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0049 Judicial Administration in Colorado

Colorado Legislative Council

0049 Judicial Administration in Colorado

Report to the Colorado General Assembly:

JUDICIAL ADMINISTRATION IN COLORADO

COLORADO LEGISLATIVE COUNCIL

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December 1960

LEGISLATIVE COUNCIL

REPORT TO THE

COLORADO GENERAL ASSEMBLY

JUDICIAL ADMINISTRATION IN COLORADO

Research Publication No. 49

COLORADO GENERAL ASSEMBLY

LEGISLATIVE COUNCIL

ROOM 343, STATE CAPITOL
DENVER 2, COLORADO
KEYSTONE 4-1171 — EXTENSION 287

December 9, 1960

To Members of the Forty-third Colorado General Assembly:

As directed by the terms of Senate Joint Resolution No. 16 (1959) and Senate Joint Resolution No. 9 (1960), the Legislative Council is submitting herewith its report and recommendations on judicial organization and administration. Also included is a report of the progress made in the examinations of the Colorado criminal code and related matters, which were among the subjects enumerated for study in both Senate Joint Resolutions. This portion of the study was not completed because of the priority given judicial reorganization and the great amount of work related to that subject.

The committee appointed by the Legislative Council to complete this study submitted its report December 9, 1960, at which time the report was adopted by the Legislative Council for transmission to the General Assembly.

Respectfully submitted,

Charles Conklin

Charles Conklin
Chairman

COLORADO GENERAL ASSEMBLY

LEGISLATIVE COUNCIL

ROOM 343, STATE CAPITOL
DENVER 2, COLORADO
KEYSTONE 4-1171 — EXTENSION 287

December 9, 1960

The Honorable Charles Conklin, Chairman
Colorado Legislative Council
State Capitol
Denver 2, Colorado

Dear Mr. Chairman:

Transmitted herewith is the report of the Legislative Council Committee on Administration of Justice appointed pursuant to Senate Joint Resolution No. 16 (1959) and continued by Senate Joint Resolution No. 9 (1960). This report covers the committee's study of judicial organization and administration and its recommendations thereon, including a proposed amendment of the judicial article of the Colorado Constitution. Aslo contained herein is a report of the committee's progress on the study of the criminal code.

Respectfully submitted,

/s/ Senator Carl Fulghum
Chairman
Committee on Administration
of Justice

FOREWORD

This study was authorized by Senate Joint Resolution No. 16 (1959) and continued by Senate Joint Resolution No. 9 (1960). These resolutions directed the Legislative Council to appoint a subcommittee to make a study directed at improving the administration of justice, including the organization and jurisdiction of all courts and judicial services, the criminal code, and rules of criminal procedure.

The Legislative Council committee appointed to make this study included: Senator Carl W. Fulghum, Glenwood Springs, chairman; Representative Albert Tomsic, Walsenburg, vice chairman; Senator Charles E. Bennett, Denver; Representative Edward J. Byrne, Denver; Senator David J. Clarke, Denver; Senator T. Everett Cook, Canon City; Representative Joe Dolan, Denver; Representative Peter Dominick, Englewood; Representative M. R. Douglass, Grand Junction; Representative Robert E. Holland, Denver; Representative John Kane, Thornton; Representative Roy McVicker, Wheatridge; Senator Ranger Rogers, Littleton; Representative Walter Stalker, Joes; and Senator Paul E. Wenke, Fort Collins.

Senate Joint Resolution No. 16 (1959) also directed the chairman of the Legislative Council to appoint an advisory committee to represent a cross section of knowledge and interest in the administration of justice, including the operation of all courts, judicial services, and criminal law. A sixteen-member advisory committee was appointed with the following members: Douglas McHendrie, Colorado Bar Association, chairman; Judge Jean Jacobucci, Adams County Court, vice chairman; Justice O. Otto Moore, Colorado Supreme Court; Justice Frank Hall, Colorado Supreme Court; Judge James Noland, Sixth Judicial District; Judge Edward Pringle, Second Judicial District; Judge Marshall Quiat, First Judicial District; Judge David Brofman, Denver County Court; Judge Hal Chapman, Otero County Court; Judge Gerald McAuliffe, Denver Municipal Court; Judge Daniel Shannon, Jefferson County Justice Court; Donald Stubbs, Colorado Bar Association;[1] Matt Kikel, Tenth Judicial District Attorney; Max Melville, Assistant District Attorney, Second Judicial District;[2] Professor Homer Clark, University of Colorado Law School; and Professor Vance R. Dittman, University of Denver Law School.

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1. Replaced by Ben Stapleton, Jr. when Mr. Stapleton succeeded Mr. Stubbs as chairman of the Colorado Bar Association Judiciary Committee
2. Deceased, replaced by Gregory Mueller, Deputy District Attorney, Second Judicial District.

The staff work on this study was the primary responsibility of Harry O. Lawson, Legislative Council senior research analyst, assisted by Myran Schlechte and Charles B. Howe, Legislative Council research assistants. Professors Albert Menard and Austin W. Scott, University of Colorado Law School, served as legal consultants to the committee, Professor Menard with respect to judicial organization and administration, and Professor Scott with respect to criminal law.

The Legislative Council Committee on the Administration of Justice held 21 meetings between June 1959, and December 1960. Ten of these meetings were regional public hearings, which were held in Alamosa, Denver, Durango, Glenwood Springs, Grand Junction, Fort Collins, Fort Morgan, Golden, La Junta, and Pueblo. At these hearings, judges and other court officials, legislators, other public officials, attorneys, and interested citizens met with the committee to discuss judicial problems and solutions.

To provide basic data on court operations, the committee directed a docket analysis of cases filed in the supreme court and in all of the district and county courts. More than six months were needed by the Council staff to collect, compile, and evaluate the extensive court data included in this analysis. In addition, the committee studied court organization and related subjects in other states, focusing special attention on judicial studies and the resultant findings and recommendations. Considerable study was made of the many recommendations made for change in Colorado. The committee's final proposal for judicial reorganization was the product of a series of workshop meetings extending over several months, at which the committee and the advisory committee pinpointed the problems in the present judicial system, evaluated various proposals for change, and formulated a plan designed to improve judicial administration on all court levels and in all areas of the state -- urban, mountain, and rural.

Judicial reorganization was considered by the committee to be its most important assignment. Because of the amount of work required on this subject, the committee was unable to complete its study of the criminal code. A good beginning was made on this subject, however, and the committee's progress on the criminal code is covered in the last chapter of this report.

The committee wishes to express its deep appreciation to the members of the advisory committee, who spent many days at their own expense attending the regional hearings and the workshop sessions. The assistance provided by the advisory committee in exploring the many judicial problems and possible solutions was invaluable. The committee also wishes to thank all of the judges and attorneys for their help, both individually and through the various judges' associations and bar association committees. In particular the committee would like to thank the judges and members of their staffs for their cooperation and assistance in making the docket analysis, and Clyde O. Martz and James Carrigan, the former and present judicial administrators, for their help.

The committee's report is lengthy, because of the many facets to the administration of justice. The report sets the committee's findings within a background covering: the state's present judicial organization; the history of Colorado's courts; previous studies and recommendations; present judicial problems; judicial organization, administration, and studies in other states; a summary of the regional hearings; and the results and implications of the docket analysis.

Lyle C. Kyle
Director

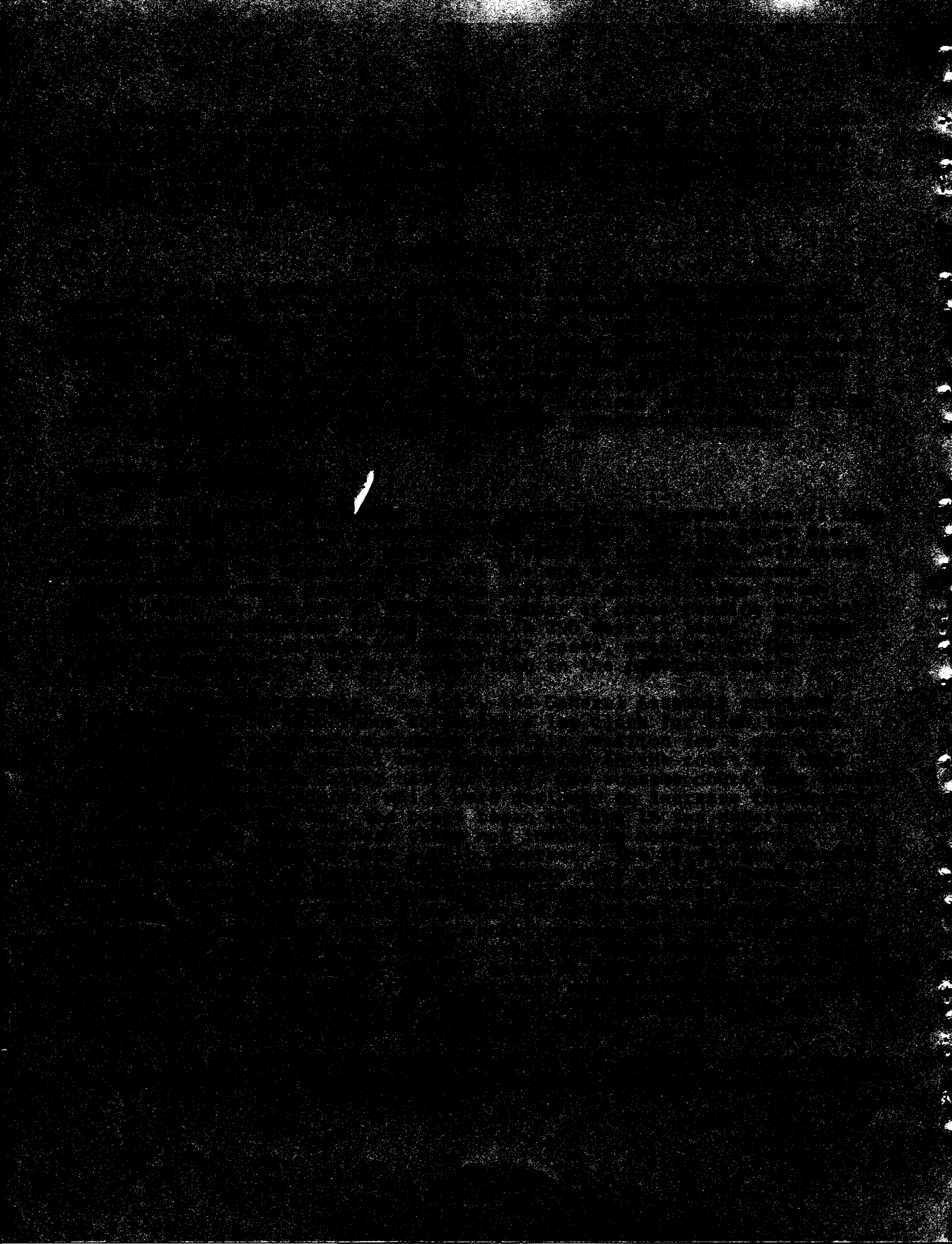
December 10, 1960

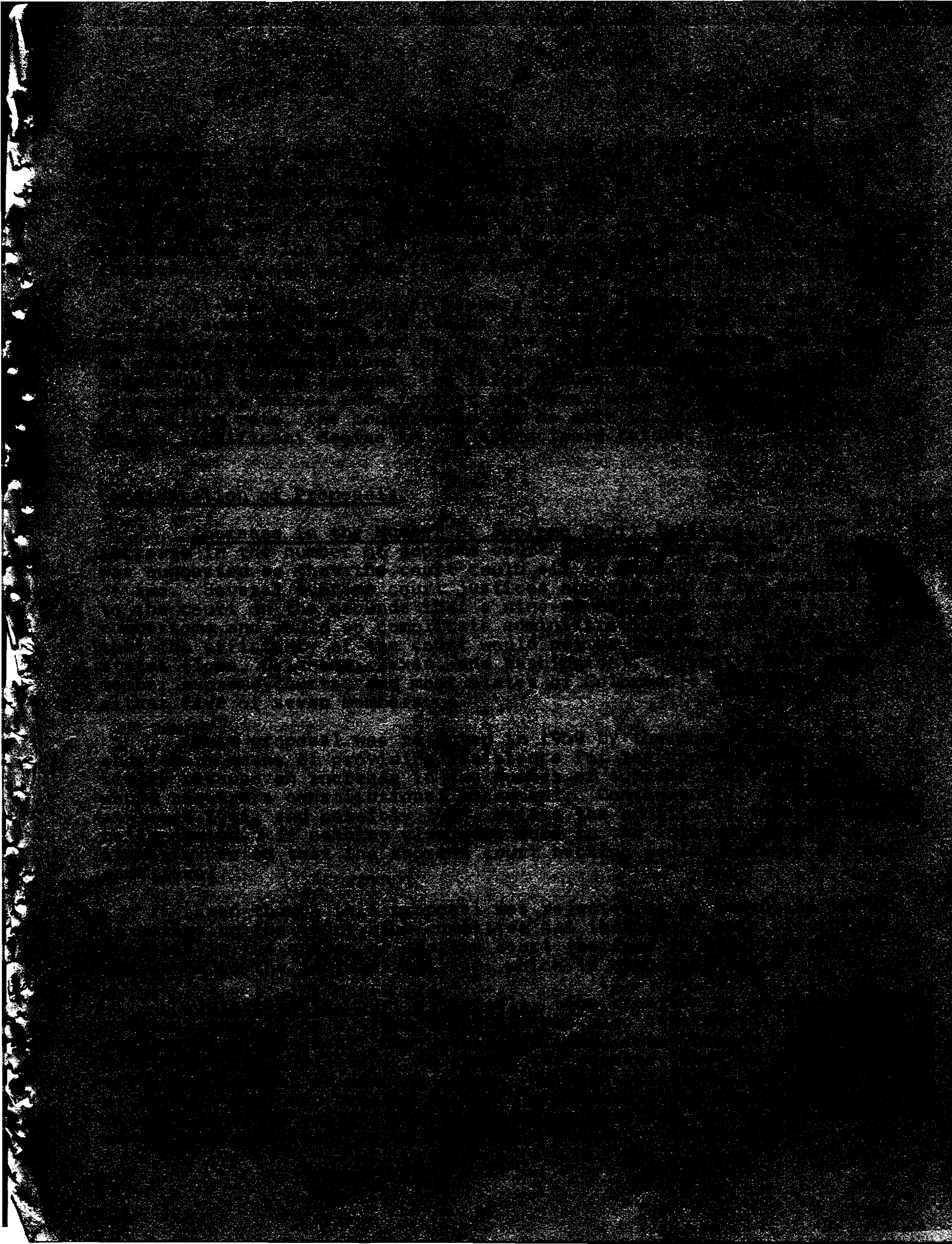
TABLE OF CONTENTS

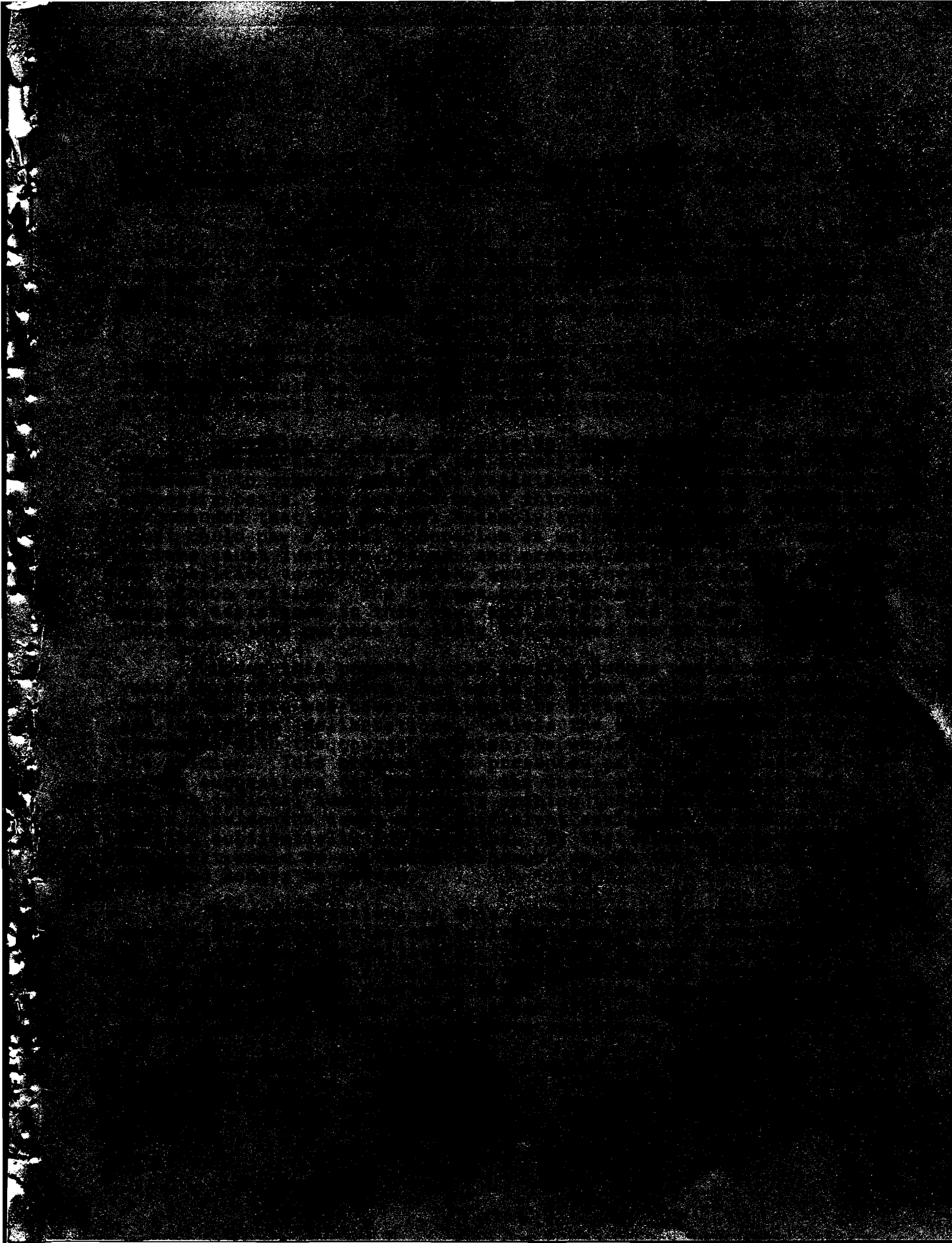
TABLE OF CONTENTS Continued:

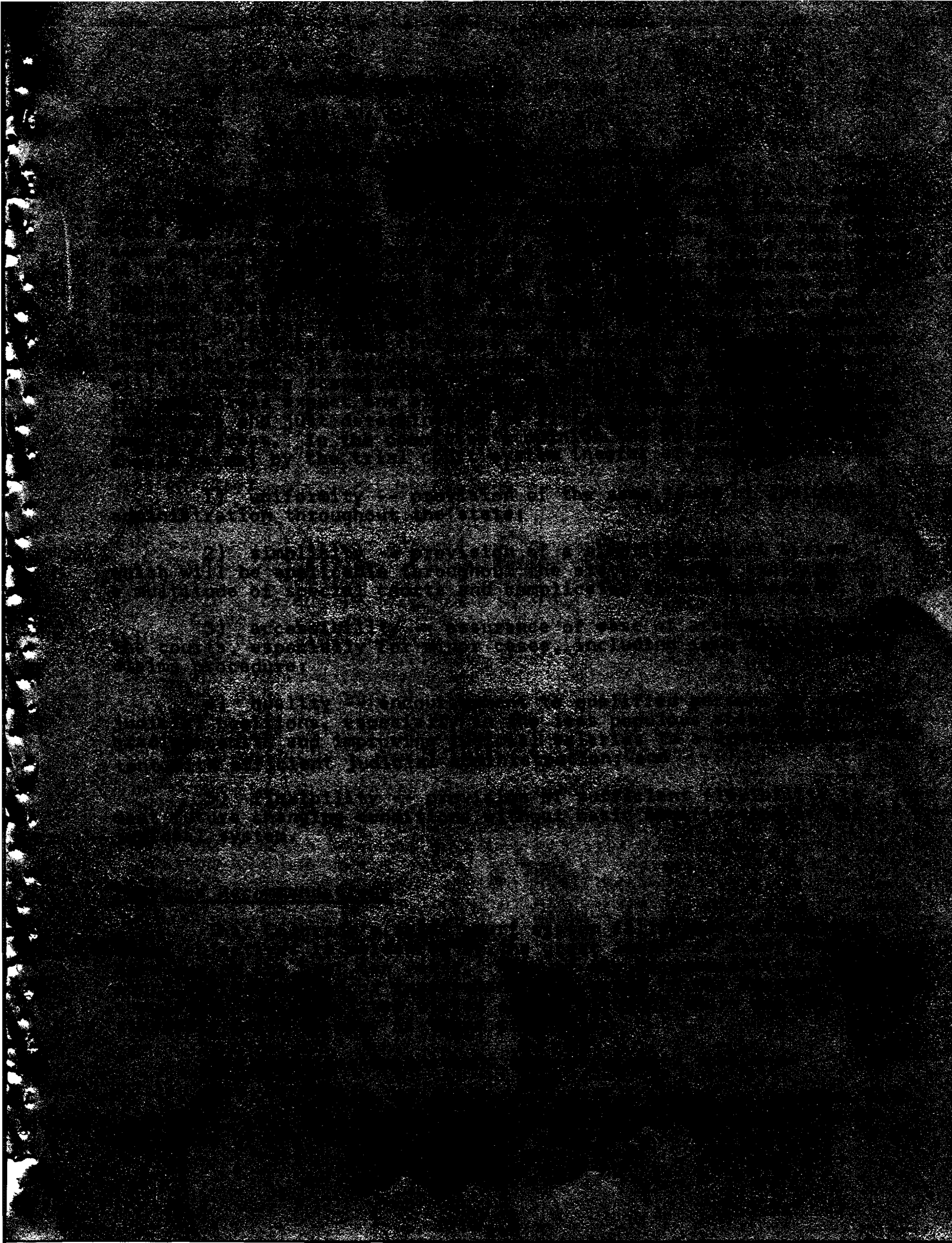
LIST OF TABLES AND CHARTS

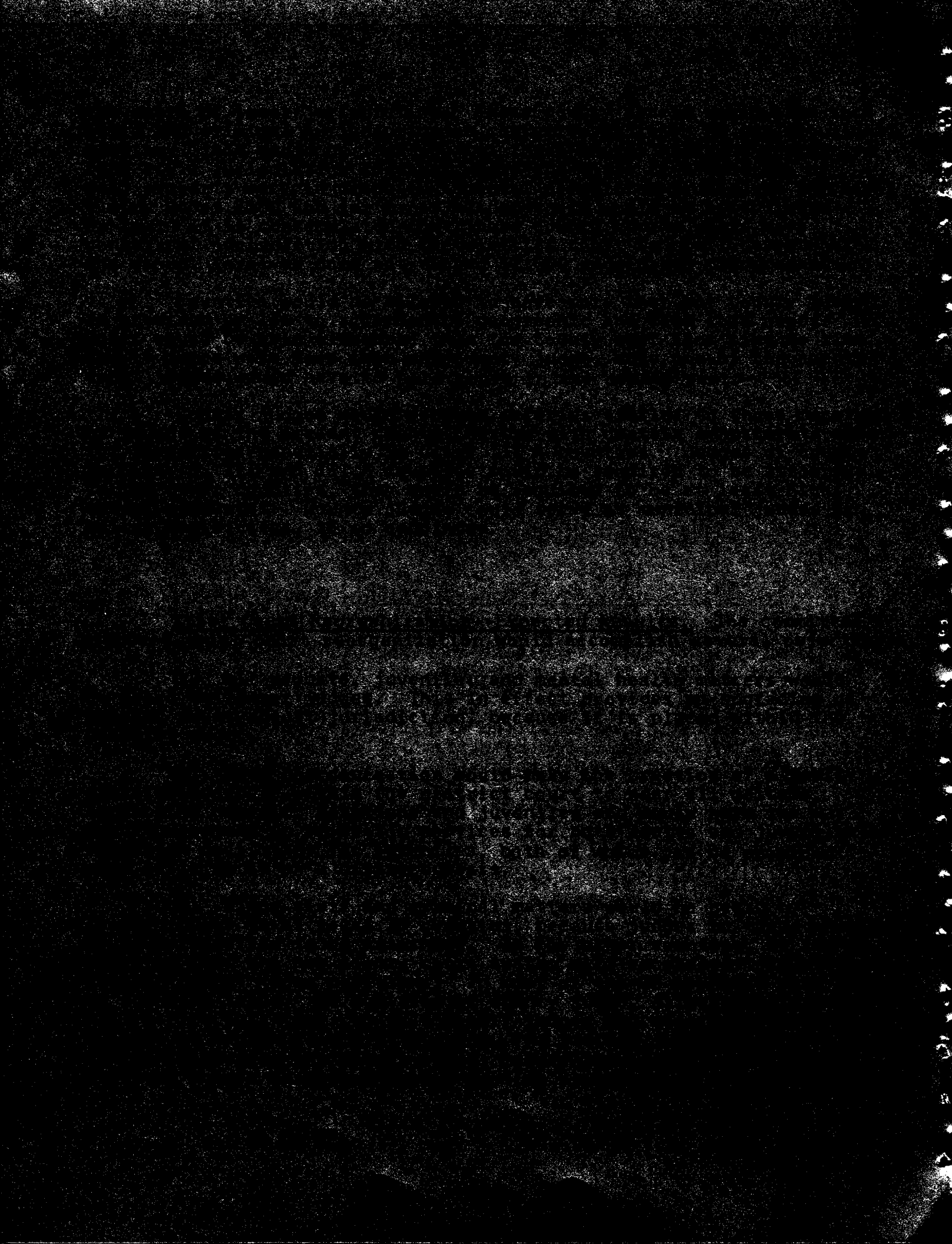
TABLE OF CONTENTS Continued:

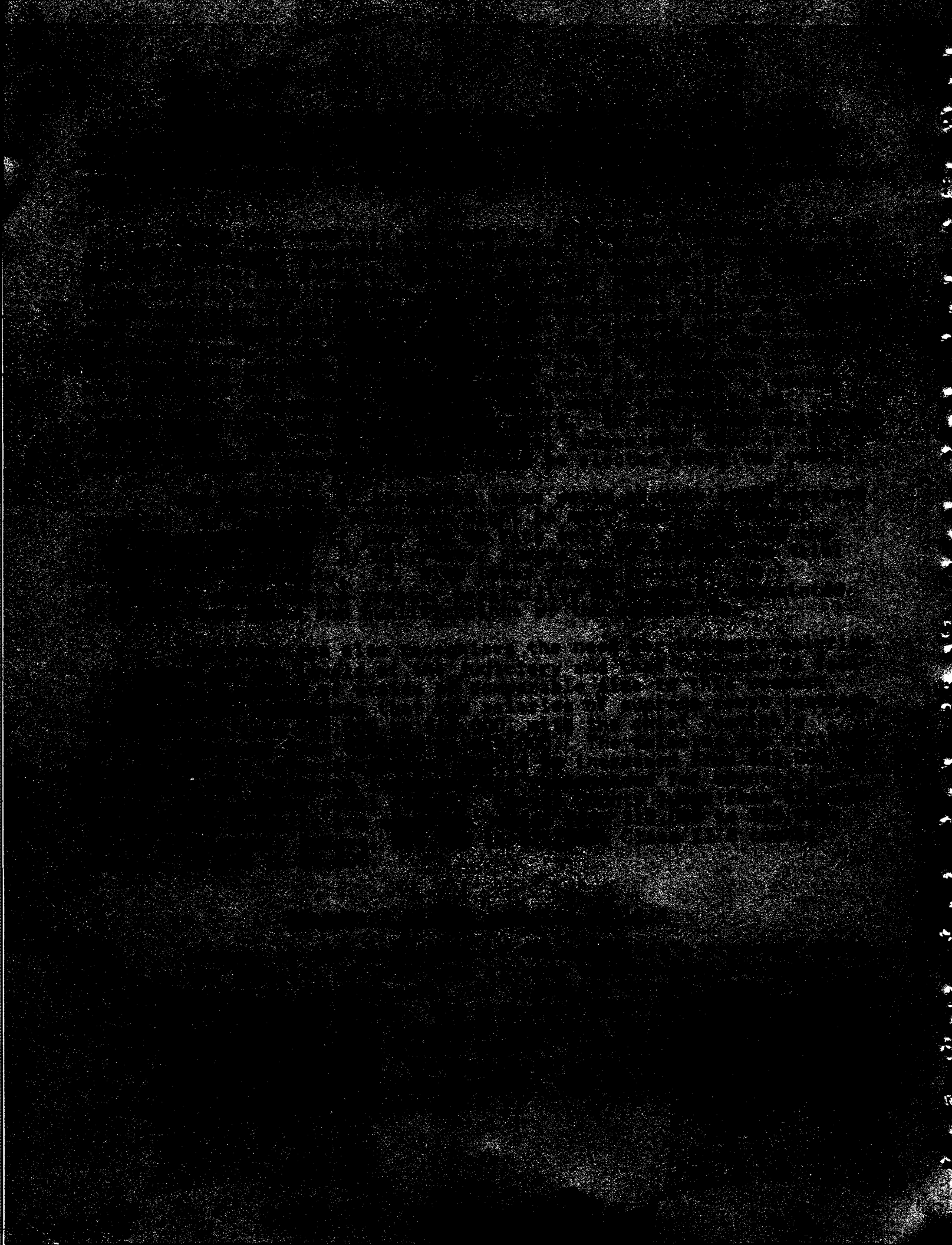


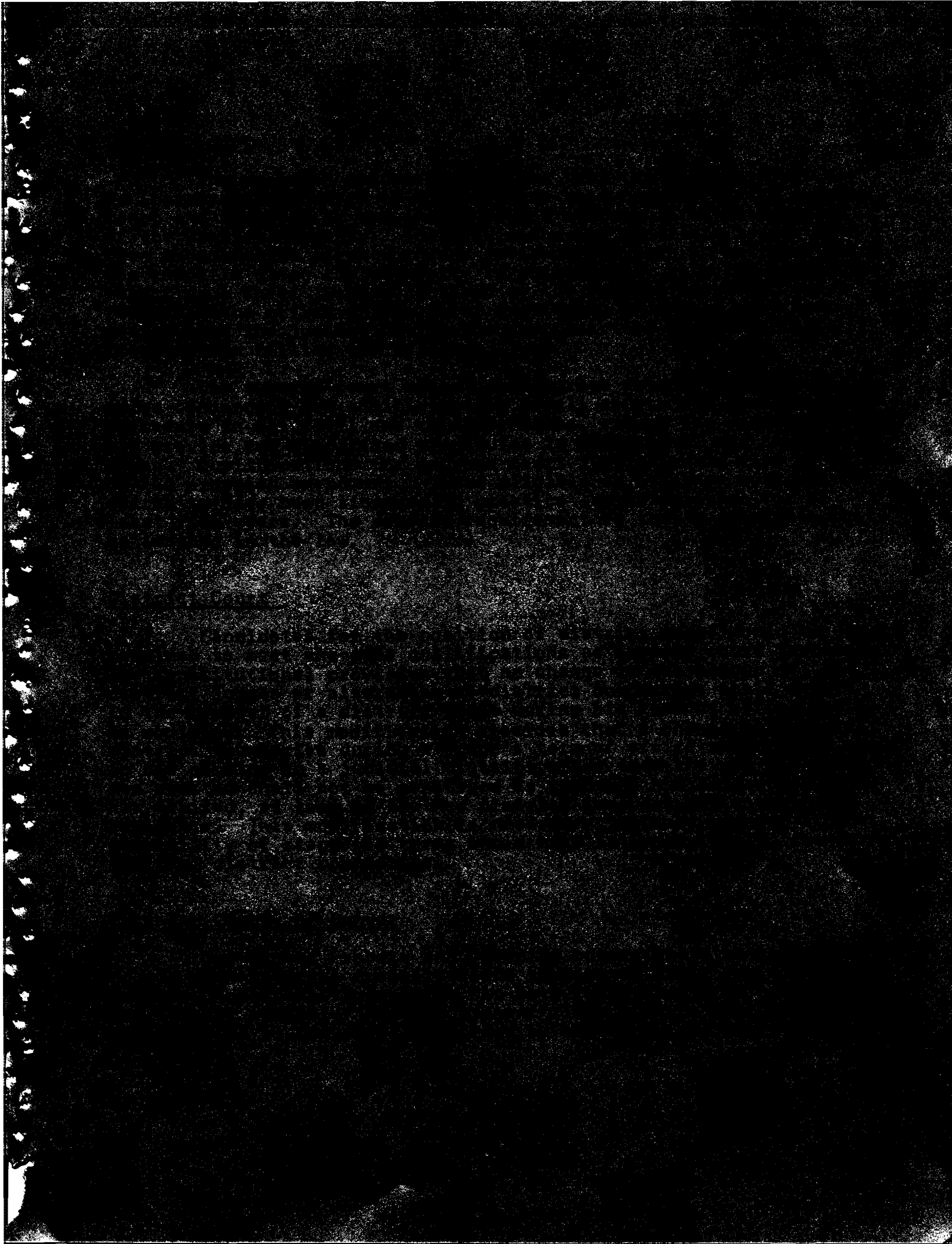


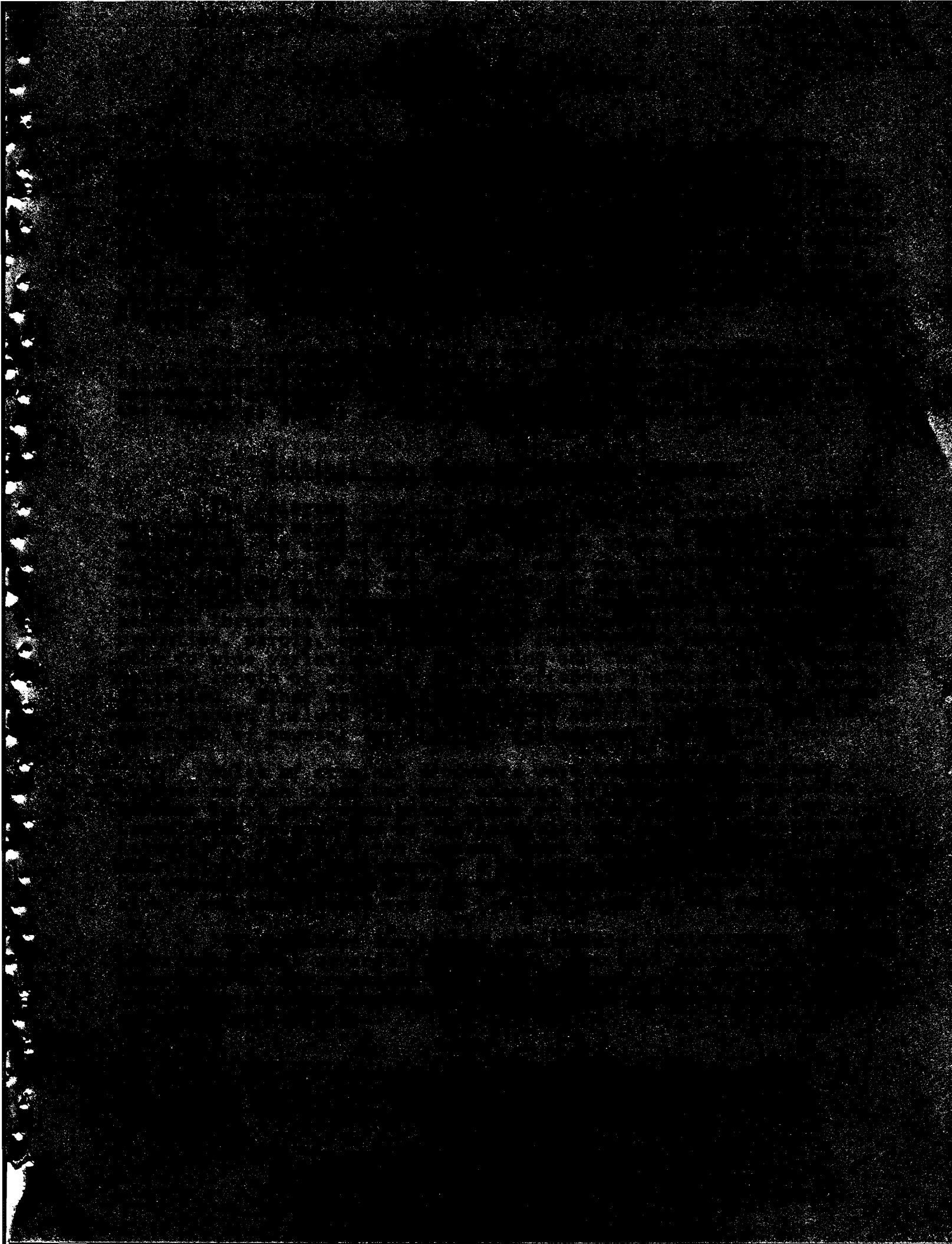


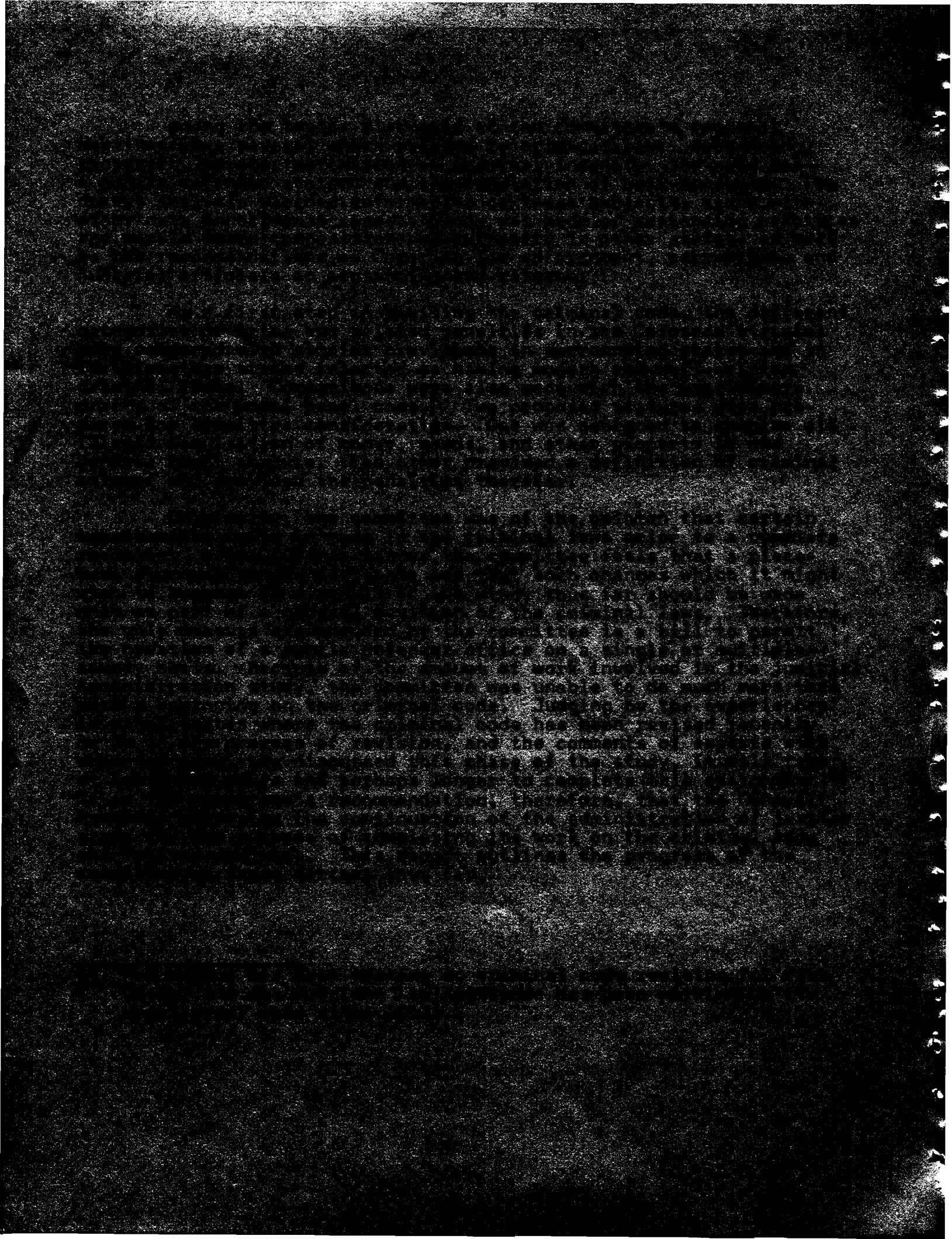












I

COLORADO'S JUDICIAL ORGANIZATION

Introduction

Colorado's judicial structure today is very much the same as it was when Colorado became a state in 1876, despite a sizable population increase, accompanied by an expanding and changing economy, and vast technological improvements in transportation and communications. With the exception of a few and, for the most part, minor amendments, the judicial article of the Colorado Constitution[1] has not been altered since its adoption.

In part, there has been little change because the judicial article in the past has proven flexible enough to accommodate, within limitations, the changes described above. For this reason, legislation has been used as the primary method of solving particular judicial problems. As a result, much of the change in judicial organization and administration has been expedient and piecemeal, and little attention has been given to long-range planning to provide a judicial structure to meet the needs of the state 50 or 75 years in the future. In many instances this legislation unintentionally has hampered long-range solutions because basic court organizational problems have been ignored, additional courts have been provided, and changed and overlapping jurisdictions have resulted in new obstacles to judicial reorganization.[2]

The difficulty in amending the state constitution has also been a major factor in the increased reliance on legislation to correct court organizational problems, not only in Colorado, but in other states as well. The legislative approach to court problems was followed throughout the country in the last two decades of the 19th century and the first 20 to 30 years of the present one. Often problems were so immediate that a legislative solution, which could be achieved in a short period of time, was preferable to the much slower process of constitutional amendment. As long as legislation could solve immediate court problems, there appeared to be little need for basic reorganization through constitutional change.[3]

Tradition also works against acceptance of change in judicial organization and procedures, often even against recognition

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1. Article VI, Colorado Constitution.
2. Piecemeal, expedient approaches to judicial problems and their effects are explored more thoroughly in the next chapter.
3. The judicial article of most state constitutions gives the legislature rather broad powers in adding to existing trial courts or in creating new ones.

that perhaps change is needed. The American legal system has its roots in British common law and judicial organization. Through the years evolution at times has been slow, especially in the older states along the Atlantic seaboard. Members of bench and bar trained and accustomed to working within a particular organizational and procedural pattern often are slow to desire basic change until inefficiency, case backlog, and related problems become so serious that no less drastic remedy appears adequate.

Even when a proposal for the basic overhaul of judicial administration has gained the acceptance of a majority of attorneys and judges, it will not be successful unless citizens in general see the need and feel the plan is sound. In every state where judicial reorganization has been successful, it has resulted from the concerted activity of informed civic groups and organizations. Unfortunately (from the standpoint of judicial improvement), the average citizen has little contact with the day-to-day operation of the court system. Consequently, it is difficult for him to recognize the need for change, except with respect to justice courts, where over 90 per cent of the citizens who have any contact with the courts have their only experiences.

A certain amount of flexibility in the judicial article, the difficulty of effecting constitutional change, short run and piecemeal improvements through legislation, tradition, lack of public understanding, resistance to change, and general apathy have all helped to prevent any basic change in Colorado's court structure since 1876. To this list should be added disagreement among proponents of different plans of judicial reorganization and the difficulty in developing a plan of judicial reorganization which would meet urban and rural needs in a state as widely diversified as Colorado.

The need for judicial reorganization should be determined by an evaluation of the effectiveness of the present judicial system and its ability to meet the demands of population growth and economic expansion in the future without constitutional change. This analysis includes: an inventory of the present court system, an evaluation of organizational, procedural, and personnel impediments to the just and speedy disposition of cases, an examination of changes made since 1876 and their effect, and a pinpointing of particular problem areas.

The Present Colorado Court System

Colorado's court system consists of four levels of courts: supreme court, district courts, county courts, and justice of the peace and municipal courts. The first three are constitutional courts and their jurisdiction is defined in the judicial article. The justice of the peace courts are referred to in the judicial article and the justice of the peace and constable are constitutional

offices by virtue of another article of the Colorado Constitution;[4] but justice of the peace courts are not constitutional in the same sense as the supreme, district, and county courts. Justice court jurisdiction is not defined in the constitution; rather, certain limitations are placed within which the General Assembly may choose to confer jurisdiction.[5]

The justice of the peace, therefore, has no constitutional guarantee of jurisdiction and the General Assembly, if it wished, could strip him of all judicial authority, although he would still remain a constitutional officer.

Municipal courts in home rule cities also derive their status from the constitution,[6] while municipal courts in general law cities and towns are provided for by statute.

Colorado also has two other courts which are on the same judicial level as county courts. The Denver Superior Court was established by statute pursuant to the authority conferred upon the General Assembly by the judicial article to create courts other than those enumerated as constitutional courts.[7] The Denver Juvenile Court was also established by statute pursuant to the constitutional provision permitting the General Assembly to create a separate court in counties and cities and counties over 100,000 population, with exclusive original jurisdiction in cases involving minors and persons whose offenses concern minors.[8] An outline of the state judicial system is shown in Figure 1.

Supreme Court

The supreme court consists of seven justices elected at large for ten-year staggered terms. It has original jurisdiction to issue remedial writs and answer interrogatories from the governor and either house of the General Assembly. It has appellate juris-

4. Article XIV, Section 11, Colorado Constitution.
5. Article VI, Section 25, Colorado Constitution provides that justices of the peace shall have such jurisdiction as may be conferred by law, but they shall not have jurisdiction of any case wherein the value of property or the amount in controversy exceeds $300, nor where the boundaries or title to real property are in question.
6. Article XX, Section 6, Colorado Constitution. The municipal court of the City and County of Denver also has justice of the peace jurisdiction as provided in Article XX, Section 2.
7. Article VI, Section 1, Colorado Constitution.
8. Ibid.

diction to review decisions of all inferior courts, and writs of error lie from the supreme court to all county court final judgments.[9] Review of other cases is limited by statute and court rule.[10]

A supreme court candidate must be learned in the law, a citizen of the United States residing in Colorado, and must be at least 30 years of age.[11] Supreme Court justices receive an annual salary of $15,000, and the chief justice receives an additional $500. The justice not holding office by appointment or election to fill a vacancy and who has the shortest period yet to serve on the court is designated as chief justice for one year.[12] The chief justice presides at all sessions of the court when it meets en banc and directs the work of the court in general.

The supreme court is authorized to sit in two or more departments (or divisions) as the court may determine, except that cases involving the construction of the United States or Colorado Constitutions shall be decided by the court en banc. When the court sits in departments, each department has the full power and authority of the court authorized in the judicial article subject to court rules, except that no decision of any department shall become the judgment of the court unless concurred in by at least three judges.[13]

The supreme court also has general superintending control over all inferior courts, and for this purpose the state is divided into six judicial departments, each headed by one of the justices appointed by the chief justice.[14] The Office of Judicial Administrator is provided by statute and the administrator is appointed by the supreme court and performs certain statutory functions and other duties assigned him by the supreme court to assist it in its administration of the state judicial system.[15]

District Courts

The district court is Colorado's major trial court of general jurisdiction. At present there are 18 judicial districts, of which

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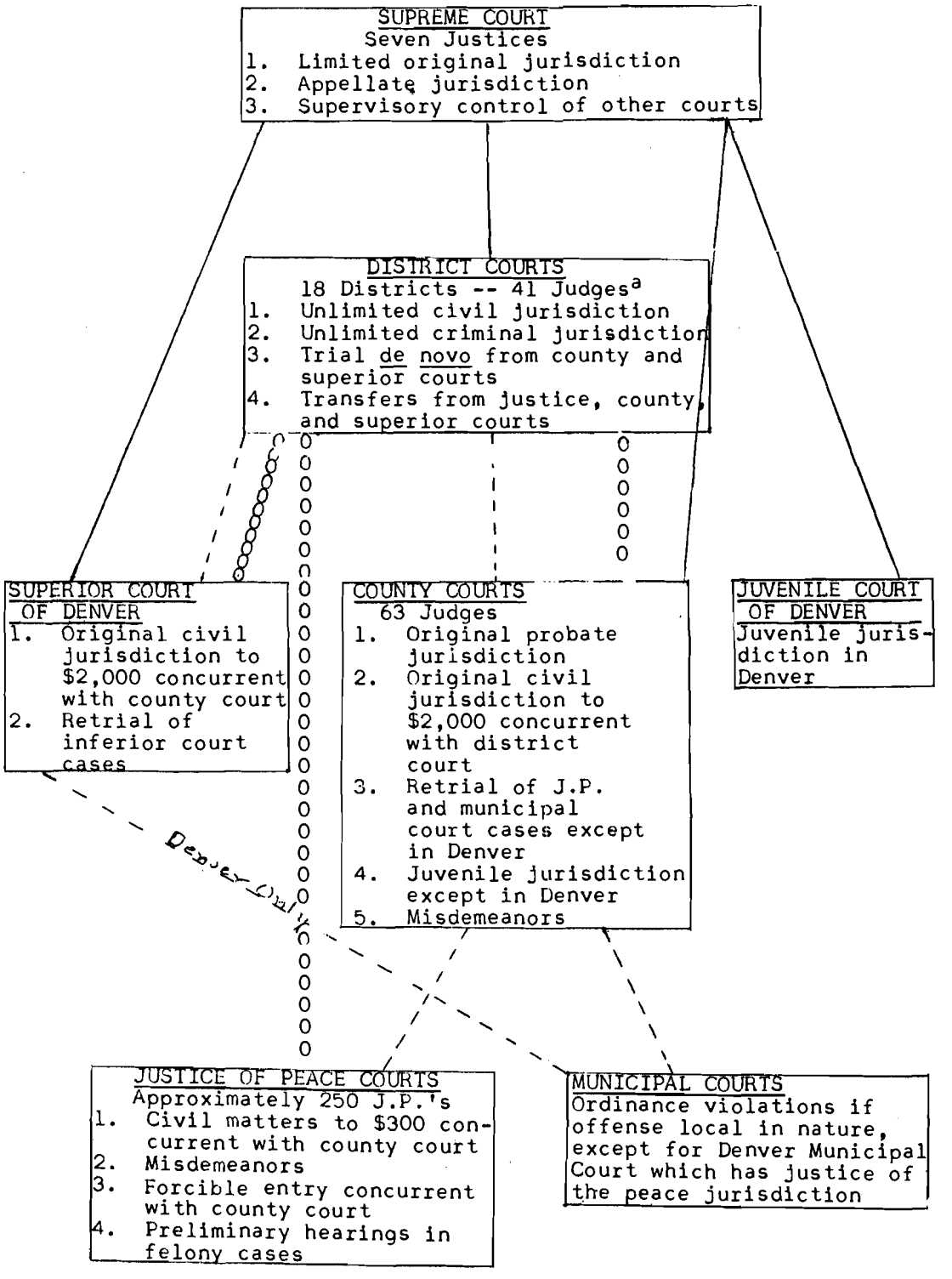
9. Article VI, Sections 2, 3, 4, 5, 6, 7, and 23.
10. 37-2-33, Colorado Revised Statutes, 1953 limits review of other cases to a writ of error procedure and such review is limited by court rule to final judgments, certain conditional water decrees, orders granting or denying temporary injunctions and orders appointing or denying the appointment of receivers.
11. Article VI, Section 10, Colorado Constitution.
12. Article VI, Section 8, Colorado Constitution.
13. Article VI, Section 5, Colorado Constitution.
14. Article VI, Section 2, Colorado Constitution and Chapter 37, Article 10, Colorado Revised Statutes, 1953, as amended by Chapter 93, Session Laws of Colorado, 1959.
15. 32-10-1 (2), Colorado Revised Statutes, 1953, as amended by Chapter 93, Session Laws of Colorado, 1959.

Figure 1

THE JUDICIAL SYSTEM OF COLORADO



a. Additional judges elected in November 1960 in 17th and 18th judicial districts, will assume office in January 1961, raising total to 41.

—— writ of error
--- trial de novo
ooo transfers

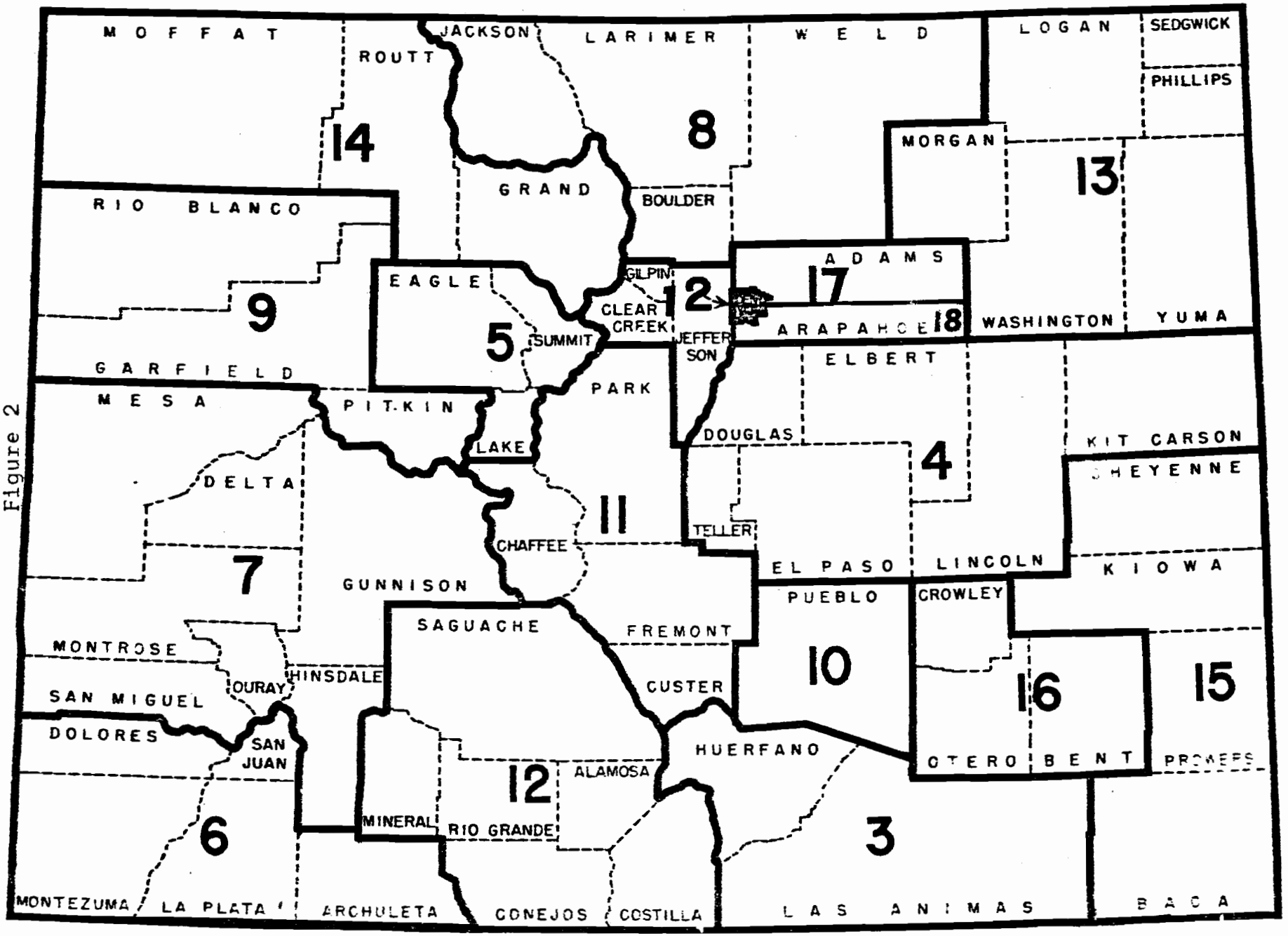
four are one-county districts. The boundaries of the 18 judicial districts are shown in Figure 2. The district court has original jurisdiction in all civil and criminal matters with the exception of probate matters and juvenile cases.[16] Cases may be brought from the county court on appeal or transferred from county and justice of the peace courts for lack of jurisdiction in these lower courts, but no appeals may be taken to the district court from any judgment in a county court in cases previously appealed from a justice or municipal court. Cases appealed from county court are retried (trial de novo). The district court also has appellate jurisdiction to review findings and conclusions of administrative agencies and certiorari powers to review cases of any inferior tribunal.

District judges are elected for six-year terms and are required to be learned in the law, at least 30 years of age, citizens of the United States, Colorado residents for at least two years preceding election, and electors within their judicial districts.[17] All district judges are elected at the same time, even in multi-judge districts. As of January 1961, there will be 41 district judges, with the 2nd Judicial District (Denver) having the largest number: 10. In multi-county districts, the judges ride circuit, holding court in the various counties at certain specified times, as provided for by the judicial article and by statute and determined by the extent and press of judicial business.[18] District judges receive an annual salary of $12,000 from the state. Salaries of non-judicial personnel and other court expenses are borne by the county or counties composing each judicial district. On invitation or assignment district judges may sit for other district judges both within and outside their districts or preside in county, superior, and juvenile courts.[19] Upon request of the supreme court, district judges may sit with that body and assist it in opinion writing.[20] County, superior, and juvenile court judges who are lawyers may also sit as district judges as requested or assigned.[21]

The General Assembly has the authority to change the boundaries of judicial districts and to increase or decrease either the number of judicial districts or the number of district judges, except that no such change can result in the removal of any district judge from office before the expiration of his term.[22]

16. Article VI, Section 11, Colorado Constitution.
17. Article VI, Section 16, Colorado Constitution.
18. Article VI, Section 17, Colorado Constitution, and Chapter 37, Article 3, Colorado Revised Statutes, 1953, as amended.
19. 37-4-11 through 15, 37-5-14 through 16, 37-9-20 through 22, and 37-11-11, Colorado Revised Statutes, 1953, as amended by Chapter 40, Session Laws of Colorado, 1960.
20. Chapter 38, Session Laws of Colorado, 1960.
21. Chapter 40, Session Laws of Colorado, 1960.
22. Article VI, Section 14, Colorado Constitution.

JUDICIAL DISTRICTS OF COLORADO



COLORADO STATE PLANNING COMMISSION

Figure 2

County Court

The county court is a constitutional trial court of more limited jurisdiction than the district court. With the exception of probate, mental health, and juvenile cases and appeals from justice of the peace and municipal courts, its jurisdiction is concurrent with the district court. This concurrent jurisdiction is limited to misdemeanors and to civil cases involving claims of less than $2,000.[23] Cases appealed from justice of the peace and municipal courts are retried (in county court). Appeals from the county court lie to the supreme court by writ of error or to the district court with certain exceptions as already indicated.

Each county has a county court and is limited to one county judge. County judges are elected every four years and their salaries and other court expenses are borne by the counties. Salaries of county judges are set by statute according to county classification and currently range from $734 (Hinsdale and Mineral counties) to $12,500 (Denver).[24] The judicial article does not require county judges to be lawyers, but there is such a statutory requirement for county judges in Class I and Class II counties.[25] Prior to the 1960 general election, only eight of the 51 county judges in Class III through VI counties were attorneys. Many of the judges in the smaller counties also serve as their own court clerks and a few serve in a similar capacity for the district court. Except in Class I and II counties, county judges who are attorneys are not restricted from the practice of law.

Denver Juvenile Court

The Denver Juvenile Court has been in existence since 1903, when it was created by statute, presumably under the authority given the General Assembly by the judicial article to establish other courts in addition to those specified. Through a 1907 amendment to the judicial article, the General Assembly was given the authority to create separate courts with exclusive original jurisdiction in cases involving minors and persons whose offenses concern minors.[26] Included within the juvenile court's jurisdiction are such matters as juvenile delinquency, dependency and neglect, relinquishment, adoption, guardianship, contributing to delinquency,

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23. Article VI, Section 23, Colorado Constitution.
24. 56-2-3, Colorado Revised Statutes, 1953, as amended by Chapter 44, Section 4, Session Laws of Colorado, 1958, and 56-2-18, Colorado Revised Statutes, 1953, as amended by Chapter 40, Section 11, Session Laws of Colorado, 1960.
25. 37-5-22, Colorado Revised Statutes, 1953, as amended. Denver is the only Class I county. The 11 Class II counties include: Adams, Arapahoe, Boulder, El Paso, Jefferson, Larimer, Las Animas, Mesa, Otero, Pueblo, and Weld.
26. Article VI, Section 1, Colorado Constitution.

and contributing to dependency. Not all of the juvenile court's jurisdiction is exclusive, however. It has concurrent jurisdiction with district and county courts in criminal cases involving or concerning persons under 21 and in annulment cases where one of the parties is less than 21.[27]

The juvenile court has exclusive jurisdiction in delinquency cases, but in such cases involving minors between 16 and 18, if the alleged offense also constitutes a felony, an action may be brought in district court rather than juvenile court. In these cases the district attorney determines whether to file a petition of delinquency in juvenile court or an information on a felony charge in district court.[28] The juvenile court is excluded from jurisdiction of traffic offenses, and game and fish violations by minors.[29] There have been several supreme court cases which have involved an interpretation of the concurrent criminal jurisdiction of the juvenile court, particularly with reference to adults involved in offenses against minors. There have also been a number of supreme court decisions concerned with the relationship between the custody jurisdiction of the district court and the dependency jurisdiction of the county court. Appeals from juvenile court may be taken to the district or supreme court in the same manner as from county court.

Prior to 1960, Denver was the only city and county or county which met the population requirement of 100,000 for the creation of a separate juvenile court as provided by statute pursuant to the judicial article.[30] Preliminary 1960 census figures indicate that five counties, Adams, Arapahoe, El Paso, Jefferson, and Pueblo, now exceed 100,000 population; however, during the 1960 legislative session, the General Assembly raised the population limit from 100,000 to 250,000, for a number of reasons which will be discussed later in this report.[31] As a result of this legislation, Denver remains the only city or county which can meet the population requirement for a separate juvenile court. In the other 62 counties, juvenile matters are heard in the county court.

The juvenile court in Denver is financed entirely by the city and county. The court has only one judge, who must have the

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27. 37-9-2 (1), Colorado Revised Statutes, 1953.
28. The same relationship exists in other counties between the district court and the county courts, which also sit as juvenile courts.
29. 22-8-15, Colorado Revised Statutes, 1953 as amended by Chapter 74, Session Laws of Colorado, 1959, and 22-8-7, Colorado Revised Statutes, 1953 as amended by Chapter 36, Section 2, Session Laws of Colorado, 1960.
30. 37-9-1, Colorado Revised Statutes of 1953.
31. 37-9-1, Colorado Revised Statutes, 1953, as amended by Chapter 41 Session Laws of Colorado, 1960.

same qualifications for office as a district judge and who also receives the same salary as a district judge. The juvenile judge is elected for a four-year term, and his term of office expires at the same time as do those of the county judges.

Denver Superior Court

Superior courts were authorized by statute in 1954 in counties or cities and counties of more than 300,000 population.[32] The exclusive jurisdiction of the superior court is limited to trials de novo in matters appealed from justices of the peace and municipal courts. It has concurrent jurisdiction with the county and district courts in divorce, separate maintenance, annulment, and other civil actions where the amount involved does not exceed $2,000.[33] Appeals may be taken to the district or supreme court in the same manner as from county courts. The superior court was established to relieve some of the burden of the Denver County Court, which was finding it difficult to keep its docket current on the large number of probate and mental health matters filed in that court, because of the substantial increase in justice court and municipal court appeals. At the time this legislation was considered there was no great need expressed for a superior court in the large counties other than Denver. For this reason the population limit was set at 300,000, which, even after the 1960 census, still excludes all other counties. There is only one judge of the superior court and his salary and all court expenses are financed by the City and County of Denver. Qualifications for superior court judge are similar to those of district judge, and he receives the same salary as a district judge. He is elected for a four-year term and stands for election at the same time as county judges and the juvenile judge.

Justice of the Peace Courts

Justice of the peace courts are the state trial courts of least jurisdiction. These courts are created by the constitution as are the offices of justice of the peace and constable, but the court's jurisdiction is limited by the constitution to misdemeanors and civil actions under $300, not involving real property disputes.[34] Justices of the peace have county-wide jurisdiction (as contrasted with county judges, who are considered state officers with state-wide jurisdiction, even though elected and paid by a particular county) concurrent with the county and district courts within the

32. Chapter 37, Article 11, Colorado Revised Statutes of 1953 as amended.
33. 32-11-2, Colorado Revised Statutes of 1953 as amended.
34. Article VI, Section 25, and Article XIV, Section 11, Colorado Constitution.

limits specified above. Justices of the peace may hold preliminary hearings in felony cases, perform marriages, administer oaths, and take acknowledgments.[35]

In the City and County of Denver, justice court jurisdiction is exercised by the Denver Municipal Court, which has separate justice of the peace civil and criminal divisions, in addition to its municipal court divisions, for various categories of ordinance violations.[36] Appeals from the justice court in the City and County of Denver lie to the superior court where they are tried de novo. In the other 62 counties appeals lie to the county court where they are also heard de novo.

The qualifications which a justice of the peace must meet are relatively few, none of which pertain to his aptitude or experience for judicial office. He must be a qualified elector and must reside and have his office in the precinct for which he was elected. Beyond these requirements, there are no standards which a justice must meet to qualify for the office.[37] Very few justices of the peace are attorneys or have had any legal training.

Each county is entitled to two justices of the peace in each precinct. The board of county commissioners has statutory authority to create additional justice precincts or consolidate existing precincts.[38] There has been no need in recent years for creating additional justice precincts, and, while consolidation would be helpful in reducing the number of justices of the peace, it has been accomplished in very few counties -- notably Huerfano, Jefferson, and Pueblo. In several other counties there are often no candidates from some justice precincts and no one will accept appointment to these positions, with the result that the county may have as few justices as might be accomplished by precinct consolidation.

Justices of the peace are compensated from the fees of their office within certain statutory limitations. Justices in precincts of more than 100,000 population may retain up to $7,500 in fees. Those in precincts between 70,000 and 100,000 population may retain up to $5,000 in fees, and all others have a maximum of $3,600.[39]

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35. For a full discussion of justice of the peace jurisdiction and duties see Justice Courts in Colorado, Colorado Legislative Council, Research Publication No. 24, December 1958, pp. 5-25.
36. Denver's authority to combine justice of the peace and municipal jurisdiction in the same court is derived from an amendment to the Denver City Charter passed pursuant to the provisions of Article XV, Section 2, Colorado Constitution.
37. Justice Courts in Colorado, p. 13.
38. 79-1-1, Colorado Revised Statutes, 1953.
39. 56-2-13, Colorado Revised Statutes, as amended by Chapter 42, Session Laws of Colorado, 1960. For most civil cases, the J.P. receives a docket fee of $4; certain civil actions require a docket fee of $5 or $6. The docket fee is $4 for traffic cases and $5 in all other criminal cases.

Except in large counties, the justices of the peace have insufficient business to reach the statutory fee maximum. In 1958 there were approximately 275 justices of the peace in the state and there may be between 250 and 275 at the present.[40]

Municipal Courts

Municipal courts are not state courts, as their jurisdiction is limited to ordinance violations, which are of local concern. Municipal courts in home rule cities derive their authority from the Home Rule Amendment to the Colorado Constitution.[41] Municipal courts in general law cities and towns are provided for by statute.[42] Appeals from municipal courts are taken to the county court and are tried de novo, except in the City and County of Denver where these appeals are tried de novo in superior court.

The office of municipal judge is a full-time position only in Denver and perhaps a few other of the larger cities such as Pueblo and Boulder. In most of the larger municipalities the municipal judge is usually an attorney. The charters of several of these cities require that the position be filled by a lawyer. Usually municipal judges are appointed for a specified term by the city council. (In Denver these appointments are made by the mayor.) In several smaller cities and towns, the local justice of the peace has also been appointed police magistrate or municipal judge. With the exception of Denver, which has 10 municipal judges (four of whom preside over the justice court divisions), no municipality has more than one judge who serves on a full-time basis, although some cities such as Boulder have a judge who serves on a standby basis when the regular judge is not available; and others (e.g., Grand Junction) may have more than one part-time judge.

The salaries of municipal judges are set by the city council or town board of trustees and vary according to the size of the municipality and whether the position is full or part time. The practice in municipalities under 2,000 population is to compensate the police magistrate or municipal judge from the fees of his office rather than by a fixed monthly or annual salary.

40. It is very difficult even to estimate the number of justices of the peace with any accuracy. The only official published list includes only those elected at the general election. A number of these don't take office, and an additional number resign. It is difficult to determine if any of these vacancies are filled by the county commissioners or if appointments are made to fill vacancies caused by the failure of candidates to stand for election.
41. Article XX, Section 6, Colorado Constitution.
42. 139-63, Colorado Revised Statutes, 1953.

Municipal ordinance violations were considered to be civil in nature prior to the supreme court decision in the Merris case in 1958,[43] even though rather severe penalties, including large fines and jail sentences, are authorized in certain instances. Consequently, alleged violators did not have the usual due process protections expected in criminal proceedings, especially the right of trial by jury. Since the Merris decision, these cases are treated as criminal in nature, and defendants are given due process including jury trials if they so desire. Home rule cities have passed municipal jury ordinances under their constitutional and charter powers, and legislation was adopted giving statutory cities and towns the authority to pass jury trial ordinances.[44] A further consequence of the Merris decision was the limitation placed on municipal court jurisdiction, through the court's ruling that the power of home rule cities to legislate on matters of local concern is limited to those areas in which the state has not enacted legislation.

A Brief History of Court Organization in Colorado

At the time Colorado became a state, its population was only 194,100, more than 1.5 million less than the preliminary 1960 census total of 1,742,029. There were only 26 counties, and the judicial article originally provided for only four judicial districts, which spanned the entire state. Adjudication of water rights and mining claims were primary concerns, since mining and cattle constituted the main economic activity in the state. The telegraph was the only means of rapid communication throughout the state and mountains were a very formidable barrier between isolated, sparsely-populated areas. Because of these conditions there was a real need for local courts to administer justice and settle minor disputes quickly and cheaply, and justice of the peace courts played a prominent judicial role; indeed, the justice of the peace during this period was exactly what his title implied. Besides settling minor civil matters, his major function was maintaining the peace with criminal jurisdiction over assaults, batteries, and affrays.

Both justices of the peace and circuit judges were officially part of the judicial structure of Colorado prior to statehood. As early as 1856, when Colorado was part of the Kansas Territory, district judges rode circuit by authority of the territorial legislature.[45] The short-lived territory of Jefferson passed an act establishing a judicial system for the territory in 1859. This act provided for the following courts: supreme court, district courts, county courts (which combined county commissioners' functions with probate jurisdiction), justice courts, and miners' courts. The latter was a local court presided over by panels of miners, with jurisdiction limited to disputes of water rights and mining.

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43. Canon City v. Merris, 137 Colorado 169, 323 P. 2d. 614.
44. Chapter 270, Session Laws of Colorado, 1959.
45. The Case for Courts, League of Women Voters of Colorado, September, 1960, p. 15.

The government of the Territory of Jefferson faded away on the arrival of the first territorial governor of Colorado in June of 1861. The Organic Act of the Territory of Colorado, signed into law in February of 1861, provided that the judicial power of the territory shall be vested in a supreme court, district courts, probate courts, and justices of the peace. The Organic Act limited the jurisdiction of the two inferior courts to debts or sums of less than $100 and excluded these courts from jurisdiction in any controversy involving the title and boundaries of land.[46] The court structure embodied in the Organic Act of 1861 was incorporated with minor changes in the judicial article of the state constitution.[47]

In establishing a four-level court system in its judicial article, Colorado was following the pattern of many of the states which were admitted to statehood between the termination of the civil war and 1890.[48] The far western states, however, which achieved statehood after California's constitutional revision of 1879, for the most part followed California's lead in eliminating the county or probate court level and placing probate jurisdiction in the trial court of general jurisdiction, generally called either the district or superior court.[49] In general, the states (including Colorado) which adopted or modified judicial articles after the civil war avoided many of the jurisdictional problems of the older eastern states which had followed the English pattern of separate courts of law and equity.[50]

Colorado Supreme Court

In 1876, when Colorado became a state, there were three supreme court justices -- each elected for a nine-year term. The business of the court increased so rapidly that in 1887, a supreme

46. Justice Courts in Colorado, p. 3.
47. For example, the probate court became the county court was given civil jurisdiction up to $2,000, including property matters. The property controversy restriction still applied to justice courts but their civil jurisdiction was raised to $300 as provided by law.
48. Nebraska, Oregon, Kansas, North Dakota, and South Dakota are cited as examples by Roscoe Pound, Organization of Courts, Little, Brown and Company, 1940, in Chapter V, "Development of Judicial Organization in the Newer States After the Civil War."
49. According to Professor Pound, op. cit., some states already admitted also modified their judicial articles in accord with the California revision. Western states which followed California in this respect included Arizona, Montana, Utah, Washington, and Wyoming, and this step had already been taken by Nevada in 1864.
50. Pound, op. cit., Chapter V, pp. 161-193.

court commission was created by legislative enactment.[51] The legislation which established the commission authorized the governor to appoint three commissioners with senate approval. The commissioners were to serve a four-year term, unless their services were no longer needed prior to the expiration of their terms. These commissioners were to have the same qualifications as supreme court justices, to take the same oath of office, and were subject to supreme court rules. The commissioners were to review and render written opinions in all cases referred to them by the supreme court. The supreme court was required to review all opinions written by the commission and could approve, modify, or reject such opinions.

The use of commissions to expedite appellate review was tried by 19 states, including Colorado, during the latter two decades of the 19th century, as there was a general condition of arrears in federal and state supreme courts, which became more and more acute in the last quarter of the century.[52] While a number of states continued the use of commissions after Colorado had abandoned this approach, the commission plan did not prove to be a satisfactory permanent solution to increased appellate case loads.

In Colorado the creation of the supreme court commission failed to bring about the expected reduction in the supreme court's docket, because the commission had no power to render final judgment. The supreme court had to review each case, and then write another opinion if it disagreed with the commission, so that the commission's work amounted to no more than a finding of fact and law.[53]

Court of Appeals I. After terminating the supreme court commission, Colorado turned to another method, also popular at the time, of handling increased supreme court caseloads: the creation of an intermediate court of appeals. Intermediate appellate courts were established in a number of states -- some by statute and some by constitutional amendment. Only 13 states, however, all more populous than Colorado, presently have intermediate appellate tribunals. None of these states has less than three million residents and seven of the 13 have more than five million.[54]

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51. Rocky Mountain Law Review, "The Trend - Appellate Courts and Procedure in Colorado," James Perchard, former Clerk, Colorado Supreme Court, November 1929, p. 60.
52. Pound, op. cit.,p. 201.
53. Perchard, loc. cit.
54. State Intermediate Appellate Courts, Their Jurisdiction, Case Load and Expenditures, Institute of Judicial Administration, New York, 1956.

The Colorado Court of Appeals was created by legislation passed at the 1891 session.[55] This legislation provided for three judges with the same qualifications as supreme court justices to be appointed by the governor, with senate approval. The first appointments were to be made for staggered terms of two, four, and six years. Subsequent appointments were to be made for six-year terms. The three former supreme court commissioners were appointed as appellate judges.

The court of appeals was given final jurisdiction in all cases where the amount involved in the judgment or replevin was $2,500 or less. The court also had jurisdiction which was not final in criminal cases, in cases involving franchises or freeholds, in cases involving constitutional provisions, and in cases heard on writ of error from the county court. Cases in these latter categories could be taken on appeal on writ of error to the supreme court. The court of appeals was given authority similar to that of the supreme court to issue all necessary and proper writs and other processes on causes within its jurisdiction. Court of appeals' opinions were to be delivered as required by the supreme court and published in a like manner.

That the court of appeals did a vast amount of work was shown in the 20 volumes of its reports, and on the whole it proved quite satisfactory.[56] However, the existence of two appellate courts created a certain degree of friction, so that in 1904, the court of appeals was abolished and a constitutional amendment was adopted increasing the number of supreme court justices from three to seven and terms from nine to ten years.[57]

Court of Appeals II. From 1904 through 1910, the enlarged supreme court handled the entire appellate work load. Judging by Governor Shafroth's message to the 18th General Assembly in 1911, the supreme court's dockets again became overcrowded during this period. In his message, Governor Shafroth offered several recommendations to limit "the ever increasing number of cases before the supreme court." First, he asked that an act be passed limiting the right of appeal from district court to the supreme court to only those cases where the amount in question was in excess of $1,000, except for cases concerning freeholds or franchises. Second, he recommended that an act be passed to give supreme court judges the right to affirm district court judgments without written opinion. Third, he called for a constitutional amendment to be presented to

55. Prior to passage of the legislation creating the intermediate appeals court the senate submitted an interrogatory to the supreme court to find out: 1) if such a court could be created legally; 2) the jurisdiction both final and coordinate which could be conferred upon such court; and 3) further questions of constitutionality.
56. Perchard, op. cit., p. 61.
57. Ibid.

the people by the General Assembly. This amendment would strike the clause "writ of error shall lie from the supreme court to every final judgment of the county court." In lieu thereof the following would be inserted "that writ of error may lie from the supreme court to such final judgments of the county court and in such manner as may be prescribed by law." After passage of such amendment, he requested that the General Assembly pass an act limiting county court appeals in the same manner recommended for district court.[58]

Instead of acting in accord with Governor Shafroth's recommendations, the General Assembly again created an intermediate court of appeals. This tribunal, also known as the court of appeals, was established for a four-year period. The number of judges was increased from three to five, not more than three of whom could belong to the same political party. These judges were to have the same qualifications as supreme court justices. In addition to appointing the judges (with senate approval), the act provided that the governor designate the presiding judge.

The court of appeals was given the authority to review and determine all judgments in civil cases pending before the supreme court, except in those cases from county court on writs of error. The legislation provided that the supreme court should transfer as many cases to the court of appeals as it deemed advisable. The General Assembly did not re-enact the statute in 1915 at the expiration of the four-year period specified in the original act, nor was there any discussion of appellate problems in Governor Orman's message to the 20th General Assembly in 1915. Colorado has not had an intermediate court of appeals since that time, nor has the supreme court commission plan been re-adopted. Recent efforts to reduce the backlog of appellate cases have been concentrated on expediting the disposition of cases by the supreme court itself without resorting to additional appellate tribunals. The court itself has taken the lead in this respect and has had the assistance of the General Assembly, which provided funds for supplying each justice with a law clerk and also made an appropriation to the court so that retired supreme court justices, district judges, and qualified county judges called in to assist the court in opinion writing could be paid a small honorarium.

There has been only one constitutional change affecting the jurisdiction of the supreme court. In 1912 an amendment to section 3 of the judicial article was adopted, which enlarged the court's jurisdiction by the addition of the following:[59]

> and each judge of the supreme court shall have like power and authority as to writs of habeas corpus. The supreme court shall

58. Senate Journal, 18th Legislative Session, 1911, p. 42.
59. Article VI, Section 3, Colorado Constitution, as amended, 1912.

give its opinion upon important questions upon solemn occasions when required by the governor, the senate or the house of representatives; and all such opinions shall be published in connection with the reported decisions of said court.

District Courts

The Organic Act of the Colorado Territory (1861) provided for three judicial districts, with one judge each. This number was increased to four when the judicial article was adopted. These four districts, with one judge each, covered the entire state and its 26 counties then in existence. As the population and economic activity of the state increased, additional judicial districts were created.

In 1886 an amendment to section 12 of the judicial article was adopted to provide for one or more judges in each district, and section 14 of the judicial article was also amended to allow the General Assembly to increase or diminish the number of judges or judicial districts at any time, provided that no judge could be deprived of his office by such action until completion of the term for which he was elected.

The addition of judges to existing judicial districts, the creation of new judicial districts, and the alteration of judicial district boundaries have made it possible for the district courts to keep pace generally with increased case loads, although in recent years the accelerated growth of metropolitan areas has resulted in a larger increase in judicial business than has been accommodated, as yet, through legislation. The last alteration in judicial district boundaries took place in 1958 when the 17th judicial district (Adams County) and the 18th judicial district (Arapahoe County) were created. These counties were formerly part of the 1st judicial district, which now consists of Clear Creek, Gilpin, and Jefferson counties. Additional judges also have been authorized recently in some of the metropolitan judicial districts; the 17th and 18th districts each elected a second judge at the 1960 general election; the number of judges in the 2nd district (Denver) was increased from nine to 10 by the General Assembly in 1959; and a fourth judge was provided in the 4th district (El Paso, Douglas, Elbert, Kit Carson, Lincoln, and Teller) by the General Assembly in 1960.

County Courts

The major function of the county court at the time the judicial article was adopted was probate jurisdiction. Following the trend in many midwestern states, this jurisdiction was vested in a separate court rather than in the district court.

Colorado had 26 counties in 1876, and four more were created during the following four years. During the 1880's, 25 new counties were established by the General Assembly. Only two counties were added during the 1890's (Mineral 1893 and Teller 1899). Six counties, including Adams and the City and County of Denver, were established during the early years of the 20th century; the last county to be created was Alamosa in 1913.

The expanding agricultural economy of eastern Colorado, accompanied by railroad development and water diversion problems, gave impetus to the creation of new counties in that part of the state. In the mountain and west slope areas, population booms, usually related to mining development (Teller County is a good example), led to the demand for a county government to serve these areas. Efforts were also made to straighten out some of the geographical inconsistencies resulting from the boundaries of the original 26 counties; for example, Archuleta County was carved out of Conejos County so that Conejos would be wholly east of the continental divide. La Plata County was also divided by the mountains of the same name, and Montezuma County established.

The increase in the number of counties has greatly reduced the area served by each county court; improvements in transportation have made the county seat more accessible. The shift in population away from eastern rural and mountain mining areas has also left a number of county courts with very little judicial business. In addition, there has been a considerable change in the kind of case brought before the county court. Through the years since statehood, probate jurisdiction has continued to constitute the major portion of the court's case load, especially in the smaller counties. However, mental health cases and juvenile matters now constitute a very significant portion of the total case load. The civil jurisdiction of the county court is no longer as important as it once was. The $2,000 civil case limit was high enough in the latter quarter of the 19th century and the first two decades of the 20th to encompass a large proportion of civil actions. There was also greater inclination to file these cases in county court when there were considerably fewer district judges, who covered a multi-county area, and might hold court in a particular county only for a few days in each six-month period.

Present day price levels have greatly reduced the proportion of civil actions within the $2,000 limit, and a number of these cases are filed in district court rather than county court for two reasons: 1) to avoid the possibility of trial de novo upon appeal to the district court from county court; and 2) to assure that the action will be heard by a judge who is an attorney. District judges, even in sparsely-populated multi-county judicial districts, no longer hold court in a county only two or three times a year. Consequently, even in these areas the district court may be almost as accessible as the county court for the speedy disposition of causes.

Very few original criminal actions are filed in county court; these are usually limited to the most serious misdemeanors, with the others tried in justice courts. As a result the county court exercises its criminal jurisdiction primarily as an appellate tribunal, retrying cases on appeal from justice and municipal courts.

There have been very few statutory changes and only one constitutional change affecting the judicial functions of county courts. In 1902 a constitutional amendment was approved which increased the county judge's term of office from three to four years. Legislation was also adopted at the same time which permitted both an assisting county judge and the resident county judge to sit concurrently in Class I and II counties if the press of judicial business so warranted.[60] In 1957, the General Assembly provided that county judges in Class I and II counties must be attorneys.[61]

Superior and Juvenile Courts. The creation of the Denver Superior Court by legislation in 1954 to relieve some of the burden on the Denver County Court already has been discussed. The Denver Juvenile Court was one of the first in the country and was established during the period (first two decades of the 20th century) when nation-wide attention was focused on the judicial handling of juvenile offenders, and court organization and procedures were recommended incorporating social work concepts. While no other special juvenile courts were established, legislation was adopted providing for the special handling of delinquent and dependent juveniles, and county judges, except in Denver, were authorized to sit as juvenile courts.[62]

Justice of the Peace Courts

Colorado's First Territorial Assembly provided for the election of two justices of the peace in every justice precinct and established procedures, fees, and specific criminal and civil jurisdiction for the justice courts. Little change in the statutory outline of justice court functions, aside from provisions increasing jurisdiction and compensation, have occurred since that date. The judicial article provided that justice court civil jurisdiction should not exceed $300, that provision being the major change from the provisions of the Organic Act of 1861 establishing justice courts.

The criminal jurisdiction of Colorado's justice courts was increased gradually by the legislature in the years following the adoption of the state constitution. In 1923, the legislature gave the justice of the peace general jurisdiction over all misdemeanors committed in his county. Both the criminal and civil jurisdiction

60. 37-5-15, Colorado Revised Statutes, 1953.
61. 37-5-22, Colorado Revised Statutes, as amended.
62. Chapter 22, Colorado Revised Statutes, 1953.

of the justice courts have changed little in the past 35 years. The composition of justice court case loads has changed considerably, however. The justice of the peace court has become largely a traffic court, 70 per cent of the cases tried involve traffic violations.[63]

The organizational structure of the justice courts remains much the same as it was when Colorado became a state. Justices are county officers. The county commissioners may consolidate or add justice precincts and to a limited extent they have done so.

In many counties the small number of justices indicates both a lack of interest in the office and the small case loads which are the lot of justices in remote and rural areas. Many justices continue to hold court in their homes or places of business and have very little, if any, training in the law, rules of evidence, and court procedure. Indeed, many do not even have copies of the Colorado statutes.

Over the years the justice court has fallen from a respected position in the state judicial system. It played an important judicial role when the state was predominantly rural and sparsely populated, and travel difficult and time-consuming. Today the justice court is more or less ignored except for the constant complaint of people who have been party to actions before justices of the peace. There is little respect for the justice court as a judicial institution as well as for the office of justice of the peace. The justice of the peace takes the blame for the failure of the public to be concerned over the years with the development of a modern, adequate lower court system. The perpetuation of the justice court system in much the same way as it operated when Colorado became a state attests to that fact.

Recent Colorado Studies Concerned with the Administration of Justice

Since World War II considerable attention has been focused on the administration of justice in Colorado. Studies on various phases of court organization and procedure have been made by bar association committees, the various judges' associations, individual members of bench and bar, legislative committees, and lay organizations such as the League of Women Voters. The prime areas of concern have been the supreme court case backlog, selection of judges, non-lawyer judges, justice courts and other minor courts with emphasis on traffic case jurisdiction, and juvenile and domestic relations jurisdiction, including auxiliary court services such as marriage counseling and probation.

63. Justice Courts in Colorado, p. 37.

Colorado Bar Association

In 1946 the Board of Governors of the Colorado Bar Association formed a judiciary committee to study the Colorado and American court systems and to make recommendations as to where and how the Colorado system could be improved.[64] A chairman was selected for each judicial district, and they selected chairmen for each county. The committee had a total membership of 157 and was financed by $14,000 raised from the state bar association membership and $1,000 from the Penrose Foundation.[65] Extensive studies were made by the committee and its recommendations were approved by more than a three to one vote at the Colorado Bar Association Convention in 1947.[66] After discussing these recommendations throughout the state, they were submitted to the General Assembly in the form of five bills and one constitutional amendment.

Legislation was proposed which: 1) provided for an integrated court system with the chief justice as the head; 2) created a judicial council; 3) provided for retirement benefits for judges after 10 or more years of service; 4) increased judicial salaries; and 5) increased the salaries of other court employees.

The proposed amendment to the judicial article included the following changes:

1) clarified the provision giving the supreme court general superintending control over all inferior courts by specifying that the court shall exercise this control through the chief justice;

2) provided that the supreme court shall elect the chief justice instead of being bound by seniority;

3) clarified the qualifications for supreme court justices and district court judges by replacing the phrase "be learned in the law" with "shall have been admitted to practice law in Colorado";

4) provided that the salary of judges may be increased during their terms of office and that no judges, except county judges in counties with less than 10,000 population, shall practice law;

5) provided that district judges could sit in county courts;

6) required that county judges in counties with more than 10,000 population be attorneys, and permitted additional county judges in counties with more than 100,000 population;

64. Rocky Mountain Law Review, "The Colorado Judicial System - Can It and Should It Be Improved", Philip S. Van Cise, Volume 22, No. 2, p. 142.
65. Ibid.
66. Ibid., p. 143.

7) transferred justice court jurisdiction to the county court and provided for the appointment of magistrates and referees by county judges to assist in administering justice court jurisdiction; and

8) replaced the election of judges with a selection plan.

In supporting these recommendations the Bar Association Judiciary Committee emphasized the need for an integrated court system administered by the supreme court through the chief justice. The chief justice should be selected on the basis of administrative ability and not seniority. The bar committee also commented on the success of judicial councils in other states. These councils, composed of judges, lawyers, and laymen, conduct a constant study of the judicial systems and make recommendations for improvement. The bar committee focused considerable attention on the county and justice of the peace courts and characterized justice courts as a survival of medieval days, inefficient, and unnecessary. While the lack of lawyer judges on the county bench was deplored, it was recognized that it would be extremely difficult and in some counties impossible to get lawyer judges. The consolidating of county courts and justice of the peace courts, providing adequate salaries for county judges, and requiring county judges to be attorneys in counties of more than 10,000 population was expected to improve greatly the administration of justice on the lower court levels.

Judicial Selection. The greatest emphasis was placed by the committee on changing the method of judicial selection. It contended that judges should be removed from the political arena and selected on the basis of qualification and experience. The method of judicial selection advocated by the committee followed the so-called Missouri Plan. Judges on various levels would be selected from panels of three nominees made by commissions composed equally of lawyers and laymen. At the first general election after completion of one year in office, the nominee would run on his record. If returned to office, the judge would serve a complete term before again running on his record at a general election. Should a judge be defeated at a general election (a majority of negative votes on the question of retaining him in office), a new judge would be appointed and the process started again. It was recommended that this method of judicial selection apply to supreme court justices, district court judges, and county judges in counties with more than 10,000 population.[67]

The amendment to the judicial article was defeated in the General Assembly as were the bills providing for an integrated court system and a judicial council. The retirement bill and the

67. The forgoing synopsis of the bar association's recommendations is based on the Philip S. Van Cise article previously cited.

measures providing increased salaries for judges and court employees were passed, although the increases were less than had been recommended.

Further Study and Recommendations. Following its limited success in the 1949 session of the General Assembly, the Colorado Bar Association Judiciary Committee continued its efforts and brought several proposals before the 1951 session of the General Assembly. An amendment of the judicial article was again proposed, considerably more limited in scope than the 1949 proposal. The amendment contained three provisions: 1) The pay of judges may be increased or decreased during their terms of office. 2) Judges may be retired if age or mental or physical impairment prevents the performance of judicial duties, but only after investigation and determination by the supreme court. 3) Judges are to be restricted from running for office other than judicial unless they resign from their present judicial positions.

This amendment was approved by the General Assembly for submission at the 1952 general election, when it was adopted by a majority vote of the electorate.[68] Legislation to improve court administration, create a judicial council, and consolidate county and justice courts was also recommended.[69] The proposal to improve court administration divided the inferior courts into departments, each to be presided over by a supreme court justice. Each departmental justice would administer the courts in his department, assign judges on a temporary basis as necessary, and gather judicial statistics. While this measure did not pass, the General Assembly approved a bill in 1953 which had somewhat similar provisions.[70] The bill creating a judicial council was similar to the bar proposal in 1949 and was again defeated. Legislation to consolidate county and justice courts was offered as a substitute for the constitutional amendment provision which was defeated in 1949. Again this approach to county court and justice of the peace court problems was rejected by the General Assembly.

During the past 10 years, the Colorado Bar Association Judiciary Committee has continued its efforts to improve the administration of justice and the bar has also appointed committees to study separate problems such as justice and traffic courts.[71]

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68. Article VI, Sections 18, 21, and 31, as amended, 1952.
69. Dicta, "Colorado and Minimum Judicial Standards", Peter H. Holmes, Jr., Vol. XXVIII, No. 1, January, 1951, p. 1.
70. Chapter 37, Article 10, Colorado Revised Statutes, 1953. This legislation was revised in 1959 to implement the intent of the 1953 measure and to provide for the office of judicial administrator.
71. For a discussion of the recommendations of the Colorado Bar Association Committee on Justice and Traffic Courts see Justice Courts in America, pp. 73-77.

In 1957, a constitutional amendment pertaining to judicial selection was drafted by the judiciary committee and introduced at the 1957 session of the General Assembly. This proposal was very similar to the one which was rejected by the General Assembly in 1949. Aside from printing, no action was taken. Instead of having this proposal introduced again in 1958, the judiciary committee referred it to the Judicial Council for consideration.

The bar association also participated in the studies made by the Judicial Council 1957-1959 and has actively supported and participated in the efforts of the Legislative Council Committee on the Administration of Justice.

Colorado Judicial Council

In September 1957, a request was made to the governor by Chief Justice O. Otto Moore of the Colorado Supreme Court that a Judicial Council be created to conduct a study concerning problems of the first magnitude in the administration of justice.[72] The governor responded by issuing an executive order creating the Colorado Judicial Council and appointing 29 members including judges, legislators, attorneys, and lay citizens.

The 41st General Assembly, second regular session (1958), adopted legislation creating the Judicial Council and authorizing the governor to appoint the members thereof, and making an appropriation of $2,500.[73] The governor appointed Chief Justice Moore as chairman and reappointed those named previously in his executive order. Two appointments of county judges were made, to give the county courts representation on the Council.

In April 1958, the membership of the Judicial Council was divided into five sub-committees for consideration of the following topics:

1) preparation of legislation to eliminate district court appellate review of actions taken by the Industrial Commission and other public agencies and for judicial review only by the supreme court and then only if the court feels there is sufficient reason for review;

2) preparation of legislation abolishing trials de novo in the district court from county courts in those counties where a full trial is heard before a lawyer judge, and general consideration of county and justice of the peace court operation and jurisdiction and the problems related thereto;

72. First Report on Proceedings of the Judicial Council, State of Colorado, Denver, December 1958, p. 1.
73. Chapter 33, Session Laws of Colorado, 1958.

3) preparation of legislation abolishing writs of error based on the complete record as a matter of right in every case to the supreme court and requiring that in certain types of cases a petition of certiorari be filed upon which the supreme court would determine whether to order a full review on the record;

4) preparation of legislation patterned after the Pennsylvania Arbitration Law under which all damage cases and money demands involving less than $3,000 must be submitted to arbitrators upon request of either party with provision for further legal action upon rejection of the arbitration award by either party; and

5) preparation of legislation or court rule making an adequate pretrial conference report a prerequisite to the right of review by the supreme court either by petition for certiorari or on writ of error, and preparation of a court rule making it necessary that in all trials (whether to the court or to a jury) a motion for a new trial be filed and determined by the trial court before a review of the judgment will be entertained by the supreme court.[74]

The reports of the five sub-committees were reviewed by the Judicial Council en banc and then referred to the Colorado Bar Association for study and comment.

Review of Administrative Agency Action. The sub-committee studying the elimination of district court review of state administrative agency actions reported that in its opinion "...before a procedure can be adopted eliminating review of board orders and decisions by the District Court and permitting original review by the Supreme Court, it will first be necessary to amend our Constitution and grant to the Supreme Court such powers."[75] Some members of the sub-committee questioned the elimination of district court appeals because of the increased burden which would be placed on the supreme court, and the increased cost resulting from appeals directly to the supreme court. The sub-committee, however, proposed a constitutional amendment which provided for direct appeals to the supreme court from the Public Utilities Commission and the Industrial Commission but not from other agencies. Further, the sub-committee recommended the employment of law clerks to assist supreme court justices, and proposed legislation on this subject.

County and Justice Court Operation. The sub-committee on county and justice court organization and operation, which also had the specific assignment of preparing legislation to eliminate trials de novo from county to district court in certain instances, made the following recommendations:

74. Ibid., pp. 2 and 3.
75. Ibid., p. 8.

1) Trials de novo on appeal from county court to district court should be abolished.

2) The office of district court family judge should be created in each judicial district except Denver. Such judges would have the same qualifications as other district judges and would have jurisdiction in all domestic relations and juvenile cases. This recommendation would deprive the county court of jurisdiction in these matters.

3) County court jurisdiction in counties of less than 5,000 population should be transferred to the district court.

4) The present justice of the peace system should be abolished and replaced with the best minor court system which can be developed from the various proposals which have already been made. Whatever plan is developed, magistrates should be under the supervision of the county courts, should be salaried, and should possess necessary educational qualifications.[76]

The sub-committee was of the opinion that a constitutional amendment would not be necessary to adopt the recommended family court system, but a constitutional amendment would be needed to transfer county court jurisdiction to district courts in the smaller counties.

Elimination of Writs of Error. The sub-committee studying the elimination of writs of error to the supreme court in certain categories of cases made the following recommendations:

1) Legislation should be adopted to provide adequately compensated and experienced research assistants to the justices of the supreme court.

2) The Judicial Council should make a continued study to determine the need for an intermediate court of appeals.

3) Complete and detailed statistical information concerning case loads, nature of cases, and other pertinent matters relating to Colorado courts should be obtained to assist the Judicial Council in further study.

4) As an immediate measure to help alleviate the backlog of cases in the supreme court, the supreme court should modify the rule of civil procedure applying to writs of error to allow it the

76. The proposals reviewed by the Judicial Council included: the recommendations of the Colorado Bar Association Justice and Traffic Court Committee, circuit magistrate system proposed by Judge Mitchell Johns, and the proposal to consolidate justice court and county court jurisdiction.

discretion to reject writs of error in district court cases involving less than $3,000.[77]

Other Matters. The sub-committee studying the adoption of the Pennsylvania Arbitration Law recommended that such legislation not be adopted. The sub-committee studying rule changes pertaining to pre-trial conferences and new trial motions prepared amended rules on both these subjects.[78]

Comments by Colorado Bar Association. The bar association referred the recommendations of the Judicial Council sub-committee to its judiciary committee, which in turn appointed sub-committees to study the Judicial Council proposals.

As a result of this study, the Colorado Bar Association Board of Governors and the Judiciary Committee reported the following findings on the Judicial Council recommendations.[79]

1) Opposition was voiced to the recommendation that appeals from the Public Utilities Commission and the Industrial Commission be taken directly to the supreme court.

2) Constitutional reform of the Colorado judicial system should be comprehensive and a piecemeal approach should be avoided, since any change in one segment of the judicial system, such as the modification of the jurisdiction of any of the courts or the elimination of existing courts or creation of new courts, of necessity affects the entire system.[80]

3) The elimination of trials de novo from county court to district court was approved in principle, providing that any legislation submitted to accomplish this objective contain proper safeguards to the litigants.

4) The proposal for creation of a district court family judge was referred to the bar association's domestic relations committee for further study, especially with reference to population and distance problems in some judicial districts and the availability of qualified judges.

5) Further study is needed with respect to eliminating county courts in small counties and provision of an intermediate court of appeals. The abolition of writs of error is opposed as

77. Judicial Council Report op. cit. p. 14.
78. Ibid., p. 15.
79. Ibid., pp. 21-26.
80. This comment was made with reference to the recommendations that county court jurisdiction be transferred to the district courts in counties of less than 5,000 population and a constitutional amendment be offered for this purpose.

long as the present court system is in effect. There was general agreement with the proposed rule changes relating to pretrial conferences and new trial motions.

Legislative Action

The 42nd General Assembly, first session (1959), passed legislation which provided a law clerk for each supreme court justice and made an appropriation for this purpose.[81] The most important legislative action concerning the administration of justice was the adoption of a measure which implemented the supreme court's general superintending control over inferior courts. This legislation provided the following:[82]

1) division of all courts of record in the state into judicial departments, not to exceed six in number, with a justice of the supreme court assigned to each department as departmental justice;

2) creation of the position of judicial administrator to be appointed by the supreme court, such administrator to be responsible to the supreme court for the performance of duties assigned by it or authorized by law;

3) collection of judicial statistics from all courts of record;

4) assignment of district court and qualified county court judges by departmental justices on temporary basis to other district courts as needed, with a similar provision assigning county judges to other county courts;

5) provision for judicial conferences to be held at least once annually by all judges and the departmental justice in each department;

6) appointment of a presiding judge in each multi-judge judicial district by the appropriate departmental justice; and

7) definition of the administrative powers of the chief justice and departmental justices and the rule-making powers which may be exercised thereunder.

None of the other Judicial Council recommendations which required legislative action or constitutional change were referred

81. 37-2-10 (2), Colorado Revised Statutes, 1953, as amended by Chapter 89, Colorado Session Laws, 1959.
82. Chapter 37, Article 10, Colorado Revised Statutes, 1953, as amended by Chapter 93, Colorado Session Laws, 1959.

to the General Assembly, although there was a large number of bills relating to justice courts introduced, as a result of various minor court studies. Instead of providing a new appropriation for the Judicial Council, the General Assembly passed a joint resolution establishing a two-year study of administration of justice under the direction of the Legislative Council.[83]

League of Women Voters

The League of Women Voters has included various phases of court organization and operation on its study agenda for the last several years. In 1955, the league recommended the establishment of separate juvenile courts throughout the state, established with a broad enough tax base so that adequate salaries could be paid and essential services provided.[84]

The League of Women Voters has also been interested in judicial selection and recently turned its attention to over-all judicial organization problems. In a recent publication the league outlined its findings on court problems and proposed solutions, but did not make any definite recommendations.[85] This report covered all court levels from the supreme court through justice courts and outlined personnel, organizational, and procedural problems. It is anticipated that the league will make some specific recommendations after further study.

Legislative Studies

Prior to the current Legislative Council administration of justice study, there were Legislative Council studies pertaining to juvenile courts and justice of the peace courts. The Legislative Council Children's Laws Committee focused attention on juvenile courts and juvenile court services in its studies from 1955 through 1958. The committee considered the creation of separate juvenile courts, including the proposal to establish a district court family division, but made no definite recommendations. Instead the committee recommended the improvement of juvenile probation services through state aid. This recommendation resulted in legislation which was passed by the General Assembly in 1959, providing matching funds of $200 per month or one-half, whichever was less, of the salary of each juvenile probation officer who met the minimum qualifications set in the act.[86]

83. Senate Joint Resolution No. 16, 42nd General Assembly, 1st session, 1959. It appears that the other Judicial Council recommendations requiring legislative action or constitutional change were not submitted, pending the results of the Legislative Council study and the data developed by the Judicial Administrator.
84. The Establishment of Special Juvenile Courts in Colorado, League of Women Voters of Colorado, Inc., Denver, October 1955.
85. The Case for Courts.
86. 22-8-8 through 10, Colorado Revised Statutes of 1953.

Justice Court Study. The Legislative Council justice court study was made pursuant to a joint resolution passed by the General Assembly in 1957.[87] The Legislative Council committee which made the justice court study held meetings throughout the state and directed an analysis of justice court dockets. In addition, this committee traced the historical development of justice courts in Colorado, examined minor court reform in other states, analyzed various proposals for eliminating or improving the justice court system, and conferred with the Colorado Justice of the Peace Association and the Colorado Bar Association Justice and Traffic Court Committee.

There was no unanimous agreement among the committee members in favor of any specific proposal for improving Colorado's minor courts. The committee's report to the 42nd General Assembly covered the data developed in the course of the study along with several alternate recommendations.[88]

In proposing these alternate recommendations for consideration by the General Assembly, the Legislative Council Justice Court Committee commented, "The importance of lower courts and the many difficulties in administering justice efficiently and equitably in these courts warrant careful consideration by the General Assembly of all propositions placed before it for modification or abolition of justice courts, not just those made by the committee."[89]

The committee then made the following recommendations:[90]

1. Justice court jurisdiction in the 11 Class II counties should be repealed and superior courts created in these counties. The judges of these superior courts should be attorneys licensed to practice law in Colorado. These courts should have jurisdiction in all misdemeanors and the same civil jurisdiction as county courts, except for probate and juvenile matters. The jurisdiction of the Denver Superior Court should be the same as for the proposed superior courts in Class II counties. There should be a sufficient number of superior courts in each of the Class II counties and in Denver to handle each county's justice court case load. Consideration should be given to locating additional superior courts outside of the county seat.

2. The General Assembly should consider alternate proposals for handling justice court cases in the 51 Class III through VI counties: a) repeal of all justice court jurisdiction with the result that justice court cases would be tried in county court; or

87. House Joint Resolution No. 6, 41st General Assembly, first session, 1957.
88. Justice Courts in Colorado, Chapter V, pp. 65-92.
89. Ibid.,p. xvi.
90. Ibid.,p. xvii.

b) limit of justice court criminal jurisdiction while continuing present civil jurisdiction. Under the second proposal, the maximum fine which a justice of the peace could levy would be $100, and he could not impose a jail sentence. Certain offenses such as hit-and-run accidents, driving while intoxicated, and driving under revocation and suspension, would automatically be tried in county court. If this second proposal is considered favorably, each Class III through VI county should be limited to one justice precinct, and two justices of the peace. One of these justices might be located outside of the county seat at the discretion of the county commissioners. The county commissioner in these counties should be required to provide adequate court facilities or reimbursement for same, statutes, and other material necessary for proper court operation.

3. A constitutional amendment providing long-range overhaul of the justice court system should be worked out in conjunction with the Colorado Judicial Council, because of the interrelationship of the various levels of the state's judicial system.[91]

Justice Court Legislation. Some 28 bills relating to justice court organization, jurisdiction, and procedures were introduced during the first session of the 42nd General Assembly in 1959. Included among these measures were: 1) a bill providing for transfer of justice court jurisdiction to county courts; 2) a bill covering the proposal of the Colorado Bar Association Justice and Traffic Court Committee; 3) several bills embodying the recommendations of the justices of the peace association; and 4) a bill which included some of the alternate suggestions of the justice court committee, such as consolidation of precincts, provision by county commissioners of necessary equipment and facilities for justice court operation.

None of the measures to eliminate or modify and improve the justice court system was passed. After defeat of the justice court--county court consolidation proposal on second reading in the house, a sub-committee of the House Judiciary Committee was appointed to consolidate the best features of the various proposals into one bill for consideration by the house. This consolidated measure included the following main features:[92]

1) Compensation: Justices of the peace in counties with populations between 70,000 and 100,000 could retain up to $7,500 in fees and would be barred from outside employment. All other justices could retain up to $5,000 in fees instead of the present $3,600 limit.

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91. At that time it was contemplated that the Colorado Judicial Council would continue in existence.
92. H. B. 112, 42nd General Assembly, 1st session, 1959.

2) Jurors: The fees for justice court jurors was set at $6 per day, the same as for courts of record and jury selection procedures were improved.

3) Consolidation of Precincts: Each county would be reduced to one justice precinct with two justices of the peace, except that in counties over 50,000 population, the board of county commissioners could appoint an additional justice for each 20,000 population.

4) Qualifications: In Class I and II counties justices of the peace would be required to be attorneys admitted to the practice of law in Colorado. In all other counties justices of the peace would be required to be high school graduates. All justices of the peace, except those already in office, would be required to be at least 25 years of age and not more than 70 years of age, and no justice of the peace could be a law enforcement officer during his term of office.

5) Removal from Office: Justices of the peace could be removed from office upon petition to the county court by the attorney general or district attorney for any of the following reasons: adjudication as a mental incompetent, malfeasance or misfeasance in office, failure to reside in the county, conviction of a felony, or failure to post the required bond.

6) Court Clerks: Provision of clerical assistance to justice courts by the county commissioners in all counties would be mandatory.

7) Contempt: Any person found guilty of contempt in justice court would be subject to a maximum fine of $25 instead of $5.

8) Facilities, Training, Supplies: The boards of county commissioners would be required to provide complete sets of statutes, other supplies, and adequate courtroom facilities for justice courts, and also pay the expenses for justices of the peace to attend meetings of the Justices of the Peace Association and other official conferences.

9) Rules of Procedure: The supreme court would be requested to adopt a uniform manual of procedure for civil and criminal actions in justice of the peace courts, including basic rules on the admission of evidence.

After considerable amendment on the floor, the bill was passed by the house in the closing days of the session and died in the senate.

The senate also approved a bill which represented a consolidation of various proposals for justice court improvement and which differed from the house measure in the following respects.[93]

93. S.B. 277, 42nd General Assembly, 1st session, 1959.

1) Compensation: Justices of the peace in counties between 70,000 and 100,000 population could retain $7,500 in fees and could not be otherwise employed (similar to H.B. 112), but justices of the peace in all other counties could retain only $3,600 in fees (as compared with $5,000 in H.B. 112).

2) Jurors: No provision.

3) Consolidation of Precincts: Each county would be reduced to one justice precinct as in H.B. 112, but additional justices could be appointed in any county by the board of county commissioners without any restrictions. (This provision appeared to be in violation of Article XIV, Section 11, Colorado Constitution, which limits the number of justices of the peace in each justice precinct to two, except in precincts of 50,000 or more population).

4) Qualifications: Justices of the peace would be required to be attorneys in Class I and II counties (similar to H.B. 112), but in the other counties, justices would be required only to be under 72 years of age and not law enforcement officers.

5) Removal from Office: No provision.

6) Court Clerks: No provision.

7) Contempt: No provision.

8) Facilities, Training, Supplies: The provision that county commissioners be required to furnish sets of statutes, supplies, and adequate court facilities was similar to H.B. 112. There was no requirement that the county commissioners pay the expenses of justices of the peace to attend conferences.

9) Rules of Procedure: No provision.

The senate adopted this measure, also in the closing days of the session, and no action was taken in the house. The major obstacle to the passage of legislation to improve the justice court system was the lack of legislative agreement on any plan which would apply uniformly throughout the state.

Summary of Previous Studies

The judicial studies made since World War II achieved many positive results, even though many of the recommendations made were rejected or deferred for further study; possibly the most important contribution of these study efforts was the attention focused on judicial problems. The inadequacy of piecemeal improvements in the administration of justice was demonstrated and, consequently, the need for an over-all study.

Concrete results of the previous studies include: 1) improvement in judicial salaries and retirement benefits; 2) emphasis on a coordinated court system administered by the supreme court and the passage of legislation to implement the court's general supervisory control; 3) assistance to the supreme court through the provision of law clerks for each justice; 4) provision for removal of physically or mentally incapacitated judges; 5) curtailment on the use of judicial office for political advancement; and 6) improvement in court services for juveniles.

CHAPTER II

CONTINUING JUDICIAL PROBLEMS

A number of varied and complex problems relating to the organization and administration of justice led to the authorization of the Legislative Council study by the General Assembly.

Supreme Court

In 1950, 218 cases were filed in the Colorado Supreme Court. By the end of 1958, the annual filing rate had increased almost 90 per cent, to 412 cases that year. On January 1, 1950, 167 cases were pending before the court. The number of cases pending had almost tripled by January 1, 1959, when 483 cases were before the court. A large proportion of pending cases as of January 1, 1959 were not at issue; however, the proportion of cases pending which were at issue increased steadily after 1956, when 90 of the 161 cases pending, or almost 45 per cent, were at issue. As of January 1, 1959, 295 of the 483 pending cases, or 61 per cent, were at issue.

Not only was the increase in supreme court backlog a problem of utmost importance, but it was one which needed a fairly immediate solution, even if only on a stop-gap basis. The provision of a law clerk for each supreme court justice was expected to be of considerable help to the court in expediting its case load, but there was no expectation that this step alone would provide an adequate solution.

Among suggested remedies were:

1) creation, at least on a temporary basis, of an intermediate court of appeals; 2) addition of two justices, increasing the size of the supreme court to nine members; 3) assistance to be provided by retired supreme court justices and active and retired district court judges; 4) curtailment of the automatic right of appeal on writ of error, at least in minor civil matters; and 5) modification of the court's internal operating procedures, perhaps disposing of some matters by sitting in department and making greater use of oral argument.

None of these suggested remedies was new, and all of them had both good and bad features. Further study was needed to determine which of these proposals (or any other) could provide a fairly immediate alleviation of the court's case backlog problems. Just as important but not as immediate was the need for long-range improvements in the judicial system to guard against backlog problems in the supreme court in future years and the development of a program to meet future backlog problems should they arise.

District Courts

The district courts appeared to have fewer problems than the other segments of the state court system. Increased case loads in metropolitan districts were causing concern, but the creation of the 17th and 18th judicial districts and the provision of additional judgeships in some of these districts were helping to alleviate the problem. There were indications, however, that still further additions to the district bench would be needed, as well as possible revision of judicial district boundaries more in accord with geographic barriers and recent populatin growth. The judicial department legislation provided machinery for the temporary assignment of district judges outside their districts. The only other matters relating to district courts suggested for further study were a change in the method of judicial selection and the elimination of trials de novo on appeals from county courts.

County Courts

There has been general agreement that trials de novo in district court on county court appeals should be eliminated, but it is doubtful that, given the existing situation in most county courts, all trials de novo could be eliminated without working a hardship on some litigants. With the exception of Class I and II counties, county judges are not required to be lawyers, and less than one-third of the county judges in the 51 smaller counties are lawyers. Often in these small counties, it is difficult to get a court reporter so that a case transcript can be prepared. The elimination of trials de novo in appeals from county courts in these small counties would deprive litigants of having a full trial before a lawyer judge; further, the difficulty in obtaining court reporters decreases the possibility that there would be an adequate transcript upon which to appeal on the record. For this reason, trials de novo have been viewed as necessary to insure each litigant an adequate judicial hearing. Nevertheless, this process is susceptible to being taken advantage of by some attorneys who would use the county court trial as a "fishing expedition" to gather information which will be useful when the case is retried on appeal to the district court. A substantial number of civil cases within the county court's jurisdictional limit of $2,000 are filed initially in district court, to avoid double trials.

While there is a $2,000 limit on civil actions in county court, all probate matters are tried, regardless of the amount of the estate involved. Further, the county court hears all lunacy and juvenile matters. It is argued that to be tried properly, these matters should be heard by judges who are lawyers. It would be extremely difficult, however, to require all county judges to be attorneys, considering the present organization and jurisdiction of county courts. The present level of county judges' salaries in the 51 smaller counties ranging from $734 to $5,600, is too low to attract many attorneys, especially as they would be required to give up

probate practice (usually a major source of attorneys' income in small counties). On the basis of the case load in most of the smaller county courts, it would be difficult to justify much of an increase in judges' salaries; and many counties do not have the resources to finance increased expenditures for county courts. In at least five counties there are no resident attorneys.

Possible Solutions

Several solutions to county court problems have been offered, all of which would alter the existing county court structure. These proposals have included: 1) consolidation of justice and county courts; 2) creation of a separate circuit court system; 3) elimination of county courts in smaller counties and transfer of jurisdiction to district courts; 4) consolidation of counties for judicial purposes; and 5) consolidation of county court jurisdiction in district courts.

Despite the many criticisms of county court operations and personnel, opposition has been expressed in several areas to the elimination of county courts. These objections have resulted from: 1) a desire to keep governmental functions as local as possible; and 2) the accessibility of the county court -- the judge is usually well known and his office is usually open on an informal basis.

Justice Courts

Many of the criticisms made of the county court apply to justice courts as well. Very few -- about five per cent at the most -- of Colorado's justices of the peace are attorneys. Some have adequate quarters in which to hold court -- usually in a courthouse or municipal building, but the majority hold court in their own homes or places of business, in inadequate surroundings for the proper respect of the judicial process. Not only are most of the justices of the peace without legal training, but many do not even have copies of the statutes.

The justice court has been a stepchild of county government. Even though counties benefit financially from the fines collected in justice court actions, county commissioners for the most part have been reluctant to furnish justices of the peace with adequate courtroom facilities, copies of the statutes, and even necessary supplies.

It is very difficult even to get qualified lay citizens to run for the position of justice of the peace. The low compensation involved and the low esteem in which justice courts are generally held discourage qualified candidates. Justices of the peace are still paid from the fees of their office and very few justices in the small counties have enough business to realize more than $300 or $400 annually. The replacement of the fee system by annual salaries would not solve this problem, because in some of the sparsely-populated

areas of the state, it would take the combined case load of several counties to justify a salary adequate for a full-time position. Elimination of the fee system would, however, remove any motivation (conscious or unconscious) to find defendants guilty in order to insure that law enforcement officers would continue to bring cases.

During the past 20 years, the justice court has become primarily a traffic court, and a large proportion of civil cases are small collection agency actions. Most people who come in contact with the courts do so through justice court appearances. Their unsatisfactory experiences in justice courts color their attitudes toward other levels of the court system and to the judicial process.

The dockets of both county courts and district courts reflect a surprisingly large number of civil cases which are within the $300 justice court jurisdictional limit. One of the original functions of the justice court was to provide an easily accessible tribunal to hear limited civil actions without need for an attorney or costly pleadings, keeping these minor cases out of the higher level trial courts.

Even with all of their shortcomings, there has been a surprising resistance in the past to elimination of justice courts. Reasons for this resistance include: 1) accessibility of justice courts, especially in traffic cases; 2) need for a court where actions on small claims can be brought cheaply and simply and without attorneys; and 3) tradition -- justice courts have been firmly entrenched in our judicial system since frontier days.

Domestic Relations - Juvenile Cases

In recent years there has been an increase in juvenile delinquency and dependency actions and in domestic relations cases (divorce, separate maintenance, annulment, custody). While it is commonly assumed that the highest rate of delinquency is found in urban areas, this is not necessarily the case, as was shown by the juvenile case analysis made by the Colorado Legislative Council Children's Laws Committee. In its report to the 42nd General Assembly, 1959, the committee stated:[1]

> These data on juvenile delinquency cases in Colorado courts in 1957 show that delinquency is not a problem limited mainly to Denver and the other metropolitan areas. Denver and the Class II counties had the greatest number of cases; however,

1. Juveniles in Trouble, Probation-Parole-Mental Health, Colorado Legislative Council, Research Publication No. 25, December 1958, pp. 5 and 6.

> many of the smaller counites had a higher incidence of delinquency than the larger ones when compared with estimated county population and with school population in the 1956-57 year. Sixteen counties had a higher incidence of delinquency in 1957 in relation to population than did Denver: Adams, El Paso, Las Animas, Mesa, and Pueblo were the only Class II counties in this group. The others were Chaffee, Fremont, Gilpin, Huerfano, Jackson, Moffat, Montezuma, Ouray, Park, Saguache, and Teller.

District and county courts in the more populous areas are usually better able to handle juvenile and domestic relations matters than are the courts in the rural areas, which have fewer of these cases. In some of the larger judicial districts, one judge is assigned to domestic relations cases, although he may preside in other matters as well. In the 2nd Judicial District (Denver), a marriage counseling service is operated as an adjunct of the court. There is no specialization in domestic relations in the smaller judicial districts.

The larger county courts and the Denver Juvenile Court have judges who are lawyers and probation departments staffed by qualified full-time officers. For the most part, these counties have taken advantage of the state aid program for juvenile probation to augment their staffs. The smaller counties do not have adequate probation services. All of the 51 counties with less than 25,000 population had part-time, and usually untrained, probation officers in 1957.[2]

These counties do not have enough juvenile cases to justify a full-time probation officer, but in most areas of the state, two to four adjacent counties could group together to employ one. In the state aid legislation passed in 1959, permission was given counties to group together in any combination which would result in a population of 25,000 to be eligible for state aid in the hiring of a full-time probation officer meeting the standards set forth in the act.[3] None of the 51 smaller counties has acted to take advantage of the state aid provisions, even though one of the major purposes of this legislation was to improve probation services in these counties.

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2. Ibid., p. 7. The current probation situation in the smaller counties is very much the same as in 1957, according to the data collected during the docket analysis made for this study.
3. 22-8-9, Colorado Revised Statutes, 1953, as amended by Chapter 73, Session Laws of Colorado, 1959.

Considerable concern has been expressed by the Children's Laws Committee, the League of Women Voters, and others interested in juvenile problems in the ability of judges in these small counties to handle juvenile cases adequately and to work with schools, social agencies, and other community resources in solving juvenile problems. For this reason, there has been considerable interest in the creation of specialized courts throughout the state with jurisdiction in juvenile cases.

The relationship of domestic and juvenile problems, and in some instances overlapping court jurisdiction, has led to the recommendation that these specialized courts be given jurisdiction over domestic relations as well. Jurisdiction over both juvenile and domestic relations cases was also advocated to assure a sufficient case load in less populous areas to justify a full-time, specialized judge, without encompassing too many counties to make the plan feasible. Sentiment has been divided as to whether these courts should be part of either the district or county courts, or be entirely separate.

There are three major objections to establishing a completely separate court system to handle juvenile and domestic relations cases: 1) It would add another court system and thereby compound the difficulties in achieving integrated judicial administration. 2) In some areas there would still be an insufficient number of juvenile and domestic relations cases to justify a full-time judge, so that even if one judge heard all these cases, he should still have other assignments to utilize judicial time fully. 3) Complete separation would result in a system of courts which might lose sight of the judicial function for which they were created and take on social agency attributes, to the detriment of proper administration of justice.

Opposition to any change has also been voiced in some rural areas, where it is felt that the advantage of close relationship between the judge, law enforcement officials, and members of the community are greater than the provision of a more qualified judge and other court personnel who would be less accessible and not as well known locally.

Judicial Selection

Selection of judges by some method other than partisan election has been advocated by the Colorado Bar Association and others for several reasons: 1) Judges should be removed from political pressures. 2) Judges running for office on a partisan ticket can often be defeated because of a general sweep by either major party, regardless of their fitness for and performance in judicial office. 3) The general electorate usually knows nothing of the qualifications and ability of the men running for judicial office; often not even their names are known. 4) The development

of a qualified judiciary depends on good initial selection, adequate salaries, and tenure in office based on performance; partisan election often results in the best-qualified candidates being defeated.

Elimination of judicial selection by partisan election has been opposed for the following reasons: 1) The people should have the right to elect judges in the same way as they do members of the executive and legislative branches. 2) Tenure offers protection to inadequate members of the judiciary. 3) Most methods of selection are as political in nature as partisan elections, except that the control is taken away from the people.

As stated previously, one plan for changing the method of judicial selection was offered as part of an over-all amendment to the Judicial Article by the Colorado Bar Association in 1949. This proposal outlined on page 23 above was defeated by the General Assembly along with the other provisions of the proposed amendment.

Unofficial Selection Plans. In some Colorado judicial districts a sort of unofficial appointment plan is in operation. In the 6th and 7th judicial districts, which have two judges each, the district bar associations and the two political parties have had a tacit agreement that each party will control one judgeship, and the candidates are recommended by the bar.[4] In the 13th Judicial District, which is a one-party area, the bar association and the predominant political party agree on the candidates for the two positions.[5]

Prior to the 1960 general election, 27 of the 39 district judges (69.2 per cent) then holding office had been appointed initially by the governor to fill a vacancy. Of these 27, 20 had stood for election at least once (prior to 1960). Ten of these 20 had never had election opposition. Two had had opposition two of the three times they stood for election. One had had opposition in two of four general elections. The remaining seven all had had election opposition, with four of this seven from Denver. With almost 70 per cent of the district bench appointed in the first instance and election opposition concentrated in Denver and urban area counties, the selection of district judges by partisan election has been modified considerably in recent years. The situation is somewhat the same for county judges,

4. The 6th District includes Archuleta, Dolores, La Plata, Montezuma, and San Juan counties; the 7th includes Delta, Gunnison, Hinsdale, Mesa, Montrose, Ouray, and San Miguel. That this sort of arrangement exists was borne out by comments made by judges and attorneys in the areas at the regional meetings held by the Legislative Council Committee on the Administration of Justice. This balance was upset in the 6th District in the 1960 general election, however, when the Democrats had two candidates and the Republicans one for the two judgeships.
5. The 13th District includes Logan, Morgan, Phillips, Sedgwick, Washington, and Yuma counties. This method of selecting judges was discussed at the Fort Morgan meeting of the Legislative Council Committee on the Administration of Justice, November 30, 1959.

as there is very little opposition except in the 12 largest counties, even though very few county judges are appointed in the first instance. On the other hand, there have been relatively few supreme court appointments, and each supreme court judgeship is strongly contested at the general elections.

There is a difference of opinion as to whether a change in the method of judicial selection or court reorganization should be the first step in improving the administration of justice, even though there may be general agreement that both are needed.

The argument is made that a judicial system is no better than the caliber of its judicial personnel and good judges can improve the operation of any court system. In reply, it is stated that improved judicial selection can be meaningful only when such selection is made to a well-designed court organization. In general, in other states it has proven disastrous to judicial reform measures to combine a new method of judicial selection and court reorganization in the same proposal.

State-Local Jurisdiction

Prior to the Merris decision by the Colorado Supreme Court,[6] the peace and order of Colorado's towns and cities were maintained by local ordinances, which often included jail sentences as penalties for violations, as well as fines. As the result of a long series of Colorado court interpretations, ordinance violations were considered civil in nature and were tried as civil cases without the constitutional protections given a defendant in a criminal proceeding. Consequently, it was the accepted practice for municipalities to try ordinance violators without providing such rights as protection against double jeopardy, trial by jury, presumption of innocence, and the requirement for the establishment of guilt beyond a reasonable doubt.

It was also common practice for municipal ordinances to regulate matters which were already made criminal by state statute. This was particularly true with respect to home rule cities, which exercised their power pursuant to Article XX of the Constitution; it was thought that this provision gave home rule jurisdictions more extensive rights of self-government and enabled them to regulate matters concurrently with the state. Because this interpretation had never really been tested in the courts, Colorado home rule cities passed numerous regulatory ordinances covering traffic violations and a multitude of other criminal acts already prohibited by state law.

Both of these municipal practices were affected drastically by the Merris decision.

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6. Canon City v. Merris, 137 Colorado 169, 323 P. 2d. 614.

The Merris Decision

On March 17, 1958 the Colorado Supreme Court decided the case of Canon City v. Merris. The court affirmed the judgment of the Fremont County Court, dismissing the prosecution's complaint for violating a Canon City ordinance pertaining to driving while intoxicated. The supreme court based its decision on two separate grounds: 1) Violation of municipal ordinances which have a counterpart state criminal statute punishing the same conduct must conform to the constitutional requirements of criminal procedure. 2) Since the ordinance in question was one of "state-wide concern" and consequently one which home rule cities have no power to regulate, it was invalid; the power of home rule cities to regulate is limited to local or municipal matters only.

It was the second finding stated above, as well as subsequent court decisions involving the same point, which has caused concern over what constitutes state and local jurisdiction. The first finding of the court has been complied with in subsequent municipal court actions; these actions are now treated as criminal in nature and defendants receive their constitutional protections, including the right to trial by jury.

State-Wide Vs. Local Concern. The majority opinion in the Merris case made only slight reference to the distinction between matters of state-wide and local concern, but it was quite clear that the court considered this reason a sufficient one for holding the Canon City ordinance invalid. Justice Albert Frantz, speaking for the majority of the court, asserted that Article XX, Section 6 of the Colorado Constitution did not permit home rule cities to supersede state law where the matter involved was one of state-wide concern. "Applications of state law or municipal ordinance, whichever pertains, is mutually exclusive," according to Justice Frantz. He went on to say that while it is difficult to determine what is of local and municipal concern, the operation of a vehicle by one who is under the influence of intoxicating liquor is of state-wide concern. Justice O. Otto Moore, in his special concurring opinion, added, "the home rule cities have not been delegated the power to legislate in this matter of state-wide concern." But neither opinion offered much more in explanation as to what matters are of state-wide concern.

City attorneys advised their authorities that many existing city ordinances regulated in the area of state-wide concern and were therefore invalid by reason of the Merris case. However, since the real meaning of the term "state-wide concern" would have to await subsequent court interpretations -- probably on the case by case basis -- most municipalities were advised to continue prosecutions under existing ordinances until they were declared invalid by court decision.

By reversing long-standing legal precedents, the court altered considerably the criminal jurisdiction of municipalities. The most

disturbing problem to municipal governments was the determination of the extent of their power to enact penal ordinances. The subtle legal problems that arose in this connection were defined by Professor Austin Scott of the University of Colorado Law School. The problems observed by Professor Scott are listed below:[7]

1) What types of conduct, other than drunken driving, are matters of "state-wide concern" as to which the state may have exclusive jurisdiction (at least if it wishes to exercise it) to regulate by statute; and what types of conduct are of "local or municipal concern" over which a home rule city may have exclusive jurisdiction (if it wishes to exercise it) to regulate by penal ordinance?

2) Does a home rule city have power to regulate, by penal ordinance, a matter of state-wide concern (which is regulated by the state) as to which the legislature has specifically granted ordinance power to towns and cities?

3) Does a home rule city have power to regulate, by penal ordinance, a matter of state-wide concern if the state itself has not chosen to regulate the matter?

4) Although home rule cities have no power to regulate, by penal ordinance, state-wide matters which the state has regulated, do non-home rule municipalities have this power?

1959 Legislative Action. Following the Merris decision, the Colorado Municipal League through its counsel submitted a request to the supreme court. In its request, the league submitted a list of offenses concerning which the court was asked to determine which were of state and which were of local concern. The court refused this request, stating that these matters would have to be determined as they arose on a case-by-case basis. The municipal league then appointed a committee of city attorneys and municipal judges to make a study and seek a solution to the problems raised by the Merris case. It was the hope of city officials that some way could be found to obtain court recognition that some matters are of both state concern and local importance, and therefore subject to concurrent jurisdiction. Their study was directed toward possible legislative action in the 1959 session of the General Assembly.[8]

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7. Rocky Mountain Law Review, "Municipal Penal Ordinances in Colorado," Austin W. Scott, Vol. 30, p. 268.
8. Senate Bill 72, 42nd General Assembly, 1st session, (1959).

Senate Bill No. 72. In essence, the resulting proposed legislation provided that if the subject matter of a municipal ordinance is of both municipal and state-wide concern, the existence of state legislation thereon should not pre-empt the field, unless the statute expressly declares that only the state has such power. The bill also provided that there could be no double jeopardy -- if a defendant was tried by ordinance, he could not be tried by statute and vice versa. This bill did not disturb that portion of the Merris holding which required that defendants in ordinance violation cases be afforded their constitutional rights when imprisonment could be imposed or when a state criminal statute was a counterpart of the ordinance.

The bill passed both houses with only minor amendments. Since there was some question about its constitutionality, the governor submitted interrogatories to the supreme court before signing it into law.

The supreme court was confronted with several legal interrogatories by the governor -- many of which related to the constitutionality of minor provisions of the bill. The most significant question, however, concerned whether the bill was an unconstitutional delegation of the legislative power in contravention of Article V, Section 1 of the Colorado Constitution. With very little explanation, the supreme court stated that Senate Bill No. 72 was an unlawful delegation of the legislative power and therefore unconstitutional.[9]

It is significant to note that the opinion of the court In Re Senate Bill No. 72 was written by Justice Frantz, who was also the author of the majority opinion in the Merris case. The conclusion reached in the interrogatory opinion was consistent with his Merris case opinion. In the earlier Merris decision, he found the area of local concern and the area of state-wide concern to be mutually exclusive. In speaking for the majority in the interrogatory opinion, he apparently concluded that if these areas are mutually exclusive, it is impossible for the legislature to delegate a part of its regulatory power so that municipalities can act concurrently with the state in matters of state-wide concern. Justice Frantz indicated that the court would not allow legislative expression to delineate the areas of state-wide concern.

Subsequent Court Decisions. On July 20, 1959, the supreme court decided three cases which greatly modified the Merris decision.[10] These decisions are particularly important since they seem to indicate

9. In Re Senate Bill No. 72, 339 P. 2d. 501.
10. City and County of Denver v. Pike, 342 P. 2d. 688; Davis v. City and County of Denver, 342 P. 2d. 674; City and County of Denver v. Palmer, 342 P. 2d. 687. All these cases may be found in Colorado Advance Sheet No. 20, 1959.

a departure from the legal reasoning used in Canon City v. Merris and In Re Senate Bill No. 72. Of special significance is the fact that all three cases were decided by a vote of 5 to 2, with Justice William Doyle writing the majority opinions and Justices Frantz and Frank Hall dissenting in all instances.

Denver v. Pike: The city of Denver was held to have power to regulate speed upon that portion of the Valley Highway within the city limits, because the state (through the state highway engineer) had contracted with the city to this effect. The court seemed to recognize the right of the state to contract away its power over matters of state-wide concern with the following words:[11]

> Under the circumstances here presented, formal approval of the City's regulations was unnecessary. The State had given its consent beforehand to the regulation by the City subject to the limitations set forth in the agreement. The right of the City to regulate speed had been in fact recognized by the State by allowing the City to post the highway and enforce its ordinances. The City, acting with the consent and approval of the State, had the requisite jurisdiction in the premises and it was error for the court to dismiss the complaint.

Davis v. City and County of Denver: This case held void a Denver municipal ordinance which punished driving under license suspension, because of the state criminal statute on the subject. However, the court indicated its changing view on the power of municipalities to regulate matters which are of state-wide concern as well as municipal concern. In the majority opinion, Justice Doyle made the following comments:[12]

> To hold that matters which are general are the exclusive preserve of the state, just as matters local and municipal can be regulated only by the city (once the city has acted), would create a highly inflexible system and would require the state or city to obtain a continuous stream of rulings from this Court as to whether a subject is local or state-wide. This kind of "straight-jacket" rule is inappropriate to the changing society in which we live and (the Merris case) should not be construed as so holding.

In this opinion, it was also held that municipalities could be delegated the authority to regulate any matter which, although

11. Denver v. Pike, op. cit.
12. Davis v. Denver, op. cit.

predominantly general, is one in which the municipality has sufficient interest to warrant the delegation of power. As pointed out in the opinion, this would bring Colorado in line with the majority of states, which recognize that municipalities may possess concurrent power with the state to punish harmful conduct which is of both state-wide and local concern, as long as the city ordinance does not conflict with the state statute.

The Davis decision also brought to light a new and different problem for Colorado municipalities. The court found that there existed independent grounds for holding the ordinance in question to be void. In this connection, the court said:[13]

> Another and independent reason for holding that the ordinance in question is ultra vires is the conflict in penalty which has been pointed out. The ordinance imposes a jail sentence of 90 days, whereas the statute imposes a jail sentence of 6 months. This reason, apart from the failure of the general assembly to manifest a consent to the exercise of authority, furnishes a basis for declaring the ordinance to be void.

Many attorneys wondered if this meant that a municipal ordinance was void if the penalty was not the same as that which could be imposed under a counterpart criminal statute. The penalties for ordinance violations are generally limited by statute (for general law cities and towns) or home rule charter to 90 days in jail and/or a $300 fine. But most statutory criminal proceedings do not have these same limitations. If this is the meaning of the Davis case, then none of the city ordinances would be valid. In addition, none of the penalties could be changed until new legislation was adopted by the legislature or until charter amendments are secured by a vote of the people. If this is the case, it would seem that the decision in the Pike case might have been different since the statutory penalty for speeding was quite different from the ordinance penalty.

The Court's Most Recent Views. On March 28, 1960 in Retallack v. Police Court of the City of Colorado Springs,[14] the supreme court deviated further from its holding in the Merris case. The court upheld a municipal ordinance which punished reckless driving where the violator exceeded the speed of 55 miles per hour in the city limits, in spite of the state statute covering reckless driving. The opinion in this case was written by Justice Edward Day with a special concurring opinion by Justice Doyle, and dissents by Justices

13. Ibid.
14. Retallack v. Colorado Springs, Colorado Bar Association Advance Sheet No. 15, 1960.

Frantz and Hall. This reflection of court sentiment included the following statement:[15]

> It is to be noted that although the Merris case did establish the offense of drunken driving to be of state-wide concern and governed by state statute, the most significant contribution to law in this state which arose out of that case was a guaranty to all citizens that trials for municipal violations in municipal courts would be in accordance with criminal process. That being the case, no person charged under a municipal ordinance can be prejudiced by leaving as much of local law intact as can be done without violating individual rights or undermining state sovereignty.

Less than three months later, the court ruled in Gazotti v. City and County of Denver that the subject of larceny was not a matter of local or municipal concern over which the City and County of Denver can exercise jurisdiction by virtue of provisions of Article XX of the Colorado Constitution.[16] The question arose over a Denver ordinance providing that: It shall be unlawful for any person to take and carry away or attempt to take and carry away, with intent to steal or purloin or convert to his own use or possession, anything of value to the owner.

In his majority opinion, Justice Moore cited Colorado statutes on larceny and referred to the Merris case and the subsequent decisions (cited above) except Retallack v. Colorado Springs, and stated that these cases pointed "inescapably to the conclusion that the subject of the ordinance involves a matter of state-wide concern covered by a state statute as distinguished from a matter of local and municipal concern."[17]

Justice Hall in a special concurring opinion referred to the Retallack case in which the court determined reckless and careless driving to be matters of local concern. He stated that the Retallack case and the Gazotti case were parallel and the same arguments applied to both. He added that if there are substantial grounds for distinguishing between the two cases, those reasons should be stated.

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15. Ibid.
16. Gazotti v. City and County of Denver, Colorado Bar Association Advance Sheet, June 13, 1960, Vol. 12, No. 20, p. 561.
17. Ibid.

In another concurring opinion, Justice Doyle discussed the difference between the Retallack and Gazotti cases. He stated that the proper question in the Gazotti case is: "whether larceny is a matter of exclusively local concern (i.e., where the interests of municipalities so outweigh the interests of the state as to preclude any state control of the activity within the municipality); and if it is not, whether on balance the interest of the state as a whole are so great as to require that it retain sole legislative jurisdiction over this matter of 'state-wide concern.'"[18]

He pointed out that the City and County of Denver had sought to define an offense which has been recognized from earliest common law as a part of the inherent sovereignty of the state and that the seriousness of the crime requires: 1) a uniform definition of the penalty; and 2) larceny be included among those crimes which are exclusively within the power of the state. He added that these features are not present in the Retallack case, wherein local interests justify a holding that reckless driving is susceptible to local legislative jurisdiction.

The Status of Municipal Jurisdiction. The present status of municipal jurisdiction is difficult -- perhaps impossible -- to determine. It should be emphasized that many questions raised by the Merris decision still remain for court interpretation, and it may be a long time before the extent of the power of municipalities to enact penal ordinances can be delineated with the same certainty as before the Merris case. Analysis of the cases already decided leads to the following alternative possibilities:

1. The Areas of State-Wide Concern and Local Concern are Mutually Exclusive; the State Cannot Delegate its Power to Regulate over Matters of State-Wide Concern. This is the view expressed in the Merris case and appears to be the present view of a minority of the court -- Justices Hall and Frantz. This view appears to allow little, if any, room for concurrent state and municipal jurisdiction. Furthermore, it would appear that there can be no exercise of authority in matters of state-wide concern by municipalities -- even where such authority is delegated to municipalities by the state through the legislature. What is of state-wide concern and what is of local concern can only be determined by the particular characteristics of the matter regulated and a careful application of the state constitution. Under this theory, the regulation of drivers' licenses and related driving offenses are exclusively reserved for the state; but the regulation of speed limits within municipal boundaries are exclusively a matter of local and municipal concern.

18. Ibid.

2. Authority to Regulate Matters Predominantly of (As Opposed to Exclusive) State-Wide Concern but Also of Local and Municipal Importance may be Delegated to Municipalities. This view, expressed by Justice Doyle in the Davis case, is a recognition that areas of both state-wide and local concern may be regulated by municipalities if the state consents to such local regulation. But where the delegation has not been specifically made, such as is the case in the parking of vehicles, flow of traffic through control signals, creation of one-way streets, and regulating speed and traffic intersections, it must be concluded that this authority has been pre-empted by the state and has been withheld from the municipalities.

3. Municipal Ordinances Regulating Matters of State-Wide Concern Concurrently with the State and Valid Unless Such Provisions Regulate in those Areas of Exclusive State-Wide Concern and/or Undermine State Sovereignty. The most recent opinion of the court suggests that municipalities can regulate concurrently with the state in matters of state-wide concern -- even without the consent of the state. However, in no event can local authorities regulate in matters of exclusive state-wide concern (such as the regulation of driver licensing and larceny), nor may local ordinances interfere with state sovereignty. In those areas regulated by the state, which also have features of local concern, municipalities may pass valid ordinances consistent with state law.

Conclusion: As previously indicated, the present status of municipal jurisdiction may be contingent on any one or a combination of the above theories. However, the three views described above reflect chronologically the changing position of the court majority.

A study of all cases arising from the Merris case seems to indicate that the court has changed from its original holding, that matters of state-wide concern and matters of local concern are mutually exclusive. The court has taken a more moderate position regarding the power of municipalities to enact penal ordinances. There is a recognition that the state has the power to delegate the necessary authority to regulate matters of both state-wide and local concern to municipalities. It is also possible that the most recent view implies the validity of penal ordinances which do not regulate in the field of exclusive state interest and do not conflict with the exercise of state sovereignty, regardless of legislative delegation by the state.

CHAPTER III

JUDICIAL REORGANIZATION -- THEORY AND PRACTICE

A Brief History

Court organization and efficiency have been matters of great concern since the Civil War. Eastern states found that their court systems (based closely on British judicial organization), with a multitude of courts, overlapping jurisdictions, and (in some states) separate courts of law and equity, resulted in a costly and time-consuming judicial process and the inefficient use of judicial manpower. The problems were somewhat different in the newer states of the mid and far west. Even though these states established simpler and more functional court systems than the eastern states, they found the efficient administration of justice hampered first, by wide expanses of area, limited population, and poor transportation and communications systems, causing the creation of a variety of minor courts to serve local areas, and later by rapid increases in population and economic expansion, which overburdened their judicial systems.

During the period from 1860 to 1900, efforts at improving the administration of justice were concentrated on meeting problems as they arose as expediently as possible, and little thought was given to overhauling the basic judicial structure to anticipate future needs. Under the authority to set up inferior courts usually conferred on state legislatures following the precedent of the federal constitution, arrears in the courts of general jurisdiction could be dealt with by setting up new courts, by creating new circuits or districts, or by adding to the number of judges.[1]

The states were usually more restricted in approaches to reducing appellate case backlogs, because for the most part their constitutions had somewhat detailed and rigid provisions as to the ultimate courts of review.[2] Remedies either required constitutional amendment or were limited to whatever arrangements could be made by the legislatures within the constitutional limitations. For this reason, the supreme court commission plan and the creation of intermediate courts of appeal proved the most widely used methods of relieving the burden of the final court of appeal, although constitutional amendment was required in a number of states before an intermediate court could be created.

As a consequence of the piecemeal appraoch taken to solve judicial problems, most states, regardless of the court organization with which they began, faced the 20th century with a non-integrated, multi-level court system with overlapping jurisdiction, presenting

1. Pound, op. cit., p. 194.
2. Ibid.

numerous possibilities for multiple trials and appeals. That this situation still exists is illustrated by the following comment on the Alabama court system.[3]

> Stemming from the legislative power to create courts "inferior to the supreme court," there has bloomed a plant of marvelous variety and profusion. Combine law and equity, civil and criminal jurisdiction in any reasonable proportions; engraft at random rules of procedure from circuit courts; probate courts, and justice of the peace courts; add a few special rules of procedure not to be found in any other Alabama court. Such a court would be at home in Alabama for there are many such creations...in existence today.

The conspicuous defects of most state court systems at the end of the last century have been defined as:[4]

> ...waste of judicial manpower, waste of time and money of litigants and public time and money because of hard and fast jurisdictional lines ill defined and frequently changed before judicial decision could draw clear bounds, hard and fast terms raising unnecessary technical questions and wasting the time of the courts, piecemeal handling of single controversies simultaneously in different courts and general want of cooperation between court and court and judge and judge in the same court for want of any real administrative head.

Approaches to Court Reorganization Since 1900

While many states (especially those with populations still predominantly rural) created additional minor courts or altered the jurisdiction of those already in existence during the first two decades of the twentieth century, a different approach to efficient administration of justice and elimination of court congestion was being considered. Court unification with judicial administrative control and the elimination of unnecessary minor courts with overlapping jurisdiction was looked upon as the best way to handle

3. Alabama Law Review, "Reorganization of Court Structure," Phillip Smith and Neil H. Graham, Fall and Spring 1958, Vol. 10, p. 189.
4. Pound, op. cit., p. 252.

judicial business. In part, support for this approach resulted from the success of the federal court system reorganization which took place in the latter part of the nineteenth century and from the consolidation of English General Courts in 1875.

Improvement in the means of transportation, increased population, and the population shift from rural to urban in many states eliminated much of the need for the minor courts which had been created during the previous twenty to thirty years. As these minor courts became less important there was a marked drop in the quality of aspirants for these judicial positions, with an equal reduction in the quality of justice dispensed in these courts.

Unfortunately, the changing conditions which reduced the need for these courts did not result in elimination of these courts or curtailment of their jurisdiction. In fact, as the more important courts of original jurisdiction became overburdened because of increased litigation, these minor courts in many instances were given increased jurisdiction (a good example is the conversion of justice courts into traffic courts), without any change in the judicial framework to accommodate a greater case load, and without central administrative organization and control.[5]

The heavily-populated states of the east, with more separate specialized courts than states in the midwest and west, felt strongly the effects of separate overlapping jurisdictions. The work of courts of review was greatly increased by appeals concerning which lower court had proper jurisdiction.[6]

Recognition of the inadequacies of the minor courts led to the right of appeal through trials de novo in higher courts of original jurisdiction. In most instances these courts had concurrent jurisdiction with the minor courts from which appeals were made. Substantial increases in the number of trials de novo also produced congestion and delay in the higher level courts of original jurisdiction.

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5. Both Dean Pound in the work previously cited and Judge Harvey Uhlenhopp, Iowa Law Review, "Judicial Reorganization in Iowa," Fall, 1958, Vol. 44, No. 1, and other writers on the subject make much of this point. Examples are cited of overworked judges and court congestion in growing metropolitan areas while rural judges at the same court level had much smaller case loads. In most states there was no expeditious method to effect transfer and assignment of judges according to work-load needs.
6. This was especially the case in New Jersey where prior to court reorganization in 1948, there were separate courts of law and equity. See Rutgers Law Review, "New Jersey's Court System," Volume 2, No. 1, 1948, p. 64-73.

As was indicated earlier, not all states felt the impact of these changes on their court systems at the same time. Court structures in the states which were experiencing relatively slow growth in population and urbanization were, of course, able to function within the existing framework for a longer period of time. Even these states have had considerable court congestion and delay since the second world war, and in many the problem became complicated further by the rapid development of one or two metropolitan areas while the remainder of the state retained its rural character.

As court congestion multiplied in state after state, members of the bench and bar, legislative committees, and interested lay groups made studies which led to recommendations designed to improve court efficiency. While these studies and recommendations varied according to local conditions and the time at which the study was made, in general they had the following as primary goals:

1) elimination of at least some inferior courts of specialized jurisdiction and removal of concurrent jurisdiction wherever possible;

2) administrative control of the judicial system through the chief justice of the highest state court with the help of an adequate administrative staff;

3) streamlining of the judicial system to effect the concept of one trial and one appeal; and

4) better judicial selection.

Judge Laurance M. Hyde, Missouri Supreme Court, made the following comment on the shift in emphasis from a number of separate courts to a more unified court system.[7]

> /Previously/ ...courts and judges were isolated from each other and most state judicial departments were composed of a group of completely separate courts. Court systems lacked unity and flexibility. There was no real responsible head to the system, and provisions for transfer of judges were lacking or inadequate. If some courts were unable to keep up their dockets while others had insufficient work, there was neither responsibility nor authority to do anything about it. The usual remedy was to add more local or specialized courts but this only added to the inefficiencies and inequalities of a hodgepodge of separated courts. These conditions were the principal cause of many cases being decided on technicalities of juris-

7. Notre Dame Lawyer, "Essentials of a Modern State Judicial System", Judge Laurance M. Hyde, Vol. 30, 1954-55, pp. 228 and 229.

> diction, venue and trial and appellate procedure, instead of on the merits. In many states, at least until very recently, courts have continued to operate almost as completely separated and unrelated as in pioneer times; and this has usually resulted in congestion of dockets causing unnecessary expense and delay to litigants. Modern conditions require a flexible, unified system and that is the real remedy. Our courts should no longer be handicapped in efforts to maintain public respect for the law by being forced to attempt to keep up with the pace of modern business and industry without the organization and facilities to do so.

This trend of proposing unified trial courts with special divisions where needed rather than separate special trial courts has been accompanied by the premise that the reduction in the number of trial courts with overlapping jurisdiction and in trials de novo would obviate the need for intermediate courts of appeal in all but the most populous states.

Present Approaches to Judicial Reorganization

> The administration of justice in a democratic society -- and democratic government generally -- is a dynamic thing, constantly responding to changed conditions and to the changed demands of the people. A court system embodying the latest principles of judicial organization and management today may become outmoded within a generation and operate to defeat justice rather than promote it.[8]

Recommendations for court reorganization have had as a common goal an efficient, flexible judicial system manned by qualified judges and other court personnel, with speedy and competent litigation as the end product. This has been the case even though the recommendations have varied according to state economic, population, and political conditions, constitutional limitations, and the time at which the recommendations were made.

General Principles

Perhaps Dean Pound has enumerated general principles which should govern court reorganization:[9]

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8. Administration of Justice in Connecticut, David Marr and Fred Kort, Institute of Public Service, University of Connecticut, April 1917, p. 14.
9. Pound, op. cit., pp. 275-276.

> ...The controlling ideas should be unification, flexibility, conservation of judicial power, and responsibility. Unification is called for in order to concentrate the machinery of justice upon its task, flexibility in order to enable it to meet speedily and efficiently the continually varying demands made upon it, responsibility in order that some one may always be held and easily stand out as the official to be held if the judicial organization is not fuctioning the most efficiently that the law and the nature of its tasks permit. Conservation of judicial power is a sine qua non of efficiency under the circumstances of the time. There are so many demands pressing upon the government for expenditure of public money that so costly a mechanism as the system of courts cannot justify needless and expensive duplications and archaic business methods. Moreover, waste of judicial power impairs the ability of courts to give individual cases the thorough going consideration which every case ought to have at their hands. Administrative organization of the entire system...and responsible superintending control of the whole is as important as the reform of procedure upon which the profession and the public have concentrated their attention for a generation.

As indicated above, studies and recommendations made during the past twenty to thirty years have revolved around a unified court system as the means of achieving the desired goal; but a unified court system has meant different things in different states. For example, in New York it took the form of a six-layer court system with two courts of appeal and four court levels of original jurisdiction. In Iowa and Wisconsin it has mean a two or three-level judicial system with one court of appeals, and in both of these states reorganization plans have been modified to retain at least a portion of the existing minor court system. In Alaska, it has meant a two-level court system, with the possibility of additional minor courts as needed. The New Jersey court system, considered a model for reorganization, has four levels of courts.

Judicial Selection

In most of the recent court reorganization studies, the assurance of a well-qualified judiciary as free as possible from external pressures has been considered a goal equal to that of providing a unified, flexible court system. The election of judges has received continued criticism from advocates of judicial reform, whose objections may be summarized as follows: The election or

defeat of a judicial candidate usually has nothing to do with his judicial qualifications or experience, because the electorate is usually unaware of his fitness for judicial office. The elective process subjects a judge to unnecessary political pressure and results in his spending an inordinate amount of time trying to retain his office. A well qualified judiciary depends on careful initial selection and tenure based on competent performance of judicial duties; neither can be assured when judges are elected.

No recommendation for judicial reform meets as much opposition as proposals to do away with the election of judges. In some states, such proposals have either been deleted or postponed in order not to jeopardize court reorganization. The election of judges is stoutly defended as being as integral a part of the democratic process as the election of executive officials and legislators.

American Bar Association (Missouri Plan)

Considerable study has been given to the development of a judicial selection plan which would combine the best ingredients of an appointive system with some sort of review by the electorate. The American Bar Association Plan, adopted in 1937, represents one such approach.[10] Judicial vacancies would be filled by appointment by the governor or other elected official or officials, but from a list submitted by a committee composed of high judicial officers and of other citizens who hold no other public office. If further check upon the appointment is desired, such check may be supplied by the requirement of confirmation of appointments by the state senate or both houses of the legislature. The appointee, after a period of service, should be eligible for reappointment periodically, or periodically go before the people on his record with no opposing candidate, the people voting upon the question, "Shall Judge_____ be retained in office?" A number of objections have been raised to this proposal, the most significant of which are: 1) While the power of selection is placed on an official responsible to the people, his choice is limited to those candidates suggested by a committee which is not publicly responsible. 2) If voters do not have sufficient knowledge to determine the best-qualified judge when offered two choices, they cannot be expected to have sufficient knowledge to evaluate properly a judge's performance in office. 3) The absence of an alternate choice in such referrals to the electorate will result in little voter interest, with the result that a judge's retention in office will depend on the opinion of a very small number of people, which defeats the purpose of this provision.

10. This plan is now commonly known as the Missouri Plan since the general provisions were incorporated in the Missouri Constitution in the revision resulting from the constitutional convention of 1945.

Present Methods of Judicial Selection

There are four methods used by the 50 states for the selection of judges of appellate and major trial courts: partisan election, non-partisal election, election of legislature, and appointment.[11]

Partisan Election. Nineteen states: Alabama, Arkansas, COLORADO, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Mississippi, New Mexico, New York, North Carolina, Oklahoma, Pennsylvania, Texas, and West Virginia.

Nonpartisan Election. Eighteen states: Arizona, California (trial courts only), Idaho, Maryland, Michigan, Minnesota, Montana, Nebraska, Nevada, North Dakota, Ohio, Oregon, South Dakota, Tennessee, Utah, Washington, Wisconsin, and Wyoming.

Election by Legislature. Four states: Rhode Island (supreme court only), South Carolina, Vermont, and Virginia.

Appointment. Twelve states: Alaska, California (appellate judges only), Connecticut, Delaware, Hawaii, Kansas (supreme court only), Maine, Massachusetts, Missouri, New Hampshire, New Jersey, Rhode Island (trial courts only).

The twelve states with appointed judges may be divided into three categories:

1. Appointment by Governor with Senate approval: Connecticut, Delaware, Hawaii, New Jersey, and Rhode Island.

2. Appointment by Governor with approval of Special Council or Commission: California, Maine, Massachusetts, and New Hampshire.

3. Missouri Plan: Alaska, Kansas, and Missouri.

The operation of judicial appointment plans by the states within each category is discussed in detail below.

Appointment by Governor -- Senate approval:

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11. Three states use different methods of selection for appellate and trial court judges. California's appellate judges are appointed and its trial court judges elected by non-partisan ballot. Rhode Island's supreme court is elected by the legislature and its trial court judges appointed. Kansas supreme court judges are appointed under the Missouri plan and trial court judges are elected on partisan ballots.

Connecticut. There are no statutory restrictions on the submission of nominations by the governor, nor is he required to consult any other group or council prior to placing judicial nominations before the senate. Court of common pleas judges are appointed for four-year terms and superior court judges and justices of the supreme court of error are appointed for terms of eight years. There is mandatory retirement for all judges at age 70.

Delaware. Supreme, superior court, and orphan's court judges are appointed for 12-year terms. There are only two restrictions on judicial nominations placed before the senate. First, judges must be citizens and learned in the law. Second, there are political restrictions. No more than two of the three supreme court justices shall be of the same major party; at least one shall be of the other major party. No more than three of the five superior court and orphan's court judges shall be of the same major party; at least two of the five shall be of the other major party.

Hawaii. The new constitution provides that the supreme and circuit court judges shall be nominated and appointed by the governor with the advice and consent of the senate. Supreme court justices are appointed for seven-year terms and circuit court judges for six-year terms. Retirement is mandatory at age 70.

New Jersey. Supreme court, intermediate appellate court, and superior court judges are appointed initially for seven-year terms. Upon reappointment they serve until retirement at age 70 contingent upon good behavior. As a matter of tradition, confirmation of judicial nominations is initiated by the senator from the nominee's home district. If confirmation is initiated in this way, it is almost always confirmed as senatorial courtesy. If the home district senator does not make the motion for acceptance, the nomination usually is not confirmed. In order to be eligible for judicial appointment, the following qualifications must be met: U.S. citizenship, ten years' New Jersey residence, learned in the law with ten years' legal experience, good character, and bar membership.

Rhode Island. This appointive system is similar to that used for federal courts. Superior court judges are appointed for life terms by the governor with senate confirmation. Although supreme court judges are elected by the legislature, they also have life terms.

Appointment by Governor -- Special Council or Commission Approval:

California. This plan actually is a hybrid, because it incorporates one of the main features of the Missouri Plan -- namely, that appointed judges are required to run for re-election on their records. Supreme court and district court of appeals judges are appointed initially by the governor with approval of the Commission on Qualifications. Initial appointment is for 12 years. The California Commission on Qualifications is presently composed of the chief justice, the presiding justice of a district court of appeals, and the attorney general.

Maine. Supreme and superior court judges are appointed for seven-year terms by the governor, with consent of the executive council. The council consists of seven members who are chosen biennially by a joint ballot of senators and representatives. The only qualifications for serving on the council are U.S. citizenship and Maine residency.

Massachusetts. Supreme, superior, and district court judges are appointed by the governor with consent of the executive council for life terms, subject to good behavior. The council consists of eight members in addition to the lieutenant governor. These eight members are elected by district on a partisan ballot for two-year terms. The only requirement for council eligibility is Massachusetts residency for five years.

New Hampshire. This state follows the same procedure as its neighboring states, Maine and Massachusetts. Appointment is also for a life term, as in Massachusetts. The council consists of five members who must meet the same qualifications as members of the New Hampshire senate. These council members are elected biennially. Judges may be removed by action of the legislature, but it cannot initiate such action. The governor must bring the matter before the legislature, and he must gain council approval to take such action.

Missouri Plan:

Alaska. The three supreme court justices are appointed by the governor from a list submitted by the judicial council. Each supreme court justice is subject to approval or rejection on a non-partisan ballot at the first general election held more than three years after his appointment. Thereafter each supreme court justice is subject to approval or rejection every tenth year. Superior court judges are appointed and stand initial election in the same manner. Subsequent election or rejection is at six-year intervals.

Kansas. Supreme court judges are appointed by the governor from nominations submitted by a non-partisan supreme court nominating commission. The commission submits three nominations for each vacancy. Each supreme court justice so appointed holds office until the first general election at least 12 months after his appointment. Each judge runs on his record on a non-partisan ballot. If approved by a majority of those voting, he serves a six-year term, when once again he is placed on the general election ballot for confirmation. The nominating commission is composed of 13 members. The chairman is selected at large from the Kansas bar by its members. One member of the bar is elected by the bar membership in each of the six congressional districts. One non-lawyer is appointed from each congressional district by the governor.

Missouri. Supreme court justices, court of appeal judges, and circuit court judges from Jackson (Kansas City) and St. Louis counties are all appointed initially by the governor from nominations

submitted by special commissions. After one year in office, they run for re-election on their records. Upon re-election supreme court justices serve for 12 years and the other judges for six years. The selection commission for the appellate courts is composed of the chief justice of the supreme court (chairman), three lawyers elected by the bar, and three laymen appointed by the governor. The members other than the chief justice have staggered six-year terms and are not eligible to succeed themselves.

The selection commissions for the two circuit courts have five members each. They are the presiding judge of the court of appeals in the county where the court is located, two laymen appointed by the governor and two attorneys elected by the bar. The legal and lay members serve six-year staggered terms and are not eligible to serve again.

Judicial Reform in Other States

In many states in which court studies have been made, it has taken a number of years to put the resultant recommendations into effect. Often these changes when adopted were not as extensive as had been proposed, and in some states, court reorganization proposals are yet to be acted upon favorably, even after years of study.

Court studies in other states have taken two different approaches. Either study is made of the entire court system and its administration, or a portion is studied, such as minor courts, administration and procedure within the existing court structure, or judicial selection and tenure. Experience in most states has shown that fractional improvements may not be too successful unless considered in respect to the system as a whole. Often further problems are created which were not anticipated at the time limited improvements were adopted:

> It is perhaps fallacious to attempt to remedy one particular area of the judicial system when it is the whole creature that needs treatment. Ideally, for reform purposes, the system should be considered as a whole. Only in this manner can the most efficient system be evolved. It is rare, however, that such a sweeping reform has been instituted. Mostly improvement has come in bits and pieces, in one area or another, without consideration of the effects of that improvement in light of remaining defects.[12]

12. Alabama Law Review, "Reorganization of Court Structure", pp. 141 and 142.

Court Reorganization in Other States

Connecticut. Court reorganization has been under study in Connecticut for over thirty years, beginning with the formation of that state's judicial council in 1927.[13] Since that time the court system has been the subject of study by a series of bar association committees, legislative committees, and little Hoover commissions, in addition to the judicial council. From 1950 until the present time, several proposals for reorganizing and unifying the court system have been before the Connecticut General Assembly. Portions of these proposals have been adopted, but no reorganization plan has gained complete acceptance. In 1953, the chief justice was made head of the judicial department, and the supreme court was given rule-making powers. In the 1959 legislative session, a minor court reorganization plan was adopted. Under the new law which will take effect January 1, 1961, the 66 municipal courts and the 102 justice courts will be abolished and replaced by a new 44-judge state-operated circuit court.[14]

As noteworthy as these changes appear to be, they are only a small segment of all the reorganization plans which have been before the legislature in various forms since 1950. After court reorganization had failed to pass in 1953, the Connecticut Legislative Council was given the two proposals then before the legislature for further study. During 1954-55, the Council held a series of meetings around the state on these two proposals and found that the public had little concern with court reorganization.[15] From 1956 through the present time, judges, members of the bar, and interested legislators have attempted to stimulate public concern and support. This was done through the joint efforts of the League of Women Voters and the formation of a citizens' committee which was headed by a retired supreme court judge, who directed the 1943 Connecticut court study.[16]

Wisconsin. In Wisconsin, court reorganization has been under study since 1913. The Wisconsin Judicial Council made its first proposal for complete reorganization in 1955. It recommended a constitutional amendment providing a judicial system organized on a two-court basis -- a supreme court as the court of appeals, and a circuit court with complete original jurisdiction to handle all matters then heard by circuit and statutory courts and justices of the peace.[17] This proposal, with a modification which reinstated the justices of the peace, was approved by the legislature in 1955, but was defeated in 1957 when it was reintroduced for the necessary

13. Journal of American Judicature Society, "Court Reorganization in Connecticut", David Marrs, Vol. 41, No. 1, June 1957, p. 6.
14. Journal of American Judicature Society, Vol. 42, No. 6, April 1959, p. 199.
15. Marrs, op cit., p. 13.
16. Ibid.
17. Approval of a proposed constitutional amendment at two successive legislative sessions is required before it can be placed on the ballot.

second approval.[18] The problem was then referred back to the Judicial Council for further study, with instructions to submit a new plan to the 1959 legislature.

The new plan which was adopted by the legislature in 1959 provided a court organization consisting of the supreme court, circuit courts, county courts, and justices of the peace. Specialized statutory courts were abolished and their functions taken over by the expanded county court system. Jurisdiction of justices of the peace would be restricted and greater administrative control would be placed with the supreme court and chief justice.[19]

At the same legislative session, preliminary approval was given to two proposed constitutional amendments affecting the courts. The first would restrict any person over 70 years of age from becoming a judge of a court of record and would require mandatory retirement for any judge of a court of record who had attained that age.[20] At present this restriction and retirement provision applies only to supreme court justices. Also included was authorization for the supreme court to assign former supreme court justices and other former judges of courts of record on a temporary basis to serve as judges of any court of record. The second proposed constitutional amendment would give the legislature the authority to provide by law for the specialization of judges in certain types of judicial matters in multi-judge circuit courts.[21]

New Jersey. The New Jersey court reorganization program which was adopted by constitutional change in 1947 has been considered a model for other states, as have the study and the campaign for public support which preceded its adoption. Yet, the peculiar nature of New Jersey's court system prior to reorganization and the population density and geographic compactness of that state have little resemblance to conditions in the midwest and Rocky Mountain areas. What is relevant about New Jersey's achievement is not the exact nature of the results, but the thoroughness of the reorganization plan and the means by which it was achieved.

The court reorganization of 1947 was the end product of a sustained effort of 16 years, and this effect was just the last in a series of attempted judicial reforms dating back 100 years.[22] Governors, members of the judiciary, and lawyers of renown were associated with these earlier attempts, but their efforts were thwarted by the lethargy of those in sympathy and by the intense activity of those opposed.[23]

18. Wisconsin Judicial Council, op. cit., pp. 4 and 5.
19. Chapter 315, Laws of Wisconsin, 1958-1959.
20. Joint Resolution No. 37, Laws of Wisconsin, 1958-1959.
21. Joint Resolution No. 42, Laws of Wisconsin, 1958-1959.
22. Rutgers University Law Review, "New Jersey's New Court System," Vol. 2, No. 1, Spring 1948, p. 62.
23. Ibid.

Prior to reorganization, the New Jersey court system was closely patterned after British judicial organization, with separate courts of chancery and law and a multitude of minor courts with overlapping jurisdiction. There was a significant volume of appellate cases whose disposition turned solely on the jurisdictional cleavage between law and equity courts.[24] Many times litigants were forced to resort to several courts before their controversy could be fully adjudicated. In one case (involving $2,500 on an insurance policy) the litigants had to go through nine trials and appeals lasting eight years to settle the question. In another, the litigants were compelled to go through five separate hearings in various courts and then found themselves back where they started.[25]

The reorganization plan was designed to reduce the number of courts, eliminate the barrier between law and equity, simplify appellate procedure, and provide centralized administrative control.

There were three basic principles which guided the committee which drafted the new judicial article:[26]

> First: Unification of Courts. By this means, the judicial system is simplified and the condition for economical and efficient administration established. It is the sole known technique for abolishing jurisdictional controversies which delay justice and waste the time and money of litigants and courts.
>
> Second: Flexibility of the Court System. By assignment of judges according to ability, experience and need, and apportionment of judicial business among courts, divisions, and parts according to the volume and type of cases, judicial resources can be fully utilized and litigation promptly decided.
>
> Third: Control Over Administration, Practice and Procedure by Rules of Court. Exclusive authority over administration, and primary responsibility for establishing rules of practical procedure, secures businesslike management of the courts as a whole and promotes simplified and more economical judicial procedure.

24. Ibid., pp. 72-73.
25. Rutgers University Law Review, "Progress in New Jersey Judicial Administration," Vol. 3, No. 2, June 1949, p. 161.
26. "New Jersey's New Court System," pp. 75-76.

The New Jersey judicial article now provides for a supreme court, superior courts, county courts, and inferior courts of limited jurisdiction. Inferior courts and their jurisdiction may be established, altered or abolished by law. The supreme court is given the authority to make rules governing the administration of all courts and, subject to law, the practice and procedure in all such courts.[27]

The superior court is the court of original general jurisdiction and also has an appellate division. The county courts' jurisdiction includes the jurisdiction formerly exercised by five other courts. Each county court may have more than one judge.[28] Pursuant to the inferior court authority given it by the judicial article, the New Jersey legislature established a state-wide system of municipal courts to handle police, traffic, and small claims matters.

Appeals from the county and municipal courts lie to the appellate division of the superior court. Appeals which may be taken to the supreme court are limited to the following: 1) cases determined by the appellate division of the superior court involving a constitutional question (either state or federal); 2) cases in which there was a dissent in the appellate division of the superior court; 3) capital cases; 4) on certification by the supreme court to the superior court, and where provided by rule of the supreme court to county courts and other inferior courts; and 5) such causes as may be provided by law.[29]

Judges are not appointed for a specific superior or county court and may be assigned anywhere in the state. A judge may receive a permanent assignment, but may be called upon to assist temporarily in another court. To assist in the assignment of judges, the compilation and analysis of judicial statistics, and in administrative matters, the judicial administrator's office was established.

Within two years the new court system had enabled a smaller number of judges to dispose of more than 50 per cent more cases in the same period than did the old system and in a much smaller time per case.[30]

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27. The Judicial Articles of the Forty-Nine States, Compiled for Committee on a Model Judicial Article Section of Judicial Administration, American Bar Association, 1959, unpaged.
28. Ibid.
29. Ibid.
30. "Progress in New Jersey Judicial Administration," p. 178. Comparative figures showed appeals were being disposed of in 21 days as compared with 134 under the old system and in similar time periods 3,741 cases were disposed of under the new system as compared with 2,442 under the old.

Iowa. The Iowa court reorganization plan was based on a study which originated in 1955. Iowa's judicial system originally was extremely simple with only two general courts: the supreme court for appellate review and the district court as the trial court of general jurisdiction. In addition, two minor tribunals -- mayors' courts and justice of the peace courts -- were established to keep the peace and settle minor disputes in outlying areas.[31]

Had the Iowa court structure remained basically a two-level system and had improvements been made in the minor courts to meet changing conditions, there would have been no need for a major overhaul of the judicial structure; instead, additional courts were added, and nothing was done to improve the justice of the peace courts.

The urban shift in population and a change in litigation habits resulted in disproportionate case loads in the different judicial districts. Litigants settled a greater proportion of cases out of court, and, as a result, in most places there were fewer trials. Some localities had become so populous, however, that in spite of the reduction in trials, the district court could not meet the demand.[32] But the district court was not expanded or contracted to meet the changing conditions in each particular area. In places where litigation lessened, the court was left at its same size. Where population became dense, the state fell into the error that the framers of the judicial article had avoided: separate independent trial courts were created.[33] As a result, Iowa's trial courts eventually consisted of the following: district courts, superior courts, municipal courts, police courts, justice of the peace courts, and mayors' courts. No improvements were made in the minor courts, which gradually fell into disrespect even though traffic cases increased the need for an adequate minor court system.

The Iowa reorganization plan was designed to produce a unified court system and in effect is a return with some modification to the two-level judicial system originally written into the Iowa constitution. All trial courts would be abolished except the district court, which would become a two-level court. One level of the district court would handle felonies, probate matters, and civil cases over $2,000. The second level (presided over by associate district judges) would handle all minor court cases and misdemeanors including traffic offenses. Both sets of judges, however, could preside on either court level as needed.

A simplified small claims procedure was recommended for all civil cases not exceeding $100. Appellate review of minor cases where no constitutional or legal questions are involved would be made by one supreme court justice rather than by the supreme court sitting in department or en banc. The Missouri plan was recommended for the selection of judges.

31. Uhlenhopp, op. cit., p. 7.
32. Ibid., p. 8.
33. Ibid.

The reorganization recommendations met with considerable success in the 1959 Iowa legislative session. All of the proposals were adopted except the creation of the new minor court system (district court, second level) which would have abolished the 1,400 courts of limited jurisdiction.

Three recommendations were put into effect through legislation, but the bulk of the changes could not be effected without constitutional amendment. Such an amendment was approved during the 1959 legislative session and must again be approved in 1961 before placement on the ballot at the 1962 general election. Of the legislation passed, one act authorizes the chief justice to call judicial conferences. Another empowers the supreme court to adopt rules for the administration of all inferior courts in the state. The third abolishes Iowa's rotating chief justiceship and provides that the supreme court shall select from among its members a chief justice to serve for the remainder of his term on the court.

The proposed constitutional amendment as approved by the legislature would bring about a number of changes. It would give the supreme court administrative control of inferior courts and permit the legislature to set salaries and qualifications for judges. The legislature would establish a mandatory retirement system for all judges. Finally, the amendment would provide that supreme court justices and district judges be appointed by the governor from lists submitted by nominating commissions.[34]

Idaho. The proposed judicial reorganization in Idaho is of special significance to Colorado, because the present court system is very similar to that of Colorado. Idaho has a supreme court, district courts, probate courts (which are located in each county and have similar jurisdiction to Colorado county courts), and justices of the peace. In June of this year, the Idaho Bar Association Committee on Reform of Inferior Courts made the following recommendations after a two-year study.[35]

1) Justice of the Peace Courts: These courts should be made courts of record with no change of jurisdiction and be renamed county courts. These county courts would have as many judges as each county desired to provide. The judges of these courts should receive salaries adequate enough to attract lawyers to the position, or in those counties where lawyers are not available, the best-qualified lay judges.

2) Probate Courts: These courts should be abolished and their jurisdiction transferred to the district courts, with the provision of additional district judges where necessary. This jurisdiction includes probate, mental health, and juvenile matters.

34. State Government News, Council of State Governments, Vol. 2, No. 5, May 1959, p. 6.
35. The Advocate, "Reform of Inferior Courts, Second Amended Reports," Idaho State Bar Foundation, June 1960, pp. 10-12.

District court clerks would be given surrogate powers to handle uncontested probate matters. Transfer of this jurisdiction to the district court would insure that all matters would be heard by lawyer judges, would eliminate trials de novo, and would provide a better solution on a district basis for many practical problems relating to mental health and juvenile delinquency. Detention facilities for delinquents and court investigation and probation services provided on a district basis would result in greater efficiency and economy.

3) Constitutional Amendment: A proposal to amend the judicial article should be submitted at the 1961 session of the Idaho Legislature, so that it can be referred to the voters in 1962. The present constitution inhibits any substantial judicial reform. The proposed amendment, patterned after the Hawaii and Alaska constitutions, would allow by legislation such reforms of courts inferior to the supreme court as might be desirable, while at the same time preserving the district courts. Presently, justice of the peace courts, probate courts, and municipal courts are, in a sense, constitutional courts, and nothing substantial can be done until this situation has been changed. This is especially true with respect to probate courts, because most probate court jurisdiction cannot be transferred to district courts until the constitution is amended.

The committee also recommended that: 1) further study be given to the family court act and proposed rules of procedure for traffic cases; 2) the legislature be requested to employ attorneys and research personnel to draft the necessary legislation to accomplish the recommended reforms and to make a detailed study of court case load data and finances; and 3) a new bar association study committee on judicial reform be created to carry on the work of the present committee, with such committee not limited to inferior courts.[36]

Other States. Judicial reorganization studies have been made recently or are currently being made in several other states including: California, Florida, Kentucky, North Carolina, Ohio, Oregon, and Rhode Island. All of these studies are aimed at: 1) simplifying the existing court structure; 2) providing coordinated administrative control under the supreme court through the chief justice; 3) eliminating trial delay and unnecessary expense; and 4) assuring a better-qualified judiciary through improvements in selection, salary, and tenure.

In Florida, a five-year study by the Judicial Council has resulted in a recommended constitutional amendment which would overhaul the judicial article. This proposal is designed to simplify the court system and provide for greater flexibility and efficiency.[37]

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36. Ibid.
37. The Florida Bar Journal, "A Proposal for Trial Court Revision," March 1959, pp. 1-50.

A special committee of the North Carolina Bar Association made a three-year study of that state's courts, at the request of the governor. This committee made several recommendations and has drafted the constitutional revision of the judicial article necessary to put these changes into effect. Abolition of all minor courts and replacement by a new district court system were recommended. The judicial system would consist of three court levels, all part of a unified court system with central administrative control residing in the supreme court. The superior court would be the trial court of general jurisdiction and the new district court system would have the jurisdiction currently exercised by the justice of the peace courts, juvenile and domestic relations courts, and an assortment of other minor tribunals. Magistrates would be appointed by the district court to assure prompt hearing of minor civil matters and traffic offenses, with the proviso that upon request of litigants or defendants, cases would be heard by a district judge rather than a magistrate.[38]

The Oregon Interim Committee on Judicial Administration has made several recommendations designed to improve court administration and to reorganize and improve trial courts. These include the transfer of county court functions to the circuit court, the addition of circuit judges, changes in some judicial district boundaries, and abolition of justice of the peace courts. Jurisdiction of the justice of the peace courts would be exercised by new district courts which would be courts of record. The judges of this new court would be assisted by commissioners having the authority of magistrates regarding preliminary hearings and the taking of bail.[39] The interim committee also recommended increased judicial salaries, mandatory retirement for judges, and judicial selection by the Missouri plan.[40]

In Ohio, the state bar association has been studying court problems for a number of years. In 1959, the legislature authorized the Ohio Legislative Service Commission to make an extensive court study. The authorization of this study followed by two years a study made by the Ohio Legislative Service Commission of minor court problems, which resulted in the replacement of justices of the peace by a new minor county court system. The Kentucky Legislative Council is also making a study in that state. Both New York and California have had legislative interim committees studying judicial organization, administration, and procedure.[41]

38. Report of the Committee on Improving and Expediting the Administration of Justice in North Carolina, North Carolina Bar Association, December, 1958.
39. Third Annual Report, Oregon Judicial Council, 1958.
40. Ibid.
41. The work of these committees is not reported upon here because the population and complex court problems of these states severely limit the application of recommendations of these committees to Colorado.

Minor Court Reform. In addition to Ohio, several states have studied and replaced or modified their courts of limited jurisdiction in recent years. California placed its justice courts on a judicial district basis and required all justices of the peace to be attorneys. Massachusetts and Rhode Island severely limited the powers of justices of the peace by transferring most of their authority and jurisdiction to other courts. Maine, Tennessee, and Virginia took steps to strengthen justice of the peace courts by reducing the number of justices, eliminating the fee system, and making certain changes in jurisdiction. Minor court studies have also been made or are still in process in Arizona, Illinois, Montana, Utah, and Washington. The Illinois study resulted in a constitutional amendment to reorganize the minor court system. This amendment was defeated narrowly at the 1958 general election.[42]

Summary

There has been a general pattern in the recent judicial reorganization studies made by some 15 states, regardless of special problems and the existing court structure. In all of these studies, attention has been directed toward the consolidation and simplification of the judicial structure. The proliferation of trial courts resulted largely from the creation of statutory courts over the years to meet specific needs of the time. Improvement in judicial administration has been a major concern, as has been the problem of securing a qualified judiciary. With respect to the latter, judicial selection, salaries, tenure, and retirement have been given considerable study.

In some states, it was found that minor court revision could not be made without considering changes in other levels of the court system as well, e.g., in Idaho and North Carolina. Generally, the problems on the supreme court level were large appellate case loads and lack of administrative control of the over-all court system. Generally, few problems were found with respect to the highest state courts of original jurisdiction. In most states, recommended changes were confined to the provision of additional judges, modification of judicial district boundaries, and administrative coordination. In states with large, sparsely-populated areas, it was found that minor courts could be upgraded satisfactorily only by adding to the jurisdiction of the highest trial court and by abolishing the various courts of least jurisdiction and replacing them with a new minor court system.

A Fresh Approach

The recent admission of Alaska and Hawaii to the union has given these states several advantages in drafting their judicial

42. This summary of minor court changes is taken from Justice Courts in Colorado, Chapter III, pp. 55-64.

articles. The experiences in other states with problems resulting from complex and restrictive constitutional judicial provisions indicated what to avoid. Recent judicial studies and theories of judicial administration have pointed to the types of court structures and judicial articles which are most desirable. Hawaii and Alaska took advantage of this experience and information; the judicial articles of both states and their court systems are models of simplicity and flexibility.

Alaska

The Alaska judicial article created a two-level court system consisting of the supreme court and the superior court, which is the trial court of general jurisdiction. While the article sets the number of judges for both the appellate and trial divisions, it provides that the number of supreme court justices may be increased by law upon the request of the supreme court. The number of superior court judges may be changed by the legislature without supreme court request.[43]

In addition, section one of the judicial article provides that the legislature may establish courts other than those expressly authorized in the constitution. This section also gives the legislature the authority to prescribe court jurisdiction. There has been some disagreement over the language in this section with some fear that these provisions may subordinate the judicial branch to the legislature. The opinion has been expressed that the sections which provide that the supreme court shall have final appellate jurisdiction and the superior court shall be the trial court of general jurisdiction may be held to limit legislative restrictions on jurisdiction.[44]

While this section gives the legislature authority to establish additional courts, it also contains a provision to insure against the creation of fragmentary minor courts over which no control can be exercised by the supreme court. It does this by providing that the courts shall constitute a unified judicial system for operation and administration. Further, section 15 gives the supreme court rule-making power governing the administration of all courts as well as practice and procedure in all civil and criminal cases in all courts. These rules may be changed, however, by a two-thirds vote of both legislative houses.

Section 16 provides that the chief justice shall be the administrative head of all courts, with power to transfer judges from one court or a division thereof to another for temporary service. The chief justice shall also appoint an administrative director with

43. The complete Alaska judicial article is contained in Appendix A.
44. Journal of the American Judicature Society, "A Model Judiciary for the 49th State," Thomas B. Stewart, Vol. 42, No. 2, August 1958.

the approval of the supreme court. The Missouri plan for the appointment of judges is also incorporated in the judicial article, as is the establishment of the Alaskan judicial council.

The Alaska judicial article is claimed by its supporters to incorporate the principles of judicial organization proposed and backed by the American Bar Association, the American Judicature Society, the Institute of Judicial Administration, and other professional and civic groups.[45]

During the 1960 session, the Alaska legislature, acting pursuant to its power to create inferior courts and define the jurisdiction thereof, established a system of magistrate courts to handle minor civil matters and misdemeanors. The magistrate courts are under the administrative supervision of the superior court and the superior court judge or judges in each judicial district appoint the magistrates.

Hawaii

Hawaii's judicial article also establishes a basically two-level court system, by providing that the judicial power of the state shall be vested in one supreme court, circuit courts, and such inferior courts as the legislature may from time to time establish.[46] These courts have such original and appellate jurisdiction as may be provided by law.

The Hawaii supreme court has five members, as compared with Alaska's three. Authority is not contained in the judicial article to increase the number of supreme court justices; rather, the chief justice is given the power to assign circuit court judges to serve temporarily on the supreme court when necessary.

Judges are appointed rather than elected, but instead of the Missouri plan, the judicial article follows the New Jersey system of selection. Judges are appointed by the governor with consent of the senate. Supreme court justices are appointed for seven-year terms and circuit judges for six-year terms. The age of mandatory retirement is set at 70 years.

The chief justice is designated as administrative head of the courts and he is given the authority to assign judges from one circuit court to another for temporary service. The chief justice is required to appoint a judicial administrator, with the approval of the other supreme court justices. The judicial article also confers upon the supreme court the power to promulgate rules and regulations in all civil and criminal cases for all courts, relating

45. Ibid.
46. The complete Hawaii judicial article is contained in Appendix B.

to process, practice, procedure and appeals, which shall have the force and effect of law. These and a few closely related provisions comprise the whole of the Hawaii judicial article.

The relative lack of rigid restrictions in the judicial articles of Alaska and Hawaii and the wide latitude given the legislature make it possible to meet changing demands on the judicial system without constitutional change. While it is always possible that the legislatures of the two states might use this authority to create a multitude of trial courts, it seems highly unlikely in light of present thinking on judicial organization. With the exception of small civil matters and misdemeanors which can be handled by a closely supervised minor court system, there should be no need for additional courts. The creation of additional judgeships and the relocation of judicial district boundaries as needed should provide adequately for increased case loads in the court of general trial jurisdiction.

Some Tools of Judicial Administration

Office of Judicial Administrator[47]

Even after judicial reorganization is accomplished, and a simplified court structure established with administrative control placed in the supreme court, proper steps must be taken to keep the modernized judicial machinery in working order. Provision of additional judges on a permanent basis or on temporary assignment, changes in rules and procedures, and recommendations for legislation should be based on a continuing accurate analysis of prevailing conditions on all levels of the court system. That the chief justice needs staff assistance to administer the court system adequately is demonstrated by the constitutional and/or statutory provisions in 24 states for the office of judicial administrator, who is appointed either by the chief justice or the supreme court en banc and serves at the court's pleasure.[48]

It is usually the responsibility of the court administrator to collect and analyze the judicial statistics necessary to provide the chief justice with current information on how the system is functioning, and to indicate problem areas. In addition, the judicial administrator conducts special studies, such as the use and advantages of pre-trial conferences, various techniques of docket coordination in multi-judge courts, and changes in rules and procedures.

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47. The work of the Colorado judicial administrator's office was created in 1959.
48. Alaska, California, Colorado, Connecticut, Hawaii, Idaho, Illinois, Iowa, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Missouri, New Jersey, New Mexico, New York, North Carolina, Ohio, Oregon, Rhode Island, Virginia, Washington, and Wisconsin.

In states such as New Jersey or Alaska which have a unified court system with appointed judges, the judicial administrator may prepare the budget for the whole judicial system and be responsible for the hiring of clerical personnel throughout the system as well as for the operation of their offices. In other states where local funds provide a portion of the trial court's budget and clerks and similar personnel are appointed by the trial court judge and are responsible to him, the functions of the judicial administrator are more limited.

Besides the functions for which he is responsible to the chief justice and the supreme court, the judicial administrator also assists the trial courts and their staffs and provides consultation and research upon their request. His office should be not only the source of information on the operation of the court system in his state, but also a clearing house for material on court operation, administration, procedures, and studies in other states as well.

Judicial Statistics

One of the most necessary adjuncts to good judicial administration is the collection and analysis of judicial statistics. These statistics, of course, do not present a complete picture of how the courts are operating; measurements of quantity do not reflect judicial quality, nor all productive use of judicial time. Within limitations, however, judicial statistics show trends in case loads, for example, point to conditions which may need further study, and indicate where temporary assignment of judges may be needed or where the permanent addition of judges might be desirable.

The Ohio State Bar Association in its report on the administration of justice in that state made the following comment on the use of judicial statistics:[49]

> The ultimate function of judicial statistics is to make available information that is necessary to an understanding of the work of the courts and the promotion of efficiency. Properly collected and compiled statistics can be used by those with administrative responsibility to see that court business is being properly executed, and in apportioning judicial work and assigning judges; and by legislatures in considering appropriations and the need for additional judges. Statistics are also of value in measuring the need for and

49. The Ohio Judicial System and the Administration of Justice, Report of the Committee on Judicial Administration and Legal Reform, Ohio State Bar Association, May 1951, p. 40.

> effect of procedural reforms, and in assisting the effectiveness of both criminal and civil justice; the statistics must be properly collected and compiled. Good statistics are invaluable; misleading and false statistics are worse than none at all. The heart of the whole problem of the accuracy and reliability of judicial statistics is the manner in which information is kept and reported by individual courts.

As indicated by the above comments, the validity and usefulness of judicial statistics depend on an accurate standardized court record system and uniform reporting by court clerks. To achieve this result, a standard record-keeping system should be designed to meet the needs of each level of courts and the statistical reports should be a by-product of this system. It is not unusual for courts of the same level to have different methods of record-keeping and statistical compilation. The problem of achieving uniformity in this instance is further complicated if the statistical information requested cannot be compiled easily from the records normally kept by the court. This problem can be avoided by assisting court clerks in developing a more efficient record-keeping system which will also provide easily the information desired by the judicial administrator's office.

Judicial Councils and Judicial Conferences

The establishment, on a permanent and continuing basis, of an agency representing the courts, the bar, and the lay public, or a conference of representative judges of all the courts, is a highly valuable means to insure continuing surveillance and improvement of judicial administration.[50] The state of Ohio is generally credited with being the first to establish a judicial council by statute in 1923. Judicial councils have since been created in a majority of states.[51] In some states, judicial councils have accomplished little, but in others the studies and recommendations of judicial councils have made a significant contribution. For example, court reorganization proposals in Florida, Oregon, and Wisconsin resulted from extensive judicial council studies.[52] In addition to studies and recommendations for court reorganization, judicial councils make studies with respect to court rules and procedures and statutory revision. In one state, Alaska, the judicial council is given the

50. Improvements in Judicial Administration: 1906-1956, Sheldon P. Elliott, Institute of Judicial Administration, New York University, April 20, 1956, p. 6.
51. Ibid., p. 9.
52. The work of the Colorado Judicial Council, which was in existence less than two years, has already been covered.

responsibility of making nominations to the governor from which he makes judicial appointments.[53] Judicial councils also serve useful functions in the dissemination of information concerning the administration of justice and in providing liaison between the courts, attorneys, the legislative and executive branches of government, and the general public.

In a number of states, including Colorado, judicial conferences have been authorized either by statute or by supreme court rule. All of the judges of one level of courts meet at least once annually with the supreme court to discuss administrative and procedural problems, to make recommendations for improvement, and to consider proposals advanced by other groups, such as special studies committees and bar associations, also concerned with judicial administration.

These judicial conferences provide a means of considering mutual judicial problems and of coordinating efforts for improvement in the administration of justice. In some states, Colorado included, annual conferences are held for court clerks as well. At these meetings, standardized procedures can be considered and adopted and clerks given assistance and consultation on the problems involved in running their offices.

53. Article IV, Section 5, Alaska Constitution.

IV

JUDICIAL PROBLEMS IN COLORADO: EXAMINATION AND MEASUREMENT

Organizing the Study

At its organizational meeting, the Legislative Council Committee on the Administration of Justice decided that the first phase of its study should be an examination of court conditions and problems throughout the state. The information gathered and compiled as the result of such an examination would provide a basis for evaluating previous proposals for improving the courts and perhaps might lead to the formulation of an entirely new approach to Colorado's judicial problems.

Judicial Statistics

A major problem confronting the committee as it began its study was the lack of reliable and complete judicial statistics. (The office of judicial administrator had been created, but the position was not filled until September 1959, three months after the committee began its work, and it was an additional six months before that office's statistical program was in full operation.) The committee, therefore, directed the Legislative Council staff to make a complete docket analysis of the supreme court and all district and county courts. Statistical data on justice of the peace courts had already been compiled as a result of a docket analysis made in connection with the Legislative Council justice court study.[1] Three Council staff members spent almost six months in the field on a full-time basis, visiting every district and county court in the state and compiling statistics on court activity. As a result, for the first time an over-all statistical analysis was compiled on the operation of Colorado's courts.[2]

Docket Analysis. The docket analysis was designed to produce several kinds of data for evaluation and use by the committee. These data included: 1) case load by court and type of case; 2) number of appeals; 3) number of jury trials; 4) number of contested matters; 5) number of cases settled out of court; 6) number of cases filed in a higher court in which a lower court has concurrent jurisdiction; 7) case disposition, including time from filing to disposition and time from issue to disposition; 8) case load trends in proportion to population and number of judges; and 9) continuances, use of pre-trial conferences, and related matters.

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1. For a detailed statistical presentation on the operation of Colorado's justice of the peace courts, see Justice Courts in Colorado, Chapter III, pp. 32-54.
2. A continuing statistical program has been established by the judicial administrator for the district and county courts, and these data will be available on an up-to-date basis in the future.

In addition, specific information on criminal cases was included, such as sentencing, use of probation, court appointed attorneys, guilty pleas, pre-sentence investigations, and elapsed time from filing and arraignment to disposition. All cases filed in the calendar year 1958 were included in the analysis; in addition, certain summary data were compiled for 1950, 1954, 1957, and the first six months of 1959.[3]

Regional Meetings

In conjunction with the docket analysis, the committee held a series of regional meetings around the state, to which judges, other court officials, legislators, lawyers, and interested citizens were invited. These meetings were held in Glenwood Springs, Alamosa, Grand Junction, Durango, La Junta, Pueblo, Fort Collins, Fort Morgan, Golden, and Denver. The docket analysis was coordinated with the regional meeting schedule, so that the preliminary results of the docket analysis for the area in which the meeting was held were available to the committee immediately prior to the meeting.

The major topics discussed at these regional meetings included the following:

A. Court Organization Proposals - Trial Courts
   1. Elimination of county courts in 29 smallest counties, jurisdiction to be transferred to the district court
   2. State-wide consolidation of county and district courts
   3. Establishment of a system of family courts as a division of district court to handle all juvenile and domestic relations matters
   4. Solution to the justice court situation:
      a. consolidate with county courts
      b. reduce number of J.P.'s, set qualifications, etc.
      c. direct supervision by a court of record
      d. other
   5. Election or selection of judges, tenure, retirement
   6. If present district - county court structure is retained, possibilities for closer coordination between courts
   7. Lawyer and/or non-lawyers judges with respect to county, justice and municipal courts
   8. Judicial district consolidation or boundary changes

B. Court Organization Proposals - Appellate Courts
   1. Present supreme court backlog
      a. temporary solutions
      b. long run-solutions

3. July 30, 1959 was used as a cutoff date to provide uniformity of information. The field work on the docket analysis began in July 1959 and was terminated in January 1960.

2. Appeal procedure generally
   a. appeal as a matter of right
   b. supreme court certiorari power
   c. one trial - one appeal
   d. trials de novo on appeal in trial courts
3. Appeal court organization
   a. intermediate court if needed - number of judges - department or en banc
   b. supreme court - number of judges - department or en banc
   c. trial courts - appeals from justice and county courts

C. Court Procedures - Trial Courts
1. Case backlog
   a. existence of same
   b. method (and/or rules) for clearing docket of dormant cases
   c. handling of continuances
2. Use of pre-trial conferences
3. Statutory court terms
   a. satisfactory or should be changed
   b. followed or ignored
   c. established by court rule (supreme or district court) or set by statute
4. Standardized court rules
   a. need for same
   b. who should promulgate
5. Judicial time spent in chambers
   a. informal matters
   b. formal matters (kinds of cases which require such treatment)
6. Judicial time spent on water adjudications, other difficult cases

D. Court Administration - Trial Courts
1. Need for a standardized reporting and record system
2. Court personnel
   a. desirability of combining clerical functions of county and district courts with one clerk to serve both courts
   b. use of court clerks for minor judicial matters

A number of subjects which related to the handling of criminal cases were also covered at the regional meetings. These topics included: sentencing, present practices and need for change; uniform rules of criminal procedures; legal definition of insanity; preliminary hearings; probation and pre-sentence investigations; representation

by counsel, court appointed attorneys and need for public defender system; and detention and court services for juveniles.[4]

Regional Meetings: Comments and Recommendations

Approximately 400 persons attended the ten regional meetings held by the committee. These included: supreme court justices; district judges; county judges; municipal judges; justices of the peace; other court personnel, such as clerks, reporters, and probation officers; district attorneys and members of their staffs; personnel of the state adult parole department; legislators; attorneys, many of whom were officials or members of bar association committees studying related matters; members of the League of Women Voters Committee on Courts; representatives of the press; and interested citizens. The following summary is a digest of the most pertinent discussions which took place at these meetings and the recommendations which were made to the committee. This summary is organizad by major topic and reference is made to each regional meeting.

Consolidation of District and County Courts

Glenwood Springs.[5] District judges were either opposed or neutral on this proposal. Opinion was expressed that an additional district judge would be needed to handle the increased case load in the 9th Judicial District (Garfield, Rio Blanco, and Pitkin counties). The consolidated case load in the 14th Judicial District (Grand, Moffat, and Routt counties) might be handled without the addition of a second district judge. County judges (none of whom present were attorneys) were generally opposed to consolidation. It was stressed that small case loads do not reflect the amount of work done by county judges. A considerable amount of time is spent on informal matters -- counseling in domestic relations and juvenile cases and in helping attorneys and others in checking files and records. The opinion was expressed that the county court was more accessible to the people than the district court and for this reason the county court performed a needed local service. Consolidation would require additional district judges, although court clerks with surrogate powers could probably handle most probate matters expeditiously in one-judge, multi-county districts with small case loads.

Attorneys were generally neutral toward the proposal while stressing the necessity of avoiding the opposite extreme; the creation or continuation of more courts than are necessary, expecially in the small counties. An alternate recommendation was made for

4. Some of these matters, along with the docket analysis information compiled on criminal cases, are included in the last section of this report which covers the criminal code and related matters.
5. Legislative Council Committee on the Administration of Justice, Meeting of July 24, 1959.

counties under 10,000 population. In these counties, it was proposed there be only one court to handle the business of the district, county, justice of the peace, and municipal courts, presided over by a lawyer judge.

Alamosa.[6] District judges were in disagreement on the suitability of consolidation in the 12th Judicial District (Alamosa, Conejos, Costilla, Mineral, Rio Grande, and Saguache counties). Opposition was expressed by one district judge because additional judges would be needed to handle the increase in case load. The other district judge was of the opinion that consolidation would be successful, if the district court clerk in each county could handle the administrative and clerical work involved in probate matters. He pointed out that almost all trials in the 12th District counties are heard in district court anyway at the present time. Four of the six county judges present (none of whom were attorneys) opposed consolidation for the same reasons expressed at the Glenwood Springs meeting. One of the four agreed that one judge could handle both courts with sufficient clerical help, but doubted that the quality of justice would be improved as a result. Two county judges felt there was considerable merit in the proposal, especially in small counties.

The consensus of opinion of attorneys present was that the public favored retention of a minor court system, but that the inadequacy of both the county and justice of the peace courts had caused loss of public respect. The real question, therefore, was whether it was possible to improve the personnel and procedures while retaining the present system or whether reorganization was the only possible solution. Two possible approaches to reorganization were suggested. The first followed along the lines suggested by the committee: consolidation of district and county court jurisdiction. With such consolidation a third judge would be needed in the district and it was suggested that this judge specialize in domestic relations, juveniles, and probate matters. At the same time that consolidation took place, a new minor court system should be created to handle small civil matters and misdemeanors such as traffic violations; perhaps this court could be under the supervision of the district court. The second suggestion was the creation of circuit county courts or the consolidation of county courts in the San Luis Valley. Under such a proposal only two judges would be needed to handle the county court business in the six counties and perhaps dispose of most justice court cases as well.

Grand Junction.[7] Generally the judges and attorneys present either were noncommittal on the consolidation proposal or expressed some opposition. One of the two district judges present, who favored

6. Legislative Council Committee on the Administration of Justice, Meeting of August 10, 1959.
7. Legislative Council Committee on the Administration of Justice, Meeting of August 28, 1959.

consolidation, stated that even though the 7th Judicial District covered seven counties (Delta, Gunnison, Hinsdale, Mesa, Montrose, Ouray and San Miguel), he did not consider travel in the district excessive and the consolidated case load could be handled with the addition of a third district judge. If county courts were retained with their present jurisdiction, he recommended that trials de novo to the district court be eliminated and a bottom dollar limit be placed on civil cases which could be filed in district court.

Of the four county judges present, three of whom were attorneys, two were neutral toward the proposal and two were opposed, generally because of the reasons cited at the Glenwood Springs meeting and because they felt that the district court would not be able to handle juvenile cases adequately.

The lawyers present felt that the matter deserved further study, but pointed out that the area and geographic barriers within the 7th District posed some problems. They felt that there hadn't been any particular problems in county courts with lawyer judges, but that in the other four counties of the district, many cases were filed in district court rather than county court so that trial would be before a lawyer judge. Even in those counties with lawyer judges, cases were often filed in district court to avoid trials de novo on appeal from the county court.

Durango.[8] Both district judges (6th Judicial District: Archuleta, Dolores, La Plata, Montezuma, and San Juan counties) were in accord with consolidation if an additional judge were added to take care of the increased case load. One of the two district judges proposed that consolidation be accompanied by the creation of a family court division of the district court to try all domestic relations and juvenile matters. Some of the attorneys present were in agreement with the consolidation and family court division proposals. One went even further and recommended that the state undertake the total financing of a consolidated court system, in order to insure a sufficient number of adequately-trained probation officers and clerical employees. A suggestion was made that all juvenile and domestic relations matters be transferred to the district court and that justice courts be consolidated with county courts, which would retain the remainder of their present jurisdiction. Of the three county judges present (two of whom were attorneys), one favored consolidation, pointing out that the county court business in Archuleta county could be handled by a district judge one day a month. The other county judges emphasized the specialized nature of the county court's jurisdiction and recommended that the county courts be upgraded and judicial salaries increased.

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8. Legislative Council Committee on the Administration of Justice, Meeting of September 11, 1959.

Pueblo.[9] The district judges were neither stongly in favor of nor opposed to the proposal. As an alternative one district judge proposed that a minimum limit of $1,000 be placed on civil actions which could be brought in district court and that county judges be required to be attorneys. Many of the attorneys present stressed the difficulty in finding lawyers willing to take a county judgeship in small counties.

In contrast, most of the county judges present (especially those who were from more populous areas and who were attorneys) favored consolidation. It was pointed out that one judge could handle the combined case load in the 3rd Judicial District (Huerfano and Las Animas counties) and that it was a waste of judicial manpower to have both a district judge and two county judges. If consolidation is not considered favorably, then attention should be directed to changing judicial district boundaries. One county judge felt that a separate court with probate jurisdiction was needed for accessibility, but agreed that the district judge could handle these matters in small counties one day a week.

One county judge felt there was no need for two courts, even in heavily-populated areas, especially if there were a family court division of the district court and a judge could be selected or elected specifically for that division. Another county judge favored consolidation, but as an alternative suggested that counties be consolidated for judicial purposes. In El Paso county, an additional county judge or a superior court similar to Denver's is needed because of the increase in judicial business. Because of the large area included within the 4th Judicial District (Douglas, El Paso, Elbert, Kit Carson, Lincoln, and Teller counties) six judges would be needed if the courts were consolidated and district boundaries unchanged.[10]

Most of the attorneys present from the Colorado Springs area and the 11th Judicial District (Chaffee, Custer, Fremont and Park counties) favored consolidation. While some of the Pueblo attorneys favored the proposal, others preferred the retention of both county and district courts, with the possibility that all juvenile and domestic relations jurisdiction be exercised by the district court.

La Junta.[11] Generally, district and county courts consolidation was opposed by the judges and attorneys present at the La Junta meeting. Stress was placed on the specialized nature of probate cases and the need to have a county judge readily available to expedite the handling of probate matters. Again the counseling

9. Legislative Council Committee on the Administration of Justice, Meeting of October 13, 1959.
10. As compared with three district judges at that time, and four at present.
11. Legislative Council Committee on the Administration of Justice, Meeting of October 23, 1959.

function of county judges was mentioned and the alternate suggestion made that county courts be upgraded and judicial salaries increased. One district judge favored the creation of a family court division of the district court, but the other contended that there was an insufficient number of juvenile and domestic relations cases in the two judicial districts in the Arkansas Valley to justify a separate district court division (15th Judicial District: Baca, Cheyenne, Kiowa and Prowers counties; 16th Judicial District: Bent, Crowley, and Otero). The four county judges (two of whom were attorneys), were equally divided as to consolidation. One county judge favored the proposal if clerks could be empowered to handle routine probate matters and there would be a sufficient number of district judges to handle the case load and give people adequate service.

Fort Collins.[12] Only one of the three district and three county judges, all of whom were attorneys, present from the 8th Judicial District (Boulder, Jackson, Larimer, and Weld), strongly opposed consolidation. Two county judges were very much in favor of the proposal; two district judges supported the idea, but less enthusiastically; and one district judge had no objections. The elimination of trials de novo was cited as a positive advantage of consolidation. It was felt that the addition of one judge in each of the three major counties in the district could accommodate the increased case load. While there was no desire expressed to break up the 8th Judicial District if the courts were not consolidated, some of the judges and attorneys present felt they would at least consider such a proposal more favorably if the courts were consolidated and each of the large counties had two judges. The increased expense resulting from having two additional district attorneys was cited, but this expense would be offset, at least somewhat, by a reduction in the judges' travel expenses. The attorneys reacted favorably to the idea, indicating a willingness to consider any proposal which embodied the principles of one trial and one appeal and that judges be attorneys.

Fort Morgan.[13] There was general opposition to consolidation from both judges and attorneys. The opinion was expressed that the retention of county courts was necessary, and that even in those counties in the 13th Judicial District (Logan, Morgan, Phillips, Sedgwick, Washington, and Yuma) without lawyer judges, the county court was doing a good job. The county judges are well known in their home communities, and their courts are easily accessible. Lawyer judges are not necessary except in the two largest counties -- Logan and Morgan, because all contested and technical matters are filed in the district court.

12. Legislative Council Committee on the Administration of Justice, Meeting of November 13, 1959.
13. Legislative Council Committee on the Administration of Justice, Meeting of November 30, 1959.

Golden.[14] Two of the three district judges present favored consolidation, as did two of the four county judges (all attorneys). One of the district judges felt that the county courts had become accepted by the people over the years and they would oppose its elimination. He felt that the proposal needed further consideration. The other two district judges felt that abolition of county courts as presently constituted, especially in the smaller counties, was desirable. The clerk of the district court could be empowered to handle probate and other administrative matters. One of the two county judges favoring consolidation supported the creation of a district court family division. Both of the county judges opposing consolidation stressed the strong relationship between the county judge and the community, but one stated that the time had perhaps come when the efficient administration of justice required consolidation. While some of the attorneys present favored consolidation, they had no fault to find with the present operation of county courts in the metropolitan area (1st Judicial District: Clear Creek, Gilpin, and Jefferson counties; 17th Judicial District: Adams county; 18th Judicial District: Arapahoe county). The creation of superior courts in metropolitan counties was mentioned as a possible means of relieving the growing burden on the county courts, if the present court structure is retained. The alternative of establishing separate juvenile courts was proposed as being more necessary in these counties under the present court organization.

Denver.[15] There was general agreement that the magnitude of the case load in the district, county, and juvenile courts in Denver necessitated the retention of three separate courts, especially since the county and juvenile courts were held in high respect by attorneys and citizens.

Minor Court Reform (including consolidation of county and justice courts)

Glenwood Springs. In general, there was opposition from judges, justices of the peace, and attorneys to eliminating justice courts. All thought the number of justices of the peace should be reduced, justices should be placed on a salary, and given both pre-service and in-service training. One proposal that all jurisdiction be placed in one court in small counties has already been discussed. One justice of the peace who is also a district court clerk stressed the need for minor courts, but said that in small counties there was no need for both a justice court and a county court.

Alamosa. Only one of the county judges offered no objections to handling justice of the peace jurisdiction in the county court. Two of the county judges said that they had the time to hear these

14. Legislative Council Committee on the Administration of Justice, Meeting of December 18, 1959.
15. Legislative Council Committee on the Administration of Justice, Meeting of March 18, 1960.

matters, but that it would be inconvenient to have minor civil cases filed in county court. The district attorney felt there should be at least one justice of the peace in each population center. As one solution to the problem, he suggested that municipal court jurisdiction in the larger cities be expanded to include justice court cases. Some of the municipal judges in these cities are attorneys, which would improve the quality of justice. Justice courts should be accessible to the district attorney and members of his staff, although they never appear in justice court unless there is opposing counsel. The justices of the peace present made recommendations similar to those offered at the Glenwood Springs meeting. The attorneys concurred in the need for a minor court system but felt that overhaul was necessary, with both county court-justice court consolidation and a new minor court system under the supervision of the district court considered as possible approaches.

Grand Junction. Opinion was equally divided between those who wished to abolish justice of the peace courts and those who wished to improve or modify the system. There was no agreement, however, on what sort of a system should be adopted to replace justice courts. It was suggested that the small claims jurisdiction of justice courts be increased, the number of justices of the peace be decreased, and that all other justice court jurisdiction be transferred to county court. This would leave the justice court to function as a small claims court, while criminal cases would be tried in county court, assuring the defendant that his rights would be protected and eliminating trials de novo on criminal appeals. A training program for justices of the peace and better procedures in jury selection were offered as remedies by attorneys who favored the retention of justice courts.

Durango. Geographic problems were cited as a major obstacle to the effective consolidation of county and justice courts. The county judges were in agreement that the addition of justice court cases to their present jurisdiction would impose an undue burden on their courts; some of the attorneys favored such consolidation, however. The proposal was also made that a separate court should be established with traffic case jurisdiction. The district attorney and members of his staff said that justices of the peace were necessary for the posting of bond and preliminary hearings in rural areas.

Pueblo. The lack of rules of procedure in justice court cases, inadequate courtroom facilities, untrained justices of the peace, and the expense and delay involved in trials de novo to the county court were all criticized; but there was no agreement on how to solve these problems. Suggestions included: reduction in the number of justices of the peace, supervision by a court of record, transfer of all cases in which a jury trial is requested to the county court, requirements in large counties that justices be attorneys and paid an adequate salary, and elimination of the fee system.

La Junta. Except for two of the county judges present, there was general opposition to consolidating county and justice courts or to eliminating justice courts. The two county judges who favored the proposal felt that justice court jurisdiction and/or administration could be handled adequately by the county court as long as some allowances were made for distances and convenience. While the difficulty in getting justices of the peace who were attorneys in most of the small Arkansas Valley counties was recognized, the attorneys present favored retention of justice courts even with non-lawyer judges. They recommended that efforts be made to improve the system through a reduction in the number of justices and elimination of the fee system.

Fort Collins. Several recommendations were made for modifying or eliminating justices of the peace. These were to: 1) combine municipal and justice courts on a precinct basis similar to the California minor court system, with home rule cities participating if they so choose; 2) to raise the civil jurisdiction to $1,000 and have magistrates supervised by the district court; 3) to set qualifications and have magistrates appointed instead of elected; and 4) to reorganize the minor courts, increase jurisdiction, and make them courts of record to eliminate trials de novo.

Fort Morgan. Elimination of minor courts was opposed, as was the suggestion that magistrates be appointed by district judges on the grounds that the protection of fair appellate review might be prejudiced if the appeal were heard by the judge who appointed the magistrate who heard the case initially. It was pointed out that the bar association assist in the selection of justices of the peace in Morgan county and that the district judges and members of the bar are available to advise justices of the peace on legal questions.

Golden. The precinct consolidation adopted in Jefferson county, which reduced the county to one justice precinct with two justices of the peace was viewed favorably as a step in the right direction, but additional recommendations were made. Two district judges favored placing justice courts or magistrates under the supervision of the district court, with one of the two recommending that magistrates be appointed by district judges as well, in the same way that federal judges appoint commissioners. Several attorneys supported the creation of superior courts in metropolitan counties, with original jurisdiction in misdemeanors and concurrent civil jurisdiction with the county court, except for probate, mental health, and juvenile matters. Each county should have a sufficient number of superior court judges to handle the case load efficiently and the courts should be located conveniently. The judges of these courts should receive an adequate salary, be required to be attorneys, and be prohibited from practicing law.

Denver. Justice court jurisdiction in Denver is exercised by the municipal court, all judges of which are attorneys. The recommendation was made that this jurisdiction be retained by the Denver Municipal Court under any reorganization plan considered by the committee, because of the large case load. The present flexibility in assigning judges, and the appointment rather than election of municipal judges.

Supreme Court Backlog and Appellate Jurisdiction

Glenwood Springs. The suggestion was made by the district judges that perhaps a monetary limitation should be placed on the right of appeal in civil cases unless a legal or constitutional question is involved. This had been done in other states and didn't appear to be an infringement of justice. The practice of writing an opinion in each case was cited as one reason for the delay, but both district judges said that written findings were helpful and that the failure to provide written findings might be unfair to the parties involved. These findings are also useful to the trial court and aid it in making better decisions. All of the attorneys present favored retention of appeal to the supreme court as a matter of right. They did not feel that Colorado needed an intermediate court of appeals, because of the state's small population. As an alternative, they proposed making the size of the supreme court flexible, so that justices might be added if and when needed.

Alamosa. The district judges and most of the attorneys agreed that the delay was caused in part by written opinions in each case, but felt that these opinions were instructive to both bench and bar. Memoranda opinions were suggested in minor cases, however. One district judge suggested that an intermediate court of appeals be established, with present district judges sitting from time to time on the intermediate appellate court. Some of the attorneys disagreed with this proposal, pointing out that if appeal was a matter of right, the intermediate court's docket would soon be in the same condition as the supreme court's. Conversely, if appeal to the intermediate court were limited, then how could the expense of establishing and maintaining such a court be justified? Speedy disposition of appellate cases is a desired goal, but not at the expense of careful consideration of the issues involved.

Grand Junction. The use of memoranda opinions on minor cases and the creation of an intermediate court of appeals were two suggestions to reduce the supreme court backlog. District judges, if available, could serve on the intermediate court. The jurisdiction of the intermediate court should be limited to lesser civil and criminal matters and further review by the supreme court should be limited as well; if further appeal can be made to the supreme court in all cases heard by the intermediate appellate court, nothing is gained by its creation.

Durango. Both district judges favored the creation of an intermediate court of appeals on a temporary basis, but felt that it would not be needed once the supreme court case load became current. The use of memoranda opinions was also advocated, and there was general agreement among judges and attorneys that there should be no limitation on the right of appeal to the supreme court. Service by district judges, either on an intermediate court or to assist the supreme court, might be necessary on a temporary basis, but attorneys would oppose the loss of trial judges' time in the district on a long term basis.

Pueblo. There was general agreement that an intermediate court of appeals should be used only as a temporary measure and for that reason any constitutional revision should not include a provision for an intermediate appellate court. Some way should be found to restrict appeals from the intermediate court to the supreme court without impeding justice. Unless this is done, the intermediate court might merely provide an additional delay in having an appeal adjudicated. In the opinion of some of the attorneys, the long-term solution to the supreme court's backlog problems lies in internal procedural changes, such as more extensive use of oral argument, use of memoranda opinions, and justices sitting in departments rather than en banc on most cases.

La Junta. Two recommendations were made favoring the creation of an intermediate appellate court and an increase in the size of the supreme court. There was a difference of opinion among attorneys favoring an intermediate court as to whether appeals to this court should be final. Some favored limiting the kinds of appeals which may be taken to the intermediate court, with that court's decision either to be final or subject to certiorari review by the supreme court. Others felt that appeal to the intermediate court should be allowed in all cases, regardless of whether further appeal could be taken to the supreme court. There was no objection to district judges either sitting on an intermediate court or assisting the supreme court, as long as this service did not involve the judges from the 15th and 16th districts.

Fort Collins. There was no general agreement on any method to reduce the supreme court backlog. There was some expression of favor for the creation of an intermediate court of appeals, at least on a temporary basis. The three district judges opposed having district judges sitting on an intermediate court on the grounds that district judges should not be sitting in judgment on the decisions of other district judges. Further, such service by district judges could easily result in an increased backlog in the trial court. As an alternative it was suggested that the right of appeal be limited. A proposal by the judicial administrator that district judges assist the supreme court in opinion writing met with limited enthusiasm. There were two objections: 1) that the district judge would be functioning as a law clerk, which would be a waste of judicial manpower; and 2) that opinions should be written by members of the court and district judges should not write opinions unless participating with the status of a supreme court justice.

Fort Morgan. There was considerable opposition to the use of district judges to write supreme court opinions. The district judges felt that it was unwise for trial and appellate judges to work too closely together. Fear was expressed that district judges would not be available for trial court work in their home districts. It was suggested that appellate review was the responsibility of judges elected for that purpose. It was also felt that the district judges would have insufficient time to handle opinion writing adequately. As alternatives it was suggested that either the right of appeal be limited or an intermediate appeals court created.

Golden. In general, the judges and attorneys present stated they would go along with the proposal to have retired supreme court justices and district judges assist the supreme court by writing opinions. After some consideration, this plan seemed more feasible as a temporary solution than either an increase in the size of the supreme court or the creation of an intermediate court of appeals. Both of these alternatives were considered too costly and not necessary in the long run. There was some concern that district judges might neglect trial work under this plan, and that although it was only a temporary measure it might become permanent. The concensus of opinion was that support should be given to any workable plan to reduce the supreme court backlog and that the use of outside judges for opinion writing was the best suggested thus far.

Denver. Opinion was mixed but generally favorable to having district judges write opinions to assist the supreme court in reducing its backlog.[16] It was recommended that the plan be discontinued as soon as the court becomes current. There was no recommendations for an intermediate court of appeals because of the expense involved and because Colorado was too small a state to need an intermediate appellate tribunal.

Election or Selection of Judges

Glenwood Springs. The attorneys present favored the adoption of the Missouri plan for judicial selection, although one qualified his endorsement by stating that the Missouri plan would be satisfactory only if competent judges were selected in the first place. In his opinion, it would not be easy to remove judges from office under the Missouri plan, but that it was still preferable to having judges participate in politics.

Alamosa. The two district judges differed on the election or selection of judges. One favored the continuation of election and pointed out that the people of Colorado had been offered a number of selection plans in the past and had rejected all of them. It was his opinion that once a judge is elected and demonstrates competence in office, he is usually returned with bi-partisan support. The other district judge felt that judges should be appointed and meet certain standards to remain in office. He did not favor any particular method of appointment, however. Most of the attorneys favored the appointment of judges and stressed that all judges should be learned in the law. They felt that the quality of justice would not be improved until non-lawyer judges were prohibited on all levels of the judicial system insofar as practical.

16. This proposal was authorized and an appropriation made therefore by the 42nd General Assembly, second session (1960). See Chapter 38, Session Laws of Colorado, 1960.

Grand Junction. The present method of unofficial selection in the 7th Judicial District was explained. Each party controls one judgeship and the bar association decides upon candidates when a vacancy exists. Some of the lawyers felt that this system was a poor substitute for a state-wide judicial selection plan, although it was unlikely that any plan proposed would be acceptable to the electorate. Some of the district and county judges preferred retention of judicial election, but others favored some other method but were not sure that a selection system could be worked out which would offer much substantial improvement.

Durango. Most of the district and county judges favored removing judges from politics, but would favor judicial selection only if appointees were referred to the people from time to time to determine whether they should be retained in office. It was pointed out by the attorneys that the district bar association and the two political parties usually agreed on district judge nominations in the same manner as in the 7th Judicial District. As an argument against the selection of judges, the federal judicial system was referred to as autocratic as the result of life appointments.

Pueblo. The attorneys favored removing judges from politics, so that even if they were elected it should be by nonpartisan ballot. Tenure was stressed as an important inducement to get qualified men in judicial office. Even though a large number of judges are re-elected continuously, election still does not provide enough assurance of tenure. The national trend has been toward judicial selection, and the constitutions of Alaska and Hawaii were cited as examples. Most of the district judges present, although appointed in the first instance, favored election of judges.

La Junta. The district judges favored some modification of the present system such as a nonpartisan ballot. It was pointed out that it is difficult for judges to find campaign issues and that voters often lack knowledge of judicial officials. On the other hand, neither judge would favor a system where it would be difficult to remove incompetent judges from office. On the other hand, the attorneys present favored the partisan election of judges, although a few would be willing to consider some method of appointment for supreme court justices. They stated that election by-and-large had resulted in qualified judges in the Arkansas Valley and that once judges demonstrated they were doing a good job they seldom had election opposition.

Fort Collins. The three district judges, all of whom had been appointed initially, had few comments except to express the opinion that judges should be removed from political pressures; for that reason nonpartisan elections might be preferable. It was stressed, however, that whatever method of selection might be adopted, local control should be retained. Justice O. Otto Moore remarked that the Judicial Council had considered this subject but had reached no conclusion. He stated that he opposed the Missouri Plan and suggested an alternative. He proposed that judges be elected initially as at present, but after

initial election, judges, upon completion of their initial terms of office, would run on their record rather than against an opponent. He felt that the people's right of selection would be retained while at the same time providing tenure for competent judges. In conjunction with this proposal, he suggested mandatory retirement at age 70. Two of the three county judges and most of the attorneys favored judicial appointment rather than election, perhaps along the lines of the Missouri Plan; although some of the attorneys felt Justice Moore's proposal had considerable merit.

Fort Morgan. There was general objection to the appointment of judges. In the 13th Judicial District, it was explained, judicial candidates are normally acceptable to the bar association; and the Morgan County Bar Association consults with the board of county commissioners on the appointment of a county judge, should there be a vacancy. The Missouri Plan was opposed because the appointment method involved was considered more political in nature than judicial election.

Golden. In addition to some support among judges and attorneys for retention of the present method of election, several alternatives were suggested. Two district judges and some of the attorneys favored nonpartisan election. One district judge favored initial appointment by the governor with senate approval and subsequent referral to the voters on a nonpartisan basis. Some favor was expressed for the Missouri Plan, and one attorney and one county judge proposed that judges be elected on a partisan basis twice, with the second election for a life term. The committee was cautioned against combining court reorganization and judicial selection in the same proposal, because of the likelihood both would be lost.

Denver. The present method of judicial election was generally favored, although some support was indicated for non partisan ballots. The suggestion was made that terms of district judges should be staggered in multi-judge districts.

Court Procedures and Internal Operation

This section covers district court operation and includes: court congestion and case backlog, use of pre-trial conferences, court rules, and related matters. County courts are not included, as there was no evidence of docket congestion, only a very limited need expressed for uniform court rules, and little comment on other operations and procedures aside from the difficulty in obtaining a reporter if a transcript is needed.

Glenwood Springs. Both district judges indicated that there were no case backlogs in their districts. In either district a case can be brought to trial within two weeks if the litigants agree they want the case tried. In the 9th Judicial District, cases are dismissed after one year for failure to prosecute; however, attorneys are given 30 days' notice, and any explanation by attorneys is

usually sufficient to keep the case from being stricken from the docket. Both district judges make use of the pre-trial conference, although in the 14th Judicial District pre-trial conferences are held only in those cases which are scheduled for jury trial. In the 9th District, court rules make pre-trial conferences mandatory, and they are usually held two weeks prior to trial.

Alamosa. Pre-trial conferences are held in only five to 10 per cent of the civil cases in the 12th Judicial District. Formal pre-trial conferences are not considered as necessary as in metropolitan districts because attorneys and litigants are quite informal, and every effort is made to get together on an informal basis prior to trial, if anything can be gained. One judge felt that the limited use of pre-trial conferences had been effective in settling cases, while the other judge had had little success in this respect. Both judges reported that any case can be brought to trial in 30 days if the litigants so choose. The weekly motion day is used to clear the docket of dormant cases and to set almost immediate hearings on uncontested matters, such as quiet title suits and divorces. Both judges recommended the appointment of a committee of district judges to promulgate a uniform set of rules for district courts. They also stated that the 12th District rules needed updating and revision. Most of the attorneys agreed that cases could be brought to trial within the time limits specified by the judges. It was pointed out that declining economic activity in the San Luis Valley had reduced case filings and a desire for immediate litigation.

Grand Junction. In the 7th Judicial District cases are dismissed if there has been no action for one year, unless cause is shown. Both district judges stated that there was little to be gained from forcing cases to trial. Despite the increase in filing rate, if a case is at issue, it usually can be tried within 30 days. Extensive use is made of pre-trial conferences by one of the judges in the district, but not by the other. The attorneys agreed that the docket was current and that cases could be brought to trial quickly if desired, but they felt that the increased filing rate might necessitate a third judge for the district in the near future.

Durango. One district judge stated that the docket was further behind than it should be, that there were too many old cases on the docket in all counties in the district. He added that attorneys were at fault in many instances, but that the court was lax in prodding them, although there was a one-year dismissal rule for lack of action. He disagreed somewhat with the other district judge's observation that a case could be brought to trial in two weeks (slightly longer for a jury trial). He said that a trial could be held that quickly in an emergency, but only if other matters on the docket were postponed. He said that part of the delay resulted from the large number of motions filed by attorneys. In 60 per cent of the cases this practice was a delaying action. He indicated his support for a rule being considered by the supreme court, which would require a brief statement to be filed with each motion. The judge could accept or overrule the motion without a hearing after five to 10 days for review of the brief.

The attorneys agreed that they were partially responsible for the delay in the 6th District, but stated that some cases had been at issue six to seven months and still had not come to trial and that a few cases had been at issue as long as two years. The attorneys felt that the judges should take steps to curtail delaying tactics on the part of some lawyers and that more extensive use should be made of pre-trial conferences.

Pueblo. In the 4th Judicial District, the area to be covered is so great and the filing rate so high that it is difficult for three judges to handle the case load as efficiently as they would like.[17] The judges stated that cases usually can be set for trial two or three months after they are at issue, but in keeping the docket this current there is little time available for research in complicated cases. The district has an automatic dismissal rule if there has been no action in a case for one year.

The lawyers said that it was difficult to get cases set for trial in the 4th District during the same court term in which they came at issue, especially if a jury trial is requested. They added that attorneys were responsible for some of the delay, however.

Both the judge and the attorneys in the 11th District agreed that there was no congestion. Cases can be set for trial within 30 days, with 60 days needed if a jury trial is requested. It was the judge's opinion that cases not tried are usually pending for good reason. Instead of dismissing cases for lack of action, he sets them for trial and gives notice. This procedure is a good way to dispose of cases, in his opinion.

The 3rd Judicial District can handle more work than the court now has; consequently litigants can get to trial in a short period of time if they wish.

In the 10th District, the docket is usually filled two weeks after term day, so that it is difficult to get a case to trial quickly. If a criminal case set for trial is not tried, no attempt is made to use the available time for a civil action. A third judge is needed but facilities are not presently available in the courthouse. The opinion was expressed that some lawyers were dilatory in the 10th District and that the judges were too lenient. One reason for delay in civil actions was the amount of time spent by the judges on domestic relations cases -- estimated at 30 to 40 per cent.

La Junta. The lawyers indicated that there was no difficulty in getting cases tried in either the 15th or 16th Judicial Districts. In the 15th district, the judge stated that he had two cases per week set for trial for the next five months; however, half of them would

17. A fourth district judge was authorized for the 4th Judicial District by Chapter 39, Session Laws of Colorado, 1960.

not be tried for one reason or another, so that time would be available if a trial were requested for a case not yet scheduled or if a request were made to move a case up on the docket. In the 16th District, the judge said he could set a case for trial within 60 days, but it would take longer if more than a one day trial was anticipated. Both judges commented on the difficulty in setting jury trials during harvest season. The judge in the 15th District sent out "no progress" letters on cases three and four years old when he took office. This action resulted in numerous complaints from attorneys who said that even if these cases were at issue it was no concern of the judge whether or not they are tried.

Fort Collins. In the 8th Judicial District, it would be three to four months before a case not already set for trial could be tried, according to the three district judges. The judges explained that the docket was filled, because there had been an unusually high number of jury trials in recent months, including several murder cases. The attorneys complained that often cases are tried too quickly in the 8th District. They also objected to the automatic six-months' dismissal rule with no notice given attorneys. If there has been no action for six months, the case is automatically dismissed, even if the case is at issue.

Some of the attorneys said that the district judges told them that cases should be tried or dismissed because the supreme court wanted the dockets kept current. Justice Moore commented that it was not the supreme court's attitude that all cases should be tried. The supreme court has no desire to compel trial when the litigants don't wish to try the case. If one litigant wishes to go to trial, then a trial should be held as soon as possible. The judicial administrator said that the district court should keep a close check on the docket and find out why cases are not being brought to trial; then if there is no reason for trial, the case should not be set; but the court has a responsibility in the matter and should not depend entirely on the opposing counsels. In defense of the six-months' automatic dismissal rule, the district judges pointed out that attorneys could inform the court at any time during the six months on the status of the case and the reasons why there hasn't been any action, and they agreed that the court had a responsibility to see that there is no undue delay in getting cases to trial.

Pre-trial conferences are used to a limited extent in the district. The judges were of the opinion that they were extremely helpful in clarifying issues in complicated cases. Some attorneys felt that pre-trial conferences were not helpful as they were being used at present. They recommended that the federal rules for pre-trial procedure be adopted.

Fort Morgan. The district judges said that the dockets were current in the 13th Judicial District. There were some old cases, but only because neither party had requested trial. The district has a six-months dismissal rule without notice, except that attorneys

receive copies of the docket. The attorneys generally were in agreement on the current status of the docket and approved of the procedures being used on dismissal. Formal pre-trial conferences are used only in complicated cases. The usual practice is for the attorneys and judge to get together on an informal basis.

Golden. In the 17th Judicial District all cases at issue have been set for trial. Because of the increased filing rate, it was expected that starting in January 1960 it would take six months for a case at issue to come to trial. The attorneys commented that the docket situation was the same in both the 17th and 18th Judicial districts. With the addition of a judge in each of these districts following the 1960 general election, the dockets in both districts should become more current; although if the number of cases filed continues to increase at the same rate as during 1959, there still may be insufficient judicial manpower. In the 1st Judicial district, the judges reported that the criminal docket was up to date and that other cases could be brought to trial in two to four months, if not already set. The attorneys in the 1st District were of the opinion that both the criminal and civil dockets were current.

One of the judges in the 1st District stated that he used pre-trial conferences in almost all civil cases and found them very effective. The other two district judges felt that pre-trial conferences would be more useful if the federal rules were followed. The judge in the 17th District said that pre-trial conferences should not be used to force settlement. He found them useful in some cases and holds them at the attorneys' request.

Denver. The district judges were of the opinion that the docket was fairly current, considering that the 2nd Judicial District had over 8,000 cases filed annually. Cases are being set for trial five to six months after they reach issue. Revised internal procedures and the cooperation of attorneys has resulted in a large number of old and dormant cases either being tried or dismissed. The committee was cautioned that a fetish for statistics should not be substituted for judicial competence; the evaluation of justice should not be based on the disposition rate. The complaint was made by one of the district judges that attorneys often wait until the day of trial to inform the court that a settlement has been reached. This is expensive because a reporter has been assigned to the case and often a jury has been called, and it is a waste of docket time, because it is difficult to substitute another trial. A court rule was suggested requiring attorneys to notify the court within five days of settlement.

Different views were expressed on the use and value of pre-trial conferences. Several judges said they used pre-trial conferences extensively, and one judge said that such conferences were mandatory in his division. Other judges said that it depended on the case, the circumstances, and the attorneys involved as to whether pre-trial conferences were desirable.

Docket Analysis Results

While statistics do not tell a complete story of the operation of the court system, used properly they serve a very necessary function, not only in day-to-day judicial administration, but also in court reorganization studies. In the opinion of the committee these data are of assistance: 1) in describing how the court system is operating at present; 2) in pointing to particular court organization problems; and 3) in providing a guide for the evaluation of proposals for modifying or reorganizing the court system. The supreme court docket analysis was considered necessary for somewhat different reasons. It was hoped that the docket analysis would help explain or at least describe the continued increase in the court's backlog and that this information would be helpful in evaluating both immediate and long run recommendations to reduce the backlog and keep the court's docket current.

Supreme Court Docket Analysis

The annual case filing rate in the supreme court almost doubled between 1950 and 1959. In 1950, 218 cases were filed as compared with 412 in both 1958 and 1959. However, the filing rate decreased somewhat during the first ten months of 1960. There were 306 cases filed during this ten-month period, and if this rate were maintained for the remainder of the year, the annual total would be approximately 370 cases.

On January 1, 1950, 167 cases were pending before the court. The number of pending cases more than tripled by January 1, 1960, when there were 523. Of course, a large proportion of pending cases are not at issue (ready for trial); however, the proportion of pending cases at issue has increased steadily since 1956, when 90 of the 161 cases pending, or almost 45 per cent, were at issue. As of January 1, 1960, 318 of the 523 pending cases, or almost 61 per cent, were at issue. This ratio increased slightly during the first ten months of 1960. As of November 1, 275, or 62.5 per cent, of the 440 cases pending were at issue.

Case Disposition. The number of cases closed has been less than the filing rate in each of the years from 1950 through 1959, with the exception of 1954, when 269 cases were closed as compared with 252 filed. In 1958, 127 fewer cases were disposed of than were filed. The court reduced this disproportion considerably in 1959, when 372 cases were closed and 412 cases filed. During the first ten months of 1960, the court had disposed of 389 cases as compared with 306 filed. If this disposition rate continues through the last two months, disposals will probably exceed filings by more than 100 cases in 1960.

One of the major reasons for the court's great increase in case dispositions has been the assistance in opinion writing provided by outside judges. During the ten-month period ending October 31,

1960,52 opinions had been written by retired supreme court justices, district judges, and qualified county judges called in to assist the supreme court. An additional 26 opinions were being written but had not yet been submitted to the court. In all, one retired supreme court justice, 24 district judges, and four county judges had assisted the court through October 30, 1960.

Funds to pay expenses and small honorariums to these judges were authorized by the General Assembly in 1960. The docket status in each trial court is taken into consideration in determining which judges are invited to sit with the supreme court. The invitations are distributed as evenly as possible to avoid depriving any area of a trial judge or judges for an extended period. An invited outside judge does not have a voice in the court's decision, rather he reviews the briefs, sits with a department of the court during oral argument and while it deliberates its decision, and then if he is in agreement he writes the opinion on which the court's decision is based.

Written Opinions. The number of the court's written opinions increased from 154 in 1950 to 160 in 1958. In 1959, however, the court wrote 256 opinions, an increase of 60 per cent over the previous year. During the first ten months of 1960, the court had written 297 opinions, 52 of which were written by outside judges as indicated above. If this rate were maintained for the remaining two months, the court would have in excess of 360 written opinions for the year.

Table I shows a year-by-year recapitulation of the cases filed and disposed of, written opinions, and cases pending and at issue for each year 1950 through October 30, 1960.

Reversals. In addition to population growth and economic expansion, a high reversal rate has been suggested as a reason for the increase in the number of cases filed in the supreme court. In other words, if a litigant had a one in three or two in five possibility of obtaining a reversal, he might bring an appeal, where he might not if the possibility of reversal were considerably less. An analysis of the number and proportion of reversals in cases before the supreme court shows that from 1953 through 1959, 485 of 1,437 cases disposed of on writs of error or almost 34 per cent were reversed entirely, and an additional 62 cases were either modified or reversed in part. In all, slightly more than 38 per cent of the cases before the court on writ of error during the seven years (1953 through 1959) were reversed or modified to some extent. A year-by-year analysis of reversals is shown in Table II.

TABLE I

Cases Before the Colorado Supreme Court
1950-1959

Year	Cases Pending Jan. 1	Cases At Issue Jan. 1	Cases Filed	Total	Cases Closed	Cases Pending Dec. 31	Number Of Written Opinions
1950	167		218	385	204	181	154
1951	181		188				131
1952	a		199	568[a]	399[a]	169[a]	138
1953	169		330	499	284	215	175
1954	215		252	467	269	198	162
1955	198		287	485	284	201	184
1956	201	90	301	502	261	241	161
1957	241	133	345	586	230	356	195
1958	356	221	412	768	285	483	160
1959	483	295	412	895	372	523	246
1960[b]	523	318[c]	306	829	389	440	297[d]

a. 1951 and 1952 combined.
b. Through October 31, 1960.
c. As of November 1, 1960, 275 cases were at issue.
d. Includes 52 by outside judges.

TABLE II

Number of Reversals, Cases Heard on Error
Colorado Supreme Court 1953-1959

Year	Number Disposed On Error	Per cent of Reversals: Reversals	%	Modified	Affirmed In Part And Revised In Part	Total[c]	%
1953	210	74	35.24	3	4	81	38.57
1954	222	68	30.63	1	8	77	34.68
1955	233	59[a]	25.32	4	7	70	30.04
1956	193	51[b]	26.42	1	2	54	27.98
1957	173	62	35.84	1	6	69	39.88
1958	180	86	47.78	1	6	93	51.67
1959	226	85	37.61	1	17	103	45.50
Total Through 1959	1,437	485	33.75	12	50	547	38.06

a. Includes 1 disapproved.
b. Includes 1 judgment reversed on petition for rehearing.
c. Includes all cases reversed, modified and reversed in part.

A relatively high reversal rate, however, does not necessarily lead to an increase in cases taken on writ of error to the supreme court. Nebraska's supreme court, for example, has a reversal rate similar to Colorado's and yet the number of cases appealed annually is about one-half the number in Colorado. In part, this difference might be explained by the fact that Nebraska's population and economic growth has been very small in the past decade, especially when compared with Colorado's. Even with a population approximately 83 per cent of Colorado's, it might be expected that the filing rate in Nebraska would be less than 83 per cent of Colorado's, even with a similar reversal rate, but more than 50 per cent if the reversal rate was a definite causal factor in the number of appeals filed.

In the long run, the reversal rate probably would not be an important factor in the number of cases filed. It might be expected in states with high filing rates that eventually the reversal rate might be reduced, because of the number of unmeritorious matters appealed to the supreme court. Conversely, if there are a small number of cases appealed, it might be assumed that there would be a higher proportion of meritorious matters, which could increase the reversal rate.

Source of Cases Filed in Supreme Court. In 1959, 87.5 per cent of the cases filed in the supreme court originated in the district courts, and almost nine per cent originated in the county and superior courts. Almost four per cent of the cases were original proceedings. As might be expected, the largest number of appeals (144 or 35 per cent) originated in the 2nd Judicial District (Denver), where 40 per cent of all district court cases are docketed. Other districts in which the number of appeals exceeded five per cent of the total cases filed in the supreme court for the year were the 1st, 8th, and 18th Judicial Districts. Table III shows the source and type of cases filed in the supreme court in 1959.

These data are useful only for descriptive purposes. In and of themselves they provide no reasons for the increase in supreme court filings. In the course of making the supreme court docket analysis, attention was focused not only on the courts where appeals originate but upon the trial judges as well. It was decided that any analysis made on this basis would be extremely presumptuous for several reasons: 1) Some cases would be appealed regardless of the trial judge. 2) Some trial judges, because of their experience and reputation, may preside over more difficult cases than others. 3) Some trial judges may have a considerably greater number of cases before the supreme court, because they handle a greater volume of judicial business. No conclusions can be drawn from the number of supreme court reversals per trial judge either, because supreme court opinions often change with the changing complexion of the court.

Delay in Case Disposition. By the end of 1959, the average delay between the time a case became at issue before the supreme court and was disposed of was 20 months. (Half of the cases were disposed of more quickly and half took longer).[18] The last analysis of pending cases at issue before the supreme court was made in 1959 and was based on the 311 cases at issue as of September, 1959. Of these 311 cases, the earliest had come of issue in the third quarter of 1957. Only 21 cases, less than seven per cent, were at issue prior to 1958, and almost half of the 311 cases became at issue in 1958. In other words, one-half of the pending cases were at issue at least ten months, as compared with 20 months from issue to final disposition. This information is shown in Table IV.

18. Judicial Business of Colorado Courts, 1959, Annual Report of Judicial Administrator, Denver, p. 12.

TABLE III

Source and Type of Cases Docketed in Supreme Court during 1959

Metropolitan District Courts	Cases Appealed				
	Civil	Crim.	Orig. Proc.	Total	% of Total
1st Dist. (Golden)	23	4	2	29	7.1
2nd Dist. (Denver)	113	21	10	144	35.4
4th Dist. (Colorado Springs)	16	4	0	20	4.9
8th Dist. (Boulder, Greeley, Fort Collins)	27	3	5	35	8.6
10th Dist. (Pueblo)	9	9	0	18	4.4
17th Dist. (Brighton)	7	0	2	9	2.2
18th Dist. (Littleton)	17	3	6	26	6.4
Total-Metro. Dists.	212	44	25	281	69.0
Non-Metropolitan District Courts					
3rd Dist.	4	1	I	6	1.4
5th Dist.	1	0	0	1	.25
6th Dist.	2	1	2	5	1.2
7th Dist.	4	6	0	10	2.4
9th Dist.	2	0	1	3	.7
11th Dist.	8	6[a]	0	14	3.4
12th Dist.	2	0	0	2	.5
13th Dist.	12	6	0	18	4.4
14th Dist.	2	0	0	2	.5
15th Dist.	6	2	0	8	1.9
16th Dist.	3	4	0	7	1.7
Total-Non-Metro. Dists.	46	26	4	76	18.5
District Court Total	258	70	29	357	87.5
County & Superior Courts	34	0	0	34	8.6
Other - Original	0	0	16	16	3.9
Total for State	292	70	45	407	100.0

a. Writs of error from denials of habeas corpus from state penitentiary.
Source: Judicial Business of Colorado Courts, 1959, Annual Report of Judicial Administrator.

TABLE IV

Cases at Issue
Before Colorado Supreme Court
As of September 30, 1959

Date Became At Issue	Number of Cases	Per Cent of Total
1957		
3rd quarter	7	2.25%
4th quarter	14	4.5
Total	21	6.75
1958		
1st quarter	32	10.29
2nd quarter	46	14.79
3rd quarter	35	11.25
4th quarter	38	12.2
Total	151	48.53
1959		
1st quarter	48	15.43
2nd quarter	33	10.61
3rd quarter	58	18.65
Total	139	44.7
Grand Total	311	

Type of Cases at Issue. Priority is given by the supreme court to criminal cases and workmen's compensation cases. Only four criminal cases and one workmen's compensation case were at issue and undisposed at the time this analysis was made. Table V shows the type of cases at issue as of September 1959, according to the time these cases became at issue. Of the categories enumerated, money demand cases show the greatest number -- 50, or 16 per cent of the total. Thirty-nine or 12.5 per cent were personal injury cases. Contract cases and cases involving local governmental units totaled 24 each or almost 8 per cent. Property, probate, and domestic relations cases each accounted for more than six per cent of the total.

Time Lag - Filing to Issue. Another factor in the delay in disposition of cases before the supreme court is the length of time it takes for cases to be ready for trial (at issue). At the time the 1959 analysis was made, half of the cases took more than 5.2 months from filing to issue, with the average for all cases, 6.3 months. Forty-eight cases or 15.4 per cent of the total took three months or less from filing to issue; 144 cases or 46.3 per cent took from three to six months; 106 cases or 34 per cent took from six to twelve months; and only 13 cases or 4.2 per cent took more than one year. Of these latter 13, three cases took two years or more from filing until issue.

When the delay from filing to issue is added to the time from issue to disposition, it shows that the average case disposed of by the supreme court by the end of 1959 had probably been filed 25 to 26 months previously.

TABLE V

Cases At Issue Pending Before the Colorado Supreme Court
By Type of Case, As of September 30, 1959

Time When Cases Became At Issue

Type of Case	1957			1958					1959				1957-1959 Total	Per Cent Of Cases At Issue
	3rd Q	4th Q	Total	1st Q	2nd Q	3rd Q	4th Q	Total	1st Q	2nd Q	3rd Q	Total		
Personal Injury[a]		4	4	3	5	5	5	18	4	6	7	17	39	12.54%
Tort[b]	1		1	1	1	3	2	7	2	1	2	5	13	4.18
Money Demand		1	1	3	7	8	8	26	10	5	8	23	50	16.08
Contract				3	4	3	3	13	4	2	5	11	24	7.71
Municipal and Local Gov't.[c]	3	1	4	2	2	3	1	8	4	2	6	12	24	7.71
Water Rights	1	2	3	2	1	2	1	6	1	2		3	12	3.86
State Agencies[d]				1	2			3	2	1	3	6	9	2.90
Property		1	1	3	5	1	3	12	3	3	4	10	23	7.40
Domestic Relations[e]		1	1	1	6	3	1	11	5	1	1	7	19	6.11
Probate				4	2	2	1	9	3	3	6	12	21	6.75
Other[f]	1	1	2	2	4	4	11	21	5	5	13	23	46	14.79
Not Shown[g]	1	3	4	7	7	1	2	17	5	2	3	10	31	9.97
TOTAL	7	14	21	32	46	35	38	151	46	33	58	139	311	100.00

a. Includes auto.
b. Other damages.
c. All cases involving municipal, county, school districts and special districts.
d. All cases involving the state of Colorado and its agencies.
e. Includes divorce, separate maintenance, annulment, custody, dependency, etc.
f. Includes the few criminal cases not disposed of.
g. Not indicated in docket book.

District Courts

Almost 20,000 cases were filed in the district courts during 1958. The number of cases filed by judicial district ranged from 97 in the 5th District (Eagle, Lake, and Summit counties) to 8,842 in the 2nd District (Denver). Of particular note is the variation in the number of cases filed per judge in the different judicial districts. In the urban districts (1st, 2nd, 4th, 8th, 10th, 17th, and 18th) and in the 7th District (western slope), the number of cases filed per judge ranged from 395 (8th District) to 884 (Denver). In the other 10 districts, the highest number of cases filed per judge was 341 (11th District); nine of the districts had fewer than 300 cases filed per judge. The 5th District was again the lowest, with 97. Together the seven urban districts and the 7th District accounted for 84 per cent of the cases filed in 1958, with 45 per cent of the state total filed in the Denver District Court.

The differences in judicial district populations and in population per judge are very similar to the variations in case filing. The seven urban judicial districts each have more than 100,000 population, according to the 1960 preliminary census figures; Denver is the most populous with 491,409. Except for the 7th District with a population of 93,803, none of the other judicial districts outside the urban area has a population of more than 65,000. Three judicial districts (5th, 9th, and 14th) have fewer than 20,000 residents. These three districts also have the smallest population per judge. The largest population per judge is in the 17th and 18th districts, more than 100,000; however, both these districts will have a second judge in January, 1961.

Table VI shows the number of district court cases filed by district in 1958 and the number of cases filed per judge, district population, and population per judge.

Trend in District Court Filings, 1950-1958. Slightly in excess of 5,000 more cases were filed in the district courts in 1958 than were filed in 1950. This increase of 36.5 per cent was five per cent greater than the state's population growth during the same period. The three judicial districts (1st, 17th, and 18th) with the greatest population growth also had the largest increase in the number of cases filed. The increase in case filings was concentrated in the metropolitan districts and the 7th District. Together, these eight districts accounted for almost 87 per cent of this increase, or 4,476 cases. Although five judicial districts lost population, only two of these, the 3rd and 15th, had a decrease in the number of cases filed. The number of cases filed decreased by one-third in the 3rd District and by one-sixth in the 15th. The other three districts (12th, 14th, and 16th) which lost population each had an increase of approximately 10 per cent in the number of cases filed. Table VII shows a comparison of cases filed and population in 1950 and 1958 by judicial district.

TABLE VI

District Court Case Load and Population per Judge, by Judicial District, Cases Filed in 1958

District[a]	Population[b]	Total Cases Filed	Number of Judges	Population per Judge	Cases Filed per Judge
1st	130,957	1,196	3	43,652	398.7
2nd	491,409	8,842	10[c]	49,141	884.2
3rd	27,611	234	1	27,611	234.0
4th	165,603	1,481	3	55,201	493.7
5th	13,773	97	1	13,773	97.0
6th	38,427	508	2	19,214	254.0
7th	93,803	983	2	46,902	491.5
8th	200,020	1,186	3	66,673	395.3
9th	19,377	253	1	19,377	253.0
10th	117,547	964	2	58,774	482.0
11th	31,328	341	1	31,328	341.0
12th	38,258	340	2	19,129	170.0
13th	65,252	544	2	32,626	272.0
14th	16,222	198	1	16,222	198.0
15th	24,530	298	1	24,530	298.0
16th	35,283	269	1	35,283	269.0
17th	119,793	778	1[c]	119,793	778.0
18th	112,836	845	1[c]	112,836	845.0
Total	1,742,029	19,357	38	45,843	509.4

[a] 1st District -- Clear Creek, Gilpin, Jefferson
2nd District -- Denver
3rd District -- Huerfano, Las Animas
4th District -- Douglas, Elbert, El Paso, Kit Carson, Lincoln, Teller
5th District -- Eagle, Lake, Summit
6th District -- Archuleta, Dolores, La Plata, Montezuma, San Juan
7th District -- Delta, Gunnison, Hinsdale, Mesa, Montrose, Ouray, San Miguel
8th District -- Boulder, Jackson, Larimer, Weld
9th District -- Garfield, Pitkin, Rio Blanco
10th District -- Pueblo
11th District -- Chaffee, Custer, Fremont, Park
12th District -- Alamosa, Conejos, Costilla, Mineral, Rio Grande, Saguache
13th District -- Logan, Morgan, Phillips, Sedgwick, Washington, Yuma
14th District -- Grand, Moffat, Routt
15th District -- Baca, Cheyenne, Kiowa, Prowers
16th District -- Bent, Crowley, Otero
17th District -- Adams
18th District -- Arapahoe

[b] Based on 1960 preliminary census figures.

[c] Denver had only 9 judges during 1958 and the 1st, 17th, 18th districts had a combined total of 3. The judges added in 1959 in these districts are included above to show a more current and realistic relationship between districts, as the 1959 case filings were similar although slightly higher than 1958, according to the report of the judicial administrator.

TABLE VII

Trend in District Court Case Loads,
Cases Filed in 1950 and 1958, by Judicial District

District[a]	Population			Cases Filed		
	1950	1958[b]	Percent of Increase	1950	1958	Percent of Increase
1st	59,826	130,957	118.9	539	1,196	121.9
2nd	415,786	491,409	18.2	6,998	8,842	26.4
3rd	36,451	27,611	- 24.3	348	234	- 32.8
4th	99,770	165,603	66.0	1,055	1,481	40.4
5th	11,773	13,773	17.0	64	97	51.6
6th	31,338	38,427	22.6	321	508	58.3
7th	82,334	93,803	13.9	628	983	56.5
8th	161,330	200,020	24.0	898	1,186	32.1
9th	17,990	19,377	7.7	173	253	46.2
10th	90,188	117,547	30.3	614	964	57.0
11th	28,977	31,328	8.1	335	341	1.8
12th	45,963	38,258	- 16.8	302	340	12.6
13th	63,627	65,252	2.6	449	544	21.2
14th	18,849	16,222	- 13.9	180	198	10.0
15th	29,256	24,530	- 16.2	358	298	- 16.8
16th	39,272	35,283	- 10.2	243	269	10.7
17th	40,234	119,793	197.7	260	778	199.2
18th	52,125	112,836	116.5	417	845	102.6
Total	1,325,089	1,742,029	31.5	14,182	19,357	36.5

a/ Present judicial district composition used for both 1950 and 1958 to provide uniformity, although some counties were in other districts in 1950.

b/ Based on 1960 preliminary census figures.

Cases Filed by Major Category. Almost 53 per cent of the cases filed in the district courts in 1958 were civil actions. Domestic relations accounted for 35 per cent and criminal cases for 12 per cent. There has been a significant increase in the number of domestic relations cases. These cases (including divorce, separate maintenance, annulment, and custody actions) increased 53 per cent since 1950 as compared with almost 28 per cent for civil cases and 34 per cent for criminal. The highest proportion of domestic relations cases is found in the urban districts, principally the 1st, 4th, 10th, 17th and 18th. The highest proportion of criminal cases (although not the largest number of criminal cases) is found in the 3rd, 7th, 12th, 13th, and 14th districts. In only one district, the 5th, civil actions accounted for more than 60 per cent of the cases filed in 1958, and in only one district, the 10th, civil actions constituted less than 40 per cent of the cases filed.

Table VIII shows the number of civil, domestic relations, and criminal cases filed in 1958, by judicial district and by the counties within each judicial district. Table IX shows a comparison of civil, domestic relations, and criminal cases filed, by judicial district in 1950 and 1958.

In two districts (1st and 17th), there was more than a 100 per cent increase in civil cases filed. Both these districts had large increases in the number of domestic relations actions filed, as well. In the 17th District, 4.5 times as many domestic relations cases were filed in 1958 as in 1950. Two districts, the 6th and 10th, had more than twice as many domestic relations cases filed in 1958 as in 1950, and four others (1st, 5th, 7th, and 18th) had increases of more than 100 per cent. Three districts had more than 100 per cent increase in criminal cases filed. These districts were the 4th, 14th, and 18th. Fewer districts had large increases in the number of civil cases filed. The 1st, 17th, and 18th were the only districts with increases substantially above the increase for the state as a whole. Four of the five districts which lost population since 1950 also had a reduction in the number of civil cases filed. The 12th District had a small gain in the number of civil cases filed, despite a loss in population. The 3rd District was the only one in which there was a reduction in all three categories -- civil, domestic relations, and criminal. The 12th District had a small decrease in criminal cases, and the 11th and 15th districts also had reductions in the number of criminal cases filed.

Case Disposition. An analysis was made of the elapsed time between filing and disposition, based on cases filed in 1958. At the time this analysis was made (in the latter half of 1959), almost 75 per cent of the civil actions filed in 1958 had been disposed of, as had 85 per cent of the domestic relations and criminal cases. This time analysis, therefore, does not indicate the elapsed time on all disposed cases, i.e., those filed prior to 1958. If these cases were included, the average time from filing to disposition would be greater. The average time from filing to disposition would also be greater had it been possible to include the elapsed time on those 1958 cases which were not disposed of until 1960. With these qualifications, however, this analysis gives an indication of how rapidly the cases filed in a given year progress to conclusion, because it is based on almost 80 per cent of the cases filed in 1958.

Within this 80 per cent, the average time from filing to disposition for civil cases was 4.4 months; for domestic relations cases it was 4.5 months; and for criminal cases, 3.5 months. The 2nd Judicial District, because of its large case load, had the greatest average elapsed time for all three types of cases: civil, 5.8 months; domestic relations, 6.2 months; and criminal, 5.2 months. Generally, the average time from filing to disposition was greater in the urban districts, but in one rural district (the 16th), the elapsed time for domestic relations cases was only one-tenth of a month less than in the 2nd. In most of the districts (both urban and rural) the average

TABLE VIII

Number of Cases by Major Category Filed in District Courts in 1958, by County and Judicial District

Districts and Counties	Civil		Domestic Relations		Criminal		Total
	No.	Pct.	No.	Pct.	No.	Pct.	No.
1st District							
Clear Creek	40	69.0	13	22.4	5	8.6	58
Gilpin	19	79.2	3	12.5	2	8.3	24
Jefferson	578	51.9	452	40.6	84	7.5	1,114
Total	637	53.3	468	39.1	91	7.6	1,196
2nd District							
Denver	5,101	57.7	2,934	33.2	807	9.1	8,842
3rd District							
Huerfano	38	40.0	14	14.7	43	45.3	95
Las Animas	74	53.2	35	25.2	30	21.6	139
Total	112	47.9	49	20.9	73	31.2	234
4th District							
Douglas	27	50.0	14	25.9	13	24.1	54
Elbert	16	84.2	3	15.8	0	0	19
El Paso	546	42.1	623	48.0	128	9.9	1,297
Kit Carson	25	62.5	8	20.0	7	17.5	40
Lincoln	17	44.8	11	28.9	10	26.3	38
Teller	26	78.8	5	15.2	2	6.0	33
Total	657	44.4	664	44.8	160	10.8	1,481
5th District							
Eagle	15	65.2	6	26.1	2	8.7	23
Lake	27	60.0	11	24.4	7	15.6	45
Summit	18	62.1	8	27.6	3	10.3	29
Total	60	61.8	25	25.8	12	12.4	97
6th District							
Archuleta	13	65.0	6	30.0	1	5.0	20
Dolores	13	59.1	5	22.7	4	18.2	22
La Plata	104	50.2	78	37.7	25	12.1	207
Montezuma	130	51.2	87	34.3	37	14.5	254
San Juan	3	60.0	2	40.0	0	0	5
Total	263	51.8	178	35.0	67	13.2	508
7th District							
Delta	44	34.1	22	17.1	63	48.8	129
Gunnison	34	65.4	10	19.2	8	15.4	52
Hinsdale	9	81.8	2	18.2	0	0	11
Mesa	214	46.9	146	32.0	96	21.1	456
Montrose	162	58.5	82	29.6	33	11.9	277
Ouray	12	54.6	5	22.7	5	22.7	22
San Miguel	25	69.4	6	16.7	5	13.9	36
Total	500	50.9	273	27.8	210	21.3	983
8th District							
Boulder	214	47.8	181	40.4	53	11.8	448
Jackson	10	41.7	5	20.8	9	37.5	24
Larimer	177	53.2	107	32.1	49	14.7	333
Weld	151	39.6	133	34.9	97	25.5	381
Total	552	46.5	426	35.9	208	17.6	1,186

TABLE VIII
(Continued)

Districts and Counties	Civil		Domestic Relations		Criminal		Total
	No.	Pct.	No.	Pct.	No.	Pct.	No.
9th District							
Garfield	72	50.7	39	27.5	31	21.8	142
Pitkin	35	81.4	5	11.6	3	7.0	43
Rio Blanco	37	54.4	11	16.2	20	29.4	68
Total	144	56.9	55	21.7	54	21.3	253
10th District							
Pueblo	359	37.2	453	47.0	152	15.8	964
11th District							
Chaffee	51	52.0	28	28.6	19	19.4	98
Custer	9	69.2	4	30.8	0	0	13
Fremont	91	45.3	89	44.3	21	10.4	201
Park	17	58.6	6	20.7	6	20.7	29
Total	168	49.3	127	37.2	46	13.5	341
12th District							
Alamosa	54	49.6	30	27.5	25	22.9	109
Conejos	25	56.8	7	15.9	12	27.3	44
Costilla	14	51.9	4	14.8	9	33.3	27
Mineral	3	50.0	3	50.0	0	0	6
Rio Grande	48	48.0	27	27.0	25	25.0	100
Saguache	25	46.3	19	35.2	10	18.5	54
Total	169	49.7	90	26.5	81	23.8	340
13th District							
Logan	83	44.6	58	31.2	45	24.2	186
Morgan	103	53.1	39	20.1	52	26.8	194
Phillips	11	40.8	10	37.0	6	22.2	27
Sedgwick	19	50.0	11	28.9	8	21.1	38
Washington	32	64.0	12	24.0	6	12.0	50
Yuma	36	73.5	7	14.3	6	12.2	49
Total	284	52.2	137	25.2	123	22.6	544
14th District							
Grand	29	63.1	10	21.7	7	15.2	46
Moffat	32	48.5	11	16.7	23	34.8	66
Routt	46	53.4	20	23.3	20	23.3	86
Total	107	54.0	41	20.7	50	25.3	198
15th District							
Baca	51	54.8	32	34.4	10	10.8	93
Cheyenne	15	71.4	4	19.1	2	9.5	21
Kiowa	31	75.6	5	12.2	5	12.2	41
Prowers	72	50.3	45	31.5	26	18.2	143
Total	169	56.7	86	28.9	43	14.4	298
16th District							
Bent	28	53.9	14	26.9	10	19.2	52
Crowley	18	52.9	4	11.8	12	35.3	34
Otero	87	47.6	65	35.5	31	16.9	183
Total	133	49.4	83	30.9	53	19.7	269
17th District							
Adams	382	49.1	339	43.6	57	7.3	778
18th District							
Arapahoe	398	47.1	367	43.4	80	9.5	845
Grand Total	10,195	52.7	6,795	35.1	2,367	12.2	19,357

TABLE IX

District Court Case Load by Type of Case Filed,
1950 and 1958, by Judicial District

District[a]	Civil			Domestic Relations			Criminal		
	1950	1958	Percent of Increase	1950	1958	Percent of Increase	1950	1958	Percent of Increase
1st	304	637	109.5	166	468	181.9	69	91	31.9
2nd	3,943	5,101	29.4	2,436	2,934	20.4	619	807	30.4
3rd	189	112	- 40.7	78	49	- 37.2	81	73	- 9.9
4th	512	657	28.3	468	664	41.9	75	160	113.3
5th	45	60	33.3	10	25	150.0	9	12	33.3
6th	231	263	13.9	54	178	229.6	36	67	86.1
7th	358	500	39.7	134	273	103.7	136	210	54.4
8th	510	552	8.2	240	426	77.5	148	208	40.5
9th	109	144	32.1	29	55	89.7	35	54	54.3
10th	355	359	1.1	146	453	210.3	113	152	34.5
11th	155	168	8.4	91	127	39.6	89	46	- 48.3
12th	149	169	13.4	70	90	28.6	83	81	- 2.4
13th	254	284	11.8	122	137	12.3	73	123	68.5
14th	122	107	- 12.3	39	41	5.1	19	50	163.2
15th	218	169	- 22.5	79	86	8.9	61	43	- 29.5
16th	142	133	- 6.3	61	83	36.1	40	53	32.5
17th	157	382	143.3	61	339	455.7	42	57	35.7
18th	228	398	74.6	155	367	136.8	34	80	135.3
Total	7,981	10,195	27.7	4,439	6,795	53.1	1,762	2,367	34.3

a/ Present judicial district composition used for both 1950 and 1958 to provide uniformity, although some counties were in other districts in 1950.

elapsed time was less than four months for civil cases and slightly more than four months for domestic relations cases. Criminal cases were usually disposed of in less than three months.

Table X shows the average elapsed time from filing to disposition for civil, domestic relations, and criminal cases in each judicial district.

Some of the averages shown in Table X need further explanation. Both the 6th and 12th districts had very low average times between filing and disposition for civil cases; but these averages were based on the disposition of only 60 per cent of the civil cases filed, as contrasted with 75 to 80 per cent in most other districts. In those districts where the highest proportion of cases filed were disposed of, the elapsed-time average reflects actual docket conditions much more accurately.

The low average elapsed time for criminal cases in some of the rural and mountain districts, such as the 5th, 9th, and 14th, is a consequence of a small number of cases being filed initially, with a high proportion of these resulting in guilty pleas being entered upon arraignment, which made it possible to dispose of these cases without trial.

Since the more complicated and contested cases usually take the longest time from filing to disposition, these elapsed-time averages are based largely on dismissed and non-contested actions. In all judicial districts, almost 30 per cent of the disposed civil cases were dismissed. These cases were dismissed usually for one of three reasons: out-of-court settlement, action dropped by the plaintiff, or lack of action resulting in the invocation of automatic dismissal rules. Slightly less than 57 per cent of the disposed civil cases were non-contested matters such as default judgments. Less than 12 per cent were non-jury contested cases, and in two per cent of these dispositions, jury trials were held.

There was also a large proportion of non-contested and dismissed cases in domestic relations actions. Almost 65 per cent of the disposed domestic relations cases were non-contested, and 26 per cent were dismissed. Only nine per cent of these cases were contested, with jury trials held in only .2 per cent.

The 8th District had the highest proportion of civil cases dismissed, 37 per cent; and the lowest proportion, 13 per cent, was in the 11th District. These statistics reflect the information given the committee at its regional meetings. The judges in the 8th District reported that the district had an automatic dismissal rule, which applied to cases which had been inactive for six months. In the 11th District, the judge does not dismiss cases for lack of action; instead, these inactive cases are set for trial unless notification is received from the attorneys.

TABLE X

Average Time from Filing to Disposition,
Civil, Criminal, and Domestic Relations Cases
Filed in 1958, by Judicial District[a]

District	Civil	Domestic Relations	Criminal
	mo.	mo.	mo.
1st	4.6	5.1	4.4
2nd	5.8	6.2	5.2
3rd	3.1	5.0	4.0
4th	3.3	4.3	2.5
5th	3.4	3.2	1.6
6th	2.0	3.5	2.1
7th	2.6	3.1	2.1
8th	3.5	4.0	2.3
9th	3.0	3.1	1.1
10th	2.1	2.5	3.2
11th	2.4	2.7	1.8
12th	1.8	2.6	1.6
13th	3.2	4.3	2.1
14th	2.8	4.0	.9
15th	3.0	3.6	3.0
16th	2.9	6.1	1.5
17th	3.1	4.3	4.0
18th	3.1	2.9	3.5
All Districts[b]	3.1	3.9	2.6
All Cases[c]	4.4	4.5	3.5

a/ In months.
b/ Unweighted average for all districts.
c/ Weighted according to number of cases.

The 2nd District had the largest number of jury trials, 70, but this number represented less than two per cent of the civil case dispositions. Three rural districts (3rd, 5th, and 12th) had the greatest proportion of jury trial dispositions, but in none of the three did jury trials exceed five per cent of total dispositions. Generally, the urban districts had the highest proportion of contested non-jury dispositions for both civil and domestic relations cases. Table XI shows the number of disposed civil cases (filed in 1958) for each judicial district, according to the type of disposition. Table XII shows similar data for domestic relations cases.

TABLE XI

Type of Disposition, Civil Cases Filed in 1958, by Judicial District

District	Number of Cases Disposed[a]	Dismissed[b]		Non-Contested		Contested Non-Jury		Contested Jury	
		No.	Pct.	No.	Pct.	No.	Pct.	No.	Pct.
1st	502	149	29.7	234	46.6	100	19.9	19	3.8
2nd	3,686	1,190	32.3	2,095	56.8	331	9.0	70	1.9
3rd	90	15	16.7	52	57.8	19	21.1	4	4.4
4th	512	123	24.0	306	59.8	67	13.1	16	3.1
5th	47	10	21.3	28	59.6	7	14.9	2	4.2
6th	155	45	29.0	95	61.3	14	9.0	1	.7
7th	354	101	28.5	197	55.7	43	12.1	13	3.7
8th	476	176	37.0	228	47.9	60	12.6	12	2.5
9th	123	31	25.2	83	67.5	8	6.5	1	.8
10th	258	56	21.7	158	61.3	38	14.7	6	2.3
11th	120	16	13.3	84	70.0	18	15.0	2	1.7
12th	99	17	17.2	69	69.7	8	8.1	5	5.0
13th	243	66	27.1	144	59.3	32	13.2	1	.4
14th	85	23	27.0	52	61.2	10	11.8	0	0
15th	156	30	19.2	110	70.5	13	8.4	3	1.9
16th	109	25	23.0	68	62.4	14	12.8	2	1.8
17th	288	86	29.9	172	59.7	28	9.7	2	.7
18th	261	84	32.2	116	44.5	57	21.8	4	1.5
Total	7,564	2,243	29.6	4,291	56.7	867	11.5	163	2.2

a/ Cases filed in 1958 which were disposed of by the latter half of 1959.
b/ Includes cases dismissed for lack of prosecution, settled out of court, etc.

TABLE XII

Type of Disposition, Domestic Relations Cases Filed in 1958, by Judicial District

District	Number of Cases Disposed[a]	Dismissed[b]		Non-Contested		Contested Non-Jury		Contested Jury	
		No.	Pct.	No.	Pct.	No.	Pct.	No.	Pct.
1st	435	113	26.0	247	56.8	75	17.2	0	0
2nd	2,738	738	27.0	1,846	67.4	149	5.4	5	.2
3rd	46	19	41.3	23	50.0	4	8.7	0	0
4th	533	134	25.2	344	64.5	54	10.1	1	.2
5th	25	5	20.0	18	72.0	2	8.0	0	0
6th	143	36	25.2	98	68.5	9	6.3	0	0
7th	204	47	23.0	133	65.2	24	11.8	0	0
8th	385	133	34.5	204	53.0	48	12.5	0	0
9th	24	1	4.2	22	91.6	1	4.2	0	0
10th	333	51	15.3	259	77.8	23	6.9	0	0
11th	96	17	17.7	69	71.9	10	10.4	0	0
12th	56	17	30.4	35	62.5	4	7.1	0	0
13th	127	45	35.4	66	52.0	15	11.8	1	.8
14th	28	4	14.3	16	57.1	8	28.6	0	0
15th	60	12	20.0	42	70.0	6	10.0	0	0
16th	47	25	53.2	17	36.2	5	10.6	0	0
17th	298	87	29.2	176	59.1	35	11.7	0	0
18th	306	56	18.3	189	61.8	61	19.9	0	0
Total	5,884	1,540	26.2	3,804	64.6	531	9.0	7	.2

a/ Cases filed in 1958 which were disposed of by the latter half of 1959.
b/ Includes cases dismissed for lack of prosecution, settled out of court, etc.

Concurrent Jurisdiction. The county courts have concurrent jurisdiction with the district courts in civil cases in which the amount in controversy is less than $2,000. The justice court's concurrent civil jurisdiction is limited to cases not involving real property or amounts in excess of $300. In theory, such concurrent jurisdiction should keep these relatively less important matters out of the district court. An analysis was made of the civil cases filed in the district courts in 1958 to determine how many fell within the jurisdiction of either the county or justice courts.

More than 3,000 (30.4 per cent) of the 10,195 civil cases filed in the district courts in 1958 involved amounts within the jurisdiction of either the county or justice courts. Seventy-seven per cent of these 3,103 cases could have been brought in the county courts and the remainder in either county or justice courts. In three districts, the civil cases which could have been brought in a lower court equalled or exceeded one-third of all civil actions filed (2nd District, 39 per cent; 13th District, 38 per cent; and 16th District, 33.1 per cent). These minor civil cases accounted for less than 15 per cent of the filings in only three districts (5th, 8th, and 17th). Table XIII shows the number of civil cases filed in 1958 in each judicial district which could have been filed instead in either county or justice courts.

TABLE XIII

Number of Civil Cases Filed in 1958, Under $2,000, by Judicial District

District	Total Civil Cases	No. Under $300	No. $300-$2,000	Total Under $2,000	Pct. of Total Civil Cases
1st	637	34	92	126	19.8
2nd	5,101	479	1,513	1,992	39.0
3rd	112	13	12	25	22.3
4th	657	15	112	127	19.3
5th	60	2	6	8	13.3
6th	263	12	68	80	30.4
7th	500	25	119	144	28.8
8th	552	11	69	80	14.5
9th	144	4	24	28	19.4
10th	359	11	58	69	19.2
11th	168	6	32	38	22.7
12th	169	8	31	39	23.1
13th	284	14	94	108	38.0
14th	107	6	14	20	18.7
15th	169	9	26	35	20.7
16th	133	7	37	44	33.1
17th	382	13	38	51	13.3
18th	398	19	70	89	22.4
Total	10,195	688	2,415	3,103	30.4

County Courts

More than 25,000 cases were filed in county courts in 1958; 43 per cent (10,860) of the total were filed in Denver.[19] Four other counties beside Denver had more than 1,000 cases filed, Arapahoe, El Paso, Jefferson, and Pueblo; and five counties had between 500 and 1,000 cases, Adams, Boulder, Larimer, Mesa, and Weld. Only one other county (Las Animas) had more than 300 cases filed; five counties had between 200 and 300; nine counties had between 100 and 200; and 38 counties had fewer than 100.

Probate actions accounted for the largest number of cases filed in all counties (32 per cent); and in 30 counties, at least 50 per cent of all cases filed were probate. Juvenile cases accounted for almost 30 per cent of the total; civil actions, 18 per cent; mental health cases, 10 per cent; criminal cases, slightly more than 5 per cent; and domestic relations matters, 4.6 per cent. Table XIV shows the number of cases filed in each county court in 1958, according to the type of case.

Trend in County Court Case Loads 1950-1958. The number of cases filed in county court increased 58 per cent between 1950 and 1958. Generally, this increase was concentrated in Denver and the five counties with more than 100,000 population (Adams, Arapahoe, El Paso, Jefferson, and Pueblo). Denver and these five counties excluded, the other 57 counties had an increase in county court cases filed of only 3.5 per cent, which was less than the 5.7 per cent average population growth of these counties during the same period. Twenty-nine counties had fewer cases filed in county court in 1958 than in 1950. These included 26 of the 36 counties which lost population during the same period. Seven counties which had fewer residents in 1958 had slight increases in the number of cases filed in county court. A comparison could not be made for three of the counties which lost population, because 1950 case load information was not available. Table XV shows a county-by-county comparison of population and cases filed in county court for 1950 and 1958.

Relationship between Case Loads and Judicial Salaries. An examination of Tables XIV and XV indicates the wide variation in county court case loads between the 12 largest counties and the remainder of the state. To a certain extent, this variation is recognized in the statutes setting the salaries of county judges.[20] In Denver, the only Class I county, the county judge receives a salary of $12,500.[21] In the other counties, judicial salaries are as follows:

19. The totals for the state and Denver include the cases filed in the Denver Juvenile and Superior courts, whose jurisdiction is exercised in the rest of the state by the county courts.
20. 56-2-3 and 56-2-4, Colorado Revised Statutes, 1953, as amended.
21. The judges of the Denver Juvenile and Superior courts each receive $12,000.

TABLE XIV

Cases Filed in County Courts in 1958, by Type of Case

County	Civil		Domestic Relations		Mental Incompetent		Probate		Juvenile		Criminal		Total[a]
	No.	Pct.	No.	Pct.	No.	Pct.	No.	Pct.	No.	Pct.	No.	Pct.	
Adams	120	12.8	57	6.1	56	6.0	184	19.7	432	46.3	85	9.1	934
Alamosa	31	26.5	3	2.6	16	13.7	39	33.3	22	18.8	6	5.1	117
Arapahoe	151	14.8	116	11.3	110	10.7	293	28.6	277	27.1	77	7.5	1,024
Archuleta	4	14.3	3	10.7	4	14.3	13	46.5	2	7.1	2	7.1	28
Baca	11	13.8	4	5.0	5	6.2	44	55.0	10	12.5	6	7.5	80
Bent	12	17.9	0	0	13	19.4	40	59.7	1	1.5	1	1.5	67
Boulder	120	16.0	46	6.2	74	9.9	319	42.6	143	19.1	46	6.2	748
Chaffee	22	16.1	8	5.9	15	10.9	67	48.9	21	15.3	4	2.9	137
Cheyenne	2	6.7	1	3.3	2	6.7	15	50.0	8	26.6	2	6.7	30
Clear Creek	8	8.9	3	3.3	10	11.1	25	27.8	9	10.0	35	38.9	90
Conejos	11	13.9	2	2.5	4	5.1	38	48.1	20	25.3	4	5.1	79
Costilla	5	13.2	5	13.2	0	0	20	52.6	7	18.4	1	2.6	38
Crowley	2	7.1	0	0	2	7.1	19	67.9	2	7.1	3	10.8	28
Custer	1	7.7	0	0	0	0	11	84.6	1	7.7	0	0	13
Delta	31	11.3	35	12.7	33	12.0	111	40.4	22	8.0	43	15.6	275
Denver[b]	2,391	22.0	204	1.8	1,038	9.6	2,508	23.1	4,343	40.0	376	3.5	10,860
Dolores	5	26.3	2	10.5	4	21.0	4	21.0	3	15.8	1	5.3	19
Douglas	6	7.7	13	16.7	5	6.4	34	43.6	11	14.1	9	11.5	78
Eagle	6	11.1	3	5.6	5	9.3	24	44.4	6	11.1	10	18.5	54
Elbert	4	10.8	2	5.4	2	5.4	24	64.9	5	13.5	0	0	37
El Paso[c]	261	15.3	78	4.6	236	13.8	577	33.8	473	27.7	83	4.8	1,708
Fremont	9	4.1	1	.5	26	11.8	136	61.5	39	17.6	10	4.5	221
Garfield	23	15.5	24	16.2	9	6.1	78	52.8	7	4.7	7	4.7	148
Gilpin	0	0	1	5.3	3	15.8	7	36.8	5	26.3	3	15.8	19
Grand	12	22.2	9	16.7	2	3.7	19	35.2	12	22.2	0	0	54
Gunnison	18	26.1	11	15.9	1	1.4	35	50.7	4	5.8	0	0	69
Hinsdale	2	66.7	0	0	0	0	1	33.3	0	0	0	0	3
Huerfano	8	4.2	15	7.9	18	9.5	89	47.1	46	24.4	13	6.9	189
Jackson	2	50.0	0	0	2	50.0	0	0	0	0	0	0	4
Jefferson	205	19.6	33	3.2	86	8.2	347	33.1	312	29.8	64	6.1	1,047
Kiowa	2	6.9	2	6.9	1	3.4	20	69.0	4	13.8	0	0	29
Kit Carson	10	12.3	4	4.9	5	6.2	44	54.3	3	3.8	15	18.5	81
Lake	7	9.0	6	7.7	9	11.6	48	61.5	4	5.1	4	5.1	78
La Plata	41	18.2	17	7.5	16	7.0	124	54.6	26	11.4	3	1.3	227
Larimer	102	17.1	42	7.0	49	8.2	279	46.7	113	18.9	12	2.1	597
Las Animas	32	9.8	32	9.8	37	11.4	124	38.1	94	28.8	7	2.1	326
Lincoln	2	4.3	3	6.5	1	2.2	35	76.1	4	8.7	1	2.2	46
Logan	6	2.8	0	0	26	12.3	122	57.5	57	26.9	1	.5	212
Mesa	161	22.6	77	10.8	48	6.7	272	38.3	149	20.9	5	.7	712
Mineral	0	0	0	0	1	20.0	4	80.0	0	0	0	0	5
Moffat	12	12.8	5	5.3	9	9.6	50	53.2	14	14.9	4	4.2	94
Montezuma	79	41.1	17	8.9	9	4.7	45	23.4	34	17.7	8	4.2	192
Montrose	20	11.6	0	0	21	12.2	85	49.4	36	20.9	10	5.9	172
Morgan	7	4.1	1	.6	16	9.4	97	57.1	45	26.5	4	2.3	170
Otero	10	4.9	7	3.5	22	10.9	141	69.9	21	10.4	1	.4	202
Ouray	2	14.3	0	0	3	21.4	8	57.1	1	7.2	0	0	14
Park	4	16.7	2	8.3	1	4.2	15	62.5	1	4.2	1	4.2	24
Phillips	8	18.2	1	2.3	1	2.3	31	70.4	3	6.8	0	0	44
Pitkin	1	7.1	3	21.4	0	0	8	57.1	1	7.1	1	7.1	14
Prowers	14	8.7	10	6.3	12	7.5	82	51.3	20	12.5	22	13.7	160
Pueblo[d]	425	20.8	151	7.4	296	14.5	569	27.9	337	16.5	263	12.9	2,041
Rio Blanco	4	7.7	4	7.7	5	9.7	36	69.1	3	5.8	0	0	52
Rio Grande	23	17.4	3	2.3	17	12.9	59	44.7	23	17.4	7	5.3	132
Routt	14	14.4	9	9.3	4	4.1	48	49.4	20	20.6	2	2.0	97
Saguache	2	2.9	0	0	6	8.7	44	63.7	9	13.0	8	11.6	69
San Juan	2	16.7	2	16.7	2	16.7	5	41.7	1	8.3	0	0	12
San Miguel	14	35.0	0	0	0	0	19	47.5	6	15.0	1	2.5	40
Sedgwick	1	1.9	5	9.4	3	5.7	24	45.3	16	30.2	4	7.5	53
Summit	8	34.8	1	4.3	2	8.7	9	39.2	1	4.3	2	8.7	23
Teller	4	11.4	6	17.2	4	11.4	19	59.3	1	2.9	1	2.9	35
Washington	17	18.4	1	1.1	14	15.2	51	55.5	7	7.6	2	2.2	92
Weld	105	12.8	62	7.6	61	7.5	378	46.3	176	21.5	35	4.3	817
Yuma	3	3.1	0	0	8	8.3	69	71.1	13	13.4	4	4.1	97
Total	4,625	18.4	1,152	4.6	2,490	9.9	8,085	32.1	7,486	29.8	1,319	5.2	25,157

a/ Does not include birth certificates.
b/ Totals for county, superior, and juvenile courts.
c/ Includes unofficial cases: El Paso, 231 juvenile cases plus 242 unofficial cases.
d/ Criminal totals include juvenile delinquents on whom criminal informations were filed.

TABLE XV

Comparison of Cases Filed in County Court
1950 and 1958

County	Population 1950	Population[a] 1958	Per Cent of Increase	Cases Filed 1950	Cases Filed 1958	Per Cent of Increase
Adams	40,334	119,793	197.7	375	934	149.1
Alamosa	10,531	9,868	- 6.3	172	117	- 32.0
Arapahoe	52,125	112,836	116.5	533	1,024	92.1
Archuleta	3,030	2,612	- 13.8	NA	28	--
Baca	7,964	6,215	- 22.0	89	80	- 11.2
Bent	8,775	7,356	- 16.2	103	67	- 35.0
Boulder	48,296	73,670	52.5	675	748	10.8
Chaffee	7,168	8,227	14.8	100	137	37.0
Cheyenne	3,453	2,720	- 21.2	49	30	- 38.8
Clear Creek	3,289	2,656	- 19.2	58	90	70.7
Conejos	10,171	8,216	- 19.2	69	79	14.5
Costilla	6,067	4,217	- 30.5	12	38	216.7
Crowley	5,222	3,932	- 24.7	32	28	- 12.5
Custer	1,573	1,275	- 18.9	19	13	- 31.6
Delta	17,365	15,363	- 11.5	278	275	- 1.1
Denver	415,786	491,409	18.2	5,904[b]	10,860[c]	83.9
Dolores	1,966	2,134	8.5	15	19	26.7
Douglas	3,507	4,792	36.6	66	78	18.2
Eagle	4,488	4,658	3.8	37	54	45.9
Elbert	4,477	3,665	- 18.1	31	37	19.4
El Paso	74,523	142,643	91.4	523	1,708	226.5
Fremont	18,366	20,048	9.2	222	221	- .5
Garfield	11,625	11,913	2.5	156	148	- 5.1
Gilpin	850	656	- 22.8	15	19	26.7
Grand	3,963	3,389	- 14.5	57	54	- 5.3
Gunnison	5,716	5,418	- 5.2	82	69	- 15.9
Hinsdale	263	218	- 17.1	4	3	- 25.0
Huerfano	10,549	7,771	- 26.3	216	189	- 12.5
Jackson	1,976	1,737	- 12.1	24	4	-833.3
Jefferson	55,687	127,645	129.2	589	1,047	77.7
Kiowa	3,003	2,374	- 20.9	42	29	- 31.0
Kit Carson	8,600	6,860	- 20.2	125	81	- 35.2
Lake	6,150	7.066	14.9	51	78	52.9
La Plata	14,880	19,005	27.7	191	227	18.8
Larimer	43,554	52,887	21.4	283	597	111.0
Las Animas	25,902	19,840	- 23.4	244	326	33.6
Lincoln	5,909	5,180	- 12.3	77	46	- 30.3
Logan	17,187	20,220	17.6	141	212	50.4
Mesa	38,974	50,196	28.8	599	712	18.9
Mineral	698	413	- 40.8	NA	5	--
Moffat	5,946	6,977	17.3	100	94	- 6.0
Montezuma	9,991	13,848	38.6	109	192	76.1
Montrose	15,220	18,077	18.8	208	172	- 17.3
Morgan	18,074	21,004	16.2	135	170	25.9
Otero	25,275	23,995	- 5.1	246	202	- 17.9
Ouray	2,103	1,596	- 24.1	23	14	- 39.1
Park	1,870	1,778	- 4.9	20	24	20.0
Phillips	4,924	4,390	- 10.8	48	44	- 8.3
Pitkin	1,646	2,396	45.6	15	14	- 6.7
Prowers	14,836	13,221	- 10.9	205	160	- 22.0
Pueblo	90,188	117,547	30.3	1,257	2,041	62.4
Rio Blanco	4,719	5,068	7.4	60	52	- 13.3
Rio Grande	12,832	11,093	- 13.6	153	132	- 13.8
Routt	8,940	5,856	- 34.5	89	97	9.0
Saguache	5,664	4,451	- 21.4	88	69	- 11.6
San Juan	1,471	828	- 43.7	18	12	- 33.3
San Miguel	2,693	2,935	9.0	26	40	53.8
Sedgwick	5,095	4,230	- 17.0	67	53	- 20.9
Summit	1,135	2,049	80.5	NA	23	--
Teller	2,754	2,463	- 10.6	51	35	- 31.4
Washington	7,520	6,568	- 12.7	92	92	0
Weld	67,504	71,726	6.3	747	817	9.4
Yuma	10,827	8,840	- 18.4	77	97	26.0
Total	1,325,089	1,742,029	31.5	15,992[d]	25,157	57.9

a/ Based on 1960 preliminary census figures.
b/ Includes 3,026 cases in Denver Juvenile Court.
c/ Includes 4,343 cases in Denver Juvenile Court and 2,378 cases in Denver Superior Court; per cent of increase for Denver Juvenile Court, 1950-1958, 43.5; for Denver County Court (total used here for 1958 includes Denver Superior Court cases, which were filed in County Court in 1950), 242.3.
d/ Does not include Archuleta, Mineral, and Summit counties, for which data were not available. These three counties had an estimated total of 50 cases in 1950.

Class II A:	Adams, Arapahoe, Boulder, El Paso, Jefferson, Larimer, Pueblo, and Weld	$10,500[22]
Class II B:	Las Animas, Mesa, and Otero	8,600
Class III A:	Delta, Fremont, Garfield, La Plata, Logan, Montrose, Morgan, Prowers, and Rio Grande	5,600
Class III B:	Huerfano and Yuma	5,200
Class III C:	Alamosa, Baca, Bent, Conejos, Kit Carson, Montezuma, Routt, and Washington	4,700
Class IV A:	Chaffee, Costilla, Crowley, Douglas, Eagle, Elbert, Grand, Gunnison, Lake, Lincoln, Moffat, Phillips, Rio Blanco, Saguache, and Sedgwick	4,100
Class IV B:	Archuleta, Cheyenne, Clear Creek, Kiowa, San Miguel, and Teller	3,600
Class V:	Custer, Dolores, Jackson, Ouray, Park, and Pitkin	3,000
Class VI A:	Gilpin, San Juan, and Summit	2,660
Class VI B:	Hinsdale and Mineral	734

When these judicial salaries, as well as total expenditures for county court operation, are related to case loads, as in Table XVI, the results show that county courts cost the taxpayers considerably more per case in small counties. This cost differential between large and small counties points up the major economic obstacle -- lack of judicial business -- to raising judicial salaries in small counties to a level which would attract attorneys to the position. A comparison of judicial salaries and case loads by county classifications (based on the data in Table XVI) is shown in the following tabulation. As shown therein, these cost differentials, however, are offset in varying degrees in each county by several intangible factors including: 1) the convenience and accessibility of the county court; 2) court services which cannot be measured by case load; and 3) the importance to residents of retaining a court at the county level.

22. Increased from $9,500 by Chapter 40, Session Laws of Colorado, 1960. $9,500 is used in this section as the salary in effect at the time this analysis was made.

TABLE XVI

Relationship Between County Court Case Loads, Judicial Salaries, and Total Court Expenditures, Cases Filed in 1958

County	Total Number Cases	Judicial Salary	Judicial Salary Per Case	Total Court Expenditures	Expenditures Per Case
Adams	934	$ 9,500	$ 10.17	$32,842	$ 35.16
Alamosa	117	4,700	40.17	8,793	75.15
Arapahoe	1,024	9,500	9.28	28,475	27.81
Archuleta	28	3,600	128.57	4,350	155.35
Baca	80	4,700	58.75	7,600	95.00
Bent	67	4,700	70.14	8,050	120.14
Boulder	748	9,500	12.70	30,081	40.21
Chaffee	137	4,100	29.93	6,740	49.20
Cheyenne	30	3,600	120.00	4,710	15.70
Clear Creek	90	3,600	40.00	4,498	49.97
Conejos	79	4,700	59.49	7,484	74.73
Costilla	38	4,100	107.89	6,825	179.60
Crowley	28	4,100	146.42	4,883	174.39
Custer	13	3,000	230.76	3,054	272.30
Delta	275	5,600	20.36	9,820	35.71
Denver	10,860[a]	36,500[b]	3.36	--[c]	--[c]
Dolores	19	3,000	157.89	3,800	200.00
Douglas	78	4,100	52.56	5,300	67.94
Eagle	54	4,100	75.92	5,100	94.44
Elbert	37	4,100	110.81	4,800	129.72
El Paso	1,708	9,500	5.56	76,800	44.96
Fremont	221	5,600	25.34	13,660	61.80
Garfield	148	5,600	37.84	8,800	59.46
Gilpin	19	2,660	140.00	3,059	161.00
Grand	54	4,100	75.92	4,300	79.62
Gunnison	69	4,100	59.42	6,496	94.14
Hinsdale	3	734	244.67	990	330.00
Huerfano	189	5,200	27.51	10,687	56.54
Jackson	4	3,000	750.00	3,280	820.00
Jefferson	1,047	9,500	9.07	44,108	42.13
Kiowa	29	3,600	124.14	4,100	141.37
Kit Carson	81	4,700	58.02	6,100	75.30
Lake	78	4,100	52.56	7,433	95.29
La Plata	227	5,600	24.67	14,400	63.43
Larimer	597	9,500	15.91	25,627	42.92

TABLE XVI
(continued)

County	Total Number Cases	Judicial Salary	Judicial Salary Per Case	Total Court Expenditures	Expenditures Per Case
Las Animas	326	$ 8,600	$ 26.38	$21,000	$ 64.41
Lincoln	46	4,100	89.13	6,100	132.60
Logan	212	5,600	26.42	13,100	61.79
Mesa	712	8,600	12.08	21,269	29.87
Mineral	5	734	146.80	1,389	277.80
Moffat	94	4,100	43.61	4,736	50.38
Montezuma	192	4,700	24.48	9,200	47.92
Montrose	172	5,600	32.56	10,679	62.08
Morgan	170	5,600	32.94	12,445	73.20
Otero	202	8,600	42.57	16,622	82.29
Ouray	14	3,000	214.28	3,247	231.92
Park	24	3,000	125.00	5,847	243.62
Phillips	44	4,100	93.18	9,970	226.59
Pitkin	14	3,000	214.28	3,500	250.00
Prowers	160	5,600	35.00	10,974	68.58
Pueblo	2,041	9,500	4.65	64,107	314.09
Rio Blanco	52	4,100	78.84	7,742	148.88
Rio Grande	132	5,600	42.42	9,705	93.52
Routt	97	4,700	48.45	7,293	75.18
Saguache	69	4,100	59.42	6,345	91.95
San Juan	12	2,660	221.66	2,758	229.83
San Miguel	40	3,600	90.00	4,033	100.82
Sedgwick	53	4,100	77.35	5,070	95.66
Summit	23	2,660	115.65	3,247	141.17
Teller	35	3,600	102.85	4,780	136.57
Washington	92	4,700	51.08	9,253	100.57
Weld	817	9,300	11.63	31,121	38.09
Yuma	97	5,200	53.60	6,537	67.39

a. Combined case load for county, superior and juvenile courts.
b. Combined salaries for judges of the above courts.
c. Not compiled.

County Class	Average Annual Case Load	Judicial Salary Per Case
Class I	10,860	$ 3.36
Class II A (8 counties)	1,114	8.53
Class II B (3 counties)	413	20.82
Class III A (9 counties)	191	29.32
Class III B (2 counties)	143	36.36
Class III C (8 counties)	101	46.53
Class IV A (15 counties)	62	66.13
Class IV B (6 counties)	42	85.71
Class V (6 counties)	15	200.00
Class VI A (3 counties)	18	147.78
Class VI B (2 counties)	4	183.50

Probate Cases. It is very difficult to determine the amount of county court judicial time devoted to probate matters. The number of probate cases filed each year presents only a partial indication of the relative importance of probate work, because many estates, guardianships, conservatorships, etc., remain open for a number of years and involve court orders and hearings from time to time. Much of the county courts' probate work is administrative, rather than judicial; except for contested matters, much of the work involved is perfunctory.

It is therefore difficult to assess the additional amount of time required to handle probate matters resulting from the filing of new cases. Even the number of new cases filed is misleading because this total includes small estates. These are actions involving less than $1,500, which are brought under the small estate law, and are usually closed after a court order authorizing the transfer of property or funds. In 1958, small estates actions constituted 45 per cent of all probate cases filed in the county courts. In eight counties, more than 60 per cent of the probate cases filed were small estates, and in 13 others, small estates accounted for more than half of the new probate cases. Table XVII shows the total number of probate cases and the number of small estates actions filed in each county court in 1958.

Concurrent Jurisdiction. In the secion on district courts, an analysis was presented of the number of civil cases filed which fell within the jurisdiction of the county or justice courts. A similar analysis was made of civil cases filed in county courts, which were within the justice courts' $300 civil jurisdiction. Almost 26 per cent of the civil actions filed in the county courts in 1958 could have been brought in justice courts. In several counties, more than 50 per cent of the civil cases filed were in this category. Table XVIII shows both the total number of civil cases filed in each county in 1958 and the number within the jurisdiction of the justice courts.

TABLE XVII

Small Estates and Other Probate Cases
Filed in County Courts in 1958

County	Total Probate Cases	Small Estates	Pct. Small Estates
Adams	184	85	46.2%
Alamosa	39	16	41.0
Arapahoe	293	123	42.0
Archuleta	13	6	46.2
Baca	44	12	27.3
Bent	40	12	30.0
Boulder	319	171	53.6
Chaffee	67	35	52.2
Cheyenne	15	3	20.0
Clear Creek	25	8	32.0
Conejos	38	29	76.3
Costilla	20	12	60.0
Crowley	19	9	47.4
Custer	11	2	18.2
Delta	111	62	55.9
Denver	2,508	1,127	44.9
Dolores	4	1	25.0
Douglas	34	N.A.	--
Eagle	24	11	45.8
Elbert	24	15	62.5
El Paso	577	205	35.5
Fremont	136	78	57.4
Garfield	78	38	48.7
Gilpin	7	0	--
Grand	19	4	21.0
Gunnison	35	14	28.6
Hinsdale	1	1	100.0
Huerfano	89	46	51.7
Jackson	0	0	--
Jefferson	347	169	48.7
Kiowa	20	6	30.0
Kit Carson	44	20	45.5
Lake	48	24	50.0
La Plata	124	53	42.7
Larimer	279	133	47.7

TABLE XVII
(continued)

County	Total Probate Cases	Small Estates	Pct. Small Estates
Las Animas	124	81	65.3%
Lincoln	35	17	48.6
Logan	122	35	28.7
Mesa	272	143	52.6
Mineral	4	2	50.0
Moffat	50	12	24.0
Montezuma	45	22	48.9
Montrose	85	45	52.9
Morgan	97	48	49.5
Otero	141	57	40.4
Ouray	8	4	50.0
Park	15	6	40.0
Phillips	31	12	38.7
Pitkin	8	1	12.5
Prowers	82	31	37.8
Pueblo	569	325	57.1
Rio Blanco	36	7	19.4
Rio Grande	59	18	30.5
Routt	48	27	56.2
Saguache	44	21	47.7
San Juan	5	3	60.0
San Miguel	19	10	52.6
Sedgwick	24	15	62.5
Summit	9	N.A.	--
Teller	19	12	63.1
Washington	51	13	25.5
Weld	378	137	36.2
Yuma	69	30	43.5
Total	8,085	3,640	45.3%[a]

a. Douglas and Summit counties, for which information on number of small estates was not available, are not included.

Table XVIII

Number of Civil Cases Under $300, Filed in County Court, 1958

County	Total Civil Cases	No. Under $300	Per cent of Total Civil Cases	County	Total Civil Cases	No. Under $300	Per cent of Total Civil Cases
Adams	120	26	21.7	Lake	7	3	42.9
Alamosa	31	11	35.5	La Plata	41	10	24.4
Arapahoe	151	31	20.5	Larimer	102	22	21.6
Archuleta	4	0	---	Las Animas	32	1	3.1
Baca	11	3	27.3	Lincoln	2	0	---
Bent	12	5	41.7	Logan	6	3	50.0
Boulder	120	42	35.0	Mesa	161	26	16.1
Chaffee	22	7	31.8	Mineral	0	0	---
Cheyenne	2	0	---	Moffat	12	2	16.7
Clear Creek	8	6	75.0	Montezuma	79	21	26.6
Conejos	11	4	36.4	Montrose	20	14	70.0
Costilla	5	0	---	Morgan	7	0	---
Crowley	2	0	---	Otero	10	0	---
Custer	1	1	100.0	Ouray	2	0	---
Delta	31	9	29.0	Park	4	2	50.0
Denver[a/]	2,391	626	26.2	Phillips	8	1	12.5
Dolores	5	0	---	Pitkin	1	0	---
Douglas	6	1	16.7	Prowers	14	7	50.0
Eagle	6	4	66.7	Pueblo	425	118	27.8
Elbert	4	0	---	Rio Blanco	4	0	---
El Paso	261	70	26.8	Rio Grande	23	9	39.1
Fremont	9	5	55.4	Routt	14	4	28.6
Garfield	23	4	17.4	Saguache	2	0	---
Gilpin	0	0	---	San Juan	2	0	---
Grand	12	6	50.0	San Miguel	14	2	14.3
Gunnison	18	6	33.3	Sedgwick	1	0	---
Hinsdale	2	0	---	Summit	8	0	---
Huerfano	8	0	---	Teller	4	0	---
Jackson	2	1	50.0	Washington	17	5	29.4
Jefferson	205	48	23.4	Weld	105	19	18.1
Kiowa	2	0	---	Yuma	3	1	33.3
Kit Carson	10	4	40.0				
				Total	4,625	1,190	25.8

a/ Includes both county court and superior court.

Table XIX

Number of Justice Court and Municipal Court Appeals Filed in County Court in 1958[a]

County	Civil	Criminal	Total
Adams	11	45	56
Alamosa	1	6	7
Arapahoe	8	55	63
Baca	3	2	5
Bent	0	1	1
Boulder	2	19	21
Chaffee	0	1	1
Cheyenne	0	1	1
Clear Creek	0	4	4
Conejos	3	0	3
Crowley	0	2	2
Delta	3	5	8
Denver[b]	68	373	441
Dolores	0	1	1
El Paso	49	13	62
Fremont	1	6	7
Gilpin	0	1	1
Huerfano	0	2	2
Jefferson	14	48	62
Kit Carson	1	3	4
La Plata	3	3	6
Larimer	4	9	13
Las Animas	0	4	4
Logan	2	0	2
Mesa	4	5	9
Montezuma	4	5	9
Montrose	3	5	8
Morgan	4	2	6
Otero	1	1	2
Park	0	1	1
Prowers	1	8	9
Pueblo	14	45	59
Rio Grande	0	4	4
Routt	1	1	2
Saguache	0	1	1
San Miguel	0	1	1
Teller	1	0	1
Washington	2	1	3
Weld	10	16	26
Yuma	0	4	4
Total	218	704	921

a/ Counties in which no appeals were filed in county court include: Archuleta, Costilla, Custer, Douglas, Eagle, Elbert, Garfield, Grand, Gunnison, Hinsdale, Jackson, Kiowa, Lake, Lincoln, Mineral, Moffat, Ouray, Phillips, Pitkin, Rio Blanco, San Juan, Sedgwick, and Summit.

b/ Denver Superior Court

Justice and Municipal Court Appeals. In 1958, 921 appeals from justice and municipal courts were tried in county courts and the Denver Superior Court. Seven hundred and four of these appeals were in criminal cases and 218 were civil.[23] Almost 48 per cent of the total number of appeals were brought in Denver, with Adams, Arapahoe, El Paso, Jefferson, and Pueblo counties together accounting for another third of the total. There were no appeals brought in 23 counties. Table XIX shows the number of civil and criminal appeals heard in each county court in 1958.

Justice Courts. An analysis of justice court dockets was made in 1957-1958 by the Legislative Council Committee on Justice Courts. A summary of the data resulting from this analysis follows:[24]

Approximately 60,000 justice court cases were filed in 1957, not including the City and County of Denver. Traffic cases account for 60 per cent of the total; civil cases, 29 per cent; and PUC violations, game and fish violations and other criminal cases, 11 per cent. Approximately two-thirds of all justice court cases are tried in county seats, and 85 per cent are tried within 15 miles of of the county seats.

TABLE XX

Distribution of Counties According
to Number of Justice Court Cases Filed in 1957

More than 5,000 cases - 3 counties
Adams, El Paso, Jefferson

3,000 to 5,000 cases - 2 counties
Arapahoe, Pueblo

2,000-3,000 cases - 4 counties
Boulder, Las Animas, Mesa, Weld

1,500-2,000 cases - 3 counties
Larimer, Montrose, Morgan

1,000-1,500 cases - 2 counties
Douglas, Montezuma

750-1,000 cases - 6 counties
Fremont, Garfield, Huerfano, La Plata, Logan, Otero

23. Includes municipal ordinance violations.
24. For a more complete discussion see Justice Courts in Colorado, Chapter III pp. 32-53.

TABLE XX
(continued)

500-750 cases - 4 counties

Chaffee, Clear Creek, Grand, Lincoln

250-500 cases - 14 counties

Alamosa, Bent, Conejos, Delta, Eagle, Gunnison, Kit Carson, Lake, Moffat, Prowers, Rio Blanco, Rio Grande, Washington, Yuma

100-250 cases - 15 counties

Archuleta, Baca, Cheyenne, Costilla, Dolores, Elbert, Jackson, Kiowa, Ouray, Park, Routt, Saguache, San Miguel, Sedwick Summit

Fewer than 100 cases - 9 counties

Crowley, Custer, Gilpin, Hinsdale, Mineral, Phillips, Pitkin, San Juan, Teller

Of the 78 justices of the peace included in the docket analysis sample, more than half made less than $300 in fees in 1957; only nine per cent made more than $2,400, including five per cent who made the statutory maximum of $3,600.

V

CRIMINAL CODE STUDY -- COMMITTEE PROGRESS

The Colorado criminal code and rules of criminal procedure were among the major subjects designated in the two joint resolutions authorizing the administration of justice study.[1] There were several reasons why a study of the criminal code was considered necessary. While numerous changes have been made in the criminal code over the years, much of the language and many of the provisions are archaic because there has never been a complete revision. Recent studies of probation, parole, and correctional institutions have called attention to wide variations in sentencing and the lack of relationship between length of sentence and the offender's prospects for rehabilitation. Other related subjects upon which recent attention has been focused include the definition of criminal insanity and the provision of counsel for indigent defendants.

Rules of criminal procedure were included in the study because no such rules had been adopted in Colorado, although the supreme court had promulgated rules of civil procedure in 1941. Legislation recommended by the committee and passed by the General Assembly in 1960 gave the supreme court authority to promulgate rules of criminal procedure.[2] A Colorado Bar Association committee has recently completed a draft of criminal rules after a two-year study, and these rules are now being reviewed by the supreme court.

The committee considered the judicial system study the most important of its several assignments. For this reason full consideration of the criminal code was deferred until the work on court reorganization was completed, although some study was made of several criminal law subjects.

Among the topics discussed at the committee's regional meetings were several which related to criminal law: sentencing, probation, parole, definition of criminal insanity, the need for a public defender system, and the regulation of bail bondsmen. The docket analysis yielded information on these subjects, along with other data on criminal cases. Study was made of sentencing practices and parole board composition and authority in other states, as well as the recommendations of Colorado law enforcement, correction, and judicial officials on sentencing and release.

As a first step in revising the criminal code, the different categories of crime and related penalties in the Colorado statutes were compared with similar provisions in surrounding states and in certain other states selected as having modern and well-written criminal codes. Comparisons were also made with the preliminary drafts of the model penal code.[3] Two proposed statutes were

1. Senate Joint Resolution No. 16 (1959), and Senate Joint Resolution No. 9 (1960).
2. Chapter 37, Session Laws of Colorado, 1960.
3. Model Penal Code, Tentative Drafts, The American Law Institute, Philadelphia, 1956.

prepared for committee consideration. One was designed to combine all illegal acquisition of money, goods, and other property in one general theft statute. The other provided a definition of criminal attempt and provided the penalties therefor.

Originally, the committee was of the opinion that certain improvements could be made in the criminal laws prior to a complete revision. After further study, the committee feels that a piecemeal approach is not advisable and that such changes which it might wish to suggest as a result of its study thus far should be made only as part of a general revision of the criminal laws. Therefore, the only measure recommended by the committee is a bill to permit the creation of a public defender office on a single or multiple-county basis. Because of the amount of work involved in the judicial administration study, the committee was unable to do much more than make a beginning on the criminal code. Judging by the experiences in other states where the criminal code has been revised recently or is in the process of revision, and the comments of experts with whom the committee discussed this phase of the study, it will take at least two years and perhaps longer to complete this assignment.[4] It is the committee's recommendation, therefore, that the General Assembly authorize the continuation of the administration of justice study for the purpose of completing its work on the criminal code and related subjects. This report outlines the progress of the committee on these matters thus far.

Sentencing

In Colorado there is no fixed penalty for the commission of a felony. The statutes provide the range for each crime (e.g., voluntary manslaughter, minimum sentence of one year and maximum sentence of eight years; grand larceny, minimum sentence of one year and maximum sentence of ten years; aggravated robbery, minimum sentence of two years and maximum sentence of life). Minimum and maximum sentences for each offender are set within these limits by the district judge who tries the case. This method of fixing criminal penalties is known as indeterminate sentencing, which, in the broadest sense, is defined as any method of sentencing which includes a variable rather than a fixed period of incarceration.

There have been three major criticisms of sentencing in Colorado. First, penal, probation, and parole officials and some judges state that the sentences imposed usually have no relation to the offender's potential for rehabilitation or to the period of incarceration needed before this potential can be realized. More than 95 per cent of all offenders committed to the penitentiary and practically all offenders committed to the reformatory sooner or later are released.

4. New Mexico has been working on criminal code revision for five years, and the American Law Institute has been working on its model penal code since 1951.

Second, there is a wide variation in the sentences imposed for the same crime. Variation is expected because of previous criminal records, extenuating circumstances, and the potential for rehabilitation; however, it is argued that the variations in sentencing are not always related to these differences. Often first offenders will receive a greater sentence for a similar crime than repeated violators. These differences in sentence not only result in injustices to individual offenders but also limit the success of correctional programs. Inmates who feel they have received an unfair sentence are less likely to respond to prison rehabilitation programs.

Third, often the spirit and intent of indeterminate sentencing are violated by the imposition of sentences such as nine years, 11 months and 29 days to 10 years.[5] Such a sentence in effect is a fixed sentence, and provides no leeway for early release, if such is warranted by the inmate's attitude and performance in the institution.

A further complicating factor is the present method of parole release in Colorado. Each inmate of the penitentiary may receive certain statutory good time allowances which are deducted from his minimum sentence.[6] This allowance may be as much as two months during each of the first two years of incarceration; four months for each of the third and fourth years of incarceration; and five months for the fifth year and each succeeding year of incarceration. For example, an inmate with a minimum sentence of one year would be eligible for a parole after 10 months if he received his maximum good time allowance; an inmate with a four-year minimum sentence would be eligible for parole after three years if he received his maximum good time allowance. In addition to statutory good time allowances, so-called trusty time may be earned, not to exceed 10 days per month. A first offender is eligible for trusty time after he has been in the penitentiary for 30 days. An inmate with previous felony convictions is not eligible for trusty time until he has been in the penitentiary for one year.

There is some question as to whether there is much relationship between an inmate's readiness to return to society and the amount of statutory good time and trusty time which he may earn. The warden of the penitentiary and other correctional officials agree that the granting of good time allowances does not necessarily result in a release date which corresponds to an inmate's readiness to leave the institution.[7]

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5. Such sentences are not common, but there are many 9 to 10 and 4½ to 5 year sentences imposed as shown in Statistical Report and Movement of Inmate Population, Annual Report, July 1, 1959 through June 30, 1960, Colorado State Penitentiary, Canon City.
6. 105-4-4 and 105-4-5, Colorado Revised Statutes, 1953.
7. Colorado's Programs in the Field of Corrections, Colorado Legislative Council, Research Report No. 21, December 1956, p. 68.

The Colorado adult parole board has no power to release an inmate on parole before he has served his minimum sentence less accumulated statutory good time and trusty time. The board is reluctant to hold back an inmate from parole if these requirements are satisfied, unless the granting of parole is clearly against the public interest. The board recognizes that the institution would have a real custody, discipline, and morale problem which could erupt and be potentially dangerous to public safety if a high proportion of inmates were refused parole. By statute and precedent, inmates expect parole after serving the required length of time, and, in general, the parole board follows this policy.[8]

Several alternatives to present sentencing and parole practices in Colorado have been suggested. These include limitation of judicial sentencing authority, removal of good time provisions, appointment of a full-time qualified parole board, and the expansion of the parole board's authority for determining release based on professional evaluation of the prospects for parole success.

Sentencing in Other States

The method of sentencing and parole release in several other states include the above components in varying degrees and in several different ways, while others are similar to Colorado in these respects.

In twenty-five of the states having indeterminate sentencing, setting the sentence is a judicial responsibility. In six of these twenty-five states, one of the two extremes is fixed by statute while the other may be varied by the sentencing authority. These six states include: Idaho, Michigan, South Dakota, Tennessee, Texas, and Wisconsin. In all, except Michigan, the court may set the maximum term but not the minimum, which is set by statute (except for Idaho, which has no provision for a particular minimum term). In Michigan, the maximum term imposed is the statutory maximum, while the judge has the discretion to set the minimum.

In eighteen of these twenty-five states, the judge sets the maximum and minimum at his discretion within the statutory limits. These states include: Arizona, Arkansas, COLORADO, Connecticut, Illinois, Maine, Massachusetts, Minnesota, Nebraska, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Oregon, Pennsylvania, Vermont, and Wyoming. In Georgia, sentence is prescribed by the jury within the statutory minimum and maximum.

In three of these states there are statutory provisions designed to prevent a judge from fixing a minimum term so nearly identical with the maximum as to approximate a definite sentence (e.g., 4½-5 years). The statutes in these states (Maine, New York, and Pennsylvania) provide that the minimum term may not exceed half of the maximum term imposed.

8. Ibid., p. 84.

Generally, in these twenty-five states, parole eligibility depends upon completion of the minimum sentence. The exceptions are as follows:

State	Earliest Date of Possible Parole Release
Georgia	when one-third of minimum sentence has been served
Idaho	at any time, as state has no statutory minimum, and none is imposed by the court
New Hampshire	after two-thirds of minimum sentence, if minimum is two years or more
New Mexico	when one-third of minimum sentence has been served, if minimum less than 10 years; if more than 10 years, must serve one-third of first 10 plus one month for each additional year
North Carolina	when one-fourth of minimum sentence has been served
Texas	with perfect prison conduct record, when either minimum or one-fourth the maximum has been served, whichever is less; with imperfect conduct record, one-third of maximum or 15 years, whichever is less
Wisconsin	after two years, or one-half the maximum sentence, whichever is less

Several of these states allow prisoners time off for good behavior. This "good time" is subtracted from the minimum sentence in determining eligibility for parole release, as it is in Colorado.

In the states which allow release prior to completion of the minimum sentence, the parole authority, in effect, has some of the powers of a sentence-fixing board, in that it can release an inmate sooner than was prescribed in the minimum sentence. It would appear that the parole authorities in the states where the minimum (less good time) must be served still have sentencing discretion, because the parole boards have the power to withhold release until the maximum is served.

Sentence Set by Statute

In 11 states, the courts have the responsibility only for the determination of guilt. The sentence imposed is a restatement of the maximum and minimum set by statute. These states include: California, Florida, Indiana, Iowa, Kansas, Nevada, New Mexico, Ohio, Utah, Washington, and West Virginia.

The removal from judicial responsibility of sentencing discretion within statutory maxima and minima does not necessarily mean that this discretion has been transferred to the paroling authority. This transfer actually takes place only in those states where the paroling authority has the power to determine parole release at a time prior to the completion of the minimum sentence set by statute. These states (of those enumerated above) include: California, Iowa, Utah, and Washington.

California, of the four states whose parole boards have the authority to determine parole release prior to completion of the statutory minimum, appears to have a sentencing system which has made a complete break from the placement of sentencing authority in the courts and the use of good time and trusty time in considering parole release.

Sentence Determination by Board -- Pro and Con

Advocates of the approach taken to sentencing by California, Iowa, Utah, and Washington present the following principal arguments:

1) Legal training does not necessarily equip judges to be able to make proper determination of the sentence to be imposed. Consequently, the sentence may bear no relationship to the period of incarceration needed to enable an offender to have a chance for a successful return to society. Some violators need little if any confinement, while others may never be released safely.

2) The courts, for the most part, lack enough adequately trained probation officers to provide judges with sufficient pre-sentence data to assist them in setting sentences commensurate with an offender's possibilities for rehabilitation.

3) Sentencing practices differ among judges -- not only among those whose courts are in different districts, but also among judges in the same district. This disparity is known to convicted offenders who compare sentences, and it lessens the success of institutional rehabilitation programs for this reason.

4) Length of sentence can be more adequately and fairly determined by a full-time qualified board removed from the immediacy of the trial and local attitudes toward the case. This is especially true when the board has the assistance of competent professional institutional personnel who can observe and evaluate the offender during his period of incarceration.

Opponents of proposals to remove sentencing responsibility from the judiciary list the following major arguments:

1) The judge is the person most acquainted with the case. He has presided during the trial, has observed the offender, and is acquainted with his record. Consequently, the judge can do a better job of sentence setting than a board whose determination will be based primarily on secondary, written, reports.

2) There is no basis for assuming that a board would be any better at sentencing than the courts either in respect to length of sentence or sentence variation for the same offense. In fact, a qualified board could do much worse than the courts, if the institutions are not adequately staffed to provide the data the board needs.

3) There is the possibility of recourse in the courts if the offender believes that he has been given an unfair sentence. What recourse would be available from an unjust sentence determination on the part of the parole board?

4) There are institution-wise prisoners who can "con" professional personnel as easily as they can accumulate good time credits. Institutional conduct may not indicate that a man is ready for release, but it does show an effort to get along and obey rules and regulations; therefore, it should be considered in determining release.

5) The paroling authority will be subjected to undue public pressure and criticism if it exercises sentencing authority. Mistakes made by the board will cause public reaction which in turn could limit the board's effectiveness by forcing it to be more conservative in its actions, regardless of the worthiness of the cases before it.

Parole Board Composition

A full-time, well-qualified parole board is considered necessary for the successful operation of a correctional program which places considerable discretion for determining release with the paroling authority. Experience and training in correctional work, law, social welfare, or psychology are considered prime prerequisites for parole board membership. In addition, correctional institutions should be staffed with professional personnel who can develop and analyze the data which the parole board needs to determine release dates. Some of the states cited above meet these criteria in all respects, but more do not.

Nine states in which either the minimum or maximum sentence or both are fixed by law have full-time parole boards. These states include: California, Florida, Ohio, Utah, Washington, West Virginia, Michigan, Texas, and Wisconsin. Minimum qualifications must be met

by parole board members in all of these states except Texas, Utah, and Washington. In three states -- Florida, Michigan, and West Virginia -- training and experience in corrections and penal work, social welfare, and/or the social sciences is required. Qualifications are somewhat similar in Wisconsin, where parole board appointments are made by the civil service commission. The seven-member California Adult Authority is composed of people with varied professional backgrounds including law, corrections, social work, law enforcement, and probation. The board is required to include members representing a variety of disciplines, and standards are set for each.

In six of these nine states, parole board appointments are made by the governor. In Wisconsin, as previously indicated, appointments are made by the civil service commission. The board of corrections makes parole board appointments in Michigan, and a committee of state executives makes the appointments in Florida. Five states have three-member boards (Florida, Texas, Utah, West Virginia, and Wisconsin); three have five members (Michigan, Ohio, and Washington); and one (California) has seven members.

The other states in which sentencing is fixed, at least in part, by statute have part-time parole boards. In most of these states, board members are appointed by the governor and there are no qualifications for the position.

Evaluation of Programs in Other States

Most of the states which limit judicial sentencing report satisfaction with their present programs, but stress the need for qualified personnel on the parole board and institutional staffs to make the program effective. Many of these states report that it is difficult to measure program results on the basis of parole success for several reasons: 1) Accurate records usually were not kept prior to the adoption of the present program, so no comparison can be made. 2) There are so many factors involved in parole success that no definite evaluation can be made on this basis. 3) As a result of improved and expanded probation programs, first offenders and those violators who have the best chance of rehabilitation usually are not sentenced, so that prisons and ultimately the parole agency primarily receive the repeaters and hard-core failures. The prognosis of parole success for this group of violators is not too favorable under any circumstances, and a comparison of parole success for this group and a group of parolees of a previous year which included more first offenders and other less difficult violators would be unfair.

In general, these states report that their parole success would be less if their present programs had not been adopted, that further improvement is both desirable and possible, and that their programs are based, insofar as practical, on modern correctional concepts.

Comments on Sentencing at Regional Meetings

Two-thirds of the 27 district judges with whom sentencing was discussed at the committee's regional meetings favored a change in the method of sentencing. The other nine judges advocated retention of the present judicial sentencing authority. Most of the judges favoring change felt that the California system had merit and recommended that the maximum and minimum sentences be set by statute, with the courts' function confined to a determination of guilt. One district judge advocated one day to life sentences in all felonies, with the parole board to determine release within this range. Another district judge felt that the parole board should be given the discretionary authority to determine release at any time after six months had been served. These judges were unanimous in the opinion that a qualified full-time parole board would be necessary to make such a change in sentencing procedures successful. Fixed statutory sentences were favored rather than open-ended sentences to limit the effect of arbitrary parole board action, which might result in incarceration of unjust length.

Several reasons were given by the district judges in favor of adopting a system of statutory sentencing. Some judges said that it was not possible to determine at the time sentence is imposed what the offender's possibility for rehabilitation might be five to 10 years in the future. It was pointed out that legal training does not give judges special competence to determine what to do with a man after he has been found guilty. Even recognizing differences between individual cases, several judges felt that there was inequality in the imposition of sentences and that the proposed change would provide more opportunity for release on the basis of an offender's prospects for a successful return to society.

The judges who opposed a change in the method of sentencing pointed out that the sentencing judge is much more acquainted with the case and the offender than any board would be after reviewing the record and interviewing the offender months or years after the crime had been committed. In imposing sentence, these judges said they took into consideration the crime and extenuating circumstances as well as the information developed through the pre-sentence investigation.

Attorneys and other judges with whom the committee discussed sentencing at the regional meetings were also divided two to one on this question; the reasons advanced for both positions were very similar to those of the district judges.

Comparison of Crimes and Penalties in Selected States

As a prerequisite to the adoption of statutory sentencing, an analysis of the crimes and penalties provided by statute is necessary to determine whether the penalties are adequate both with respect to each crime and in relation to each other. A comparison

was made of Colorado criminal categories and penalties with those of other states and the model penal code. Mountain and neighboring plains states were used for this comparison, except for Wisconsin and Louisiana, which were included because of recent criminal code revision. This comparison is shown in Table XXI. Because of the considerable variation among the states shown in Table XXI with respect to most categories of crimes, further study is needed to determine which provisions in other states should be adopted in Colorado.

TABLE XXI

Comparison of Crimes, Penalties and Related Provisions, Colorado and Selected States

CRIME	COLORADO	WISCONSIN	LOUISIANA	MODEL PENAL CODE	NEBRASKA
First Degree Murder	Life or death (40-2-3)	Life (940.01)	Death only 1st degree, intent, or felony murder (14:30)	1st degree felony (1-20 to life) Death if aggravated	Life max. (28-401)
Second Degree Murder	10 yrs. to life (40-2-3)	Depraved heart 5-25 yrs. (940.02) 3rd degree murder (felony) 15 yrs. max. (940.03)	Same as above	Same as above	10 yrs. - life (28-402)
Voluntary Manslaughter	1-8 yrs. (40-2-8)	10 yr. max. (940.05)	21 yr. max. (14:31)	Second degree felony (1-3 to 10)	1-10 yrs. 28-403
Involuntary Manslaughter	1 yr. max. (40-2-8)	5 yr. max. (940.06)	(Negligent Homicide) 5 yr. max. (14:32)	Same as above	Motor Vehicle Homicide, 1-10 yrs. also misdem. 6 mos. max. (28-403.01)
Death while driving under influence	1-14 yrs. (40-2-10)	5 yr. max. (940.09)	No special statute	Negligent homicide 3rd degree felony (1-2 to 5)	No special statute
Assault & Battery Simple	1 yr. max. (40-2-35)	6 mos. max. (940.20)	Battery 2 yr. max. (14:35) Assault, 90 day max. (14:35)	Misdem. (1 yr. max.)	1-5 yrs. (28-413) Also misdem. (6 mos. max. 28-411)
Assault & Battery with deadly weapon	1-5 yrs. (40-2-34)	Aggravated battery (intent) 5 yr. max. (940.22) depraved heart - battery 10 yr. max. (940.23)	Battery - 10 yrs. max. (14:34) Assault - 2 yr. max. (14:37)	Second degree felony	Felony assault 2-15 yrs. (28-409)
A & B with intent to kill, rape, rob, steal, commit mayhem	(1 day to life if assault to rape)* (39-19-1) 1-14 yrs. (40-2-34)	No special statute	No special statute	Same as above	Shoot or stab 1-20 yrs. (28-410)
Mayhem	1-20 yrs. (40-2-24)	15 yrs. max. (940.21)	See Assault & Battery	Second degree felony intent to inflict s/b/i; intent to inflict non s/b/i with a deadly weapon	1-20 yrs. (28-406)
Rape - forcible	3 yrs. to life (40-2-28)	(Physical violence) 30 yrs. max. (944.01) (without consent - fraud) 15 yrs. max. (944.02)	Physical force, or female child under 12; Death (14:42) without consent or fraud 1-20 yrs. (14-43)	First degree felony if s/b/i not Ds companion; Second degree felony otherwise	Daughter - sister life (28-407), other 3-20 yrs. (28-408)
Rape - statutory	3 yrs. to life, if male is over 18; 1 yr. to 5 yrs. if male is under 18 (40-2-28)	Female under 12, male over 18, 30 yrs.max. Female under 16, male over 18, 15 yrs. max. Female under 18, 5 yrs. max. (944.10)	5 yrs. max. (14:80)	Third degree felony	3-20 yrs. (28-408)
Kidnapping	Life or death, if for ransom and victim harmed; 30 yrs. to life if ransom and no harm. 30 yrs. max. if no ransom (40-2-45)	Ransom - life, but if released safe 30 yrs. max. All other 15 yrs. max. (940.31)	Ransom - death, but if released safe - life "simple" 5 yrs. max. (14:45)	First degree felony except 2nd degree felony if released unharmed in safe place.	Ransom and injury death-life. Ransom life. Other 3-7 yrs. (28-417)

Table XXI Continued:

CRIME	COLORADO	WISCONSIN	LOUISIANA	MODEL PENAL CODE	NEBRASKA
Abortion	3 yrs. max. (40-2-23)	Other than mother unquickened foetus 3 yrs. max., quickened foetus 15 yrs. max, death of mother 15 yrs. max., unquickened mother 6 mos. max, quickened mother 2 yrs. max. (940.04)	1-10 yrs. (14:87)	Third degree felony if pregnant under 26 wks., 2nd degree felony if pregnant over 26 wks.	Vitalized foetus 1-10 yrs. (28-404) Other 1 yr. max. (28-405)
Larceny - grand	1-10 yrs. (40-5-2)	Theft crimes over $2,500, 15 yrs. max. $100-$2,500 5 yrs. max.	Theft crimes over $100,10 yrs. max, $20-$100, 2 yrs max. (14:67) Livestock 1-10 yrs. (14:67.1 Supp. 1959)	Third degree felony if over $500 (206.15)	1-7 yrs. (28-506)
Larceny - petit	6 mos. max. (40-5-2)	Under $100 6 mos. max. Special circumstances under $2,500 5 yrs. max. (943.20)	Under $20, 1st offense: 6 mos. max. 2nd offense: 6 mos.-1 yr. later offense 6 mos.-2 yrs. (14:67)	Misdem. if $50-500 Petty misdem. if under $50 (206.15)	First offense - misdem. 2nd offense, 1-2 yrs. (28-512)
Larceny from person	1-10 yrs. (40-5-2)	5 yrs. max. (943.20 (3)(d)	No special statute	Third degree felony (regardless of amount)	1-7 yrs. (28-505)
Larceny of auto	1-10 yrs. (40-5-10)	See larceny	See larceny	Auto or guns, third degree felony (206.15)	1-10 yrs. (28-522)
Joyriding	12 mos. max. 1st offense 1-10 yrs. 2nd offense within 5 yrs. (13-13-2)	5 yrs. max. (943.23)	No special statute		Misdem. 3-6 mos. (28-521)
Embezzlement	1-10 yrs (grand) 6 mos. max. (petty) (40-5-16)	See theft crimes under larceny	See theft crimes under larceny	Third degree felony if fiduciary third degree felony if over $500 (206.15)	Same penalty as larceny (28-538) Public moneys 1-21 yrs. (28-543)
False Pretenses	10 yrs. max. (grand) 6 mos. max. (petty) (40-14-2)	See theft crimes under larceny	See theft crimes under larceny	Same as larceny	Under $35: misdem. (30d) over $35 1-5 yrs. (28-1207)
Confidence game	1-20 yrs. (40-10-1)	See larceny	See larceny		2-5 yrs. (28-953)
No Acct. Checks	1-5 yrs. (40-14-10)	1 yr. max. (943.24)	See short checks	Petty Misdem? (206.22)	Misdem. or 1-10 yrs. (28-1212)
Short checks	Misdem. (40-14-20)	1 yr. max. (943.24)	Check over $100: 5 yr. max., $20-100: 2 yr. max., under 20: 6 mos. max, (14:71 Supp. 1959)	Same as above	Under $35: misdem. (90d) over $35: 7 yrs. max. (28-1213)
Receiving stolen property	1-10 yrs. (grand) 6 mos. max. (petty) (40-5-12, -22)	Under $100 - 6 mos. max., $100-2,500 5 yrs. max., over $2,500 15 yrs. max. (943.34)	Over $100: 10 yrs. max., $20-100 2 yrs. max., under $20: 6 mos. max. (14:69)	Third degree felony if over $500 or if dealer	Grand 1-7 yrs. (28-508)
Robbery - simple	1-14 yrs. (40-5-1)	10 yrs. max. (943.32)	5 yrs.max. (14:65)	Second degree felony	3-50 yrs. (28-414)
Robbery - aggravated (armed)	2 yrs. to life (40-5-1)	30 yrs. max. (943.32)	2-30 yrs. (14:64 Supp. 1959)	First degree felony if (1) attempt to kill or do s/b/i (2) purposely do s/b/i	No special statute
Blackmail (extortion)	20 yrs. max. (40-12-1)	5 yrs. max. (943.20)	1-15 yrs. (14:66)		Threatened kidnapping 1-20 yrs. (28-417) Other 1-3 yrs. (28-441 to 445)
Malicious mischief	If damage over $100 1-10 yrs. If less than $100, misdem. (40-18-1)	$1,000 damage 5 yrs. max. Spec. prop. 3 yrs. max. Other 6 mos. max. (943.01)	Danger to life: 1-15 yrs. (14:55) damage over $500: 2 yrs. max., damage under $500: 6 mos. max. (14:56) Intent to defraud: 4 yrs. max. (14:57)	Third degree felony if property over $1,000; misdem. if property over $100; petty if property is recklessly caused over $25 damage	$100 damage 1-3 yrs. (28-572) under $100 damage 6 mos. max. (28-573)
Forgery & uttering	1-14 yrs. (40-6-1)	10 yrs.max. (Legal documents or pub.record) (Other) 6 mos. max. (943.38)	10 yrs. max. (14:72)	Second degree felony if forgery of part of issue of stocks, bonds, money. 3rd degree felony if other writings.	1-20 yrs. (28-601)

Table XXI Continued:

CRIME	KANSAS	OKLAHOMA	NEW MEXICO	ARIZONA	UTAH	WYOMING
First Degree Murder	Death-life (21-403)	Death-life § 707	Death-life (40-24-10)	Death-life (13-453)	Death-life (76-30-4)	Death-life (6-54)
Second Degree Murder	Not under 10 yrs. (21-403)		Not under 3 yrs. (40-24-10) Attempt: 1-10 yrs. 40-6-10	Not under 10 yrs. (13-453)	10 yrs.-life (76-30-4)	20 yrs.-life (6-55)
Voluntary Manslaughter	First degree misdem. mansl. 5-21 yrs. 2nd degree heat of passion (cruel) 3-5 yrs. (21-407ff, 421)	First degree, not under 4 yrs. § 715	1-10 yrs. (40-24-10)	10 yrs. max. (13-457 Supp. 1959)	1-10 yrs. (76-30-6)	20 yrs. max. (6-58)
Involuntary Manslaughter	Third degree involuntary 6 mos; 3 yrs.; 4th degree heat of passion (not cruel) 6 mos. 2 yrs. (21-472, 423)	Second degree 2-4 yrs. or misdem.-1 yr. max. § 722	1-10 yrs. (40-24-10)	10 yrs. max. (13-457 Supp 1959) driving vehicle 1-5 yrs. or misdem. 1 yr. max. (13-457 Supp. 1959)	Misdem. 1 yr. max. (76-30-6)	
Death while driving under influence	No special statute	No special statute	No special statute	No special statute	1-10 yrs. (76-30-7,4 Supp. 1959)	No special statute
Assault & Battery Simple	1 yr. max. (21-436)	Misdem. (30d) (§ 644)	Upon wife: 30d-3 yrs., Felony assault 6 mos.-3 yrs., general misdem. 90d max. (40-6-1 to 4)	Assault-3 mos. max.; Batt.-6 mos. max., aggravated 1-5 yrs. (13-243 to 245)	Assault-3 mos. max., Batt.-6 mos. max., (76-7-2,4) by convict w/malice death-life (76-7-12 Supp. 1959) by convict: 3-20 yrs. (76-7-11 Supp. 1959)	Misdem.- 6 mos. max. (6-68)
Assault & battery with deadly weapon	10 yrs. max. (21-431)	5 yrs. max. or misdem.-1 yr. max.(§ 645)	Armed robbery: 1-5 yrs. (40-6-8)	1-10 yrs. (13-249)	5 yrs. max. (76-7-6)	Inflicts grievous harm misdem. 1 yr. max. (6-70)
A & B with intent to kill, rape, rob, steal, commit mayhem	10 yrs. max. (21-431)	Poison-not under 10 yrs. § 651 shooting-20 yrs. max. § 652, Other 5 yrs. max. or misdem.-1 yr. max. § 653	Rape-50 yrs. max. (40-6-9) intent to kill 1-25 yrs. 40-6-6)	Intent to murder not under 5 yrs.-life (13-248) rape & mayhem, etc. 1-14 yrs. (13-252)	Rape, mayhem: 1-10 yrs. (76-7-7) murder: 5 yrs.-life (76-30-14)	Rape: 1-50 yrs. (6-64) felonious intent: 14 yrs. max. (6-69)
Mayhem	5-10 yrs. (21-430)	7 yrs. max. or misdem.-1 yr. max. § 759	1-5 yrs. (40-30-1)	14 yrs. max. (13-521)	10 yrs. max. (76-41-2)	14 yrs. max. (6-72)
Rape-forcible	5-21 yrs. (21-424)	Forcible or male over 18, female under 14 or lunatic 15 yrs.-death §§ 1114-1115	1-99 yrs. (40-39-1)	5 yrs.-life (13-614)	Not under 10 yrs. (76-53-18)	1 yr. - life (6-63)
Rape-statutory	1-21 yrs. (21-424)	1-15 yrs. §§ 1114, 1116	Female under 16: life, 1-99 yrs. (40-39-1)	5 yrs.-life (13-614)	Female under 13:20 yrs.-life (76-53-18) carnal knowledge female 13-18: 5 yrs. max. (76-53-19, 76-1-15)	1 yr.-life (6-63)
Kidnapping	Ransom & injury death-life, ransom not under 20 yrs. (21-449 Supp. 1959) Other 30 yrs. max. (21-450)	To extort, 10 yrs. death, other 10 yrs. max. §§ 741, 745	For ransom: 5 yrs. death, child under 12: 6 mos.-20 yrs. Other: 10 yrs. max. (40-25-1 to 3)	Ransom-serious harm: death-life w/o parole ransom 20-50 yrs. Other 1-10 yrs. (13-491, 492)	Ransom-death, life other 1 yr.-life (76-35-1)	Ransom-harm death ransom 20 yrs.-life (6-59)
Abortion	1 yr. max. (21-437)	Quickened foetus 1st degree mansl. § 713, death of mother, 1st degree mansl. § 714, procuring - 3 yrs. max. or misdem.-§ 861	1-5 yrs. (40-3-1)	2-5 yrs. (13-211)	2-10 yrs. (76-2-1) solicitation by woman 1-5 yrs. (76-2-2)	14 yrs. max. (6-77) solicitation by woman misdem: 6 mos. max. (6-78)
Larceny-grand	Livestock 7 yrs. max., other 5 yrs. max. (21-534)	5 yrs. max. § 1705	1-10 yrs. (40-45-1)	Grand "theft" 1-10 yrs. (13-671)	1-10 yrs. 76-38-6	10 yrs. max. (6-132)
Larceny-petit	1 yr. max. (21-535 Supp. 1959)	Misdem. (30d) § 1706	Misdem. 3 mos. max. (40-45-1) Shoplifting-3rd offense 3-5 yrs. (40-45-25 Supp. 1959)	Petty "theft" misdem. (13-671) 6 mos. max. (13-1645)	Misdem. 6 mos. max. (76-38-7)	Misdem: 6 mos. max. 2nd offense: 10 yrs. max. (6-133)
Larceny from person	4 yrs. max. (21-2422)	Nighttime 10 yrs. max. § 1708	3 mos. - 4 yrs. (40-45-9)	1-10 yrs. (13-663,671)	Defined as grand (76-38-4) 1-10 yrs. (76-38-6)	No special statute
Larceny of auto	5-15 yrs. (21-534)	3-20 yrs. § 1720	No special statute	No special statute	No special statute	No special statute

Table XXI Continued:

CRIME	KANSAS	OKLAHOMA	NEW MEXICO	ARIZONA	UTAH	WYOMING
Joyriding	1 yr. max. (21-544)	Misdem. fine only § 1787	No special statute	Misdem. (13-672) 6 mos. max. (13-1645)	No special statute	No statute
Embezzlement	Same penalty as larceny (21-545)	As for larceny § 1462	Over $50: 1-10 yrs., under $50: misdem. 30-90 days, 40-45-19	Same penalty as larceny (13-688)	Same penalty as larceny (76-17-11)	Public funds: 21 yrs. max. (6-136) by atty: 20 yrs. max., other 14 yrs. max. (6-138 to 142)
False Pretenses	Same penalty as larceny (21-551)	Over $20 7 yrs. max., Under $20 misdem. § 1541	1-5 yrs. (40-21-1)	Included in "theft" see larceny	Same penalty as larceny (76-20-8 Supp. 1959)	10 yrs. max. (6-38)
Confidence Game	2-5 yrs. (21-930)	Over $20 7 yrs. max., Under $20 misdem. § 1541	2-5 yrs. (40-21-3)	1-5 yrs. also misdem. 1 yr. max. (13-312 Supp. 1959)	10 yrs. max. (76-20-17)	No special statute
No Acct. Checks	Under $50 6 mos. max., Over $50 1-5 yrs. (21-555 Supp. 1959)	Over $20 7 yrs. max., Under $20 misdem. § 1541	Over $20 5 yrs. max., Under $20 misdem. 3 mos. max.	Defined-felony (13-316 Supp. 1959) 5 yrs. max. (13-1645)	"Insufficient funds" Same as short checks	"Insufficient funds" Same as short checks
Short checks	See no acct. checks	Same as above	Same as above	Under $25-misdem. 6 mos. max. (13-1645) Over $25-felony (13-316 Supp. 1959) 5 yrs. max. (13-1645)	5 yrs. max. or misdem.-1 yr. max. (76-20-11 Supp. 1959)	Under $25-6 mos. max. (misdem); 2nd offense, 5 yrs. max Over $25- 5 yrs. max. (6-39, 40)
Receiving Stolen Property	Same penalty as larceny (21-549)	5 yrs. max. or misdem. 6 mos. max. § 1713	Under $50-misdem. 3 mos. max. Over $50: 1-10 yrs. 40-45-1	Over $50-felony (13-621) 5 yrs. max. (13-1645)	Grand: 5 yrs. max. Petit: misdem. 6 mos. max. (76-38-12, 76-1-16)	Same penalty as larceny (6-135)
Robbery-simple	First degree-10-21 yrs., 2nd degree 5-10 yrs. (21-530)	Two or more robbers: 5-50 yrs. § 800, force or fear: not under 10 yrs. § 798, other: 10 yrs. max. § 799	3-15 yrs. (40-9-1) (40-42-1)	Not under 5 yrs. (13-643)	5 yrs.-life 76-51-2	14 yrs. max. (6-65)
Robbery-aggravated (armed)	No special statute	5 yrs.-death § 801	3-25 yrs. (40-42-2)	No special statute	5 yrs.-life 76-51-3	5-50 yrs. (6-66)
Blackmail (extortion)	(Third degree robbery) 5 yrs. max. (21-530) 1-5 yrs. (21-2412)	5 yrs. max. § 1483	6 mos. - 1 yr. (40-46-1)	5 yrs. max. (13-401)	3 yrs. max. (76-19-3)	5 yrs. max. (6-147)
Malicious Mischief	Misdem. 1 yr. max.	Generally- misdem. 1 yr. max. §§ 1760 Special property 2, 3, 4, 5 & 10 yrs. max. §§ 1751-1786	Certain named realty, crops & fixtures 10 days-3 yrs. (40-47-5 to 25)	General-misdem. (13-501) 6 mos. max. (13-1645)	Misdem. 6 mos. max. (76-60-1 to 8 76-1-16)	Misdem. 6 mos. max. (6-227)
Forgery & uttering	First degree-21 yrs. max., 2nd degree-10 yrs. max., 3rd degree 7 yrs. max., 4th degree 6 mos.-5 yrs. (21-631)	First degree-7-20 yrs., 2nd degree 7 yrs. max. § 1621	1-5 yrs. §§ 40-20-1 to 17. 2nd offense: twice penalty (40-20-18)	1-14 yrs. (13-421)	1-20 yrs. (76-26-4)	14 yrs. max. (6-17)
Arson	Dwelling-2-20 yrs. Other bldg.-1-10 yrs, Personalty-1-3 yrs., Defraud insurer-1-5 yrs. Attempt 6 mos.-2 yrs. (21-58 to 585)	Inhabited bldg.-1-30 yrs. Other bldg: 1-15 yrs. Other-1-5 yrs. §§ 1390-1392	Dwelling: 2-20 yrs. Other bldg. 1-10 yrs., Personalty-1-3 yrs., Insured Personalty: 1-5 yrs Attempt: 1-2 yrs. (40-5-1 to 5)	Dwelling: 2-20 yrs. Other bldg. 1-10 yrs., Personalty: 1-3 yrs., Attempt 1-2 yrs., defraud insurer: 1-5 yrs. 13-231 to 235	Dwelling: 2-20 yrs. Other bldg. 1-10 yrs., Personalty 1-3 yrs., Defraud insurer 1-5 yrs. Attempt 1-2 yrs. (76-6-1 to 5)	Dwelling: 2-20 yrs. Other bldg. 1-10 yrs., Personalty 1-3 yrs., Attempt 1-2 yrs., Defraud Insurer 1-5 yrs. (6-121 to 125)
Burglary	First degree-10-21 yrs., 2nd degree 5-10 yrs. 3rd degree 5 yrs. max. (21-523) w/explosives 10-30 yrs. (21-526)	Occupied bldg. 7-20 yrs., Other 2-7 yrs. §§ 1431-1436 w/explosives 20-50 yrs. § 1441	1-15 yrs. (40-9-1, 3) armed, 3-25 yrs., explosives 10-30 yrs. (40-9-2, 5) daytime, 6 mos.-3 yrs. (40-9-7)	Daytime, 5 yrs. max., nighttime, 1-15 yrs. w/explosives, etc. not under 5 yrs. (13-302, 303)	W/explosives, 25-40 yrs., nighttime, 1-20 yrs. daytime, 6 mos.-3 yrs. (76-9-1 to 6)	14 yrs. max. (6-129)
Possess burglary tools	No statute	Misdem. 1 yr. max. § 1437, § 10	10 yrs. max. (40-9-9)	Misdem. (13-304) 6 mos. max. (13-1645)	Misdem. (76-9-8) 6 mos. max. (76-1-16)	10 yrs. max. (6-131
Sodomy (crime against nature)	10 yrs. max. (21-907)	10 yrs. max. § 886	1 yr. to life (40-7-7 Supp. 1957) Attempt 10 yrs. max. (40-7-8 Supp. 1957)	5-20 yrs. (13-651) Lewd Acts 1-5 yrs. (13-652)	3-20 yrs. (76-53-22)	10 yrs. max. (6-98)
Incest	7 yrs. max. (21-906)	10 yrs. max. (§ 885)	50 yrs. max. (40-7-3)	10 yrs. max. (13-471)	3-15 yrs. (76-53-4)	5 yrs. max. or misdem. 1 yr. max. (6-85)
Bigamy	6 mos.-5 yrs. (21-901)	5 yrs. max. (§ 883)	2-7 yrs. (40-7-1)	10 yrs. max. (13-271)	5 yrs. max. (76-53-1)	5 yrs. max. (6-84)
Knowingly marry bigamist	6 mos.-5 yrs. (21-905)	5 yrs. max. or misdem.-1 yr. max. § 884	No statute	3 yrs. max. (13-273)	No statute	No statute

Table XXI Continued:

CRIME	COLORADO	WISCONSIN 1955	LOUISIANA 1942	MODEL PENAL CODE	NEBRASKA
Arson	20 yrs. max., dwelling. 10 yrs. max., other realty. 3 yrs. max., personalty. 5 yrs. max., defraud ins. co. (40-3-1, et. seq.)	Building 15 yr. max. (943.02) Other property 3 yrs. max. (943.03) defraud insurer 5 yrs.max. (943.04)	Danger to life 2-20 yrs. (14:51) damage under $500, 1 yr. max. damage over $500 10 yrs. max. (14:52) intent to defraud 5 yr. max. (14:53)	Second degree felony if purposely burn house, occupied bldg. Third degree felony if to defraud ins. co. & no one endangered	Dwelling 2-20 yrs. Other bldg. 1-10 yrs. Personalty 1-3 yrs. Attempt 1-2 yrs. Defraud insurer 1-5 yrs. (28-504.01 to .05)
Burglary	1-10 yrs., 25-40 yrs. if dynamited (40-3-6, - 7)	10 yrs. max. (943.10) vehicle 1 yr. max. (943.11)	Armed or commits battery 1-30 yrs. (14:60) other 9 yrs. max. (14:62)	Third degree felony: day. Second degree felony: night, injury	1-10 yrs. (28-533) w/explosives 20 yrs.- life (28-5
Possess burglary tools	2 yrs. max. (40-3-8)	10 yrs. max. (943.12)	6 mos. max. (14:95)		1-5 yrs. (28-534)
Sodomy (crime against nature)	(1 day to life)* 1-14 yrs. (40-2-31)	5 yrs. max. (944.17)	5 yrs. max. (14:89)	Second degree felony if force, fear, victim under 10. Third degree felony if victim under 18. No crime if in private with consenting adults (207.5)	20 yrs. max. (28-919)
Incest	(1 day to life)* 6 mos. to 5 yrs., exc. 20 yrs. max. for father with daughter (40-9-6)	10 yrs. max. (944.06)	Ascendant-descendant siblings: 15 yrs. max. uncle-niece-aunt-nephew 5 yrs. max. (14:78)	Third degree felony (207.3)	5-15 yrs. (28-905) father w/daughter not under 20 yrs. (28-906)
Bigamy	2 yrs. max. (40-9-1)	5 yrs. max. (944.05)	5 yrs. max. (14:76)	Third degree felony (207.2)	1-7 yrs. (28-903)
Knowingly marry bigamist	1 yr. max. (felony) (40-9-2)	5 yrs. max. (944.05)	5 yrs. max. (14:77)	Misdem. (207.2)	No statute
Indecent Liberties with minor (sexual assault short of intercourse)	10 yrs. max., or (1 day to life)* (40-2-32)	10 yrs. max. (944.11 Supp. 1960)	2 yrs. max. (14:81 Supp. 1959)	Third degree felony if force, threats, carnal contact; otherwise, misdem. (207.6)	1st offense misdem./or 1-5 yrs. 2nd offense 5-10 yrs. (28.929)
Perjury	1-14 yrs. (40-7-1)	5 yrs. max. (946.31)	Felony trial 10 yrs. max. Other case 5 yrs. max. (14:123)	Third degree felony (208.20)	1-14 yrs. (28-701)
Subornation of Perjury	1-14 yrs. (40-7-1)	No statute	No statute		1-10 yrs. (28-702)
Bribery	1-5 yrs. (40-7-6, -7)	5 yrs. max. (946.10)	Public: 5 yrs. max. (14:118), voters: 1 yr. max. (14:119) commercial: 1 yrs. max. (14:73) sports participants: 1-5 yrs. (14:118.1 supp. 1959)	Third degree felony (208.10)	Juror or witness 1-5 yrs. (28-703)
Escape by felon	1-10 yrs. (40-7-54) Assault by lifer, death. Assault by other, 5-50 yrs. Hostage during escape 5-10 yrs. (40-7-50, -51, -52)	5 yrs. max. after arrest, before sentencing 1 yr. max. (946.42)	Danger to life 10 yrs. max. (14:109) Other 1 yr. max. (14:110)	Third degree felony if felon escapes, or if force, firearms used. Misdem. otherwise (208.33)	1-10 yrs. (28-736)
Conspiracy	To commit felony 1-10 yrs., to commit misdem. 1 yr. max. (40-7-30)	As for completed crime except crime penalized by life 30 yrs. max. (939.31)	Death-life crime 1-20 yrs. theft, rec. stolen goods 1 yrs. max. - other ½ max. for complete crime (14:26)		2 yrs. max. (28-301)
Attempt	No general attempt statute	Felony, battery, theft ½ penalty for completed crime except life-crime 30 yrs. max. (939.32)	Death-life crime 20 yrs. max., theft, rec. stolen goods 1 yr. max. other ½ max. for completed crime (14:27)		No general attempt statute
Possession of Narcotics	2-10 yrs., 1st offense, 5-15 yrs. 2nd offense (48-6-20)	1-5 yrs. also misdem. 1 yr. max. in jail (161.02)	10-15 yrs. (40:981)		1st offense 2-5 yrs. 2nd offense 5-10 yrs. Later offense 10-20 yrs. (28-470)
Sale of Narcotics	5-15 yrs. if victim 21, 10-20 yrs. if victim under 21 (48-6-20)	Same as above	Same as above		Same as above
Non-support	5 yrs. max. (43-1-1)	2 yrs. max. (52.03)	1 yr. max. (14:74 supp. 1959)	Misdem. (207.14)	1 yr. max. (28-446)

Table XXI Continued:

CRIME	COLORADO	WISCONSIN 1955	LOUISIANA 1942	MODEL PENAL CODE	NEBRASKA
Two prior felony convictions	Not less than longest term, not more than 3 times longest term (39-13-1)	1 felony, or 3 misdem. w/i 5 yrs. past; a. if max. term 1 yr. or less, add up to 3 yrs.; b. if max. term 1-10 yrs., add up to 6 yrs.; c. if max. term 10 or more yrs., add up to 10 yrs. (939.62)	No general statute, see petit larceny for special case	Extended term if D persistent offender, D professional criminal, D dangerous and mentally abnormal, D multiple offender (series of crimes charged together) Extended term punishments: 1st degree felony: 1-30 (min.) to life. 2nd degree felony 1-5 (min.) to 10-20 (max). 3rd degree felony 1-3 to 5-10	No general statute see petit larceny indecent liberties and narcotics sections
Three prior felony convictions	Life (39-13-1)		Same as above	Same as above	Third conviction not over 15 yrs. (21-107a)
Indeterminate sentence	Felony: except life terms, court fix max. & min. within the max. & min. fixed by statute (39-12-1)	Court sets max. term, min. is set by statute, parole eligibility after yr. or ½ of max. sentence whichever is less (with certain other exceptions) (606 & 607)		Court sets min. & max. within statutory limits which vary according to degree of crime	Court sets min. & max. within statutory limit
Good time reduction sentence	Good time: 1st yr.-2 mo., 2nd yr.-2 mos. 3rd yr. - 4 mos., 4th yr.-4 mos.5th and each succeeding yr.-5 mos. Trusty time: max. of 10 da. per mo. plus good time with additional 3 da. per mo. for constructive work. Both subtracted from min. sentence. (105-4-4 and 105-4-5)	Good time: similar to Colorado plus max. of 5 da. per mo. for diligence in labor/study. Note that time is subtracted from max. sentence rather than min.		Good Time: 6 da. per mo. plus a max. of 6 da. per mo. for extra meritorious behavior both subtracted from min. to determine date of parole eligibility and from max. to determine date when parole release mandatory (305.5)	Good Time: 1st yr.-2 mos., 2nd yr.-2 mos., 3rd yr.-3 mos., 4th and each succeeding yr.-4 mos. (29-263
Statutory Reference	Colo. Rev. Stat. Ann. (1953)	Wis. Stat. Ann. (1958)	La. Rev. Stat. Ann. (1951)		Nebr. Rev. Stat. Ann. (1956)

CRIME	KANSAS	OKLAHOMA	NEW MEXICO	ARIZONA	UTAH	WYOMING
Indecent Liberties with minor (sexual assault short of intercourse)	Solicitation to indecencies child under 15, 1-5 yrs. 15-18, 1 yr. max. (38-711 Supp. 1959)	1-20 yrs. § 1123	6 mos.-5 yrs. (40-34-21)	Lewd Acts 1-5 yrs. (13-652)	No statute	Some acts: 10 yrs. max. (6-98)
Perjury	Capital trial against accused death or not under 10 yrs. other felony not under 7 yrs. Other 7 yrs. max. (21-702)	Felony trial 2-20 yrs., other trial 1-10 yrs., Other 5 yrs. max. § 499	Capital case 3-15 yrs., Other 2-5 yrs. (40-32-1)	Procures death sentence-death; other 1-14 yrs. (13-572)	Judicial proceeding 1-5 yrs. Other-misdem. 1 yr. max. (76-45-13)	14 yrs. max. (6-153
Subornation of Perjury	Same penalty as for perjury (21-704)	Same penalty as for perjury § 504	Same penalty as for perjury (40-32-4)	1-14 yrs. (13-572)	Judicial proceeding 1-5 yrs. Other-misdem. 1 yr. max. (76-45-13)	14 yrs. max. (6-155
Bribery	Witness-1 yr. max. Juror-5 yrs. max. (21-708, 709) Pub. officer-7 yrs. max., Voter-5 yrs. max. (21-801-805)	Exec. Off.-10 yrs. max. (21 § 265) Legislator-2-5 yrs. (21 § 320)Other Officers-5 yrs. max. § 381 Jurors-10 yrs. max. § 383	Of Judges & Pub. Off.-1-5 yrs. Legislators-1-2 yrs. (40-8-1, 3) Witness-1 yr. max. (40-31-1)	Pub. Officer-1-14 yrs. Legislator-1-10 yrs., Juror, 1-10 yrs. (13-281, 285, 287)	Officers-5 yrs. max. (76-28-3, 76-1-15) Legislator-5 yrs. max. (76-28-17, 76-1-15) Juror 5 yrs. max. (76-28-28, 76-1-15)	14 yrs. max. (6-156, 157)
Escape by felon	Breaking out 5 yrs. max. (21-732) w/o breaking out 3 yrs. max. (21-734)	State pen or prison 2 yrs. max. §§ 434, 435, 9	1-5 yrs. (40-41-2) with weapons or explosives 25-50 yrs. (40-41-3)	Felony (13-392) 5 yrs. max. (13-1645)	10 yrs. max. (76-60-3)	1-10 yrs. (6-167 Supp. 1959)
Conspiracy	Kidnapping 5-50 yrs. (21-452)	Misdem. 1 yr. max. § 421, § 10	1-14 yrs. (40-11-1) to kidnap 5 yrs.-death (40-25-4)	1 yr. max. 13-331	Misdem. 1 yr. max. (76-12-1)	To kidnap-same as kidnapping (6-60) No general conspiracy stat.

Table XXI Continued:

CRIME	KANSAS	OKLAHOMA	NEW MEXICO	ARIZONA	UTAH	WYOMING
Attempt	Death-life crime 10 yrs. max. Other 1/2 max for compl. crime (21-101)	4 yrs. or more crime 1/2 max. for compl. crime Under 4 yrs. crime misdem. 1 yr. max. (21 § 42)	General: 6 mos.-3 yrs. (40-1-6)	General: over 5 yrs. crime ½ max. for compl. crime Under 5 yrs. crime 6 mos. max. 13-110	5 yrs. crime ½ max. for compl. crime, Under 5 yrs. crime 1 yr. max. (misdem) (76-1-31)	No general attempt statute
Possession of Narcotics	7 yrs. max. (65-2502, 2519a)	First offense, 2 yrs. max., Subseq. offense 3 yrs. max. (Title 63 §§ 402, 420)	First offense 2-5 yrs., 2nd offense 5-10 yrs. Subseq. Offense 10-20 yrs. adult selling to minor 10 yrs.-life (54-7-1, 54-7-15 Supp. 1957)	First offense 1 yr. max. (misdem) or 25 yrs. max. Subseq. offense: 25 yrs. max. (36-1002, 1020)	First offense 5 yrs. max. 2nd or subseq. 5 yrs. life (58-13a-2, 44 Supp. 1959)	First offense 2-5 yrs., 2nd offense 5-10 yrs., 3rd or Subseq.10-20 yrs. adult selling to minors, 1st offense 10-20 yrs. 2nd or subseq. 20-50 yrs. (35-350, 369)
Sale of Narcotics	Same as above	Same as above	Same as above	Same as above	Same as above	Same as above
Non-support	2 yrs. max. (21-442)	Desertion 1-10 yrs. §§ 851, 853 non-support misdem. 1 yr. max. §§ 852, 10	First offense 1 yr. max., 2nd & subseq. offense 2 yrs. max. (40-2-3)	Wife-felony (13-803) Child: misdem. (13-801)	5 yrs. max. (76-15-1 Supp. 1959)	3 yrs. max. (20-71)
Two prior felony convictions	Second conviction, Penalty doubled (21-107a)	Petit larceny 5 yrs. max. Over 5 yrs. crime: not under 10 yrs., 5 yrs. crime or less 10 yrs. max. (21 § 51)	No general statute, see forgery and petit larceny	Over 5 yrs. crime not under 10 yrs. Under 5 yrs. crime 10 yrs. max. Petty theft, molestation, lewd conduct under 5 yrs. crime, 5 yrs. max. (13-1649)	Not under 15 yrs. (76-1-18)	10-50 yrs. (6-9)
Three prior felony convictions	Third conviction, not under 15 yrs. (21-107a)	Same as above	Same as above	Same as above	Same as above	Life (6-10)
Indeterminate sentence	Min. and max. set by statute	No provision	Min. and max. are set by statute: parole eligibility after one-third of min. if less than 10 yrs. If more than 10 yrs. one-third of first 10 plus 1 mo. for each additional yr.	Court sets min. and max. within statutory limits	Court sets min. and max., both of which may be modified by Board of Pardons	Court sets min. and max. within statutory limits
Good time reduction sentence	Accumulated according to regulations promulgated by Board of Probation and Parole and subtracted from min. (62-2245)	1st yr.-3 da. per mo., 2nd yr.-6 da. per mo., 3rd and each succeeding yr.-8 da. per mo. (57 § 232)	Similar to Colo. plus 10 da. per mo. for meritorious service or conduct plus an additional lump sum award of 1 yr. for extra meritorious service or conduct. Note: all good time subtracted from max. sentence (42-1-54 and 42-1-55)	1st yr-2 mos., 2nd yr.-2 mos., 3rd yr. 4 mos., 4th yr.-4 mos., 5th and succeeding yr. 5 mos. plus trusty time equal to good time, both to be subtracted from min. if first offense or from max. If second or subseq. offense (31-251 and 31-252)	1 yr. sentence or less-5 da. per mo. 1-3 yr. sentence-6 da. per mo., 3-5 yr. sentence-7 da. per mo. 5-10 yr sentence-8 da. per mo., 10 yrs. sentence or more-10 da. per mo. Note: court decisions have held that it is not mandatory that good time allowances be applied by the Board of Pardons in exercising its authority under the Indeterminate sentencing law. (77-62-10)	Similar to Colo. plus special good time allowance conferred by Board of Pardons not to exceed 210 da. in any 12 mo. period: both to be deducted from max. (7-308 and 7-325)
Statutory reference	Kan. Gen. Stat. Ann. (1949)	Okla. Stat. Ann. Cit. 21, (1958)	N.M. Stat. Ann. (1953)	Ariz. Rev. Stat. Ann. (1956)	Utah Code Ann. (1953)	Wyo. Stat. Ann. (1957)

* Indeterminate sentence for sex offenses. 39-19-1, Colorado Revised Statutes, 1953, as amended.

Abbreviations:

D = Defendant
s/b/i = serious bodily injury

Counsel for Indigent Defendants

In district court criminal actions, statutory authority is given the judge to appoint counsel for indigent defendants.[9] This authority is permissive rather than mandatory, but if counsel is appointed he receives a fee fixed by the judge and paid by the county in which the case is tried.[10] There are no provisions for court-appointed counsels in cases before county, juvenile, and municipal courts. The method of providing counsel for indigent defendants in Colorado has been criticized for several shortcomings: 1) Counsel is provided only for district court defendants when there is often need for counsel in other courts as well. 2) Usually counsel is not appointed until the defendant is arraigned, and to prepare an adequate defense, counsel should be appointed as shortly after arrest as possible. 3) The alleged violator is entitled to the best possible defense, but often, inexperienced attorneys are appointed. 4) The present system does not provide the investigatory and other facilities necessary for a complete defense. 5) In some counties, the fees paid are too small for the work involved in preparing an adequate defense. 6) In some of the larger counties where the fees paid are more commensurate with the work required, the total cost is too great for the services provided.

Other Methods of Providing Counsel

These criticisms have also been made of the assigned-counsel system in other states. As a result, several alternate approaches to providing counsel for indigent defendants have been developed. These include the voluntary-defender system, the public-defender system, and the mixed private-public system.[11]

These systems may be described as follows:[12]

The Voluntary-Defender System

> Voluntary-defender organizations...[are] private, non-governmental organizations representing indigent defendants accused of crime. They may or may not be affiliated with a civil legal aid organization...
>
> The voluntary-defender system is characterized by what may be termed the "law-office" approach to the representation of the indigent defendant. While the assigned-counsel system

9. 39-7-29, Colorado Revised Statutes, 1953.
10. Ibid.
11. Equal Justice for the Accused, Special Committee of the New York City Bar Association and the National Legal Aid Association, Doubleday & Company, Inc., Garden City, New York, 1959, p. 25.
12. Ibid., pp. 50-52.

generally results in a number of different lawyers being assigned from time to time to represent indigent defendants, the voluntary-defender system creates a law office which the court may assign to represent any and all indigent defendants. These law offices vary in size from the substantial organizations of New York and Philadelphia to smaller offices such as New Orleans. Nevertheless, under this system the function of defending indigents is centralized in a professional defense unit.

Voluntary-defender offices are privately controlled and supported. Private control is usually achieved through an independent governing body to which the staff of the organization is responsible. Financial support is sought either through independent efforts to secure charitable donations or through participation in cooperative charitable efforts such as the Community Chest. In some instances, both methods are used.

The voluntary-defender system may utilize trained, salaried investigators to assist its legal staff. It may also be aided by volunteers from private law offices or local law schools...

The Public-Defender System

The public defender, like the public prosecutor, is a public official. The former is retained by the government to fulfill society's duty to see that all defendants, irrespective of means, have equal protection under the law; the latter is retained by the government to serve society's interest in law enforcement. Generally, whenever there is a public-defender office, that office represents all indigent defendants in those courts in which the public defender regularly appears.

Public-defender systems vary in size from large offices such as those in Los Angeles County and Alameda County, California, to a single-lawyer office such as the public defender in the New Haven District in Connecticut. Some, such as certain offices in

California, have facilities for investigation; others have only limited funds and facilities.

The staff of public-defender offices may be selected through civil-service procedures, appointed by the judiciary or the appropriate local officials, or elected. On the whole, the legal staffs of public-defender offices appear to be relatively stable and in a number of instances these staffs have developed the characteristics of career services.

The larger public-defender offices receive office facilities from the government. However, smaller public-defender offices often are operated from the private law office of the attorney serving as public defender.

Public-defender systems are financed by public funds. In some instances, they are treated in the same manner as other government institutions and submit a yearly budget to the proper appropriating body. Others operate on a fixed retainer basis, the public defender being paid a yearly salary or fee for his services and being expected to finance his office expenses from his compensation.

The Mixed Private-Public System

The cities of Rochester and Buffalo, New York, have a mixed private-public system which is unique in the United States.

Rochester has had for some time a Legal Aid Society which is active in civil cases. In 1954, pursuant to an enabling statute, the Legal Aid Society requested and received from the Board of Supervisors of Monroe County an appropriation to establish a defender service to function in the inferior criminal courts of the county. A lawyer employed by the Society has since performed this function.

Thus, Rochester furnishes counsel to the indigent defendant in lower court criminal cases within the organizational framework of a private legal aid society and supports this system by public funds. Buffalo has recently instituted a similar program of operation.

Recommendations for the Defense of the Indigent in Colorado

In both the 1957 and 1959 sessions of the General Assembly, a bill was introduced to establish a public defender system in judicial districts with more than 50,000 population. A public defender was to be appointed for each such district by the governor from persons recommended to him by the district judge or judges. The salaries set for public defenders were comparable to those for district attorneys. In neither session was this measure approved by the General Assembly.

Permissive Public Defender System

In September 1960, the Metropolitan Public Defender Committee was formed with its membership composed of representatives from the Legal Aid Society, Denver Mental Health Association, League of Women Voters, Catholic Welfare, American Civil Liberties Union, and other organizations. After considerable study, this group has recommended legislation patterned after the Model Defender Act, which was drafted by the National Legal Aid and Defender Association in conjunction with the American Bar Association. This model act was adopted in 1959 by the National Conference of Commissioners on Uniform State Laws.

The proposed legislation differs from the measures introduced in 1957 and 1959 in three important respects: 1) The act is permissive rather than mandatory. 2) All counties, singly or in groups, may establish a defender system instead of limiting the office of public defender to judicial districts of a certain size. 3) The public defender would be authorized to represent indigent defendants charged with crimes in county and municipal court, as well as in district court.

In those counties which would establish the office of public defender as permitted in this act, the county commissioners would appoint the defender, set his salary, and provide adequate office space and supplies. The commissioners would also determine the number of additional professional and clerical staff members, prescribe their method of appointment, and set their salaries. If a public defender office were established on a multi-county basis, the county commissioners of the several counties would make the appointment of the defender jointly and devise a formula for sharing the expense of the office. In the City and County of Denver, the bill provides that the public defender would be appointed by the mayor.

Even if the office of public defender is established, the court would have the authority to appoint an attorney other than the public defender in the same way as now provided by law in district courts. If the defender were appointed, however, it would be his duty to represent the indigent defendant and provide counsel at every stage of the proceedings following arrest.

The act is flexible enough to permit the court to appoint a representative of a local legal aid and/or defender organization as counsel, if the county does not wish to establish the office.

Proponents of this measure feel that the permissive and flexible provisions will make it possible for each local area to adopt a system tailored to meet its own needs. The Metropolitan Defender Committee proposed this measure primarily to make it possible for a defender office to be created in Denver and, perhaps, in the large surrounding counties. The committee's opinion is that the present method of assigning counsel, especially in Denver, is extremely expensive for the services provided. This committee contends that more defendants can be assisted more adequately at less cost through a public defender system and has cited experience in other major cities as examples.

Fees Paid Court-Appointed Attorneys

Table XXII shows the annual amount of fees paid court-appointed attorneys in Denver for 1950, 1954, and 1957 through 1959. The annual total of fees paid increased almost 400 per cent from 1950 to 1959.

TABLE XXII

Court-Appointed Attorney Fees Paid,
Denver District Court Criminal Divisions,
for Selected Years

Year	Amount
1950	$ 27,111
1954	40,175
1957	63,552
1958	80,225
1959	133,794

Denver and the two Denver-metropolitan area judicial districts (17th and 18th) for which data were available paid court-appointed attorneys considerably higher fees than the remaining districts in criminal cases filed in 1958. The mean and median fees paid in each judicial district for which information was available is shown in Table XXIII.

Only the three judicial districts already cited had mean and median court-appointed attorneys' fees in excess of $100, and in five judicial districts both the mean and median fees were less than $75. Many of the attorneys and judges who appeared before the committee at its regional meetings complained of the low fees paid, but pointed out that the county commissioners refused to allow larger amounts. The attorneys stated generally that they tried to do an adequate job, even if the fees were not commensurate with the work involved. However, many felt that they lacked sufficient time for investigation to do a thorough job.

TABLE XXIII

Fees Paid Court-Appointed Attorneys,
Criminal Cases Filed in 1958 by Judicial District

Judicial District[a]	Mean	Median
2nd	$195	$150
3rd	25	25
4th	93	75
6th	83	75
7th	41	40
8th	53	35
9th	82	75
13th	81	50
15th	62	61
16th	35	35
17th	187	175
18th	333[b]	150

a. Information not available for 1st, 5th, 10th, 11th, 12th, and 14th districts.
b. Not a true reflection of average fees because of the Early case and one or two other involved cases which resulted in large fees to court-appointed attorneys. These fees raised the average considerably; therefore, the median is a much better indication of typical fees paid.

Defendants Represented by Counsel in Criminal Cases

One-fourth of the defendants in criminal cases filed in the district courts in 1958 were not represented by counsel. In three judicial districts (11th, 12th, and 14th), more than three-fourths of the defendants were not represented by counsel, and there were three others (4th, 9th, and 16th) where counsel appeared for less than half of the defendants. In contrast, there were five districts (2nd, 3rd, 8th, 15th, and 17th) where 88 per cent or more of the defendants had attorneys. In one of these districts (15th), all defendants were represented by counsel.

Sixty per cent of the defendants represented by counsel had court-appointed attorneys. This proportion varied from almost 80 per cent in the 3rd District to 12.5 per cent in the 12th District. In a number of cases in which no counsel appeared, the docket analysis shows that a plea of guilty was entered on arraignment and that no

counsel was requested. Some criminal cases in which there was no representation by counsel were dismissed at the request of the district attorney without prosecution, and in a few instances the alleged offender had not been apprehended or had been returned to prison for parole violation rather than prosecuted on a new charge.

Even when these factors are taken into consideration, the small number of court-appointed attorneys in some judicial districts as shown by the docket analysis indicates that present statutory provisions for court-appointed counsel may not be entirely adequate. An analysis by judicial district of defendants represented by counsel in criminal cases filed in 1958 is shown in Table XXIV.

TABLE XXIV

Defendants Represented by Counsel
Criminal Cases Filed in 1958 by Judicial District

	1	2	3	4	5	6	7
Judicial District	No. of Defend-ands	No. for Which Counsel Indicated[a]	Rep. by Counsel	Pct. 3 of 2	No. Rep. by Ct. Appt. Attorney	Pct. 5 of 3	Pct. 5 of
1st	Incomplete Data						
2nd	1,056	1,046	919	87.8%	594	64.6%	56.8%
3rd	113	97	93	95.8	74	79.6	76.3
4th	159	131	61	46.6	25	41.0	19.8
5th	15	15	8	53.3	2	25.0	13.3
6th	80	65	47	72.3	29	61.7	44.6
7th	266	220	130	59.1	90	69.2	40.9
8th	259	244	224	91.8	143	63.8	58.6
9th	62	58	25	43.1	14	56.0	24.1
10th	218	187	132	70.6	51	38.6	27.3
11th	50	43	6	13.9	4	66.7	9.3
12th	96	68	16	23.5	2	12.5	2.6
13th	129	120	82	68.3	37	45.1	30.8
14th	52	43	6	13.9	2	33.3	4.6
15th	52	38	38	100.0	30	78.9	78.9
16th	88	80	38	47.5	11	28.9	13.8
17th	82	82	74	90.2	36	48.6	43.9
18th	89	66	51	77.3	30	58.8	46.0
Total	2,866	2,603	1,950	74.9%	1,174	60.2%	45.1

a. Data not available for all cases on presence of counsel.

Obstacles and Objections to Public Defender System

One of the major obstacles to adopting a public defender system in most of the judicial districts is the small number of criminal cases filed each year. Only eight judicial districts have more than 100 criminal cases filed annually. Proponents of the public defender system contend that the appointment of a part-time public defender and assistants in these districts at salaries equal to those received by the district attorney and his assistants would provide better defense counsel at less cost. At the committee's regional meetings, very few attorneys and judges in non-urban districts wished to adopt the public defender system in their areas, although conceding that perhaps such a system would work in Denver and the surrounding counties. Expense and the small number of criminal cases were cited as the reasons why a defender system would not be satisfactory in rural areas.

There have also been objections to the adoption of the public defender system in Denver and other metropolitan areas. Some judges and attorneys feel that adequate defense is now being provided and at less cost than through a public defender's office.

The Legislative Council Committee on the Administration of Justice has recommended the adoption of the legislation proposed by the Metropolitan Defender Committee, because it is permissive rather than mandatory, so that no county would be required to adopt the system unless there was local support.

Licensing and Regulation of Bail Bondsmen

There is no provision in the Colorado statutes regulating bail bondsmen or prescribing the terms and conditions for the issuance of bail bonds. The absence of such regulation has led to several alleged malpractices.[13] Because there are no regulations or qualifications applying to bail bondsmen, it is alleged that many ex-convicts are now in the bail bond business. There is no way at present to prohibit possible arrangements between bondsmen and attorneys, which might require alleged violators to engage certain counsel before bond would be made. It was stated that fees charged by bail bondsmen were exorbitant and that it was not an uncommon practice for a bondsman to request the court to terminate bond after the fee had been paid on the grounds that the alleged violator was a poor risk, even though this is not the case.

With the goal of taking some corrective legislative action, an examination was made of statutory regulations in other states pertaining to bail bondsmen. Seven states (Arizona, Connecticut, Florida, Georgia, Massachusetts, New Hampshire, and New York)

13. As indicated by some judges and attorneys who attended the March 18 regional meeting of the Legislative Council Committee on the Administration of Justice.

were found to have such legislation. A summary analysis of each state law is presented below:[14]

Arizona

Arizona requires only that each professional bondsman (other than a surety company) be registered with the clerk of the superior court.

Connecticut

This act requires that each professional bondsman be licensed by the state and includes other regulations.

Bondsmen Licensed. Any person who makes bail in five or more criminal cases, whether for compensation or not, must be licensed.

Licensing Authority. The state police commissioner is charged with the licensing and regulation of professional bondsmen.

Qualifications. Each applicant must make a sworn statement which contains the following:

(a) a list of assets and liabilities
(b) applicant's fingerprints and photo
(c) proof of sound moral character
(d) proof of financial responsibility
(e) statement that applicant has never been convicted of a felony

The commissioner may deny or suspend a license if any of the above are not truthfully provided.

License Fee. The license fee is $100.

Maximum Bond Fees. First $100 of bond -- $5 fee; $100 to $5,000 -- five per cent of bond amount; over $5,000 -- 2.5 per cent of bond amount.

Annual Report. Each bondsman must submit an annual report to the commission showing: 1) the number of bonds handled; 2) amount of bonds; and 3) the fees charged.

Penalty. For violation of any of the above laws, sentence may be $1,000 fine and/or two years in jail.

Florida

This state has the most comprehensive regulations of the states which have such laws.

14. Except for Georgia, for which current statutes were not available.

Bondsmen Licensed. The state licenses sureties, bail bondsmen, and runners (who are leg men for professional bondsmen).

Licensing Authority. The state treasurer is the designated insurance commissioner and enforces the law regulating bondsmen and runners.

Qualifications for Bondsmen. Each applicant for a license must take an examination administered by the commissioner of insurance. In addition, he must show the following qualifications:

(a) 21 years of age
(b) citizen and resident for six months
(c) experience in bonding business by previous employment or completion of correspondence course
(d) high moral character
(e) a detailed financial report
(f) the rating plan the applicant will use (bond fees)

License Fee. The license fee in Florida is $10.

Annual Report. Once a year the professional bondsman must file a statement of his assets and liabilities and must list every bond forfeiture.

Penalty. Any violation of law may be punished by $500 fine and/or six months in jail.

Other. Several specific prohibitions are made in the law pertaining to the conduct of bondsmen, including:

(a) Bondsmen may not advise employment of a particular attorney.
(b) Bondsmen may not solicit business in court.
(c) Bondsmen may not pay any fee to a jailer, attorney, policeman or public official.
(d) No bond agency may hold itself out as a surety company.

Massachusetts

Bondsmen are required to register, but are subject to very few regulations; they are regulated by the local courts.

Bondsmen Registered. All bondsmen, other than surety companies, who make bond on five or more occasions must be registered.

Registering Authority. Each bondsman must register with and be approved by the superior court (similar to Colorado's county court) and be subject to the rules of the court.

Monthly Report. A 1959 amendment to the Massachusetts law requires each bondsman to submit a monthly report to the chief judge of each superior court showing the bail or surety, defendant's name, offense charged, and fee charged on each case bonded for that month.

Penalty. Any violation of Massachusetts law is subject to $1,000 fine and/or one year in jail.

New Hampshire

The law requires registration of all bondsmen and makes them subject to limitations on the fees that may be charged.

Bondsmen Registered. All professional bondsmen who receive compensation for making bail must register.

Registering Authority. The clerk of the superior court registers and administers an oath of financial responsibility to each bondsman.

Registration Fee. The clerk of each superior court sets the fee.

Maximum Fees. Professional bondsmen are prohibited from charging more than five per cent of the amount of bail and in no instance can charge more than $100 for a bond.

Penalty. Failure to comply with any of the above requirements may result in a $100 fine or 30 days in jail.

New York

New York has a rather rigid set of license requirements for bondsmen.

Bondsmen Licensed. Any person other than a surety company who makes bond on more than two occasions within a two-month period must be licensed.

Licensing Authority. The superintendent of insurance licenses and regulates all professional bail bondsmen.

Qualifications. Each applicant must submit to a written examination over any phase of the bonding business administered by the superintendent of insurance. In addition, each applicant must show proof of good character and reputation.

Qualification Bond. Each applicant must post a $5,000 bond in order to do business in New York State.

License Fee. Examination fee of $5 and a license fee of $25 is charged to applicants.

Other. The superintendent of insurance may suspend or revoke such licenses for any "fraudulent or dishonest conduct" after due notice and opportunity for hearing is given the licensee.

Suggested Legislation for Colorado

Proposed legislation for regulating bail bondsmen in Colorado has been drafted for consideration along with other subjects to be included in a major revision of the criminal code. An outline of this proposed legislation follows:

Professional Bondsmen to be Licensed

This provision is patterned after the law in Connecticut which requires any person who makes a business of furnishing bail in criminal cases to be licensed as a professional bondsman. It also requires any person who furnishes bond in five or more criminal cases to be licensed; this provision allows a person to occasionally furnish bail for a friend or relative without being required to register as a professional bondsman. Surety companies are exempted because their bonding activities are already regulated.

Department of Insurance Vested with Enforcement

The department of insurance is suggested as the authority to enforce the provisions of this article. This is done in at least one other state (New York). However, other state agencies that might be qualified to enforce this bill are the department of state and the office of judicial administrator.

License Application, Qualification Bond, and Forfeiture

The applicant for a professional bondsman's license is required to provide certain information to the department of insurance. Persons who have been convicted of a felony or crime of moral turpitude and persons who are engaged in law enforcement are prohibited from doing business as a professional bondsman (as is required in the laws of Connecticut, Florida, and New York).

Each applicant is also required to post a $5,000 qualification bond with the department of insurance as proof of his financial responsibility. Under present law, the attorney general must initiate civil action in order to collect the amount due on a defaulted bond. The provision in the proposed bill requiring a $5,000 qualification bond insures the court against loss on a bond issued by a professional bondsman. If a bond issued by a professional bondsman is declared forfeited and not paid within a reasonable time, the court may order the department of insurance to declare the qualification bond of such professional bondsman to be forfeited. In addition, the department is authorized to suspend the license of a professional bondsman until such time as the bondsman posts a new qualification bond.

License Fee

The license fees of the states which regulate professional bondsmen vary considerably (from $10 in New York to $100 in Connecticut); a $50 fee was selected as an arbitrary figure between these extremes. While no estimate is available on the number of bondsmen in this state, the $50 fee should provide most of the cost of administering the act.

Annual Reports Required

In order to detect fraudulent activity on the part of a professional bondsman, provision is made for annual reports to the department of insurance. Such reports will provide the department with sufficient information to investigate properly any suspicious activities on the part of a professional bondsman.

Denial, Suspension, Revocation, and Refusal to Renew License

The department is authorized to deprive a professional bondsman of his license for misrepresentations made to the department, fraud, or dishonest business activity.

Notice to Courts of Names of Bondsmen

This provision requires the department of insurance to provide all courts of the state with the names of professional bondsmen licensed under the act. Courts are prohibited from accepting bond from a professional bondsman unless such bondsman is licensed under the act.

Maximum Commission or Fee

Since professional bondsmen are in a position to charge unreasonable fees, a maximum commission would be set by statute. Connecticut limits bond fees to five per cent of any bond up to $5,000 and 2.5 per cent of bond amounts in excess of $5,000. New Hampshire limits professional bondsmen fees to five per cent of the amount of bail, not to exceed $100. It is proposed that bond fees be limited to 10 per cent on the first $100 of bail furnished, five per cent on the amount of bail furnished up to $5,000, and not more than 2.5 per cent of the amount of bail in excess of $5,000. As an alternative to establishing maximum fees, each professional bondsman could be required to submit a schedule of his bail bond fees to the enforcing agency (as is provided in the Florida law).

Prohibited Activities -- Penalties

Several prohibited activities for professional bondsmen are enumerated and criminal penalties provided; these activities are similar to those contained in the laws of Florida and Connecticut.

This provision also prescribes a criminal penalty for one who attempts to act as a professional bondsman under the act without a license.

Penalty for Violation of Bond Conditions

It would be unlawful for a person to "jump bond." Bond jumping is similar to theft in that it deprives another person of his property. It was thought that this provision might give some measure of protection to professional bondsmen.

APPENDIX A

JUDICIAL ARTICLE
CONSTITUTION OF ALASKA

Article IV: The Judiciary

Judicial Power and Jurisdiction.

SECTION 1. The judicial power of the State is vested in a supreme court, a superior court, and the courts established by the legislature. The jurisdiction of courts shall be prescribed by law. The courts shall constitute a unified judicial system for operation and administration. Judicial districts shall be established by law.

Supreme Court.

SECTION 2. The supreme court shall be the highest court of the State, with final appellate jurisdiction. It shall consist of three justices, one of whom is chief justice. The number of justices may be increased by law upon the request of the supreme court.

Superior Court.

SECTION 3. The superior court shall be the trial court of general jurisdiction and shall consist of five judges. The number of judges may be changed by law.

Qualifications of Justices and Judges.

SECTION 4. Supreme court justices and superior court judges shall be citizens of the United States and of the State, licensed to practice law in the State, and possessing any additional qualifications prescribed by law. Judges of other courts shall be selected in a manner, for terms, and with qualifications prescribed by law.

Nomination and Appointment.

SECTION 5. The governor shall fill any vacancy in an office of supreme court justice or superior court judge by appointing one of two or more persons nominated by the judicial council.

Approval or Rejection.

SECTION 6. Each supreme court justice and superior court judge shall, in the manner provided by law, be subject to approval or rejection on a nonpartisan ballot at the first general election held more than three years after his appointment. Thereafter, each supreme court justice shall be subject to approval or rejection in a like manner every tenth year, and each superior court judge, every sixth year.

Vacancy.

SECTION 7. The office of any supreme court justice or superior court judge becomes vacant ninety days after the election at which he is rejected by a majority of those voting on the question, or for which he fails to file his declaration of candidacy to succeed himself.

Judicial Council.

SECTION 8. The judicial council shall consist of seven members. Three attorney members shall be appointed for six-year terms by the governing body of the organized state bar. Three non-attorney members shall be appointed for six-year terms by the governor subject to confirmation by a majority of the members of the legislature in joint session. Vacancies shall be filled for the unexpired term in like manner. Appointments shall be made with due consideration to area representation and without regard to political affiliation. The chief justice of the supreme court shall be ex officio the seventh member and chairman of the judicial council. No member of the judicial council, except the chief juctice, may hold any other office or position of profit under the United States or the State. The judicial council shall act by concurrence of four or more members and according to rules which it adopts.

Additional Duties.

SECTION 9. The judicial council shall conduct studies for improvement of the administration of justice, and make reports and recommendations to the supreme court and to the legislature at intervals of not more than two years. The judicial council shall perform other duties assigned by law.

Incapacity of Judges.

SECTION 10. Whenever the judicial council certifies to the governor that a supreme court justice appears to be so incapacitated as substantially to prevent him from performing his judicial duties, the governor shall appoint a board of three persons to inquire into the circumstances, and may on the board's recommendation retire the justice. Whenever a judge of another court appears to be so incapacitated as substantially to prevent him from performing his judicial duties, the judicial council shall recommend to the supreme court that the judge be place under early retirement. After notice and hearing, the supreme court by majority vote of its members may retire the judge.

Retirement.

SECTION 11. Justices and judges shall be retired at the age of seventy except as provided in this article. The basis and amount of retirement pay shall be prescribed by law. Retired judges shall render no further service on the bench except for special assignments as provided by court rule.

Impeachment.

SECTION 12. Impeachment of any justice or judge for malfeasance or misfeasance in the performance of his official duties shall be according to procedure prescribed for civil officers.

Compensation.

SECTION 13. Justices, judges, and members of the judicial council shall receive compensation as prescribed by law. Compensation of justices and judges shall not be diminished during their terms of office, unless by general law applying to all salaried officers of the State.

Restrictions.

SECTION 14. Supreme court justices and superior court judges while holding office may not practice law, hold office in a political party, or hold any other office or position of profit under the United States, the State, or its political subdivisions. Any supreme court justice or superior court judge filing for another elective public office forfeits his judicial position.

Rule-Making Power.

SECTION 15. The supreme court shall make and promulgate rules governing the administration of all courts. It shall make and promulgate rules governing practice and procedure in civil and criminal cases in all courts. These rules may be changed by the legislature by two-thirds vote of the members elected to each house.

Court Administration.

SECTION 16. The chief justice of the supreme court shall be the administrative head of all courts. He may assign judges from one court or division thereof to another for temporary service. The chief justice shall, with the approval of the supreme court, appoint an administrative director to serve at his pleasure and to supervise the administrative operations of the judicial system.

APPENDIX B

JUDICIAL ARTICLE
CONSTITUTION OF HAWAII

Judicial Power.

SECTION 1. The judicial power of the State shall be vested in one supreme court, circuit courts, and in such inferior courts as the legislature may from time to time establish. The several courts shall have original and appellate jurisdiction as provided by law.

Supreme Court.

SECTION 2. The supreme court shall consist of a chief justice and four associate justices. When necessary, the chief justice shall assign a judge or judges of a circuit court to serve temporarily on the supreme court. In case of a vacancy in the office of chief justice, or if he is ill, absent or otherwise unable to serve, an associate justice designated in accordance with the rules of the supreme court shall serve temporarily in his stead.

Appointment of Judges.

SECTION 3. The governor shall nominate and, by and with the advice and consent of the senate, appoint the justices of the supreme court and the judges of the circuit courts. No nomination shall be sent to the senate, and no interim appointment shall be made when the senate is not in session, until after ten days' public notice by the governor.

Qualifications.

No justice or judge shall hold any other office or position of profit under the State or the United States. No person shall be eligible to such office who shall not have been admitted to practice law before the supreme court of this State for at least ten years. Any justice or judge who shall become a candidate for an elective office shall thereby forfeit his office.

Tenure - Compensation - Retirement - Removal

The term of office of a justice of the supreme court shall be seven years and that of a judge of a circuit court shall be six years. They shall receive for their services such compensation as may be presribed by law, which shall not be diminished during their respective terms of office, unless by general law applying to all salaried officers of the State. They shall be retired upon attaining the age of seventy years. They shall be included in any retirement law of the State. They shall be subject to removal from office upon the concurrence of two-thirds of the membership of each house of the legislature, sitting in joint session, for such causes and in such manner as may be provided by law.

Retirement for Incapacity.

SECTION 4. Whenever a commission or agency, authorized by law for such purpose, shall certify to the governor that any justice of the supreme court or judge of a circuit court appears to be so incapacitated as substantially to prevent him from performing his judicial duties, the governor shall appoint a board of three persons to inquire into the circumstances and on their recommendation the governor may retire the justice or judge from office.

Administration.

SECTION 5. The chief justice of the supreme court shall be the administrative head of the courts. He may assign judges from one circuit court to another for temporary service. With the approval of the supreme court he shall appoint an administrative director to serve at his pleasure.

Rules.

SECTION 6. The supreme court shall have power to promulgate rules and regulations in all civil and criminal cases for all courts relating to process, practice, procedure and appeals, which shall have the force and effect of law.

APPENDIX C

NUMBER OF DISTRICT AND COUNTY JUDGES REQUIRED UNDER THE PROPOSED AMENDMENT

The proposed transfer of county court probate, juvenile, and mental health jurisdiction to the district courts[1] would require 28 additional district judges, if present judicial district boundaries are retained.[2] This total includes two district judges recommended by the committee immediately for the 2nd District (Denver), four judges who may be needed anyway in the near future because of increased district court business, and two judges who might not be needed necessarily because of consolidated case loads, but who have been added to provide better judicial service and at least two judges in each judicial district.

The following table shows the present number of district judges in each judicial district and the number of additional judges required under the proposed amendment:

Judicial District	Present No. of Judges	Additional Judges Required	Total	Comments
1st	3	1	4	
2nd	10	2	12	addition recommended because of increase in district court business
3rd	1	1	2	
4th	4	2	6	
5th	1	1	2	addition to make 2-judge district
6th	2	1	3	
7th	2	3	5	including one judge who may be needed shortly anyway
8th	3	3	6	
9th	1	1	2	
10th	2	2	4	including one judge who may be needed shortly anyway
11th	1	1	2	
12th	2	1	3	
13th	2	2	4	
14th	1	1	2	addition to make 2-judge district
15th	1	1	2	
16th	1	1	2	
17th	2[a]	2	4	including one judge who may be needed shortly anyway
18th	2[a]	2	4	including one judge who may be needed shortly anyway
Total	41[a]	28	69	

[a] As of January, 1961.

1 Except in Denver (2nd District).
2 Based on present case load data and anticipated increases.

Consideration of Judicial Boundary Changes

Several factors should be considered in evaluating the adequacy of present judicial district boundaries and proposed changes following expansion of district court jurisdiction. Where possible, as justified by increased case loads, districts should be reduced in size. The possibility of establishing one-county districts in the larger Class II counties should be examined. The exceptions would include those large counties with small counties immediately adjacent, which because of geography or limited judicial business could not be appended to any other district. Attention should be directed as well to realigning districts (if compatible with case load) to encompass homogeneous geographic areas and to eliminate mountain passes and other travel impediments.

All districts should have at least two judges under the proposed plan. With two judges in multi-county, less populous districts, better judicial service could be provided and travel time reduced. In such districts, the judges could have cases assigned either according to the type of case or the county of filing, whichever method provides the most efficient administration of justice. In the eight districts (aside from Denver) where the total number of district judges would be four or more, it would be possible to have at least one judge for each division of the court, such as probate, civil, criminal, and family.

County Court Judges

New county court jurisdiction, which would be provided by statute pursuant to the proposed amendment, would require at least one additional county judge in 12 counties, because of case load and/or geography. The estimated total number of county judges required would be 84. Counties where additional judges are expected to be needed include:

County	No. of Additional Judges	Comments
Adams	3	possibly located in Thornton, Brighton, and Aurora
Arapahoe	3	possibly located in Littleton, Englewood, and Aurora
Boulder	2	possibly located in Boulder and Longmont
Denver	4[a]	
El Paso	3	one located outside of Colorado Springs
Garfield	2	geographic considerations: judges in Glenwood Springs and Rifle
Jefferson	3	
Larimer	2	possibly located in Fort Collins and Loveland
Mesa	2	
Montrose	2	geographic considerations: judges in Montrose and Nucla
Pueblo	3	
Weld	2	
Total	31	

[a] In addition to present superior court judge

At present, there are 41 district judges, 63 county judges, one juvenile judge, one superior court judge, and approximately 275 justices of the peace. Under the proposed judicial reorganization there would be initially 69 district judges, one probate judge, one juvenile judge, and 83 county judges.

APPENDIX D

COMPARISON OF JUDICIAL ARTICLE AND PROPOSED AMENDMENT

PRESENT JUDICIAL ARTICLE	PROPOSED JUDICIAL AMENDMENT	COMMENTS
Section 1. Vestment of judicial power.--The judicial power of the state as to all matters of law and equity, except as in the constitution otherwise provided, shall be vested in the supreme court, district courts, county courts, and such other courts as may be provided by law. In counties and cities and counties having a population exceeding 100,000, exclusive original jurisdiction in cases involving minors and persons whose offenses concern minors may be vested in a separate court now or hereafter established by law.	Section 1. Vestment of judicial power. The judicial power of the state shall be vested in a supreme court, district courts, a probate court in the city and county of Denver, a juvenile court in the city and county of Denver, county courts, and such other courts or judicial officers with jurisdiction inferior to the supreme court, as the general assembly may, from time to time establish; provided, however, that nothing herein contained shall be construed to restrict or diminish the powers of home rule cities and towns granted under Article XX, Section 6 of this constitution to create municipal and police courts.	The proposed amendment eliminates justice of the peace courts as constitutional courts. While county courts retain constitutional status, their jurisdiction would be limited generally to that of present justice courts, except that the limit in civil cases would be set by law. Denver would also have a county court to handle minor state jurisdiction instead of the Denver municipal court as at present. (See Sections 14 and 15 for more detailed provisions re: county courts.) The proposed amendment would also create a probate court and a juvenile court as constitutional courts in the city and county of Denver. Certain jurisdiction of the present Denver county court would be transferred to the probate court, as provided in Section 9 (3) of the amendment. A clause has been added to insure no interference with the constitutional authority given home rule cities to create municipal or police courts.
Section 2. Appellate jurisdiction.--The supreme court, except as otherwise provided in this constitution, shall have appellate jurisdiction only, which shall be coextensive with the state, and shall have a general superintending control over all inferior courts, under such regulations and limitations as may be prescribed by law.	Section 2. Appellate jurisdiction. (1) The supreme court, except as otherwise provided in this constitution, shall have appellate jurisdiction only, which shall be coextensive with the state, and shall have a general superintending control over all inferior courts, under such regulations and limitations as may be prescribed by law. (2) Appellate review by the supreme court of every final judgment of the district courts, the probate court of the city and county of Denver, and the juvenile court of the city and county of Denver shall be allowed, and the supreme court shall have such other appellate review as may be provided by law. No appeal shall lie to the district court from any final judgment of the probate court of the city and county of Denver or of the juvenile court of the city and county of Denver.	The proposed amendment adds a paragraph to Section 2, which provides for appellate review by the supreme court from final judgments of the district courts and Denver probate and juvenile courts (not now provided in the judicial article). Trials de novo in Denver are eliminated by providing that there is no appeal from the Denver juvenile and probate courts to the district courts. Supreme court review of county court decisions would be as provided by law.

PRESENT JUDICIAL ARTICLE	PROPOSED JUDICIAL AMENDMENT	COMMENTS
Section 3. Original jurisdiction--opinions.--It shall have power to issue writs of habeas corpus, mandamus, quo warranto, certiorari, injunction, and other original and remedial writs, with authority to hear and determine the same; and each judge of the supreme court shall have like power and authority as to writs of habeas corpus. The supreme court shall give its opinion upon important questions upon solemn occasions when required by the governor, the senate, or the house of representatives; and all such opinions shall be published in connection with the reported decisions of said court.	Section 3. Original jurisdiction--opinions. The supreme court shall have power to issue writs of habeas corpus, mandamus, quo warranto, certiorari, injunction, and such other original and remedial writs as may be provided by rule of court with authority to hear and determine the same; and each judge of the supreme court shall have like power and authority as to writs of habeas corpus. The supreme court shall give its opinion upon important questions upon solemn occasions when required by the governor, the senate, or the house of representatives; and all such opinions shall be published in connection with the reported decisions of said court.	Section 3 of the proposed amendment is similar to Section 3 of the present judicial article except for two changes. "The supreme court" has been substituted for "It" in line one. The phrase "as may be provided by rule of court" was added to provide that the supreme court shall define by rule those unspecified original and remedial writs, which it is willing to entertain.
Section 4. Terms.--At least two terms of the supreme court shall be held each year, at the seat of government.	Section 4. Terms.--At least two terms of the supreme court shall be held each year, at the seat of government.	No change.
Section 5. Personnel of court--departments.--The supreme court shall consist of seven judges, who may sit en banc or in two or more departments as the court may, from time to time, determine. In case said court shall sit in departments, each of said departments shall have the full power and authority of said court in the determination of causes, the issuing of writs and the exercise of all powers authorized by this constitution, or provided by law, subject to the general control of the court sitting en banc, and such rules and regulations as the court may make, but no decision of any department shall become the judgment of the court unless concurred in by at least three judges, and no case involving a construction of the constitution of this state or of the United States shall be decided except by the court en banc.	Section 5. Personnel of court--departments. The supreme court shall consist of not less than seven justices, who may sit en banc or in departments. In case said court shall sit in departments, each of said departments shall have full power and authority of said court in the determination of causes, the issuing of writs and the exercise of all powers authorized by this constitution, or provided by law, subject to the general control of the court sitting en banc, and such rules and regulations as the court may make, but no decision of any department shall become judgment of the court unless concurred in by at least three justices, and no case involving construction of the constitution of this state or of the United States shall be decided except by the court en banc. Upon request of the supreme court, the number of justices may be increased to no more than nine members whenever two-thirds of the members of each house of the general assembly concur therein. The court shall provide by rule for the manner of selecting a chief justice from among the court membership, who shall preside at all sessions of the court.	The proposed amendment provides that the general assembly may increase the number of supreme court justices from seven to nine upon two-thirds vote, if such increase is requested by the supreme court. This last clause was added to insure that no increase would be made in the size of the court, if the court objected. The supreme court is given authority to make its own rules for selection of a chief justice. At present, the supreme court justice with the shortest time to serve, not holding his office by appointment or election to fill a vacancy, serves as chief justice as provided in the present Section 8 of the judicial article.
Section 6. Election of judges.--The judges of the supreme court, except as herein provided, shall be elected by the electors of the state at large.	Section 6. Election of justices.--The justices of the supreme court shall be elected by the electors of the state at large. Vacancies shall be filled as provided in Section 20 of this article.	This section in the proposed amendment is very similar to Section 6 in the present judicial article.

PRESENT JUDICIAL ARTICLE	PROPOSED JUDICIAL AMENDMENT	COMMENTS
Section 7. Term of office.--The term of office of the judges of the supreme court, hereafter elected, except as in this article otherwise provided, shall be ten years.	Section 7. Term of office. The term of office of justices of the supreme court shall be ten years, and justices of the supreme court holding office on the effective date of this constitutional amendment shall continue in office for the remainder of the respective terms for which they were elected or appointed.	The proposed amendment adds the provision that supreme court justices holding office on the effective date of the amendment shall continue in office for the remainder of their respective terms.
Section 8. Appointment and election of judges.--No successor of the judge of the court of appeals whose term expires in April, 1905, shall be appointed. On the first Wednesday of April, 1905, the court of appeals shall cease to exist, and the judges of said court whose regular terms shall not then have expired shall become judges of the supreme court. All causes pending before the court of appeals shall then stand transferred to, and be pending in, the supreme court, and no bond or obligation given in any of said causes shall be affected by said transfer. The term of office of that judge of the supreme court whose term expires on the second Tuesday in January, 1907, shall so expire; the term of office of that judge transferred from the court of appeals whose term shall expire in April, 1907, shall expire on the second Tuesday in January, 1907; and the term of office of that judge of the supreme court whose term expires in January, 1910, is hereby extended to the second Tuesday in January, 1911; and the term of office of the judge or judges transferred from the court of appeals whose term would expire in April, 1909, shall expire on the second Tuesday in January, 1909; and the term of office of the judge of the supreme court whose term expires on the second Tuesday in January, 1913, shall so expire. At the general election in the year 1906 and every tenth year thereafter, there shall be elected two judges of the supreme court. At the general election in the year 1908, there shall be elected three judges of the supreme court, one for the term of six years, and two for the term of ten years. At the general election in the year 1910 and every tenth year thereafter, there shall be elected one judge of the supreme court. At the general election in the year 1912 and every tenth year thereafter, there shall be elected one judge of the supreme court. At the general election in the year 1914 and every tenth year thereafter, there shall be elected one judge of the supreme court.		This section of the present judicial article is repealed.

PRESENT JUDICIAL ARTICLE	PROPOSED JUDICIAL AMENDMENT	COMMENTS
Section 8. Continued: At the general election in the year 1918 and every tenth year thereafter, there shall be elected two judges of the supreme court. Provided, that if said court of appeals shall at the time of the going into effect of this amendment, by law consist of only three judges, the governor shall nominate and by and with the advice and consent of the senate appoint two judges of the supreme court whose terms of office shall begin on the first Wednesday of April, 1905, and expire on the second Tuesday of January, 1909. Provided also, that nothing herein contained shall be construed to prevent the general assembly from changing the time of electing judges of the supreme court and from extending or abridging their terms of office as provided in Art. VI, Section 15 of the constitution of this state. The judge having the shortest time to serve, not holding his office by appointment or election to fill vacancy, shall be the chief justice. Of the two judges whose terms of office expire upon the same day, the younger in years of the two judges shall be chief justice during the next to the last year of his term of office and the elder of the two judges shall be chief justice during the last year of his term of office. The chief justice shall preside at all sessions of the court en banc, and, in case of his absence, then the judge present who would next be entitled to become chief justice shall preside. Until otherwise provided by law, the supreme court shall have power to review the judgments and proceedings of inferior courts, in such instances and in such manner as was provided by law previous to the act establishing the court of appeals.		
Section 9. Clerk of supreme court.-- There shall be a clerk of the supreme court, who shall be appointed by the judges thereof, and shall hold his office during the pleasure of said judges, and whose duties and emoluments shall be as prescribed by law and by the rules of the supreme court.		This section is not included in the proposed amendment, as the position is provided for by statute.

PRESENT JUDICIAL ARTICLE	PROPOSED JUDICIAL AMENDMENT	COMMENTS
Section 10. Qualifications of judges.--No person shall be eligible to the office of judge of the supreme court unless he be learned in the law; be at least thirty years of age and a citizen of the United States, nor unless he shall have resided in this state or territory at least two years next preceding his election.	Section 8. Qualifications of Justices. No person shall be eligible to the office of justice of the supreme court unless he shall be a qualified elector of the state of Colorado and shall have been licensed to practice law in this state for at least five years.	Section 8 of the proposed amendment replaces Section 10 of the present judicial article, with the qualifications for the office of supreme court justice changed. The 30-year age minimum is eliminated and the qualification as to legal training is increased. The present qualification is that a supreme court justice be learned in the law. The proposed amendment changes this to "have been licensed to practice law in this state for at least five years." The present provision includes two-year residency in the state among the qualifications. The proposed amendment stipulates that a qualified elector shall be eligible without the two-year requirement.
Section 11. Jurisdiction.--The district courts shall have original jurisdiction of all causes both at law and in equity, and such appellate jurisdiction as may be conferred by law. They shall have original jurisdiction to determine all controversies upon relation of any person on behalf of the people, concerning the rights, duties and liabilities of railroad, telegraph or toll-road companies or corporations.	Section 9. District courts--jurisdiction. (1) The district courts shall be trial courts of record with general jurisdiction, and shall have original jurisdiction in all civil, probate, and criminal cases, except as otherwise provided herein, and shall have such appellate jurisdiction as may be prescribed by law. (2) Effective the second Tuesday in January, 1965, all causes pending before the county court in each county, except those causes within the jurisdiction of the county court as provided by law, and except as provided in Subsection (3) of this section, shall then be transferred to and pending in the district court of such county, and no bond or obligation given in any of said causes shall be affected by said transfer. (3) In the city and county of Denver, exclusive original jurisdiction in all matters of probate, settlements of estates of deceased persons, appointment of guardians, conservators and administrators, and settlement of their accounts, the adjudication of the mentally ill, and such other jurisdiction as may be provided by law shall be vested in a probate court, created by Section 1 of this article, and to which court all of such jurisdiction of the county court of the city and county of Denver shall be transferred, including all pending cases and matters effective on the second Tuesday of January, 1965.	Section 9 of the proposed amendment replaces Section 11 of the present judicial article. It confers upon the district court all original jurisdiction, with certain exceptions, in line with the changed jurisdiction of county courts and elimination of justice courts.

PRESENT JUDICIAL ARTICLE	PROPOSED JUDICIAL AMENDMENT	COMMENTS
Section 12, Judicial districts--term of judges.--The state shall be divided into judicial districts, in each of which there shall be elected by the electors thereof, one or more judges of the district court therein, as may be provided by law, whose term of office shall be six years; the judges of the district courts may hold courts for each other, and shall do so when required by law, and the general assembly may by law provide for the selection or election of a suitable person to preside in the trial of causes in special cases.	Section 10. Judicial districts--district judges. (1) The state shall be divided into judicial districts. Such districts shall be formed of compact territory and be bounded by county lines. The judicial districts as provided by law on the effective date of this amendment shall constitute the judicial districts of the state until changed. The general assembly may by law, whenever two-thirds of the members of each house concur therein, change the boundaries of any district or increase or diminish the number of judicial districts. (2) In each judicial district there shall be elected by the electors thereof one or more judges of the district court. The term of office of a district judge shall be six years and district judges holding office on the effective date of this constitutional amendment shall continue in office for the remainder of the respective terms for which they were elected or appointed. Vacancies shall be filled as provided in Section 20 of this article. (3) The number of district judges provided by law for each district on the effective date of this amendment shall constitute the number of judges for the district until changed. The general assembly may by law, whenever two-thirds of the members of each house concur therein, increase or diminish the number of district judges, except that the office of a district judge may not be abolished until completion of the term for which he was elected or appointed, but he may be required to serve in a judicial district other than the one for which elected, as long as such district encompasses his county of residence. (4) Separate divisions of district courts may be established in districts by law, or in the absence of any such law, by rule of court.	This section replaces Sections 12, 13, 14, and 15 of the present judicial article. It provides for election of district judges in the same way as is provided in Section 12 of the present judicial article. Proposed Section 10 also provides that separate divisions of the district court in any district may be established by law, or in the absence of any such law, by majority vote of the judges in any such district. The judicial districts are not enumerated as in Section 13 of the present judicial article. Instead, Section 10 states that the judicial districts as provided by law upon the effective date of the amendment shall constitute the judicial districts of the state. Section 14 of the present judicial article provides that no change in judicial district boundaries shall cause the removal of any judge during the time for which he shall have been elected or appointed. This provision is also incorporated in the proposed Section 10. An additional phrase has been added to Subsection (3) to provide that a judge may be required to finish his term in a district other than the one in which he was elected as long as it encompasses his county of residence. This makes it possible to change judicial district boundaries during a judge's term of office. This provision is necessary because without it the possibility of staggered terms would make it impossible to change judicial district boundaries.

PRESENT JUDICIAL ARTICLE	PROPOSED JUDICIAL AMENDMENT	COMMENTS
Section 13. Judicial districts.--Until otherwise provided by law, said districts shall be four in number, and constituted as follows, viz: First District--The counties of Boulder, Jefferson, Gilpin, Clear Creek, Summit and Grand. Second District--The counties of Arapahoe, Douglas, Elbert, Weld and Larimer. Third District--The counties of Park, El Paso, Fremont, Pueblo, Bent, Las Animas and Huerfano. Fourth District--The counties of Costilla, Conejos, Rio Grande, San Juan, La Plata, Hinsdale, Saguache and Lake.		This section of the present article is repealed, and judicial district composition is covered in Section 10 of the proposed amendment.
Section 14. Number of districts increased or diminished. The general assembly may (whenever two-thirds of the members of each house concur therein) increase or diminish the number of judges for any district, or increase or diminish the number of judicial districts and the judges thereof. Such districts shall be formed of compact territory, and be bounded by county lines; but such increase, diminution, or change in the boundaries of a district shall not work the removal of any judge from his office during the time for which he shall have been elected or appointed.		The provisions of Section 14 of the present judicial article are covered in Section 10 of the proposed amendment.
Section 15. Election of judges--term.--The judges of the district court first elected shall be chosen at the first general election. The general assembly may provide that after the year eighteen hundred and seventy-eight, the election of the judges of the supreme court, district and county courts, and the district attorneys, or any of them, shall be on a different day from that on which an election is held for any other purpose, and for that purpose may extend or abridge the term of office of any such officers then holding, but not in any case more than six months. Until otherwise provided by law, such officers shall be elected at the time of holding the general elections. The term of office of all judges of the district court, elected in the several districts throughout the state, shall expire on the same day; and the terms of office of district attorneys elected in the several districts throughout the state shall, in like manner, expire on the same day.		The provisions of Section 15 of the present judicial article are covered in Section 10 above of the proposed amendment. Present Section 15 provides that the terms of all district judges shall expire on the same day. This provision is eliminated from Section 10 of the proposed amendment, because proposed Section 20 concerning the filling of vacancies provides that a successor elected after a vacancy is filled shall be elected for a full term, rather than for the remainder of the term in which the vacancy was created.

PRESENT JUDICIAL ARTICLE	PROPOSED JUDICIAL AMENDMENT	COMMENTS
Section 16. Qualifications of district judges.--No person shall be eligible to the office of district judge unless he be learned in the law, be at least thirty years old, and a citizen of the United States, nor unless he shall have resided in the state or territory at least two years next preceding his election, nor unless he shall, at the time of his election, be an elector within the judicial district for which he is elected; provided, that at the first election, any person of the requisite age and learning, and who is an elector of the territory of Colorado, under the laws thereof, at the time of the adoption of this constitution, shall be eligible to the office of judge of the district court of the judicial district within which he is an elector.	Section 11. Qualifications of district judges. No person shall be eligible to the office of district judge unless he shall be a qualified elector of the judicial district at the time of his election or selection and shall have been licensed to practice law in this state for five years. Each judge of the district court shall be a resident of his district during his term of office.	Section 11 of the proposed amendment replaces Section 16 of the present judicial article. This section changes present qualifications for the office of district judge by eliminating the 30-year age minimum and requiring admittance to the practice of law in Colorado instead of being learned in the law. Section 16 requires two-year residence in Colorado. The proposed section does not contain this provision; however, a clause has been added requiring a district judge to have been licensed to practice law in Colorado for five years--similar to the qualifications for supreme court justice.
Section 17. Terms of court.--The time of holding courts within the said district shall be as provided by law, but at least one term of the district court shall be held annually in each county, except in such counties as may be attached, for judicial purposes, to another county wherein such courts are so held. This shall not be construed to prevent the holding of special terms under such regulations as may be provided by law.	Section 12. Terms of court. The time of holding courts within the judicial districts shall be as provided by rule of court, but at least one term of the district court shall be held annually in each county.	Section 12 of the proposed amendment replaces Section 17 of the present judicial article and provides that terms of court shall be established by court rule instead of by statute.
Section 18. Compensation and services of judges.--Judges of courts of record shall receive such compensation as may be provided by law, which may be increased or decreased during their terms of office, and shall also receive such pension or retirement benefits as may be provided by law. The supreme court shall be open except on Sundays and holidays during customary hours of court. No judge of the district court or supreme court shall accept nomination for any public office other than judicial, the term of which shall begin more than 30 days before the end of his term of office, without first resigning from his judicial office, nor shall he engage in the practice of law, nor shall he hold office in a political party organization. When called upon to act any county judge admitted to the practice of law in the state of Colorado may serve as district judge in any district with full authority therein as the judge of the district wherein he serves.		Section 18 of the present judicial article is replaced by Section 18 of the proposed amendment.

PRESENT JUDICIAL ARTICLE	PROPOSED JUDICIAL AMENDMENT	COMMENTS
Section 19. Clerk of district court.--There shall be a clerk of the district court in each county wherein a term is held, who shall be appointed by the judge of the district, to hold his office during the pleasure of the judge. His duties and compensation shall be as provided by law, and regulated by the rules of the court. Section 20. Judges may fix terms, when.--Until the general assembly shall provide by law for fixing the terms of the courts aforesaid, the judges of the supreme and district courts, respectively, shall fix the terms thereof.		These two sections are repealed in the proposed amendment. Section 19 is eliminated as the office of district court clerk is provided by statute. Section 20 is eliminated as no longer being applicable, as it is covered by Section 12 of the proposed amendment.
Section 21. Election--term--salary--qualifications.--There shall be elected by the qualified electors of each judicial district, at the general election in the year nineteen hundred and four, and every four years thereafter, a district attorney for such district, whose term of office shall be four years, and whose duties and salary or compensation, either from the fees or emoluments of his office or from the general county fund, as shall be provided by law. No person shall be eligible to the office of district attorney who shall not, at the time of his election, be at least twenty-five years of age and possess all the qualifications of judges of the district courts, as provided in this article. The term of office of the district attorneys serving in the several districts, at the time of the adoption of this amendment, is hereby extended to the second Tuesday of January, in the year A.D. 1905.	Section 13. District attorneys--election--term--salary--qualifications. In each judicial district there shall be a district attorney elected by the electors thereof, whose term of office shall be four years. District attorneys shall receive such salaries and perform such duties as provided by law. No person shall be eligible to the office of district attorney who shall not, at the time of his election possess all the qualifications of district court judges as provided in this article. All district attorneys holding office on the effective date of this amendment shall continue in office for the remainder of the respective terms for which they were elected or appointed.	Section 13 of the proposed amendment replaces Section 21 of the present judicial article. The proposed section eliminates reference to compensation from fees, as this practice has not been followed for several years. The language of the section has also been simplified in its reference to the selection and qualifications of district attorneys and provides that district attorneys must meet the same qualifications as district judges.
Section 22. Judge--election--term--salary.--There shall be elected at the general election in each organized county in the year nineteen hundred and four, and every four years thereafter, a county judge, who shall be judge of the county court of said county, whose term of office shall be four years, and who shall be paid such salary or compensation, either from the fees and emoluments of his office or from the general county fund, as shall be provided by law, The term of office of the county judges serving at the time of the adoption of this amendment is hereby extended to the second Tuesday of January in the year A.D. 1905.		Sections 22 and 23 of the present judicial article, which pertain to county courts, would be repealed as of the second Tuesday in January, 1965--the time when county courts would no longer have their present jurisdiction. New constitutional provisions for county courts will be found in Sections 14 and 15 below of the proposed amendment.

PRESENT JUDICIAL ARTICLE	PROPOSED JUDICIAL AMENDMENT	COMMENTS
Section 23. Court of record--jurisdiction--appeals--writs of error.--County courts shall be courts of record and shall have original jurisdiction in all matters of probate, settlement of estates of deceased persons, appointment of guardians, conservators and administrators, and settlement of their accounts, and such other civil and criminal jurisdiction as may be conferred by law: provided, such courts shall not have jurisdiction in any case where the debt, damage, or claim or value of property involved shall exceed two thousand dollars, except in cases relating to the estate of deceased persons. Appeals may be taken from county to district courts, or to the supreme court, in such cases and in such manner as may be prescribed by law. Writs of error shall lie from the supreme court to every final judgment of the county court. No appeal shall lie to the district court from any judgment given upon an appeal from a justice of the peace.	Section 14. Probate court--jurisdiction--judges--election--term--qualifications. The probate court of the city and county of Denver shall have such jurisdiction as provided by Section 9, Subsection (3) of this article. The judge of the probate court of the city and county of Denver shall have the same qualifications and term of office as provided in this article for district judges and shall be elected initially by the qualified electors of the city and county of Denver at the general election in the year 1964. Vacancies shall be filled as provided in Section 20 of this article. The number of judges of the probate court of the city and county of Denver may be increased as provided by law.	Section 14 of the proposed amendment takes effect at the time present county court jurisdiction is changed (although a probate judge would be elected in 1964) and refers to the probate court of the city and county of Denver. This court is established as a constitutional court by Section 1 of the proposed amendment. and the probate court's jurisdiction is covered by Section 9 (3) of the proposed amendment. This section of the proposed amendment pertains to the election, term, and qualifications of the probate judge. The provisions which apply to district judges as to election, term, and qualifications are similar for probate judges. In addition, proposed Section 14 makes it possible to increase the number of judges of the Denver Probate Court by statute.

PRESENT JUDICIAL ARTICLE	PROPOSED JUDICIAL AMENDMENT	COMMENTS
	Section 15. Juvenile court--jurisdiction--judges--election--term--qualifications. The juvenile court of the city and county of Denver shall have such jurisdiction as shall be provided by law. The judge of the juvenile court of the city and county of Denver shall have the same qualifications and term of office as provided in this article for district judges and shall be elected initially by the qualified electors of the city and county of Denver at the general election in the year 1964. Vacancies shall be filled as provided in Section 20 of this article. The number of judges of the juvenile court of the city and county of Denver may be increased as provided by law.	Section 15 of the proposed amendment pertains to the selection, term, and qualifications of the judge of the Denver Juvenile Court (which is established as a constitutional court in Section 1 of the proposed amendment). This section also does not take effect until the second Tuesday in January, 1965, but a juvenile judge will be elected in 1964. Election, term, and qualifications for the juvenile judge are the same as for the district and probate judges. Proposed Section 15 makes it possible to increase the number of judges of the Denver Juvenile Court by statute.
Section 24. In what counties--jurisdiction.--The general assembly shall have power to create and establish a criminal court in each county having a population exceeding fifteen thousand, which court may have concurrent jurisdiction with the district courts in all criminal cases not capital; the terms of such courts to be as provided by law.		This section is repealed, because separate criminal courts in counties over 15,000 population are not needed and would be contrary to the court consolidation embodied in the proposed amendment.
Section 25. Jurisdiction.--Justices of the peace shall have such jurisdiction as may be conferred by law; but they shall not have jurisdiction of any case wherein the value of the property or the amount in controversy exceeds the sum of three hundred dollars, nor where the boundaries or title to real property shall be called in question.		This section is repealed, because it refers to justice of the peace courts, which are abolished by the proposed amendment. This section is repealed as of the effective date of the amendment rather than as of the second Tuesday in January, 1965, when justice of the peace courts are abolished, because there is sufficient legislation to cover these courts and their jurisdiction.
Section 26. How created--jurisdiction.--The general assembly shall have power to provide for creating such police magistrates for cities and towns as may be deemed from time to time necessary or expedient, who shall have jurisdiction of all cases arising under the ordinances of such cities and towns respectively.		This section is repealed because the authority to create such courts is contained in Section 1 of the proposed amendment.

PRESENT JUDICIAL ARTICLE	PROPOSED JUDICIAL AMENDMENT	COMMENTS
Section 27. Judges to report defects in laws--governor to transmit.--The judges of courts of record inferior to the supreme court shall on or before the first day in July, in each year, report in writing to the judges of the supreme court such defects and omissions in the laws as their knowledge and experience may suggest, and the judges of the supreme court shall, on or before the first day of December of each year report in writing to the governor, to be by him transmitted to the general assembly, together with his message, such defects and omissions in the constitution and laws as they may find to exist, together with appropriate bills for curing the same.		This section is repealed as its purpose can be accomplished by statute, if desired.
	Section 16. County judges--election--term--qualifications.--In each county there shall be elected by the electors thereof in the year 1964, and every four years thereafter, one or more judges of the county court as may be provided by law, whose term of office shall be four years, and whose qualifications shall be prescribed by law. Such judges shall be qualified electors of their counties at the time of their election or appointment.	Section 16 of the proposed amendment replaces Section 22 of the present judicial article and applies to the election, term, and qualifications of county judges. Under this section it will be possible for counties to have more than one county judge as provided by law. Additional county judges will be necessary in several counties because of the volume of justice court cases and/or convenience to litigants and defendants. This section also provides that county judges' qualifications shall be set by statute, which would make it possible to have lawyer judges in the larger counties.
	Section 17. County courts--jurisdiction--appeals.--County courts shall have such civil, criminal, and appellate jurisdiction as may be provided by law, provided such courts shall not have jurisdiction of felonies or in civil cases where the boundaries or title to real property shall be in question. Appellate review by the supreme court or the district courts of every final judgment of the county courts shall be as provided by law.	Section 17 of the proposed amendment replaces Section 23 of the present judicial article and applies to county court jurisdiction. Such jurisdiction would be limited to misdemeanors and civil cases not involving title to or boundaries of real property. This jurisdiction is similar to that of present justice courts, except that no constitutional monetary limit is set in civil actions. Such monetary limits would be set by statute and could be varied according to economic conditions without constitutional change. This section also provides for appellate jurisdiction as set by statute. This provision would make it possible for municipal court cases to be reviewed by the county courts. Appeals from the county court may lie to either the district court or the supreme court as provided by law.

PRESENT JUDICIAL ARTICLE	PROPOSED JUDICIAL AMENDMENT	COMMENTS
	Section 18. Compensation and services. Justices of the supreme court, district judges, probate judges, juvenile judges, and county judges shall receive such compensation as may be provided by law, which may be increased during their terms of office, and shall receive such pension or retirement benefits as may be provided by law. No supreme court justice, district court judge, probate judge, juvenile judge, or county court judge shall accept nomination for any public office other than judicial, the term of which shall begin more than thirty days before the end of his term of office, without first resigning from his judicial office, nor shall he hold at any other time any other public office during his term of office, nor hold office in any political party organization. No supreme court justice, district court judge, probate judge, or juvenile judge shall engage in the practice of law. District judges, probate judges, juvenile judges, and county judges possessing the qualifications of district judges, when called upon to do so, may serve in any state court with full authority as provided by law. Any county judge may serve in any county court or as a municipal judge or police magistrate as provided by law.	Section 18 of the proposed amendment replaces Section 18 of the present judicial article. The present section provides that salaries may be increased or decreased during judges' terms of office. The proposed section provides only for increases during judges' terms of office. Judges of all state courts are prohibited from holding or running for a non-judicial public office without resigning their judicial positions. Judges of all courts except the county court are prohibited from practicing law. District, probate, juvenile, and qualified county judges are permitted to sit for each other. County judges may serve in other county courts or as municipal judges or police magistrates as provided by law.
Section 28. Laws relating to courts--uniform.--All laws relating to courts shall be general and of uniform operation throughout the state; and the organization, jurisdiction, powers, proceedings and practice of all the courts of the same class or grade, so far as regulated by law, and the force and effect of the proceedings, judgements and decrees of such courts severally shall be uniform.	Section 19. Laws relating to courts--uniform. All laws relating to state courts shall be general and of uniform operation throughout the state, and the organization, jurisdiction, powers, proceedings, and practice of all courts of the same class, and the force and effect of the proceedings, judgments and decrees of such courts severally shall be uniform. County courts may be classified or graded as may be provided by law, and the organization, jurisdiction, powers, proceedings, and practice of county courts within the same class or grade, and the force and effect of the proceedings, judgments and decrees of county courts in the same class or grade shall be uniform.	Section 19 of the proposed amendment replaces Section 28 of the present judicial article. This section also specifies that county courts may be classified by group and that as long as organization, jurisdiction, and procedures are the same within each class there is no violation of uniformity.

PRESENT JUDICIAL ARTICLE

Section 29. Where officers must reside--vacancies.--All officers provided for in this article, excepting judges of the supreme court, shall respectively reside in the district, county, precinct, city or town for which they may be elected or appointed. Vacancies occurring in any of the offices provided for in this article shall be filled by appointment as follows: Of judges of the supreme and district courts, by the governor; of district attorneys, by the judge of the court of the district for which such attorney was elected; and of all other judicial officers, by the board of county commissioners of the county wherein the vacancy occurs. Judges of the supreme, district and county courts appointed under the provisions of this section shall hold office until next general election and until their successors elected thereat shall be duly qualified.

PROPOSED JUDICIAL AMENDMENT

Section 20. Vacancies. (1) Vacancies occurring in any of the elective judicial offices of the supreme court, district courts, probate court of the city and county of Denver, and the juvenile court of the city and county of Denver shall be filled by appointment of the governor. Judges appointed under the provisions of this section to elective judicial offices shall hold office until the next general election and until their successors elected thereat shall be duly qualified. Such successors shall be elected for a full term to their respective offices.

(2) Vacancies occurring in the office of county judge of any county shall be filled by appointment of the county commissioners of such county. County judges appointed under the provisions of this section shall hold office until the next general election and until their successors elected thereat shall be duly qualified. Such successors shall be elected for a full term to their respective offices.

(3) Other vacancies occurring in judicial offices shall be filled as now or hereafter provided by law.

(4) Vacancies occurring in the office of district attorney shall be filled by appointment of the governor. District attorneys appointed under the provisions of this section shall hold office until the next general election and until their successors elected thereat shall be duly qualified. Such successors shall be elected for the remainder of the unexpired term in which the vacancy was created.

COMMENTS

Section 20 of the proposed amendment replaces Section 29 of the present judicial article with some significant changes: 1) The Denver Probate Court and the Denver Juvenile Court have been added to the list of judicial vacancies to be filled by the governor. 2) Judges appointed to fill vacancies would hold office only until the first general election as at present, but their successors would be elected for a full term rather than for the expiration of the term in which the vacancy is created. 3) The provision as to residency has been eliminated as it is covered in other sections of the proposed amendment. 4) Vacancies in the office of district attorney would be filled by the governor rather than by the judges of the district courts in which such vacancies were created. Vacancies in the office of county judge would be filled by county commissioners' appointments as at present, but the duly elected successor would be elected for a full term rather than for the unexpired term as at present.

The provision allowing a successor to be elected for a full term rather than for the remainder of the unexpired term was included for two reasons. First, it would have the effect ultimately of staggering judicial terms so that it would not be necessary to elect a large number of judges at one time. Second, it might encourage qualified men to accept appointment if they know they can run for a full term rather than for two to four years and then be faced with another election. The change in filling vacancies in the office of district attorney was also motivated by two factors: first, the difficulty of filling such vacancy in two-judge districts where the judges are of opposite political parties; and second, the questionable desirability of having district attorneys appointed by judges before whom they will appear.

PRESENT JUDICIAL ARTICLE	PROPOSED JUDICIAL AMENDMENT	COMMENTS
	Section 21. Rule making power. The supreme court shall make and promulgate rules governing the administration of all courts and shall make and promulgate rules governing practice and procedure in civil and criminal cases, except that the general assembly shall have the power to provide simplified procedures in county courts for claims not exceeding $500 and for the trial of misdemeanors.	Section 21 of the proposed amendment is not in the present judicial article except for the provision in Section 2 that the supreme court has general superintending control over all courts. (This provision is also incorporated in Section 2 of the proposed amendment.) This proposed section gives the supreme court authority to promulgate rules governing administration of all courts and for civil and criminal practice and procedure with one exception. The general assembly is given the authority to provide simplified procedures in county courts for small civil cases and minor misdemeanors. This provision makes it possible to provide simplified procedures for cases formerly within the jurisdiction of justice courts.
Section 30. Process--run in name of people.--All process shall run in the name of "The People of the State of Colorado;" all prosecutions shall be carried on in the name and by the authority of "The People of the State of Colorado." and conclude, "against the peace and dignity of the same."	Section 22. Process--prosecution--in name of people. In all prosecutions for violations of the laws of Colorado, process shall run in the name of "The People of the State of Colorado;" all prosecutions shall be carried on in the name and by the authority of "The People of the State of Colorado," and conclude, "against the peace and dignity of the same."	Section 22 of the proposed amendment replaces Section 30 of the present judicial article. This section has been limited to violations of state law, so that it is clear that in violations of ordinances tried in municipal courts, process shall run in the name of the people of the respective city or town.
Section 31. Retirement of judges.--Any judge of any court now existing in the state of Colorado, or hereafter created, shall be retired from office if found permanently disabled, by reason of mental or physical infirmities, from performing the duties of his office. Issues concerning retirement for disability shall be initiated by motion of the attorney general to the supreme court for investigation concerning the permanent disability of such judge, whereupon said court may appoint a referee who shall have authority to subpoena witnesses and make full investigation and submit his report thereon to the court. In the event the court shall determine such judge to be so permanently disabled, he shall be retired with such pension or retirement benefits as he would have received had he fully completed his then term of office. Upon such retirement his office shall be deemed vacant and be filled as provided by law.	Section 23. Retirement of judges. Any judge of any court now existing in the state of Colorado, or hereafter created, shall be retired from office if found permanently disabled, by reason of mental or physical infirmities, from performing the duties of his office. Issues concerning retirement for disability shall be initiated by motion of the attorney general to the supreme court for investigation concerning the permanent disability of such judge, whereupon said court may appoint a referee who shall have authority to subpoena witnesses and make full investigation and submit his report thereon to the the court. In proceedings against a justice of the supreme court under this section, such justice shall be disqualified from sitting as a judge. In the event the court shall determine such judge to be so permanently disabled, he shall be retired with such pension or retirement benefits as he would have received had he fully completed his then term of office. Upon such retirement his office shall be deemed vacant and be filled as provided by law.	Section 23 of the proposed amendment replaces Section 31 of the present judicial article with the restriction added that in proceedings against a justice of the supreme court under this section, such justice shall be disqualified from participating in the decision.

PRESENT JUDICIAL ARTICLE	PROPOSED JUDICIAL AMENDMENT	COMMENTS
Article XIV. Section 11. Justices of the peace--constables.--There shall be elected at the same time at which members of the general assembly are elected, beginning with the year nineteen hundred and four, two justices of the peace and two constables in each precinct in each county, who shall hold their office for a term of two years: provided, that in precincts containing fifty thousand (50,000) or more inhabitants, the number of justices and constables may be increased as provided by law. The term of offices of all justices of the peace that expires in January, 1904, is hereby extended to the second Tuesday in January, 1905. This section shall govern, except as hereafter otherwise expressly directed, or permitted by constitutional enactment.	Section 24. Justices of the peace--constables. Effective on the second Tuesday in January, 1965, all justice of the peace courts shall cease to exist, and as of said date, Section 11 of Article XIV of the constitution of the state of Colorado shall be repealed, and no justices of the peace or constables shall be elected at the general election held in 1964.	The proposed amendment also includes repeal of Article XIV, Section 11 of the constitution. This section refers to justices of the peace and constables and would be repealed effective the second Tuesday of January, 1965, when justice of the peace courts would be terminated.

APPENDIX E

BY BILL NO.

A BILL FOR AN ACT

CONCERNING PUBLIC DEFENDERS.

Be It Enacted by the General Assembly of the State of Colorado:

SECTION 1. Definitions. As used in this act, unless the context clearly indicates otherwise:

(1) The term "governing authority" shall mean the board of county commissioners in the case of a county, and the city council in the case of a city and county.

(2) The term "county" shall include a city and county.

SECTION 2. Permissive authority to establish office of public defender. In any county the governing authority may establish the office of public defender. A county may join with one or more other counties to establish one office of public defender to serve those counties.

Comment*

Provision for securing counsel for indigents charged with criminal offenses has been accomplished in various patterns:

1. By statute setting up the office
   a. as mandatory for every county;
   b. as permissive for every county;
   c. as mandatory in counties of a stated population and permissive for others.

*Comments are those of the National Conference of Commissioners on Uniform State Laws to the equivalent sections of the Model Defender Act approved by the Conference in 1959. The Colorado Defender Act is substantially the same as the Model Defender Act.

2. Appointment by the court in individual cases with compensation
   a. under legislative scale;
   b. fixed by the appointing court.

3. By legal aid and defender organizations in certain municipalities supported by public funds, private philanthropy, or both.

It seems wise, therefore, to create the office by an enabling act with the county as the appropriate unit, so that local requirements and wishes can be carried out.

Throughout the act, the county is made the governmental unit. In some jurisdictions this will necessarily require changes.

SECTION 3. Selection and qualification of public defender - represent indigent persons. (1) The public defender shall be a qualified attorney licensed to practice law in this state, selected by the governing authority in the case of a county, or by the mayor in the case of a city and county. The public defender shall represent, without charge, each indigent person who is under arrest or charged with a crime, including such offenses under municipal codes as he may, in his discretion, determine, if:

a. The defendant requests it; or

b. The court, on its own motion or otherwise, so orders and the defendant does not affirmatively reject of record the opportunity to be so represented.

(2) The determination of indigency shall be made by the public defender, subject to review by the court.

Comment

It is recognized that the criminal codes of the several states vary widely with respect to what specific acts constitute offenses against the state. Therefore, it should be left to each jurisdiction to determine what crimes are to be covered in this act.

Careful thought should be given to the method of selecting the public defender. A method other than by election will shield the

public defender from the hazards and expense of campaigning for office. In some jurisdictions, a judicial selection is made; in others, the public defender is chosen by the legislative division. Sometimes he is under civil service.

If local conditions are such that election of the public defender must be the method of selection in order to get the bill passed, additional safeguards may be set up.

Many lawyers who have studied the various defender systems feel that the method of selecting the official is the key to the success of the plan. The objective, whatever the method, is to make certain that not only a qualified lawyer holds the position but that he will also have the independence to serve his clients with complete professional loyalty.

Former drafts embodied the thinking that it was appropriate to pattern the office after its so-called counterpart, the office of the prosecuting attorney, and subject to the same restrictions respecting salary, private practice, etc. Debate has shown this provision to be inelastic, difficult to create, and provacative of controversy.

SECTION 4. Term of public defender - assistant attorneys and employees - compensation. (1) The term and compensation of the public defender shall be fixed by the governing authority.

(2) The public defender may appoint as many assistant attorneys, clerks, investigators, stenographers, and other employees as the governing authority considers necessary to enable him to carry out his responsibilities. Appointments under this section shall be made in the manner prescribed by the governing authority. An assistant attorney must be a qualified attorney licensed to practice law in this state.

(3) The compensation of persons appointed under subsection (2) of this section shall be fixed by the governing authority.

Comment

This section should be flexible enough to cover jurisdictions of varying size and population, as some counties may need only a part-time defender while others may require more than one lawyer and additional clerks, etc., on the staff. In the more populous counties, the effectiveness of the office will be greatly reduced unless there is provision for an investigator.

SECTION 5. Duties of public defender. When representing an indigent person, the public defender shall (1) counsel and defend him, whether he is held in custody or charged with a criminal offense, at every stage of the proceedings following arrest; and (2) prosecute any appeals or other remedies before or after conviction that he considers to be in the interest of justice.

Comment

This wide authority is given to permit the defender to represent indigent clients at every stage of the proceedings and to appear for those charged with felonies and misdemeanors. One of the chief criticisms of the assigned counsel system is that the defendant's lawyer is selected too late in the proceedings to render the most effective service. Too, there are many situations where indigent defendants with misdemeanor charges need a lawyer as much as those facing more serious offenses. This is particularly true where the defendant is young or is a first offender, and in jurisdictions where misdemeanors carry a heavy penalty.

SECTION 6. Appointment of other attorney in place of public defender. For cause, the court may, on its own motion or upon the application of the public defender or the indigent person, appoint an attorney other than the public defender to represent him at any stage of the proceedings or on appeal. The attorney shall be awarded reasonable compensation and reimbursement for expenses necessarily incurred, to be fixed by the court and paid by the county.

Comment

It seems desirable to provide a plan for handling those cases where a conflict of interest or other legitimate reason makes it desirable to appoint counsel other than the public defender.

SECTION 7. Report of public defender. The public defender shall make an annual report to the governing authority covering all cases handled by his office during the preceding year.

Comment

This requirement is self-explanatory. The justification of the office as well as a history of its efficiency makes this regulation a requisite.

SECTION 8. Office space, equipment, etc. - expenses - sharing by counties. The governing authority in the case of a county, and the mayor in the case of a city and county, shall provide office space, furniture, equipment, and supplies for the use of the public defender suitable for the conduct of the business of his office. However, the governing authority in any case may provide for an allowance in place of facilities. Each such item is a charge against the county in which the services were rendered. If the public defender serves more than one county, expenses that are properly allocable to the business of more than one of those counties shall be prorated among the counties concerned, as shall be agreed upon by the governing authorities of the counties concerned.

Comment

If the defender serves more than one county, the last two sentences are desirable to clarify the division of cost and expense.

SECTION 9. Absence of office of public defender. If the governing authority does not create the office of public defender then, at county expense, either

(1) The services prescribed by this act shall be provided by a qualified attorney appointed by the court in each case and awarded reasonable compensation and expenses by the court; or

(2) The services prescribed by this act shall be provided through nonprofit legal aid or defender organizations designed by the governing authority, which organizations may be awarded