		
Removed	18	11	14	17
Fall River				
Original	12	12		
Removed	12	7	10	15
Essex				
Salem				
Original	12	14		
Removed	9	14	12½	17
Lawrence				
Original	12	15		
Removed	12	16	17	12
Newburyport				
Original	6	9		
Removed	6	9	9	12
Franklin				
Original	8	8		
Removed	4	13	12	16
Hampden				
Original	9	11	12	11
Removed	9	11	motor torts 19 mos.	
Hampshire				
Original	10	11		
Removed	6	7	10	13
Middlesex				
Cambridge				
Original	23	16		
Removed	11	12	15	21

§21.3. ¹ For 1960 and 1961, original and removed cases are not separated, since the repeal of the Fielding Act (requiring all motor tort cases to be started in a District Court) on September 1, 1958, has made the separation statistically unimportant.

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	July 1, 1958	July 1, 1959	July 1, 1960	April 1, 1961
Lowell				
Original	16	14	12	15
Removed	7	12		
Norfolk				
Original	12	13	13	17
Removed	12	14		
Plymouth				
Plymouth				
Original	11	12	13	23
Removed	10	11		
Brockton				
Original	10	12	13	23
Removed	11	11		
Suffolk				
Original	12	12	12	14
Removed	12	11		
Worcester				
Worcester				
Original	9	10	13	16
Removed	11	11		
Fitchburg				
Original	12	19	11	17
Removed	12	22		

T A B L E I V

Transfer Act Cases²

	<i>District Courts (Other than Boston Municipal Court)</i>		<i>Boston Municipal Court</i>	
	1959-60	1960-61	1959-60	1960-61
Remanded from Superior Court	3,646	5,967	3,089	3,015
Tried in District Courts	1,073	1,414	650	563
Retransferred to Superior Court	475	544	255	216
Pending in District Courts	1,393	2,300	1,628	1,744

§21.4. District Court judges sitting in the Superior Court. Since 1922, temporary legislation, regularly renewed, has authorized District Court judges, upon request of the Chief Justice of the Superior Court, to sit on misdemeanor cases in the Superior Court. Similar temporary legislation, first passed in 1954 and also regularly renewed, has authorized District Court judges to sit on motor tort cases in the Superior Court. By Chapter 535 of the Acts of 1960, the misdemeanor legisla-

² General Laws, c. 231, §102C, authorizing the Superior Court, "after determination that if the plaintiff prevails, there is no reasonable likelihood that recovery

tion was made permanent and the motor tort legislation was renewed to September 1, 1966.

Unless funds are appropriated to pay for these sittings, the legislation authorizing them can be rendered nugatory. Such funds were unavailable in both the 1960 and 1961 SURVEY years, with the result that District Court judges did not sit in the Superior Court. For the next SURVEY year, however, owing largely to the voice of the organized bar speaking through the Massachusetts Bar Association, the legislature has appropriated the necessary funds.

§21.5. **Speedy trials.** A new type of case has been added to the mixed list of cases that are entitled to a speedy trial. Chapter 96 of the Acts of 1961 provides that at the request of any party, a speedy trial shall be held in "a proceeding brought to determine the validity of any action taken by a housing authority or redevelopment authority." In the 1960 report of the Executive Secretary to the Justices of the Supreme Judicial Court, the existing grab-bag collection of statutory preferences is severely criticized as unwise and possibly unconstitutional as a legislative interference with the courts, and a recommendation is made that the awarding of speedy trials be left to judicial discretion.¹

C. THE PROBATE COURTS

§21.6. **Conciliation in Norfolk and Worcester counties.** The influence of the organized bar was felt in the enactment of Chapter 620 of the Acts of 1961. The product of the Boston Bar Association Committee on Family Law, of which Rev. Robert F. Drinan, S.J., Dean of Boston College Law School, was one of three co-chairmen, the act provides for marriage counselors and a reconciliation procedure in Norfolk and Worcester counties. Admittedly an experiment — it expires on December 31, 1964 — the act creates conciliation divisions in the two named counties, each to be headed by a trained social worker experienced as a family counselor. Unless the court waives the requirement, all divorce and separate support proceedings in the county must go through the conciliation procedure. If conciliation fails, the court will then hear the case. Having created this framework for domestic conciliation, the legislature left the program incomplete by making no provision for funds to finance the operation of the program. Accordingly, the inauguration of conciliation must await the necessary appropriation.

will exceed one thousand dollars," to transfer, or remand as it is commonly called, any tort or contract action to an appropriate District Court for trial by a full-time justice. After a District Court trial, including any review requested of the Appellate Division, remanded cases, upon application of an aggrieved party, are subject to retransfer to the Superior Court, where the District Court finding is given prima facie weight. See *Lubell v. First National Stores, Inc.*, 342 Mass. 161, 172 N.E.2d 689 (1961).

§21.5. ¹ Pub. Doc. No. 166, p. 11 (1960).

D. THE DISTRICT COURTS

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

TABLE V

District Court Business
(Other than Boston Municipal Court)

	1957-58	1958-59	1959-60	1960-61
Civil writs entered	79,817	73,988	74,066	80,772
Removals to the Superior Court	16,100	7,020	4,447	4,842
Criminal cases begun	236,519	242,208	263,683	273,760
Small claims	68,281	68,192	72,091	76,565
Juveniles under 17	10,235	9,153	9,378	9,239
Parking tickets returned	865,912	798,983	910,414	992,292

TABLE VI

Uniform Reciprocal Enforcement of Support
Act Cases in District Courts
(Other than Boston Municipal Court)

	1958-59	1959-60	1960-61
Number of cases initiated	1,070	1,167	1,203
Number of cases re- ceived from other states	456	539	536
Amount collected	\$1,018,258	\$1,198,473	\$1,401,215

§21.8. **Full-time courts.** During the 1961 SURVEY year the District Courts of Holyoke and the First District Court of Southern Worcester were made full-time courts by Chapters 483 and 612 respectively of the Acts of 1961. This brings the number of full-time courts to forty-six.

§21.9. **Six-member juries in civil cases.** Because of the successful use of six-member juries in civil cases in the Central District Court of Worcester, Chapter 89 of the Acts of 1961 extended through July 1, 1964, the period of the temporary legislation authorizing such juries. During the 1961 SURVEY year, 27 cases were tried to a verdict before them and 169 cases were settled. For the preceding year the corresponding figures were 28 and 137.

§21.10. **Six-member juries in criminal cases.** During the 1961 SURVEY year two acts, one applicable to the appellate level and the other applicable to the trial level, provided for six-member juries in criminal cases in certain District Courts. Both statutes expire on July 1, 1964. Chapter 527 of the Acts of 1961 establishes a procedure whereby a defendant convicted of a misdemeanor in any District Court in Worcester County may appeal and claim a trial by a jury of six in the Central District Court of Worcester.¹ By electing to appeal in this manner a defendant waives the appeal that he would otherwise have to the Superior Court. Trials by juries of six under the new procedure are subject to review by the Supreme Judicial Court in the manner provided for jury trials in the Superior Court.

Chapter 599 of the Acts of 1961 establishes a procedure for original trials by juries of six in the Third District Court of Eastern Middlesex in Cambridge. It permits any defendant "in any criminal proceeding" there to claim trial by such a jury. In consequence, a defendant waives the appeal that he would otherwise have to the Superior Court. Trials by juries of six under the new procedure are subject to review of the Supreme Judicial Court in the manner provided for jury trials in the Superior Court.

By purporting to apply to "any criminal proceeding" the Cambridge statute does not fit into the existing system of criminal jurisdiction of the District Courts. G.L., c. 218, §26, limits such jurisdiction to specified classes of offenses. It is extremely doubtful whether the establishment of a procedure to try cases to a jury of six in one District Court can be regarded as an extension of the jurisdiction of that court to hear previously excluded matters. Certainly a defendant charged with a major crime could not by electing to be tried by a jury of six in the District Court in Cambridge deprive that court of the power to bind him over for trial in the Superior Court.

§21.11. **Return day in District Courts.** Chapter 375 of the Acts of 1961 changes the return day in the District Courts from Saturday to Monday, effective January 1, 1962. The time for filing an answer is governed by rule.¹

E. OTHER MATTERS

§21.12. **No-fix traffic tickets.** Chapter 592 of the Acts of 1961, the no-fix traffic ticket law, has been described as "ill-considered, poorly drafted and dubious."¹ In substance it provides that when a driver is halted for a motor vehicle violation, the officer shall prepare a four-part notice on a uniform ticket for submission to the chief traffic

§21.10. ¹ See Thirty-sixth Report of the Judicial Council, Pub. Doc. No. 144, p. 48 (1960).

§21.11. ¹ G.L., c. 218, §§43, 50.

§21.12. ¹ Boston Bar Association, Annual Report of the Committee on Administrative Law, 5 Boston B.J. 4 (July, 1961).

official in the officer's department. This official then decides whether to take one of three actions: send a written warning to the operator, refer the matter to the registrar of motor vehicles, or apply to a District Court for a summons. Of the four parts of the original notice, one copy is to be given to the operator, stating the action to be taken; one is to be given to the appropriate District Court; one is to be given to the registrar of motor vehicles; and one is to be retained by the originating department.

The District Courts are charged with the responsibility for issuing books of tickets and for keeping a record of their use. Quarterly audits are to be made by the courts of all citations contained in each book of tickets issued.

A highly questionable provision of the law makes it mandatory for the registrar of motor vehicles to suspend for thirty days the license of any operator who has been given three warnings within a year. Perhaps the most fundamental defect, however, is the absence of an effective anti-fix safeguard. Since the determination of the action to be taken upon a violation rests not with the officer at the scene but rather with the superior official to whom he must deliver the ticket, there exists an interval during which familiar influences can be applied.

§21.13. Judicial pensions. Pensions for Massachusetts judges are based upon a noncontributory system.¹ Until the 1961 SURVEY year, however, a judge's widow received no benefits whether the judge died before or after his retirement. To provide benefits for widows, certain proposals have been made in recent years to fit judicial pensions into the contributory retirement law, but ultimately it was decided to retain the noncontributory system and to incorporate widow's benefits into that structure. This was done by Chapter 724 of the Acts of 1960, adding a new Section 65C to G.L., c. 32. The new statute provides optional pensions for judges' widows by offering a judge, in lieu of the usual pension of two thirds of his salary at the time of his retirement, a pension for life at a lower rate and a pension for his widow for her life in an amount equal to two thirds of the amount paid to him. The aggregate amount to be paid shall be actuarially equivalent, as of the date of the judge's retirement, to the judge's regular pension. To obtain these benefits for his wife, a judge must elect the optional plan within thirty days after his retirement.

The new statute also provides reduced pensions for life for widows of judges who die in office although eligible for pensions had they sooner retired or, if between the ages of fifty-five and seventy at the date of death, otherwise eligible for pensions but for the fact that they had not attained the age of seventy.

¹ For recent discussions of judicial pensions see the Second, Third, and Fourth Annual Reports to the Justices of the Supreme Judicial Court by the Executive Secretary, Pub. Doc. No. 166 (1958-1960).