Report to the Colorado General Assembly:

JUDICIAL ADMINISTRATION IN COLORADO

COLORADO LEGISLATIVE COUNCIL

RESEARCH PUBLICATION NO. 49

December 1960

LEGISLATIVE COUNCIL

OF THE

COLORADO GENERAL ASSEMBLY

* * * * *

The Legislative Council, which is composed of five Senators, six Representatives, and the presiding officers of the two houses, serves as a continuing research agency for the legislature through the maintenance of a trained staff. Between sessions, research activities are concentrated on the study of relatively broad problems formally proposed by legislators, and the publication and distribution of factual reports to aid in their solution.

During the sessions, the emphasis is on supplying legislators, on individual request, with personal memoranda, providing them with information needed to handle their own legislative problems. Reports and memoranda both give pertinent data in the form of facts, figures, arguments, and alternatives.

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.

---

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

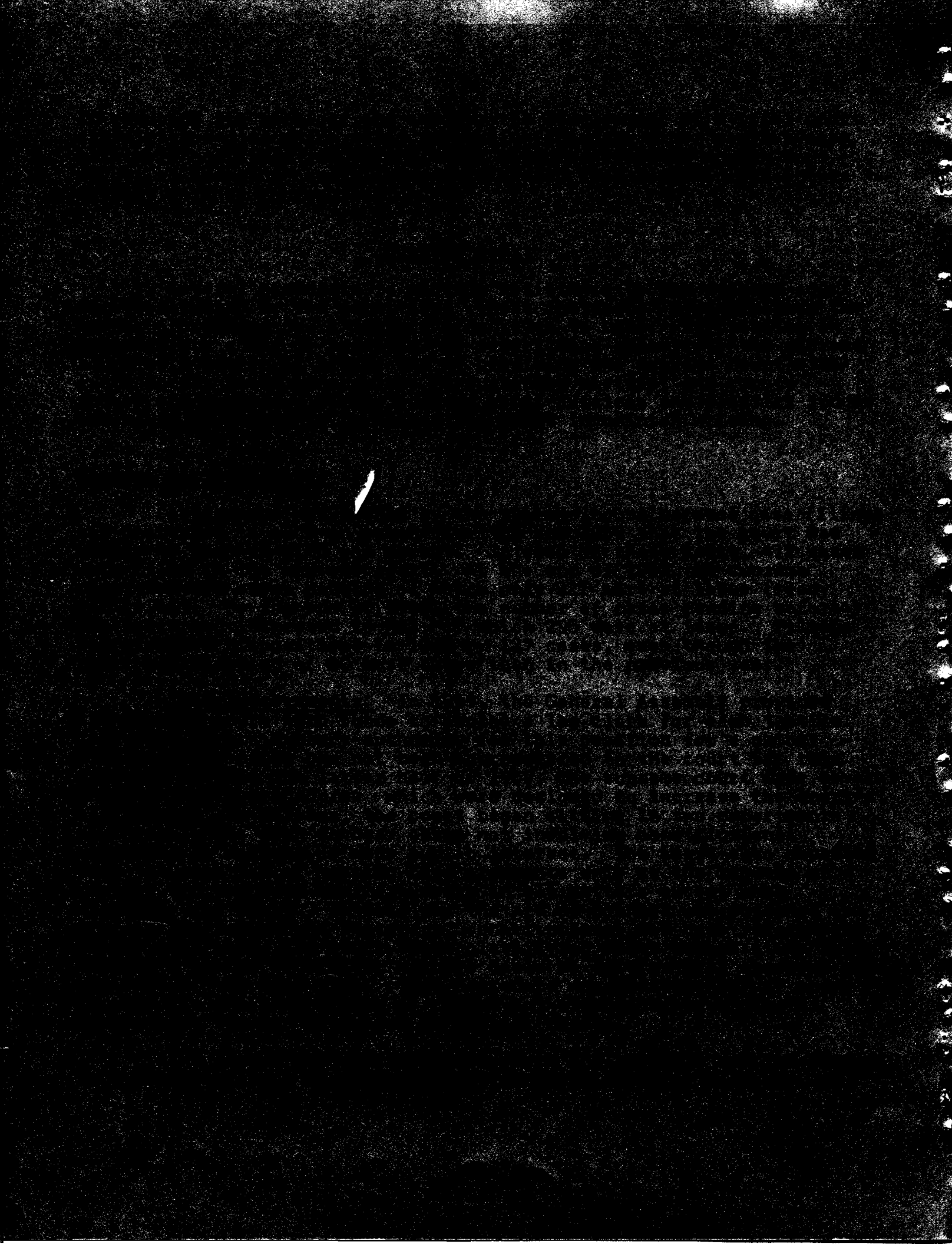
December 10, 1960

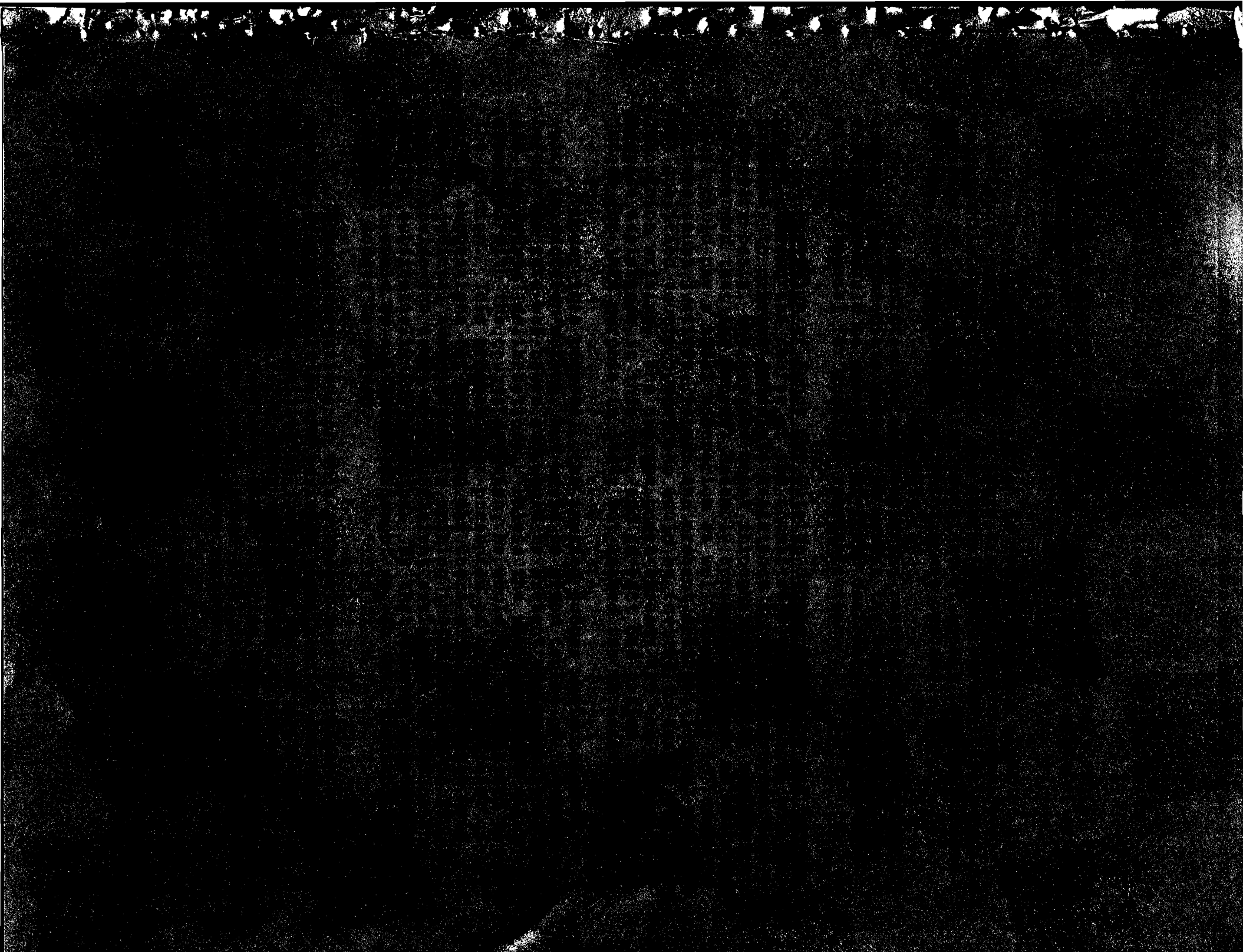
TABLE OF CONTENTS

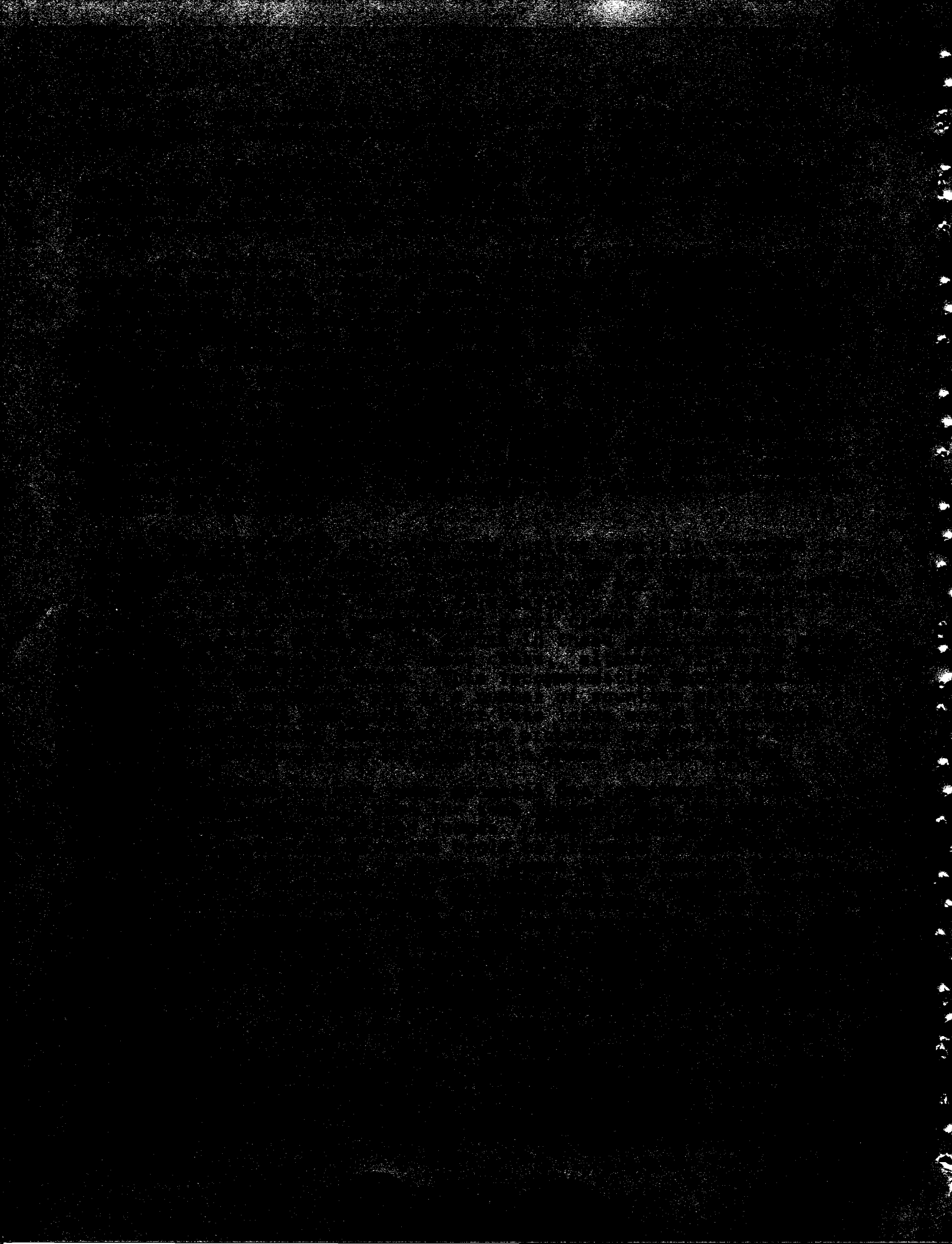
TABLE OF CONTENTS Continued:

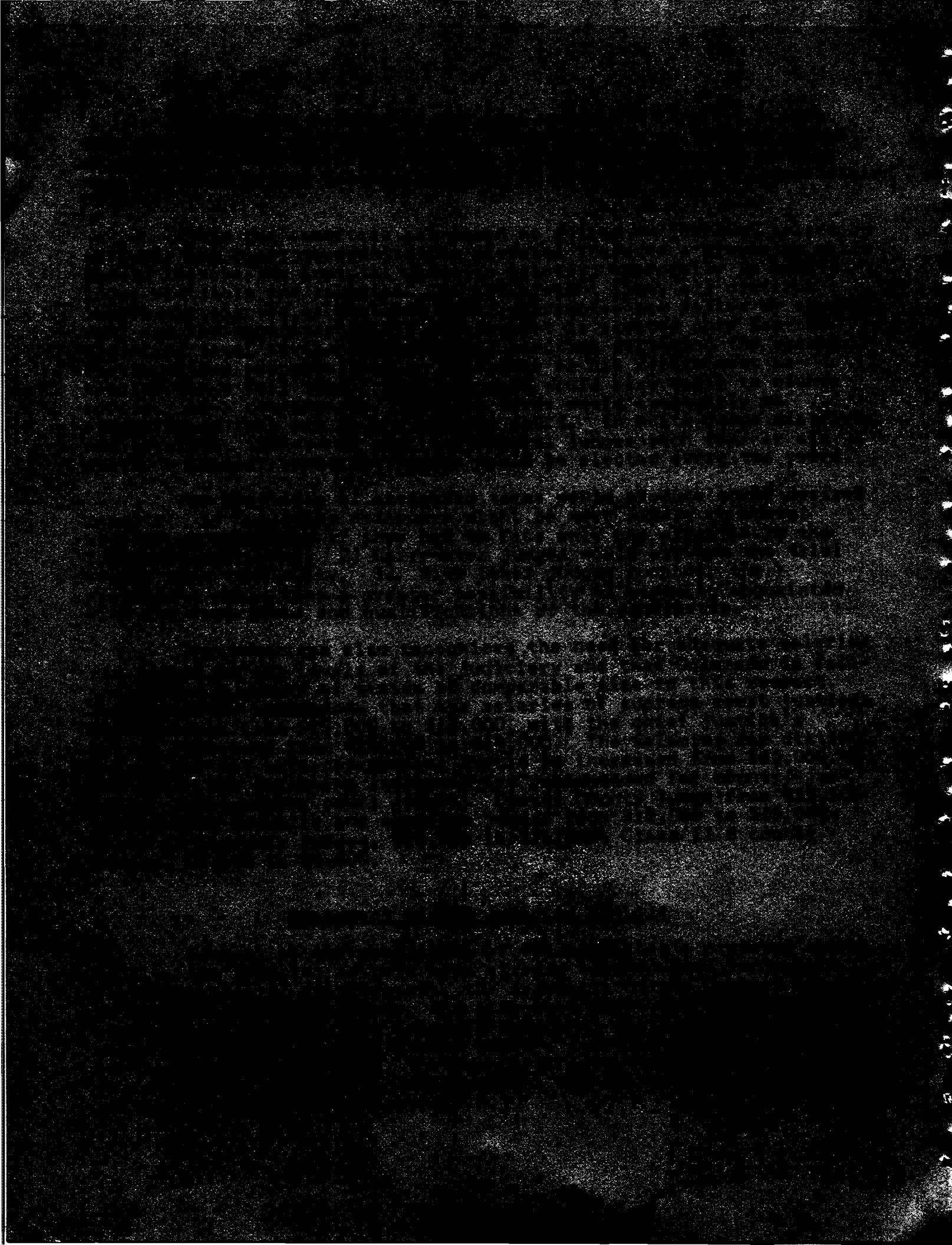
LIST OF TABLES AND CHARTS

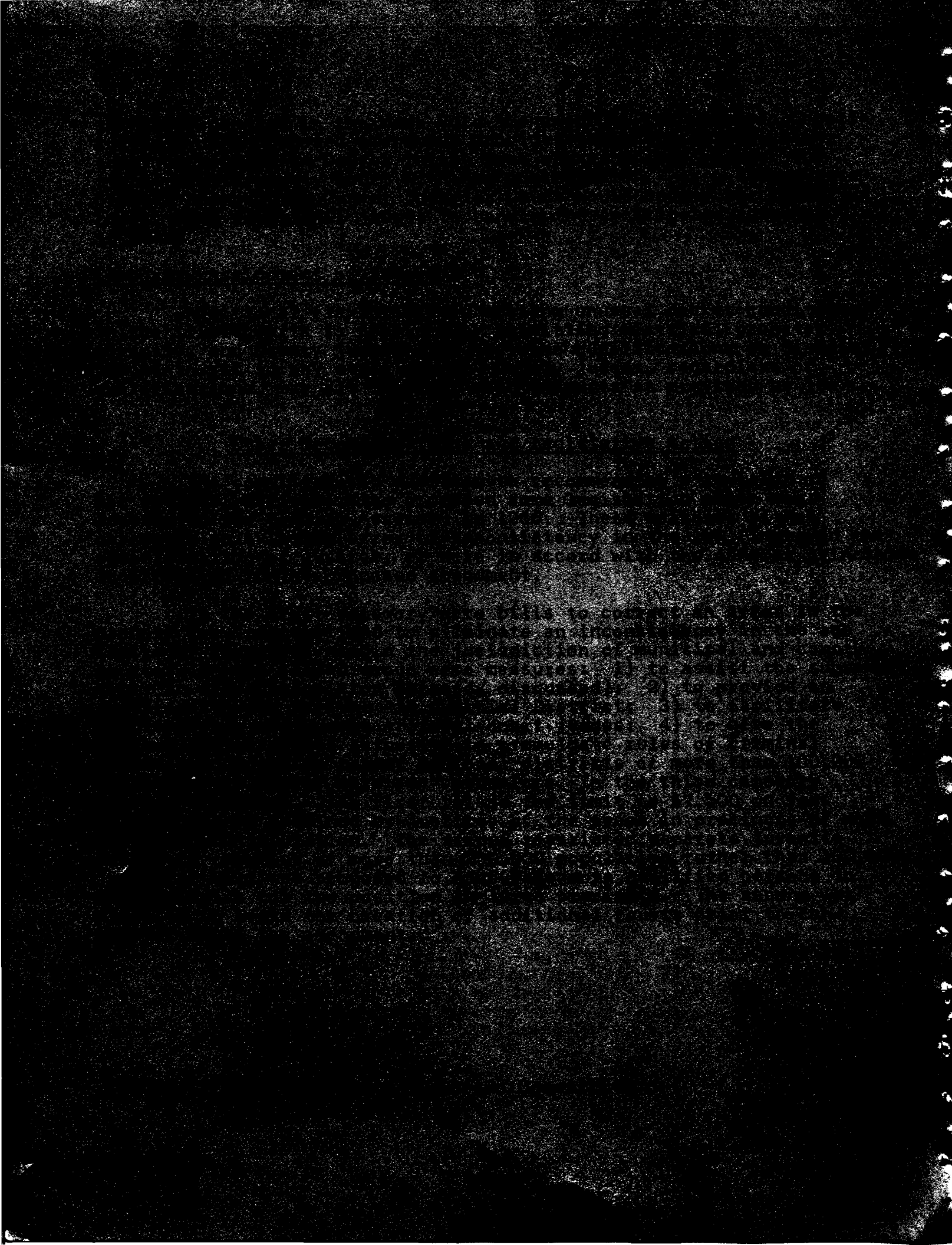
TABLE OF CONTENTS Continued:

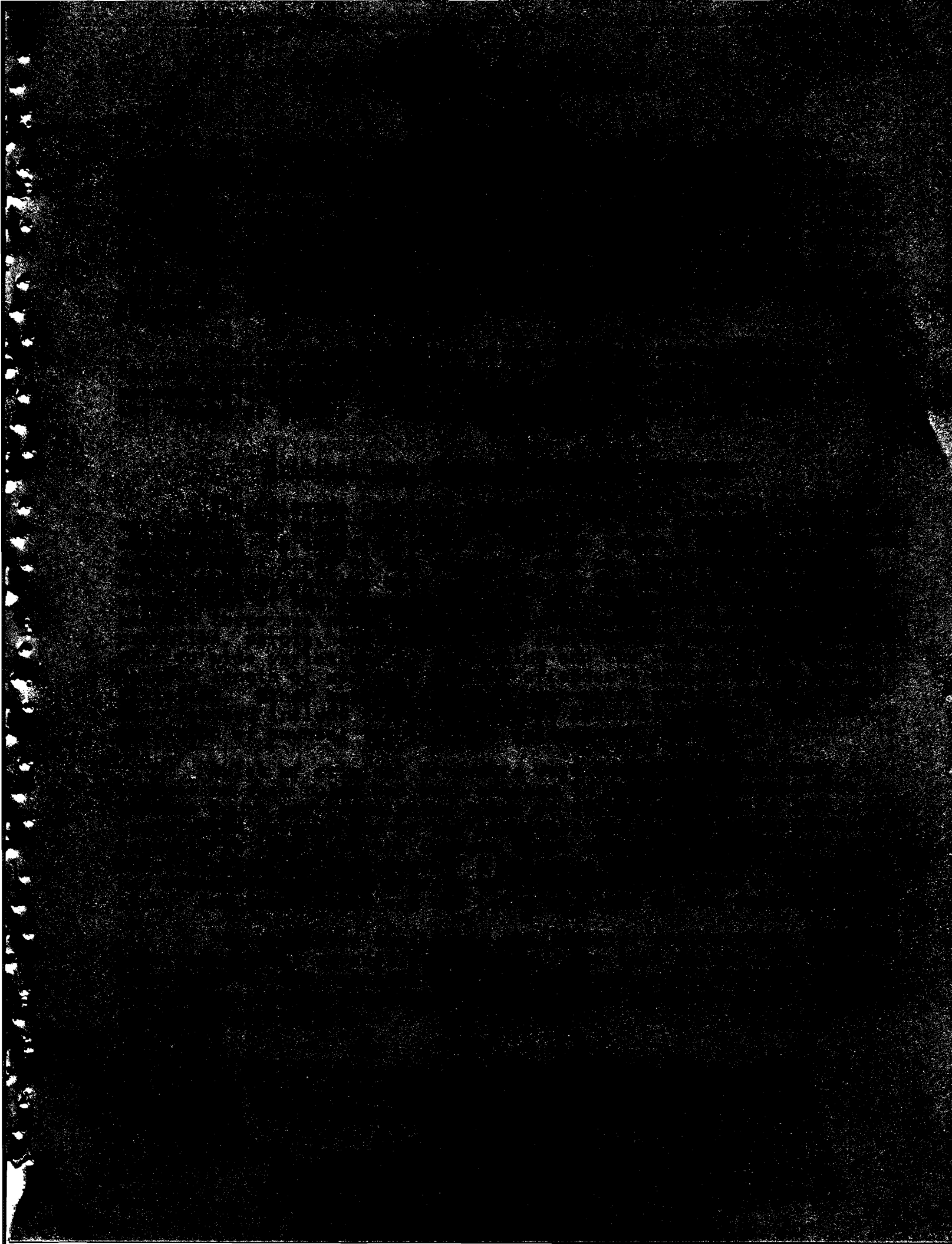


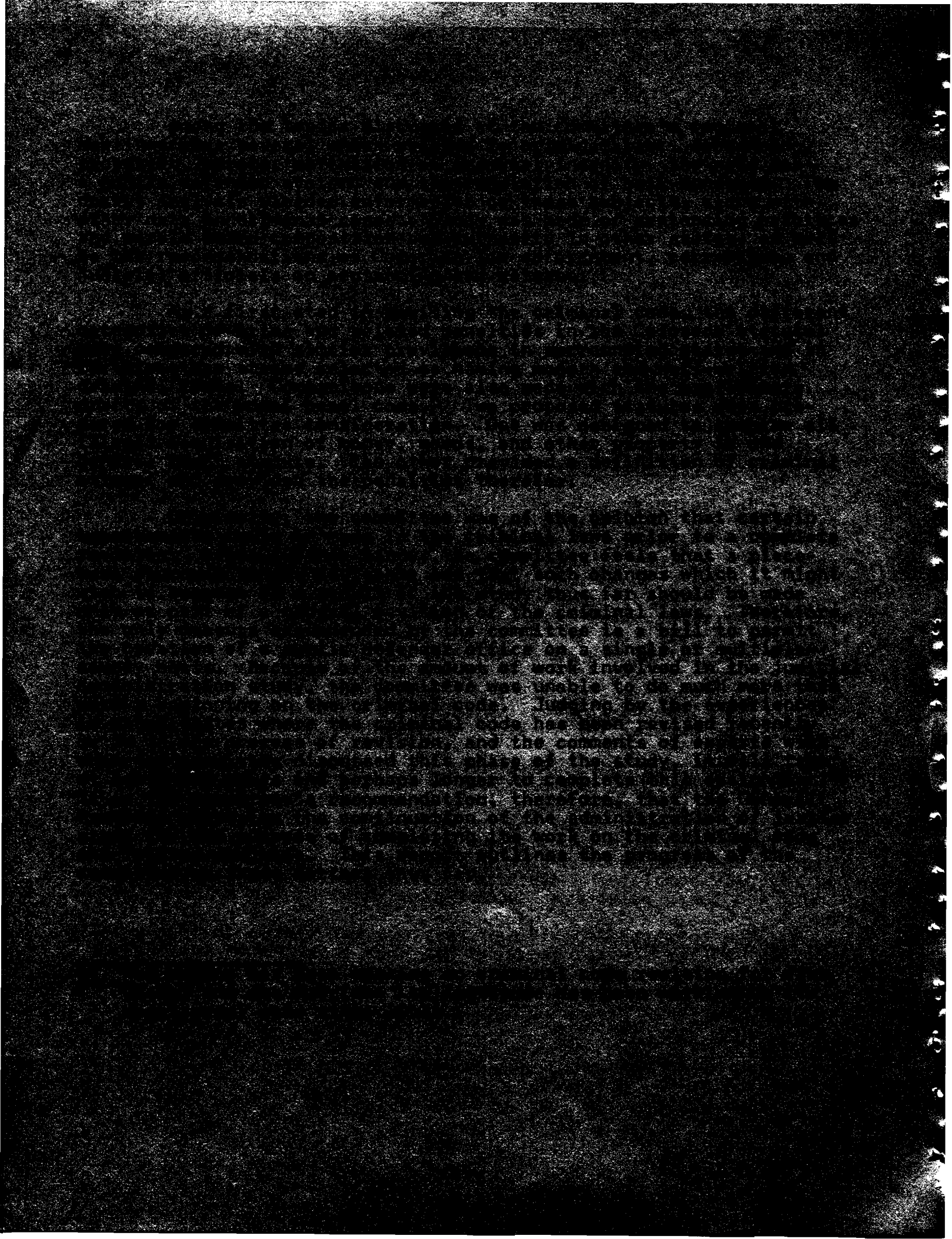












I

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

---

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

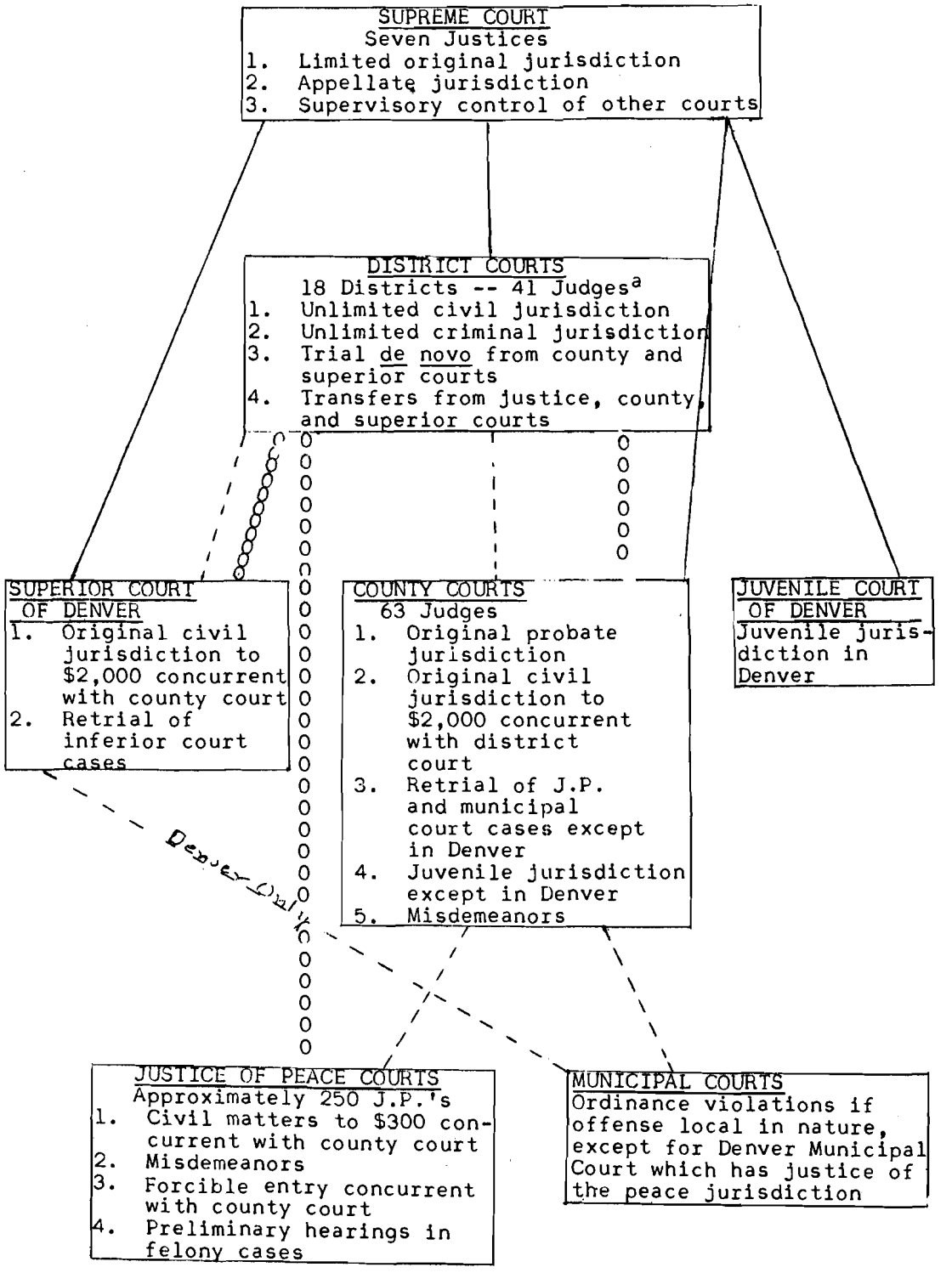
The district court is Colorado's major trial court of general jurisdiction. At present there are 18 judicial districts, of which

---

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

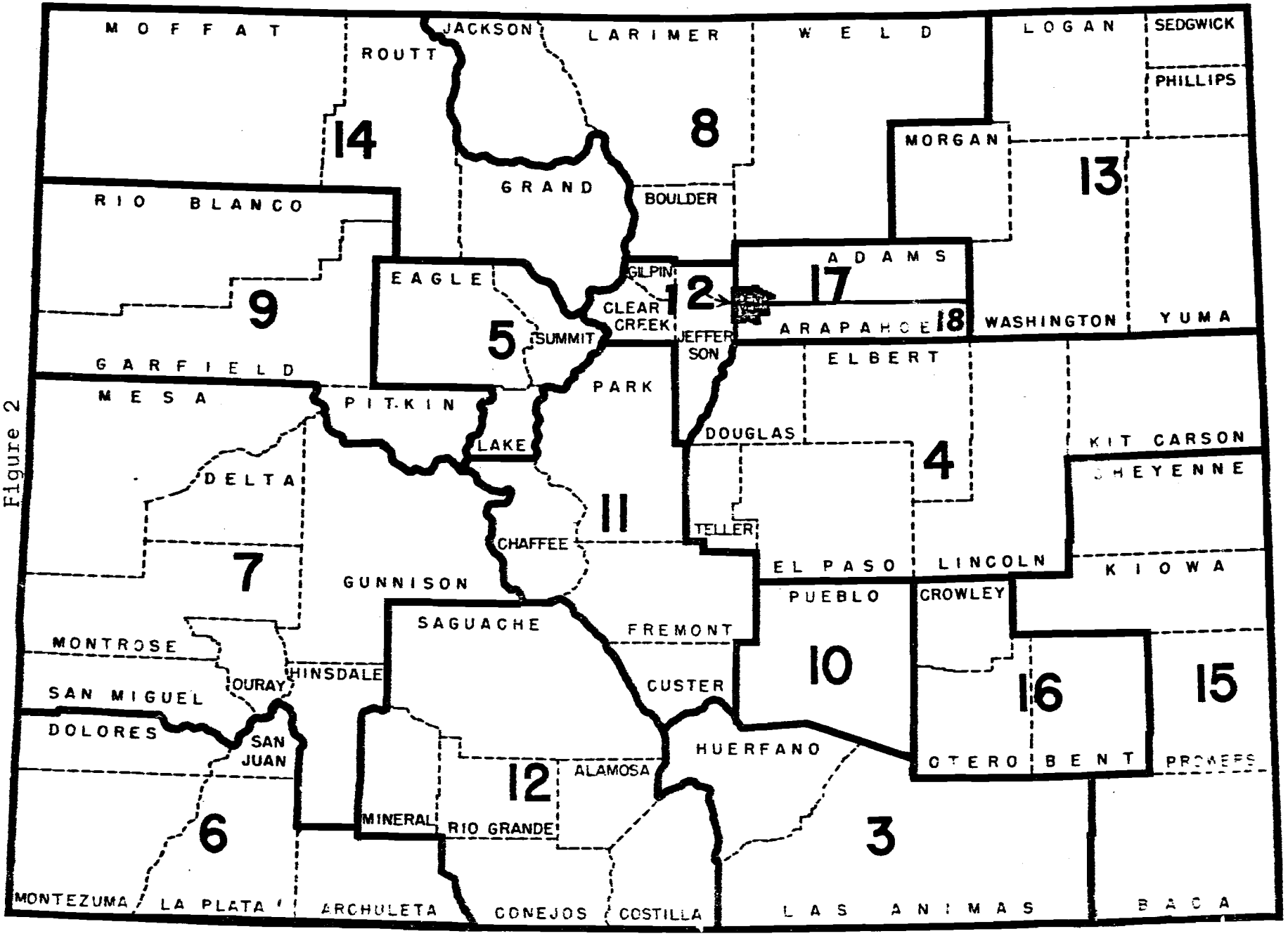
four are one-county districts. The boundaries of the 18 judicial districts are shown in Figure 2. The district court has original jurisdiction in all civil and criminal matters with the exception of probate matters and juvenile cases.[16] Cases may be brought from the county court on appeal or transferred 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,

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

---

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]

---

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.

---

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]

---

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]

---

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.

---

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.

---

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.

---

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]

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.

---

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.

---

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]

---

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:

---

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]

---

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]

---

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.

---

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.