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COLORADO'S PROGRAM TO IMPROVE COURT ADMINISTRATION

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After one full year of operational experience with a judicial department, the great value of this staff service in solving delay, congestion and other modern day court problems must be acknowledged. Among its many functions is the important one of conducting surveys and investigations looking to a more just and speedy determination of cases. In addition, it serves as a focal point for mobilizing interested community groups such as the law schools, members of the bar, the bar associations, the public relations media, labor and business associations, etc., cooperation of which are essential to success in a long range improvement program. In Colorado this department has become a non-substantive research arm of the Supreme Court and this experiment has proven and is proving of great value.

The apprehensions expressed by some that adoption of such a system would mechanize the judicial process have not come to pass. Experience has shown the contrary to be true and that instead of interfering with careful and painstaking consideration and determination of cases, a system of administration relieves the judge of preoccupation with detail so that he can give undivided attention to the cases.

The story of adoption of the judicial department, which must include the prior background, the forces which brought it about, and an analysis of the progress which has resulted, may be of practical value in those states which have problems similar to ours in Colorado.

Adoption of a system of court administration has been one part of a broad effort to improve the administration of justice in Colorado. This aspect of the program has been within the present institutional system. Equally important, however, has been the long range program of court reform looking to adoption of a new judicial article. This movement has been spearheaded by the Legislative Council's Committee on the Administration of Justice. Some attention will be here given to the legislative attack, but the most space will be devoted to the functioning of our judicial department.

The views and comments expressed herein are conclusions of the author and not necessarily of the court of which he is a member.

I. CAUSES OF COURT CONGESTION

Colorado has had and continues to have a phenomenal post-war growth. The last decade has witnessed a population growth from 1,325,089 in 1950 to 1,735,315 in 1960. The increase in population does not tell the entire story. Colorado is a relatively large state and the population is concentrated in the area on either side of the Continental Divide. This has added to the problem. The urban areas have experienced the large gains while the rural areas have re-

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mained more or less static. Very little was done to relieve the court congestion which resulted from this unforeseen growth until 1957, and by that time the backlog had become substantial. In 1957 there were over 200 appeals at issue and undecided in the Colorado Supreme Court.[1] The waiting period from date of issue until date of decision was two years. The volume of filings steadily increased, apparently stimulated by the delay. A similar delay of two years from date of issue until trial existed at the district court level (at least in the densely populated areas).

While the problem was developing there had been some recognition of it by the General Assembly and other groups; however, this did not result in the adoption of any broadscale program. Additional judges were from time to time provided and new judicial districts were created, but it was not until the problem had become a minor crisis that any positive steps toward solving it were developed.

II. THE PRESENT JUDICIAL FRAMEWORK

Our court system has grown and spread indiscriminately since it was originally created with the adoption of the Judicial Article of the Constitution of Colorado in the year 1876.[2] The original constitutional provisions remain, but in addition, there have been new courts created and new amendments added as conditions have demanded. For example, we have had an intermediate appellate court which was later abolished. A juvenile court has been added in Denver. There has been an increase in the number of Supreme Court Justices and the General Assembly has created a superior court, an auxiliary court in Denver.

Apart, however, from these additions, the three basic constitutional courts remain: the Supreme Court,[3] which exercises appellate jurisdiction, the district courts,[4] the courts of general and unlimited jurisdiction, and the county courts[5] which are the probate courts but also have a limited civil and criminal jurisdiction. In addition, the General Assembly is empowered to create justices of the peace, municipal courts and police magistrates.

The Supreme Court's power includes review of final judgments of the district and county courts, together with the power to entertain original extraordinary writs.[6] It may also render supervisory opinions.[7] The original Judicial Article gave the Supreme Court authority to supervise all inferior courts "under such regulations and limitations as may be prescribed by law." The provision has not, however, been implemented or used until quite recently. The Supreme Court Justices are elected on a partisan basis for 10 year terms.

The district courts are organized upon the basis of judicial districts, some of which are coextensive with county boundaries and some of which encompass several counties.[8] The judges are elected

1 1959 Colo. Judicial Administrator Ann. Rep. 12 [hereinafter cited as 1959 Ann. Rep.].
2 Colo. Const. art. VI.
3 Colo. Const. art. VI, § 2.
4 Colo. Const. art. VI, § 11.
5 Colo. Const. art. VI, § 23.
6 Colo. Const. art. VI, § 3.
7 Colo. Const. art. VI, § 3.
8 1959 Ann. Rep. 1.

on a partisan basis for 6 year terms from judicial districts.[9] There are now 18 districts and 39 district judges. The great variation in population from district to district creates a substantial disproportion with respect to the ratio of judges to population. For example, Denver has a population of about 500,000 and has 10 judges, whereas the smallest of these districts has a population of approximately 14,000.[10]

There are 63 counties and 63 county judges, each of whom is elected for a 4 year term.[11] These judges are paid upon the basis of the population within the county and are also required or not required to be lawyers depending on the population within the county.[12] Most of the county judges are not lawyers. Final judgments of the county court can be reviewed in the Supreme Court, or, in the alternative, may be appealed and a trial *de novo* had in the district court.

We now have an estimated 278 elected justices of the peace.[13] They are elected for 2 year terms,[14] and are paid on a fee basis.[15] They exercise a limited civil and criminal jurisdiction and appeals from their judgments may be taken to the county where a trial *de novo* is available.[16]

Despite the fact that the above-described system is loose jointed, unintegrated, duplicative and that it offers much more due process than is necessary under organic law or as a matter of fair play, and notwithstanding that a new judicial article would be helpful, the failure to adopt a new court system has not been the responsible factor in the rise of the docket congestion problem. While this has undoubtedly affected the general efficiency of the system and although a new and improved amendment would furnish necessary tone, it is impossible to see any substantial relationship between the outmoded constitutional provision and the docket congestion. After all, the framers (in 1876) did place the responsibility on the Supreme Court to supervise the court system. The failure of the Court to assume responsibility when the congestion became apparent was one effective cause.

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9 Colo. Const. art. VI, § 12.
10 1959 Ann. Rep. (Appendix I).
11 Colo. Const. art. VI, § 22.
12 Colo. Sess. Laws 1958, c. 44, § 4; Colo. Sess. Laws 1960, c. 40, § 11; Colo. Rev. Stat. § 37-5-22 (Supp. 1957).
13 1959 Ann. Rep. 4.
14 Colo. Rev. Stat. § 49-1-6(3) (Supp. 1957).
15 Colo. Rev. Stat. § 56-2-13 (Supp. 1957).
16 Colo. Rev. Stat. § 79-13-1 (1953).

III. OFFICIAL RECOGNITION THAT A PROBLEM EXISTED

Everyone will agree that court reform is more difficult to achieve than other governmental improvements. This is very evident from the frustrating slowness and laboriousness which attends such efforts in the face of obvious need. The responsible factor is probably the traditional independence and also the conservativeness of the judiciary. Judges are quite properly insulated from outside pressures and this insulation has had its effect not only in the area of decisions but also with respect to improving administration. In view of this, the need for leadership from the courts is the more apparent. Unless the judges themselves initiate improvements the chances of their becoming realities are lessened. This was true in our state. While the years of effort on the part of the bar and other groups are not to be discounted as influences, nevertheless no broad-scale program was able to get off the ground until the Supreme Court itself initiated it.

The first meaningful step was taken in 1957 by the then Chief Justice of the Supreme Court, O. Otto Moore. Soon after assuming the chair of Chief Justice he asked the Governor to create a Judicial Council for the purpose of studying the problem. After that the Governor appointed a Judicial Council of 29 lawyers and judges. The Governor's action was subsequently confirmed by the General Assembly and money was appropriated for the work of the Council. The Assembly directed the Council to make a survey and to report on or before December 15, 1958. Everything which has been accomplished stems from this group. This Council divided into committees and made studies in a number of fields including (1) the desirability of eliminating a review step in the field of administrative decisions, (2) desirability of abolishing the trial *de novo* in appeals from the county court to the district court, (3) methods of solving the district court deadlock, and (4) some methods for solving the Supreme Court deadlock.

The subsequent studies of the Council and its recommendations furnished a background for the General Assembly to adopt the various measures for obtaining reliable data and for taking positive steps to improve the judicial system. The statutes which were subsequently passed included:

1. Joint Resolution No. 16.[17] This measure created a study committee composed of 12 members of the House and Senate, which was called the Committee on the Administration of Justice. Money was appropriated for the employment of a professional staff and authority was given to conduct a thorough survey on the entire field of "administration of justice," including the organization of all courts and judicial services, the criminal code and code of criminal procedure. The committee immediately appointed an advisory group composed of representatives of the Supreme Court and district court, the law schools and the bar associations. It proceeded to conduct its own survey of court conditions and to hold public hearings in all parts of the state. Following its year-long study, the committee proposed numerous legislative measures dealing with various aspects, substantive as well as procedural problems, including a pro-

17 Colo. Sess. Laws 1959, p. 924.

posed new judicial article.[18] This unit is continuing and has for its immediate objective the reorganization of the courts by adoption of a new constitutional amendment. The details of the proposed amendment are unimportant here. It is sufficient to mention that the proposal seeks to integrate the court system and to eliminate duplications. The proponent's philosophy is that fewer but better qualified courts will improve the quality and the efficiency of judicial administration.

2. A second important enactment created the Judicial Department headed by a Judicial Administrator.[19] This will be hereinafter considered in some detail.

3. Legislation provided for some new district judgeships in the more congested areas.

4. An act that authorized the appointment of law clerks in the Supreme Court.

The above are the more important judicial statutes which were passed in 1959. There were others, such as the authorization directed to the Supreme Court to adopt rules of criminal procedure.

IV. THE STRUCTURE OF THE JUDICIAL DEPARTMENT

The most significant of the measures passed by the Assembly was the Judicial Reform Act of 1959.[20] This was modeled after the federal statute in that it created a department system for the supervision of the trial courts. The Act established a Judicial Department "for the supervision of all courts of record in the State of Colorado." It divided the state into departments to be supervised by individual Justices of the Colorado Supreme Court and created the office of Judicial Administrator. It provided that he is appointed by and serves at the will of the Justices of the Supreme Court. His duties, as declared in the statute, include the development of a reporting system with respect to pending cases in all courts of record. He is also required to analyze and study the reports, thus obtaining and determining which courts are in need of additional judges "so that litigants of this state shall receive just, speedy and inexpensive determination of all causes pending . . . ." He is also required to report his findings to the Chief Justice so that accumulated business can be disposed of by calling to the congested areas judges from other areas. The Act also provided for an Annual Judicial Conference looking to improved methods for transacting business within each department.

The Departmental Justice was authorized to install a reporting system within his department to examine dockets, records and proceedings in the courts under his supervision, and the judges and clerks of the district courts are required to furnish information requested.

Undoubtedly the most important aspect of a program such as this is the appointment of a competent Administrator. To be successful in such an endeavor many qualities are required. The most important of these are dedication, energy, drive, selflessness, and perhaps less important, diplomacy. One reason for the high degree

18 H.R. Con. Res. 6, 42d General Assembly, 2d Sess. (1960).
19 Colo. Sess. Laws 1959, c. 93, § 1.
20 Colo. Sess. Laws 1959, c. 93, § 1-2.

of success achieved during the first year was the fact that we were fortunate enough to have an administrator with these qualities. Clyde O. Martz, Assistant Dean of the University of Colorado Law School, took the position for a one year period. He has been succeeded by an equally qualified man, Professor James R. Carrigan, who had been on the teaching staff of New York University Law School, the University of Denver College of Law and the University of Washington Law School. The uncompromising approach of both of these men is producing a tradition which should insure a continuous high level of court administration.

Immediately after his appointment, the first Administrator commenced a long term study of the various courts of the state.[21] He sent forms to the clerks requesting information as to cases pending at the start of the requested period, new cases docketed and the number and nature of dispositions, together with the age of cases pending at the end of the period. He used another technique, which was to obtain a short term analysis of time spent by individual judges. These original reports and the continuing reports have furnished invaluable data useful in recommending new judgeships, in making temporary assignments and in projecting future problems. Similar data has been obtained from other courts, including the county, juvenile and superior courts. The work of the Administrator, has not, however, stopped with statistic gathering. He has also engaged in a variety of research work, including the following:

1. Supervision of the publication of comprehensive court manuals for the district and county courts. These manuals contain procedural directions and forms and are designed to promote uniform procedural practices. The County Court Manual was prepared by a research and writing team composed of prominent judges, attorneys, professors of law from the University of Denver, and county court clerks. The District Court Clerks Manual was a project of the University of Denver Law Center and was prepared by an outstanding research and writing team. The Administrator was instrumental in the physical work of editing and arranging the manuals which were published and will be maintained and distributed by the Judicial Department.

2. Assistance to the Supreme Court in connection with its rule making duties. The Rules of Civil Procedure were first promulgated in 1941 and many of them require amendment. Justices have found it impossible, what with the great backlog of pending cases, to devote themselves to this type of work. The Judicial Department has researched the problem and furnished necessary drafts which will ultimately lead to promulgation of improved Rules of Civil Procedure.

3. Submission of a draft set of rules of criminal procedure to the Supreme Court for its consideration. The Administrator, in conjunction with a committee of the Colorado Bar Association, drafted such rules fashioned after the federal rules. The Court has the legislative duty to promulgate Rules of Criminal Procedure and the Court's task is greatly simplified when it has a draft set of rules from which to work.

21 The following description of the activities of the Administrator is based on the detailed account in the 1959 Annual Report of the Judicial Administrator.

4. Analyzation of the Supreme Court's backlog of cases. This and the grouping of similar cases has substantially aided the case disposition rate.

V. REDUCTION OF THE DISTRICT COURT BACKLOG

The mere existence of the Judicial Department as a clearing house for information with respect to the need for additional judicial help has made a great contribution to the solution of the congestion problem. The individual districts, acting through their presiding judges, have customarily requested judicial help by notifying the Judicial Department of the Supreme Court. Normally these requests are filled on a completely informal basis. The Administrator has information which permits him to communicate directly with a judge who has available time to assist in another district, so the Administrator is usually successful in filling these requests without communicating with the Departmental Justice. Sometimes this latter procedure is necessary. In the very short time that the system has been operating the waiting period has been reduced from a high of 2 years, which existed just prior to the appointment of the Administrator, to approximately 6 months at the present time.

In the busiest court, the district court for the City and County of Denver, business machine methods have been installed so that information is maintained on an up-to-date basis.

It is not fair to attribute the improvement entirely to the work of the Judicial Department. First, there has been a high degree of cooperation and hard work by the judges. This has been the most important single factor. Secondly, there have been improvements in the operation of the master docket. The presiding judge has acquired more authority in the making of assignments and preventing continuances. Thirdly, the pre-trial conference has been more widely used and it is generally agreed that this has been a successful procedure in increasing settlements and reducing the docket. The rule of civil procedure providing for a mandatory pre-trial conference has not yet been adopted. However, in his report, the Judicial Administrator recommended:

> Civil Rule 16 should be amended to prescribe the scope of pre-trial preparation, outline conference procedures and establish sanctions for lack of preparation and lack of candor by participants in the conference. Uniform local rules, complementing the Revised Rule 16, should provide form pre-trial notices, form pre-trial orders and detailed procedures. By state rule pre-trial should be made mandatory in contested civil cases except where waived for good cause shown by written order of the judge. Without these changes pre-trial conferences will continue to be conducted sporadically, often on the day of trial, and without accomplishing the savings in time and litigation expense contemplated in their use. With these changes, the judges and attorneys will have confidence that the Supreme Court will enforce

pre-trial orders and attorneys can reasonably expect full disclosure under the supervision of the trial court during conference.[22]

It is not certain that the mandatory pre-trial rule will be adopted but some change in Rule 16 looking to more effective use of the pre-trial conference is likely. Whether the pre-trial should be mandatory is open to question. A present New Jersey study is seeking the answer whether pre-trial is helpful in all cases. The results of this survey may influence our Rule 16 changes.

When the system of administration was first adopted it was viewed with some apprehension by the district courts and also by the court clerks. It now has more acceptance. The judges and the clerks recognize that it is designed to help conduct a continuing self survey of the work of the courts and they recognize that this is desirable.

VI. REDUCTION OF THE SUPREME COURT BACKLOG

The need for study and survey of the Supreme Court practice has been more apparent than survey of the district courts because the backlog of undecided cases has been continuously increasing for almost 10 years. Various suggestions have been made to solve this. Most of them have dealt with methods for decreasing the traffic either through a system of discretionary review or through an intermediate court. Neither method is at the moment practical and consequently some kind of short term relief was essential. The following steps have been taken:

1. *Employment of Law Clerks for the Justices.* The Assembly had authorized employment of law clerks in 1904, but this had never been implemented by appropriation and there was no evidence that the Justices ever requested it. Enactment of a law authorizing each Justice to appoint a law clerk has improved the quality as well as the quantity of work.

2. *Departmental Hearings.* During the regime of Chief Justice Francis Knauss, the Court reinstituted the practice of hearing and deciding cases in three judge departments instead of en banc. This approach has been long authorized by Article VI, Sec. 5 of the Colorado Constitution, and has been utilized during various periods of the Court's existence, but it had fallen into disuse during the past decade. The Constitution provides that there must be three judges concurring in department cases and also provides: ". . . 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."[23] All cases are now assigned to departments except those involving constitutional questions and cases of great public importance. The Chief Justice determines whether a case is to be assigned to a department or to the full Court and he also determines the membership within departments. At first an effort was made to establish fixed membership within departments, but now the composition is completely flexible. This latter approach has proven better.

22 1959 Ann. Rep. 41.
23 Colo. Const. art. VI, § 5.

4. *Oral Arguments.* A third step taken was adoption of a rule requiring oral arguments in all cases with the exception of original proceedings and criminal appeals *pro se.*

5. *Use of Outside Judges.* The Legislative Council Committee on the Administration of Justice recommended that money be appropriated to employ district court judges, former Supreme Court judges and qualified county judges to aid in the drafting of opinions. The Assembly responded by authorizing funds in its 1960 session.[24] Now trial court judges are frequently participants in department hearings following which drafts of opinions are submitted and, as modified, are adopted *per curiam.*

The past Chief Justice, Leonard v. B. Sutton, refined and developed all of the above improvements and added others, including extensive use of the outside judges and of long term docket planning. All of this promises to reduce the Court's backlog by as many as 100 cases per year.

As a result of the described improvements, the number of cases at issue and ready for disposition had declined from a high of 331 as of October, 1959 to approximately 270 as of October, 1960. The number of pending cases had been reduced from 538 as of October 1, 1959 to approximately 450 as of October, 1960. The waiting period between the date of issue and date of final disposition had been reduced from 2 years to approximately 14 months. In the year 1960 there were 370 cases disposed of on written opinion and many other dispositions by order. On the present basis, it is estimated that the Supreme Court will be on a current basis at some time in the early part of 1962.

CONCLUDING COMMENTS

The enthusiasm of the foregoing remarks on judicial administration must not be construed as expressing belief that organic court reform is not essential. On the contrary, the system will never work at maximum efficiency until a modern vehicle has been substituted for the 1876 model. Since in our case a new amendment was not forthcoming it was necessary to utilize the old equipment to the best possible advantage. Our experience has shown that there can be limited progress even in these circumstances. Our experience has shown also that:

1. The Judicial Administrator can be trusted to perform responsible tasks. He should not be a mere super clerk or statistics gatherer. He should at long last receive recognition as a highly trained professional capable of rendering intelligent service in a broad area. He should be awarded more responsible and more meaningful tasks.

2. The Administrator must, of course, work under the guidance of the judges. The judges must assume leadership, initiative and must finally make the decisions in any court reform program or in any system of court administration. This can not be left to the General Assembly, the Bar Association, or to any other person or group. No influence outside the judiciary can effectively tell the courts how to run their business. If the courts fail to move there will be little in the way of court improvements.

[24] Colo. Sess. Laws 1960, c. 38, § 1-6.

3. It is finally submitted that the great contribution which a system of judicial administration can make is to provide a facility for continuous self analysis and self study. It gives the courts an objective picture of how they are doing. The trouble spots appear at once and can be corrected before they become difficult problems. If the plan operates with imagination and vigor it should provide essential tone and should serve as effective preventive medicine against arteriosclerosis, a disease to which judicial systems seem peculiarly susceptible.