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A Report from the Judiciary Committee

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Chairman

This committee started its work in the fall of 1946. It was composed of 157 members, with at least one member for each county. It raised $15,000.00 for its work and has a balance of only $600.00 on hand.

Its plans were approved by the Colorado Bar Association at the October, 1947 Convention, and thereafter by committees from the District and County Judges associations, and a bar committee of four (one from each congressional district) selected by the Board of Governors. At a meeting of the Governors while the Legislature was in session, the committee was authorized to make any changes it deemed necessary in order to secure the passage of its measures.

The following measures were introduced:

Constitutional Amendment House Resolution No. 1, Senate No. 2	
Chief Justice	H.B. 152 — S.B. 305
Judicial Council	H.B. 153 — S.B. 307
Retirement	H.B. 154 — S.B. 308
Salaries, Judges	H.B. 174 — S.B. 306
Salaries, Employees	H.B. 482 — S.B. 297

Only two bills were passed, H.B. 154, providing for retirement for district judges and county judges in *counties of over* 20,000 population, and H.B. 174, increasing salaries for court employees except in Denver. Both were modifications of the bills as introduced.

The Constitutional Amendment

The principal measure, of course, was the constitutional amendment, Senate Concurrent Resolution No. 2. This contained all of our proposals for amendment of the judiciary section of the Colorado Constitution, Article VI., with the ABA-Missouri plan of election and appointment, abolition of justice courts, etc.

Although the constitutional amendment was introduced in both houses, the united effort was made in the Senate. Bar committee members Stanley Johnson, Carle Whitehead, Winston Howard, Peter Holme, Jr., Elmer Brock, Jr., Worth Allen, Sam January, Richard Downing, Louis Hellerstein, and President William H. Robinson, Jr., all rendered yeoman service in attending the legislature and working with individual members to secure passage of our measures. Former State Senator Claude W. Blake was very valuable in his advice and efforts. Dean Ed King made two trips from Boulder to help at the legislature.

After many attempts to secure joint hearings by Senate and House committees we finally had a poorly attended Constitutional Amendment Committee meeting in the Senate chamber, and then the resolution came to a vote on third reading.

The heat was all on the Missouri plan. Senators Johnson, Carlson, Laws and Theobald spoke for it and the others who supported it were Senators Briscoe, Cheever, Chrysler, Gill, Gobble, Harpel, MacDonald, Murphy, Norcross, Rogers, Ryan, Saunders, Thornton, Veltrie and Whitaker.

On a roll call, the favorable vote would have only been 19 out of the required 24. Then Senator Dunklee told the writer that if it was sent back to the committee and the Missouri plan omitted, it could be passed. This was done, and it passed unanimously as Senate Resolution No. 9.

What The Revised Amendment Provided

The resolution as rewritten had the following most desirable provisions for amendment of Article VI which we believe the people would have supported at the 1950 general election:

1. Eleven sections were amended, three sections repealed and three new sections added.

2. Section 2 was amended by simply inserting a few words that the Supreme Court, "acting through its Chief Justice" shall have a general superintending control over inferior courts. This was to make the Chief Justice the responsible head of all courts.

3. Section 5 was amended by the addition of the following paragraph:

> "In case of the temporary absence of any judge, or his inability to serve, the chief justice may recall any retired supreme court judge, or call any district judge, retired or active, temporarily to serve in such office, and such judge, while so serving, shall have all the powers and receive the compensation of a judge of the court to which he is assigned, but such judge shall not receive any other compensation, retirement or pension payment from the State while so serving."

This was to enable the supreme, district and county courts always to have the full bench available for duty, so that public, litigants and lawyers might be adequately served.

4. Section 8 was obsolete, as it was passed when the Court of Appeals was abolished and its judges added to the Supreme Court. The new section abolished the old seniority provision for Chief Justice, provided for his election by the Supreme Court judges on the bases of his administrative ability for a trial term of one year, and thereafter, if desired, for three years. It also allowed him to assign a judge of any court temporarily to any other court.

5. Section 10 required a Supreme Court judge to be admitted to practice in Colorado instead of being "learned in the law."

6. Section 12 was rewritten to read "The State shall be divided into such judicial districts as may be provided by law, in each of which districts there shall be one or more judges."

7. Section 16 was modernized and district judges were also required to be admitted to practice in Colorado.

8. Section 18 allowed judges' *salaries to be increased during their term of office,* prohibited judges from practicing law (except in counties under 10,000), or from becoming a candidate for any office except a judicial one, *or from accepting employment or activities of any kind which interfered with judicial duties.* (This therefore prohibited board memberships, which took judges off the bench.) District judges could hold court for other district *or county judges,* and county judges for other county judges, and *lawyer county judges could sit for a district judge when requested by him so to do.*

9. Section 22 (County Court) provided for a county judge in each county, and that there could be additional judges in all counties over 100,000 population. The county judge was to be 25, and required to be a lawyer in counties over 10,000 population, unless the Chief Justice determined that lawyers were unavailable. This section did not apply to county judges in office. The General Assembly was empowered to abolish the county court and combine it with the district court in any county *or to consolidate county courts of several counties.*

10. Section 23. Most of this section was retained, but it was amended by giving county judges "*as may be provided by law, other civil and criminal jurisdiction, to be administered by the judge, or by assistants or subordinates, at any place within the county.*" It specifically gave them jurisdiction over the estates of minors and mental incompetents. *It provided for doing away with trials de nova by stating:* "Appeals may be taken, and *proceedings of any kind transferred from the county to the district court, in such cases and in such manner as may be prescribed by law or by rule of the Supreme Court.*"

11. Section 25 on justice courts was amended entirely to read:

> "(a) The offices of justice of the peace and of constable are abolished effective six months from the adoption hereof. Until June 1, 1955, or such time thereafter as may be provided by law, the jurisdiction heretofore conferred upon justices of the peace shall be in the county courts of the counties within which the justice precincts were contained and shall be administered by the judges thereof, and by any magistrates and referees, appointed by them. Service of process in civil and criminal actions may be made in the manner provided for courts of record. Special constables may be appointed by the county judge. Upon the abolition of justice courts, all cases pending in such courts shall be transferred forthwith to the county court.
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> "(b) Magistrates and Referees. To assist in administering the jurisdiction conferred in Subsection (a) hereof, the county judge in

each county exceeding 20,000 population may appoint a magistrate; and, for each additional 30,000 population in excess of 50,000 may appoint an additional magistrate; and in any county, regardless of population, with the approval of the chief justice, may appoint additional magistrates. To administer non-contested matters within such jurisdictions the county judge may also appoint referees. All magistrates and referees shall be residents of the county. The county judge shall fix the salary of each magistrate in an amount not exceeding seventy-five per cent of his own salary. He may fix the compensation of referees with the approval of the county commissioners. Magistrates and referees shall serve at the pleasure of the county judge.

"(c) Procedure Before Magistrates and Referees. The Supreme Court shall prescribe rules of civil and criminal procedure covering the administration of the jurisdiction conferred in sub-paragraph (a) hereof. Until otherwise provided by law or rule of court, the procedure, fees and costs shall be as now prescribed for justice of the peace courts and constables.

"(d) Magistrates Act in City and Town Courts. Magistrates of the county courts may also act as police magistrates and municipal judges, in which case part of their salaries may be paid by the county and part by the town or city."

12. As all of section 29 had been changed in other sections, vacancies in district attorneys was all that remained of the section so it was amended simply to read that such vacancies should be filled by the judges of the district the same as now.

13. Sections 7, 13 and 15 were repealed, as all were covered in the other sections.

The three new sections were as follows:

"Section 31. Election and Terms of Office of Judges of Courts of Record. All Judges of Courts of Record shall be elected at the general election unless otherwise provided by law. District judges shall be elected in their districts and county judges in their county or counties. The term of office of all judges hereafter elected shall be as follows: Ten years for judges of the Supreme Court, six years for district court judges, and four years for county and juvenile court judges.

"Section 32. Vacancies in Judicial Office. Whenever a vacancy shall occur in the office of judge of the Supreme Court, the district court, the county court or the juvenile court, the Governor shall fill such vacancy. Such appointees shall serve until the second Tuesday of the succeeding January after the next general election and if elected shall then serve for a full term of office of such court as provided in Section 31.

"Section 33. Retirement. A judge of any court now existing, or hereafter created, shall be retired from office at such age as shall be fixed by the General Assembly, but until so fixed upon reaching 75 years of age, or prior thereto, if found disabled by reason of mental or physical infirmities from performing the duties of his office. Issues concerning retirement for age or disability shall be determined by such court, council, board, committee or referee and in such manner as shall be provided by rule of the Supreme Court, or by law, with the right of appeal, by the judge affected, to the Supreme Court."

House Action on The Amendment

As the resolution passed the Senate unanimously, no opposition was expected in the House. Great difficulty, however, was encountered in getting it out of the rules committee, and when it emerged on April 15 most of its supporters were absent. There were very few members present, not even a quorum, as it was Good Friday afternoon. Amendments were made, without consultation with any of those who had introduced it, to strike out retirement age at 75, and changing the 10,000 persons per county to $15,000! Then about 2 P.M. only 9 voted for it and it was apparently hopelessly lost. Radetsky and Hamburg managed to have it brought out for reconsideration the next day, Saturday, and it lost again 25 to 28, with many of our active supporters absent. Some details on the vote are as follows, lawyers *italicized*:

For: Barker, Berry, *Bennett*, Bentley, Bezoff, Bledsoe, Clay, *Cobb*, *Crowley*, *Hamburg*, Hill, *Houtchens*, *Johnson*, Lamb, Mac Donald, Ogilvie, *Paddock*, Pellet, Roth, Stalker, Steele, *Tinsley*, *Wade*, Yersin, Mr. Speaker.

Against: Two lawyers, *Blackman* and *Eaton* and 26 others.

Absent: Abe, Abernathy, Archambault, Hobbs, *O'Neil*, Phillips, *Pile*, *Quiat*, *Radetsky*, Weissenfluh. 10

The Fate of The Statutes

While all statutes were introduced in both houses, we sought to have them first passed by the House. The retirement bill as prepared by the district judges went through the House without dissent. One of the Supreme Court judges objected to their inclusion in the bill and that was at once amended in the Senate. Then Senator McNichols found many defects in it from a retirement fund and administrative angle, so had it held in committee. He conferred with Allen Moore of the Legislative Reference Bureau, who amended it in these respects and it was speedily passed. As only a few days of the session remained, there was no time to confer with the District Judges Association, so it was take it or leave it. The district judges at their meeting June 4 found it still defective so repudiated it in toto.

The bill for increased salaries also passed the House as written, but the Senate eliminated salary increases for Denver.

Our bills for judicial council and increased powers for the Chief Justice, after being approved early in the session by the judiciary committee, were buried in the rules committee and never saw daylight. We could not get them out. The bar association favored a judicial council of laymen, lawyers and judges to constantly study and try to improve the judicial system of Colorado. This we believe to be the proper approach to the problem—that laymen and active lawyers, as well as the judges, themselves, work together for service to the public by the courts.

Some of the members of the Supreme Court had other ideas. Apparently they were primarily interested in a raise in salary, so they prepared and had introduced H.B. No. 782. This was sponsored by four lawyer members of the House. It divided the state into seven departments, each to be presided over by a Supreme Court judge, who was to coordinate and expedite the work of the district and county judges in his department. For this additional work the judges were to receive additional salaries, so that all Supreme Court judges would get raises to $9,000.00 each, instead of the $6,500.00 the older judges are getting, and the $7,500.00 being received by the two justices elected in November, 1948. As this bill clashed head on with our judicial council and chief justice bills these justices are credited with keeping our two measures in the rules committee. H.B. 782 passed the House unanimously but as it called for an appropriation of $31,000.00 for the additional salaries the Senate finance committee buried it.

Then on the very last day for consideration of such a measure, one of the justices had a proposed constitutional amendment introduced in the House. This was limited to raises of judges salaries during their tenure of office. This also unanimously passed the House, but was not even voted on in the Senate.

Conclusion

Lack of team-work between the bar association judiciary committee and Supreme Court is to be regretted. The raise of salaries for the Supreme Court justices was in our constitutional amendment. Many of us believed that the suggested additional work for extra salaries for Supreme Court judges as proposed in H.B. 782 was clearly unconstitutional. We also believed that the Supreme Court judges had enough work to do clearing their docket, without having quasi-judicial duties added.

In any event we fell down because we didn't properly sell our program to the individual legislators. If the lawyers throughout the state will first be committed to a bar association program, then sell the legislature before it convenes, success will be easy. Otherwise we must have enough funds for a

full time lobbyist. Many of the district judges, (all but one of the Denver group) cooperated very actively by writing letters to and contacting legislators, but we need real teamwork among lawyers, judges and laymen.

Our unfulfilled program is very worthwhile. What do the lawyers and the bar association want us to do? We believe we should go forward and finish our job, but need your suggestions, your support and your very active personal cooperation.

Regents Reject Joint Publication Project

The proposal to have the Rocky Mountain Law Review jointly published by the Colorado and Denver law schools and the Colorado and Denver bar associations, and distributed as Dicta is now to all members of the associations, was rejected by the Board of Regents of the University of Colorado at a meeting the latter part of April.

Although the project had the endorsement of the law school at Boulder, as well as of the other interested organizations, the Regents voted for the publication of RMLR to remain exclusively in the hands of the University of Colorado.

This decision means that Dicta will continue to be published either in its present form or with the participation of the other law schools in the state. With this thought in mind, the Editor would like to get a better idea as to just what sort of material the attorneys in Denver and throughout the state would like to see published in Dicta. Accordingly, the reader is humbly petitioned to inform the Editor, either by letter or on the form below, as to his thoughts on the subject, numbering his preferences 1, 2, 3, etc.:

.....current decisions in constitutional law, Federal and state. (now a regular department edited by Edward H. Sherman of the Denver bar.)
.....significant decisions at nisi prius in Colorado.
.....comment on Colorado law, cases and practices.
.....comment on Federal law, cases and practices.
.....biographical write-ups on outstanding Colorado lawyers.
.....humorous anecdotes and stories.
.....other (describe what you want and how you think the Editor can get it with as much particularity as possible.)

Please mail your letters to the Editor, 319 Chamber of Commerce Bldg., Denver, and accept his thanks in advance for your interest.

Donald B. Robertson of the Denver bar was recently appointed general attorney of the Denver Tramway Co. Mr. Robertson is a member of the firm of Johnson and Robertson, which also recently announced the association with them of James D. Voorhees.