

## C H A P T E R 34

### Administration of Justice

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§34.1. **General.** The 1957 SURVEY year's report on the Administration of Justice is a story of consolidation and extension of the signal achievements of 1956. The 1956 SURVEY report reviewed in some detail major new legislation together with new rules and procedures of the Superior Court. This year, on the other hand, our legislative report is brief and our report on the Superior Court is concerned primarily with the results and certain extensions of last year's accomplishments. Because of this difference in subject matter, the following report will speak frequently in the tabulated speech of statistics. Unlike last year, we do not have the drama of an opening night to portray. But our figures may, we hope, be able to catch some of the drama that attends every good performance.

§34.2. **The full bench business of the Supreme Judicial Court.** During the court year September 1, 1956, to August 31, 1957, the full bench of the Supreme Judicial Court decided 254 cases, against 248 for the preceding year. The Court also rendered three advisory opinions, against five for the preceding year. As of the June, 1957, consultation, all full bench cases had been disposed of.

§34.3. **The Superior Court.** Continuing its policy of assuming an enlarged direct responsibility for the efficient administration of its docket, the Superior Court during the SURVEY year made a substantial reduction in its backlog of cases. In some counties the results were outstanding, meriting not merely local approval but national repute in a country beset with congested dockets in so many of its metropolitan centers.<sup>1</sup>

The 1956 SURVEY discussed the Superior Court's new pretrial procedure, its revival of the auditor system in motor tort cases, its installation of the nontriable docket and its limitation on continuances because of other engagements of counsel. This year the Superior Court

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§34.3. <sup>1</sup> A concise and authoritative report on the Superior Court's policies and accomplishments is contained in the article by Chief Justice Paul C. Reardon, *The Suffolk Docket—Progress and Plans*, 1 Boston B.J., No. 8, p. 7 (1957). For the national picture, see Institute of Judicial Administration, *State Trial Courts of General Jurisdiction*, Calendar Status Study (1957).

put two additional tools to use. First, under the authority of Chapter 472 of the Acts of 1956,<sup>2</sup> the court called up District Court judges to sit in motor tort cases. Second, in Suffolk County there was established on November 5, 1956, a session known as the Assignment Session to serve as a headquarters for assignment of Suffolk cases for immediate trial in the civil jury and non-jury sessions, thereby keeping the number of empty courtrooms to a minimum. A justice especially assigned to the Assignment Session was given control of the civil trial lists together with supervision of other administrative matters including requests for continuances. Trial counsel were advised that when their cases were listed for assignment, they were expected to attend with their clients and witnesses ready for trial.

At its inception the Assignment Session caused some consternation and inconvenience. But subsequent administrative accommodations have, it is believed, made it generally acceptable. Its results appear to be successful. In addition to assuring a constant flow of cases to the trial sessions, the Assignment Session, between the date of its creation on November 5, 1956, and the end of June, 1957, also produced 1668 settlements.<sup>3</sup>

Continuing a program adopted in April, 1956, the Superior Court during the SURVEY year made general use of auditors in motor tort jury cases and also extended the use of auditors to other types of jury cases as well. As a device to relieve the caseload on available judicial manpower, the results have been very successful. Of 7990 cases referred to auditors between April, 1956, and the end of June, 1957, 4137 cases were disposed of. After the filing of auditors' reports, 128 cases were retried before a jury and 32 were retried before a judge alone.<sup>4</sup>

Since September, 1957, auditors in Suffolk County have been sitting continuously in the courthouse during regular court hours. Each day the justice sitting in the Assignment Session assigns to them cases for immediate trial in the same manner as cases are assigned to the regular sessions of the court. By this procedure auditors are relieved of the burden of arranging trial dates, and delay in starting and proceeding with hearings has been eliminated. All requests for continuances must be presented to the justice in charge of the Assignment Session. In order that auditors may not be uncompensated for any time that they may be required to spend at the courthouse while awaiting assignment of a case, Superior Court Rule 86 was amended on October 4, 1957, so as to allow compensation for waiting time at the usual auditor's rate of nine dollars an hour.

Table I indicates the docket clearing results of the year's work.<sup>5</sup>

<sup>2</sup> This act is now codified as G.L., c. 212, §14B, as amended.

<sup>3</sup> See Reardon, *The Suffolk Docket—Progress and Plans*, 1 Boston B.J., No. 8, pp. 7, 9 (1957).

<sup>4</sup> These figures are from those compiled by the office of the Chief Justice of the Superior Court.

<sup>5</sup> These figures are from those compiled by the Executive Secretary to the

It shows that the number of dispositions increased by almost 10,000 over the previous year's total. And despite an increase of more than 4000 entries over the previous year, the number of undisposed of cases at the end of the year was 9066 fewer than at the year's beginning. Because of lack of uniformity, however, in the statistical methods used in the various counties, an internal discrepancy in the figures, noted in previous volumes of the SURVEY, is still evident. The number of undisposed of cases at the beginning of the year (68,739) plus the number of entries during the year (35,619) less the number of dispositions during the year (42,209) should produce 62,149 as the number of undisposed of cases at the end of the year. Yet the reported figure is given as 59,673. The Executive Secretary to the Justices of the Supreme Judicial Court is attempting to bring about necessary corrections to eliminate future discrepancies.

TABLE I

Superior Court Business<sup>6</sup>

<i>Year</i>	<i>1952-53</i>	<i>1953-54</i>	<i>1954-55</i>	<i>1955-56</i>	<i>1956-57</i>
Undisposed of cases beginning of year	59,837	59,504	66,381	66,483	68,739
Entries during year	33,060	33,946	32,366	31,586	35,619
Dispositions during year	34,045	29,015	30,611	32,923	42,209
Undisposed of cases end of year	50,445	64,027	67,416	67,529	59,673
Undisposed of law cases end of year				61,105	52,356
Remaining triable law docket end of year				48,702	40,473

The most significant index of the amount of congestion of a court's docket is the number of months that it takes a case to be tried in the usual course. This year, for the first time, figures were available to show for the past three years the time interval separately for original entries and removed cases. Due to the re-enactment of the Fielding Act in 1954 requiring all motor tort cases to be started in the District Courts, such a breakdown of figures has been particularly significant. Motor tort cases are automatically excluded from the original entries but they comprise the bulk of the removals and thus become identifiable. Since they have been the principal target of recent efforts to relieve congestion, especially in Worcester and Suffolk counties, the success of these efforts can be measured with a high degree of accuracy

Justices of the Supreme Judicial Court from reports submitted by the various clerks. For years prior to 1956-1957 the figures were compiled by the Judicial Council.

<sup>6</sup> These figures are as of June 30.

by paying particular attention to the time interval for the removed cases.

TABLE II  
Average Number of Months Waiting Period  
for Jury Trials<sup>7</sup>

	<i>July 1, 1955</i>	<i>July 1, 1956</i>	<i>July 1, 1957</i>
Barnstable			
Original	12	23	24
Removed	22½	21⅓	20
Berkshire			
Original	29	29	29
Removed	32	31	30
Bristol			
Taunton			
Original	37	37	20
Removed	37	29⅔	20
New Bedford			
Original	27	31	21
Removed	26⅓	31	20
Fall River			
Original	26	26	24
Removed	30	31⅔	21⅓
Essex			
Salem			
Original	27	28	15
Removed	28	30⅓	17
Lawrence			
Original	33	29	18
Removed	32	31	20
Newburyport			
Original	7	32	6
Removed	17	8	6
Franklin			
Original	7	10½	7
Removed	8⅔	11	9
Hampden			
Original	28	27	16
Removed	27	32⅓	13⅓
Hampshire			
Original	3	12	10
Removed	7	6	10

<sup>7</sup> These figures are from those compiled by the office of the Chief Justice of the Superior Court.

	<i>July 1, 1955</i>	<i>July 1, 1956</i>	<i>July 1, 1957</i>
Middlesex			
Cambridge			
Original	39	37	31
Removed	39	39	26
Lowell			
Original	23	25	24
Removed	23 $\frac{1}{3}$	29	26
Norfolk			
Original	22	25	15
Removed	25	26	19
Plymouth			
Plymouth			
Original	29	37	7
Removed	33	40	9 $\frac{1}{2}$
Brockton			
Original	28	39	10
Removed	32	39 $\frac{1}{2}$	11
Suffolk			
Original	32	32	30
Removed	32	32 $\frac{2}{3}$	15
Worcester			
Worcester			
Original	48	39	11
Removed	47 $\frac{1}{2}$	39 $\frac{1}{2}$	13
Fitchburg			
Original	25	31	28
Removed	25 $\frac{1}{2}$	37 $\frac{1}{2}$	29 $\frac{1}{2}$

The contribution made by District Court judges sitting in the Superior Court is reflected in the following table.

TABLE III

Number of Days That District Court Judges Sat  
in the Superior Court<sup>8</sup>

	<i>1953-54</i>	<i>1954-55</i>	<i>1955-56</i>	<i>1956-57</i>
Motor tort				1,411
Criminal	413	498	558	537

Superior Court justices sat an average of 167 days each or 33 $\frac{1}{2}$  five-day weeks, against 171 days or 34 five-day weeks for the preceding year. As mentioned in the 1956 SURVEY, such averages must be considered with discrimination.

<sup>8</sup> These figures are as of June 30. They are from figures compiled by the Executive Secretary to the Justices of the Supreme Judicial Court.

TABLE IV

Number of Days That Superior Court Justices Sat<sup>9</sup>

	1953-54	1954-55	1955-56	1956-57
Civil jury	2,806	2,894½	2,975½	{ 4,297½ }
Civil non-jury	1,573	1,452½	1,406	
Criminal	1,120	1,272½	1,099½	
Totals	5,499	5,619½	5,481	5,357½

§34.4. **The District Courts.** The system of full-time judges in the District Courts became effective on July 1, 1957. Experience with this new system is still too limited to enable us to determine its effects.

TABLE V

District Court Business (Other than Boston Municipal Court)<sup>1</sup>

	1953-54	1954-55	1955-56	1956-57
Civil writs entered	57,102	63,798	73,868	75,993
Removals to the Superior Court	3,998	9,248	13,569	14,409
Motor tort entries	14,612	20,104	26,276	27,630
Motor tort removals	2,599	7,756	11,965	12,921
Criminal cases begun	202,334	202,126	201,730	223,760
Small claims	73,182	70,877	68,153	68,546

In the Boston Municipal Court in 1956-1957 there were 8920 motor tort entries, of which 5256 were removed to the Superior Court. Adding these figures to the totals for the other District Courts, the number of such entries and removals were 36,550 and 18,177 respectively. The percentage of removals was thus 50 percent, against 53 percent for 1956. In 1952 and 1953, prior to the re-enactment of the Fielding Act requiring all motor tort actions to be started in the District Courts, the percentages were 46 percent and 47 percent respectively.

<sup>9</sup> Ibid.

§34.4. <sup>1</sup> These figures are as of June 30. The figures for the District Courts, other than the Municipal Court of the City of Boston, were compiled by the Administrative Committee of the District Courts.

TABLE VI

Ratio of Trials to Entries in District Courts  
(Other than Boston Municipal Court)<sup>2</sup>

	1954-55	1955-56	1956-57
Summary process	44%	38%	36%
Motor vehicle tort			
cases not removed	18%	14%	14%
Other torts	15%	15%	14%
Contract	7%	6%	7%
Other	17%	18%	20%

The over-all percentage for 1956-1957 was 13 percent against 13½ percent for the preceding year. In the Superior Court the percentage during the same period was 6 percent, against 10 percent for the preceding year.

An experimental provision of the District Court Reorganization Act of 1956<sup>3</sup> was the establishment of six-man juries in the Central District Court of Worcester. As of October 25, 1957, out of 45 cases that had been placed on the six-man jury list, 32 were settled either before or during trial.<sup>4</sup>

**§34.5. Pensions.** The 1956 SURVEY traced the history of Massachusetts judicial pension legislation through Chapter 670 of the Acts of 1956<sup>1</sup> whereby judges appointed to their respective offices after July 31, 1956, had their pension rights conditioned upon their prompt retirement after they first became eligible for a pension. Eligibility accrued to judges who, having attained the age of seventy, had ten continuous years of judicial service. The required service, however, included service rendered in any judicial office, not necessarily the particular judicial office held by a judge at the time when he became eligible for a pension.

Since the act applied to all judicial appointments after July 31, 1956, an associate justice of the Supreme Judicial Court holding his office on July 31, 1956, and later appointed to the position of chief justice, a judicial office separate and distinct from that of an associate justice,<sup>2</sup> became subject to the 1956 act. Similarly, if a justice of the Superior Court holding his office on July 31, 1956, was later appointed chief justice of that court, also a separate and distinct judicial office, or to the Supreme Judicial Court, the act would apply to him. In each case, however, pre-July 31, 1956, judicial service was included in his pension time, with the result that after ten years of service, having

<sup>2</sup> Ibid.

<sup>3</sup> Acts of 1956, c. 738, §1A.

<sup>4</sup> Letter dated October 25, 1957, from Wesley E. Mellquist, clerk, to the author.

**§34.5.** <sup>1</sup> This act is now codified as G.L., c. 32, §65A, as amended. See 1956 Ann. Surv. Mass. Law §23.19.

<sup>2</sup> Opinion of the Justices, 271 Mass. 575, 581, 171 N.E. 237, 240 (1930).

attained the age of seventy, the judge had to resign or lose his pension. Elevation of an associate justice of the Supreme Judicial Court or any justice of the Superior Court holding a judgeship on July 31, 1956, would thus have put him in a worse position respecting a pension than if he had continued in his existing office. District Court and Probate Court justices were similarly affected. This result, so far as justices of the Supreme Judicial Court and the Superior Court were concerned, was remedied by Chapter 668 of the Acts of 1957 which excluded from the application of the resignation conditions of the 1956 Act justices of either of these courts holding their offices on July 31, 1956, and later elevated to higher judicial positions.

**§34.6. Report of the Executive Secretary.** The 1956 SURVEY discussed at some length the background and purpose of Chapter 707 of the Acts of 1956<sup>1</sup> entrusting to the justices of the Supreme Judicial Court general supervision of the administration of all courts of the Commonwealth and creating the office of Executive Secretary. On November 1, 1956, the justices appointed to this office John A. Daly of Cambridge, a lawyer of experience and distinction who assumed his duties on November 15.

Soon after June 30, 1957, in accordance with the statute creating his office, Mr. Daly filed a report for the period ending on that date. Exclusive of appendices, the Report contains 39 single-spaced mimeographed pages. Within the compass of this SURVEY, we can do little more than allude to the Report and to urge that it be read. Being a public document, it will be printed and available to all as soon as certain statistical data on the courts are compiled.<sup>2</sup> The section headings of the Report indicate its scope: Organization of the courts; Court congestion and recommendations; Physical facilities of the courts and recommendations; Financial cost of operating the courts and recommendations; Use of judicial manpower; Pensions; Assignment of counsel for indigent defendants; Contingent fees; Televising and broadcasting court trials; and Comments on the various courts. Of particular interest are the sections on the physical facilities of the courts and the financial cost of their operation. The first of these sections, together with its appendix, presents a detailed inventory of all the courthouse facilities in the Commonwealth. The second of them unties, for what is believed to be the first time, the tangled threads of court finances.

§34.6. <sup>1</sup> This act is now codified as G.L., c. 211, §3, as amended. See 1956 Ann. Surv. Mass. Law §§23.4-23.9.

<sup>2</sup> The report has since been published as Public Document No. 166.