

## CHAPTER 23

# Administration of Justice

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**§23.1. Introduction.** The administration of justice has known better times than the 1964 SURVEY year. A bill for a legislative grant or affirmation of the power of the Superior Court to adopt rules for pretrial oral discovery, introduced by a special message of the Governor,<sup>1</sup> was badly beaten. A bill to add ten judges to the Superior Court was defeated in a political quarrel that even blocked the substitution of any lesser number to meet the pressing needs of the court. A special legislative commission on the use of the seventy-eight special justices of the district courts submitted, by an uncertain majority of its members, a report recommending that all such justices be converted from part-time officers on per diem compensation to full-time officers with annual salaries of \$18,000.<sup>2</sup> So confused and unsupportable were the report's design and structure, however, that even the best friends of both the authors and the intended beneficiaries of the report were constrained to reject it, and thus the proposal was defeated. This outcome, of course, will not prevent a resubmission of the plan at another session.

### A. THE SUPREME JUDICIAL COURT

**§23.2. Business of the full bench.** It now seems that the decline in the number of cases decided by the full bench of the Supreme Judicial Court during the 1963 SURVEY year was only temporary. In the 1964 SURVEY year the number rose to 308, compared with 273 in the previous SURVEY year. Table 1 shows the business of the full bench for the last four years.<sup>1</sup> The caseload is heavy—one of the

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<sup>1</sup> §23.1. <sup>1</sup> House Doc. No. 3377 (1964).

<sup>2</sup> Report of the Special Commission Relative to Special Justices of the District Courts and Certain Related Matters, House Doc. No. 3450 (1964). This report appeared in two printings, the first of which carried the names of all eleven members of the Commission as signers (p. 26). This printing was withdrawn immediately upon its release, and a second printing then appeared with only six signers (p. 26). Although three members filed dissenting reports, neither of the printings contained the dissents. The three dissenters published their dissents at private expense.

<sup>1</sup> §23.2. <sup>1</sup> The statistics in this chapter have been obtained from the offices of

## T A B L E I

Full Bench Business of  
the Supreme Judicial Court

	1960-61	1961-62	1962-63	1963-64
Cases decided	314	331	273	308
Advisory opinions	0	2	2	4
Rescripts without opinion	53	69	63	102
Decision of trial court affirmed	199	214	175	207
Decision of trial court affirmed with modification	6	9	4	13
Decision of trial court reversed	84	80	78	67
No decision by trial court	25	28	16	21
Average interval <sup>2</sup> between entry and consultation	98	97	109	100
Average interval between consultation and decision	142	62	46	45
Average interval between entry and decision	240	159	155	145

heaviest of any state supreme court — yet the Court has been able to keep current with its docket.

## B. THE SUPERIOR COURT

§23.3. **Civil business.** Table II gives data on the civil business of the Superior Court for the past four years. During the 1964 SURVEY year all categories show the increasing stress on the capacity of the court. Another and even more significant index is the waiting time for civil jury trials. As of June 30, 1964, the time lag in some of our more populous areas was: Bristol County (at New Bedford), 30 months; Hampden County, 27 months; Middlesex County, 32 months; Plymouth County, 28 months; and Suffolk County, 33 months.

Chief Justice G. Joseph Tauro of the Superior Court has called public attention to the growing demands on both the civil and criminal sides of the tribunal.<sup>1</sup> Using existing rule-making and administrative

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Joseph K. Collins, Esquire, Executive Secretary to the Justices of the Supreme Judicial Court; Chief Justice G. Joseph Tauro of the Superior Court; and Hon. Kenneth L. Nash, Chief Justice of the District Courts. The statistical year of the Supreme Judicial Court ends on August 31. For the other courts, the statistical year ends on June 30.

<sup>2</sup> Interval represents number of days.

§23.3. <sup>1</sup> Chief Justice G. Joseph Tauro, *Improving the Quality of Justice in Massachusetts*, 49 Mass. L.Q. 5 (March, 1964); Report to the Bar, 49 Mass. L.Q. 331 (Dec. 1964).

powers, the court itself has tried to lighten the strain.<sup>2</sup> Other forms of relief, such as additional judges and the imposition of a fee for a claim or actual use of trial by jury, can come only from the legislature.

T A B L E I I

## Superior Court Business

	1960-61	1961-62	1962-63	1963-64
Undisposed of cases, beginning of year	53,891	55,648	52,540	51,791
Entries during year	39,878	40,830	39,400	42,449
Dispositions during year	38,085	44,090	39,912	36,407
Undisposed of cases, end of year	55,648	52,502	52,237	54,036
Undisposed of law cases, end of year	47,521	44,470	43,571	44,991

## C. THE DISTRICT COURTS

§23.4. **Business of the courts.** Table IV shows the growing business of the district courts. Transfer Act cases are treated separately in Table III and are not included in any of the Table IV figures. Table V shows the increasing collections under the Uniform Reciprocal Enforcement of Support Act.

T A B L E I I I

Transfer Act<sup>1</sup> Cases

	<i>District Courts</i> ( <i>Other than Boston</i> <i>Municipal Court</i> )			<i>Boston</i> <i>Municipal Court</i>		
	1961-62	1962-63	1963-64	1961-62	1962-63	1963-64
Transferred from Superior Court	9,098	10,679	11,367	1,911	1,818	1,575
Tried in District Courts	1,684	2,676	2,966	738	1,336	1,006
Retransferred to Superior Court after trial	716	1,277	1,406	253	360	259
All dispositions <sup>2</sup>	5,878	9,740	10,342	—	2,388	2,602
Pending	5,205	6,279	7,390	1,975	1,405	378

<sup>2</sup> See Tauro, Report to the Bar, *supra*, at 337-342.

§23.4. <sup>1</sup> G.L., c. 231, §102C, as amended.

<sup>2</sup> Agreements, trials, dismissals, settlements, etc.

T A B L E I V

District Court Business (Other than Boston Municipal Court)				
	1960-61	1961-62	1962-63	1963-64
Civil writs entered	80,722	83,539	88,263	97,278
Civil cases tried (other than summary process)	6,687	8,044	8,512	9,332
Summary process entries	9,923	9,775	10,281	11,339
Summary process trials	2,754	3,024	3,337	3,580
Removed to the Superior Court	4,842	5,216	5,562	7,282
Reported to Appellate Division	87	112	73	122
Appealed to Supreme Judicial Court	8	13	13	10
Small claims	76,565	75,564	79,238	76,573
Criminal cases begun	273,760	304,254	337,957	336,558
Criminal appeals	4,784	5,026	5,111	5,976
Automobile cases (criminal)	156,749	177,889	208,923	213,700
Juveniles under 17	9,239	9,754	11,199	12,521
Parking tickets returned	992,292	1,101,198	996,585	986,566

T A B L E V

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

	1960-61	1961-62	1962-63	1963-64
Cases initiated	1,203	1,313	1,351	1,471
Cases received from other states	536	636	666	862
Amount collected	\$1,401,215	\$1,672,561	\$1,966,578	\$2,149,338

§23.5. **Six-man juries.** Previous SURVEYS have reviewed the use of six-man juries in the Central District Court of Worcester, and in the First District Court of Eastern Middlesex, at Cambridge.<sup>1</sup> In Worces-

§23.5. <sup>1</sup> 1961 Ann. Surv. Mass. Law §§21.9, 21.10; 1962 Ann. Surv. Mass. Law §§22.8, 22.9.

ter such juries have been used in both civil and criminal cases; in Cambridge they have been confined to criminal matters. The civil trials at Worcester have been original proceedings held upon consent of the parties and subject to direct review by the Supreme Judicial Court rather than through the Western Appellate Division. At both Worcester and Cambridge the criminal trials have been appellate trials de novo on appeals from misdemeanor convictions in any district court in the county. By claiming such an appeal, a defendant has waived an appeal for a like trial in the Superior Court.

The 1964 SURVEY year saw the six-man jury adopted for criminal appeals in six other counties: Berkshire,<sup>2</sup> Bristol,<sup>3</sup> Essex,<sup>4</sup> Hampden,<sup>5</sup> Norfolk,<sup>6</sup> and Plymouth.<sup>7</sup> In Plymouth County the new jury sits at Brockton; in Bristol County it sits at both Fall River and New Bedford; in the other counties it sits only at the county seat.

Although gaining wider acceptance, the six-man jury is still regarded as an experiment. Thus this year's legislation extending it to criminal cases in other counties has an expiration date of July 1, 1966. Similarly, legislation enacted during the 1964 SURVEY year to continue the use of six-man criminal juries at Worcester and Cambridge expires on the same date.<sup>8</sup>

All of this SURVEY year's statutes establishing or continuing six-man juries provide that the Chief Justice of the District Courts shall arrange for the jury sessions and shall assign justices and special justices to them.

**§23.6. Additional judge for the Worcester District Court.** Chapter 638 of the Acts of 1964 added a third full-time justice to the Central District Court of Worcester.

**§23.7. Criminal jurisdiction.** Chapter 140 of the Acts of 1964 increased the jurisdictional limit of the district courts from fifty dollars to one hundred dollars in cases of forgery and uttering of promissory notes and similar instruments.

**§23.8. Small claims.** Chapter 496 of the Acts of 1964 increased the limits of small claims cases from one hundred dollars to one-hundred and fifty dollars. The last prior increase, from seventy-five dollars to one hundred dollars, had been passed in 1960.

**§23.9. Mail-payment of fines for automobile violations.** Chapter 626 of the Acts of 1964 authorizes the Chief Justice of the Boston Municipal Court and, with the approval of the Chief Justice of the District Courts, the senior justice of each other district court, to establish in their respective courts schedules of fines for motor vehicle violations

<sup>2</sup> Acts of 1964, c. 659.

<sup>3</sup> Id., c. 658.

<sup>4</sup> Id., c. 661.

<sup>5</sup> Id., c. 657.

<sup>6</sup> Id., c. 656.

<sup>7</sup> Id., c. 660.

<sup>8</sup> Id., cc. 628 (Cambridge), 629 (Worcester).

other than parking cases, for which the only permitted punishment is a fine of not more than fifty dollars. The new act allows pleas of guilty to such violations and payment of the prescribed fines to be made by mail by persons who have not been convicted of motor vehicle violations during the prior twelve months. Special permission, however, is needed for the entering of such pleas by defendants who have not appeared on a summons, and by delinquent children. Mail payment of fines for parking violations has previously been authorized by other legislation.

#### D. OTHER MATTERS

**§23.10. Fees of sheriffs, deputy sheriffs, and constables.** Chapter 594 of the Acts of 1964 increased the fees of the specified officers for the service of civil and criminal process. In granting the increase the legislature also provided that all deputy sheriffs must file annually with their county treasurers a sworn account of all receipts from the services of civil process. Previously there had been no duty to make a public accounting.

**§23.11. Additional probate judge for Plymouth County.** Chapter 675 of the Acts of 1964 assigned a second probate judge to Plymouth County.

**§23.12. Salary of the Justice of the Boston Juvenile Court.** Chapter 694 of the Acts of 1964 raised the salary of the justice of the Boston Juvenile Court from sixteen thousand dollars, to which it had been increased in 1963, to twenty thousand dollars, thereby putting it at the same level as salaries of district court judges.

**§23.13. Pensions for judges' widows.** Liberalizing the eligibility of judges' widows for pensions, Chapter 464 of the Acts of 1964 declared that each three years spent by a judge "in the service of the commonwealth or of any county, city or town thereof" shall, for the purpose of his widow's pension, count as one year of continuous judicial service, up to a maximum of four years. Although the new act is framed in broad terms, one suspects that it may in fact have been designed to ease the hardship of a particular case.