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The Judiciary Committee Plan and the 1949 General Assembly

By STANLEY H. JOHNSON

Executive Secretary of the Committee

In 1945 the Governors of the Colorado Bar Association directed that a judiciary committee be established to study the Colorado court system and recommend improvements. Particular emphasis was placed upon the need of removing the Colorado judicial system from partisan politics, where, most lawyers felt, it did not belong.

Under the chairmanship of Philip S. Van Cise, the committee was organized in Denver and throughout the state early in 1946. For over a year it collected information about the courts that no one had ever bothered to obtain before. For three months thereafter the committee made every effort to obtain suggestions and criticisms concerning the matters it had under consideration. After reviewing the returns, it presented a plan to the Colorado bar in October, 1947, which was approved by a vote of three to one. Nevertheless, the committee felt its plan would be improved by the first hand advice of judges and lawyers from districts outside of Denver. The Governors formed a collaborating committee of three district court and three county court judges and three lawyers from other counties, and after two extensive meetings the final plan was evolved.

From December, 1947 to March, 1948, the Judiciary Committee put in many hours of work, drafting bills and proposed constitutional amendments to implement its plan. It then spent many days in an attempt to persuade the legislators to attend a special session, so that judicial salaries, which were obviously too low, might be increased before they were frozen by the election of judges to new terms in November, 1948.

With the help of the county officers and county commissioners, the Judiciary Committee was successful in inducing the Governor to call a special session, but it did not succeed in obtaining the passage of its salary bill. Instead, the Republican members of the Assembly—according to the press, after a secret caucus—presented a bill of their own and passed it in a minimum of time. No opportunity was given the Judiciary Committee to present its bill at the caucus, nor the reasons behind it. Nevertheless, in the face of serious financial shortages, which it seemed certain to face in 1949, the Legislature did increase judicial salaries from 15 to 30 percent. The trouble was, with money worth half what it was in 1937 when the existing meager salaries were established, the raise was not nearly enough. Furthermore, the Judiciary Committee salary bill was part of a general plan to improve the administration of justice, but the salary bill passed at the special session had no bearing upon it.

The purposes of the overall plan, so far as the Judiciary Committee was

concerned, were in part, to make judicial work attractive to the abler members of the bar by (a) avoiding the expense, and the aimless and sometimes blind selection of judges resulting from political campaigns, (b) to provide salaries which would partially recompense an attorney for the sacrifice of his practice, enable him to live in reasonable security and comfort as a judge, (c) to insure, so far as possible, the selection of good judges with an opportunity to adopt judicial work as a career, and (d) to make one person responsible for the efficiency of the courts who will have the power to see that judges are sent where they are needed and kept busy.

The new salary act will not further this plan to any great extent. A capable lawyer in Denver will not be attracted to the District Court bench at \$6,000 a year when last month a bricklayer received damages from a jury at the rate of \$5,000 a year. Nor may we pay a County Judge \$3,500 a year and expect to get a lawyer, educated to the rules of law, who will work full-time as a judge.

In a few weeks now the complete plan will be presented to the Assembly in general session. It is not the same legislature which attended the special session. Instead of two or three salary bills, it probably will have some two thousand bills of all kinds, and a bad treasury problem, dumped in its lap. Nevertheless, it will have some time for deliberation, and to make its consideration of the Judiciary committee's plan easier, dinner meetings sponsored by the local bar associations are being arranged at which the details and the reasons for the legislation will be explained. One of the first of such meetings will be held on December 13 for the Denver legislators. Later, after the session gets under way, it is planned to present the proposed measures to all of the legislators.

Since the special session, the committee has held frequent meetings, and has polished and repolished the various bills and proposed amendments—all, that is, except its salary bill. Whether or not its salary bill again will be presented will depend upon the legislators themselves. If they express a willingness to hear the reasons of the committee for its recommended salaries for judges, then the bill will again be offered. Otherwise not. It will be withdrawn, in that case, until 1951.

The Legislative Program for 1949

Four bills will be presented by the Colorado Bar Association's Judiciary Committee at the general session. These are bills providing for: (1) a judicial council and court administrative officer to study and improve the laws and court administration, not occasionally and in a haphazard fashion, but constantly and consistently; (2) retirement pensions for judges who have reached voluntary or involuntary retirement age or have become disabled; (3) specific powers in the Chief Justice to assign judges from one court to another or to recall retired judges to active service; (4) amendment of section 11 of House Bill No. 3 which was passed at the special session. That statute lim-

ited the \$1,000 raise to the terms of office to which judges were elected in 1948 and 1950 and to the terms of offices of judges appointed or elected in their places. This limitation should be stricken so that it is effective to all judges hereafter elected or appointed.

The remainder of the committee plan is all contained in one amendment to Article VI of the Colorado constitution. This includes: (1) a plan of non-partisan judicial selection, a modification of the plan which has been in effect in Missouri since 1940; (2) abolition of the office of justice of the peace and substitution until 1955 of magistrates and referees under supervision of the county courts; (3) election of a chief justice chosen for administrative ability with the necessary powers to integrate the courts and increase their efficiency; (4) a requirement that all judges, where practically possible, shall be trained in the law and devote full time to their work without participation in political activities; (5) provision for declaring vacant the office of any judge physically or mentally incapable of performing his duties; (6) provision for involuntary retirement of judges at age 75; (7) clarification of the jurisdiction of the County Court and right of appeal from its orders; (8) provision for increasing salaries of judges during their terms of office and for retirement benefits.

The remainder of this article will be devoted to explaining briefly the contents of these measures and why, in the opinion of the committee, such criticisms as are directed against them are outweighed by the improvements which they will effect.

1. The Judicial Council Bill

Provisions. The council consists of nine members: the Chief Justice, a District Judge, a County Judge, the chairmen of the Judiciary Committees of both houses, two lawyers selected by the bar, and two laymen by the Governor. Its function: to make continual analysis of substantive and procedural law and rules and business of the courts based upon information obtained by a trained and adequately paid secretary, and to publish annually recommendations for improvement. The secretary also serves the Chief Justice as an administrative officer to assist in unifying the courts and supervising all clerks of court, and in centralizing the purchase and uniformity of court forms. Members of the council receive expenses but not salaries, serve for six years, or, where serving *ex officio*, during their terms of office. The council also has power to determine whether a judge is so disabled as to be incapable of performing his duties, or is entitled to retirement benefits, subject to review by the Supreme Court.

Comments. Half of the states have judicial councils, but only such states as New York, Michigan, Ohio, Texas and California, where the councils are small, carefully chosen from judges, lawyers and laymen, and provided with well-paid research assistants, have received the full benefits possible from such a council. Since the council's study of laws and courts is con-

tinuous, and some of the members serve for several years, the results are usually more searching and more consistent than the spasmodic efforts of a few members of a bar association. Furthermore, its recommendations are published, are official, and drawn with the approval of two members of the Assembly. There is none of the usual guff about the motives of lawyers in feathering their own nests. If the courts are to be efficiently intergrated, supervised and controlled, the Chief Justice must be provided with a well-paid assistant who serves a dual purpose. Determination of disability of judges is left to the council because judges acting alone should not be compelled to pass on the mental or physical ability of a colleague. The discipline of lawyers by the Colorado courts generally has not been considered effective, and in ruling upon a disability case the courts also might not be firm. Appropriation for the council's first biennium, including the administrative officer's salary, should not be less than \$30,000, if it is to accomplish anything. If given proper support, the Council may prove to be the most important factor in this plan for judicial reform.

2. Retirement Pension Bill

Provisions. The pensions provided are of four kinds: (1) at age 65 after 10 years service in any court of record, forty per cent of the average salary for life; (2) at age 65 after 16 years service, one-half the average salary for life; (3) if disabled at any age after 10 years service, one-half the average salary for life; (4) if disabled before 10 years of service, one-half the average salary for as many years as he has served. The judges contribute five per cent of their salary, the State the rest. Membership in the plan is optional.

Comments. Retirement benefits are necessary for the security of judges and to make a judicial career attractive to able men. The provisions of this bill are sounder under actuarial tests than the State Firemen's or Denver Police pensions which, though based on 25 years of service, have no age limit. The cost to the state might be small for the first few years and reduced to nothing by 1972. Figures of costs have been prepared for the committee by an actuary and are available. The right of the public workers to security in old age is now well established.

3. Powers of the Chief Justice

Provisions. The Chief Justice may: (1) call an annual conference of judges; (2) assign a judge of any court of record qualified to practice law temporarily to any other court of record; (3) assign Supreme Court cases to district judges or retired Supreme Court judges for advisory opinions; (4) recall a retired judge of the district or supreme courts to replace any absent judge, or any retired judge qualified to practice law to active duty, judges thus recalled to receive the full pay provided for the office occupied; (5) transfer on good cause cases from one judge to another judge of a similar

court; (6) assign judges specially trained to the trial of special kinds of cases, with consent of the parties; (7) order disability hearings by the council; (8) supervise and coordinate the work of the courts, Judicial Council and administrative officer; (9) determine the number of magistrates necessary for county judges.

Comments. The Chief Justice at present has and exercises few powers. If possessed of administrative ability he is the logical person to coordinate, make more efficient, and expedite the work of all courts, and some executive leadership to this end is badly needed. In districts where judicial work is heavy, it is difficult now to obtain supply judges. The need is very great now in the Denver district courts. Furthermore, there are times when the one district or county judge is ill and no cases are tried in his court for months. County court judges trained in law or district judges could be assigned to fill-in, if not required to attend to their own business. This is the purpose of the Administrative Office of the United States Supreme Court among the many Federal courts. We have 80 separate courts of record in Colorado with no one supervisor and little coordination. This is not sound business practice. Cases are now removed from one judge to another only by consent of the judges affected. The decision should lie elsewhere. Judges with special skill, as in water rights or mining, should be available to parties. The courts of Colorado, as a whole, are not operated on a sound business basis, to the loss of the public. They have been subject to criticism for many years and it is time something is done about it.

4. Judges' Salary Bill

Provisions. The proposed bill provided salaries of \$10,000 for the Chief Justice, \$9,500 for his associates, \$7,500 for district judges and the Juvenile Court and County Court judge in Denver, and salaries graduated downward from \$6,500 for county judges outside Denver. Distinction was made between counties in which, under the Committee's plan, a county judge must be a qualified lawyer and give his full time to judicial work and those in which he need not be.

Comments

The salaries under the proposed bill were fixed after prolonged discussions and study of statistics of the courts over a 10-year period; this bill should be reintroduced in either 1951 or 1953 session. No study was made by the special session of salaries or the basis for them in connection with its new act, in which Supreme Court judges were given a raise of \$1,000 to \$7,500, district court judges and Denver Juvenile Court judges of \$1,000 to \$6,000, and the salaries for county judges outside of Denver graduated down from \$5,600 without any reference to the work they might perform. However, the only salary measure which we shall introduce will be as previously stated, to strike the limitation clause in the special session's bill.

Trials de novo in District Court

Trials de nova in the district court on appeals from the county court are expensive, obstruct justice by delay and are generally obnoxious to the bar. They should be abolished. Hence in our constitutional amendment we propose to amend the second paragraph of Section 23, Article VI, to read as follows:

"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 rule of the Supreme Court*. Writs of error shall lie to the Supreme Court from every judgment of the County Court."

The italicized words are the amendments.

Resolution for Amendments to Article VI

The amendments are so numerous that they will be explained here by sections. Many of the old sections are amended, though only in a few particulars but there are several new and important sections added. The amendments are discussed first.

Section 2. The supervising control already existing, but unused, in the Supreme Court, is placed in the hands of the Chief Justice but may be limited by legislative action, except as provided in the remainder of the article. The reasons for this change already have been mentioned.

Section 5. The first paragraph repeats the provisions of the existing Section 5. The second paragraph is new. It enables the Chief Justice to fill a temporary vacancy on the Supreme Court by calling in a retired supreme or district court judge, or active district judge, who shall have the powers and compensation of that office. As the population of the state increases, it may be expected that decisions in department by three or four justices will increase in order to keep up with increase in cases. Now that the Supreme Court, after many years, is catching up with its business, it is important to enable it to keep its decisions current. The cost and loss to litigants from past delays must have been substantial. Some of these delays, however, have been the fault of the attorneys or litigants. Nevertheless, neighboring state courts have managed to stay within six months to a year of their dockets.

Section 8. The Chief Justice, in the future, is to be elected by the judges of the Supreme Court for his administrative ability, not merely succeeding to that office by rotation during the final year of his term. He is first chosen for a trial term of one year; then, if his administrative ability is demonstrated, for three years more and for additional four year terms, so long as he is a judge of that court. He is expressly required to supervise the administration of all the courts and perform such other duties as the legislature gives him. The "Chief Justice Bill" executes this provision.

It is unnecessary to emphasize again the importance of this amendment. During the last year, under the leadership of Chief Justice Burke, the Su-

preme Court has made great strides in catching up with its docket. Leadership for all the courts is equally necessary.

Section 10. The old section is amended to provide that Supreme Court judges shall have been qualified to practice law, not merely learned in the law. It is ridiculous to have one requirement for qualification of lawyers and another, more lax and vague, for judges who decide what the law is. The same change is made in the qualification of district and county judges in Sections 16 and 22. Section 10 also adds the words "preceding his appointment" to the two year residence requirement.

Section 16. The same changes appear here for district judges as in section 10.

Section 18. This amendment permits an increase of salaries of judges during their terms in office. Without such a provision, the salary increase provided for Supreme Court judges at the special session will not be available to the experienced judges already serving when it was passed, but will be available to the judges elected last November and appointed or elected in 1950. Certainly the incumbent judges should have the benefit of any salary raises now or in the future. The new section also, except for county judges in counties under 10,000 population (where they are not required to be and, practically, cannot be, lawyers) prohibits any judge from: (1) receiving any other compensation because of his office in any form; (2) practicing law or being a candidate for, or holding any other kind of public office; (3) or accepting other employment which interferes with his judicial duties. He must be available for duty at all times except during a six weeks' vacation. No judge or judicial officer is to be paid according to the amount of fees collected. The purpose of these amendments requires no discussion except that they require payment of more liberal salaries to judges than are provided in the new salary act.

Section 22. Provides for an additional county judge in Denver, if needed. At present, even the judge there can hear only a portion of the cases and judges from other counties must assist him. A city should choose its own judges from among its own attorneys. This section also requires that in counties with 10,000 population or more, the county judge shall be qualified to practice law. Considerable wealth has been acquired in rural areas and the administration of estates, or for that matter, the trial of divorces, civil and criminal matters in those courts, whenever possible, should be conducted by judges who know the rules. Since no period of residence is required before appointment or election, if the salary is adequate, attorneys may be induced to take residence in counties where lawyers are scarce, to serve as county judge. It is true that laymen may make fair and honest judges, but there is surely more reason for a trained umpire in this field than in the field of sports.

Section 23. This section is amended to clarify the right of the county court to unlimited jurisdiction in hearing claims in all estates. The present

section refers only to estates of deceased persons. It also permits it, under the limits of statutes to hear cases in any place in the county or to have its assistants or subordinates do so. These changes refer primarily to the abolition of the justice of the peace courts, as provided in Section 25. The second paragraph governs trials *de nova*.

Section 25(a). Abolishes the offices of justice of the peace and constable. Instead it provides that until 1955 the county judges take over that jurisdiction and may appoint special constables. After 1955, when the plan has had a fair trial, the question of inferior courts is left to the legislature.

(b). The county judge may appoint one or two magistrates to assist him in this work, and others with consent of the chief justice, and he may also employ referees for non-contested matters. They are answerable to the county judge, who fixes their compensation. Magistrates shall receive not over 75 per cent of the judge's salary.

(c). The present justice court procedure and costs continue until changed by the Supreme Court by rule or by the legislature.

(d). Magistrates may act as police magistrates. The purpose of this measure is not only to get rid of justice of the peace courts which have earned a well-deserved criticism throughout the United States over many years, but to insure that petty civil and criminal cases are tried before the county judge and his assistants during the two year period. The judge and his magistrates may hear cases anywhere in the county.

Several states are in process of studying or changing-over from the justice of the peace system. The committee has examined reports of the Judicial Councils of those states and has adopted this plan as the most practical for Colorado. The legislature is so busy with a host of bills that it would be difficult for it to make a comprehensive study of a substitute plan at one session. And yet the evils of the present system are so great that a carefully thought-out plan should be given a trial period of operation.

Sections 32, 33 and 34. These sections contain the committee's modification of the plan proposed by the American Bar Association in 1935 and adopted in Missouri in 1940. It has since been twice reenacted against strong opposition there. The sections must be outlined very briefly here for want of space. They will be discussed at greater length in a later article. The committee hopes that it may persuade a member of the Missouri Supreme Court to explain this plan and the splendid results it has brought about in Missouri to the Colorado legislators.

The plan provides that judges shall no longer be elected on a partisan political ticket in a competitive election. When the terms of the present judges expire, their offices will become vacant. Then, as now, the Governor will fill the vacancies by appointment but he must select from three nominees (except in the case of county judges in counties under 10,000 population) selected by impartial nominating commissions. The commission for the Su-

preme Court contains nine members, for a district court, five, for the county courts in counties of 10,000 or more population, three members. The Chief Justice is a member of the supreme court commission. The Governor appoints one layman, the bar one lawyer, from each congressional district. For the district court commission, the Governor selects two laymen and the bar two lawyers and these four select a fifth who must be a layman. All must reside in the district. The county court commission is made up in the same manner with two laymen to one lawyer.

The judge thus appointed serves a trial term of at least one year until the general election, when his name is placed upon the ballot without party designation or opposition. The voters then decide whether or not he shall be retained in office. If he is, he serves out the full term of his office. If he is voted out, or if after his retention, he dies or resigns, the vacancy is filled again by the Governor in the same manner.

This method of selection permits a careful nomination of candidates according to ability, rather than by whim of party leaders and avoids the results of the usual political campaign in which judges, whose business has no connection with politics, should not take part. It also gives the public a period of from one to two years to measure the judge's ability before retaining him in office for a full term of four, six, or ten years.

Section 35. Provides that a judge must retire at age 75 or sooner, if disabled by mental or physical infirmity from performing his duties. It empowers the legislature to provide what court, council, board or committee shall determine disability or age for retirement, and enables the Supreme Court to provide rules of procedure. Retired judges, if able and willing, may be recalled to service by the Chief Justice at full pay while serving.

There have been repeated instances in which judges have become mentally incompetent while on the bench, with no provision in the law for their removal. This provision of the amendment, together with the implementing Judicial Retirement bill mentioned above, would prevent such a situation from arising.

The sole purpose of the Committee's work for over two years has been to improve the administration of justice in Colorado. It has reached its conclusions after careful study and innumerable conferences, has invited criticism and suggestion from every quarter, and has weighed the comments it has received. Its work was made possible by the payment of \$15,000 by Colorado lawyers into a fund earmarked for that purpose. The bar has had the plan explained to it in detail many times and has endorsed it. It is a plan which should be considered and adopted as a unit, so that, for the first time, the courts of this state will be administered as parts of a whole for the good of the people, and the judges presiding over these courts will be the best men available. There has never been a time when these objectives have been more important.