Report to the Colorado General Assembly:

JUSTICE COURTS IN COLORADO

COLORADO LEGISLATIVE COUNCIL

RESEARCH PUBLICATION NO. 24

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LEGISLATIVE COUNCIL

OF THE

COLORADO GENERAL ASSEMBLY

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LEGISLATIVE COUNCIL

REPORT TO THE

COLORADO GENERAL ASSEMBLY

JUSTICE COURTS

IN COLORADO

Research Publication No. 24

STATE OF COLORADO

Legislative Council

STATE CAPITOL - DENVER 2, COLORADO

RAY B. DANKS, Chairman WALTER W. JOHNSON, Vice-Chairman

LYLE C. KYLE, Director

LETTER OF TRANSMITTAL

November 21, 1958

The Honorable Ray B. Danks
Colorado Legislative Council
Denver, Colorado

Dear Senator Danks:

Transmitted herewith is the report on the justice of the peace courts in Colorado conducted by the Legislative Committee on Justice Courts.

This report is submitted to the General Assembly pursuant to the instructions contained in H. J. R. Number 6 passed in 1956.

Sincerely yours,

/s/ Senator Carl W. Fulghum
Chairman
Committee on Justice Courts

FOREWORD

The study of Colorado justice of the peace courts was made under the provisions of H.J.R. 6 passed at the first session of the Forty-first General Assembly. This resolution directed the Colorado Legislative Council to appoint a subcommittee for the purpose of studying the structure, organization, methods, and laws pertaining to the justice of the peace courts in Colorado. The resolution stated further that this study was necessary because of: 1) the importance of justice courts; 2) the archaic and cumbersome administration of justice in these courts; 3) the lack of change in state policy toward justice courts since territorial days; and 4) the inadequacy of piece meal legislation in correcting the deficiencies inherent in the justice court system.

The Legislative Council committee appointed to make this study included: Senator Carl Fulghum, Glenwood Springs, Chairman; Senator Fay DeBerard, Kremmling; Senator Wilkie Ham, Lamar; Representative Edward Byrne, Denver; Representative Bert Gallagos, Denver; Representative Robert Holland, Denver; Representative Peter Dominick, Englewood; and Representative Ray Simpson, Cope.

In making the justice court study as directed by the resolution, the committee held seven meetings with justices of the peace in various parts of the state. These meetings were held in Alamosa, Burlington, Canon City, Durango, Grand Junction, Greeley, and La Junta. In addition, the committee directed an analysis of all statutes, constitutional provisions, and supreme court decisions pertaining to justice courts, as well as a complete analysis of the 1957 dockets of all justices of the peace in four judicial districts.

Harry O. Lawson, Legislative Council senior research analyst, had the primary responsibility for the staff work on this study. Professor Albert Menard, University of Colorado Law School, prepared the analysis of statutes, constitutional provisions, and supreme court decisions. The basic data for the docket analysis was compiled by Robert Ridgely, Legislative Council research assistant. The historical information on justice courts found in Chapter I of this report was taken from an unpublished master's thesis on justice courts, written by Frederick Jellison, University of Michigan, formerly of the University of Colorado.

This report presents both an outline of how Colorado's justice courts are supposed to operate according to the statutes, the constitution, and the Colorado Supreme Court, and a picture of how these courts actually operate as ascertained through the committee's regional meetings and the docket analysis. Six proposals for improving or abolishing Colorado's present justice court system are evaluated in this report in light of the data developed by the committee during the course of its study.

The Legislative Council Committee on Justice Courts proposes several changes in the state's lower court system and in justice court jurisdiction. These changes may be made through legislation without a constitutional amendment. Some changes in the justice court system may be made through legislation within the present constitutional framework. In the committee's opinion, however, long-term improvement will necessitate constitutional amendment.

The interrelationship of the various levels of the state's judicial system makes it important that such constitutional amendment be consistent with the long range reforms proposed for other state courts. Consequently, the committee recommends that long range justice court revampment be worked out in conjunction with the Colorado Judicial Council, which has been charged with the responsibility of recommending overall improvements in the state's judicial system.

Lyle C. Kyle
Director

November 21, 1958

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Focusing On The Problem

Colorado's justice court system was established by the first territorial legislature in 1861 to perform an important judicial function when the state was predominately rural and sparsely populated, and travel difficult and time consuming. Technological change, population growth, and urbanization have altered the role of Colorado's justice courts, yet no fundamental change has been made in the state's justice court system since the days of the territorial legislature.

Justice courts are now traffic courts, for the most part. Jurisdiction over traffic violations has been grafted on to the justice court system without an accompanying change in the organization or operation of these courts. Growing awareness of the justice court's shortcomings in handling traffic cases has led to an over-all examination of the justice court system in many states.

Justices of the peace are the forgotten officials in county government. Many do not have the proper facilities for holding court, or even a complete, up-to-date set of the Colorado Revised Statutes. There is little respect for the justice court as a judicial institution or for the office of justice of the peace. The justice of the peace takes the blame for the lack of public concern over the years in the development of a modern, adequate, lower court system.

Most people who come in contact with the courts have their only experience with the judicial system through appearances in justice or municipal courts. Consequently, the whole judicial system receives a black eye when these lower courts are not conducted in a dignified and orderly manner by a neat-appearing judge with knowledge of the laws and court procedure.

Colorado Justice Courts--According To Law

The justice of the peace in Colorado is a constitutional officer, but his criminal and civil jurisdiction is derived by statute. The constitution provides only that civil jurisdiction is limited to cases in which: 1) the amount in controversy is not more than $300; and 2) the boundaries or title to real property are not in question. Since 1923, the statutes have given the justice of the peace general jurisdiction to try all misdemeanors committed within his county. This jurisdiction is shared with county and district courts. The justice of the peace may also hold preliminary hearings in felony cases. In general, the justice of the peace has county-wide jurisdiction in civil cases as well. His other powers include performing marriages, administering oaths, and taking acknowledgments.

The qualifications for the office of justice of the peace are relatively few. The justice of the peace must be a qualified elector and have resided in the county for at least one year, and he must reside and have his office in the precinct for which he was elected. In order to qualify after election, he must post bond and take an oath of office.

The most important record which the justice is required to keep is his docket book, since the justice court is not considered a court of record. The docket includes the names of the parties, the nature and date of the action, a description of all process issued, orders made, or judgments rendered. He must also keep an account book covering all fees received and make a monthly report in writing and under oath to the county commissioners showing all fees and authorized expenses of his office. An audit of each justice's records is included in the county audit. The justice also makes periodic reports to the Game and Fish Commission on game and fish cases and to the Department of Revenue on traffic cases.

Justice court criminal and civil judgments may be appealed to the county court except in those counties in which superior courts have been established and constitute the appropriate courts for these appeals. Appeals are not possible if the defendant has confessed judgment in a civil case or has pleaded guilty in a criminal case. When a case is appealed a new trial is held (trial de novo), on questions of fact and law, because there is no summarized record from the justice court trial.

All justices of the peace are compensated by fee and the statutes fix the maximum income from fees which may be retained. In justice precincts of less than 70,000 population, each justice may retain a maximum of $3,600 in fees. In precincts with populations of 70,000 to 100,000, each justice may retain a maximum of $5,000 in fees. All fees in excess of these limits revert to the county general fund.

Fines imposed in justice court cases are allocated to one or more state or county funds according to the nature of the case tried. The laws providing for such allocation, in general, are complex and confusing and are scattered throughout several volumes of the Colorado Revised Statutes. Fines may be distributed to the county school fund, the county road fund, the county general fund, the state general fund, the game and fish fund, the police pension fund, and to the Colorado Humane Society.

Although the justice of the peace is a county officer; the county commissioners have little direct authority over his operations. The county commissioners may create additional justice precincts or consolidate existing precincts. They may appoint justices to fill vacancies and provide for additional justices in precincts with more than 50,000 population. In precincts with more than 50,000 population and city precincts with more than 20,000 population, the county commissioners may provide justices with clerks at county expense. While justices are entitled by statute to a reasonable sum for rent and supplies, it is up to the county commissioners whether such expenses shall be allowed.

There is very little connection between the justice courts and the other courts in the state's judicial system. Control of the justice court by the county court is solely through the medium of judicial review, and the county court has no administrative power over justice courts. The district courts have even less connection with justice courts than do the county courts, since direct appeal to the district court

from the justice court is not possible. Justice court cases which are appealed to the county courts are taken to the supreme court, if appealed further. The supreme court has the legal authority for supervision and control of justice courts; however, such supervision has never been exercised.

The laws which govern the justice court system and the laws which every justice is supposed to know and apply are both complex and detailed. Many of these laws are over-lapping and contradictory; others have several gaps.

The tenor and approach of these laws presumes a court presided over by a judge, who, whether or not an attorney, has considerable familiarity with legal affairs. Yet it is expected that a justice of the peace who may have no previous training and who may not even have a set of the statutes will produce results in accordance with the law.

The legal framework of the justice court system is a hodgepodge of item piled upon item for the last 97 years; however, the major problem is the system itself. Once determinations have been made as to what kind of an initial court of limited jurisdiction is most desirable, the task of bringing the laws into line, while laborious and time-consuming, can be accomplished.

Colorado's Justice Courts--Actual Practice

Colorado's justices of the peace in general are older men, many of whom are retired except for their justice court work. Most of them consider the position as a part time one, and those who are not retired usually have another major occupation.

Most of the justices have had at least two or three years of high school, but very few have taken any college work or specialized legal training. The justices over the age of 60 generally have the least formal education and training.

Many of the justices who reside in a county seat have facilities provided for them in the court house. If the justice lives elsewhere, he usually uses his home or his place of business in which to hold his court. A number of justices, however, have court facilities in the city or town hall of the municipality where they reside. Even though many justices hold court in the court house or municipal building, their court-room facilities are generally inadequate.

Very few justices receive rental allowances and most of these are in the Class II and large Class III counties. Very few justices in the larger counties have clerical assistance paid for by the county. Approximately one-third of the justices do not have a set of the statutes or access to same.

While it appears that at least half of the justices have their dockets audited in accordance with law, in a number of instances only the criminal docket is audited. Approximately one-fourth of the justices have had their dockets audited infrequently, and the remainder have had no audit at all.

Most justices of the peace turn to the district attorney or his deputy for legal advice, although some get such advice from private attorneys, the county attorney, or from county or district judges.

There were approximately 58,000 justice court cases tried in Colorado in 1957. Slightly more than 60 per cent of these cases were traffic, and 29 per cent were civil. The other 11 per cent included game and fish cases, P.U.C. cases, and other misdemeanors.

Caseload projections based on the docket analysis show that 48 counties had fewer than 1,000 justice court cases in 1957. Thirty-eight of these 48 counties had fewer than 500 cases, with 24 having fewer than 250 cases.

Although the smaller counties generally were the ones with fewer than 1,000 justice court cases in 1957, there was little relationship between county population or classification and the number of justice court cases. For example, the nine counties with fewer than 100 justice court cases included four Class VI counties, two Class V counties, and three Class IV counties. The 15 counties with between 100 and 250 justice court cases included one Class VI county, four Class V counties, eight Class IV counties and two Class III counties.

Almost 86 per cent of all justice court cases and 85 per cent of the traffic cases in 1957 were tried by justices located within 15 miles of the county seat. Sixty-nine per cent of all cases and almost 64 per cent of the traffic cases in 1957 were tried by justices located in county seats.

Fifteen counties have all of their justices of the peace located in the county seat, and an additional 13 counties have all of their justices located within 15 miles of the county seat. Fifteen counties have all their justices located within 30 miles of the county seat, and 19 counties have at least one justice located more than 30 miles from the county seat. In all but three of these 19 counties, the justices located more than 30 miles from the county seat had very few cases, in 1957.

Forty-three of the 78 justices in the docket analysis made less than $300 in 1957, and 69 of the 78 made less than $1,800. Only four of the 78 justices made $3,600, the statutory maximum.

Defendants entered guilty pleas in two-thirds of all criminal cases and in 70 per cent of the traffic cases tried in justice courts in 1957. Ten per cent of all cases were dismissed, including 6.5 per cent of the traffic cases and 17 per cent of the civil cases. Almost 14 percent of all other cases were dismissed.

There were very few appeals, changes of venue, or jury trials in 1957; less than one per cent of the cases in each instance. Attorneys were present in less than five per cent of all cases. Attorneys appeared four times as often in civil cases as in criminal cases. District attorneys or their deputies prosecuted only four per cent of the criminal cases; even so, they appeared three times as often in criminal cases as did defense attorneys.

The more prominent irregularities in justice court practices and procedures as revealed by the docket analysis included: a) fees charged not consistent with those established by law, and in some instances based upon the amount of work involved or the defendant's ability to pay; b) no separate justice court bank account maintained; c) defendant charged a district attorney's fee; d) no credits to plaintiff indicated in unused portion of deposits in civil cases; e) defendant had to pay full fine and costs before release from jail; f) no dockets kept, or dockets irregularly kept; and g) justices' refusal to try civil and/or small claims cases.

Proposals For Improving Colorado Justice Courts

Recommendations made by justices of the peace include:

a) eliminate fee system and place justices on a salary;
b) reduce the number of justices of the peace through precinct consolidation;
c) provide preliminary training in court procedure, rules of evidence, and the law for all new justices of the peace;
d) set minimum qualifications for the office;
e) require counties to provide adequate court facilities, statutes, and other materials for the proper conduct of the office; and
f) continue to elect justices of the peace.

It would necessitate a constitutional amendment to eliminate the fee system as the basis of compensation for justices of the peace. This could have been done by legislation at the first session of the 42nd General Assembly in 1959, had Amendment No. 2 been passed by the voters in the 1958 General Election.[1]

The other recommendations could be enacted by legislation without a constitutional amendment. It is argued that these recommendations would improve the administration of justice while at the same time preserving the so-called "poor man's court" - with the convenience of quick trial and small cost. These improvements could be made without disrupting other parts of the judicial system.

While it is obvious that the justice court system could not be eliminated without having its jurisdiction assumed by new or existing courts, it is less clear that it is necessary for the major ingredients of the system to remain intact. There is also considerable doubt as to whether the justice of the peace system, as such, could regain the confidence and respect of the public, no matter what improvements are made. Certainly, such confidence and respect will not be forthcoming without major improvements in court personnel and facilities. To bring about an improvement in personnel, the financial rewards of the position must be sufficient to attract competent people. The establishment of qualifications for the office would be of little help, if no qualified people are interested. In order to justify payment of sufficient salary, the number of justices would have to be reduced substantially.

On first examination, it appears that improvement in personnel would result from the justices' recommendations. Both the payment of adequate salaries and a reduction in the number of J.P.'s are advocated. However, the results of the docket analysis cast serious doubts as to whether an adequate salary for full-time justices can be justified in two-thirds of the state's 62 counties (excluding Denver). Even if justices were placed on part-time salaries in the smaller counties, it would be difficult

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1) Amendment No. 2 provided that salaries could be paid to certain county and precinct officials now paid by fee and that the General Assembly could base county officers' salaries on factors other than population.

to provide for these salaries within the present legislative and constitutional framework. County officials receive compensation according to either the classification of the county or its population. The lack of relationship between classification or population and justice court case loads makes it very difficult to establish an equitable salary scale on these bases. Consequently, a constitutional amendment would be needed not only to allow the payment of salaries but also to allow the General Assembly to fix salaries by criteria other than population (similar to the provisions of the defeated Amendment No. 2). It will be 1960 before such an amendment again could be placed before the people, 1961 before legislative action could be taken if the amendment passes, and 1962 before such legislation would take effect. In other words, it would take four years before the basic proposal in the justices' recommendations could be carried out.

Even if an equitable and adequate salary scale for justices of the peace were eventually worked out, it would be extremely difficult to set up realistic yet adequate qualifications for the position. If the qualifications were set too high, it is doubtful that the salary would attract persons who met such qualifications. On the other hand, if the qualifications were set lower, it is doubtful that many of those who meet these lower qualifications could do a competent job, because of the complex nature of the laws a justice of the peace is required to interpret.

The recommendations of the Colorado Bar Association Committee on Justice and Traffic Courts would modify the present justice court system. Minor court magistrates would be appointed by a judge of a court of record (county or district court) who would have supervisory powers over such magistrates. The number of magistrates in each county would be determined by the supervisory judge with the approval of the county commissioners. The term of office would be four years as contrasted with the present two-year term for justices of the peace.

The bar association committee also proposes that the General Assembly set qualifications for the office of magistrate to include: a minimum age of 25 and a maximum of 70; a high school education or its equivalent; high moral character; the holding of no position as a law enforcement officer while serving as a magistrate; and being a qualified elector of the county. In addition, each magistrate would receive an adequate salary to be set by the General Assembly and paid from county funds, and procedures would be established for removal of a magistrate for improper conduct of his office.

The criminal jurisdiction of the proposed magistrate courts would be limited to misdemeanors for which the maximum fine would be no more than $500 and the maximum jail sentence six months, or both. These courts would have no jurisdiction over driving while intoxicated, reckless driving, driving under license suspension or revocation, and hit-and-run offenses. These offenses would be tried in a court of record. Civil jurisdiction would be increased to $500 from the present $300 limit which now applies to justice courts.

The bar association committee also recommended that a uniform system of justice court records and accounts be established by law and that the procedure for jury trials be altered. The bar association committee report enumerated those recommendations for which legislation should be introduced at the first session of the 42nd General Assembly, as differentiated from those which would require constitutional amendment.

Such legislation would include the establishment of qualifications for the office of justice of the peace, the consolidation of justice precincts, the provision of proper courtroom facilities by county commissioners, and the establishment of a uniform system of records and accounts. The failure of Amendment No. 2 makes it impossible to carry out the recommendation that immediate legislation be passed to place justices of the peace on a salary.

The intent of these proposals is to correct the shortcomings of the present justice of the peace system by substituting an improved magistrate system which would operate in much the same way as the justice courts. This would be done by improving court personnel, eliminating excess lower court judges, providing supervision by a court of record, changing lower court jurisdiction, tightening up the record-keeping process, and requiring counties to provide adequate court facilities, statutes and other court needs.

While proposing that the number of justices be reduced, and that the remainder be placed on a salary unrelated to work load, the bar association committee did not develop a formula by which these propositions could be accomplished. Consequently, the questions raised by similar recommendations made by the justices of the peace apply here. The problem of the less heavily populated counties with small justice court case loads is not solved by the bar association committee plan, nor is the need demonstrated for full-time justices in counties where the position of county court judge is not a full-time one. Unless the increase in civil jurisdiction to $500 results in an additional number of cases equal to those lost through the proposed curtailment in criminal jurisdiction, the justice or magistrate court case load would be even less than at present.

Qualifications for the office of magistrate are proposed by the bar association committee, but there is some question as to whether these qualifications would result in any substantial improvement over the existing system. The proposal for uniform record-keeping and periodic reports and audits is good, but the statutes now in effect are not followed, nor are efforts to require compliance very successful. Colorado's statutes now make an audit of county accounts mandatory every six months. County commissioners are charged by law with the responsibility of seeing that audits are made completely and at the proper time. It may be that such audits won't be made in some counties until the audit law is re-examined and strengthened.

Recommendations of the Colorado Judicial Council's Committee on County Courts would have two results: a) the elimination of county courts in all counties of less than 5,000 population; and b) the replacement of justice courts by a lower court system composed of qualified, salaried magistrates.

One of the other proposals before the Legislative Council Committee on Justice Courts included the recommendation that justice court jurisdiction be transferred to the county courts. This would be an unworkable solution if county courts in 23 or 24 counties were abolished. The Judicial Council recommendation would require district judges to sit as county judges in those counties in which the county courts would be abolished. It would be impractical to require the district judge to carry out the functions of his court as well as those of the county and the justice courts.

The Judicial Council proposal depends on the adoption of a constitutional amendment. The earliest time that such an amendment could be placed before the voters would be at the general election in November, 1960. If justice court legislative changes proposed in 1959 and 1960 involved or affected the county courts, they would have to be weighed carefully in light of the Judicial Council proposal. Conversely, any such changes, if put into effect, would have to be considered by the Judicial Council in determining whether or not to place this constitutional amendment before the public in 1960.

Those counties in which the county court would be abolished, under the Judicial Council proposal, are also the ones with the lowest justice court case load. The Judicial Council county court committee has followed the Colorado Bar Association proposal to some extent, in that it also recommends that a new lower court system with qualified magistrates be set up to replace the present justice of the peace system. Presumably, these new lower courts could be supervised by the county judges in the larger counties, and by the district court judges in those counties in which county courts would be abolished. Such supervision was also part of the bar association proposal.

As yet, the Judicial Council committee has not made public any detailed plans for establishing such a lower court system, developing an equitable salary schedule, and determining the number of lower court judges in each county. If county courts are eliminated in a number of counties, it seems likely that there will have to be at least one magistrate in each county, including those small counties in which there is not enough justice court business to justify a full-time judge on that judicial level. Therefore, it would appear that the problems of salary, number of judges, qualifications for the office, and court convenience would still be present under this proposal as under those offered by the bar association committee and the justices of the peace.

Recommendations of Judge Mitchell Johns, Denver Superior Court, would revise both the county court and justice court systems. County courts except in the City and County of Denver would be replaced by county circuit courts on a judicial district basis. In addition to assuming present county court jurisdiction, much of the present justice court jurisdiction would pass to the new county circuit courts. The present justice court system would be replaced by a new magistrate court system of more limited jurisdiction. The creation of both county circuit courts and magistrate courts of limited jurisdiction would require a constitutional amendment.

The criminal jurisdiction of the proposed magistrate courts would be limited to minor violations in which the fine does not exceed $100 and no jail sentence is imposed. Civil jurisdiction would be limited to cases in which the amount in controversy does not exceed $100. The number of magistrates in each county would be determined by the number of cases, topography and geography. The magistrate would be paid a salary and would be appointed by county commissioners and county circuit judges acting in concert. The presiding judge of the county circuit court would have supervisory power over the magistrate courts. While the county circuit judges would be required to be attorneys, the magistrates would not but would have to meet certain qualifications set by the General Assembly.

Under Judge Johns' proposal, the case load of the magistrate courts would be substantially reduced from that of the justice courts at present. Jurisdiction in traffic cases and other misdemeanors would be drastically limited, unless many of the statutes for minor offenses were rewritten to provide for penalties within the limits set up by Judge Johns' plan. This case load decrease poses additional problems in determining an equitable salary for magistrates under this proposal. The 48 counties which had fewer than 1,000 justice court cases in 1957 would have their case loads further reduced by Judge Johns' plan.

The adoption of this plan might lead to part-time magistrates in as many as two-thirds of the state's counties and it might be difficult to attract qualified persons to a part-time position.

The recommendation that justice courts be replaced with a judicial district circuit magistrate system would eliminate part-time justices in small counties and would make it possible to place magistrates under the supervision of district courts.

In order for this proposal to work satisfactorily, there would have to be enough justice court cases within each judicial district to justify a sufficient number of circuit magistrates, so that travel would be minimized as much as possible in relation to the time spent hearing cases. Adjudication would be difficult if judges had to cover a large area while holding court briefly in several communities.

The feasibility of this proposal was examined by analyzing the 1957 justice court case load as well as the geography and topography in each judicial district. In this analysis, the judicial districts fell into four categories: 1) six districts in which the major portion of the justice court case load was in one county; 2) five districts (primarily one-county judicial districts) in which there would be little advantage to a circuit system; 3) three districts in which the case load and the area to be covered could not be handled by one circuit judge, and the case load would justify only two magistrates who would have to cover a large area; and 4) three districts in which the case load would justify only one circuit magistrate, who would have to cover a large area.

It would appear that while a circuit magistrate system has considerable merit, the case load and geographical factors in Colorado would create problems that might make the plan impractical on a judicial district basis. Other combinations of counties were examined with the same result. Grouping of counties could be arranged that would work in some areas of the state, but no grouping could be devised that proved satisfactory for the state as a whole.

The recommendation that justice court jurisdiction be transferred to the county courts, except in Class II counties where superior courts would be created, differs materially from those proposals already discussed. The other proposals provide either for a retention of the justice court system or its replacement by some other type of lower court. This proposal eliminates justice court jurisdiction without substituting another lower court system.

One advantage of this plan is that it could be carried out without a constitutional amendment. The constitution confers no jurisdiction upon the justice courts except that which is given them by the General Assembly. This being the case, justice court jurisdiction could be repealed by the General Assembly, which would leave the constitutional office of the justice of the peace untouched, but which would also leave the justices with no powers except to perform marriages. As the county court has concurrent jurisdiction with the justice courts, if justice court jurisdiction is repealed, these cases would have to be tried in county court.

The General Assembly has constitutional authority to establish additional courts. The Assembly has already created a superior court in the City and County of Denver under this constitutional provision. The specific provisions of this recommendation are as follows:

a) Eliminate all jurisdiction, both criminal and civil, of all justice courts by repealing all statutes providing for such jurisdiction and transfer justice court case load to county courts in Classes III, IV, V and VI counties (51 counties). The county courts would, according to available data, be able to handle the justice court case load.

b) Establish Superior Courts in Class II counties and give these courts original jurisdiction in all misdemeanors. From the size of both the justice court and the county court case loads in Class II counties, the county court would be unable to try justice court cases. Superior courts would be set up with original jurisdiction in misdemeanors and concurrent jurisdiction in all civil cases, except probate and juvenile matters. These superior courts would be courts of record, and the judges thereof would have to be attorneys licensed to practice law in Colorado.

c) Denver Superior Court would also be given original jurisdiction over misdemeanors. By extending the jurisdiction of the Denver Superior Court, the Denver municipal court would be limited to hearing those cases which arose out of municipal ordinance violations which are not also offenses of state concern, tryable as such in superior courts. Appellate jurisdiction in municipal cases would also be retained by superior court.

d) Eliminate Trials de Novo. As all cases would be heard in courts of record in Class II counties, there would be no necessity for trials de novo upon appeal.

e) Revise Fee Schedule. The fee scale in county court and superior court would be changed so that the fees involved in trying these former justice court cases in county and superior court would be the same as they are at present in the justice court.

One of the major objections to this plan is that in 36 counties, justice court cases would be transferred to county judges who are not attorneys. It is argued that little would be gained in diverting these cases from one group of non-lawyer judges to another, especially if trials de novo are eliminated as a result. However, the number of non-lawyer judges would be reduced considerably through such transfer of case load, and all cases would be tried in a courtroom with proper judicial atmosphere. It is argued that it might be possible to interest more lawyers in the position of

county judge, if the salary can be raised as the result of an increased case load. Another advantage of this proposal, emphasized by its proponents, is that greater use would be made of existing courts. It is difficult to justify the expense of magistrates' salaries and adequate magistrate court facilities, in addition to the costs of maintaining a county court which sits on a part-time basis. This is especially true if many of the magistrates also serve on a part-time basis, as would probably be the case in two-thirds of the counties.

Another major objection to the plan is the lack of convenience which would result from transferring all cases to county court. All tourists accused of a traffic violation would have to travel to the county seat. As it is unlikely that county courts would be in session in the evening or on weekends, alleged traffic violators would either have to post bond and be tried at a later date, accept a penalty assessment ticket, or face delay in their travels. County residents would not be as greatly affected, since a suitable trial date could be set. In 1957, the docket analysis showed that 64 per cent of all justice court traffic cases were tried in the county seat, and 85 per cent were tried within 15 miles of the county seat.

A possible solution to the convenience problem has been suggested. It appears to be legally possible to extend the venue of county courts to adjoining counties by action of the General Assembly. This extension of venue could be given county courts because they already have jurisdiction, and because county judges have been deemed state officers by the Colorado Supreme Court. Under this proposal such extension of venue would also be made for superior courts. If venue in traffic cases were extended to adjoining counties, it could cut down considerably the distance an alleged violator would have to travel to have his case tried. Distance also would not have as much significance if the alleged violator were taken to county court along his route of travel.

Recommendations

The Legislative Council Committee on Justice Courts proposes several changes in the state's lower court system to be considered at the first session of the 42nd General Assembly. These changes may be made without constitutional amendment, and therefore do not include elimination of the justice of the peace fee system, even though the committee is in agreement that justices should be placed on a salary, if retained with limited jurisdiction in some counties.

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.

The Committee on Justice Courts recommends that justice court jurisdiction in Class II counties be repealed and that superior courts be created in all such counties.[2] These superior courts should be presided over by judges who are licensed to practice law in Colorado, and should have original jurisdiction in all misdemeanors and concurrent jurisdiction with county courts in civil cases, except for probate and juvenile matters. The jurisdiction of the Denver Superior Court should be the same as for the superior courts in Class II counties. There should be a sufficient number of superior courts in each of the Class II counties and Denver to handle the county's justice court case load. Consideration should be given to locating additional superior courts outside of the county seat.

The Committee on Justice Courts recommends that the General Assembly give consideration to alternate proposals for handling justice court cases in the 51 Class III through VI counties: a) repeal all justice court jurisdiction with the result that justice court cases will be tried in county court; or b) limit 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 would 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 may be located outside of the county seat at the discretion of the county commissioners. The county commissioners in these counties should be required to provide adequate court facilities or reimbursement for same, statutes, and other material necessary for proper court operation.

The Committee on Justice Courts recommends that a constitutional amendment providing for long-range overhaul of the justice court system be worked out in conjunction with the Colorado Judicial Council, because of the interrelationship of the various levels of the state's judicial system. To achieve this end, the Committee recommends further that its existence be continued through a joint resolution of the General Assembly.

The committee was evenly divided in respect to proposing an alternative recommendation in the event that the first two committee recommendations were not acted upon. This recommendation included: a) reduction of justice precincts to one per county; b) mandatory provision of adequate court facilities, statutes, and other materials by county commissioners; c) requirement that clerks shall be provided at county expense in Class II counties; d) requirement that justices in Class II counties be attorneys; and e) an increase in the maximum amount of fees which shall be retained by justices in Class II counties.

The committee members in favor of the provisions of the alternate recommendation were of the opinion that in the absence of more thorough reform, these measures would at least make some improvement in the justice court system. The committee members in opposition argued that these changes would not result in substantial improvement commensurate with the additional expense involved in providing clerks, facilities, and statutes, and that support of these changes implied acceptance of the present justice court system, which is inadequate.

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2) Adams, Arapahoe, Boulder, El Paso, Jefferson, Larimer, Las Animas, Mesa, Otero, Pueblo and Weld.

I

FOCUSING ON THE PROBLEM

The justice court has been an English and American judicial institution for so long a time that there has been a general tendency to take it for granted without questioning whether it meets the needs of a minor court system in the mid-20th century. In recent years, however, justice courts in many states have received close scrutiny by legislators, attorneys, and the general public. The reexamination of this venerable judicial institution is a consequence of increased public contact with justice courts. People are having more to do with justice courts, because of the great number of motor vehicles and number of miles traveled which grow larger year by year. Justice courts are now traffic courts for the most part. Jurisdiction over traffic violations was grafted on to most justice court systems without an accompanying change in the organization or operation of these courts. The growing awareness of the justice court's short comings as a traffic court not only led to studies of this aspect of the justice court's functions, but to reexaminations of the whole system as well.

The history of justice courts shows how few changes have been made in the system from its introduction in the American Colonies until the present time.

Historical Background

The earliest evidence of the existence of justice courts is found in a statute of Edward III of England in 1327 which established the office of "Conservator of the Peace" in each county. Justice courts, then, are more than 600 years old. In the time of Edward III, justices were appointed by the Crown and were given authority to keep the peace and to bind criminal offenders over for trial by a higher court. In 1360, Edward III added the power to try felonies and trespassers to the jurisdiction of the Conservator of the Peace who became known officially as the Justice of the Peace two years later. Over the next three centuries the powers and duties of the justice of the peace, including those of a county administrative officer, were increased to the extent that he became one of the most important and powerful officials in the county.

By the time that English colonists were instituting the machinery of local government in America during the 17th century, the office of justice of the peace in England was a pervasive and established fixture of English local government.

In America, the office of justice of the peace was one of the first instruments of local government created by the English colonists. As early as 1630, Massachusetts Bay Colony records indicate the appointment of several justices of the peace. Colonial justices were appointed by the governor and were not required to be learned in the law. Largely patterned after the English justice, colonial justices of the peace in many states initially played a much greater role in the conduct of local government than is true of their contemporary descendants. Their functions ranged from the power of tax assessment in New Jersey and Pennsylvania to nomination of all county officers for appointment by the governor in Virginia. In those colonies, as well as in most of the New England colonies and in South Carolina, the county justices of the peace, sitting en banc, were the general administrative as well as judicial

bodies of the county. When constituted as such a "general board" the county justices paralleled the role of their English brethern.

In apparent departure from the English tradition the colonial justices of the peace were gradually assigned limited civil jurisdiction. A statute of Massachusetts Bay Colony in 1692, for instance, authorized the justices of the peace "... to hear, try and adjudge all manners of debts, trespasses and other matters involving in controversery a value not exceeding 40 shillings." Also, American justice of the peace courts were made fee courts during the eighteenth century.

Following American independence from England, the functions and major characteristics of the office of justice of the peace in America departed even more from those of its English model. From 1790 to 1860 the office of justice of the peace was divested of most of its administrative powers and devolved from an office of county-wide predominance into an office of no more than precinct-wide significance. The major steps in this process were: 1) the governor's power to appoint justices of the peace was taken from him by many revolutionary constitutions and placed in the hands of the state legislature; 2) elected boards of county commissioners or supervisors acquired the major administrative powers formerly possessed by the appointed justices of the peace; and 3) the office of justice of the peace became an elective office, the precinct or township being the electoral area.

By 1860, the office of justice of the peace in the United States was characterized by the following: 1) it was a minor judicial office, possessed of limited civil and criminal jurisdiction; 2) it was generally an elective office, the electoral area commonly being a sub-division of the county; 3) it possessed only minor administrative functions, such as conserving the peace and performing marriages; and 4) it was generally both a county and a township office, the justice being chosen in the township or precinct but exercising jurisdiction over many subjects and causes throughout the county.

These major characteristics of the historical office of justice of the peace were incorporated in the office of justice of the peace in Colorado. Records concerning the functioning and activities of justice courts in the early history of Colorado are sparse. All basic territorial and congressional laws concerning Colorado provided for the office, however.

In October of 1859, a provisional government for the Territory of Jefferson was formed in response to demands by the residents of western-most Kansas territory that they be provided self-government. The illegal and short-lived government of the territory of Jefferson passed an "Act Establishing a Judicial System for the Territory of Jefferson" in December of 1859. Section five of that act provided for two elected justices of the peace in each township or precinct in the organized counties of Jefferson Territory. The justices were granted jurisdiction over petty criminal offenses and over all civil cases "where the amount in controversy does not exceed the sum of two hundred dollars." The acts relating to justice courts gave the county courts discretion over the election of additional justices of the peace. The jurisdiction of the justice courts was not to extend to cases in chancery, to cases where title to real estate was in question nor to cases over which exclusive jurisdiction had been vested by statute in miner's courts.

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 said territory shall be vested in a supreme court, district courts, probate courts, and in the justices of the peace." The Organic Act limited the jurisdiction of the two inferior courts to "debts or sums less than $100.00 -- and to no jurisdiction of any manner in a controversy when the title and boundaries of land may be in dispute."

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 Constitution of the State of Colorado, adopted in 1876, provided that justice court civil jurisdiction should not exceed $300; that provision being the major change over the provisions of the Organic Act of 1861 setting up 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 of the justice courts have changed little in the past 35 years.

The organizational structure of the justice courts remains much the same as it was when Colorado became a state. Justices are county officers with two authorized to be elected in each justice precinct. 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. In a sense, they are the forgotten officials in county government and enjoy very little respect for their position on the lowest rung of the state's judicial ladder.

Importance of Lower Courts

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.

It is unfortunate that at the same time the justice court has fallen in ill repute, more people have contact with it than ever before. More than 90 per cent of the people who come in contact with the courts have their only experience with the judicial system through appearances in justice or municipal courts. Consequently, the whole judicial system receives a black eye when these lower courts are not held in adequate facilities and are not conducted in a dignified, orderly manner by a neat-appearing judge with knowledge of the law and court procedures.

It is estimated that in excess of 58,000 cases were heard in Colorado's justice courts in 1957. This volume of business points up the desirability of improving the lower court system until a person's rights are fully protected and he is assured due process of law.

Most of Colorado's approximately 275 justices of the peace operate under a severe handicap.[1] In most instances, counties have been reluctant to provide decent court facilities, clerical assistance, and even copies of the statutes. The case load of most justices is so small that justice court work becomes a part time occupation, with cases held at those times and in those places least likely to interfere with the justice's full time job. Very few qualified persons are attracted to the position, and in many counties the commissioners have to appoint justices because very few stand for election and many of those who do fail to qualify for the office by refusing to go to the trouble of posting bond. Unqualified personnel, inadequate facilities and lack of public interest and support have all contributed to the shortcomings of Colorado's justice court system.

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1. It is difficult to determine exactly the number of active justices of the peace. The Secretary of State compiles a list of those elected, but no report is made to his office or any other central agency on those justices who fail to qualify, resign, or are appointed by the county commissioners.

II

COLORADO'S JUSTICE COURTS -- ACCORDING TO LAW

This section outlines in some detail the justice court system as it is supposed to operate under the provisions of the Colorado Constitution and statutes. Colorado Supreme Court decisions and attorney-general's opinions have also been examined to determine their bearing on the justice court system's legal framework.

Jurisdiction Over Causes

Criminal Jurisdiction

In general, criminal functions conferred upon the justice courts fall into two classes. Justice courts have concurrent trial powers with certain courts of record for offenses classified as misdemeanors. In other words, in misdemeanor cases they may conduct the trial of the accused and, if a conviction results, impose penalties. In felony cases the justices of the peace are designated as committing magistrates. In both classes of cases they may issue warrants and perform functions of similar nature.

Jurisdiction to Try Criminal Cases. The Colorado constitution does not spell out the criminal jurisdiction of the justice courts to try cases. Neither does it contain any detailed limitations. However, it does provide that "justices of the peace shall have such jurisdiction as may be conferred by law."[1] Thus it has always been considered necessary to point to statutory authority for criminal jurisdiction.[2] From the establishment of justice courts by the first territorial laws[3] in 1861 there has been some criminal jurisdiction over non-felonious or minor offenses. In the law of 1861, such jurisdiction was limited to three types of cases -- assaults, batteries and affrays. Gradually over the course of many years it has been extended by specific statutes to more and more misdemeanor offenses, and the Manual of Colorado Justice Court Practice and Procedure lists slightly over 100 statutes which directly confer jurisdiction to try criminal misdemeanors of various types in the justice courts.[4]

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1. Colo. Cons. Art. VI, Sect. 25.
2. Colo. Justice Court Practice and Procedure Sect. 48 (3rd ed. 1942).
3. Laws of Colo. Territory (1861) p. 220, which gave justice authority only over assaults, batteries and affrays.
4. Manual of Colo. Justice Court Practice and Procedure Sect. 45 and 36 (3rd ed. 1942) particularly note 10 to Sect. 46.

Since 1923 the statutes have given the justice of the peace general jurisdiction to try all misdemeanors committed within his county.[5] The supreme court recognized the effect of this statute in Harden v. People[6] and conceded that it gives the justice court concurrent jurisdiction over a charge of driving while under the influence of intoxicants. It reached this decision although the various provisions of Chapter 13, C.R.S. 1953, making up the motor vehicle laws, in most instances simply describe the offense as a misdemeanor and confer jurisdiction on courts of "competent jurisdiction." As a consequence of this general statute and the case just discussed, only those misdemeanors on which the statutes confer jurisdiction specifically to named courts, and either omit the justice courts[7] or specifically negate their jurisdiction, would apparently be beyond the power of the justice to try. There are very few such statutes which make it absolutely clear that justice courts lack jurisdiction, but these are important in certain areas. For example, justices are specifically denied criminal jurisdiction over children sixteen years and under, even though the offense is otherwise a misdemeanor.[8] Of course, justice courts have no jurisdiction to try felonies on the merits under any circumstances.

It should be emphasized that the jurisdiction of the justice courts over misdemeanors is completely concurrent with the county courts by statute.[9] Any misdemeanor which could be tried by justice courts may also be tried in county courts.[10] The state constitution also gives district courts original jurisdiction in all matters of law.[11] Hence, the justice courts have no original exclusive jurisdiction.

The statutes also permit the appointment of a justice of the peace as police magistrate of a town or city.[12] If so appointed, the justice, when sitting as police magistrate, has jurisdiction by virtue of such office over violations of city ordinances.

Jurisdiction to Conduct Preliminary Examinations and to Act as a "Committing Magistrate". One of the traditional functions of the justice of the peace throughout the United States has been the task of holding a preliminary examination when an individual is arrested and charged with a serious criminal offense beyond the power of the justice to try on the merits.[13] As a result of such hearing the individual charged is released if insufficient cause to hold him is shown or, if probable cause

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5. C.R.S. 1953 Sect. 79-15-3. The statement to the contrary in Manual of Colo. Justice Court Practice and Procedure Sect. 405 is apparently in error.
6. 121 Colo. 375, 216 P2d 429 (1950).
7. Even in this situation it could be argued that the general statute granting jurisdiction, C.R.S. 1953, Sect. 79-15-3, overides a mere failure to list justice court when conferring jurisdiction. See Hartman v. People 80 Colo. 342, 251 P. 540 (1926) where county court was involved in this problem.
8. See C.R.S. 1953, Sect. 22-8-7. Justice must transfer such cases to juvenile or county court.
9. C.R.S. 1953 Sect. 27-1-1.
10. See Lambert v. People 78 Colo. 313, 241 Pac. 533 (1925).
11. Colo. Cons. Art. VI, Sect. 11.
12. C.R.S. 1953 Sects. 139-84-5, 139-85-5, 139-86-4.
13. An excellent general discussion of preliminary examinations is found in Ch. 3, Orfield, Criminal Procedure from Arrest to Conviction (1947) Pgs. 49-100.

is demonstrated, he is held in jail or released on bail, pending trial by an appropriate court of record. In many states, statutes make such an examination mandatory and in a few it is required by the state constitution.[14] At the present time, there is a United States Supreme Court decision that the due process clause of the fourteenth amendment to the United States Constitution does not require a state to extend the privilege of a preliminary examination to an accused, at least in certain cases.[15] However, it has been suggested that the United States Supreme Court, with its obvious tendency toward demanding greater consideration for the accused, may find in the future that preliminary examination is required as a matter of fundamental fairness.[16]

The Colorado Supreme Court has said that our state constitution cannot be interpreted in such a way as to require the holding of a preliminary examination.[17] Neither do we have any comprehensive statutory requirement that in all criminal cases or in all felony cases a preliminary examination shall be held. However, in a number of instances it does seem necessary by statute in this state. Thus, where a warrant is issued for the arrest of a person suspected of committing a criminal act, the statute provides that such person upon arrest shall be brought before the judge issuing the warrant for examination.[18] There is no comparable general provision in the statute authorizing arrest without a warrant,[19] but if no preliminary hearing was held, it would seem that recourse to a writ of habeas corpus could be made to test the validity of detention. Furthermore, if the arrest without a warrant was made by a constable, the statute does direct that he bring the arrested person immediately before a justice of the peace,[20] and somewhat comparable statutes apply to municipal police officers.[21] Certainly the justice of the peace can hold a preliminary examination in such instances.[22] On the other hand, our statutes permit the filing of any information, without prior preliminary hearing, if the court permits.[23] It is quite plain that an accused, if he wishes, may waive preliminary examination even when a statute provides for it.[24]

Other Functions in the Administration of Criminal Law. The issuance of warrants for arrest, when any person charges under oath that an individual has committed a crime or that a crime has been committed and an individual is reasonably suspected thereof, is a power of justices of the peace as well as judges.[25] However, there is ample statutory authority for an officer to arrest without a warrant if a crime has been committed and he has reasonable grounds to believe that the person to be

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14. See 14 Am. Jr. Crim. Law Sect. 240. The federal rule requires examination before the United States Commissioner. Rule 5A, Federal Rules, Criminal Procedure.
15. See Lem Woon v. Oregon, 229 U. S. 586 (1913).
16. Cf. 2 King, Colo. Practice Methods Sect. 2368 n. 62 (1956).
17. Holt v. People, 23 Colo. 1 (1896).
18. C.R.S. 1953 Sect. 39-2-3.
19. See C.R.S. 1953 Sect. 39-2-20 (In supplement only - passed in 1955).
20. C.R.S. 1953 Sect. 79-15-1.
21. C.R.S. 1953 Sects. 139-3-15, 139-4-6, 139-75-5.
22. C.R.S. 1953 Sect. 39-2-12.
23. C.R.S. 1953 Sect. 39-5-1.
24. C.R.S. 1953 Sect. 39-4-2.
25. C.R.A. 1953 Sect. 39-2-3 and Sect. 39-2-7.

arrested has committed it.[26] Justices may also issue search warrants when a larceny has been committed and the person swears that he believes goods are concealed in a certain house or other place.[27] The verification of an application for extradition to the governor when the district attorney seeks to secure the return of a fugitive to Colorado from some other state[28] had to be made before a magistrate. The 1957 amendment to this statute seems to require only an affidavit, which could be executed before any notary.[29] In his ancient role as conservator of the peace, the justice of the peace may require "peace bonds" of individuals who threaten others or threaten to break the peace, pending the next term of the district court.[30]

Civil Jurisdiction in Judicial Matters

As is the case with criminal jurisdiction, any civil jurisdiction which the justice courts possess must be derived from specific statutes, since the Colorado constitution provides that "justices of the peace shall have such jurisdiction as may be conferred by law."[31] The Colorado constitution provides further limitations, for the justice court cannot be given by statute under any circumstances jurisdiction in "any case wherein the value of the property or the amount in controversy exceeds the sum of $300 nor where the boundaries or title to real property shall be called in question."[32] Within these limitations, the legislature has determined the jurisdiction of the justice courts.

Civil Jurisdiction in Ordinary Cases. The principal statute under which justice courts exercise civil jurisdiction begins by reiterating the constitutional limitations on the amount in controversy and type of case just set out. It then sets out seventeen kinds of cases in which the justice court may act.[33] Without restating these in detail, it is an adequate generalization to state that they encompass actions based on contract or agreement when money damages are demanded which do not exceed $300; a number of different tort actions such as assault, battery, trespass, conversion, and apparent negligence, again when damages do not exceed $300; replevin for the recovery of specific property not exceeding $300 in value; and actions by or against executors and administrators, again within the same monetary limitations.

Jurisdiction over cases to evict tenants or individuals in possession of real property usually referred to as "forcible entry and detainer actions" is given to

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26. C.R.S. 1953 Sect. 39-2-20.
27. C.R.S. 1953 Sect. 39-2-6.
28. C.R.S. 1953 Sect. 60-1-23-(3) prior to amendment.
29. C.R.S. 1953 Sect. 60-1-23-(3) as amended in 1957. Session Laws 1957 Ch. 149, Sect. 4 at p. 380.
30. C.R.S. 1953 Sect. 39-2-1.
31. Colo. Cons. Art. VI Sect. 25; Corthell v. Mead, 19 Colo. 386 at 391, 35 Pac. 741 at 743 (1894); Robinson v. Compher, 13 Colo. App. 343, 57 Pac. 754 (1899).
32. Colo. Cons. Art. VI Sect. 25.
33. C.R.S. 1953 Sect. 79-5-2.

the justice court by a separate statute.[34] This statute provides that if the title to the property becomes an issue, the case must be transferred to the district court. While this statute does not so state, it seems plain that a claim for rent in connection with the action to evict could not exceed $300 in the justice court.[35]

Civil jurisdiction of the justice court as cited above is all concurrent. Any of these cases can also be brought in district court or county court since there is no legal minimum limitation on their jurisdiction, even though, as a practical matter, the expense and delay of litigation therein do impose working minimum limitations. Thus, for example, nearly all forcible entry and detainer actions are brought in justice court. Concurrent jurisdiction obviously does not operate to vest jurisdiction in the justice courts when it doesn't exist, and many cases cannot be brought in justice court simply because there is no statutory provision conferring power on the justice courts in these fields. For example, justice courts have no power to try any suits of equitable origin such as actions for an accounting between partners,[36] specific performance of contracts, or injunctions. The same is true as to divorce actions, and probate matters.

The Justice Court as a Small Claims Court. Since 1939 a specialized procedure has been available in the justice courts for the collection of small claims.[37] This procedure is limited to justice courts. It is not a jurisdictional matter which exists outside of the jurisdiction over suits discussed above, but rather a permissable manner of handling certain causes of action which are already within the jurisdiction of the justice court. Under this procedure, an action for the recovery of a sum of money not to exceed $50 as a general rule and not to exceed $100 if the action is for wages, salary, or work and labor performed under a contract may be brought under a simplified procedure. Tort claims are not included in "money demands" for the purposes of the small claims act and cannot be brought under this procedure.[38] Neither is this procedure available in court of record, although any particular claim which can be brought thereunder can also be brought in the more traditional regular justice procedure or in a court of record.

Judicial Areas in Which the Justice has no Jurisdiction. By way of contrast to the above sections discussing the civil judicial powers of justice courts, there are certain "border line" areas in which justice courts have definitely been held or recognized to possess no powers. Again it should be emphasized that all powers of the justice must stem from a specific statutory authorization. Hence, these specific limitations by constitution, statute, or court decision simply reenforce

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34. C.R.S. 1953 Sect. 58-1-9.
35. Manual of Colo. Justice Court Procedure Sect. 295.
36. Robinson v. Compher, 13 Colo. App. 343, 57 Pac. 754 (1899).
37. C.R.S. 1953 Sect. 127-1-1 et. seq.
38. Hartman v. Marshall, 131 Colo. 88, 279 P2d 683 (1955).

the point. In any event, it is quite clear that justices of the peace have no power in the following instances:

1. When the claim demands more than $300.[39]

2. When the action involves title to land or a boundary dispute.[40]

3. When the claim is basically an equitable action or one which is of equitable origin, including actions for an accounting, an injunction.[41]

4. When the action seeks a divorce.[42]

5. When the action seeks the issuance of a court order in the nature of an extra-ordinary writ such as mandamus, quo warranto or certiorari.[43]

Other Powers of the Justice of the Peace. The justice of the peace has a number of other civil powers. He may conduct marriages.[44] He may take acknowledgments[45] and administer oaths.[46] He may act as coroner in the absence of that official.[47] He may sign apprenticeship agreements for minors sixteen years of age or over, if there is no parent or guardian.[48] But again the usual generalization, inapplicable only to small claims as noted above, holds true; no one of these powers is vested solely in the justice.

In at least one instance, however, the justice does appear to have exclusive power. Liens on personal property given to agistors,[49] to common carriers and warehousemen,[50] and to those who make or repair personal property[51] are enforceable by nonjudicial foreclosure by sale by the holder of the lien.[52] However, the lien holder must first procure the appointment of three appraisers by a justice of the

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39. Colo. Cons. Art. VI, Sect. 25.
40. Colo. Cons. Art. VI, Sect. 25.
41. Starrett v. Ruth 51 Colo. 583, 119 P. 690 (1911); Robinson v. Compher 13 Colo. App. 343.
42. C.R.S. 1953 Sect. 46-1-2. This result is not affected by the new divorce bill which became law July 1, 1958. The amended form of Sect. 46-1-2 makes no change as to this.
43. These actions authorized only in courts of record. See Rule 106, Colo. Rules Cir. Proc.
44. C.R.S. 1953 Sect. 90-1-18.
45. C.R.S. 1953 Sect. 118-1-26.
46. C.R.S. 1953 Sect. 98-1-3.
47. C.R.S. 1953 Sect. 79-2-16.
48. C.R.S. 1953 Sect. 9-1-5. One wonders just how frequently this power has been exercised.
49. C.R.S. 1953 Sect. 86-1-1.
50. C.R.S. 1953 Sect. 86-1-4.
51. C.R.S. 1953 Sect. 86-1-5.
52. C.R.S. 1953 Sect. 86-1-8.

peace of the county, and these appraisers, after being sworn by the justice, must place a value upon the property,[53] which value is reported to the appointing justice. The lien holder must secure at the sale at least two-thirds of the value placed upon the property by the appraisers[54] and, of course, any surplus over the amount due the lien holder and over the expenses of sale must be remitted to the original property owner. After completion of the sale, the lien holder must file a bill of sale with the justice court, showing purchaser and the amount paid.[55]

Territorial Jurisdiction and Problems of Venue

The justice of the peace has been described as a county officer by the Colorado Supreme Court.[56] From this conclusion, the court derived the general principle that in no event, even with the apparent consent of the parties, could a justice act in a matter which arose in another county.[57] Thus, using the term jurisdiction in its true sense to denote basic authority, the jusisdiction of the justice courts in a given county is always limited to matters arising in the county or which have some rational connection therewith, and this limitation cannot be waived.

On the other hand, venue, or the place in which it is proper for an action to be heard upon which the parties to the litigation may insist, may be confined to a narrower territorial area than the jurisdiction of the court. It is often limited to the justice precinct in which the case arises or the defendant resides. However, this limitation may be waived by the parties, either by consent or by failure to interpose an objection at the proper time.[58]

Before discussing the detailed application of the rules of venue, a brief description of the precinct system is necessary. While the justice is a county officer and has county wide jurisdiction in the strict sense of the word, he is elected by and for a specific precinct or territory within the county in which he must reside and have his office.[59] The county commissioners are given the power to divide their counties into precincts, and to create additional precincts or reduce the number thereof.[60] For a good many years Pueblo county has constituted a single justice precinct and Jefferson county is contemplating a similar reduction. On the

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53. C.R.S. 1953 Sects. 86-1-6, 86-1-7.
54. C.R.S. 1953 Sect. 86-1-9.
55. C.R.S. 1953 Sect. 86-1-11.
56. Thrush v. People 53 Colo. 544, 127 P. 937 (1912).
57. Rush v. Lung Sanitarium 106 Colo. 589, 109 P2d 265 (1940). According to the annotations in C.R.S. the case would apparently overule Squires v. Curtain 42 Colo. 51, 93 P 1106 (1908) on this point, although it does not so state expressly. A reading of Squires v. Curtain indicates that the case is wrongly described and that it indicated waiver only within the county, in other words, waiver only of a matter of venue, not jurisdiction.
58. Fremont County v. People ex rel Harvey 109 Colo. 287, 124 P2d. 934 (1942) contains the best explanation of justice court venue in civil actions and of the difference between jurisdiction and venue.
59. C.R.S. 1953 Sect. 79-2-1.
60. C.R.S. 1953 Sect. 79-1-1.

other hand, Weld county has a substantial number of precincts. Normally, there are two justices in each precinct,[61] but the county commissioners at their discretion can increase this number in precincts with a population of more than 50,000, by adding not more than one justice for each 20,000 population in the precinct beyond the 50,000 needed for an increase.[62]

Turning back now to specific matters of jurisdiction and venue in criminal matters, cases must be brought in a justice court in the county in which the offense occurred.[63] As a general rule, both jurisdiction and venue are thus county-wide. A specific statute clearly provides for a change of venue in preliminary examination.[64] This change may be made within the county to the nearest justice. Probably the general statute on change of venue in justice court[65] applies to the trial of misdemeanors and permits a change of venue to the nearest justice in such cases. In People ex. rel. Frank v. Blanchard, J.P.[66] the Colorado Supreme Court stated that there was a dispute as to the applicability of this general statute to criminal cases but assumed, without deciding, that it did so apply. It would certainly be anomalous for the law to be interpreted as providing change of venue in every case except the trial on the merits of a criminal matter, the situation in which it is most needed.

A few generalizations, which may or may not be fully warranted, seem to follow from making both jurisdiction and venue county-wide in criminal matters. It permits the prosecution to "shop" for "convicting" justices. This is only partially ameliorated by the possibility of jury trial or of change of venue, neither of which may be known to the defendant. On the other hand, it does eliminate some technicalities, and it does permit the prosecutor to by-pass incompetent justices.

In civil matters, venue is at times more limited, although jurisdiction remains county-wide.[67] Thus, general civil claims and replevin actions should be brought in the precinct in which the debtor resides, unless the cause of action arose in the precinct in which plaintiff resides, in which case it may be brought there.[68] Provision is made for bringing the case before the justice nearest to the residence of the defendant, if there is no justice in the precinct.[69] These venue provisions are for the convenience of the defendant and he may waive them by entering a general appearance[70] or otherwise consenting to action elsewhere in the county.

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61. Colo. Cons. Art. XIV, Sect. 11.
62. C.R.S. 1953 Sect. 79-1-2.
63. C.R.S. 1953 Sect. 79-15-3.
64. C.R.S. 1953 Sect. 79-15-24.
65. C.R.S. 1953 Sect. 79-14-1.
66. 70 Colo. 237, 199 Pac. 493 (1921).
67. See Slinkard v. Jordan 131 Colo. 144, 274 P2d 1054 (1955).
68. C.R.S. 1953 Sect. 79-5-6.
69. C.R.S. 1953 Sect. 79-5-7.
70. Slinkard v. Johnson 131 Colo. 144, 274 P2d 1054 (1955).

In forcible entry and detainer cases the proper venue is apparently county-wide, therefore the case can be initiated before any justice in the county.[71] The same principle seems to apply to justices sitting as small claims courts.[72]

Change of venue may be had by the defendant in all civil cases and probably in all criminal cases, as noted above, by stating under oath prior to the commencement of the trial that he does not believe he can receive a fair trial before the justice in whose court the action is brought.[73] If such an affidavit is filed, the justice must transfer the case to the nearest justice, who may be either the other justice in the precinct or some other justice in the county. The plaintiff can also secure one change of venue.[74]

Operational and Procedural Patterns

Personnel and Qualifications

The Justice of the Peace. The central figure in the justice court system is obviously the justice of the peace himself. At present, the Colorado constitution provides for the election of two justices of the peace for each precinct to serve a two year term.[75] Since the justice of the peace is covered separately from other county officers by section 11 rather than section 8 of the constitutional article on counties, his term was not lengthened to four years when section 8 of this article was amended in 1954 to provide four year tenure for most county offices.

The qualifications which a justice must meet are relatively few. Since he is a "county" officer, no doubt he is governed by the general constitutional requirements for such an officer.[76] He must be a qualified elector and have resided in the county for at least one year. As an elector, he must be over the age of 21, a citizen of the United States, and a resident of the state for one year.[77] The statutes further provide that the justice must reside and have his office in the precinct for which he was elected.[78] Beyond these limited requirements, there are absolutely no standards which the justice must meet in order to occupy the position. In order to qualify after election, he must post bond and take an oath of office.[79] At times, a justice is elected but thinks so little of the office that he fails to provide the bond and actually undertake his duties. While the statute provides a penalty for such conduct, undoubtedly its imposition would be extremely unusual.[80]

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71. C.R.S. 1953 Sect. 58-1-9.
72. C.R.S. 1953 Sect. 58-1-9.
73. C.R.S. 1953 Sect. 79-14-1.
74. C.R.S. 1953 Sect. 79-14-2.
75. Colo. Cons. Art. XIV Sect. 11.
76. Colo. Cons. Art. XIV, Sect. 10. See also Colo. Cons. Art. VI, Sect. 29 and Art. VII Sect. 6.
77. Colo. Cons. Art. VII Sect. 1.
78. C.R.S. 1953, Sect. 79-2-1.
79. C.R.S. 1953, Sect. 79-3-1 et seq.
80. See C.R.S. 1953 Sect. 35-1-7, providing penalty of from $25 to $100 for failure to qualify after election.

Vacancies normally occur due to death, resignation, removal from precinct, or the failure of any one to stand for office or qualify. These may be filled by appointment by the county commissioners.[81] Removal for cause while in office no doubt has been extremely rare. Since the justice of the peace is specifically excepted from the officers listed by the constitution as being subject to impeachment,[82] he is liable by constitutional provision to removal for misconduct or malfeasance in office as may be provided by statute.[83] The only apparently pertinent statute provides for removal if he is convicted of an infamous crime or of an offense involving a violation of his official oath.[84] The only method of dispensing with the services of a justice for incompetency would seem to be by recall.[85]

Constables. The constable performs somewhat the same functions for the justice court that the sheriff performs for courts of record, making arrests and serving various types of process. Sheriffs as well as constables may serve warrants issued by the justice court[86] but cannot serve other writs from the justice court.[87] The state constitution provides for two constables in each precinct to serve two year terms.[88] He must be a qualified elector of the precinct, thus he must meet about the same qualifications as the justice himself. The constable may appoint a deputy in a precinct with a population of 25,000 or more.[89] Constables and their deputies, when appointed, must post bond.[90]

Perhaps the most important single factor in this field is the power of the justice to appoint a special or temporary constable to serve process in a specific case.[91] Such an appointment may be made at the request of, and at the expense of a party to the case, when no qualified constable can conveniently be found. Statutory requirements must be strictly followed.[92] Even so, the relatively frequent use of an inexperienced and unbonded temporary constable picked up off the street or the courthouse lawn to serve a specific paper, while it may contribute to the speed with which the justice court can operate, hardly contributes to the development of respect for the system.

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81. Colo. Cons. Art. XIV Sect. 9.
82. Colo. Cons. Art. XIII Sect. 2.
83. Colo. Cons. Art. XIII Sect. 3.
84. C.R.S. 1953, Sect. 35-1-5. See People v. Enlow 135 Colo. 249, 310 P2d 539.
85. C.R.S. 1953 Sect. 35-2-1. Any doubt on this point in view of constitutional language of misconduct would seem removed by Art. XXI of the State Constitution.
86. C.R.S. 1953, Sect. 79-2-23.
87. Porter v. Stapp, 6 Colo. 32 (1881).
88. Colo. Cons. Art. XIV, Sect. 11.
89. C.R.S. 1953, Sect. 79-2-11.
90. C.R.S. 1953, Sects. 79-3-1, 79-2-11.
91. C.R.S. 1953 Sect. 79-2-12.
92. Bruce v. Endicott 16 Colo. App. 506, 66 Pac. 578 (1901).

Clerks. The assistance of a clerk is provided for the justice courts in a very limited number of instances. In precincts having more than 50,000 population and in counties having only one justice precinct, justices may appoint a chief clerk and deputy clerks with the approval of the county commissioners.[93] Clerks so appointed are paid from the county general fund. As a practical matter, this provision has present applicability only in Denver, Pueblo county and the central precinct in El Paso county.

Rules and Procedures. Justice courts are not subject to the Colorado Rules of Civil Procedure, which govern actions in courts of record.[94] In general, they operate strictly under procedures prescribed in various statutes.[95] However, any city, or any city and county, or any precinct, having more than 50,000 population, or in counties with only one precinct, the justices may make rules of procedure.[96] These rules should "follow" the Colorado Rules of Civil Procedure but must not conflict with the statutes of the state governing justice courts, hence, their permissable scope actually is not too wide, with this limitation standing in the way of any substantial change in procedure by rule.

Actually the procedures used in the justice court, at least those provided by statute, often do not differ widely in principle from those in courts of record, although there are detailed differences at every step of the way. The general purpose of these variations -- indeed of justice court procedure as a whole -- is undoubtedly to combine simplicity with fairness at minimum expense. Whether all of these objectives are attained is a matter of opinion. In any event, rather than trace in laborious detail the exact procedure for every one of the types of actions which can be brought in justice court, it may be more profitable to point out a few of the most significant features.

In civil cases in justice court, an action is started in most instances by the issuance of a summons by the justice stating the time and date of hearing.[97] Except in cases of forcible entry and detainer, there is no complaint prepared nor is any answer required, contrary to the practice in courts of record.

This has the advantages both of speed and cheapness. However, the defendant may not be sufficiently informed of the case against him to prepare a defense. Also, the fact that the justice, rather than a clerk, issues the summons leads to an inference, whether warranted or not, that the justice has heard the plaintiff's case and made up his mind on the matter.

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93. C.R.S. 1953 Sect. 79-2-17.
94. Colo. Rules Cir. Proc. 1(a).
95. This principle is particularly rigidly applied in attachment and garnishment cases. See Colo. Fuel and Iron Co. v. Blair 6 Colo. App. 40, 39 Pac. 897 (1895).
96. C.R.S. 1953 Sect. 79-2-22.
97. C.R.S. 1953 Sect. 79-5-8.

The time of trial must be within five to fifteen days after issuance of summons, and the summons must be served at least three days before the date fixed for trial.[98] Again, the advantage over courts of record, in which it may take months to reach trial, is speed in disposing of the matter. However, there is some problem of fairness to the defendant in rushing him to trial so rapidly. True, he may request a continuance of ten days, but often he may not be aware of this right.

A final point worth some note is that the plaintiff, if the defendant does not appear at the time appointed for trial, must present an affidavit of the amount due.[99] Only then can the justice properly enter judgment for the plaintiff. To the extent followed in practice, which may be questionable, this provision seems to provide some safeguard for the defendant - a safeguard not present in courts of record.[100] However, it represents some withdrawal of protection available prior to 1957, since prior to amendment in that year the plaintiff had to present his full case even though defendant did not appear.

Civil procedures in justice court vary somewhat from the above in specialized cases. In forcible entry and detainer,[101] replevin,[102] and cases involving the issuance of a writ of attachment[103] or garnishment,[104] the procedure is somewhat more complicated and formal. On the other hand, small claims procedure is simplified even further.[105] Finally there is a possibility, apparently not used extensively, which is even further simplified. If both parties so desire, they may submit a controversy to the justice without any pleadings (i.e., summons) at all and he can proceed to try the case on the parties' oral submission and other evidence as in other cases.[106]

At any time before evidence is given in any civil suit before a justice of the peace, either party may demand a jury trial.[107] Such person must advance the jury fee and specify the number of jurors, which can be not less than three nor more than twelve. The other party, if fewer than twelve are specified, can increase the number, up to that figure. The statute does not provide a specific source for jurors, the constable being directed to summon as many as are needed.

In criminal cases for the trial of misdemeanors, the Colorado Supreme Court has said that prosecution may be had upon the basis of a warrant issued upon the oath of a competent person or upon a verified complaint.[108] The Colorado Supreme Court

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98. C.R.S. 1953 Sect. 79-5-8.
99. C.R.S. 1953 Sect. 79-5-8.
100. Compare Colo. Rule Cir. Proc. 55.
101. See C.R.S. 1953 Sect. 58-1-10 et. seq.
102. See C.R.S. 1953 Sect. 79-11-1 et. seq.
103. See C.R.S. 1953 Sect. 79-9-1 et. seq.
104. See C.R.S. 1953 Sect. 79-10-1 et. seq.
105. See C.R.S. 1953 Sect. 127-1-1 et. seq.
106. C.R.S. 1953 Sect. 79-5-37.
107. C.R.S. 1953 Sect. 79-7-1.
108. People v. Read 132 Colo. 390, 288 P2d. 347 (1955).

apparently has held that the issuance of a "traffic ticket", because it is not under oath, does not actually constitute the beginning of a criminal case although the exact basis of the case is not completely clear.[109] The case may have turned on a misnomer on the form, using "summons" instead of notice.

Once the parties are properly before the justice, there are very few procedural rules established by statute, nor have there been many supreme court decisions which shed light on minimum procedural requirements. By statute,[110] as well as by the Colorado constitution,[111] the defendant in criminal actions is guaranteed the right to trial by jury if he so demands, with the size of the jury being fixed at six unless the parties agree to less. In justice courts, a jury, if empanelled, fixes the punishment as well as determining guilt or innocence of the accused,[112] except in any city, or any city and county, having more than 100,000 inhabitants.[113]

Records

Court Records. The most important court record which the justice is required to keep is his docket book, since the justice court is not considered a "court of record". The statute specifies the item to be entered on the docket book, including the names of the parties, the amount and nature of the debt sued upon, and the date and a description of all process issued, orders made, or judgment rendered.[114] The same statute requires that he file and keep all papers given to him, such as affidavits in attachment and the like. Upon appeal taken from the justice, a transcript of the judgment and all papers filed in the case are certified to the county court.[115] The docket and papers of the justice are merely in his possession and are not his personal property; they must be transferred by him to his successor when he vacates his post.[116]

Financial Records and Reports. As a county officer, the statute requires that a justice of the peace maintain an account book covering all fees received.[117] The statute also requires that he make a monthly report in writing and under oath to the county commissioners setting out all fees of his office and any authorized expenses.[118] The county commissioners are directed to audit these accounts[119] and the attorney general has ruled that an audit of each justice should be included in the county audit.[120]

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109. Solt v. People 130 Colo. 1, 272 P2d. 638 (1954), but see Hart v. Herzig
110. C.R.S. 1953 Sect. 79-15-4.
111. Colo. Cons. Art. II, Sect. 23.
112. C.R.S. 1953 Sect. 79-15-6.
113. C.R.S. 1953 Sect. 79-15-7.
114. C.R.S. 1953 Sect. 79-2-2.
115. C.R.S. 1953 Sect. 79-13-4.
116. C.R.S. 1953 Sect. 79-2-6.
117. C.R.S. 1953 Sect. 54-1-16.
118. C.R.S. 1953 Sect. 56-4-17.
119. C.R.S. 1953 Sect. 5C-4-18.
120. Op. Atty. Gen. of Colo. 1954-51 (1951).

Other Reports. There are other reports which the justice is directed to make, some of them financial in part, but often involving other items. Thus the justice must report the result of all trials for breaking game and fish laws to the Game and Fish Commission.[121] The justice must forward an abstract of his court record in all motor vehicle cases to the director of revenue.[122] Fines in criminal cases are to be reported quarterly to the county treasurer.[123] Fines and penalties which are paid into the general school fund must be reported quarterly to the county commissioners, with certain information about the trial.[124]

Judgments. In civil cases, justice court judgments are limited to a sum of money except in replevin and forcible entry and detainer actions. If the plaintiff is successful, the judgment includes court costs and interest from the time the debt became due, if upon a note or account.[125] If the defendant is successful, the judgment is against the plaintiff for court costs. In the interests of speed, the justice is directed to enter a civil judgment within four days after the trial is completed.[126] If he fails to do so he forfeits his costs and is liable to a damage suit.[127] The judgment is void unless signed by the justice.[128] The justice in most precincts has no power to set aside a judgment once entered, but an exception is made in any city, or any city and county, having a population over 100,000.[129] Judgments, if not paid promptly, are collected by execution, which may be issued immediately after judgment is made.[130]

In criminal cases, the jury, if one is used, returns the verdict, and sets the amount of the fine or the term of imprisonment or both, if the verdict is guilty.[131]

In any city, or in any city and county, having over 100,000 inhabitants, the justice, rather than the jury, is empowered to fix the punishment.[132] Of course, if no jury is demanded, this function falls to the justice in all counties and

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121. C.R.S. 1953 Sect. 62-13-8.
122. C.R.S. 1953 Sect. 13-4-142.
123. C.R.S. 1953 Sect. 79-15-16.
124. C.R.S. 1953 Sect. 79-15-18.
125. C.R.S. 1953 Sect. 79-5-27.
126. C.R.S. 1953 Sect. 79-5-20.
127. C.R.S. 1953 Sect. 79-5-21.
128. Ferrier v. Morris 109 Colo. 154, 122 P2d 880 (1942), Perkins v. Peterson 67 Colo. 101, 185 P. 660 (1919).
129. C.R.S. 1953 Sect. 79-5-30.
130. C.R.S. 1953 Sect. 79-8-1.
131. C.R.S. 1953 Sects. 79-15-5, 79-15-6.
132. C.R.S. 1953 Sect. 79-15-7.

precincts. In many instances the statute defining the offense prescribes the maximum penalty[133] and occasionally a minimum penalty.[134] In the event a statute defining a misdemeanor is silent concerning punishment, the general criminal statutes provide that the maximum punishment shall be not more than one year in the county jail or a fine of $300 or both.[135]

The judgment in a criminal case must be entered within 10 days after the trial.[136] If the defendant is found guilty, the judgment includes the costs as well as the fine. The justice issues execution to collect the fine and costs.[137] Exemptions are very limited, covering largely household and kitchen furniture, and civil exemptions do not apply.[138] While the justice statutes provide for a capias to hold a man in jail if the fine is not paid, at a rate of 24 hours for every two dollars,[139] an apparently over-riding statute allows the district judge, upon petition, to direct the release of a prisoner without any estate at all who is held for non-payment of a fine.[140] How many prisoners are aware of this statute and are able to make use of it is a matter of some conjecture.

Appeals and Other Methods of Appellate Court Review. Both civil and criminal judgments of the justice court may be appealed to the county court,[141] except in counties in which superior courts have been established and constitute the appropriate court for these appeals.[142] Appeal is not possible if the defendant has confessed judgment in a civil case,[143] or if he has plead guilty in a criminal case.[144] In order to perfect his appeal the party seeking review must file an appeal bond in all civil cases[145] as well as in those criminal cases in which he wishes to stay execution of the judgment.[146]

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133. A rather typical high maximum is the penalty of up to one year in the county jail or up to $1,000 fine for tampering with telephone or telegraph wires (C.R.S. 1953 Sect. 40-4-17). Others are lower. For example, disturbing the peace on Sundays carries a maximum fine of $50 and no imprisonment. C.R.S. 1953 Sect. 40-8-15.
134. See e.g. the statute on driving while under the influence prescribing a minimum imprisonment of 90 days for second offenders within five years. 1953 C.R.S. Sect. 13-4-30.
135. C.R.S. 1953 Sect. 39-10-19.
136. C.R.S. 1953 Sect. 39-15-27.
137. C.R.S. 1953 Sect. 79-15-9.
138. Enderman v. Alexander 68 Colo. 110, 187 P. 729 (1920).
139. C.R.S. 1953 Sect. 79-15-10.
140. C.R.S. 1953 Sect. 39-10-9.
141. Civil and criminal appeals see C.R.S. 1953 Sect. 79-13-1; criminal appeals also covered C.R.S. 1953 Sect. 79-15-11.
142. For jurisdiction of superior courts over appeals for justice courts see C.R.S. 1953 Sect. 37-11-2 and C.R.S. 1953 Sect. 79-15-11.
143. C.R.S. 1953 Sect. 79-13-2.
144. People v. Brown 87 Colo. 261, 286 P. 859 (1930).
145. C.R.S. 1953 Sect. 79-13-2; C.R.S. 1953 Sect. 79-13-3.
146. C.R.S. 1953 Sect. 79-15-11.

In the county courts, a new trial is held (trial de novo) on questions of fact and law since there is neither verbation or summarized record as such for review;[147] however, there are no new pleadings filed, the transcript of the justice's docket entry and other papers which are brought up to the county court being adequate for this purpose.[148] Notice to the appellee is given by summons.[149]

A limited right to certiorari from the district or county courts exists to remove cases from the justice of the peace courts,[150] but only after final judgment.[151] Review by certiorari is not a substitute or alternative for review by appeal, and is available only when it was not within the power of a party to take an appeal in the ordinary way.[152] In general, according to the reported cases, parties have had a difficult time showing that appeal was not available.[153] Although some of the cases contain confusing language, certiorari, when granted, seems to provide a trial de novo, just as does appeal.[154]

If the justice court is clearly exceeding its jurisdiction, no doubt a writ of prohibition may be had from the district court to prevent further proceedings by the justice.[155] However, it would probably be less expensive in many instances to appeal an adverse judgment to the county court than to attack it by prohibition. While an appeal to the county court does waive defective process, such as the form of service or the proceedings,[156] it does not waive the jurisdictional amount (jurisdiction limited to action involving less than $300)[157] and so the individual may prefer appeal to a writ of prohibition, in view of the extremely limited time in which action must be taken for such writ.

Fees and Fines

Justice Court Fees

The justice court system is designed to be almost entirely self-sustaining through an elaborate fee system by which both the justice and the constable are paid.

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147. See Johnson v. Cousins 110 Colo. 540, 135 P2d 1021 (1943).
148. C.R.S. 1953 Sect. 79-13-4.
149. C.R.S. 1953 Sect. 79-13-5.
150. See C.R.S. 1953 Sects. 79-12-1 through 79-12-8. The writ of certiorari under this statute is to be distinguished from relief under Rules. Civ. Proc. 106. See Serra v. Cameron 133 Colo. 115, 292 P2d 340 (1956).
151. Foster v. Nickles 88 Colo. 71, 291 P. 1040 (1930).
152. The most recent discussion is in Shotkin v. Denver Publishing Co. 119 Colo. 463, 204 P2d 1080 (1949).
153. Daily Waiste Co. v. Harris 71 Colo. 63, 203 P. 1094 (1922).
154. Axelson v. People 45 Colo. 285, P. 54 (1909); Daily Waiste Co. v. Harris 71 Colo. 63, 203 P. 1094 (1922).
155. See Colo. Rules Civ. Proc. 106 (a) (4). Walker v. People 87 Colo. 178, 285 P. 1104 (1930), Justice Court v. People ex rel Harvey 109 Colo. 287, 124 P2d 934 (1942).
156. Downing v. Tipton 48 Colo. 364, 110 P. 70 (1910).
157. C.R.S. 1953 Sect. 79-13-11. Lalonde v. Neal 53 Colo. 249, 125 P. 121 (1912).

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155. See Colo. Rules Civ. Proc. 106 (a) (4). Walker v. People 87 Colo. 178, 285 P. 1104 (1930), Justice Court v. People ex rel Harvey 109 Colo. 287, 124 P2d 934 (1942).
156. Downing v. Tipton 48 Colo. 364, 110 P. 70 (1910).
157. C.R.S. 1953 Sect. 79-13-11. Lalonde v. Neal 53 Colo. 249, 125 P. 121 (1912).

At the time of this report, the Colorado constitution makes the fee system mandatory for all county officers.[158] However, amendment #2, a constitutional amendment which was submitted to the voters at the general election in November 1958, would remove this constitutional mandate. If it should pass, the General Assembly would be free to put justices on a straight salary basis if it wished. At present, the fee system, although on a firm legal basis, is blamed for many of the faults which appear in the justice court system.

Statutes fix the maximum income from fees which a justice may retain and all fees above this amount must be turned into the county treasury.[159] In justice precincts of less than 70,000 population, the salary of the justice cannot exceed $3600, paid from his fees, and in precincts of 70,000 to 100,000, it cannot exceed $5000.[160] While certain statutes indicate that fee officers should turn over all fees to the county treasurer and then draw on such fees for their salary up to the maximum allowed, the Colorado Supreme Court has ruled that this is not necessary and that they may retain their fees until the ceiling is reached.[161]

Fees are collected from the party requesting each action for which a fee is provided at the time that he does so. At the close of a civil case, court costs are assessed against the losing party.[162] In a criminal case, they are charged to the defendant if convicted and to the county if the defendant is acquitted or if he is convicted and cannot pay them.[163]

The specific fees which the justice is allowed to charge were simplified considerably in 1955, but still form a relatively complex pattern.[164] In general, ordinary civil cases involve a docket fee of $4.00; replevin and forcible entry and detainer cases, $5.00; and attachments, $6.00. On the criminal side, traffic cases carry a docket fee of $4.00 and all other criminal cases a docket fee of $5.00. In addition to these basic fees, there are many miscellaneous charges.

Fines

The system of fines has not yet undergone the partial simplification applied to fees. Specific maximums and minimums are set by individual statutes in many instances, but where this has been omitted a general statute provides for a maximum of $300 for misdemeanors. Fines separately authorized by statute for individual offenses of the grade of misdemeanor may range as high as $1,000.

The disposition made of fines collected is as varied as are the amounts. This disposition can be presented most simply merely by listing the various funds and the fines which flow into them.

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158. Colo. Cons. Art. XIV, Sect. 15.
159. Colo. Cons. Art. XIV, Sect. 15.
160. C.R.S. 1953 Sect. 56-2-13.
161. Board of County Commissioners v. Bullock. 122 Colo. 218, 220 P2d 877 (1950).
162. C.R.S. 1953 Sect. 79-5-27.
163. C.R.S. 1953 Sect. 33-2-1.
164. See C.R.S. 1953 Sect. 56-4-4.

The County School Fund. All fines for breach of the penal laws of the state, unless otherwise specified, go to the county school fund.[165] However, a later statute provides that one-half of each such fine, when the offense against state law was committed within a municipality, shall go to the treasurer of the state of Colorado for credit to the policemen's pension fund.[166] There are many other special limitations which also apply. All sums received for violation of court orders or for contempt of court also go to the county school fund,[167] and this appears to include the penalty of $5.00 for contempt of justice court.[168]

The County Road Fund. Forfeitures for injuring highways are placed in the county road fund.[169] Apparently no other fines go into this fund.

The County General Fund. The largest source of fines which flow into the county general fund is from convictions for violations of the motor vehicle laws,[171] but note that Article 5 of this chapter contains no such provision on fines (and so fines for violation of this article, covering registrations, go to the county school fund.) A second possible source of fines for the county general fund is apparently convictions for violation of the game and fish laws. One-third of each of these fines is "deposited in the county treasury". The statute is not specific as to disposition to a designated fund. It is possible that these fines should go into the county school fund as an undesignated fine. On the other hand, the "county treasury" may be taken to imply the county general fund.[172] A comparable problem exists as to fines for violation of sanitary laws. The statute calls for deposit of all fines in the county treasury.[173] However, the disposition of certain other fines in the same chapter for violation of food and drug laws is not specified and therefore go to the school fund.

The State General Fund. One statute pertaining to the state inspector of oils provides that one-half of the fine for violation shall go to the state general fund.[174] This victory for the hard pressed general fund is not significant, however, for apparently the statute no longer prohibits anything. Other statutes on fuels do not designate the recipients of fine revenues. No other statute seems to name the state general fund as the recipient of all or a share of a fine, although certain civil penalties for violation of the Public Utilities Law accrue to the general fund.[175]

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165. C.R.S. 1953 Sect. 123-3-3.
166. C.R.S. 1953 Sect. 139-49-6.
167. C.R.S. 1953 Sect. 123-3-3.
168. C.R.S. 1953 Sect. 79-2-15.
169. C.R.S. 1953 Sects. 120-4-5, 120-4-7.
170. C.R.S. 1953 Ch. 13.
171. C.R.S. 1953 Sects. 13-3-36, 13-4-133.
172. C.R.S. 1953 Sect. 62-13-7.
173. C.R.S. 1953 Sect. 66-13-10.
174. C.R.S. 1953 Sect. 100-1-6.
175. C.R.S. 1953 Sect. 115-7-9.

The Game and Fish Fund. One-third of most fines for violation of game and fish laws go to the Game and Fish Commission. If the arrest was made by a salaried officer, an additional one-third of the fine goes to the commission, but if made by an individual not on salary, this third of the fine goes to the arresting individual.[176]

Police Pension Fund. As previously noted, one-half of the fines for state offenses occurring within municipal limits go to the police pension fund.[177]

The Colorado Humane Society. Fines for offenses against children go to the Colorado Humane Society.[178]

Powers and Duties of County Commissioners Pertaining to Justice Courts

Although the justice of the peace is a county officer, the county commissioners have little direct authority over his operations. True, the county commissioners can create additional justice precincts or consolidate existing precincts.[179] The power to consolidate precincts and thus reduce the number of justices could very well have been exercised widely in recent years, but such has not been the case.

The county commissioners may appoint justices to fill vacancies.[180] They may also provide for additional justices in precincts of over 50,000 inhabitants and appoint the first incumbents of the new posts;[181] however, they cannot remove a justice.

The county commissioners' responsibilities are almost as limited as their powers. As long as the fee system continues, the county commissioners cannot pay a straight salary to a justice even if they wish to do so, since he must be paid from his fee receipts. However, in any city, or any city and county, and in any justice precinct which has a population of more than 50,000, they can provide him with a chief clerk and deputy clerks to be paid from county funds.[182] A comparable provision exists for city precincts of over 20,000 population in second class counties.[183] Since 1955, all justices of the peace, by statute, have been entitled to a reasonable sum for rent and supplies when space and supplies are not made directly available by the county commissioners.[184] However, it remains necessary for the county commissioners to "allow" these payments from the general fund, and how many justices receive them at present is problematical.

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176. C.R.S. 1953 Sect. 62-13-7.
177. C.R.S. 1953 Sect. 139-49-6.
178. C.R.S. 1953 Sect. 40-13-4.
179. C.R.S. 1953 Sect. 79-1-1.
180. See Colo. Cons. Art. XIV, Sect. 9 and C.R.S. 1953 Sect. 36-1-17.
181. C.R.S. 1953 Sect. 79-1-2.
182. C.R.S. 1953 Sect. 79-2-17.
183. C.R.S. 1953 Sect. 79-2-14.
184. C.R.S. 1953 Sect. 56-2-13.

There is no statutory directive to the county commissioners to furnish justices with statutes or other books. No doubt they can buy such items for the use of the justices so long as the books remain county property, under their general power to purchase personal property for county purposes.[185] This power is recognized even more directly, although in a negative way, in the statute requiring a resigning justice to return all copies of statutes which he may have received from the county clerk to that office.[186]

Relationship of the Justice Court to other Courts

The justice court, as a court of very limited jurisdiction, is obviously the lowest rung on the judicial ladder. Its jurisdiction is entirely concurrent. Every case which it is authorized to handle can also be heard initially in county court or district court. Practical considerations of speed of decision and lower expense usually point to the justice court as the choice of forum, when this concurrent jurisdiction exists.

Control of the justice court by the county court is solely through the medium of judicial review and the county court has no administrative powers at all over justice courts. Judicial review is normally by appeal, which has been discussed previously in some detail.[187] Certiorari is also available when appropriate.[188] While obviously appellate review, standing alone, does not provide a comprehensive control over justice court action, its availability undoubtedly has some effect and tends to provide at least some incentive for correct application of the law in justice courts.

While the jurisdiction of the justice court and the county court in most matters is concurrent as to initial jurisdiction, and successive if the case is started in the justice court and then appealed, a different situation prevails as to juveniles. The statutes confer jurisdiction over juveniles in criminal cases upon the county court or the juvenile court, if one has been established.[189] The statutes are somewhat confused as to the exact age below which the jurisdiction of the justice courts is completely excluded, but certainly the justice courts have no jurisdiction over those 16 and under.[190]

The district courts have even less connection with the justice courts than do the county courts, since direct appeal to the district court from the justice court is not possible. Cases from the justice court which are appealed to the county court usually move from the latter court to the supreme court if further appealed.[191] Certiorari may issue from district court to the justice courts, but is probably quite rare.[192]

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185. C.R.S. 1953 Sect. 36-1-1 (2).
186. C.R.S. 1953 Sect. 79-2-6.
187. Supra p.
188. C.R.S. 1953 Sect. 79-12-1.
189. C.R.S. 1953 Sects. 22-8-1, 22-8-7.
190. C.R.S. 1953 Sect. 22-8-7.
191. Colo. Rules Civ. Proc. 111 (a). See also C.R.S. 1953 Sects. 37-6-15, 37-7-5.
192. C.R.S. Sect. 79-12-1.

The supreme court does have a legal basis for exercising some degree of control over justice courts. The statutes state that the supreme court shall supervise and control all inferior courts within the state.[193] While the justice himself is a county officer and there are many consequences which flow from this fact, the justice courts, as an institution, are undoubtedly a part of the judicial department as one of those courts which the state constitution indicates may be provided by law;[194] also, the justice courts are specifically mentioned in Section 25 of Article VI, the judicial article of the state constitution. Accepting this premise, then, the justice courts are subject to Supreme Court supervision and control under Article 10 of Chapter 37 of the Revised Statutes. This article does not indicate fully what is meant by "supervise and control". However, the specific powers of the supreme court which are mentioned, and which probably do not cover comprehensively the power of the supreme court on this matter, are limited. They cover only such matters as requiring statistical and other reports, attendance at conferences and the like.[195] While the supreme court's general supervisory power no doubt goes beyond these items, it would seem to stop short of the powers of the county commissioners to increase or decrease precincts, provide clerical assistance, and similar provisions. If there is any conflict at all between the powers of the supreme court and those of the county commissioners it is very limited, and it is submitted that in all probability no conflict exists.

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193. C.R.S. 1953 Sect. 37-10-1.
194. Colo. Cons. Art. VI, Sect. 1.
195. C.R.S. 1953 Sect. 37-10-2.

III

COLORADO'S JUSTICE COURTS -- ACTUAL PRACTICE

The previous section outlined the Colorado justice court system as it is supposed to operate according to constitutional provisions, the statutes, and supreme court decisions pertaining to justice courts. This chapter presents a picture of how the state's justice courts are actually functioning and covers court personnel, case loads, court facilities and procedure, fines and fees collected, county commissioners and the justice courts, and similar items.

There were two main sources for this information: 1.) seven regional meetings held in various areas of the state by the committee to which all justices in each area were invited; and 2.)a complete docket analysis of the 1957 case loads of all justices of the peace in a selected sample of 22 counties covering four judicial districts.

In addition, many justices of the peace were visited by members of the Legislative Council staff both in completing the docket analysis and in carrying out a preliminary field study under direction of the committee. In all, 129 of the state's approximately 275 justices of the peace were contacted either by the committee or the Council staff. These 129 justices are located in 45 of the 62 counties, excluding Denver. Sixty-six justices met with the committee at the several regional meetings, the same number were visited by the staff, and 78 were included in the docket analysis. Many of the justices who met with the committee were also included in the docket analysis and/or visited by the staff.

Information as to court personnel and facilities, relationships with other state agencies, the relationship between justice courts and the county commissioners, and such matters as record control and legal advicewere obtained primarily from the regional meetings and staff visits. The docket analysis was the chief source of data on case loads, court procedure, fines and fees, appeals, attorney appearances, and related items.

Committee Regional Meetings

Regional meetings were held in Canon City, Greeley, Grand Junction, Burlington, Alamosa, La Junta, and Durango. In all, 190 justices of the peace were invited to the committee meeting in their respective areas, and 66 of these justices met with the committee.

The "Typical" Justice of the Peace. It is difficult, as might be expected, to draw any composite of characteristics of age, education and experience, and label it the "typical" justice of the peace. Even if the "typical" justice of the peace could be identified in this fashion, there is no statistical assurance

that these 66 justices who met with the committee are representative of the state's justices of the peace as a whole; although other data gathered by the committee indicate that they are.

With due consideration to these limitations, there are several generalities which may be made concerning Colorado's justices of the peace, based on information from the 66 justices who met with the committee and backed up by staff court visits.

Colorado's justices of the peace in general are older men, many of whom are retired save for their justice court work. Approximately 55 per cent of the justices who met with the committee were over 60 years of age, and there were only two between 30 and 35. Occupational data was obtained from 62 of these justices. Twenty-one, or slightly less than a third, were retired. Only seven of the justices worked full time as justices of the peace. These were justices in more populous areas such as Pueblo, Colorado Springs, Grand Junction, and Montrose, whose case loads were large enough to require full time attention to the position and who indicated their annual fees were close to or at the maximum allowed by law.

Generally then, most of the justices of the peace consider the position a part-time one. Several told the committee that they accepted appointment to the position or ran for election as a public service to the people in their community rather than for financial gain. As the section on the docket analysis below shows, most justices have such small case loads that the financial rewards of the position are extremely limited. Aside from the third of the justices who are retired, save for justice court duties, most of the part time justices are engaged in occupations that permit hearing cases intermittently at irregular hours during the day or in the evening. A few, however, will try cases only in the evening or at certain specified hours, because of the committments of their regular employment.

One-half of the part time justices, who still actively pursue another occupation, are in businesses of one sort or another and may hold court at their place of business. Eight of these justices indicated they were in the insurance and real estate business, two operate credit bureaus and collection agencies, and two were morticians. Other occupations included service station operator, sporting goods dealer, photographer, wholesale grocer, and tourist court and restaurant operator.

Four of the occupationally active justices were either skilled or semi-skilled workers including a carpenter, a mechanic, a power lineman, and a blacksmith. Seven are also in some other type of public employment ranging from court house custodian to district court clerk.

Of the known occupations of the 21 justices who were retired from other employment, six were farmers, three worked for a railroad, three were in government service, two worked for sugar companies and one was a lumberman.

Education. Most of the justices who met with the committee, for whom educational background is known, had at least two or three years of high school; many had completed a high school education and several took some college work. Two graduated from college, and three had special education in the law; however, none of these three graduated from a school of law. In general, it appeared that the older justices (those over 60) had the least formal education and training. Those with a college background or degree were the relatively younger justices whose regular occupation was likely to be in government service, real estate, accounting, or insurance.

Experience and Election Opposition. Half of the justices who met with the committee had at least four years experience in the position. About 30 per cent of the justices had more than ten years experience. These as might be expected were the justices who were in the upper age brackets. Only two of the eighteen justices with more than ten years experience were under 50 years of age. Most of the justices reported little or no election opposition either in the general elections or in the primaries. Most of the justices who reported election opposition serve in the populous areas where the case load is high enough to provide a reasonable income, at least for a part-time position. In the few instances where election opposition was reported in sparsely populated areas, it resulted from personality conflicts or from local grievances with the incumbent justice. Several justices reported that they were originally appointed to the position by the county commissioners and continued to stand for election because no one else would run or accept an appointment to the position.

Court Room Facilities. Many of the justices who reside in a county seat have facilities provided for them in the court house. If the justice lives elsewhere, he usually uses his home or his place of business in which to hold court. The major exceptions are the number of justices who have court facilities in the city or town hall of the municipality where they reside. These quarters are provided usually because the justice also serves as police magistrate or did so in the past, or because he works for the municipal government in some other capacity.

Twenty-seven of the justices who met with the committee reported that they had quarters in the court house for holding court. However, several justices located in county seats do not have court house facilities. These included J.P.'s from the county seats of Archuleta, Boulder, Chaffee, Fremont, Larimer, Kit Carson and Mesa counties. In two of these counties ---- Boulder and Mesa ---- justice court quarters are planned in new court house annexes either under construction or proposed. Overcrowded court house conditions probably have caused the lack of justice court facilities in some of the other counties.

Fifteen of the justices reported holding court in their own homes -- usually in a room set aside for this purpose. Court is held in offices or places of business by thirteen of the J.P.'s who met with the committee. Eleven justices reported they held court in city or town hall or in another municipal building such as the fire station.

It should not be assumed that justices have proper facilities, for holding court, just because they are quartered in the court house; this is also true of justices sitting in municipal buildings. Several of the justices holding court in the court houses have been given unsuitable basement rooms, a portion of the sheriff's office, or a room in the jail in which to hear cases. A number of the facilities provided by municipalities are of the same caliber. There is less cause for complaint as far as municipalities are concerned, however, because court space is usually provided at no expense either to the justice or to the county. Several of the justices holding court in either a court house or in a municipal building complained to the committee of the inadequacy of their "court rooms".

Whether proper surroundings for holding court can be provided in an office or place of business depends on its location and office furnishings and upon the justices' regular occupation. Some of the justices use a separate office room in which to hold court and have tried to equip it adequately to lend dignity to court proceedings. Others hold court in the office of a service station, blacksmith shop or lodge hall. Still others hold court in the same room or place in which they conduct their business, usually with other people present and business activity continuing while court is in session.

It is extremely difficult to provide proper court facilities if court is held in the justice's home, even though a separate room with an outside entrance is used. Holding of court in these surroundings has led to the charge that justice court proceedings constitute "parlor" or "kitchen" justice.

The Council staff reported to the committee on the court facilities of 33 of the justices who were included in the docket analysis. That report pointed out that of the six courts held in court houses, only one approached the dignity or facilities of a court of record. Even this court room was inadequate since the room was shared with another county officer who was present while cases were tried. In two of these courts, there was constant interruption because of heavy pedestrian traffic through the room while court was being held. In the nine courts held in places of business, there were only three with a reasonable amount of privacy and orderly surroundings. Only two of the nine courts held in the justices' homes approached the atmosphere of a proper court room. The two courts held in trailers were completely inadequate. The remainder held in municipal buildings were fairly satisfactory.

County Assistance to Justice Courts. Closely related to the types of facilities in which court is held are the amounts and kinds of assistance provided justices by the county commissioners. In other words, the inadequacy of court facilities in many cases is directly related to the failure of county commissioners to assume any responsibility for the proper functioning of justice courts. In the previous chapter it was pointed out that the counties, by law, may provide court facilities or a rental allowance, statutes and the justice manual, and, in certain large counties, court clerks. However, counties are not required to provide any of this assistance; the committee's hearings show the extent to which such assistance is provided.

As mentioned before, court house facilities were made available to 27 of the 66 justices who appeared before the committee. Eleven others received rental allowances for courts conducted in offices or in residences. These rental allowances varied from $15 to $40 per month. Most of these 11 justices complained that this compensation was not sufficient to cover rent, utility bills, use of telephone, or office equipment.

Ten of the 11 municipalities which provided court room space to the justices received no compensation from either the justices or the county commissioners. The town of Nucla receives $150 per month from Montrose county. This amount covers office rent, the justice court's share of utility and phone bills, and the part time services of the town clerk who also serves as clerk of the justice court. This is a special situation because Nucla is located 93 miles from the county seat and there is a substantially large justice court case load in that part of Montrose county.

In general, it is the Class II and larger Class III counties which provide rental allowances to justices holding court in places other than the court house or municipal building. Justices from seven counties reported such rental allowances. All but one of them are Class II or large Class III counties ... Adams, Boulder, El Paso, Larimer, Mesa, and Montrose. The lone exception was Chaffee, a Class IV county. In the six larger counties, rental allowances were not given to all justices and the amounts paid varied among the justices who received them. This variation apparently had no relationship to the type of facility used by each of the justices.

Full time clerical assistance is provided for the two justices in Pueblo county and for the two in El Paso county who hold court in the court house. The two justices in Las Animas county who sit in the court house have part time clerical assistance as does one of the two justices in Boulder. With the exception of the justice in Nucla none of the other justices who met with the committee had any clerical help provided or subsidized by the county; neither did most of the justices visited by the Council staff had no clerical assistance provided or subsidized by the county.

Only 35 of the 66 justices who met with the committee had a set of statutes provided by the county commissioners. An additional half dozen had access to a set located nearby in the court house. A few of the 35, however, had only a partial set -- for example, the justice in Fremont county who had volumes three and four only. Several justices complained that their statutes were not up to date because the county failed to provide either the supplements or the session laws. Forty-two justices reported that they had copies of the Justice of the Peace Manual (last revised in 1942) and 14 of these purchased their own copies.

Audits and Reporting. According to law, justice court dockets should be audited twice each year along with other county government records. Almost half of the justices who met with the committee said that their dockets were audited every six months, but fifteen of these have only their criminal dockets audited. A fourth of the justices said their dockets had never been audited and the remaining 25 per cent said their dockets (usually criminal only) were audited once a year or even more infrequently. It is not the justices' fault if his dockets are not audited according to law. Ultimately it is the responsibility of the county commissioners to see that the private auditor engaged to audit the county's books does a complete job in conformance with law.

Most of the justices told the committee that they filed monthly reports of cases heard, fines, and fees with the county commissioners or county treasurer and that they try to report to the Motor Vehicle Division, State Department of Revenue the traffic cases and fines on a monthly basis, although the law requires such report every ten days. The reports themselves may be a complete detailed accounting or the merest outline. Usually the latter is the case. Under present statutes, which allocate fines to various sources according to the type of case, it is very important that the county treasurer receive a detailed report in order to properly allocate fines. Without this information, the county treasurer is forced to make an arbitrary distribution of fines from all cases except traffic and game and fish. It appears that such an arbitrary distribution is made in a number of counties.

Legal Advice. While a few justices in the state are attorneys, none of those who appeared before the committee had completed legal training. Consequently, the committee inquired as to whom these justices turned for legal advice. This question was asked of forty-eight of the J.P.'s who appeared before the committee. Thirty-eight of them indicated that they request such advice from the district attorney or his deputy. Many of these justices also request legal assistance from time-to-time from private attorneys, the county attorney, district and county judges, and other justices of the peace. Ten of the forty-eight never contact the district attorney, but instead rely on private attorneys or the county attorney. The committee seriously questioned the advisability of receiving legal aid from a prosecuting attorney, while recognizing the difficulty many justices have in properly interpreting the law.

Relationship with State Patrol. Most of the justices who met with the committee indicated that they felt their relationships with the state patrol was satisfactory and that they received their fair share of traffic cases. Six said that the patrol discriminated against them in the assignment of traffic cases, and three of these six justices felt the patrol tried to interfere with their court operations.

In general, the justices felt the patrol cooperated very well with them and they appreciated the policy inaugrated by the Chief of the Patrol in March, 1957 under which the patrol keeps a record of cases assigned to the various justices and tries to distribute such cases equitably.

Most of the justices said that they gave each alleged traffic violator his day in court, but four justices indicated they assumed an alleged violator was guilty or he would never have been brought to court in the first place.

Results of the Justice Court Docket Analysis

Reasons for the Docket Analysis. In the early stages of the study all available data was checked by the Council staff to determine whether these data would yield sufficient information as to justice court case loads, fines, fees, etc., to provide the committee with factual basis for determining what changes might be feasible in the justice court system.

The data checked included county budgets and audits, Motor Vehicle Division files, and the files of the state patrol. These sources did provide some information which was of use to the committee. Unfortunately, this information was not complete enough for purposes of this study, nor was it compiled in such a way that an over-all picture of justice court operations could be obtained.[1]

It was then decided that the needed information might be obtained from an analysis of justice court dockets for the year 1957. Since there are approximately 275 justices in Colorado the committee directed the Council staff to select a sample of J.P.'s for docket analysis, such sample to be as representative as possible of all justices.

It was decided that, insofar as possible, the sample should be selected in such a manner that data could be developed for justices within counties, for counties as a whole, and for judicial districts.

A sample of judicial districts was selected. This sample included each justice in every county within the judicial districts. A number of statistical factors pertinent to the operation of justice courts were used in selecting the judicial districts to be used as a sample. For example the number of J.P.'s, miles of paved road not in corporate limits, motor vehicle fines paid to the state motor vehicle division, and various combinations of these factors were used.

It was assumed that judicial districts which ranked higher in these categories i.e., more fines, greater number of miles of paved road and larger population, would also have a greater number of justice court cases. Two judicial districts were not considered: the City and County of Denver, because of its unique justice court - municipal court system, and the 10th Judicial District (Pueblo), because this was a one county judicial district, the only county in the state which at that time had been reduced to one justice precinct.

On the basis of the data used, the remaining fourteen judicial districts were ranked according to the expected number of justice court cases:

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1. Each agency's records contained only data needed by them for their day-to-day operations.

Group I
1st District: Adams, Arapahoe, Clear Creek, Gilpin and Jefferson counties.[2]
4th District: Douglas, Elbert, El Paso, Kit Carson, Lincoln and Teller counties.
8th District: Boulder, Jackson, Larimer and Weld counties.

Group II
3rd District: Huerfano and Las Animas counties.
13th District: Logan, Morgan, Phillips, Sedgwick, Washington and Yuma counties.
7th District: Delta, Gunnison, Hinsdale, Mesa, Montrose, Ouray and San Miguel counties.
6th District: Archuleta, Dolores, La Plata, Montezuma and San Juan counties.

Group III
11th District: Chaffee, Custer, Fremont and Park counties.
16th District: Bent, Crowley and Otero counties.
12th District: Alamosa, Conejos, Costilla, Mineral, Rio Grande and Saguache counties.
9th District: Garfield, Pitkin and Rio Blanco counties.

Group IV
14th District: Grand, Moffat and Routt counties.
15th District: Baca, Cheyene, Kiowa and Prowers counties.
5th District: Eagle, Lake and Summit counties.

One judicial district was selected from each of the four groups so that each group would be represented in the sample. In making these selections, the geographic location of each district was taken into consideration so that as many sections of the state as possible might be represented by the four judicial districts selected. On this basis the following districts were selected as a sample.

Group I - 4th Judicial District (eastern part of the state)
Group II - 7th Judicial District (western slope)
Group III -12th Judicial District (San Luis Valley)
Group IV - 5th Judicial District (middle mountain area)

These four judicial districts include 22 counties or more than a third of the state total. These districts were also thought to include 89 justices of the peace which is almost a third of the justices in the state.[3]

2. At that time the first judicial district had not been divided by the legislature.
3. In making the docket analysis, it was discovered there were only 79 active justices in these four judicial districts as ten either failed to qualify or had resigned.

When the docket analysis was completed, the sample was tested in several ways against the various data available.

The factor which proved to be most accurate in predicting case loads was motor vehicle fines paid. This relationship between motor vehicle fines and case loads was used to project the case loads for the counties and judicial districts not included in the sample, but for which the amount of motor vehicle fines received by the state in 1957 was known.

The docket analysis yielded two different types of information. First, the docket analysis provided a measurement of case loads by type of case and the amount of fines and fees collected. The docket analysis also provided information as to dismissals, attorneys' appearances, defendants entering a guilty plea, changes of venue, and appeals. Some of this latter information is considered not to be completely accurate, because it appeared that many justices failed to record some of these items on their dockets.

Secondly, the docket analysis gave some indication of justice court practices such as, but not limited to, fees charged not consistent with those established by law, acceptance of cash bonds, payment of full fine and costs by defendant before release from jail, and refusal of justices to hear civil or small claims cases.

Case Loads - Sample Counties and Judicial Districts. The results of the docket analysis showed that more than 80 per cent of the counties in the sample (18 counties) had fewer than 1,000 justice court cases in 1957. The four counties with more than 1,000 cases were: Douglas, 1,105; Montrose, 1,530; Mesa, 2,147; and El Paso, 7,707.

El Paso county is part of the 4th Judicial District, and this district had the greatest number of cases of the four in the sample. There were 9,882 cases in the 4th Judicial District, 4,669 in the 7th, 1,569 in the 12th, and 810 in the 5th. Table I shows the total number of cases in each of the counties in the sample, and the proportion each county's case load was of the district total.

TABLE I

Total Number of Justice Court Cases for
Selected Counties and Judicial Districts in 1957

Districts and Counties	Number of Cases	% of District Total
4th District		
Douglas	1105	11.2%
Elbert	139	1.4
El Paso	7707	78.0
Kit Carson	299	3.0
Lincoln	543	5.5
Teller	89	.9
	9882	100.0
5th District		
Eagle	307	37.9%
Lake	394	48.6
Summit	109	13.5
	810	100.0
7th District		
Delta	374	8.0%
Gunnison	312	6.7
Hinsdale	9	.2
Mesa	2147	46.0
Montrose	1530	32.8
Ouray	103	2.2
San Miguel	194	4.1
	4669	100.0
12th District		
Alamosa	483	30.8%
Rio Grande	348	22.2
Conejos	338	21.5
Costilla	195	12.4
Saguache	178	11.4
Mineral	27	1.7
	1569	100.0

In both the 4th and 7th judicial districts, two counties account for the major portion of the justice court case load. In the 4th, El Paso and Douglas together had almost 90 per cent of the case load. In the 7th, Mesa and Montrose accounted for almost 79 per cent of the case load. The case loads were more evenly distributed in the other two districts, except for Summit County in the 5th district, which accounted for only 13.5 per cent of that district's cases and Mineral County in the 12th, which had less than two per cent of the justice cases in that district.

The totals for the four judicial districts show that traffic cases comprised 60 per cent of the total, civil cases almost 30 per cent, other criminal cases, except for game and fish and PUC, slightly more than seven per cent. Game and fish cases comprised slightly more than 1.5 per cent of the total and PUC cases slightly less than 1.5 per cent. There were considerable variations in these proportions from district to district and county to county.

Douglas County had the highest proportion of traffic cases - 92.6 per cent, followed by Elbert - 84.9 per cent. In six of the 18 counties, traffic cases comprised less than 50 per cent of the total case load.

Lake County had the highest proportion of civil cases 50 per cent, followed by Mesa - 37.3 per cent, and El Paso and Montrose - 35.1 per cent.

A detailed breakdown by county and by judicial district of justice court case loads with the total of each type of case and its proportion of the total case load is shown in Table II.

Information given the committee by justices of the peace at the committee meetings around the state indicated that traffic cases comprised 70 per cent or more of each one's case load. This was found to be true for most individual justices by the docket analysis despite the fact that in only one judicial district and ten counties in the sample was the proportion of traffic cases to total case load nearly 70 per cent or more. In most of the counties, the major portion of civil cases were heard by one or two judges. If there were several other judges in the county, their case loads would result mainly from traffic cases. For example, Delta County had six J.P.'s in 1957, one of the six heard 69 of the 100 civil cases. In San Miguel County, one of the six justices heard 39 of the 54 civil cases. In El Paso, two of six justices (both in Colorado Springs) heard 2,208 of the 2,705 civil cases.

These justices with most of the civil cases tended also to have the highest total case loads in their county. These justices were located either in county seats or other centrally located municipalities. As will be shown on the following page, so-called outlying or rural justices for the most part had very few cases.

TABLE II

Number and Proportion of Justice Court Cases
By Category for Selected Counties and Judicial Districts, 1957

District & County	Traffic Cases #	Traffic Cases %	P U C Cases #	P U C Cases %	Game & Fish Cases #	Game & Fish Cases %	Other Criminal Cases #	Other Criminal Cases %	Civil Cases #	Civil Cases %	Total Cases
4th District											
Douglas	1023	92.6	0	----	28	2.6	48	4.3	6	.5	1105
Elbert	118	84.9	0	----	1	.7	6	4.3	14	10.1	139
El Paso	4502	58.5	99	1.2	5	c*	396	5.1	2705	35.1	7707
Kit Carson	177	71.4	4	1.6	2	.8	1	.4	64	25.8	299a*
Lincoln	426	78.5	96	17.7	5	.9	16	2.9	0	----	543
Teller	39	43.8	0	----	0	----	22	24.7	28	31.5	89
4th District	6285	63.9	199	2.0	41	.4	489	5.0	2817	28.7	9882b*
5th District											
Eagle	149	48.5	0	----	19	6.2	39	12.7	100	32.6	307
Lake	181	45.9	0	----	3	.8	13	3.3	197	50.0	394
Summit	80	73.4	0	----	2	1.8	10	9.2	17	15.6	109
5th District	410	50.6	0	----	24	3.0	62	7.7	314	38.7	810
7th District											
Delta	259	69.3	5	1.3	2	.5	14	3.8	94	25.1	374
Gunnison	153	49.0	0	----	33	10.6	25	8.0	101	32.4	312
Hinsdale	0	----	0	----	7	77.8	0	----	2	22.2	9
Mesa	999	46.5	17	.8	55	2.6	275	12.8	801	37.3	2147
Montrose	813	53.1	7	.5	29	1.9	144	9.4	537	35.1	1530
Ouray	58	56.3	0	----	5	4.9	22	21.4	18	17.4	103
San Miguel	121	62.4	3	1.5	6	3.1	10	5.2	54	27.8	194
7th District	2403	51.5	32	.7	137	2.9	490	10.5	1607	34.4	4669
12th District											
Alamosa	289	59.8	1	.2	15	3.1	87	18.0	91	18.8	483
Conejos	225	66.6	1	.3	12	3.5	33	9.8	67	19.8	338
Costilla	135	69.2	3	1.5	22	11.3	26	13.4	9	4.6	195
Mineral	19	70.4	0	----	8	29.6	0	----	0	----	27
Rio Grande	275	79.0	0	----	18	5.2	36	10.3	19	5.5	348
Saguache	125	70.2	0	----	8	4.5	25	14.0	20	11.2	178
12th District	1068	68.0	5	.3	83	5.3	207	13.2	206	13.2	1569
Total 4 Districts	10,166	60.2	236	1.4	285	1.7	1248	7.4	4944	29.3	16930b*

a* includes 51 cases for which no breakdown was available
b* includes 51 cases in Kit Carson County for which no breakdown was available
c* less than .1 of 1%

Table III shows a distribution of the 22 counties in the sample according to the proportion of total case load made up by traffic, civil, and other criminal cases.

TABLE III

Distribution of Selected Counties According
To Proportion of Justice Court Case Load by Category

Traffic Cases		Civil Cases		Other Criminal Cases	
Per Cent	Number of Counties	Per Cent	Number of Counties	Per Cent	Number of Counties
less than 40	1	0-10	5	0-3	4
40-50	5	10-20	6	3-6	6
50-60	4	20-30	4	6-9	1
60-70	4	30-40	6	9-12	4
70-80	6	40-50	1	12-15	4
80-90	1			15-18	0
90-100	1			more than 18	3

Fines and Fees - Sample Counties and Judicial Districts. In the previous section, it was pointed out that those justices located in county seats or other centrally located municipalities had the largest case loads and that most of the other justices had very few cases.

This is borne out in Table IV which lists the justices in each county, their 1957 case loads, and the amount of fines and fees collected by each J.P. Those judges located in county seats or other centrally located municipalities have their names preceded by an *.

Several of the judges who appeared before the committee said that they accepted the office of justice of the peace as a public service. They pointed out that the office was not desirable from a financial standpoint. The findings of the docket analysis indicate that few justices are receiving enough in fees to make the office financially attractive.

43 of the 78 justices in the sample, or 55.1 per cent, made less than $300 in 1957
52 of the 78 justices in the sample, or 66.7 per cent, made less than $600 in 1957
59 of the 78 justices in the sample, or 75.6 per cent, made less than $900 in 1957
69 of the 78 justices in the sample, or 88.5 per cent, made less than $1800 in 1957

On the other hand:

Only 7 of the 78 justices in the sample, or 9.0 per cent, made more than $2400 in 1957
Only 4 of the 78 justices in the sample, or 5.1 per cent, made $3600 (the statutory maximum) in 1957

In fact, the total fees collected by justices of the peace exceeded $3600 in only four counties: Douglas, $4,564; Montrose, $6,686; Mesa, $8,215; and El Paso, $30,774. That means that in only four counties in the sample did total fees for all J.P.'s in the county exceed the $3,600 maximum allowed by statute for each justice in a precinct with a population of less than 70,000.

TABLE IV

Number of Cases, Fines, and Fees, in 1957 for
Justices of the Peace in Selected Counties and Judicial Districts

4th District

County & J.P.	No. of Cases	Fees	Fines
Douglas Co.			
* Gordon	408	$1658	$6071
Wilkinson	219	949	4329
* Wolfe	478	1957	8960
3	1105	$4564	$19360
Elbert Co.			
* Kilgore	42	$ 157	$ 560
* Lamberson	2	9	5
McClennan	95	383	2662
3	139	$ 549	$3227
El Paso Co.			
Love	463	$1808	$9473
* McShane	2783	11422[a]	30970
Martin	402	1574	7334
Miller	81	311	1320
* Nason	797	3695[a]	7000
* Vohringer	2659	9929[a]	29674
Williams	522	2035	15487
7	7707	$30774	$101258
Kit Carson Co.			
* Clark	38	$ 152	$ 434
Methany	51	[b]	[b]
Moore	14	56	240
* Parmer	168	618	2439
Toland	28	110	484
5	299	$ 936[c]	$3597[c]
Lincoln Co.			
* Haberthur	80	$ 313	$1845
* Mariner	281	1153	6525
Pugh	182	745	4065
3	543	$2211	$12435
Teller Co.			
Carroll	69	$ 271	$ 245
* Chapman	20	95	320
2	89	$ 366	$ 555
23	9882	$39400[c]	$140432[c]

5th District

Eagle Co.			
* Burnett	139	$ 685	$1561
Collins	2	10	45
* Cowden	16	72	196
Elliott	20	89	724
Forster	0	0	0
Knuth	31	109	221
Reed	2	16	0
Shoemaker	6	25	45
Smith	91	396	170
9	307	$1402	$2962

TABLE IV CON'T.

County & J.P.	No. of Cases	Fees	Fines
Lake Co.			
* Dailey	394	$2510	$4102
1	394	$2510	$4102
Summit Co.			
Callahan	84	$ 350	$ 377
Hruska	25	52	176
2	109	$ 402	$ 553
12	810	$4314	$7617
	7th District		
Delta Co.			
Bohnet	11	$ 44	$ 331
Crissman	14	62	260
* Kilmer	36	111	185
* Linn, H.	251	985	3759
Linn, W.	39	153	940
Tracey	23	100	635
6	374	$1455	$6110
Gunnison Co.			
* Costanzo	9	$ 40	$ 45
* Schumann	303	1251	4068
2	312	$1291	$4113
Hinsdale Co.			
Carlin	0	0	0
* Hersinger	8	$ 40	$ 260
Stewart	1	5	30
3	9	$ 45	$ 290
Mesa Co.			
* Bakker	1098	$5540[a]	$7884[a]
* Baylis	736	1765	9739
Harris	313	910	6099
3	2147	$8215	$23722
Montrose Co.			
* Gardner	0[d]	0 [d]	0[d]
Huntley	172	$ 655	$2450
* Jacobsen	812	3203	11214
* Steele	546	2828	6497
4	1530	$6686	$20161
Ouray Co.			
* Flora	53	$ 278	$1040
* Nickel	39	148	890
Weston	11	44	15
3	103	$ 470	$1945
San Miguel Co.			
Foster	0	0	0
Impson	38	$ 132	$ 524
* Narron	26	115	860
Piele	120	536	2835
Smith	0	0	0
* Wood	10	25	255
6	194	$ 808	$4474
27	4669	$13970	$60815

TABLE IV CON'T.

12th District

County & J.P.	No. of Cases	Fees	Fines
Alamosa Co.			
* Aragon	119	$ 579	$2583
* Brackett	364	1499	6773
2	483	$2078	$9356
Conejos Co.			
Brady	0	0	0
Boise	14	$ 56	0
Casius	43	159	$ 511
* Eagon	149	615	2813
Vance	132	643	2660
5	338	$1473	$5984
Costilla Co.			
Escheman	75	$ 188	$1237
* Vigil, H.	111	403	1726
* Vigil,V.	9	41	165
3	195	$ 632	$3128
Mineral Co.			
Jennings	16	$ 71	$ 205
* Deering	11	43	303
2	27	$ 114	$ 508
Rio Grande Co.			
Bond	67	$ 273	$1530
Brown	22	77	205
* Lindstrom	259	895	5687
3	348	$1245	$7422
Saguache Co.			
* Cottrell	70	$ 277	$2349
* Welton	108	427	2005
2	178	$ 704	$4354
17	1569	$6246	$30752

SUMMARY

District	No. of J.P.'s	No. of Cases	Fees	Fines
4th	23	9,882	$39,400	$140,432
5th	12	810	4,314	7,617
7th	27	4,669	18,970	60,815
12th	17	1,569	6,246	30,752
	79	16,930	$68,930[c]	$239,616[c]

a By statute, justice allowed to retain only $3600 in fees; all fees above $3600 revert to the county

b Amount of fines and fees not known

c Excluding fines and fees of Justice Methany, Kit Carson, which are not known

d Sits only as a substitute for Judge Jacobsen and dockets his cases in Judge Jacobsen's books, therefore included in Jacobsen's total.

County Revenue from Justice Court Cases. The docket analysis results show that the justice courts have been good revenue producers for the counties and that the counties paid very little both in actual dollars and in proportion to total fees for dismissed cases. Many of the justices emphasized this point in complaining about the lack of court space and the lack of copies of the statutes.

Table V shows the estimated share of fines for each county in the sample, the amount of justice fees paid by each county and the proportion this amount was of total justice fees.

TABLE V

County Share of Fines, and Payment of Justice Fees in 1957, for Selected Counties

District & County	Estimated Share of Fines	Justice Fees Paid by County	% of Total Justice Fees
4th District			
Douglas	$10100	$578	12.7%
Elbert	1600	549	2.4
El Paso	70000[a]	1983	6.4
Kit Carson	2000	42	4.5
Lincoln	7200	113	5.1
Teller	300	95	2.6
5th District			
Eagle	1800	39	2.8
Lake	2250	37	1.5
Summit	300	25	6.2
7th District			
Delta	3300	56	3.9
Gunnison	2700	60	4.6
Hinsdale	1290	-	-
Mesa	16500[b]	299	3.6
Montrose	11500	367	5.5
Ouray	1300	68	14.5
San Miguel	2600	4	.5
12th District			
Alamosa	6000	216	10.4
Conejos	3350	157	10.3
Costilla	2200	17	2.7
Mineral	350	8	7.0
Rio Grande	4200	188	15.1
Saguache	2600	34	4.8

a Includes $14000 in excess fees
b Includes $1800 in excess fees

Quarterly Variation in Case Loads. In making the docket analysis, case loads were divided on a quarterly basis to see if there were significant variations in case loads from quarter to quarter. A comparison of quarterly case load totals shows that, except for a few counties, case load fluctuation is not very significant. If a plan for justice court change can meet the problems raised by diversified case loads in the several counties and districts, there is little doubt that the problem of quarterly fluctuations will also be met.

For the docket analysis as a whole, 4,194 cases or 24.8 per cent of the total case load were docketed in the first quarter of 1957. In the second quarter, there were 3,956 oases or 23.4 per cent of total; for the third quarter, 4,348 cases or 25.8 per cent of total; for the fourth quarter, 4,381 cases or 26.0 per cent of total. The fluctuations in traffic and civil case loads, when considered separately, were roughly similar to total case load. There are so few game & fish, P.U.C., and other criminal cases, that fluctuations in these cases from quarter to quarter have relatively no effect on total case load variation.

Only one of the four judicial districts, the 12th, showed a relatively large variation in case load. In the 12th judicial district, 955 cases or almost 61 per cent of the cases were docketed in the last half of the year - fairly equally divided between the 3rd and 4th quarter. This fluctuation was due primarily to a substantial increase in traffic cases after the middle of the year. However, any proposed change which can meet the needs of the San Luis Valley -- six counties and only 1,569 cases -- will probably handle this case load fluctuation satisfactorily.

In the other three districts, Lake, Gunnison, and Mesa counties each had quarters in which approximately a third of the year's cases were docketed. Of the three, Mesa's case load was the only one large enough to show a significant increase in the actual number of cases heard in the high quarter. In Mesa, 258 more cases were heard in the 4th quarter than in the first. Lake county varied 83 cases from low to high quarter, and Gunnison county, 47 cases from low to high quarter. El Paso county, with 45.5 per cent of all the cases in the sample, showed a very even distribution of cases with 27.2 per cent docketed in the first quarter, 24.3 per cent in the second, 25.5 per cent in the third and 23.0 per cent in the fourth. Most of the other counties in the sample not mentioned above had fairly equal quarterly case load distributions, varying generally from a low quarter of 21 or 22 per cent to a high quarter of 27 or 28 per cent.

Case Load Projections. Justice court case loads for counties and judicial districts not in the sample were projected according to the relationship between the total county justice court case load, as determined by the docket analysis in the 22 sample counties, and the motor vehicle fines received by the state from each of these counties in 1957. This case load projection took into account civil cases as well, because the relationship on which the projection was based included the total case load in each of the 22 counties in the sample. In a few of the larger counties the case load derived by formula was arbitrarily increased, because other data in the committee files indicated a greater case load.[4]

Ranges were used for these projected case loads to allow for possible errors in projecting justice court case loads by this method. Table VI shows the actual justice court case loads by judicial district for the 4 districts in the sample and the estimated case load for the remaining districts. The table also shows the number

4. The biggest increase in projected case loads was made for Pueblo and Las Animas counties.

of counties and justices of the peace in each district. A map of judicial districts is included so that each district and the counties therein may be readily located. (The city and county of Denver is excluded.)

TABLE VI

Justice Court Case Loads
By Judicial District, 1957

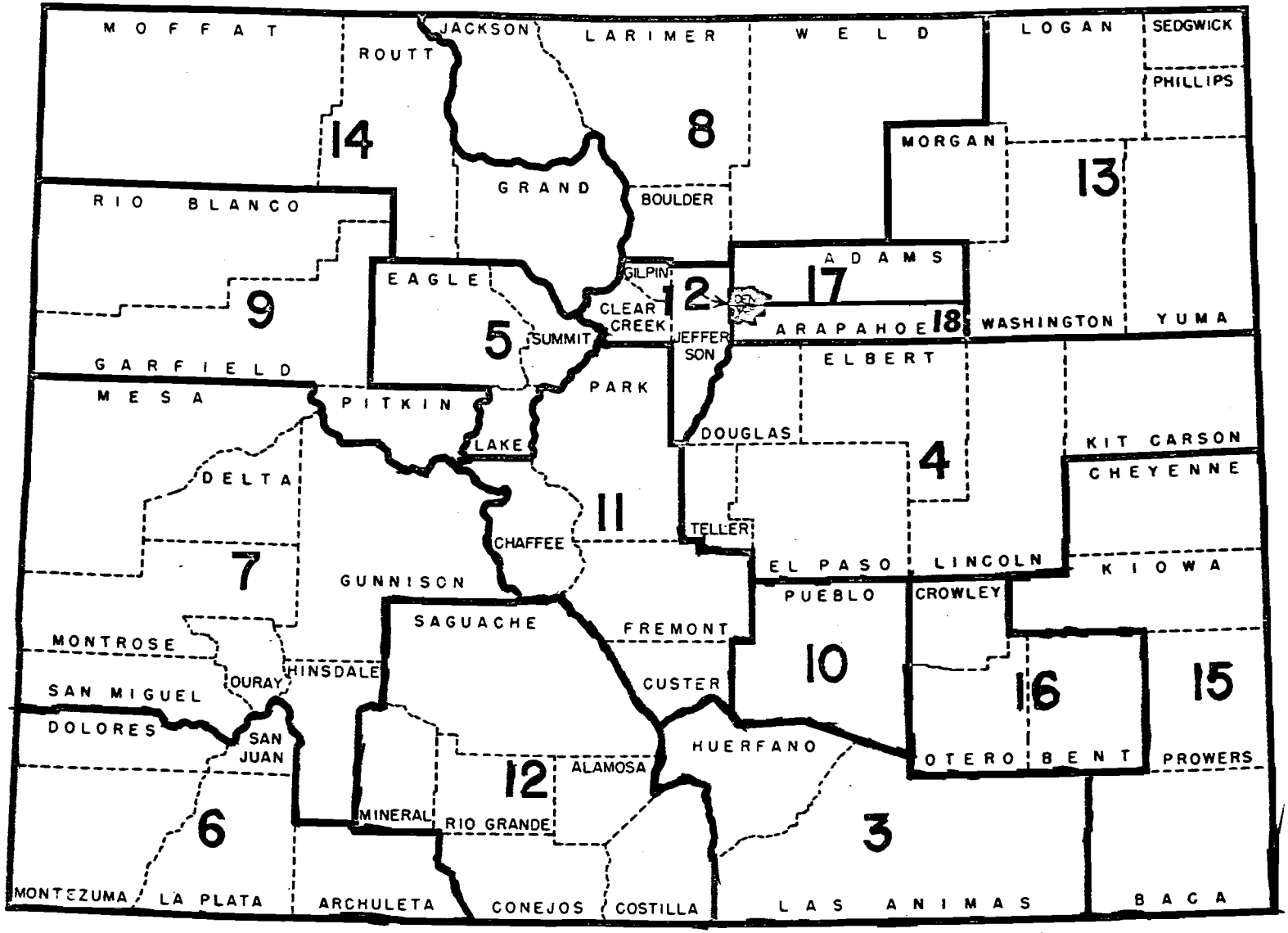
Judicial District	No. of Justices[a]	No. of Counties	Estimated J. P. Case Load
1st	15	3	6,500
2nd		Denver	
3rd	12	2	3,400
4th	23	6	9,822*
5th	12	3	810*
6th	16	5	2,400
7th	27	7	4,669*
8th	42	4	6,500
9th	13	3	1,350
10th	2	1	4,500
11th	18	4	1,600
12th	17	6	1,569*
13th	20	6	3,600
14th	17	3	1,150
15th	13	4	800
16th	13	3	1,200
17th[b]	11	1	5,500
18th[b]	7	1	3,000
	278	62	58,430

* Actual case loads, district included in sample.
a As nearly as can be determined, source: Legislative Council revised list.
b 1st Judicial District divided into three districts by Chapter 34, P.-207, Session Laws of 1958. The 1st district is composed of Jefferson, Clear Creek, and Gilpin counties; the 17th, Adams county, and the 18th Arapahoe county.

An examination of Table VI shows that nine of the eighteen judicial districts had fewer than 2,500 justice court cases in 1957 with two districts (5th & 15th) having fewer than 1,000 cases. Five judicial districts had between 2,500 and 5,000 cases, and four had more than 5,000 cases. This distribution indicates the major operational problem which must be solved if any proposal for revamping the justice courts is to be successful; specifically, very small case loads in several large geographic areas.

Nine judicial districts had fewer than 2,500 justice court cases in 1957, yet the two justices sitting in Colorado Springs heard 5,500 cases between them and the two justices in Pueblo heard 4,500 cases. This wide disparity also poses a problem in that any workable justice court reform would have to be designed to fit such extremes in case loads.

JUDICIAL DISTRICTS OF COLORADO



COLORADO STATE PLANNING COMMISSION

Table VII

Justice and County Court Case loads, 1957
County Classification, Salary of Judges, and other pertinent data

County	Population[1]	County Court Case Load[2]	County Judge's Salary[3]	County Classification[4]	Number of Lawyers on County[2]	Number of Justice of the Peace[5]
Fewer than 100 Justice Court Cases--9 Counties						
Crowley	5,000	60	$4,100	IV A	2	3
Custer	1,500	29[a]	3,000	V	1	4
Gilpin	850		2,660*	VI A		5
** Hinsdale	275	7	734	VI B	0	3
** Mineral	650		734	VI B	0	3
Phillips	4,800	39[b]	4,100	IV A	3	3
Pitkin	2,300		3,000	V		2
San Juan	1,300	27	2,660	VI A	1	1
** Teller	2,800	116[a b]	3,600	IV B	0	2
100 - 250 Justice Court Cases--15 Counties						
Archuleta	3,000	29[a]	3,600	IV B	1	2
Baca	7,800	92[a]	4,700*	III C	4	1
Cheyenne	3,300	47[a]	3,600	IV B	3	4
** Costilla	6,000		4,100	IV A		3
Delores	2,100	24[a]	3,000*	V	1	3
** Elbert	4,300	34	4,100	IV A	2	3
Jackson	2,100	25	3,000*	V	1	2
Kiowa	2,800	53[a]	3,600	IV B	2	2
Ouray	2,100	44[a]	3,000*	V	2	3
Park	1,800	21	3,000	V	3	8
Routt	8,900	115[a]	4,700	III C	7	5
** Saguache	5,200	52[a]	4,100	IV A	1	3
** San Miguel	2,900	54[a]	3,600	IV B	1	6
Sedgwick	4,900	79[a]	4,100	IV A	3	2
** Summit	1,200	31[a]	2,660	VI A	2	2
250 - 500 Justice Court Cases--14 Counties						
** Alamosa	11,000	107[a]	4,700	III C	7	2
Bent	8,800	127[a]	4,700*	III C	2	2
** Conejos	10,000	84*	4,700	III C	2	5
** Delta	18,000	266[a]	5,600*	III A	10	6
** Eagle	4,700	39	4,100	IV A	2	9
** Gunnison	5,800	93	4,100	IV A	5	2
** Kit Carson	8,300	118[a]	4,700*	III C	4	4
** Lake	7,600	191[a]	4,100	IV A	4	1
Moffat	6,700	98[a]	4,100	IV A	7	5
Prowers	14,800	148[a]	5,600	III A	13	6
Rio Blanco	4,800	68[a]	4,100*	IV A	5	3
** Rio Grande	12,900		5,600*	III A		4
Washington	7,300	129[a]	4,700	III C	5	3
Yuma	10,500	93[a]	5,200	III B	6	5
500 - 750 Justice Court Cases--4 Counties						
Chaffee	7,200	135	4,100*	IV A	8	2
Clear Creek	3,400	87[a]	3,600	IV B	5	2
Grand	4,100	45[a]	4,100	IV A	3	7
** Lincoln	5,600		4,100	IV A		3
750 - 1,000 Justice Court Cases--6 Counties						
Fremont	19,300		5,600	III A		4
Garfield	12,500		5,600	III A		8
Huerfano	9,800	160[a]	5,200*	III B	5	6
La Plata	20,300	322[a b]	5,600*	III A	17	4
Logan	21,300	230[a]	5,600*	III A	14	2
Otero	25,800		8,600*	II B		8
1,000 - 1,500 Justice Court Cases--2 Counties						
** Douglas	4,100		4,100*	IV A		3
Montezuma	12,200	248[a]	4,700	III C	11	6

Table VII
Continued

County	Population[1]	County Court Case Load[2]	County Judge's Salary[3]	County Classification[4]	Number of Lawyers on County[2]	Number of Justice of the Peace[5]
		1,500 - 2,000 Justice Court Cases--3 Counties				
Larimer	49,500	730[a]	8,600*	II B	41	10
** Montrose	16,400	113[a]	5,600	III A	15	4
Morgan	22,200		5,600*	III A		5
		2,000 - 3,000 Justice Court Cases--4 Counties				
Boulder	60,000	757[a]	9,500*	II A	80	10
Las Animas	24,300	211[a]	8,600*	II B	11	6
** Mesa	53,200	700[a]	8,600*	II B	39	3
Weld	75,500	1,072[a]	9,500*	II A	40	24
		3,000 - 5,000 Justice Court Cases-- 2 Counties				
Arapahoe	95,000	969[a c]	9,500*	II A	30	7
Pueblo	116,000	827[a b]	9,500*	II A	63	2
		More than 5,000 Justice Court Cases--3 Counties				
Adams	75,000	922[a b]	9,500*	II A	30	11
** El Paso	118,000	1,629[a b]	9,500*	II A	100	6
Jefferson	105,000	1,096[a b]	9,500*	II A	50	8

* Indicates Judge is lawyer
** Indicates County was in docket analysis sample

1 State Planning Division estimates as of July 1, 1957
2 Data taken from questionnaires answered by County Judge's for District Judge James Noland
3 As set by Chapter 44, Page 240, Session Laws of 1958
4 As set by statute 56-2-4 thru 56-2-6 CRS 1953 as amended by Chapter 41, Page 233, session laws of 1958
5 Legislative Council corrected list

a There was no way to tell from the questionnaires whether Justice Court appeals were included in the number of criminal and civil cases docketed. The number of Justice Court appeals was as follows:

Custer	2	Alamosa	6	Clear Creek	1	Weld	7
Teller	3	Bent	1	Grand	2	Arapahoe	66
Archuleta	2	Conejos	4	Huerfano	2	Pueblo	24
Baca	2	Delta	1	La Plata	6	Adams	32
Cheyenne	2	Kit Carson	1	Logan	5	El Paso	53
Delores	1	Lake	3	Montezuma	9	Jefferson	119
Kiowa	1	Moffat	2	Larimer	7		
Ouray	2	Prowers	7	Montrose	10		
Routt	2	Rio Blanco	3	Boulder	6		
Saguache	1	Washington	1	Las Animas	15		
San Miguel	2	Yuma	3	Mesa	13		
Sedgwick	1						
Summit	2						

b As reported to the Legislative Council Children's Laws Committee, many county judges try juvenile cases unofficially. These unoffical cases are not included in the total and are as follows:

Phillips	4	Pueblo	636
Teller	9	Adams	35
La Plata	3	El Paso	240
		Jefferson	64

c Does not include docketed criminal cases, which were not reported on questionnaire.

Table VI showed the number of justice court cases by judicial district for 1957. Table VII presents this information for individual counties grouped according to their 1957 justice court case load. In addition this table shows the population for each county, its statutory classification, the county judge's salary, county court case load, number of lawyers in the county and the number of justices of the peace.

The data presented in Table VII point out many of the factors which should be taken into account in deciding which justice court reform proposal is best.[5] These factors include:

1. 77.4 per cent or 48 of the counties had fewer than 1,000 justice court cases in 1957, and 61.3 per cent or 38 counties had fewer than 500 cases;
2. There is very little relationship between county classification or population and justice court case load for those 51 counties in Classes III through VI;
3. Most of the small counties do not have attorneys as county judges; only 15 of the 51 county judges in Classes III through VI counties are attorneys;
4. Most of the small counties have very few attorneys in residence. In 31 counties there are five or fewer lawyers in residence, with three or fewer in 23 counties. Three of these counties have no resident attorneys at all;
5. All Class II county courts for which data is available, except Las Animas, had more than 700 cases docketed in 1957. All Classes III through VI counties, except La Plata, had less than 300. If the position of county judge is a full time job in most of Class II counties, then the difference in case load indicates that county judges may not work full time in the other 51 counties; and
6. There is no relationship between the number of justices in each county and the total justice court case load in the county.

Guilty Pleas, Dismissals, Appeals, and Change of Venue. At the committee's regional meetings 43 of the 60 justices who were asked the proportion of defendants pleading guilty indicated that 70 per cent or more made guilty pleas. One of the reasons for the committee's interest in this matter was the introduction of a bill during the 1957 session which would have made it possible to appeal a justice court case even though a plea of guilty was entered by the defendant. This legislation failed to pass, so that a plea of guilty in a justice court case automatically makes an appeal impossible.

It was also thought that many defendants might plead guilty, because they felt they would be found guilty anyway, and a guilty plea might lessen the fine. This supposed feeling on the part of some defendants was substantiated somewhat by the few justices who told the committee they assumed a person was guilty in a traffic case or the patrol would not have issued him a summons.

The results of the docket analysis show that roughly two-thirds of the defendants in the 22 counties covered in the sample pleaded guilty in all criminal cases including traffic. When traffic cases are considered separately, the proportion is slightly higher, 70 per cent. The largest proportion of guilty pleas was found in the 4th Judicial District; 70.5 per cent on all criminal cases and 74.4 per cent on traffic cases alone. The lowest proportion of guilty pleas was found in the 5th Judicial District; 48.2 per cent in all criminal cases and 51.2 per cent in traffic cases.

5. These proposals will be discussed pro and con in Chapter VI.

Table VIII shows the number and proportion of guilty pleas by county and judicial district for all criminal cases and for traffic cases only.

TABLE VIII

Number and Proportion of Guilty Pleas in Justice Court
Criminal and Traffic Cases for Selected Counties in 1957

4th District	No. All Criminal	Guilty Pleas	%	No. Traffic	No. Pleas	%
Douglas	1099	758	68.1%	1023	734	71.7%
Elbert	125	113	90.4	118	106	89.0
El Paso	5002	3571	71.4	4502	3342	74.2
Kit Carson	184[a]	137[a]	47.4	177[a]	131[a]	74.0
Lincoln	543	429	79.0	426	334	78.2
Teller	61	34	53.7	39	32	82.1
	7014[a]	5042[a]	70.5	6285[a]	4679[a]	74.4
5th District						
Eagle	207	149	72.0	149	122	81.9
Lake	197	67	34.0	181	67	37.0
Summit	92	23	25.0	80	21	26.3
	496	239	48.2	410	210	51.2
7th District						
Delta	280	184	65.7	259	172	66.4
Gunnison	211	110	52.1	153	78	51.0
Hinsdale	7	7	100.0	0	0	-
Mesa	1346	724	53.8	999	620	62.1
Montrose	993	578	58.2	813	541	66.5
Ouray	85	27	31.8	58	12	20.7
San Miguel	140	101	72.1	121	93	76.8
	3062	1731	56.5	2403	1516	63.1
12th District						
Alamosa	392	250	63.8	289	191	66.1
Conejos	271	168	62.0	225	149	66.2
Costilla	186	128	68.8	135	93	68.8
Mineral	27	24	88.8	19	16	84.2
Rio Grande	329	215	65.3	275	187	68.0
Saguache	158	100	63.3	125	85	68.0
	1363	885	64.9	1068	721	67.5
Grand Total	11935[a]	7897[a]	66.2	10166[a]	7126[a]	70.1

a Does not include 51 cases in Kit Carson County for which data was not available.

Table IX shows the distribution of counties in the sample according to the proportion of guilty pleas in all criminal cases and in traffic cases only.

TABLE IX

Distribution of Selected Counties According to Proportion of Guilty Pleas in all Criminal and Traffic Cases, 1957

	All Criminal	Traffic Only
Less than 30%	1	2
30-40	2	1
40-50	0	0
50-60	4	1
60-70	7	8
70-80	5	5
80-90	1	4
90-100	2	0
	22	21[a]

a No Traffic Cases in Hinsdale County

Slightly more than 10 per cent of all the cases docketed in the four judicial districts in the sample resulted in dismissals. There was a higher proportion of dismissals in civil cases, 17.2 per cent, than in any other category. However, a closer examination shows that this rate was caused by the proportion of civil case dismissals in two counties (El Paso and Mesa), which between them accounted for 71 per cent of all civil cases heard in the sample counties. In El Paso County, 664 out of 2,705 civil cases or 24.5 per cent were dismissed. In Mesa County 132 out of 801 civil cases or 16.5 per cent were dismissed.

On the other hand, 10 of the 22 counties had no civil cases dismissed at all. The proportion of civil cases dismissed in the 12th Judicial District was 1.4 per cent or three out of 206 cases. In the 5th Judicial District only one out of 314 civil cases, or three per cent, was dismissed.

The dismissal rate for all traffic cases in the sample was 6.5 per cent or 659 out of 10,166. Three counties had more than 10 per cent of their traffic cases dismissed: Alamosa 16.2 per cent, Rio Grande 12 per cent, and Douglas 10.3 per cent. Other criminal cases, game and fish cases and PUC cases combined resulted in almost 14 per cent being dismissed in the 22 counties or 244 out of 1,769 cases.

This data is presented in Table X. A comparison of Table X, dismissals, and Table IX, guilty pleas, shows some interesting results. The two judicial districts (5th and 7th) with the lowest proportion of guilty pleas in traffic cases also had the lowest proportion of traffic case dismissals. Counties which show this same relationship include: Lake, Gunnison, Mesa and Ouray. There were also a few counties which had more than 70 per cent guilty pleas in traffic cases as well as fairly high dismissal rates.

TABLE X

Justice Court Dismissals for Selected Counties by Category of Case, 1957

District & County	Traffic			Civil			All Other			% of all Cases Dismissed
	Cases	Dis.	%	Cases	Dis.	%	Cases	Dis.	%	
4th										
Douglas	1023	105	10.3%	6	0	-	74	0	-	11.3%
Elbert	118	1	.8	14	0	-	7	1	14.3%	.7
El Paso	4502	332	7.4	2705	664	24.5%	500	135	27.0	17.4
Kit Carson[a]	177	9	5.1	64	2	3.1	7	0	-	4.8
Lincoln	426	4	.9	-	-	-	117	5	4.3	1.7
Teller	39	2	5.1	28	9	32.2	22	5	22.7	18.0
	6285	453	7.2	2817	675	23.9	729	166	21.9	13.1
5th										
Eagle	149	3	2.0	100	1	1.0	58	8	13.8	3.9
Lake	181	6	3.3	197	0	-	16	2	12.5	2.1
Summit	80	6	7.5	17	0	-	12	2	16.7	7.3
	410	15	3.9	314	1	.3	86	12	13.9	3.5
7th										
Delta	259	4	1.5	94	4	4.3	21	3	14.3	2.9
Gunnison	153	2	1.3	101	1	1.0	58	1	1.7	1.3
Hinsdale	-	-	-	2	0	-	7	0	-	-
Mesa	999	37	3.8	801	132	16.5	347	12	3.1	8.4
Montrose	813	38	4.6	537	34	6.4	180	29	16.1	6.6
Ouray	58	1	1.7	18	0	-	27	2	7.4	2.9
San Miguel	121	5	4.1	54	0	-	19	1	5.3	3.1
	2403	87	3.7	1607	171	10.6	659	48	7.9	6.5
12th										
Alamosa	289	47	16.2	91	2	2.2	103	5	4.9	11.2
Conejos	225	15	6.7	67	0	-	46	4	8.7	5.6
Costilla	135	7	5.2	9	0	-	51	4	7.8	5.6
Mineral	19	1	5.3	-	-	-	8	0	-	3.7
Rio Grande	275	33	12.0	19	1	5.3	54	2	3.7	10.3
Saguache	125	1	.8	20	0	-	33	3	11.1	2.2
	1068	104	9.7	206	3	1.4	295	18	6.5	8.0
Grand Total	10166	659	6.5	4944	850	17.2	1769	244	13.8	10.4

[a] 51 cases excluded for which no data is available.

The docket analysis showed very few appeals from justice court cases in 1957 for the 22 counties in the sample. Only 90 appeals, or less than one-half of one per cent of the total case load, were recorded. It is quite possible, however, that information on appeals may not have been included in some of the dockets.

According to the information found on the dockets, there were 68 appeals in El Paso County, six in Douglas, five in Montrose, three in Delta and Lincoln, two in Mesa, and one in Teller, Summit and Ouray Counties. Thirteen counties showed no appeals at all, including the whole 12th Judicial District.

This data was checked against[6] the justice court appeals reported to Judge Noland on his county court questionnaire, even though it was recognized that the time periods might not be comparable, because 1956 justice court cases might not have been appealed until 1957 and 1957 justice court cases might not have been appealed until 1958.

Comparisons were available for 17 of the 22 counties. County judges reported fewer appeals in two counties: El Paso and Delta; and the same number in four: Elbert, Eagle, Gunnison, and Hinsdale. In the other 11 counties, 36 more appeals were reported by the county judges than were shown on the J.P. dockets. Even if these 36 appealed cases are assumed to have been tried in justice court in 1957 and are added on to the 90 shown on the dockets, the result is still less than one per cent of total case load.

One of the objections to reducing counties with small case loads to one justice is that the defendant would lose his right of change of venue unless the case were transferred to another county, which might be inconvenient as well as unconstitutional.

The docket analysis shows that there were only 147 changes of venue or .9 per cent of total case load in the 22 counties in 1957. Again, all changes of venue may not have been recorded on the dockets; however, the information on this and other matters can be gotten only from the dockets, and there is no further original source from which it may be gathered.

Changes of venue, according to the results of the docket analysis, were proportionately the same in each of the four judicial districts. In each one the number of changes of venue equaled one per cent or slightly less of the total case load.

Attorney Appearances, District Attorney Appearances, and Jury Trial

The results of the docket analysis show that considerably more attorneys appear in civil cases than in criminal cases including traffic. Again, all attorney appearances may not have been recorded on the dockets, but if this information is reasonably correct, very few attorneys practice in justice court.

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6. Data collected by Judge James Noland, District Court, Durango, for use by the Colorado Judicial Council.

Attorneys were present in only 762 cases in the 22 counties in 1957 or in 4.5 per cent of the total case load. Six hundred and six of these appearances were in civil cases and 156 were in criminal cases. Attorneys appeared four times as often in civil cases as they did in criminal cases.

In El Paso County, lawyers appeared in 319 civil cases or almost 12 per cent of the total civil case load. In Mesa County, attorneys were present in 210 of the 801 civil cases. In no other county was the proportion more than nine per cent of civil case load. No attorneys at all appeared in the 314 civil cases in the 5th Judicial District, where only one case was dismissed. On the other hand, attorneys were present in 12 per cent of the civil cases in the 12th Judicial District and this district had only three dismissals in 206 cases.

Almost two-thirds of the attorney appearances in criminal cases were in El Paso County or 98 of the 156 criminal cases in which attorneys appeared. These cases represented only 1.3 per cent of total criminal case load. Except for El Paso County, where attorneys appeared in two per cent of the criminal cases, none of the counties in the sample with large criminal case loads had attorneys appear more than one per cent of the time, if that often.

While attorneys appeared in only 156 criminal cases, the district attorney or his deputy appeared in 495 cases or slightly more than four per cent of the total criminal case load. District attorney appearances by judicial district were as follows:

4th Judicial District	220	3.1% of criminal cases
5th Judicial District	14	2.8 of criminal cases
7th Judicial District	221	7.2 of criminal cases
12th Judicial District	40	2.9 of criminal cases

Only four counties showed no district attorney appearances at all: Hinsdale, Mineral, Summit, and Teller. The district attorney appeared in 169 cases in Gunnison County, or in 80 per cent of the criminal cases docketed; he appeared in 122 of the 153 traffic cases, in 22 of the 33 game and fish cases, and in all 25 of the other criminal cases. There is no other information available to explain the high proportion of district attorney appearances in Gunnison County. In only two other counties did the district attorney appear in as many as four per cent of the criminal cases. In El Paso County, the district attorney appeared in 209 of 5,002 criminal cases, and in Alamosa County the district attorney appeared in 16 of 392 criminal cases.

There were only 61 justice court jury trials in the 22 counties in 1957 according to the docket analysis. Thirty-one of the 61 jury trials were held in El Paso County, 11 in Montrose, five in Mesa, four in Alamosa and Douglas, three in Ouray, and two in Delta. Five counties had only one jury trial each and ten counties had no jury trials at all.

Irregularities in Justice Court Practices and Procedures

The docket analysis, in addition to providing data on case load and related subjects, also showed some of the practices of the individual justices, to be illegal and/or contrary to good court procedures.

In general, these irregularities may be attributed to a lack of statutes and other legal references, a lack of adequate legal counseling and failure to train justices to interpret the law properly and to follow proper procedures.

1.	No docket kept	4
2.	Fees charged not consistent with those established by law; either more, less or no fee	47
3.	Tries small claims under "assumpsit" or charges a $4 fee	8
4.	No separate J.P. bank account	majority
5.	Charges defendant a D.A. fee	20
6.	Charges defendant a fee of $4 or more on each traffic count.	5
7.	Charges county a fee of $4 for each count on dismissed case	1
8.	No credits to plaintiff indicated in unused portion of deposits in civil cases	66
9.	Defendant pays full fine and costs before being released from jail	7
10.	Fee depends on amount of work involved	8
11.	Fees are based on defendant's ability to pay	5
12.	Divides fee with other justice in change of venue	1
13.	$12.50 advance fees collected in all civil cases	3
14.	Fees not collected in advance in civil actions or when complaint is made	3
15.	Collects $4 fee from county on appeal cases	1
16.	Charges $5 each time action is taken in civil cases and for continuances	1
17.	Defendant pays costs in dismissed cases	1
18.	Charges defendant a $5 jail cost	1
19.	Accepts cash bonds	2
20.	Fine, fee, and disposition of case not indicated on docket	4
21.	Doesn't name offense on docket	2
22.	Lists two cases under same docket number	2
23.	Civil cases not docketed, does not know how to enter same	1
24.	Refuses to accept civil cases	4
25.	Refuses to accept small claim cases, too much work for the fee involved	3

IV

LOWER COURT REFORMS IN OTHER STATES

A study of the justice court system is not peculiar to Colorado. Many other states have already adopted some sort of lower court reform and several others have been studying their justice courts and are considering proposals for change. Some of these changes and proposals for change have been designed to improve the existing lower court system, while others have completely revamped the justice courts or have done away with them entirely. Many of these changes have little relevance for Colorado because of differences in court systems, case load, population, and geography. Others show much similarity to some of the changes proposed for Colorado.

Lower Court System Reforms Carried Out

California

In 1949 California passed the Municipal and Justice Court Act, contingent upon the passage of an amendment to the constitution. The constitutional amendment was passed and became effective in 1951. The amendment provided that the legislature was to divide the state into judicial districts and provided further that no city, or city and county was to be in more than one district. In each district with 40,000 or more population, and in each consolidated city and county, there was to be established a justice court.[1]

Civil Jurisdiction: 1) all cases involving $500 or less; 2) proceedings of forcible entry or unlawful detainer where rental value is $75 or less per month, or where whole damage amount is $500 or less; and 3) to perform all acts and orders necessary to perform and enforce court judgments to determine title of property, executions, etc. Municipal courts have civil jurisdiction in general up to $3,000.

Criminal Jurisdiction. Justice Court has jurisdiction in all violations subject to penalties of up to 6 months in jail and a $1,000 fine. This jurisdiction is concurrent with superior courts. Exclusive jurisdiction exists in all cases involving violation of city ordinances.

Where the jurisdiction of municipal and justice courts is the same, jurisdiction is concurrent. Justice and municipal courts may sit as small claims courts if the amount involved does not exceed $100.

Judge's Qualifications. He must be admitted to practice law[2] and he must be a qualified elector of the state.

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1. These were some special exceptions to this rule permitted if the legislature so desired.
2. This does not apply to incumbents of a superseded inferior court who succeed to justice court.

Term of Office. Judges serve six years and are elected to office, but vacancies in the office of municipal court are filled by the governor's appointment and vacancies in justice court are filled by the county board of supervisors. Appointed officers hold office until next election for that office.

Salary. Each county board of supervisors sets the salaries of justice court judges.

Additional Court Assistance. The county board of supervisors is empowered by law to prescribe the number, qualifications, and compensation of such clerks, deputies, and other employees of justice courts as public convenience may require.

Other Provisions. A judge of a municipal court or justice court cannot receive a salary unless an annual report covering the court's activities is made to the judicial council, and if no cause in his court has remained pending for over 30 days.

The state controller is required to establish a uniform accounting system for municipal and justice courts. Failure of a judge to follow such procedure is a misdemeanor.

Accounts and books of justices and municipal judges must be audited once a year.

Missouri

Missouri overhauled its judicial system through the constitutional convention of 1945. The state has established a magistrate system, with magistrates elected for 4-year terms of office; provided, however, that in counties of 30,000 inhabitants or less the probate judge shall be judge of the magistrate court. In counties of 30,000 to 70,000 there is one magistrate judge, and the number of judges increases as the population increases. As populations of counties change, the jurisdiction of magistrates also changes; this provision applies to future population changes.

Civil Jurisdiction. Jurisdiction in civil cases varies with the population of the counties: 1) counties not exceeding 70,000 population - $500 jurisdiction limit; 2) counties not exceeding 100,000 population - $750 jurisdiction limit; and 3) counties over 100,000 population - $1,000 jurisdiction limit.

Magistrates also have concurrent jurisdiction over all actions against railroads to recover damages for killing or injuring animals within their counties, regardless of the value of the animals. However, the magistrate has original jurisdiction in all cases where the amount involved is less than $50.

There are also some specified limits on magistrate jurisdiction. Magistrates do not have jurisdiction over the following: 1) actions against executors or administrators of estates; 2) actions of slander or libel; 3) cases of false arrests and actions where titles of lands are involved; and 4) all equitable proceedings.

Magistrates in counties of less than 70,000 population have concurrent juvenile jurisdiction with the circuit court, and the powers of the circuit judge, when the circuit judge is absent from the county.

Criminal Jurisdiction. Magistrates have concurrent original jurisdiction with the circuit courts, coextensive with their respective counties in all cases of misdemeanor, except in cities having courts exercising exclusive jurisdiction in criminal cases, or as otherwise provided by law.

Magistrates in counties with no parole board have parole powers over those who were convicted in the court of the paroling magistrate.

Magistrates also issue warrants upon complaints setting forth the allegation of a felony.

The magistrate court has county-wide jurisdiction.

Qualifications. In order to be a magistrate, one must possess the following qualifications: 1) qualified voter at least 22 years old; 2) resident of county for at least 9 months; and 3) licensed to practice law - but an unlicensed previous probate judge may serve in magistrate court; and justices of the peace on February 27, 1945, or who have 4 years experience as J.P. may serve in magistrate court if not licensed to practice.

Term of Office. Four years - Elected.

Court of Record. Yes.

Salary. Magistrates are paid by the state - compensation is based upon the population and assessed valuation of a county. The salary range is from $4,800 to $7,700.

Additional magistrates appointed by the county must be paid by the county. No magistrate can receive any additional compensation for any other public service, or practice law, or do law business while he is magistrate.

A $5.00 fee is charged upon the commencement of any civil proceeding in magistrate court but this is a docket fee and does not apply to the magistrate's compensation. Fees are paid to the state director of revenue, and magistrates' salaries are paid from these fees.

Other Provisions. The county court (county commissioners) is authorized to hire such help as the county may need to assist the magistrate.

A change of venue in the county is made to the circuit court from the magistrate court, if there is no other magistrate court.

Ohio

In 1957 Ohio abolished the J.P. system and established county courts in those counties which did not have municipal courts co-extensive with county boundaries. The county court has jurisdiction in all of the county except for areas subject to territorial jurisdiction of municipal courts.

Jurisdiction. 1) motor vehicle violations; and 2) misdemeanors and all other actions in which justice court had jurisdiction (proceedings same as J.P. court).

Number of Judges. The number of judges is based on population of county as follows: 1) 30,000 population or less - one judge; 2) 30,000 to 60,000 population - two judges; 3) 60,000 to 90,000 population - three judges; 4) 90,000 to 120,000 population - four judges; 5) 120,000 to 150,000 population - five judges; 6) 150,000 to 360,000 population - eight judges; and 7) 360,000 or over - 12 judges. In addition, each county which is crossed by any portion of the Ohio Turnpike may have one judge for every 20,000 population.

Qualifications. Each county court judge must meet the following qualifications; 1) elector and resident of county; 2) beginning January 1, 1963, each judge must be a member of the bar and must have practiced for at least one year; except this provision does not effect judges in office January 1, 1962, who are candidates to succeed themselves; and 3) must post bond of $5,000.

Term of Office. County judges are elected for four year terms.

Salary. County judge's salaries are computed according to the following formula: $1,500 plus 3¢ per capita for the district's population - such additional amount not to exceed $2,500; an additional amount up to $1,000 may be paid a judge by the county - exact amount to be fixed by county; the county is required by law to provide suitable court and office space for the judge.

County court judges are disqualified from the practice of law only as to matters pending or originating in county court during their term of office.

Court of Record. Yes.

Appointment. The common pleas court of each county shall appoint an acting judge with same qualifications as the county judge in case the judge in office is incapacitated.

Revisions in Other States

Justice court revisions have also been made in a number of other states.

Maine has established one justice of the peace for each county in the state. The justice is appointed by the governor for a term of seven years. The salary of the justice is determined by the board of county commissioners in each county.

In 1953 Massachusetts practically abolished the trial justice system. The justices of the peace are now appointed by the governor, but their jurisdiction is limited to such minor matters as administering oaths, etc. Justices of the district court (courts of record) have assumed the jurisdiction of the trial justices.

New Jersey abolished the J.P. system in 1948. To replace these courts, the state established county district courts and municipal courts.

Rhode Island has changed the justice court to an administrative subdivision of the district court. The justice of the peace is appointed for five years by the governor, and apparently performs only detailed judicial acts such as issuing warrants, administering oaths, depositions, etc. The district court has custody of all justice of the peace records.

In Tennessee, the justice of peace system was strengthened by extending the term of the J.P. to six years and increasing the jurisdiction of the justice court in civil cases to a maximum of $2,000. The number of justices was reduced to one in each town or city and two in each county district in a county.

Virginia supplemented its J.P. system with a trial justice plan. The trial justice plan can be adopted by a county with over 500 persons per square mile. The trial justice has the same powers and jurisdiction as the J.P. The essential difference is that the trial justice can be paid a salary - the amount of the salary to be set by a committee of three circuit judges appointed by the governor.

Purposed Lower Court System Changes

Illinois

In November, 1958, Illinois voted on a constitutional amendment which would abolish the justice of the peace system. The amendment, as proposed by the bar association of the state, is very flexible; but, in general, it proposes to unify all the state's trial courts in each circuit into one circuit court. The justice of the peace and police magistrate courts and all other trial courts within each circuit would disappear as separate courts and would be consolidated into the circuit court, and all proceedings thereafter would be matters of record. There would be three classifications of trial judges in the circuit court: 1) circuit judges; 2) associate judges; and 3) magistrates.

Qualifications. There is no provision in the amendment concerning magistrates' qualifications. Many lawyers object to this omission; but, it is pointed out that magistrates would not be popularly elected, and circuit judges would be sufficiently interested in the quality of the magistrates to appoint lawyers to the position.

Jurisdiction. Each circuit court would possess unlimited original jurisdiction over all justiciable matters. Overlapping jurisdiction would no longer exist. Magistrates would have jurisdiction over the same matters as they presently have - unless changed by the legislature.

Term of Office. Magistrates would be appointed by circuit judges, to serve at their pleasure, but police magistrates and justices of the peace in office on the effective date of the amendment would become magistrates of the circuit court and would serve in that capacity, during a transitional period, for the remainder of the terms for which they were elected. Cook County, the City of Chicago, and the area outside the city would constitute separate units for purposes of selection of magistrates and associate judges, and at least one-fourth of the magistrates would be selected from the area outside Chicago.

Salary. Magistrates would be paid by the state - the salary to be set by the legislature. All fees would go into the state treasury.

Administration. Subject to the over-all authority of the supreme court, the judges and magistrates in each circuit court would be under the administrative supervision and direction of the chief judge of the circuit. The chief judge is authorized by the proposed amendment to set up, as future needs require, general or specialized branches of the circuit court.

Effects of Amendment. The amendment is designed to meet the criticisms of the present system. The effects of the amendment, as seen by the proponents, would be as follows: 1) the fee system would be abolished - judges would receive a salary; 2) part-time judges would be eliminated - it is estimated that 200 full-time magistrates could replace the 3,500 part-time magistrates and J.P.'s; 3) there would be no more trials de novo - all trials would be of record; 4) overlapping jurisdiction of existing courts would be eliminated; 5) judges no longer would be subject to political influence - they would be appointed by a superior judge; and 6) a flexible court system would be established with administrative responsibility and supervision.

Michigan

Pursuant to a house resolution, a joint house and senate interim committee was created to study the Michigan justice of the peace system. The committee traveled to Ohio and Missouri to study the court changes made in these states. At the conclusion of the committee's study it was decided that the J.P. system should be maintained in Michigan, but that several improvements should be made. Legislation covering eight points was to be introduced:

1. the number of J.P.'s would be reduced from two to one per township, excepting in townships having 10,000 or more population according to the last federal decennial census; these townships would retain two J.P.'s;

2. all traffic tickets would go to the elected J.P. or J.P.'s of the township in which the offense occurred, and if none were available, then to the nearest available justice (in another township or city if necessary);

3. an integrated J.P. association would be provided similar to the state bar association with the supreme court authorized to regulate, provide rules concerning the conduct of the associations's program, establish dues, provide for standards of ethical conduct to be observed by the J.P.'s; each J.P. would have to be an active member of the integrated association before he has any jurisdiction in criminal cases;

4. township J.P. and municipal J.P.'s not already having such power would be authorized to appoint a court clerk;

5. the position of justice court and municipal courts administrator would be set up. This administrator would set up educational programs for J.P.'s, investigate complaints, etc;

6. it no longer would be necessary for sheriffs' departments and other organized police departments to obtain an authorization from prosecuting attorneys prior to issuing warrants in traffic cases;

7. civil jurisdiction of J.P.'s would be raised to $500 in line with depreciated dollar value; and

8. the interim study committee on the J.P. system would continue in existence for the purpose of studying the J.P. system in order that the committee might make further recommendations to the legislature as to other improvements, changes, and codification of laws as they affect justice courts and other courts of inferior jurisdiction.

It appears that there was strong opposition to radical change of the J.P. system in Michigan. A supplemental committee report was filed which defended the existing J.P. system and recommended a bill in the senate which would increase the J.P. jurisdiction to $1,500. This report endorsed the principle that the J.P.'s are close to the people, and people oppose continuous efforts to centralize government.

Washington

The Washington Legislative Council is presently studying proposals for the improvement of the state's justice of the peace system. A legislative committee, after gathering extensive information on the number of attorneys and number of cases in each county, prepared two draft proposals on justice court revision. One draft would establish a system of county-wide courts, and the other proposal is based upon a district court system. Both drafts result in the abolition of police and justice courts and the establishment of a single court inferior to the superior court. There is, however, substantial variance between the two proposals regarding number of justices, manner of selection of judges, jurisdiction and venue, and powers of clerks. Each proposal will be analyzed separately.

County-Wide Proposal in Washington

Under this arrangement, the justice court would be the only court inferior to the superior court in each county. In counties of 70,000 population or less the justice of peace would be the sole judge of the justice court. In addition, counties with over 70,000 population could have one, two, three, or four district judges, in accordance with the county population. The justice of peace and district judges would be authorized to hold court as judges of the justice court. In counties over 70,000 population, county commissioners would be required to number the positions and designate one justice of the peace as the presiding judge.

Jurisdiction. Civil jurisdiction would be almost the same as Colorado J.P.'s presently have with a jurisdictional limit of $300 in all civil cases.

Justice courts would have concurrent criminal jurisdiction with superior courts over all misdemeanors; however, justice courts could not impose a punishment greater than a $500 fine and six months in jail.

The territorial jurisdiction would be co-extensive with county boundaries.

Qualifications. To be eligible for the office of justice of peace or district judge, a person would have to meet all the following qualifications: 1) be a citizen of the U.S. and the state of Washington; 2) be a resident elector of the county where he is seeking office; 3) be over 21 years old; 4) be either: a.) a member of state bar with 5 years experience as an attorney; or b.) a person who has served as a J.P. or inferior court judge in Washington; or c.) a person who has taken and passed a qualifying exam for the office administered by the court administrator; and 5) no sheriff, coroner, or clerk of the superior court during his term of office would be eligible to hold this office.

Term of Office. Judges would be elected for four year terms. Vacancies would be filled by gubernatorial appointment. Appointees must qualify under the act, and in addition, have the approval of a majority of the mayors of the incorporated cities in the county, the board of county commissioners, and the board of governors of the Washington State Bar Association.

Salaries. Counties with 40,000 population and over would have full-time judges with five salary levels ranging from $8,000 to $11,500, based on county population.

Counties with population of 40,000 and below would have part-time judges. These salaries would be based on county population, ranging from a low of $1,200 in counties with 5,000 population to a high of $5,900 in counties of 38,000 or more population. Salaries would be paid by the counties. Judges would also receive $9 per diem while engaged in business away from their principal post of duty but within the state and $12 per diem while on business out of the state.

Other Provisions. The presiding judge may appoint three judges pro tempore to serve in the absence of a judge of the justice court.

The proposal sets forth instances where a judge would be disqualified from acting in a case. For example, if he is an "interested party", related to a litigant, or if a party petitions that no fair trial can result by the judge sitting, then the judge is disqualified.

The justice court would be located at county seat. Counties must provide adequate courtroom facilities subject to the approval of a court administrator.

A city may petition the presiding judge to direct a justice to sit in that city. The presiding judge may grant such petition if: 1) the petitioning city has a population of 300 or more; and 2) the petitioning city provides adequate courtroom facilities. The judge presiding would then decide the days and hours at which justice court will be held in that city.

The court administrator must inspect work of justice courts and publish a biennial report of the work of each court. He must also make recommendations to justice courts concerning the handling of administrative work and provide training courses for judges and court personnel.

The presiding judge may appoint a clerk and such deputies as are necessary for the court. The clerk has rather extensive powers. For example, he would be empowered to issue warrants for arrest upon a signed traffic complaint or for violation of an ordinance.

District Court Proposal in Washington

This plan calls for the county commissioners of each county to divide the county into as many judicial districts as there are incorporated cities having a population of 500 persons or more. The proposal contains certain limitations of the districting process; for example, no incorporated city may be divided into more than one district. Each district would have one justice of the peace. In addition, districts over 40,000 population may have additional justices in accordance with the population of the district. In counties which are entitled to more than one J.P., the justice of peace who receives the highest number of votes would be the presiding judge.

Jurisdiction. Civil jurisdiction - same as in previous proposal - $300 limit on civil cases.

Criminal jurisdiction - same as in previous proposal - jurisdiction over all misdemeanors and violations of ordinances, but no punishment can be exacted in excess of $500 fine and six months in jail. Territorial jurisdiction extends only to the limits of the district, except that the justice court in the county seat would have jurisdiction throughout the county.

Qualifications. To be eligible for the office of justice of peace, a person would have to meet the following qualifications: 1) be a citizen of the U.S. and Washington; 2) be a resident elector of the district where he is seeking office; 3) be over 21 years old; 4) in districts over 20,000 population - be a licensed lawyer; and 5) no sheriff, coroner or clerk of the superior court, during his term of office, would be eligible to hold this office.

Term of Office. Justices of the peace would be elected for a term of four years. Vacancies would be filled in the same manner as in the county-wide proposal.

Salaries. Justices in districts with a population of 40,000 or more would be full-time judges and could not engage in any other occupation. Justices in districts of from 40,000 to 100,000 population would receive $9,000. Justices in districts of 100,000 to 200,000 population would receive $9,600. Justices in districts with population over 200,000 would receive $10,000 per annum.

Districts under 40,000 population would have part-time justices of the peace. These J.P.'s could engage in other occupations, but if lawyers, their partners may not practice before their courts. Salaries of part-time J.P.'s would be based on the population of the districts and could range from $600 in very sparsely populated counties to $5,400 in densely populated counties. Salaries would be paid monthly by the county. Judges would receive the same per diem allowances as permitted in the county-wide proposal.

Other Provisions. The court administrator, in districts of less than 40,000 population, may select three persons who meet the qualifications of the act to serve as judges pro tempore. For each day served, each such judge would receive 1/240th of the annual salary of the justice of peace for whom he is serving.

Justice courts would be located in the largest city within a district. The presiding judge would be authorized to: 1) distribute and assign business of court; and 2) create and organize new departments as the business of the court warrants.

Counties would pay all court expenses and maintain proper and adequate court facilities, subject to examination by court administrator.

According to a letter received from the Washington Legislative Council, the committee is in the process of writing a third draft. The third draft is based primarily on the county-wide proposal, which appeared to be the proposal favored by the public, lawyers, and judges who studied both plans. The district court approach was criticized because of the excessive costs to the county.

Utah

Early in 1957 the county attorney of Salt Lake County, Utah, requested that Deputy County Attorney Peter F. Leary conduct an investigation of the county's justice of peace courts. Mr. Leary examined the county's eight justice courts and their records for a period extending from January 1, 1957, to March 15, 1958. His examination was primarily confined to criminal practices and procedures in the justice courts of Salt Lake County.

Mr. Leary found that the justices of peace were not following the required statutes. For example, there were several instances where a justice of the peace issued a warrant without first causing a proper complaint to be filed as required by law.

As a result of this study several recommendations for improvement were advanced by Mr. Leary. It was recommended that each justice of the peace be required to file a quarterly report with the county attorney on matters involving violations of ordinances and statutes. It was further recommended that the county attorney refuse to approve fees for a justice of peace who fails to file a report or whose reports indicate that he is not following the law.

In order to keep a closer check on the money taken in by justices of the peace, it was recommended that the county attorney's office undertake an extensive annual audit of each justice's books.

It was recommended that the Utah Highway Patrol and other law enforcement agencies revise citation procedures so that justices and city courts will receive copies of traffic citations as soon as possible after issuance.

It was recommended that the county attorney and the state bar association, in conjunction with the Utah Legislative Council, make an extensive study of the state's justice of the peace courts, with the possibility of abolishing the justice court system.

It was also recommended that a new system of courts be established to replace the justice court system. Mr. Leary suggested the following factors be considered in any new court system: 1) geographical location of courts; 2) use of existing physical facilities in the Salt Lake County area; 3) adequate number of judges who are members of the bar; 4) adequate clerical staff; 5) availability of court for services to all law enforcement agencies in Salt Lake County; and 6) one division of the court to be in session at night and on weekends for the purpose of filing complaints, setting bail and arraigning defendants.

V

PROPOSALS FOR IMPROVING COLORADO JUSTICE COURTS

The justice courts have not been the only part of the state's judicial system under study during the past two years. Another Legislative Council committee has been looking at the juvenile functions of the county courts. The Colorado Judicial Council, under the chairmanship of Justice Otto Moore of the Colorado Supreme Court, has been examining all portions of the judicial system including courts of both appellate and original jurisdiction. Denver Superior Court Judge Mitchel Johns has brought forth a proposal for revamping the justice and county courts, and the Colorado Bar Association has been making a study of justice courts in general as well as traffic courts in particular.

The Merris decision[1] by the Colorado Supreme Court has also had a major impact on the lower courts of the state judicial system. While there is considerable disagreement as to the actual ramifications of this case, many attorneys construe the decision to mean that home rule cities cannot regulate matters which are of "state-wide concern". If this interpretation is correct, it means that municipalities will be unable to enforce ordinances which provide punishment for a violation of any act made a crime by state law. Consequently, local law enforcement officials would have to have the district attorney bring these prosecutions under state statutes in state courts. Many of these misdemeanors will undoubtedly be tried in justice courts.

This possible increase in case load could affect the operations of the justice court considerably. Justice courts would be trying an additional number of criminal offenses of a serious nature. It is likely therefore, that there would be an increase in the number of both defense and prosecution attorney appearances. It is also likely that a good many of these cases would be jury trial proceedings.

This combination of factors -- increased case load, serious criminal prosecutions, attorney appearances, and jury trials -- poses problems for lower court judges not well-grounded in the rules of evidence and court procedure as well as the appropriate criminal statutes. Under such conditions, errors in procedure or misrulings of law by a justice of the peace could result in a greater number of appeals and trials de novo in the county court. This would, in turn, result in an increased work load for the county court and tend to further complicate the state's judicial structure.

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1. City of Canon City v. Clyde James Merris.

The interrelationship of the various courts in the state judicial system[2] makes it almost impossible to propose recommendations to improve the administration of justice on one level without having some effect on the others. Improvement of the justice courts, the state's lowest court of original jurisdiction, is directly related to the administration of justice in county courts. Recognition of this interrelationship is apparent in most of the justice court reform proposals considered by the Legislative Council Justice Court Committee and in the recommendations of the Colorado Bar Association, the Colorado Judicial Council, and Judge Mitchel Johns.

There are fundamental differences in these recommendations as they apply to the justice court system; nevertheless, there is considerable agreement in respect to the premises upon which these recommendations are based. In general, it is agreed that justice courts are not adequately fulfilling the function for which they were designed. Unqualified judges without an adequate knowledge of the law, court room procedure and rules of evidence, inadequate court room facilities, lack of clerical help and uniform records, and an excess of justices of the peace for the number of cases heard annually have all contributed to the system's problems.

Six proposals for improving the administration of justice on the lower court level have been before the committee for consideration. Two have been brought forward by members of the committee; the others include the recommendations of the Colorado Bar Association, the Colorado Judicial Council, Judge Mitchel Johns, and many of the justices of the peace who met with the committee at its regional meetings.

One of these recommendations would eliminate the justice court system by transferring justice court jurisdiction to county courts in all but the twelve largest counties, where superior courts would be created. Three would substitute a different type of magistrate court system for the present justice courts. One proposes improvements in the justice courts as well as some basic changes, and one would make modifications and improvements within the present justice court system.

Recommendations of the Justices of the Peace

Most of the justices of the peace who met with the committee were aware of the inadequacies of the justice court system. Very few recommended abolition of the system with the transfer of jurisdiction to the county courts. Most of them favored retention of justice courts but with improvements or reforms.

In general, the justices favored the following:

1. place justices on a salary and eliminate the fee system;

2. reduce substantially the number of justices by consolidating justice precincts;

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2. Municipal Courts, Justice Courts, County Courts, Denver Superior Court, Denver Juvenile Court, District Courts, and the Colorado Supreme Court.

3. provide preliminary training in court procedure, rules and evidence, and the law for all new justices before they take office, and provide in-service training for justices already in office;

4. set minimum qualifications for the office;

5. require counties to provide adequate court facilities, statutes, and other materials for the proper conduct of the office, with clerical help at county expense in the larger counties; and

6. continue to elect justices of the peace.

More justices supported the placement of justices on a salary and the consolidation of precincts than any of the other recommendations, although a substantial number of them proposed training programs, minimum qualifications and the provisions of adequate court room facilities. While most of them favored the continued election of justices, several felt that justices should be appointed. A few felt that the civil jurisdiction of justices should be increased at least to $500 in line with the decreasing value of the dollar.

Justices of the peace should receive salaries of $3,600 to $6,000, according to most of the justices who met with the committee. The elimination of the fee system for compensation of justices of the peace would require a constitutional amendment which could not be placed before the voters until 1960, since Amendment Number Two, which appeared on the 1958 ballot, failed to pass.[3]

The statutes now provide that county commissioners may consolidate justice precincts or increase their number as long as such change does not take place until the justices currently in office complete their terms. While seventeen counties[4] had only one or two justices of the peace in 1957, only in Pueblo county has there been a reduction to one justice precinct. Jefferson county plans to take such action, effective January 1, 1959. The number of justices in the other counties has been reduced to one or two through the lack of candidates in some justice precincts, the failure of some successful candidates to qualify, resignations, and the failure of the county commissioners to make appointments to vacant positions. The recommendation that the consolidation of justice precincts be made mandatory could be put in effect by changing the permissive provision of 79-1-1 C.R.S. 1953 and by setting forth the formula under which such consolidation should take place.

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3. Among other things, this amendment would have eliminated as the basis of compensation for county officers including justices of the peace, and would have allowed the General Assembly to place them on a salary.

4. Alamosa, Archuleta, Baca, Bent, Chaffee, Clear Creek, Gunnison, Jackson, Kiowa, Lake, Logan, Pitkin, Pueblo, San Juan, Sedgwick, Summit and Teller.

There was a wide range of opinion among the justices as to who should provide pre-service and in-service training, although there was general agreement that such training should be subsidized either by the state, or by the county, or both. District courts, county courts, and the state and local bar associations all were suggested as appropriate agencies to conduct a justice of the peace training program.

While many justices felt qualifications for the office were needed, there was little agreement as to what those qualifications should be, except on the point that it should not be necessary to be an attorney to be eligible for the office. Several suggested that a written examination be given successful candidates for the office and that such examination be tied in with a pre-training program. Others suggested a high school education and good character as minimum qualifications, perhaps with upper and lower age limits set for the position.

The provision of proper facilities, statutes, and other necessities of the office, as well as clerical assistance in the larger counties, could be made mandatory by legislation detailing the counties' responsibilities toward the justice court system. As was pointed out in Chapter III of this report, counties may assume these responsibilities now, but are not required to do so.

The recommendations of the justices have considerable merit in that they propose changes in many of the conditions which have produced the greatest criticisms of the justice court system. If carried out, the fee system would be eliminated, an excess number of justices would be eliminated, those remaining would receive pre-service and in-service training and be placed on a salary, better people would be attracted to the office, and court room facilities and other needs of the office would be provided.

These recommendations, even those requiring constitutional amendments, could be put into effect quite easily. These changes would preserve the so-called "poor man's court" with the convenience of quick trial and small cost, while at the same time improving the administration of justice. These improvements in the justice courts could be made with out disrupting other parts of the judicial system such as the county or district courts, and might even reduce the work load of county courts if improvement on the justice court level reduced the number of appeals which must be tried de novo by the county court.

The justice's recommendations are based on the supposition that retention of the justice court system is both necessary and desirable. These changes could improve the system and also could lead to greater respect by the public for the court with which it has the most first-hand contact.

While it is obvious that the justice court system could not be eliminated without having its jurisdiction assumed by new or existing courts, it is less clear that it is necessary for the major ingredients of the system to remain intact. There is also considerable doubt as to whether the justice of the peace system, as such, could ever regain the confidence and respect of the public, no matter what improvements are made. Certainly, such confidence and respect will not be forthcoming without major improvements in court personnel and facilities.

To bring about an improvement in personnel, the financial rewards of the position must be sufficient to attract competent people. The establishment of qualifications for the office would be of little help, if no qualified people are interested. In

order to justify payment of sufficient salary, the number of justices would have to be substantially reduced.

On first examination, it appears that improvement in personnel would result from the justices' recommendations. Both the payment of adequate salaries and a reduction in the number of J.P.'s are advocated. However, the results of the docket analysis cast serious doubts as to whether an adequate salary for full time justices can be justified in two-thirds of the state's 62 counties (excluding Denver). The docket analysis results show that the 78 justices in the sample received slightly more than four dollars for each case docketed in 1957. If this relationship were used to determine salary, it would take an annual case load of 900 cases to justify a salary of $3,600. Forty-two counties had fewer than 750 justice court cases in 1957, and 38 of those had fewer than 500. Consequently, it would be difficult to justify one full-time justice of the peace with an adequate salary in these counties on a case load basis.

While it would be possible to have full-time salaried justices of the peace in the 20 counties with at least 750 cases in 1957, it would be difficult to provide for these salaries within the present legislative framework. County officials receive compensation according to either the classification of their county or it's population. These 20 counties vary in population from Clear Creek (4,100) to El Paso (118,000).[5] They include one Class IV A county, one Class III C county, one Class III B county, 6 Class III A counties, and all 11 Class II counties.

There are two other possible approaches to the problem of providing salaries for justices of the peace: 1) justices could be placed on part-time salaries in the counties with small case loads; or 2) all justices could be placed on an adequate full-time salary regardless of case load.

In these smaller counties, there was such a wide dispersion of case loads, in relation to population or statutory county classification, that it would be extremely difficult to develop an equitable salary scale for part-time justices of the peace. The problems involved in the development of such a salary scale are illustrated by Tables XI and XII which show the distribution of counties with fewer than 1,000 justice court cases according to population and county classification.

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5. Population estimates as of July 1, 1957 by State Planning Division

TABLE XI

Counties with Fewer Than 1,000 Justice Court Cases Distributed According to Population

Population	No. of Counties Having: Fewer than 100 cases	100-250 cases	250-500 cases	500-750 cases	750-1000 cases
less than 2500	6	5	-	-	-
2500-5000	3	6	2	2	-
5000-7500	-	2	3	2	-
7500-10,000	-	2	4	-	1
more than 10,000	-	-	5	-	5
	9	15	14	4	6

TABLE XII

Counties with Fewer than 1,000 Justice Court Cases Distributed According to County Classification

County Classification	No. of Counties Having: Fewer than 100 cases	100-250 cases	250-500 cases	500-750 cases	750-1000 cases
VI	4	1	-	-	-
V	2	4	-	-	-
IV B	1	4	-	1	-
IV A	2	4	6	3	-
III C	-	2	5	-	-
III B	-	-	1	-	1
III A	-	-	2	-	4
II B	-	-	-	-	1
	9	15	14	4	6

Ideally it would be desirable to place all judges on an adequate salary regardless of case load. The justices of the peace indicate that $3,600 should be the minimum. Even with the pay raise granted in 1958 by the second session of the Forty-Second General Assembly, county judges in Class V and VI counties receive less than $3,600, county judges in Class IV B counties receive $3,600 while county judges in Class IV A counties receive $4,100. When these salaries are paid county judges, it would be difficult to justify paying an equal or higher salary to justices of the peace who serve only part-time.

Counties would have a legitimate objection to paying justices an adequate full time salary for part-time jobs, when county courts in all but the largest counties do not require full-time judges at present. Only four county courts in Class III or smaller counties reported more than 200 cases docketed in 1957, while all Class II counties, except one, reported more than 700 cases docketed.

To assist the committee in its consideration of the justices' recommendations as well as the other proposals, the Legislative Council staff attempted to develop an equitable salary scale for justices of the peace, who would serve part-time in smaller counties and full-time in the larger counties.

This salary scale shown in Table XIII is a combination of a flat base salary plus an additional amount per case heard over the number of cases upon which the minimum salary is based. This minimum salary was determined by computing the average case load for the counties in each classification,[6] modifying this average to the nearest 50 or 100, and multiplying the result by $5.00. Payment for additional cases was considered necessary because of the wide range of county justice court case loads within each county classification, as shown in Table XII.

Table XIII also shows the maximum number of justices per county within each county classification which can be substantiated by the justice court case load. It would be difficult to justify more than one justice at the salary shown in the table in county Classes IV B, V, VI A & B. Only one of these counties, Clear Creek, Class IV B, had more than 250 cases in 1957.

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6. Except for the two Class VI B counties where the average case load was 18.

TABLE XIII

Suggested Salary Schedule
for Justices of the Peace

Class	No. of Counties	No. of J.P.'s Allowed per County	Base	Other[b]
VI B	2	1	$ 300	-------
VI A	3	1	500	$4 per case over 100
V	6	1	650	$4 per case over 150
IV B	6	1	1,000	$4 per case over 200
IV A	15	2	1,500	$4 per case over 300
III C	8	2	2,000	$4 per case over 400
III B	2	2	2,500	$4 per case over 500
III A	9	2	3,000	$4 per case over 600
II	11	3[a]	5,000	$4 per case over 1,000[c]

a. Must have at least two.
b. Could be set at any other amount considered adequate reimbursement per case over and above the base.
c. To a maximum of $7,500 total salary.

In Class IV A, III C, III B and III A counties, if two justices were appointed, it is doubtful that very many of them would exceed the basic number of cases. Counties in which at least one of the justices might try more cases than the base include: 1) Chaffee, Grand, Lincoln and Douglas - Class IV A; 2) Montezuma - Class III C; 3) Clear Creek, Huerfano - Class III B; and 4) Fremont, Montrose, Morgan, Garfield, Logan and La Plata - Class III C.

It is evident that in Classes IV B, V and VI counties, the position of justice of the peace would be part time. With the possible exception of Montrose, Morgan, and Logan counties, it is improbable that the justice of the peace position would be full time in Classes IV A, III C, III B, and III A counties, if two justices serve.

The position of justice of the peace in Class II counties would undoubtedly be full time.

There are several problems which would remain unsolved if the above salary schedule, or a similar one, is adopted.

First, by having only one justice of the peace in the 17 smaller counties, there would still be the problem of easy accessibility to court, although the J.P. would not necessarily have to sit in the county seat if there were a more central location.

Second, there would still be part-time justices in these smaller counties, which might make it difficult to attract qualified personnel.

Third, in most of the larger counties except for (Class II), there would be a choice of (a) providing two part-time justices for "convenience" or (b) having one full-time justice, probably better qualified, but providing no solution to the "convenience" problem.

Fourth, many counties would be required to spend additional money to provide salaries, court facilities, etc.,while at the same time supporting a county court which is not a full-time operation.

Even if an equitable and adequate salary scale for justices of the peace could be worked out with an accompanying reduction in the number of justices, it would be extremely difficult to set up realistic yet adequate qualifications for the position. If the qualifications were set too high it is doubtful that the salary would attract persons who met such qualifications. On the other hand, if the qualifications were set lower, it is doubtful that many of those who met these lower qualifications could do a competent job, because of the complex nature of the laws a justice of the peace is required to interpret.[7]

It is agreed, however, that the recommendations of the justices of the peace -- if carried out -- would result in improvement in the lower court system. The question remains as to whether this is the best way to improve the system, or whether one of the proposals for more drastic reform would be better.

Recommendations of the Colorado Bar Association Committee on Justice and Traffic Courts

The Colorado Bar Association committee recommendations were made subsequent to six meetings held by that committee during 1958 to discuss problems and possible improvements in the state's justice court system. The bar association committee was provided with much of the data developed by the Legislative Council Justice Court Committee. In making its recommendations the bar association committee stated that its proposals were not the only possible solutions to justice court problems, nor does it preclude consideration of other recommendations.

In its report to the Colorado Bar Association Board of Governors, the justice and traffic court committee stated that "... the justice of the peace system as it presently exists in the State of Colorado, and as it is being presently operated, is not adequately serving the citizens and communities of the State of Colorado and it should be abolished in order to make way for a new system."[8]

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7. See Chapter II.
8. Report of the Traffic and Justice of the Peace Courts Committee, Colorado Bar Association, September 1958, p2.

The committee proposed a long-range judicial reform program leading to the development of a new minor court system. Following are the bar committee's specific recommendations:[9]

1. the appointment rather than the election of the minor court magistrate;

2. the appointment of the magistrate by a judge of a court of record who shall have administrative supervisory powers over such magistrates;

3. the designation by a judge of a court of record, with the approval of the county commissioners, of the number of judicial precincts, their boundaries, and the number of magistrates of each precinct;

4. the term of office to be four years;

5. the establishment of qualifications for the magistrates by the General Assembly to include:

   a. a minimum age of twenty-five years, and a maximum age of seventy;
   b. a high school education or its equivalent;
   c. high moral character;
   d. the holding of no position as a law enforcement officer while serving as magistrate of a minor court;
   e. being a qualified electorate of the county.

6. the establishment of a procedure for the removal from office of the magistrate, which should include any of the following:

   a. adjudication of mental incompetency;
   b. malfeasance or nonfeasance, or both, in office;
   c. failure to reside in the county;
   d. conviction of a felony.

7. the magistrate may be removed for cause for reasons stated in paragraph six above by the appointing judge, with the approval of the county commissioners, with the right of appeal to the district court with a trial de novo;

8. the magistrate should be paid an adequate salary, to be set by the General Assembly and to be paid from the general fund of the county, and said salary shall not be related in any manner to the fees collected by such magistrate;

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9. Ibid. pp. 3 and 4.

9. the establishment by the General Assembly of a uniform cost schedule pertaining to the magistrate court;

10. the General Assembly shall cause to be established a uniform system of records and accounts to be kept and maintained by each magistrate and shall require each magistrate to report and remit to all authorized persons as provided by law all costs and fines received by him, and a periodic audit of such accounts and records should be made;

11. the jurisdiction of said magistrates shall be established as follows:

    a. civil jurisdiction as now provided by statute, except that the monetary claim for relief shall be increased to $500.00;
    b. criminal jurisdiction: those crimes now or hereafter set by statute wherein the maximum fine cannot exceed $500.00, and the jail sentence cannot exceed six months, or both such fine and jail sentence, except that such courts shall not have jurisdiction over driving under the influence, reckless driving, driving while license is suspended or revoked, and hit-and-run offenses, which offenses shall be tried in a court of record.

12. the General Assembly shall establish that jury trials be afforded to all litigants in all cases upon demand, and said jurors are to be selected from a list certified by the county commissioners of persons residing within the judicial precinct, and said jury shall not be less than three nor more than six; and, further, that the verdict of the jury shall be unanimous. In all jury trials before the magistrate in criminal cases, the magistrate and not the jury shall set the penalty provided by law;

13. the right to appeal from said magistrate courts shall be the same as now provided by law, except that the period of time within which to effect an appeal shall be enlarged to thirty days.

In setting forth these recommendations, the bar association committee report pointed out the need for accompanying reform on the county court level. The specific reform proposed for county courts was that all county judges be attorneys, especially because a legal education would be necessary to properly supervise the proposed magistrate system. The report went on to enumerate those recommendations for which legislation should be introduced at the first session of the Forty-Second General Assembly as differentiated from those which would require constitutional amendments or further consideration;[10]

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10. Ibid p. 5.

1. the payment of an adequate salary to the justice of the peace from the general fund of the county, and said salary shall not be related in any manner to the fees collected by said justice of the peace;[11]

2. the establishment of qualifications for the justices of the peace as follows:

   a. a minimum age of twenty-five years, and a maximum age of seventy;
   b. a high school education, or its equivalent;
   c. high moral character;
   d. the holding of no position as law enforcement officer while serving as magistrate of a minor court;
   e. being a qualified electorate of the county.

3. the requirement that proper courtroom facilities be furnished by the county commissioners of each county, and to furnish to the justices of the peace the statutes of the State of Colorado;

4. the requirement that the county commissioners of each county consolidate the justice of the peace precincts based upon a formula including population, geographic area, and case load;

5. the establishment of a uniform system of records and accounts to be maintained by each justice of the peace with the requirement of a periodic audit of said records.

There are a few similarities between the bar association committee proposals and the recommendations made by the justices of the peace. Both provide for the consolidation of precincts, the placing of justices (or magistrates) on a salary and elimination of the fee system of compensation, requiring the county to provide proper court facilities and the establishment of qualifications for the office. The bar association committee also proposes an increase in civil jurisdiction to $500, a recommendation made by several justices of the peace.

The bar association committee goes much further, however. Judges of the proposed lower court system would be known as magistrates rather than justices and would be appointed rather than elected. These magistrates would be supervised by the judge of a court of record, presumably the county judge if a licensed attorney, and the term of office would be extended to four years from the present two. Taking cognizance of the lack of record uniformity, infrequent audits, and faulty docket keeping, the bar association committee proposes a uniform system of records and accounts as prescribed by statute be kept by each magistrate and that periodic audits be required.

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11. Possible only if Amendment No. 2 had been approved by the voters in 1958 general election.

The bar association committee also has taken into account the implications of the Colorado Supreme Court decision in the Merris case by limiting the criminal jurisdiction of the proposed magistrate courts to those crimes for which the maximum fine does not exceed $500, the jail sentence six months, or both. The proposed magistrate courts would not have jurisdiction over driving under the influence, reckless driving, driving while license is suspended or revoked, and hit-and-run offenses. These offenses would be tried in a court of record.

The intent of these proposals is to correct the shortcomings of the present justice of the peace system by substituting an improved magistrate system which would operate much in the same way as the justice courts. This would be done by improving court personnel, eliminating excess lower court judges, providing supervision by a court of record, changing lower court jurisdiction, tightening up the record keeping process, and requiring counties to provide adequate court facilities, statutes, and other court needs.

While proposing that the number of justices be reduced and that the remainder be placed on a salary unrelated to work load, the bar association committee did not develop a formula by which these propositions could be accomplished. Consequently, the questions raised by similar recommendations made by the justices of the peace apply here. The problem of the less heavily populated counties with small justice court case loads is not solved by the bar association committee plan, nor is the need demonstrated for full-time justices in counties where the position of county court judge is not a full-time one. Unless the increase in civil jurisdiction to $500 results in an additional number of cases equal to those lost through the proposed curtailment in criminal jurisdiction, justice or magistrate court case loads would be even less than the present. Small county court case loads are also a stumbling block to the long-range proposal by the bar association committee that all county judges be licensed attorneys.

Qualifications for the office of magistrate are proposed by the bar association committee, but there is some question as to whether requiring a high school education or its equivalent, high moral character, and an age of at least 25 but no more than 70 would result in any substantial improvement over the existing system.

The proposal for uniform record keeping and periodic reports and audits is a good one, but the statutes now in effect are not followed nor are efforts to require compliance very successful. Colorado's statutes now make an audit of county accounts mandatory every six months. County commissioners are charged by law with the responsibility of seeing that the audits are made completely and at the proper time. It may be that such audits won't be made in some counties until the audit law is reexamined and strengthened.

Some members of the Legislative Council Committee on Justice Courts have questioned the desirability of having justices or magistrates appointed rather than elected, especially if such appointment is made by the county judge and the county commissioners. It is feared that such appointments would be based on political considerations rather than competence.

Recommendations of the Colorado Judicial Council

In 1958, the Forty-First General Assembly created the Colorado Judicial Council by statute.[12] The council's membership consists of a justice of the supreme court designated by the chief justice, the attorney general, and the following members appointed by the governor: four district judges, three district attorneys, four members of the bar who are practicing attorneys, two senators, two members of the house of representatives, two county judges, and representatives of business, labor, agriculture, and professional groups.

The Judicial Council is charged by statute with the responsibility of making a continuous study of the organization and relation of the various courts of record of the state and counties, the rules and methods of procedure and practice of the state judicial system, and the results produced. The Judicial Council may also submit suggestions to the justices and judges of the various courts in regard to the rules of practice and procedure. In addition, the Council must report to the governor and the General Assembly before December 15, 1958 and June 30, 1959 such matters as it may wish to bring to his or the General Assembly's attention.

The Judicial Council was divided into committees for the study of various phases of the state's judicial system by the chairman, Justice O. Otto Moore of the Colorado Supreme Court. The county court committee, under the direction of District Judge James Noland, Durango, has proposed two recommendations affecting the justice court system in Colorado: 1) abolish county courts in all counties of less than 5,000 population; and 2) abolish the justice court system and replace it with a lower court system composed of qualified, salaried magistrates.

One of the other recommendations before the Legislative Council Committee on Justice Courts proposed that justice court jurisdiction be transferred to the county courts. Obviously, this would be an unworkable solution if county courts in 23 or 24 counties were abolished. The Judicial Council recommendation would require district judges to sit as county judges in those counties in which the county courts would be abolished. It would be impractical to require the district judge to carry out the functions of his court as well as the county and the justice courts.

According to the 1950 census, county courts in the following 23 counties would be abolished by this proposal: Archuleta, Clear Creek, Custer, Cheyenne, Gilpin, Douglas, Dolores, Elbert, Grand, Hinsdale, Jackson, Kiowa, Mineral, Ouray, Park, Eagle, Phillips, Pitkin, Rio Blanco, Sedgwick, San Juan, San Miguel, and Teller. The 1957 county population estimates by the State Planning Division indicate that Sedgwick County may fall into the under 5,000 population group as a result of the 1960 census. These 24 counties include all of the counties in Classes VI A & B, V, IV B, and seven of the 15 counties in Class IV A.

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12. House Bill 14, p. 46, Laws Enacted by the Second regular session of the 41st General Assembly.

The county court committee of the Judicial Council is aware of the small county court case loads in these counties from the statistics gathered by its chairman, District Judge James Noland. It is also interested in having attorneys sit as judges in courts of record. At present only the county judges in the eleven Class II counties and the City and County of Denver are required by law to be attorneys. By doing away with the 24 county courts in the smallest counties, only six judges, who are attorneys, would be removed from office. The business of these 24 courts would be handled by district judges who are required to be attorneys. This would leave eight Class IV counties and 19 Class III counties with county courts in which judges are not required to be lawyers.

This Judicial Council proposal, which would eliminate county courts in counties of less than 5,000 population, could be carried out only through a constitutional amendment. The earliest time that such an amendment could be placed before the voters would be at the general election in November, 1960. Any of the recommendations regarding change in the justice court system which do not require constitutional amendments could be put into effect by legislation in 1959 and/or 1960. If such legislative changes involved or affected the county courts, they would have to be weighed carefully in light of the Judicial Council proposal. Conversely, any such changes, if put into effect, would have to be considered by the Judicial Council in determining whether or not to place a constitutional amendment before the public in 1960.

Those counties in which the county court would be abolished under the Judicial Council proposal are also the ones with the lowest justice court case load. Only four of the 24 counties had more than 500 justice court cases in 1957; three -- Clear Creek, Chaffee, Grand had between 500 and 750, and one, Douglas, had 1,105. The Judicial Council county court committee has followed the Colorado Bar Association proposal to some extent, in that it also recommends that a new lower court system with qualified magistrates be set up to replace the present justice of the peace system. Presumably these new lower courts could be supervised by the county judges in the larger counties and by the district court judges in those counties in which county courts would be abolished. Such supervision was also part of the bar association proposal.

As yet, the Judicial Council committee has not made public any detailed plans for establishing such a lower court system, developing an equitable salary schedule, and determining the number of lower court judges in each county. If county courts are eliminated in a number of counties, it seems likely that there will have to be at least one magistrate in each county, including those small counties in which there is not enough justice court business to justify a full-time judge on that judicial level. Therefore, it would appear that the problems of salary, number of judges, and qualifications for the office, and court convenience would still be present under this proposal as under those offered by the bar association committee and the justices of the peace, themselves.

Recommendations of Judge Mitchel B. Johns

Judge Mitchel Johns, Denver Superior Court, has proposed a revision in both the county court and justice court systems. Under his proposal, county courts would be replaced by circuit courts organized on a judicial district basis.[13] These circuit courts would operate in addition to the district courts, whose jurisdiction would not be materially affected by this new court system.[14] In addition to assuming present county court jurisdiction much of the present justice court jurisdiction would pass to the new county circuit courts. All judges in this proposed circuit court system would be required to be attorneys. A constitutional amendment would be necessary to put Judge Johns' court reform plan into effect. Such an amendment could not be placed before the voters until the general election in November 1960.

The present justice court system would be replaced by a new magistrate court system of more limited jurisdiction. The establishment of these magistrate courts would also be contingent upon the passage of a constitutional amendment. Following is an outline of Judge Johns' proposed system of magistrate courts:

1. Jurisdiction:

    a. civil claims where claim does not exceed $100; and
    b. minor violations where fine does not exceed $100 and no jail sentence can be imposed.

2. Special features of the magistrate court system:

    a. number of magistrates to be determined by volume of business, topography, and geography;
    b. magistrates to be appointed by county commissioners and circuit judges, acting in concert;
    c. magistrates to be paid a stated salary;
    d. no jury trials;
    e. magistrates need not be lawyers but must have certain qualifications set by the legislature; and
    f. presiding judge of circuit court to have supervisory and superintending power over magistrates.

These magistrate courts would be set up on a county basis and all appeals would be tried de novo by the proposed county circuit courts. Criminal jurisdiction would be extremely limited as compared with present justice courts. Justices of the peace at present have general jurisdiction to try all misdemeanors committed in their county.[15] Civil jurisdiction would be limited to claims which do not involve more than $100 as opposed to the present $300 limit set by both the constitution and statute.

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13. Except for the Second Judicial District, (City and County of Denver).
14. As this report is concerned with justice courts, details of Judge Johns' plan will be limited to those provisions which effect the justice court system.
15. 79-15-3 C.R.S. 1953.

There are several similarities between Judge Johns' proposals and those submitted by the Colorado Bar Association Committee on Traffic and Justice Courts. Both plans would limit criminal jurisdiction, although Judge Johns' plan is more drastic in this respect. Both propose that magistrates be appointed. Such appointment would be made by the county commissioners and the county judge under the bar proposal, and by the county commissioners and the county circuit judges under Judge Johns' plan. Both propose that the number of magistrates be determined by number of cases, topography, and geography, and that magistrates need not be lawyers, but must have certain qualifications set by the General Assembly. In addition, both propose that the magistrate courts be under the direct supervision of a court of record presided over by a judge who is an attorney. Salaries for magistrates are provided for in both proposals and are also a part of the Judicial Council's recommendations. The bar association committee, Judge Johns, and the Judicial Council are all in agreement that judges on the county court level should be licensed attorneys.

There are also two major differences between Judge Johns' plan for magistrate courts and the bar association committee proposal. The bar association committee proposes that civil jurisdiction be increased to $500; Judge Johns would limit it to $100. The bar association committee provides for jury trials in magistrate courts and sets forth the procedure by which a jury would be selected. Judge Johns' plan prohibits jury trials in magistrate courts because they would not be necessary with the limited criminal jurisdiction provided for in his proposal.

Under Judge Johns' proposal, the case load of the magistrate courts would be substantially reduced from that of the justice courts at present. Jurisdiction in traffic cases and other misdemeanors would be drastically limited unless many of the statutes for minor offenses were rewritten to provide for penalties within the limits set up by Judge Johns' plan; i.e. maximum fine of $100 and no jail sentence. There would also be a significant decrease in civil cases.[16]

This case load decrease poses additional problems in determining an equitable salary for magistrates under this proposal. As was pointed out above in the discussion of other recommendations for justice court reform, 42 counties in 1957 did not have a sufficient justice court case load to justify a full time justice. This case load would be further reduced by Judge Johns' plan. In addition, Judge Johns' proposed magistrate system would require at least one magistrate in each county, even in those nine counties where the justice court case load was less than 100 cases in 1957. The adoption of this plan might well lead to part time magistrates in perhaps two-thirds of the state's counties. Under this proposal there would be at least one magistrate in every county, whether full or part time with the possibility that four

16. Unfortunately the docket analysis was completed before Judge Johns' plan was presented to the Legislative Council Justice Court committee. Consequently, information was not compiled which could accurately measure the effect of Judge Johns' proposal on justice court case load.

counties, Adams, El Paso, Jefferson, and Pueblo would need an additional magistrate. With the limited jurisdiction of the proposed magistrate courts it is doubtful whether full-time magistrates would be required in more than 12 counties: Larimer, Montrose, Morgan, Boulder, Las Animas, Mesa, Weld, Arapahoe, Pueblo, Adams, El Paso, and Jefferson. It was pointed out in the discussion of other proposals for justice court reform that it might be difficult to attract qualified people to a part-time position. In some small counties where the case load would justify only one part-time judge, it is doubtful whether the convenience of a quick trial, one of the strongest arguments for the continuance of justice courts or a similar lower court system, would be possible.

Replace Justice Courts With A Circuit Magistrate System On A Judicial District Basis or by Combining Counties

The substitution of a circuit magistrate system on a judicial district basis was another recommendation before the Legislative Council Committee on Justice Courts. This proposal would solve the problem of part-time justices in small counties and would make it possible to place the magistrate system under the supervision of the district court, all judges of which are required to be lawyers.

In order for this proposal to work satisfactorily, there would have to be enough justice court cases within each judicial district to justify a sufficient number of circuit magistrates so that travel would be minimized as much as possible in relation to the time spent hearing cases. There would be considerable inconvenience to persons involved in circuit court cases, if quick adjudication were difficult because judges had to cover a larger area while holding court briefly in several communities.

The feasibility of this proposal was examined by analyzing the 1957 justice court case load in each judicial district as well as the geography and topography. As a result of this analysis, the judicial districts fell into four categories: 1) those districts in which the major portion of the justice court case load was in one county; 2) those districts (primarily one county judicial districts) in which there would be little advantage to a circuit system; 3) those districts in which the case load and the area to be covered could not be handled by one circuit judge, and the case load would justify only two magistrates who would have to cover a large area; and 4) those districts in which the case load would justify only one circuit magistrate who would have to cover a large area.

In the first category were six judicial districts: the 1st, 4th, 6th, 7th, 13th, and 16th. In each of these six districts one county had from 50 per cent to 80 per cent of the justice court case load, leaving several counties with a large area to be covered and relatively few cases.

Five judicial districts were in the second category: the 3rd, 8th, 10th, 17th, and 18th. Three of these districts (10th, 17th, and 18th) are one county judicial districts where the circuit magistrate system would offer few advantages over resident judges. In two districts, the 3rd and 8th, each county had a sufficient case load

to justify at least one resident judge,[17] and it is doubtful whether a circuit court system could handle the case load more expeditiously than resident magistrates.

In three judicial districts, the 9th, 11th and 12th, the case load was too large and the area to great for one circuit magistrate to cover. While two justices could handle the case load, a wide area would have to be covered for a relatively small number of cases.

The case load would justify only one circuit judge in the remaining three judicial districts, the 5th, 14th, and 15th. The area to be covered is probably too large for one justice to handle expeditiously.

It would appear that while a circuit magistrate system has considerable merit, the case load and geographical factors in Colorado would create problems that might make the plan impractical on a judicial district basis. Other combinations of counties were examined with the same result. Grouping of counties could be arranged that would work in some areas of the state, but no grouping was devised that proved satisfactory for the state as a whole.

Transfer of Justice Court Jurisdiction to County Courts Except in Class II Counties Where Superior Courts Would be Created

This recommendation differs markedly from those proposals already discussed. The other proposals provide either for a retention of the justice court system or its replacement by some other type of lower court. Two of these proposals, made by Judge Mitchel Johns and the Colorado Judicial Council, tie in recommendations on the justice court level with revampment at the county court level. Under this recommendation justice court jurisdiction would be transferred to county courts in all but the Class II counties, where superior courts would be created to handle justice court cases.

One advantage of this plan is that it could be carried out without a constitutional amendment. The constitution states that the justices of the peace shall have such jurisdiction as may be conferred by law, except that the General Assembly may not give the justice courts civil jurisdiction in cases where boundaries or title to real property is in question or where the amount in controversy exceeds $300.[18] In other words, the constitution confers no jurisdiction upon the justice courts except that which is given them by the General Assembly. This being the case, justice court jurisdiction could be repealed by the General Assembly which would leave the constitutional office of justice of the peace untouched, but which would also leave the justices with no powers except to perform marriages. As the county court has concurrent jurisdiction with the justice courts, if justice court jurisdiction is repealed, these cases would have to be tried in county court.

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17. Except for Jackson County in the 8th judicial district.
18. Article VI Section 25, Colorado Constitution. For a more thorough discussion of jurisdiction see Chapter III of this report.

The General Assembly may also create superior courts under the constitutional provision which states, "The Judicial power of the state as to all matters of law, and equity, except as in the constitution otherwise provided, shall be vested in the supreme court, district courts, and such other courts as may be provided by law."[19] The General Assembly has already created a superior court in the City and County of Denver under this constitutional provision.[20] The specific provisions of this proposal are discussed below:

1. Eliminate all jurisdiction, both criminal and civil, of all justice courts by repealing all statutes providing for such jurisdiction and transfer justice court case load to county courts in Classes III, IV, V, and VI counties (51 counties). The county court has jurisdiction at the present time over all cases heard in justice court. Consequently, it would be unnecessary to pass a bill giving this jurisdiction to the county courts. These county courts should, according to available data, be able to handle the justice court case load. County court case loads for 41 of the 51 counties involved show 26 with fewer than 100 cases docketed in 1957, 11 with 100-200 cases, three with 200-300 cases and one (La Plata) with 322 cases. In contrast, data for 10 of the 11 Class II counties show that only one (Las Animas -- 211) had fewer than 700 cases docketed last year.

2. Establish Superior Courts in Class II counties and give these courts original jurisdiction in all misdemeanors. From the size of both the justice court and the county court case loads in Class II counties, the county court would be unable to try justice court cases. Therefore superior courts would be set up with original jurisdiction in misdemeanors and concurrent jurisdiction in all civil cases, except probate and juvenile matters. These superior courts would be courts of record, and the judges thereof would have to be attorneys licensed to practice law in Colorado.

3. Denver Superior Court would also be given original jurisdiction over misdemeanors. By extending the jurisdiction of the Denver Superior Court, the Denver municipal court would be limited to hearing only those cases which arose out of municipal ordinance violations which were not also offenses of state concern, tryable as such in superior courts. Appellate jurisdiction in municipal cases would also be retained by superior court.

4. Eliminate Trials De Novo. As all cases would be heard in courts of record in Class II Counties, there would be no necessity for trials de novo upon appeal.

5. Revise Fee Schedule. The fee scale in county court would be changed so that the fees involved in trying these former justice court cases in county and superior court would be the same as they are at present in justice court.

One of the major objections to this plan is that in 36 counties, justice court cases would be transferred to county judges who are not attorneys. It is argued that little would be gained in diverting these cases from one group of non-lawyer

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19. Article VI, Sect. 1, Colorado Constitution; underlining added for emphasis.
20. 37-11-1 and following CS 1957 to CRS 1953.

judges to another, especially if trials de novo are eliminated as a result.

Proponents of this recommendation point out that the number of non-lawyer judges would be reduced considerably through such transfer of case load. In addition, all cases would be heard in a courtroom with a proper judicial atmosphere. Low salaries are the major reasons why more attorneys are not interested in the position of county judge. Even though county judges' salaries were increased by the General Assembly in 1958, the pay level is still not high enough to attract attorneys in Classes III through VI counties. The lack of courty court case load has been the major obstacle in raising county court salaries to a higher level.

Supporters of this proposal point out that the increase in county court case load resulting from the trying of justice court cases would make it possible to increase county court salaries to a level where attorneys would be interested. When this is done, the General Assembly would be justified in requiring that county judges be attorneys in Class III and perhaps Class IV A counties. It should be recognized that it may never be possible to require that judges be attorneys in the 17 smallest counties (Classes IV B, V, VI), because the case load, even with justice court cases included, would not be sufficient to pay a salary large enough to attract them. In many of these small counties there are three or fewer attorneys in residence, and in three counties there are none. This situation is also a deterrent to having attorneys as county judges in all counties. It may, therefore, be necessary to combine counties in some manner for judicial purposes to assure that judges in all courts of record are attorneys,if that is decided to be a desired goal.

One advantage of this plan emphasized by its proponents is that greater use would be made of existing courts. It is difficult to justify the expense of magistrates' salaries and adequate magistrate court facilities in addition to the costs of maintaining a county court which sits on a part-time basis. This is especially true if many of the magistrates also serve on a part-time basis as would probably be the case in two-thirds of the counties.

Another major objection to the plan is the lack of convenience which would result from transferring all cases to county court. All tourists accused of a traffic violation would have to travel to the county seat. As it is unlikely that county courts would be in session in the evening or on weekends, alleged traffic violators would either have to post bond and be tried at a later date, accept a penalty assessment ticket, or face delay in their travels. County residents would not be as greatly affected, since a suitable trial date could be set.

In examining how important the factor of convenience is, especially in motor vehicle cases, the results of the docket analysis were examined in terms of where justice court cases, in general, and traffic court cases, in particular, were tried in relation to the county seat. In making this examination it was assumed that all cases heard within 15 miles of the county seat could be transferred there without undue lack of convenience, and that cases which would be transferred to the county seat from justice courts 30 miles or further away would result in inconvenience to alleged minor violators. It was further assumed that cases transferred from justices between 15 and 30 miles from the county seat might result in inconvenience, depending upon circumstances and the location of the county seat.

Table XIV shows the geographic distribution of justices of the peace of each county with the counties grouped according to statutory classification. This table shows the number of counties with all J.P.'s in the county seat and at varying distances from the county seat.

TABLE XIV

Location of Justices of the Peace
by County Classification

Class	No. of counties	All J.P.'s in C. S.	All J.P.'s within 15 M	All J.P.'s within 30 M	At least 1 J.P. more than 30 M
VI	5	1	3	0	1
V	6	1	2	0	3
IV	21	7	3	5	6
III	19	4	4	7	4
II	11	2a	1	3	5
Total	62	15	13	15	19

a. includes Jefferson County

Fifteen counties have all of their justices located in the county seat. Thirteen others have all their J.P.'s within 15 miles of the county seat. Naturally, in the fifteen counties with J.P.'s in the county seat only, a transfer of jurisdiction would have no effect. For the thirteen counties with all justices within 15 miles of the county seat, a transfer of the case load to the county court would probably not be much of an inconvenience.

With the other 34 counties, and especially the 18 counties with at least one J.P. in excess of 30 miles from the county seat, it would appear that easy accessibility to court might definitely be decreased. One way to measure the utility of these outlying justice courts is to examine the relationship of case load and geographic location. This examination was made for the 22 counties in the docket analysis and the results are shown in Table XV.

TABLE XV

Location of Justice Court Cases Tried in 1957
For the 22 Docket Analysis Counties

	Class VI	Class V	Class IV	Class III	Class II	Total
No. of Counties	3	1	10	6	2	22
Total Cases	145	103	3456	3372	9854	16,930
Tried at C.S.[a]	18[c]	92	2241	2055	7276	11,682
Pct. Tried at C.S.	12.4%[c]	89.32%	64.84%	60.94%	73.84%	69.0%
Total Cases	145	103	3456	3372	9854	16,930
Tried within 15 M of C.S.[b]	102[c]	103	2633	2448	9251	14,537
Pct. Tried within 15 M	70.34%[c]	100%	76.19%	72.6%	93.88%	85.87%
Traffic Cases	99	58	2470	2038	5501	10,166
Tried at C.S.	4[c]	47	1598	1233	3608	6490
Pct. Tried at C.S.	4.04%	81.03%	64.7%	60.5%	65.59%	63.84%
Traffic Cases	99	58	2470	2038	5501	10,166
Tried with 15 M of C.S.	63[c]	58	1871	1635	5007	8,634
Pct. tried within 15 M of C.S.	63.63%	100%	75.75%	80.22%	91.02%	84.93%

a. C.S. - county seat
b. M - miles
c. Summit county did not have a justice of the peace sitting in Breckenridge, the county seat in 1957. The J.P. in Dillon, nine miles from Breckenridge, had most of the cases in the county. He has since resigned and was replaced by a justice in Breckenridge.

Table XV shows that sixty-nine per cent of all cases and almost 64 per cent of the traffic cases in the 22 counties in the docket analysis were heard in the county seat. Almost 86 per cent of all cases and 85 per cent of traffic cases were heard within a radius of 15 miles of the county seat.

This eighty-six per cent was applied to the estimated case loads for those counties not in the docket analysis. In these forty counties, 6,000 of an estimated 43,000 cases were tried in justice courts located more than 15 miles from the county seat. When those totals are added to the ones in Table XV, the results show that in 1957 an estimated 8,400 cases out of an estimated total of 58,300 were tried in justice courts located more than 15 miles from a county seat.

The docket analysis showed that slightly more than 60 per cent of the total number of cases in the 22 counties were traffic. Sixty per cent of the 43,000 estimated cases for the other 40 counties in 1957 is equal to approximately 26,000. Table XV shows that in the docket analysis counties, 85 per cent of all traffic cases were tried within 15 miles of the county seat. Eighty-five per cent of the estimated 26,000 traffic cases for the counties not in the docket analysis equals 22,000 (rounded from 22,100); so an estimated 4,000 traffic cases in these 40 counties were tried in justice courts more than 15 miles from a county seat. This estimate was added to the traffic case totals shown in Table XV. The results show that approximately 5,500 of the estimated traffic case load of 36,000 were tried in justice courts located more than 15 miles from the county seat.

Nineteen counties had at least one justice of the peace located more than 30 miles from the county seat. These counties included:

Class VI - Mineral;

Class V - Custer, Dolores, and Park;

Class IV - San Miguel, Cheyenne, Eagle, Elbert, Moffat, and Rio Blanco;

Class III - Fremont, Garfield, Kit Carson, and Montrose;

Class II - Adams, Arapahoe, Larimer, Otero, and Weld.

The problem of easy accessibility to court, if all cases were heard in county court, may not be as great as it appears in these 19 counties. Some of them have very small case loads, so that the number of cases in which an alleged traffic violator would be inconvenienced is relatively few in comparison with the total case load in the state. Some of these counties have county seats which are either centrally located or are located on major highways, so that the inconvenience of traveling to the county seat might not be as great as the distance indicates. Also some of the outlying justices had very few cases and a few are located on unpaved, little-traveled highways.

Custer and Mineral counties had fewer than 100 cases in 1957; in fact, Mineral's case load was only 27, 16 of which were tried by the justice in Moon Valley. Park, Dolores, Elbert, Cheyenne, and San Miguel had between 200 and 250 cases each. The county seat of Park County, Fairplay, is centrally located in the county at a junction of main highways.

In San Miguel County sixty-one per cent of the cases were heard in Norwood, but the county seat is only 33 miles away on a main highway. Special problems are posed by Elbert and Dolores counties. The J.P. in Simla tried 78 per cent of Elbert County's traffic cases in 1957. Simla not only is 69 miles from the county seat, Kiowa, but is also located on a different highway. Rico, in Dolores County, is 100 miles from Dove Creek, the county seat. To reach Dove Creek from Rico involves travel through Montezuma County.

Eagle, the county seat of Eagle County, is centrally located on U.S. Highways 6 and 24, main east-west routes. Justices located in McCoy and Sheephorn, on unpaved roads, had no cases in 1957, and the Justice in Basalt tried only six cases, one of which was traffic. The justices sitting in Red Cliff also had very few cases.

Three counties appear to be special problems - Moffat, Routt, and Montrose. The first two had case loads estimated at between 250 and 500. These counties, in the northwest corner of the state, have county seats located a considerable distance from the state line, which would make it necessary for an alleged violator apprehended near the state line to travel more than 55 miles in Rio Blanco county and 88 miles in Moffat county to the county seat. In Montrose county, 37 per cent (309) of the traffic cases were tried in Nucla, which is 92 miles from the county seat.

A possible solution to the convenience problem has been suggested. It appears to be legally possible to extend the venue of county courts to adjoining counties by action of the General Assembly. This extension of venue could be given county courts, because they already have jurisdiction, and because county judges have been deemed state officers by the Colorado Supreme Court. Under this proposal such extension of venue would also be made for superior courts. The constitution grants every person the right to be tried in the county or judicial district where the alleged violation took place.[21] It would be necessary to allow each alleged violator the choice of being tried in the county of origin or to waive such venue for convenience.

If venue in traffic cases were extended to adjoining counties, it would cut down considerably the distance an alleged violator would have to travel to have his case tried. If legislation were drafted so that the patrol would be instructed to cite the alleged violator into the nearest county court in an adjoining county, in the direction in which the violator is traveling, courts would be easily accessible except in very few counties as is shown below.

Distance would not have as much significance if the above steps were taken, because it would not particularly inconvenience an alleged violator if he had to travel 40 or 50 miles, as long as it was further along his route of travel.

To show the effect this proposal would have, the 19 counties with at least one justice located 30 miles from the county seat have been re-examined.

Mineral County — Cases which would normally go to the justice in Moon Valley could be taken either to Pagosa Springs, county seat of Archuleta county, or to Del Norte, county seat of Rio Grande county.

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21. Article II, Section 16, Colorado Constitution

Custer County	Cases which normally would be tried by the justice in Wetmore could be taken either to Canon City, county seat of Fremont county, or to Pueblo, county seat of Pueblo county.
Park County	Cases which normally must be tried in Lake George could be tried in Cripple Creek, county seat of Teller county, or even in Salida, county seat of Chaffee county.
Dolores County	Cases normally heard in Rico could be tried in Telluride, county seat of San Miguel county, 29 miles away, rather than Dove Creek, which is 100 miles from Rico, or they could be tried in Cortez, county seat of Montezuma county.
San Miguel County	No change under this proposal, although cases from the Norwood area could be tried in Ouray or Dove Creek, should this prove more convenient.
Cheyenne County	Cases normally tried in Wild Horse could be taken to Hugo, county seat of Lincoln county, or in Eads, county seat of Kiowa county.
Eagle County	Cases normally tried in Basalt could be taken either to Aspen, county seat of Pitkin county, or to Glenwood Springs, county seat of Garfield county. Cases normally heard in Red Cliff could be taken to Leadville, county seat of Lake county. The justices in McCoy and Sheephorn have no cases, so there is little need for concern if they are eliminated.
Elbert County	Cases normally tried in Simla could be taken to Hugo, county seat of Lincoln county, or to Colorado Springs, county seat of El Paso county.
Routt County	No change under this proposal.
Moffat County	Cases normally heard in Artesia could be tried in Meeker, county seat of Rio Blanco county, instead of Craig, which would cut the distance 15 miles, from 88 to 73 miles.
Fremont County	Cases normally tried in Howard could be taken to Salida, county seat of Chaffee county.
Garfield County	Cases normally tried in Grand Valley could be tried in Grand Junction, county seat of Mesa county.
Kit Carson County	Cases normally tried in Flagler could be tried in Hugo, county seat of Lincoln county, or in Akron, county seat of Washington county.

Montrose County	Cases normally tried in Nucla could be tried in Telluride, county seat of San Miguel County, which would shorten the distance from 92 to 58 miles.
Otero County	Cases normally heard in Fowler could be tried in Pueblo, county seat of Pueblo county, or in Ordway, county seat of Crowley county.
Larimer County	Cases normally tried in Estes Park could be taken to Boulder, county seat of Boulder county, reducing the distance to 55 miles.
Arapahoe County	Cases normally tried in Byers or Deer Trail could be tried in Denver or in Hugo, county seat of Lincoln county.
Adams County	Cases normally heard in Bennett could be tried in Denver or in Hugo, county seat of Lincoln county.
Weld County	Cases normally heard in Stoneham could be tried in Sterling, county seat of Logan county. Cases normally heard in Erie could be tried in Boulder, county seat of Boulder county. Cases normally tried in Roggen could be tried either in Brighton, county seat of Adams county, or Fort Morgan, county seat of Morgan county. Cases normally tried in Dacona or Frederick could be taken to Boulder, county seat of Boulder county.

It should be remembered that these cases may also be tried in the county seat of each county, depending on which is the most convenient.

From the above analysis of the effect of this proposal upon these 19 counties, it would appear that there would be a great deal of flexibility, if county courts were given venue over traffic cases in adjoining counties. This flexibility might well make up for the loss of convenience resulting from the elimination of justice courts in the outlying areas of some counties.

In fact, this proposal would prove more convenient in some areas than the present justice court setup. The criminal jurisdiction and venue of justices of the peace are only county wide. In Las Animas County, an alleged violator apprehended in the eastern part of the county now has to travel up to 107 miles from the point of arrest to Trinidad, the county seat. Under this proposal he could be tried in either Trinidad or in Springfield, county seat of Baca County, depending upon the direction in which he is traveling. In Logan county, a person apprehended in the eastern part of the county near the Sedgwick county line has to be tried in Sterling - a distance of about 40 miles. Under this proposal, he could be tried either in Sterling or in Julesburg, county seat of Sedgwick county.

At present, alleged violators apprehended anywhere in Pueblo county must travel to the county seat. Under this proposal cases could be heard in Colorado Springs, Walsenburg, Canon City, Ordway or La Junta, depending on the location of the alleged offense and the direction of travel.

Other counties with justices sitting only in the county seat include: San Juan, Pitkin, Archuleta, Kiowa, Saguache, Alamosa, Sedgwick, Gunnison, Lake, Chaffee, Baca, Bent, and Jefferson. Under this proposal alleged violators in all these counties might find courts more accessible if they could be taken to the most convenient county court in an adjoining county depending on their direction of travel.

On the other hand, it is true that certain counties continue to be problems under this proposal: Moffat, Routt, Montrose, and Larimer counties will still have cases originating in areas that make access to any county court difficult. The extension of venue across county lines would also create problems for the state patrol. Chief Carrel of the State Patrol has stated that additional man power would be needed under this plan, because of the number of patrolmen who might be tied up in court a considerable distance from their regular patrol area.

Summary

None of the six specific proposals discussed above solve all the problems involved in the operation of a lower court system in a state as widely diversified as Colorado in population, geography, and topography. It is also virtually impossible to change one portion of the state's judicial system without affecting the other levels of the courts. While there is no ideal proposal, an adequate approach might be found by weighing the advantages and disadvantages of the various recommendations, and adopting the one, perhaps with modifications, with the fewest drawbacks.