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Report to the Colorado General Assembly:

**INTERMEDIATE COURT OF APPEALS
FOR COLORADO**



COLORADO LEGISLATIVE COUNCIL

**RESEARCH PUBLICATION NO. 138
NOVEMBER 1968**

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INTERMEDIATE COURT OF APPEALS
FOR COLORADO

Legislative Council
Report to the
Colorado General Assembly

Research Publication No. 138
November, 1968

COLORADO GENERAL ASSEMBLY



LEGISLATIVE COUNCIL

ROOM 341, STATE CAPITOL
DENVER, COLORADO 80203
222-9911 - EXTENSION 2285
AREA CODE 303

December 9, 1968

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REP. RAYMOND WILDER

To Members of the Forty-seventh General Assembly:

Under direction of House Joint Resolution No. 1026, Forty-sixth General Assembly (1968), the Legislative Council appointed the Committee on Appellate Courts to make a thorough study of the Supreme Court case load problem and possible solutions. The report of this committee, which contains the committee's recommendations and a draft of proposed legislation to create an intermediate court of appeals, is submitted herewith.

The committee submitted its report and draft of the proposed bill on December 9, 1968, at which time the report was accepted by the Legislative Council for transmittal to the Forty-seventh General Assembly.

Respectfully submitted,

/s/ Representative C. P. (Doc) Lamb
Chairman

CPL/pw

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REP. RAYMOND WILDER

Representative C. P. (Doc) Lamb
Chairman
Colorado Legislative Council
341 State Capitol
Denver, Colorado 80203

Dear Mr. Chairman:

Your Committee on Appellate Courts appointed to study the Supreme Court case load problem and possible solutions submits the accompanying report, containing a draft of suggested legislation to establish an intermediate court of Appeals.

The seriousness of the Supreme Court backlog problem indicates that immediate action is necessary. The committee considered many proposed solutions to the problem and concluded that of all the alternative solutions considered, the creation of an intermediate Court of Appeals for Colorado offered the best solution to the Supreme Court backlog problem for now and for the foreseeable future. The committee's report thus recommends the creation of a Court of Appeals.

Respectfully submitted,

/s/ Senator James C. Perrill
Chairman, Committee on
Appellate Courts

JCP/pw

FOREWORD

The Legislative Council's Committee on Appellate Courts was created pursuant to the provisions of House Joint Resolution No. 1026, Forty-sixth General Assembly (1968), to study the Supreme Court backlog problem and the consequent delay in case disposition. The mission of the Committee on Appellate Courts was to take cognizance of the backlog problem and attempt to arrive at a workable and feasible solution. The members appointed to the committee were:

Senator James Perrill, Chairman	Representative Thomas Dameron
Representative Ronald Strahle, Vice Chairman	Representative Barbara Frank
Senator Clarence Decker	Representative John MacFarlane
Senator Ruth Stockton	Representative Harold McCormick
	Representative Clarence Quinlan

Advisory committee members were:

Mr. Jim R. Carrigan	Judge Francis W. Jamison
Mr. Bryant O'Donnell	Judge Robert E. Lee
Mr. Kenneth Wormwood	Justice R. H. McWilliams
	Justice E. E. Pringle

The Committee on Appellate Courts held five meetings during the study. At these meetings the committee attempted to formulate a solution to the backlog problem. Early in its deliberations the committee directed the Judicial Administrator, with the cooperation of the Legislative Council staff, to conduct an analysis of the Supreme Court docket. This information was of much assistance to the committee. In addition, the committee consulted with persons from outside the state in order to gain information on how other states are facing the problems of court congestion and delay.

The committee wishes to express its appreciation to the Colorado Supreme Court and the Supreme Court Clerk's Office for their cooperation and assistance in the conduct of this study. Valuable assistance was also given by Mr. Harry Lawson, Colorado Judicial Administrator, who was responsible for the Supreme Court docket analysis, and who supplied valuable information to the committee. The information received from these sources was particularly beneficial to the committee and their cooperation and assistance is gratefully acknowledged.

Earl Thaxton, senior research assistant for the Legislative Council, had the primary responsibility for the staff work on this study and Robert Holt of the Legislative Drafting Office had primary responsibility for bill drafting services provided the committee.

December 9, 1968

Lyle C. Kyle
Director

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COMMITTEE FINDINGS AND RECOMMENDATIONS

Delay in the courts is unqualifiedly bad. It is bad because it deprives citizens of a basic public service. . .it is bad because delay may cause severe hardship to some parties; . . .and it is bad because it brings to the entire court system a loss of public confidence, respect and pride.^{1/}

History records that man has usually had a contempt for delayed justice. Thus, it was not surprising that the Founders of our nation saw fit constitutionally to grant and protect the concept of prompt and just trial and appeal for all. Yet important as this concept seems in the constitutions and statutes of the nation and the several states, it appears to be one of the most frustrating principles of justice to guarantee and secure, for the prompt disposition of cases has become almost impossible in recent years because of the delay caused by appellate court congestion. Not only is the quality of justice important, but it is equally important that legal disputes be promptly resolved. This delay in justice has in part created the general disrespect for law and contempt for our courts with which our country and state is faced today.

In Colorado, our Supreme Court has for several years been plagued by an excessive case load, congested docket and burdensome backlog that impedes its efficiency and creates delay. The problem quite simply is that there are too many cases too often, for too few judges. The number of cases filed annually in the Colorado Supreme Court has increased steadily during the past decade, reaching an all time high of 639 in 1967, and is expected to approach 700 by 1970.

There were 861 cases pending in the Supreme Court at the end of 1967 even though the court disposed of more cases, 588, and produced more written opinions, 378, than in any other year in the court's history, such dispositions exceeding those of any other seven-judge Supreme Court with no intermediate court of appeals. There is presently an average delay of approximately 18 to 20 months from the date a case is filed in the Supreme Court until the date of final disposition. In other words, some litigants now have to wait for a period of approximately two years before a final decision is reached in their case.

Hans Zeisel, Harry Kalven, Jr., and Bernard Buchholz, Delay in the Court, p. xxii, Boston: Little, Brown & Co. (1959).

The causes for this increase of cases today continue to be many and varied. Among the main causes are population increase, industrial growth, and urbanization. Our society, in general, has become more complex, more mobile and is today subjected to more governing bodies. The increase of governmental regulations, the growing number of automobiles, the abrasion of human relationships, particularly in dense urban living, and many other factors, all contribute to increased litigation and produce more opportunity for potential litigation. New commodities, new developments in trade, business, sciences, and housing, have paved the way for more potential suits.

Another major cause of the increase in case filings is the increase in the financial ability of litigants to finance appeals. Today, more citizens have the money to turn to the Supreme Court in many more civil matters than ever before. In the area of criminal law, as well, many more cases of drug addiction, liquor, narcotics and gambling come before the courts. The increase in the crime rate will necessarily result in an increase of criminal cases. In addition, civil rights litigation has opened a whole new horizon in civil jurisdiction.

In the last 15 years the state has nearly doubled the number of trial court judges. The increase in district court judges, in addition to the increase in the jurisdiction of the district courts, has resulted in an increase in the number of dispositions at the trial court level. This increase, in turn, has resulted in an increase in the number of cases coming to the Supreme Court. In the meantime, however, the Supreme Court has had to do an adequate job with substantially the same personnel and structure which existed in 1905. As is readily apparent from the figures, the court has simply not been able to keep up with the increasing number of cases filed, thus creating a backlog.

There is no reason to believe that Colorado's current rate of population and economic growth will diminish appreciably in the near future, rather it appears that the converse is more likely. Consequently, a continued increase in new matters coming before the Supreme Court can be anticipated. When the filing rate trend over the past several years is projected into the future, it is estimated that the number of cases filed annually will approach 700 by 1970 and will be approximately 940 by 1980. By 1970 the backlog of cases is estimated to be 1,168, and by 1980 the backlog will approach 3,792 cases. Such a backlog will create an estimated delay at between 5 and 5.5 years in 1980. In other words, it would take more than five years from filing to termination for a case on the civil docket in 1980. It is evident that additional steps are necessary in order to cope with the backlog problem and to prevent further delay.

Case Filings and Dispositions

The 1967 term of the Colorado Supreme Court was significant in that it pointed up vividly the extraordinary burdens that have been placed upon the Colorado Supreme Court by its ever-expanding case load. Although more cases were disposed of during the 1967 term (588) than during any other prior term, the intake of 639 cases filed was the highest in the court's history. The 639 cases filed in 1967 was 83 (or 15 percent) more than the previous high of 556 in 1966. The figures demonstrate that there has been a steady increase in the filing rate over the last seventeen years.

The previous high for cases closed was 524 in 1961 and the five-year average, 1962 through 1966, was 419, demonstrating that cases closed in 1967 (588) far exceeded the number closed in any previous year. Of the 588 cases that were closed, 378 of them were by written opinion. The previous high for written opinions was 371 in 1960, and the five-year average, 1962 through 1966, was 251. The number of cases closed has been less than the filing rate in each of the years from 1950 through 1967, with the exception of the years 1954, 1960 and 1961, when cases closed exceeded those cases filed. This situation has created a backlog of pending cases which has grown from 319 in 1962 to 861 in 1968. As of August 1, 1968, there was a backlog of 913 cases pending before the Colorado Supreme Court.

Other Considerations

In addition to the record number of appeals filed in 1967, the number of original proceedings has also increased. In 1955, only 12 original proceedings were filed in the Supreme Court. By 1965, the number of original proceedings filed in the court had grown to 131 and in 1967 there were approximately 150 original proceedings, 20 of which were disciplinary proceedings. This factor is especially significant because study and action on these proceedings often takes as much or more time than the usual appellate cases.

To be considered also are the other matters which take up a sizable portion of the court's time, because the growing volume of work in the court is not reflected entirely by case filings and dispositions and the number of written opinions. These other matters are requests for extensions of time, motions to dismiss, and similar paper work -- all of which have to be received, examined, stamped, listed and studied and then orders issued.

In 1966, the Colorado Supreme Court received 1,668 requests for extensions of time and 1,476 other motions of various kinds for a total of 3,144 items. As statistics were not kept on these matters prior to 1965, a comparison must necessarily be

limited; however, the increase of 1,198 or 53.7 percent over the 1965 total of 2,046 illustrates the increased activity in this area.

Delay

The backlog of pending cases in the court has necessarily resulted in a delay in the time it takes a case to be finally disposed of by the court. The committee found that the median time lapse from the date a case becomes at issue until the date it is orally argued is ten months in civil cases, six months in criminal cases, and one month in workmen's compensation cases. The committee also determined that the average length of time from the date a case is filed until it becomes at issue is approximately six to eight months. In other words, six to eight months precede the date the case becomes at issue.

It was noted that the court often grants extensions of time within which attorneys must file their briefs. All extensions of time, of course, increase the length of time from filing to issue date. The committee also found that the average length of time from oral argument to final disposition is approximately two months. This means that there is an average lapse of approximately 18 to 20 months from the filing date to the date of final disposition. Thus some litigants now have to wait for a period of approximately two years before a final decision is reached in their case.

Written Opinions

The figures show that the judges of the Colorado Supreme Court are being called upon to write more opinions than ever before. In 1967, there was a total of 378 written opinions, a figure which has never been exceeded. The previous high was 371 and occurred during the 1960 term when approximately 70 opinions were written by outside judges. In 1967, only 20 opinions were written by outside judges.

Each judge, during the 1967 term, wrote an average of 50 opinions, not including whatever concurring or dissenting opinions he may have filed. Of those 30 states which do not have an intermediate appellate court, only Kentucky, with the equivalent of 11 justices, exceeded Colorado in the number of written opinions.

It is difficult to assess the extraordinary increase of cases in terms of the burdens it places upon the individual judges of the Supreme Court. Necessarily, a great deal more time is consumed by oral arguments and by conference discussing each case. And since there is an increase in the total number of opinions turned out by the court, each judge must expend more

time considering opinions other than those he writes, if the opinion is to be a seven-man opinion. Thereby, the judges are deprived of time during which they could have been preparing opinions in cases assigned to them.

To expect the present judges to write more opinions appears to be unreasonable for the quality of judicial opinions is more likely to be deficient when a judge is expected to write more than the optimum number of opinions. The effect of poor quality opinions is to produce uncertainty in the law. This uncertainty usually has the effect of encouraging more appeals.

It is believed by the committee that the judges of the Supreme Court should be afforded sufficient time to study thoroughly the cases presented to them so that, while maintaining high quality in their work, they can meet their dual responsibility: dispensing justice to individual litigants, and molding the body of Colorado law. Because of the important matters coming before the Supreme Court and the effect of the court's decisions on Colorado law, there should be sufficient time for consideration of these matters and for each member to review carefully the opinions written by his colleagues.

In this regard it is appropriate to ask how many cases a seven-man appellate court can be expected to dispose of annually by written opinions consistent with the time needed to give proper consideration to important matters and consistent with the development of good case law. Various opinions have been expressed on this subject, but generally an average of 50 cases per judge is probably the maximum, and 35 to 40 cases is considered a more satisfactory total. This means that the court can be expected under the best of circumstances to dispose of a maximum of 350 cases in any one year by written opinion, and the total is more likely to fall between 225 and 275. In a survey of the 30 states without an intermediate appellate court it was shown that the median number of written opinions was 130, with an average of 26.2 per judge.

Court Capability

Judging from the experience each year from 1960 through 1967, an annual average of 167 cases are closed without written opinion. Assuming that the court could produce from 225 to 350 written opinions per year, it can be seen that the court may be capable of disposing of a total number of cases annually of 392 to 517 cases. Thus the maximum capability of the Supreme Court is about 517 cases per year. As long as the filing rate continues to exceed this maximum, no reduction in the number of cases pending can be anticipated. In fact, the number of pending cases is expected to increase, as explained in the next paragraph.

Anticipated Case Load

Assuming that the court could dispose of 550 cases per year (a very optimistic assumption), which means that the court would have to write approximately 325-335 opinions per year, and assuming that there is no reform of some type to ease the continuing backlog, it is anticipated that by 1980 the backlog will be at almost 3,800 cases. This figure is based upon a projection of the annual filing rate using past population-case filing ratios and population projections.

It is anticipated that in 1970 there will be a filing rate of 679 and a cumulative backlog of 1,168; in 1975 there will be a filing rate of 809 and a cumulative backlog of 2,103; in 1980 there will be a filing rate of 940 and a cumulative backlog of 3,792.

The Problem

When the anticipated case load is compared with court capability, the staggering, cumulative backlog which will develop is obvious. Stated briefly, the seven-man Supreme Court responsible for all appellate review cannot hope to keep abreast of the appeals being generated by a growing population and economy. The court, already with a delay of approximately two years, is losing ground rapidly and by 1980 it is conservatively anticipated that it will require more than six years for a case on the civil docket to be finally decided. Without reform of some type to ease the increasing backlog and delay, the right of appellate review in civil cases may become virtually nonexistent in a decade or so. Therefore, it is evident that a solution designed to alleviate the increasing case load of the Supreme Court should be implemented, and that such a solution should be sufficiently flexible to serve both present and future needs.

Alternative Solutions

The problem of appellate court congestion and delay is not limited to the Colorado judiciary but has existed and exists presently in varying degrees in most of the judicial systems in the United States. The committee found that there are numerous ways to reduce appellate court congestion, many of which have been tried elsewhere in the United States, and some of which have been utilized in Colorado.

The committee considered and examined these various alternative solutions, both in light of the experience of other states with such solutions and in relation to the application of such solutions to Colorado. These alternative solutions include: (1) increase the number of Supreme Court judges from seven to

nine; (2) more extensive use of retired and outside judges; (3) some limitations on the right of appeal; (4) a Supreme Court Commissioner plan; (5) improvement in the internal efficiency of the Supreme Court; (6) creation of a separate Criminal Court of Appeals; and (7) the creation of an intermediate Court of Appeals.

The idea of increasing the number of Supreme Court justices from seven to nine was rejected by the committee. It is believed by the committee that a nine-member court would be too unwieldy and would not increase the court's production appreciably, because each member would be required to review the opinions of eight other justices instead of six as at present. The extra time involved in such a review would probably offset or at least minimize the increase in the number of written opinions which might be expected from the addition of two justices. Furthermore, an increase in the size of the court would provoke more discussion, disagreement and diversity, thus causing a substantial reduction in net gain of judicial time.

If the court were increased to nine members and coupled with the practice of sitting in three-man departments, the likelihood of conflicting opinions from the different departments would exist. Because it was felt by the committee that increasing the court to nine members would provide an excessive and unwieldy number, in addition to the concern that dividing the court into three-man departments would produce conflicting opinions, this solution appeared to the committee to be impractical and probably ineffective as a long term solution.

The committee also concluded that the use of outside judges or commissioners to assist the court was not a satisfactory long term solution. The main criticism of this plan is that the use of commissioners or other outside help is not really that beneficial to the court. Persons who are called to assist the court are just not as precise and clear with respect to opinion writing as are the regular justices who are responsible for their opinions and who are familiar with opinion writing techniques. The most important challenge which may be leveled at this plan is that litigants are entitled to a decision in a case made by judges, not by assistants of the court. If the court is to be expanded by providing for additional personnel, there is no reason why they should not be full fledged justices, rather than a judge in fact but not in name. The same arguments militating against the addition of more judges to the Supreme Court apply to the employment of commissioners or other outside assistance. The use of outside judges or commissioners to assist the court is simply not facing the need for a permanent solution. They are what their name implies, a temporary expedient. The committee concluded that the need is for a more permanent solution to the problem which is no longer viewed as a temporary condition.

The idea of changing the system of appellate review or restricting the right of appeal to the Supreme Court in order to curtail the number of cases filed was also considered by the committee. However, the committee ruled out serious consideration of devices designed to reduce appellate congestion which would preclude in all or some instances one's absolute right to an appeal in every case. The committee believes that every litigant should be entitled to at least one appeal as a matter of right in every case.

Other solutions to the backlog problem were considered by the committee. These proposals were mainly concerned with improving the internal efficiency of the Colorado Supreme Court. The committee gave consideration to several of these proposals, including (1) the use of memorandum opinions, (2) doing away with oral argument in some instances, (3) not granting extensions of time, and (4) providing for more assistants.

The committee generally concluded that the Supreme Court is already using the memorandum opinion or the per curiam system wherever it thinks it possible to do so. At the present rate of filing, even more extensive use of the memorandum opinion is not likely to be effective in reducing substantially the backlog of cases. Therefore, the committee determined that this method could not be an effective long term solution. With respect to the suggestion that the court abandon the practice of hearing oral argument, at least in some cases, the committee believes that the hearing of oral argument is very important and valuable to the individual justices and that the practice should not be abolished.

In regard to the granting of extensions of time by the court, the committee recognized that there is no reason why the court should not grant extensions of time given the present delay in the Supreme Court. Nothing would be gained by not granting extensions of time. It is believed that if other things could be done to expedite the process of cases through the court, any problems with respect to the granting of extensions will work itself out. With respect to the idea of using more assistants, it is believed by the committee that the employment of additional law clerks for justices of the Supreme Court would not bear appreciably on the workload of the justices. Assistants could not help out in many of the time-consuming tasks such as reading briefs, hearing arguments, and attending conferences.

The committee generally concluded that the present case load appears to be well beyond what even the most efficient court can reasonably be expected to handle with the present number of personnel. Thus, even if there should be an increase in the internal operating efficiency of the court, it would not furnish a complete solution to the existing problem.

The committee also considered a proposal to create a separate Court of Criminal Appeals. A Court of Criminal Appeals could be established by any one of the following three alternative methods: 1) a Court of Criminal Appeals with final jurisdiction; 2) an intermediate appellate Court of Criminal Appeals with further appeal to the Supreme Court; and 3) an increase in the size of the Supreme Court and establishment of a Criminal Appeals Department.

The major objection to the Court of Criminal Appeals approach is that the creation of such a court with final jurisdiction would require a constitutional amendment and would be inflexible, when the need is for a flexible system. Another objection is that the decisions of the Supreme Court and the Court of Criminal Appeals might conflict, and there would be no method of resolving differences of opinion. The committee generally concluded that two courts with final jurisdiction are undesirable.

An intermediate Court of Criminal Appeals, while avoiding the objections raised with respect to the establishment of a court with final jurisdiction, is subject to criticism because it would probably lead to double appeals in many instances. Thus, while there might be a considerable saving of judicial time, there would, at the same time, be a considerable waste.

Consideration of the two foregoing alternative approaches suggested another alternative approach wherein the Supreme Court could be increased in number, with provision that three members of the court, on assignment by the Chief Justice, sit as a Department of Criminal Appeals. This approach would require a constitutional amendment if the Supreme Court were increased to more than nine members. Thus, if more than nine members were necessary in order to establish the suggested plan, there would be a delay of two or more years before the system could be operative. The implementation of the plan with just nine members (thus obviating the necessity for a constitutional amendment) would probably not be effective in reducing the case load. On the other hand, it is argued that a Supreme Court with more than nine members will be too many. Because the delay inherent in obtaining voter approval of a constitutional amendment would create further delay, because the problem of the backlog is an immediate problem, and because the Court of Criminal Appeals approach is inflexible, the committee concluded that such a proposal was not desirable.

All of the measures utilized by the various states have been tried in an attempt to bring balance and a semblance of order to appellate procedure. Yet no one of these methods seems to be the panacea which will totally alleviate the court congestion problem. While all of these methods aid and assist in some degree in overcoming court congestion and delay, the committee

generally found that none are sufficient measures in themselves to be solely relied upon, with the exception of the proposal to create an intermediate Court of Appeals.

The committee found that many of those states which have used some of the measures mentioned above still experienced excessive case loads. As a result many of them turned to the intermediate appellate court system as a more permanent and long lasting solution to their court problems. There are currently 20 states which use one form or another of the intermediate appellate court system. The committee concluded that of all the alternative solutions considered, the creation of an intermediate Court of Appeals for Colorado offered the best solution to the Supreme Court backlog problem for now and for the foreseeable future.

Creation of Court of Appeals

The Committee on Appellate Courts recommends the creation of an intermediate appellate court, to be known as the Court of Appeals. In recommending such an intermediate court, the committee was guided by several fundamental principles which were thought to be controlling in the creation of such a new court. These guiding principles are as follows:

1. The committee, in its deliberations, abided by what seems to be an unvarying thesis: a litigant is entitled to at least one trial on the merits, and one appeal on the law, as a matter of right in every case. The principle that there should be no limitation on the right to at least one appeal in every case is the traditional principle of Anglo-Saxon and Colorado jurisprudence, and must be preserved.

2 As a corollary to the above principle, the committee believes that double appeals, as of right, are to be avoided. There is no object in having an intermediate court of appeals if litigants have an absolute right of appeal from the intermediate court to the Supreme Court. An absolute right of appeal, as a practical matter, would mean two appeals instead of one. Instead of dispatch such a system would breed further delay. American concepts of justice do not require more than one appeal. Therefore, it is essential that an appeal from the intermediate court to the Supreme Court be allowed only at the discretion of the Supreme Court.

3. The Supreme Court must remain the court entrusted with final decision in all cases. However, in order to ease the burden on the Supreme Court, certain cases must be left to the determination of the intermediate court, subject to further review at the discretion of the Supreme Court. A strictly limited category of cases should have direct access to the Supreme Court.

Again, the committee believes that the Supreme Court should be afforded sufficient time to study thoroughly the cases presented to them so as to maintain high quality in their work and to develop those matters of major significance to the state as a whole.

4. Subject to the principle that matters of major importance should always have access to the Supreme Court, a fair and equitable division of labor must be maintained between the Supreme Court and the intermediate court, to the end that all cases on appeal are settled without unnecessary delay. To achieve this goal, jurisdictional allocation of cases between the two appellate courts is to be provided for, subject to the authority of the Supreme Court to adjust case loads equitably by exercising its discretion.

5. Any intermediate appellate court system should provide a considerable degree of flexibility so that the legislature can expand or reduce the court, and change the jurisdiction of the court as future experience deems necessary and desirable. This is necessary in order to readily resolve any problems that may arise in the future.

6. The intermediate appellate court should be operational as soon as practicable, the Supreme Court's need for relief being urgent.

A summary of the salient features of the committee's proposal and recommendation follows:

1. The jurisdiction of the Court of Appeals would be: (a) civil appeals from judgments of the district courts, superior courts, and probate court of the city and county of Denver, and the juvenile court of the city and county of Denver, except in specified cases; and (b) to review awards or actions of the Industrial Commission. All criminal cases tried initially in the district courts, writs of habeas corpus, cases in which the constitutionality of a statute, municipal charter provision or an ordinance is in question, cases concerned with decisions or actions of the Public Utilities Commission, water cases involving priorities or adjudications, and all original proceedings. All other cases not within the jurisdiction of the Supreme Court will continue to be within the jurisdiction of the Court of Appeals.

2. A petition for a writ of certiorari could be made to the Supreme Court in all cases decided on appeal by the Court of Appeals.

3. There would be six judges of the Court of Appeals, such judges to have the same qualifications as Justices of the Supreme Court, to be appointed for a term of eight years, and to

receive an annual salary equal to a sum halfway between the salaries of the district court judges and the Supreme Court justices.

4. The Court of Appeals would sit in two divisions of three judges each, both divisions to be located in the city and county of Denver; however, any division could have authority to sit in any county seat for the purpose of hearing oral argument in cases before the division.

5. The Supreme Court would be empowered, prior to final determination of any such case by the Court of Appeals, to order the case certified for final determination by the Supreme Court.

6. Opinions would be written by the judges of the Court of Appeals. The Supreme Court would by rule select opinions to be published, and such selected opinions would be published in Colorado Reports.

Organization of the Court of Appeals

Six judges. A few of the 20 states which have an intermediate court of appeals have only three or six judges; several of the most populous states have two dozen or more; the most common number is nine. Fourteen of the 20 states have more than six judges. Choosing the proper number of Court of Appeals judges was considered by the committee to be an important matter, because the committee wished to avoid providing for more judges than was absolutely necessary and at the same time wished to provide the number of judges necessary to do an adequate job.

This matter had to be considered in relation to the problem of the jurisdiction of the Court of Appeals -- the answer to each problem necessarily influencing the other. Any number less than six -- two divisions of three judges each -- was considered to be entirely insufficient if adequate relief for the Supreme Court was to be realized. Consideration was given to more than six judges, but the committee determined that the most prudent course would be to hold the membership at six until experience clearly demonstrates that a larger number is needed.

The committee thus recommends that the Court of Appeals have six judges, such judges to have the same qualifications as the Supreme Court justices. It is further recommended that the judges be appointed pursuant to section 20 of article VI of the Colorado Constitution for a term of eight years.

Salary of judges. In the 20 states which have an intermediate appellate court the salaries in 1968 ranged from a high of \$40,000 in New York to a low of \$16,500 in Oklahoma, with \$25,000 approximately the median state salary. In the 20 states, the intermediate court judges usually receive from \$1,000 to \$3,000 less in salary than do justices of the highest court.

The committee determined that the simplest and most equitable basis upon which to set the salaries of the judges of the Court of Appeals is to set them in relation to the salaries of the judges of the Supreme Court and district courts. Therefore, the committee recommends that the judges of the Court of Appeals be paid an amount per annum equal to the sum which is halfway between the salaries of the Supreme Court justices and the district court judges. In addition, the committee recommends that the Chief Judge of the Court of Appeals be paid an additional amount of \$500. Based on present judicial salaries, the judges of the Court of Appeals would receive \$20,000 annually pursuant to the committee recommendation. The Chief Judge of the Court of Appeals would receive \$20,500.

The present salary of the Chief Justice of the Colorado Supreme Court is \$22,500, and the associate justices now receive \$22,000 annually. The judges of the district courts presently receive an annual salary of \$18,000. In 1968, the national average salary for judges of the highest state courts and general trial courts was \$25,446 and \$21,560 respectively. The national median salary in 1968 for judges of the highest state courts and general trial courts was \$24,500 and \$21,000 respectively.

Court to sit in two divisions. The intermediate appellate courts of other states almost without exception sit in divisions (sometimes also called panels or parts) of three. In some states the membership of a division is fixed and unchanging; in other states the division membership is changed frequently, and each division is assigned business as it arises. In some states the divisions have state-wide jurisdiction and in other states the divisions sit over particular geographical areas of the state.

For Colorado, the committee recommends that appellate judges sit in the almost universally used grouping -- in divisions of three. With six judges, this means that there will be two divisions. The committee further recommends that the composition of the divisions be changed frequently so that each appellate judge sits, as nearly as may be, an equal number of times with every other appellate judge. This system of rotating division membership tends to prevent the growth of diverging bodies of case law among various divisions of fixed membership.

The committee favors assignment of appellate business to the various divisions without regard to its geographic origin within the state. No advantage is apparent in dividing the state into a number of geographic divisions, over each of which a division of the Court of Appeals would have exclusive control in appellate matters.

This does not mean that a division or divisions could not sit in various localities throughout the state. On the contrary, when facilities are available and the convenience of the public

and the litigants warrants it, the committee sees no reasons why divisions could not be scheduled to sit at a location or locations anywhere in the state. Initially, however, all divisions of the court should sit in Denver, and divisions should be scheduled to sit in other locations only after the desirability of such an arrangement, in terms of convenience and economy, has been clearly demonstrated.

Situs. As already indicated, the committee recommends that the two divisions of the Court of Appeals sit in Denver. The preeminent factor in determining the place where the Court of Appeals will sit is the availability of a complete law library. Because the Supreme Court Law Library is located in Denver, and because of the expense of establishing another law library elsewhere in the state, the committee concluded that the court should be located in Denver so as to have easy access to the Supreme Court Law Library.

Chief judge. The committee recommends that the Chief Justice of the Supreme Court designate one of the Court of Appeals judges to serve as the Chief Judge, to serve at his pleasure. The Chief Judge in turn should determine the composition of the various divisions of the Court of Appeals, have authority to transfer cases from one division to another to maintain equal case loads or for other appropriate reasons, and to exercise such other administrative powers as may be delegated to him by the Chief Justice.

Clerk and staff. The committee recommends that the Court of Appeals have its own clerk, deputy clerks, and such other assistants as may be necessary, to be appointed by the Court of Appeals subject to the rules and regulations of the Supreme Court. In addition, each judge of the Court of Appeals should have authority to appoint a law clerk and a secretary or stenographer to serve at his pleasure. All employees appointed by the court or by the judges would be paid such compensation as prescribed by the rules and regulations of the Supreme Court.

Jurisdiction of the Court of Appeals

One of the most fundamental questions associated with creating an intermediate Court of Appeals is that of jurisdiction. A soundly conceived jurisdictional arrangement is the key to a successful appellate court system. This became clear to the committee as it studied the great variety of appellate jurisdiction arrangements in other states, and became aware of the extremely wide range of similar arrangements which could be utilized in Colorado.

Review by Supreme Court. It must be understood that, in speaking of the jurisdiction of the Court of Appeals, we are

necessarily also dealing with the jurisdiction of the Supreme Court. Article VI, Section 2 (2) of the Colorado Constitution provides that "Appellate review by the supreme court of every final judgment of the district courts, the probate court of the city and county of Denver, and the juvenile court of the city and county of Denver shall be allowed, . . ." It is generally the opinion that this section can be interpreted in such a way that Supreme Court review to determine whether a case should be heard by the court on a writ of certiorari would be sufficient to satisfy the appellate review provision. Assuming this to be the case, it is possible to establish an intermediate Court of Appeals with specific statutory jurisdiction. Cases falling within the jurisdiction of the Court of Appeals could be taken up to the Supreme Court on a writ of certiorari. Cases falling outside of the statutory jurisdiction given the Court of Appeals would go from the trial court to the Supreme Court on writ of error.

Thus, the only constitutional limitations on the establishment of a Court of Appeals is that provision has to be made for review of the court's decisions by the Supreme Court. The committee recommends that the Supreme Court be given authority to review by writ of certiorari the decisions of the Court of Appeals. It is believed that this procedure will satisfy the requirements of the Constitution with respect to appellate review because it, in effect, allows the Supreme Court to decide finally essentially all cases litigated in the state.

Agreement on this aspect of the problem allowed the committee to approach its task essentially unfettered by any constitutional impediment to devising the best possible jurisdictional division between the Supreme Court and the Court of Appeals. The committee thus focused its attention on the problem of identifying the principles which should dictate the allocation of jurisdiction between the two courts, and to defining the proper functions of each of these courts in a proper system of appeals.

Division of Functions between Supreme Court and Court of Appeals. The committee believes that the functions of appellate courts are two-fold: First, they correct error committed at the trial level which is prejudicial to the litigant, i.e., they attempt to insure justice in the individual case. Second, they develop the jurisprudence of the state through their reported decisions, i.e., they serve the precedential function of the common law system by declaring, expanding, and clarifying the case law of the state.

These two functions of course are frequently carried on simultaneously. In many cases the general law is clarified or expanded in the very process of correcting trial court error in the individual case. However, there are many cases the determination of which at the appellate level cannot be said to have

any further effect than to correct error by pointing out failure of the trial court to make correct application of settled principles of law which are neither clarified, expanded, nor changed in the process. It is of course no less important to the litigant in the latter case than in the former that error be corrected. However, it is true that in the process the added dimension of a general development of the law of the state is not present. Obviously, those cases having this added dimension of general jurisprudential significance should be assigned to our highest court. As a corollary, those cases which, in great numbers, tend not to have this added dimension seem the natural basic material for the intermediate court.

In view of the fundamental principle that one appeal rather than two is the ideal, the committee agreed that these two different kinds of cases should be identified for what they are, and routed as speedily as possible to the appropriate court for appellate review. Double appeals ought to be avoided as much as possible. If the case has the added dimension of significance above described, waste of time and added expense results from having such a case heard in the first instance by the intermediate court. And if the case does not have this added measure of general significance, then only waste of time and added expense will result from allowing such a case to be subject to a second review by the highest court. This last statement of course assumes an intermediate court of first-rate competence which has the full respect of bench, bar and public. The committee has assumed this in all its deliberations and in its recommendation.

It is believed that such a basic allocation of primary functions, and hence of case load, would considerably reduce the burden of the Supreme Court, which now of necessity must handle both kinds of cases. This relief of case load alone would serve the primary legislative purpose in authorizing the creation of the Court of Appeals. But there is more than simply relief of the case burden in this idea. There is also allocation to the Supreme Court, as its primary case load, of precisely that type of case the very nature of which requires the greatest opportunity for deep, reflective and relatively unhurried consideration by our highest court.

Statutory division of jurisdiction. The next problem faced by the committee was to devise a system whereby in practice cases could be readily differentiated and routed to their appropriate courts. One way to attempt this is to lay down rigid statutory divisions of jurisdiction between the two courts based upon the subject matter content of cases. This assumes that the subject matter content of a case, "contract", "personal injury", "revenue", etc., is itself a likely indicator of whether the case has or has not this added dimension of general significance. Many states have used this means and the committee studied the statutes of these states and their experience. The clear impres-

sion gained was that such an approach is largely an ineffectual one.

In the first place, the subject matter content of a case is by no means a reliable guide to whether it has this added dimension of significance. The "landmark" case is just as likely to arise out of simple subject matter involving a small amount of money as it is to arise out of a complicated situation involving a fortune. Secondly, it was noted that in some states problems of jurisdictional interpretation have led to confusion and delay. The variety of subject matter categories utilized by different states and the lack of agreement among them as to a substantial common core of categories is perhaps the best indication that attempts to capture the general jurisprudential significance of a case by means of its subject matter content are essentially off the mark.

The committee concluded that this quality about a case can only be detected with predictable reliability after the case has taken shape in litigation -- and that consequently the detection must be left fundamentally to the highest court itself on a case-by-case basis. This approach is the central feature of the committee's jurisdictional proposal for the utilization of the two courts which is embodied in the draft bill. That proposal will now be summarized.

Committee proposal. With the exception of criminal cases tried initially in district courts, and other exceptions (later to be discussed), every case appealed from judgments of the district courts, superior courts, and probate court of the city and county of Denver, and the juvenile court of the city and county of Denver, are to be initially appealed directly to the Court of Appeals. So far as the Court of Appeals jurisdiction -- its power to decide these cases -- is concerned, it is fully empowered by the proposed bill to decide all cases so appealed. However, the Supreme Court is empowered, on its own motion prior to determination of any case by the Court of Appeals, to call the case up (certify it) for final determination by the Supreme Court. In addition, the Court of Appeals, prior to determination, may certify any case before it to the Supreme Court for its review and final determination. The Supreme Court is to consider such certification in a summary manner and may accept the case for final determination or may remand the case for determination by the Court of Appeals.

The proposed statute lays down specific criteria for the guidance of the Court of Appeals and the Supreme Court in determining whether to certify the case or whether to order the certification of the case before determination by the Court of Appeals. All but one of these criteria are designed to express the notion of general jurisprudential significance which, as indicated, provides the basis for the desired fundamental division

of labor between the two courts. Thus, the Court of Appeals is directed that it should ordinarily certify to the Supreme Court, for hearing and final determination, before determination by the Court of Appeals, all cases which appear to it to involve: (1) subject matter of significant public interest; or (2) legal principles of major significance to the state.

Additionally, the Court of Appeals is directed that it should certify cases to the Supreme Court when the case load of the Court of Appeals is such that the expeditious administration of justice requires certification. It should be noted at this point that a certification from the Court of Appeals to the Supreme Court under these provisions will not necessitate any further perfecting of his appeal by a litigant. His appeal is considered to have been perfected when either court has jurisdiction to decide it. When the case is certified to the Supreme Court prior to determination by the Court of Appeals, counsel for the parties simply present themselves for oral argument at the appointed place and time before the Supreme Court rather than the Court of Appeals.

The above arrangement for appeals is the basic one in the committee's proposal. It is believed that the discretionary and flexible aspects of the arrangement are the best means to accomplish the desired ends. However, believing that certain categories of cases require special attention, a limited number of variations to the basic proposal is recommended wherein cases are appealed directly to the Supreme Court, bypassing the Court of Appeals.

Criminal cases. The most important variation concerns criminal cases. Under the proposal, all criminal cases tried initially in district courts would be appealable as of right directly to the Supreme Court. To provide for direct, by-pass appeal in criminal cases thus departs from the basic principle of the over-all proposal because it is obvious that not all such cases would qualify for review by the Supreme Court under the principle of general jurisprudential significance. However, the reason for this exception seems obvious.

It is thought that having criminal cases go to the Court of Appeals would not result in a decision of sufficient finality to permit review by the federal courts under recent U.S. Supreme Court decisions. It is believed that any decision of the Court of Appeals, were it to have jurisdiction of criminal cases, would have to be reviewed by the Supreme Court before federal jurisdiction could be obtained for further review. In addition, many of the current criminal cases involve many constitutional issues. In this respect, the Supreme Court would undoubtedly review the decisions of the Court of Appeals by certiorari. Because of this likelihood of double appeals if the intermediate court were to have jurisdiction of criminal cases, it was recommended that the Supreme Court have jurisdiction over all criminal cases. This will avoid double appeals.

Other cases appealed directly to Supreme Court. The second variation from the basic arrangement involves provisions for direct appeal to the Supreme Court in a limited category of cases. These are cases: (1) in which the constitutionality of a statute, municipal charter, or an ordinance is in question; (2) concerned with decisions or actions of the Colorado Public Utilities Commission; (3) involving water priorities and adjudications; and (4) all cases appealed from the county courts to the district courts or superior courts.

All but the last of these classes of cases is thought so typically demanding of final adjudication by the Supreme Court that the discretionary pattern of routing is varied in favor of direct appeal to the Supreme Court. The reasons are different for each. Cases involving a constitutional question with respect to a statute, charter, or ordinance will invariably be of major public significance which is the key to discretionary review. For this reason they would ordinarily be certified to the Supreme Court prior to review in the Court of Appeals. Rather than have these few cases go to the Court of Appeals initially and then certified to the Supreme Court, it was thought desirable to allow appeal directly to the Supreme Court.

The special quality about the Public Utilities Commission cases, aside from the almost invariable general state-wide significance they will have, is the fact that the litigants in such cases usually exhaust all possible remedies. Thus it can be anticipated that the litigants would apply to the Supreme Court for a writ of certiorari in most cases, were the Court of Appeals to have initial jurisdiction of such cases. To avoid this likelihood of double appeals, it was thought desirable to allow appeal directly to the Supreme Court. Similar reasoning was likewise applied to cases involving water priorities and adjudications.

County court appeals. County court cases, both civil and criminal, are presently appealed to the district courts or superior courts for review, with further review possible upon writ of certiorari to the Supreme Court. The committee considered a suggestion that the present county court appellate procedure be changed so that these appeals initially go to the Court of Appeals, thus by-passing the district courts. This proposal would have added approximately 220 cases to the docket of the Court of Appeals. This proposal was rejected however because it would have required nine judges on the Court of Appeals to handle the increased case load. In addition, county court appeals have not yet become a burden on district courts. By handling these appeals in the same way as now provided, litigants would not be discouraged from taking appeals in minor cases because of a possible increase in the cost of perfecting the appeal. Also, the possibility of the Court of Appeal's docket becoming clogged with relatively minor matters would be avoided. Thus, the committee concluded that these appeals should continue to go to the district courts, rather than to the Court of Appeals. Appeals from

the district court judgments in these cases would continue to be to the Supreme Court on writ of certiorari.

Review of workmen's compensation, unemployment compensation cases. At present, judicial review of the decisions of the Industrial Commission with respect to workmen's compensation and unemployment compensation is initially undertaken by the district courts. The committee concluded that judicial review of these decisions should be undertaken by the Court of Appeals because of the importance of the subject matter and the need for early decision. By taking the workmen's and unemployment compensation cases directly to the Court of Appeals, two things would be accomplished. First, a certain degree of finality would be accomplished and, second, the district courts would be relieved of the responsibility for reviewing these decisions. In addition, the number of steps necessary to obtain final judgment in such a case would be cut down in most instances. The committee believes this is desirable since the policy of the law in this area should be to afford the claimant relief as soon as possible.

All other agency or administrative review cases would continue to be taken to the district courts, with appeal lying to the Court of Appeals, except in P.U.C. cases which are to be appealed directly to the Supreme Court. Other administrative review cases involve such things as review of liquor license issuance or denial, zoning orders, etc. In these cases, the district courts are usually familiar with the area and environment involved. In addition, local philosophy is often involved in these cases with which a district court would be more familiar than an intermediate court. On the other hand, workmen's compensation and unemployment compensation cases usually involve general propositions of law without the presence of any local factors. These cases can easily be handled by the intermediate courts.

Administrative review cases appealed from the decisions or orders of state licensing boards or departments will continue to be within the jurisdiction of the district courts. The committee found that there are very few of these cases, most of which are taken to the Denver District Court, and considered it best to leave these cases within the jurisdiction of the district courts, with the exception of P.U.C. cases.

Transfer of cases. One final variation from the basic arrangement of the committee proposal is important. It proceeds upon a different principle than that of insuring a basically functional division of the total appellate case load between the two appellate courts. It is obvious that such a functional division of the case load will decrease the present case load of the Supreme Court. This is desirable, and is one of the most important goals of the proposal. However, there is the possibility that from time to time under the basic arrangement for routing cases here proposed, the case load of the Court of Ap-

peals may become burdensome at a time when that of the Supreme Court is relatively light. In such a situation, there should be an opportunity for the Supreme Court, acting as a load balancer, to relieve the Court of Appeals by taking a certain number of cases in process of appeal without regard to their general jurisprudential significance.

Provision for such a procedure is made in the committee's proposal by directing that the Court of Appeals certify cases to the Supreme Court when the case load of the Court of Appeals is such that the expeditious administration of justice requires certification. Likewise, the Supreme Court may order the Court of Appeals to certify any case before it to the Supreme Court for final determination.

The committee's proposal necessarily imposes a heavy duty and responsibility on the Supreme Court. It must be alert and sensitive in fulfilling its duty of selecting for decision the "significant" type cases. It must also willingly assume the role, when circumstances dictate, as "load balancer." The tradition of our Supreme Court for hard work and a high sense of public duty is to the committee an ample guarantee of its effective administration of the proposed system of appeals.

Summary. To summarize the committee proposal: (1) all civil cases appealed from the district courts, and the probate court and the juvenile court of the city and county of Denver, are initially appealed directly to the Court of Appeals; (2) all criminal cases tried initially in the district courts; all writs of habeas corpus; cases in which the constitutionality of a statute, municipal charter provision, or an ordinance is in question; cases concerned with decisions or actions of the Public Utilities Commission; cases involving water priorities and adjudications; and all cases appealed from the county courts to the district courts or superior courts, are appealed directly to the Supreme Court; (3) while any case is pending on appeal to the Court of Appeals, it may be certified to the Supreme Court when (a) the subject matter of the appeal has significant public interest, (b) the case involves legal principles of major significance, or (c) the case load of the Court of Appeals is such that the expeditious administration of justice requires certification; (4) the Supreme Court may order the Court of Appeals to certify any case before the Court of Appeals to the Supreme Court for final consideration; (5) after any case is determined in the Court of Appeals, and within thirty days after a rehearing has been refused, any party in interest who is aggrieved by the judgment of the Court of Appeals may appeal by application to the Supreme Court for a writ of certiorari; (6) when a case is before the Court of Appeals and a party in interest alleges or the court concludes that it is properly within the jurisdiction of the Supreme Court, the Court of Appeals can refer the case to the Supreme Court and the Supreme Court's determination of the question of jurisdiction is to be conclusive; (7) any case within the jurisdiction of the

Court of Appeals which is filed erroneously in the Supreme Court shall be transferred to the Court of Appeals by the Supreme Court; (8) no case filed either in the Supreme Court or the Court of Appeals shall be dismissed for having been filed in the wrong court, but shall be transferred and considered properly filed in the court which the Supreme Court determines has jurisdiction.

Finally, several features of appellate review are retained in the proposal and should be emphasized. First, there is an absolute right of appeal in every case beyond the trial court level to one of the appellate courts. Second, double appeals are avoided except when the Supreme Court grants a petition for a writ of certiorari. Third, the Supreme Court has the power finally to determine any case tried in any court inferior to it, and the means of available to any litigant to seek invocation of that power in any case.

Estimated Case Load

As of January 1, 1970, it is estimated that the annual filing rate in the Colorado Supreme Court will be approximately 680 cases. The estimated backlog as of that date will be 950 cases, of which approximately 50 percent, or 475, will be at issue. Approximately 85 percent, or 400, of the cases at issue will be civil cases.

Assuming that: 1) all civil, mental health, juvenile, and probate cases will be taken to the Court of Appeals; and 2) initial judicial review of workmen's compensation and unemployment compensation cases will be in the Court of Appeals, the total estimated appellate cases which will be filed in 1970 is 780, and of these 780 cases, approximately 350 will be in the Supreme Court under the committee proposal:

All criminal and habeas corpus arising out of criminal ac- tions	135-150
Original proceedings	150
All cases attacking the consti- tutionality of a statute or ordinance; water cases concern- ing priorities or adjudications; P.U.C. cases (from district court); cases certified from Court of Appeals; granting of certiorari	<u>50-65</u>
Total	350

As 350 of these will be in the Supreme Court, it would leave a remainder of approximately 430 cases for the two Courts of Appeals divisions. It should be recognized, however, that the anticipated increase in the annual filing rate will probably require one and maybe two additional divisions during the next decade to keep up with the workload.

Space and Facility Needs

The Committee on Appellate Courts recognizes that adequate facilities and sufficient space is necessary to the proper conduct of judicial business. The lack of necessary space and facilities has been a problem for many years and is of considerable concern to the committee, as it has been to the Colorado Supreme Court and past legislative committees. The lack of adequate space for the Supreme Court and all of its adjuncts was recognized in 1967 by the Legislative Council Committee on Legislative Procedures, as follows:

The Judicial Administrator's Office is currently overcrowded, and, should a merit system for the courts be established, additional staff members will be needed. Accommodations for additional staff members will also have to be found should the General Assembly decide that the state will finance the court system of the state. To a lesser degree, the Legislative Auditor's Office, the Court Reporter, and the Clerk of the Court's Office are also in need of more space.^{2/}

The Legislative Council Committee on Legislative Procedures in 1967 thus proposed that the Legislative Reference Office be moved to the basement, along with the Legislative Council. Under this proposal the Court Administrator will move into the space vacated by the Legislative Reference Office. The Court Reporter will move from the second floor to the previous quarters of the Court Administrator, freeing some additional space on the second floor for the Clerk of the Supreme Court. As a result of the 1967 proposal some of the Supreme Court's present space needs will be met.

^{2/} Legislative Procedures in Colorado, Part II, Colorado Legislative Council Publication No. 128, December 1967, p. 19.

Existing space problems. Even though this proposal will be of temporary assistance and will alleviate the most immediate and pressing space needs of the Supreme Court agencies, the committee recognizes that there are other existing space problems which will not be solved by the 1967 proposal. Some of these problems were pointed out by the Chief Justice in his January, 1968, annual report:

Currently there is no office space available for the retired and active district judges called in to assist the Court in coping with the current backlog. Further, there is no separate office available for the Chief Justice's law clerk, and the Supreme Court conference room is less than adequate in size. . .^{3/}

In addition to these existing space problems, the committee recognizes that there are future space needs which will eventually have to be met. These future needs are discussed below.

Impact of state financial responsibility. The committee found that if the General Assembly decides in 1969 to assume full financial responsibility for the judicial system, the Court Administrator's Office will require approximately six additional staff members. While the new quarters for this office will be much more adequate than the present ones for a staff of seven, there appears to be no way to accommodate a staff of 13. In addition to the necessary increase in the Court Administrator's staff, if the proposal is adopted, the proposal also calls for the creation of a state-wide public defender system. It is estimated that 10-12 people will be needed to operate the central state office in charge of this function. Thus additional space will have to be found for this staff.

Intermediate court of appeals. All of the above space need problems exist aside from those which would result from the creation of an intermediate Court of Appeals, as recommended by the committee. The additional space requirements which would be imposed by the recommended Court of Appeals include:

1) office space generally equivalent to that now provided for Supreme Court Justices to house six judges, six law clerks, and six secretaries;

^{3/} The State of the Courts, Annual Report of the Chief Justice, O. Otto Moore, January, 1968, p. 33.

2) space to house the Court of Appeals clerk's office;
and

3) court room, robing room, conference room, and law library.

The creation of a Court of Appeals will thus require considerable space for the judges of such court, and for secretarial and clerical personnel. It appears impossible that these space needs can be met through provision of space in the Capitol Building. Thus the judges, their staff, the clerk's office, etc., would have to be located elsewhere. In addition, it would be very difficult, if not impossible, for the Court of Appeals to use the present Supreme Court chambers for oral argument. Even if schedule problems could be worked out so that both the Supreme Court and the Court of Appeals could temporarily use the Supreme Court chambers, it would be undesirable to separate the judges and their law clerks from the Supreme Court Law Library and from easy access to chambers.

Recommendation

The committee recognizes that the creation of an intermediate Court of Appeals will only accentuate, although to a considerable degree, the present space problems of the Supreme Court and its related offices and agencies. In addition to the understandably greater need for space by the General Assembly and its related agencies, so that it can conduct its business more expeditiously, there will be a need for more judicial staff space if the General Assembly assumes full financial responsibility for the judicial system. The committee finds that these other present and future needs cannot be met in the State Capitol Building. Therefore, the committee suggests that high priority consideration be given by the Legislative Council Committee on Legislative Procedures and by the General Assembly to a separate court building in the development of long-range capital construction plans.

A BILL FOR AN ACT

CREATING A COURT OF APPEALS, AND PROVIDING FOR THE JURISDICTION
THEREOF AND PROCEDURES IN CONNECTION THEREWITH.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Chapter 37, Colorado Revised Statutes 1963, as amended, is amended BY THE ADDITION OF A NEW ARTICLE 21, to read:

ARTICLE 21

COURT OF APPEALS

37-21-1. Establishment. There is hereby created the court of appeals, pursuant to section 1 of article VI of the state constitution. The court of appeals shall be a court of record.

37-21-2. Jurisdiction. (1) (a) Any provision of law to the contrary notwithstanding, the court of appeals shall have initial jurisdiction over appeals from final judgments of the district courts, superior courts, the probate court of the city and county of Denver, and the juvenile court of the city and county of Denver, except in:

(b) Criminal cases tried initially in district court;

(c) Cases in which the constitutionality of a statute, a municipal charter provision, or an ordinance is in question;

(d) Cases concerned with decisions or actions of the public utilities commission;

(e) Water cases involving priorities or adjudications;

(f) Writs of habeas corpus;

(g) Cases appealed from the county court to the district court or superior court, as provided in section 37-15-10, C.R.S. 1963;

(h) Summary proceedings initiated under chapter 49, C.R.S. 1963, as amended.

(2) The court of appeals shall have initial jurisdiction to review awards or actions of the industrial commission, as provided in article 14 of chapter 81 and article 5 of chapter 82, C.R.S. 1963.

(3) The court of appeals shall have authority to issue any writs, directives, orders, and mandates necessary to the determination of cases within its jurisdiction.

37-21-3. Number of judges - qualifications. (1) The number of judges of the court of appeals shall be six.

(2) Judges of the court of appeals shall have the same qualifications as justices of the Colorado supreme court.

37-21-4. Term of office - selection and compensation. (1) The term of office for a judge of the court of appeals shall be eight years.

(2) Judicial appointments to the court of appeals shall be made pursuant to Section 20 of article VI of the state constitution.

(3) Judges of the court of appeals shall receive an annual salary in an amount equal to the annual salary of a district judge plus one-half the difference between the annual salary of a district judge and the annual salary of a supreme court justice.

37-21-5. Chief judge. The chief justice of the supreme court shall appoint a judge of the court of appeals to serve as chief judge at the pleasure of the chief justice. The chief judge shall exercise such administrative powers as may be delegated to him by the chief justice.

37-21-6. Divisions. (1) The court of appeals shall sit in divisions of three judges each to hear and determine all matters

before the court.

(2) The chief judge, with the approval of the chief justice, shall assign judges to each division. Such assignments shall be changed from time to time as determined by the chief judge, with the approval of the chief justice.

(3) Cases shall be assigned to the divisions of the court of appeals in rotation according to the order in which they are filed with the clerk of the court of appeals or transferred by the supreme court, except that the chief judge shall have the authority to transfer cases from one division to another to maintain approximately equal caseloads or for any other appropriate reason.

37-21-7. Place of court. The court of appeals shall be located in the city and county of Denver, but any division of the court of appeals may sit in any county seat for the purpose of hearing oral argument in cases before the division.

37-21-8. Supreme court review. (1) Before application may be made for writ of certiorari, as provided in this section, application shall be made to the court of appeals for a rehearing as provided by supreme court rule.

(2) Within thirty days after a rehearing has been refused by the court of appeals, any party in interest who is aggrieved by the judgment of the court of appeals may appeal by application to the supreme court for a writ of certiorari.

(3) Procedures on writs of certiorari shall be as prescribed by rule of the supreme court.

37-21-9. Certification of cases to the supreme court.

(1) (a) The court of appeals, prior to final determination, may certify any case before it to the supreme court for its review and final determination, if the court of appeals finds:

(b) The subject matter of the appeal has significant public interest;

(c) The case involves legal principles of major significance; or

(d) The caseload of the court of appeals is such that the expeditious administration of justice requires certification.

(2) The supreme court shall consider such certification and may accept the case for final determination or remand it for determination by the court of appeals.

(3) The supreme court may order the court of appeals to certify any case before the court of appeals to the supreme court for final determination.

37-21-10. Determination of jurisdiction - transfer of cases.

(1) When a party in interest alleges, or the court is of the opinion, that a case before the court of appeals is not properly within the jurisdiction of the court of appeals, the court of appeals shall refer the case to the supreme court. The supreme court shall decide the question of jurisdiction in a summary manner, and its determination shall be conclusive.

(2) (a) Any case within the jurisdiction of the court of appeals which is filed erroneously in the supreme court shall be transferred to the court of appeals by the supreme court.

(b) Any case within the jurisdiction of the court of appeals which was filed in the supreme court prior to the effective date

of this article may be transferred to the court of appeals by the supreme court.

(3) No case filed either in the supreme court or the court of appeals shall be dismissed for having been filed in the wrong court, but shall be transferred and considered properly filed in the court which the supreme court determines has jurisdiction.

37-21-11. Employees - compensation. (1) Subject to the rules and regulations of the supreme court, the court of appeals shall appoint a clerk, deputy clerks, and such other assistants as may be necessary.

(2) Each judge of the court of appeals may appoint a law clerk who shall be learned in the law and one secretary or stenographer. The persons so employed may be discharged or removed at the pleasure of the judge employing them.

(3) All employees appointed under subsections (1) and (2) of this section shall be paid such compensation as shall be prescribed by the rules and regulations of the supreme court.

37-21-12. Fees of the clerk of court of appeals. (1) The fee schedule of the clerk of the court of appeals shall be as provided by supreme court rule.

(2) Fees received by the clerk of the court of appeals shall be deposited as provided in section 37-2-18, C.R.S. 1963, and used for the purpose specified in section 37-2-19, C.R.S. 1963.

37-21-13. Reporter - publication of decisions. (1) The reporter of decisions for the supreme court shall also be the reporter of decisions for the court of appeals.

(2) Those court of appeals opinions to be published in full shall be selected as prescribed by supreme court rule.

37-21-14. Expenses and compensation of judges, retired justices and judges. (1) When a district, probate, or juvenile judge renders service, pursuant to section 5(3) of article VI of the state constitution to assist the court of appeals in disposing of cases pending before it, he shall be reimbursed for his actual and necessary personal maintenance expense while engaged in such duties outside of his county or district not to exceed twenty dollars per day together with mileage at the rate of eight cents for each mile actually and necessarily traveled in going to and from the hearing or conference.

(2) When a retired justice or district, probate, or juvenile judge renders service, pursuant to section 5(3) of article VI of the state constitution, to assist the court of appeals in disposing of cases pending before it, he shall receive remuneration as provided in said section of the state constitution, and shall be reimbursed for his actual and necessary personal maintenance expenses while attending oral argument and conferences, not to exceed twenty dollars per day together with mileage at the rate of eight cents per each mile actually and necessarily traveled in going to and from the hearing or conference.

SECTION 2. 37-1-7, Colorado Revised Statutes 1963, is amended to read:

37-1-7. Certified copy of record in supreme court or court of appeals. In all causes which have been removed to the supreme court of this state OR TO THE COURT OF APPEALS, a duly certified copy of the record of such cause remaining in the supreme court

OR THE COURT OF APPEALS may be filed in the court from which said cause was removed, on motion of any party, person or persons claiming to be interested therein, and the copy so filed shall have the same effect as the original record would have had if the same had not been lost or destroyed.

SECTION 3. 37-2-21, Colorado Revised Statutes 1963, is amended to read:

37-2-21. Supreme court and court of appeals opinions published. The opinions of the supreme court of the state of Colorado AND OF THE COURT OF APPEALS, shall be published in volumes of the size, as nearly as may be, ~~of volumes one, two, and three~~ AS PRESENT VOLUMES of THE Colorado reports, and containing not less than six hundred and fifty pages each.

SECTION 4. 37-2-22, Colorado Revised Statutes 1963, is amended to read:

37-2-22. Duty of reporter. It is hereby-made the duty of the reporter of the decisions of said court COURTS, within four months after a sufficient number of opinions to constitute a volume of the PRESCRIBED size aforesaid shall have been delivered to him, to compile and prepare the same for publication, together with such other proceedings of said supreme court as the justices thereof may designate for insertion in such volume, with syllabi, title pages, digest, and table of cases reported.

SECTION 5. 37-2-23, Colorado Revised Statutes 1963, is amended to read:

37-2-23. Publication of reports. (1) The chief justice and reporter of the supreme court are responsible for the

publication of the reports of the supreme court, and any republishing or reproduction of said reports and the EARLIER reports of the court of appeals. The specifications, contracts, and sales pertaining to all such reports shall be handled in accordance with the provisions of ARTICLE 2 of chapter 109, ~~article-2~~; C.R.S. 1963, AS AMENDED.

(2) WHENEVER ANY LAW OF THIS STATE REFERS TO THE REPORTS OF THE SUPREME COURT OF THE STATE OF COLORADO, SAID LAW SHALL BE CONSTRUED AS REFERRING TO THE REPORTS IN WHICH ARE ALSO CONTAINED THE REPORTED OPINIONS OF THE COURT OF APPEALS CREATED PURSUANT TO ARTICLE 21 OF THIS CHAPTER.

SECTION 6. 37-2-26, Colorado Revised Statutes 1963 (1965 Supp.), is REPEALED AND RE-ENACTED, WITH AMENDMENTS, to read:

37-2-26. Method for review. Appellate review by the supreme court of any action or proceeding of an inferior tribunal, whether such action or proceeding be civil, criminal, special, statutory, common law, or otherwise, shall be prescribed by rule of the supreme court, except as otherwise provided by law.

SECTION 7. 37-10-8, Colorado Revised Statutes 1963 (1965 Supp.), is amended to read:

37-10-8. Appellate review. Appellate review of final judgments of superior courts shall be by the supreme court OR BY THE COURT OF APPEALS in such cases and in such manner as may be prescribed by law, the Colorado rules of civil procedure, and the Colorado rules of criminal procedure for appellate review of final judgments of the district courts.

SECTION 8. 37-19-26, Colorado Revised Statutes 1963 (1967 Supp.), is REPEALED AND RE-ENACTED, WITH AMENDMENTS, to read:

37-19-26. Appellate review. Appellate review of any order, decree, or judgment may be taken to the supreme court or the court of appeals, as provided by law and the Colorado rules of civil procedure, except that an appeal taken pursuant to section 22-3-10, C.R.S. 1963, as amended, shall be as provided in the Colorado rules of criminal procedure. Initials shall appear on the record on appeal in place of the name of the child. Appeals from orders or decrees concerning legal custody, termination of parental rights, and adoptions shall be advanced upon the calendars of the supreme court and the court of appeals, and shall be decided at the earliest practicable time.

SECTION 9. 37-20-20, Colorado Revised Statutes 1963 (1965 Supp.), is amended to read:

37-20-20. Appeals. Appellate review of final judgments of the probate court shall be by the supreme court OR BY THE COURT OF APPEALS, AS PROVIDED BY LAW, and shall be conducted in the same manner as prescribed by the Colorado rules of civil procedure for review by the supreme court AND THE COURT OF APPEALS of final judgments of the district courts.

SECTION 10. 81-14-8, Colorado Revised Statutes 1963, is amended to read:

81-14-8. Review of order or award - parties. Any person in interest, including the state compensation insurance fund, being dissatisfied with any such finding, order, or award of the commission issued or promulgated by virtue of the authority conferred in this chapter, may commence an action in the ~~district-court-in-and-for-the-county-wherein-the-injury-was-sustained-or-in-the-district-court-in-and-for-the-city-and-county-of-Denver~~ COURT OF APPEALS

against the commission as defendant, to modify or vacate the same on-the-ground-herein-specified ANY SUCH FINDING, ORDER, OR AWARD ON THE GROUNDS SET FORTH IN SECTION 81-14-12. in-which-action-any adverse-party-shall-also-be-made-a-defendant. IN ANY SUCH ACTION AN ADVERSE PARTY SHALL ALSO BE MADE A DEFENDANT. provided;-that-said IF THE state compensation insurance fund has the consent of one or more of the members of said THE commission for-the-purpose-of-bringing-said-action TO COMMENCE SUCH AN ACTION IN THE COURT OF APPEALS, in-which-case THEN the state compensation insurance fund, by that name and title, may commence and prosecute, acting through its manager, such suit to modify or vacate the finding, order, or award of the commission, and shall be authorized to employ an attorney to represent such THE state compensation insurance fund. in-such-litigation.

SECTION 11. 81-14-9, Colorado Revised Statutes 1963, is amended to read:

81-14-9. Precedence of action. All such actions shall have precedence over any civil cause of a different nature pending in such court, and the district court OF APPEALS shall always be deemed open for the trial thereof, and the same SUCH ACTION shall be tried and determined by the district court OF APPEALS in THE manner as provided for other civil actions.

SECTION 12. 81-14-10(2), Colorado Revised Statutes 1963, is amended to read:

81-14-10. Complaint - hearing - change of venue - records.
(2) The record of said commission so filed in said court shall be returned to said THE commission after the final disposition of-said case by the district court OF APPEALS or THE supreme court.

SECTION 13. 81-14-15, Colorado Revised Statutes 1963, is amended to read:

81-14-15. Court record transmitted to commission - when. It shall be the duty of the clerk of the ~~district~~ court OF APPEALS, without order of court or application of the commission, to transmit the record in any case to the commission, within twenty-five days after the order or judgment of the court unless in the meantime, ~~a write of error addressed to the district court shall be obtained from the supreme court for the reviewing of such order or judgment~~ FURTHER APPELLATE REVIEW IS GRANTED BY THE SUPREME COURT. ~~In that event, he shall so return it~~ IF THE SUPREME COURT GRANTS FURTHER APPELLATE REVIEW, THE CLERK SHALL RETURN THE RECORD upon receipt of remittitur from the supreme court, unless the order of the supreme court requires further action by the ~~district~~ court OF APPEALS, and then within twenty-five days after such further action.

SECTION 14. 81-14-7, Colorado Revised Statutes 1963, is REPEALED AND RE-ENACTED, WITH AMENDMENTS, to read:

81-14-17. Summary review by supreme court. If the supreme court reviews the judgment of the court of appeals, such review shall be limited to a summary review of questions of law. Any such action shall be advanced upon the calendar of the supreme court, and a final decision shall be rendered within sixty days after the date the supreme court grants further appellate review. The commission or any other aggrieved party shall not be required to file any undertaking or other security upon review by the supreme court.

SECTION 15. 82-5-11, Colorado Revised Statutes 1963, is amended to read:

82-5-11. Court review. Such action, proceeding, or suit must be commenced within twenty days after the final findings or decision of the commission, and any party aggrieved thereby may secure judicial review thereof by commencing an action in the ~~district court OF APPEALS where-the-claim-for-benefits-was-filed; or-in-the-city-and-county-of-Denver~~ for the review of the commission's findings or decision in the same manner as reviews are now provided by law in workmen's compensation cases. The commission, in its discretion, may also certify to such court questions of law involved in any decisions by it. In any judicial proceeding under sections 82-5-1 to 82-5-11, the findings of the commission as to the facts, if supported by substantial evidence and in absence of fraud, shall be conclusive. Such actions, and the questions so certified shall be heard in a summary manner and shall be given precedence over all other civil cases except cases arising under the workmen's compensation laws of this state. ~~Writs-of error-may-be-taken-to-the-supreme-court-from-the-decision-of-a--district-court-reviewing-any-such-proceedings-in-the-same-manner as-now-provided-by-law-in-workmen's-compensation-cases:~~ IF THE SUPREME COURT REVIEWS THE JUDGMENT OF THE COURT OF APPEALS, SUCH REVIEW SHALL BE LIMITED TO A SUMMARY REVIEW OF QUESTIONS OF LAW. ANY SUCH ACTION SHALL BE ADVANCED UPON THE CALENDAR OF THE SUPREME COURT, AND A FINAL DECISION SHALL BE RENDERED WITHIN SIXTY DAYS AFTER THE SUPREME COURT GRANTS FURTHER APPELLATE REVIEW.

SECTION 16. Severability clause. If any provision of this act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions

or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

SECTION 17. Effective date. This act shall take effect January 1, 1970.

SECTION 18. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

SUPREME COURT BACKLOG PROBLEM

Introduction

Colorado has long been recognized as a leader among the several states in the administration of justice. Colorado's judicial system has achieved national recognition as one of the most progressive as a consequence of the adoption of two judicial reform constitutional amendments, Amendment No. 1 in 1962 and Amendment No. 3 in 1966, and their implementation by law.^{1/} In addition to the extensive constitutional modification, legislation designed to modify and improve the judicial system has been adopted with increasing frequency over the past decade.

The stature of Colorado as a progressive leader in judicial reform is primarily the result of continuous study of the various phases of court organization and procedure by various interested groups and legislative committees. These studies have achieved many positive results and served to focus attention on judicial problems, even though many of the recommendations made were rejected or deferred for further study.^{2/}

One of the problems which has received considerable attention in past studies is the problem of the backlog of cases in the Supreme Court due to the continued increase in the annual filing rate. Several solutions to the problem have been proposed and adopted, i.e., the employment of law clerks for research assistance; the use of oral argument in all cases; and the use of district and retired Supreme Court judges to assist in opinion writing.^{3/} Several other solutions have been proposed and rejected or deferred for further study, i.e., the establishment of an intermediate appellate court; the submission of fewer cases on oral argument; and changes in the prevailing method of appellate review.^{4/}

- ^{1/} Shannon, Judicial Reform for Colorado Courts of Special Jurisdiction, 50 Judicature 16 (June-July 1966); Clark, Colorado at the Judicial Crossroads, 50 Judicature 118 (December 1966).
- ^{2/} Judicial Administration in Colorado, Colorado Legislative Council, Research Publication No. 49, p. 34 (December 1960).
- ^{3/} Doyle, The Battle of the Backlog in the Supreme Court, 33 Rocky Mountain Law Review 489 (June 1961) (Symposium on the Judicial Administration in Colorado).
- ^{4/} Id. at 496.

Despite these proposals, the backlog of cases continues to exist and a further increase can be expected in the future.^{5/} In light of this problem, the General Assembly expressed its interest in continued study by the introduction of Senate Joint Resolution No. 12. The content of this resolution (S.J.R. No. 12) was adopted in House Joint Resolution No. 1026. Pursuant to House Joint Resolution No. 1026, Forty-sixth General Assembly (1968), the Legislative Council was directed to appoint a committee to make a thorough study of appellate case load problems and possible solutions, including, but not limited to the following; (1) the creation of an intermediate court of appeals, (2) more extensive use of outside and retired judges, (3) changes in the prevailing method of appellate review, and (4) improvement in the physical facilities of the Supreme Court.

The mission of the Committee on Appellate Courts was thus to take cognizance of the backlog problem in the Supreme Court of Colorado and attempt to arrive at a workable and politically feasible solution to the problem.

A Look at the Backlog Problem

Cases filed. In 1950, 218 cases were filed in the Supreme Court. This annual filing rate almost doubled by 1959 when 407 cases were filed. In 1967, the number of cases filed reached an all-time high of 639. The 639 cases filed in 1967 was 83 (or 15 percent) more than the previous high of 556 in 1966. More than twice as many cases were filed in 1967 as in 1955. These figures demonstrate that the Supreme Court's annual intake has increased steadily during the past 17 years.^{6/} (See Table I.)

In 1950, 167 cases were pending before the court. The number of pending cases more than tripled by 1960 when there were 548. Of course, a large proportion of pending cases are not at issue (ready for final disposition); however, the proportion of pending cases at issue has increased steadily. For example, in 1956 there were 90 of the 201 cases pending which were at issue, or 45 percent.^{7/} In 1960, there were 318 of the 548 pending cases at issue, or 58 percent.^{8/} In 1967, there were 521 of the

^{5/} The State of the Courts, Annual Report of the Chief Justice of the Colorado Supreme Court (1968) (Submitted to the General Assembly pursuant to 37-11-2 (3), C.R.S. 1963, as amended).

^{6/} Id. at p. 5.

^{7/} Judicial Administration in Colorado, Colorado Legislative Council, Research Publication No. 49, p. 98 (Dec. 1960).

^{8/} Ibid.

TABLE I

Cases Before the Colorado Supreme Court
1950 Through 1967

<u>Year</u>	<u>Cases Pending Jan. 1</u>	<u>Cases Filed</u>	<u>Total</u>	<u>Number of Written Opinions</u>	<u>Cases Closed</u>
1950	167	218	385	154	204
1951	181	188	---	131	---
1952	a	199	568 ^a	138	399
1953	169	330	499	175	284
1954	215	252	467	162	269
1955	198	287	485	184	284
1956	201	301	502	161	261
1957	241	345	586	197	230
1958	356	412	768	159	285
1959	483	407	890	250	342
1960	548	364	912	371	489
1961	423	420	843	355	524
1962	319	486	805	238	378
1963	427	505	932	255	424
1964	508	490	998	239	385
1965	613	550	1163	264	464
1966	699	556	1255	260	445
1967	810	639	1449	378	588
1968	861	---	---	---	---

a. 1951 and 1952 combined.

TABLE I
(continued)

The 861 cases pending at the end of 1967 consisted of the following:

Cases at Issue Awaiting Oral Argument	446
Cases Orally Argued Awaiting Opinion	39
Cases Submitted Without Oral Argument	15
Opinions Announced Awaiting Action on Rehearing	17
Cases Reopened	1
Cases Reopened and at Issue	2
Cases at Issue on Rehearing	1
Total Cases at Issue	521
Cases Not at Issue	340
Total Cases Pending	861

Source: Judicial Administration in Colorado, Colorado Legislative Council, Res. Pub. No. 49, p. 100 (Dec. 1960); and The State of the Courts, Annual Report of the Chief Justice of the Colorado Supreme Court, p. 5 (Jan. 1968).

861 pending cases at issue, or 60 percent.^{9/} Thus the proportion of cases at issue to the total number of cases pending has increased from 45 percent in 1950 to 60 percent in 1967.

In addition, the number of original proceedings has also increased. In 1955, only 12 original proceedings were filed in the Supreme Court. By 1965, the number of original proceedings filed in the Court had grown to 131. This factor is especially significant because study and action on these proceedings often takes as much or more time than the usual appellate cases.^{10/}

Case dispositions. The Colorado Supreme Court disposed of more cases, 588 in 1967, than in any previous year in the court's history. At the same time, however, the court's intake of 639 cases filed was also the highest in the court's history. Of the 588 cases that were closed, 378 of these were by written opinion. The previous high for cases closed was 524 in 1961, and the five-year average, 1962 through 1966, was 419. The previous high for written opinions was 371 in 1960, and the five-year average, 1962 through 1966, was 251.^{11/} The number of cases closed has been less than the filing rate in each of the years from 1950 through 1967, with the exception of the years 1954, 1960 and 1961, when cases closed exceeded those cases filed. (See Table I.)

Several reasons are attributable to the court's significant increase in case dispositions in the years 1960 and 1961. First, all judges for the first time employed law clerks for research and analysis assignments. Appropriations for this purpose were made in 1959.^{12/} Second, the court required oral argument in all matters except those waived by the court. In this way the aid of counsel was obtained in the pinpointing of issues and authorities.^{13/} Third, in early 1960 the court began calling selected district court judges, county court judges and retired Supreme Court judges to assist it in opinion writing. Senate Bill No. 28 of the 1960 General Assembly authorized the court to pay expenses and supplemental remuneration to visiting judges who perform these services. The visiting judges hear oral argument, confer with the court without voice or vote and prepare opinions in line with the tentative decision of the court. The court then reviews, modifies as necessary, and approves these opinions as per curiam decisions of the court.^{14/}

^{9/} The State of the Courts, op. cit. supra note 5, at p. 6.

^{10/} Id. at p. 4.

^{11/} Ibid.

^{12/} Judicial Business of Colorado Courts, Annual Report of the Judicial Administrator, p. 11 (1959).

^{13/} Ibid.

^{14/} Ibid.

In 1960 and 1961, approximately 70 opinions were written by outside judges. One retired Supreme Court judge, 24 district judges, and four county court judges assisted the court in 1960.^{15/} This explains why the number of written opinions in 1960 was high.

During 1967, four retired judges and four active district judges were assigned to assist the Supreme Court pursuant to Article VI, Section 5 of the Colorado Constitution. These assignments resulted in 20 written opinions. This assistance was of considerable help to the court in achieving its record productivity in 1967.^{16/}

Other considerations. To be considered also are the other matters which take up a sizable portion of the court's time, because the growing volume of work in the court is not reflected entirely by case filings and dispositions and the number of written opinions. These other matters are requests for extensions of time, motions to dismiss, and similar paper work -- all of which have to be received, examined, stamped, listed and studied and then orders issued and the papers filed, microfilmed, and stored.^{17/}

In 1966, the Supreme Court received 1,668 requests for extensions of time and 1,476 other motions of various kinds for a total of 3,144 items. As statistics were not kept on these matters prior to 1965, a comparison must necessarily be limited; however, the increase of 1,198 or 53.7 percent over the 1965 total of 2,046 illustrates the increased activity in this area. It also demonstrates that delay begets delay, because it appears that the more cases that are not disposed of, the more requests that are made to the court for extensions of time and the more motions that are filed to dismiss. It should be noted that these totals do not include orders transferring trial judges and other administrative actions taken through the office of the Judicial Administrator.^{18/}

It should also be remembered that in the last 15 years the state has nearly doubled the number of trial court judges. This increase in trial court judges has resulted in an increase in the number of dispositions at the trial court level. This increase, in turn, has resulted in an increase in the number of cases coming to the Supreme Court. In the meantime, the Supreme

^{15/} Judicial Administration in Colorado, op. cit. supra note 7.

^{16/} The State of the Courts, Annual Report of the Chief Justice of the Colorado Supreme Court, p. 6 (Jan. 1968).

^{17/} Ibid.

^{18/} Ibid.

Court has had to do an adequate job with the same personnel and structure which existed in 1905. As is readily apparent from a look at the figures in Table I, the court has not been able to keep up with the number of cases filed, thus creating a backlog.

Considerations relevant to written opinions. Even if the number of written opinions and case dispositions continue at the all-time high rate set in 1967, it does not appear that the court will be able to reduce the backlog substantially in the foreseeable future. In this regard it is appropriate to ask how many cases a seven man appellate court can be expected to dispose of annually by written opinions consistent with the time needed to give proper consideration to important matters and consistent with the development of good case law. Various opinions have been expressed on this subject, but generally an average of 50 cases per judge is probably the maximum, and 35 to 40 cases is considered a more satisfactory total. This means that the court can be expected under the best of circumstances to dispose of a maximum of 350 cases in any one year by written opinion, and the total is more likely to fall between 225 and 275.^{19/}

The written opinions per judge averages cited above are guide posts at best, because the number of written opinions in any given period will fluctuate considerably according to the type of case before the court. Many cases are relatively minor and may be disposed of in a short period of time. Others are extremely complicated and technical and may involve statutory and/or constitutional construction. During a period when a large proportion of the cases before the court fall in this latter category, the number of written opinions will naturally be fewer.

While productions expressed in the number of written opinions and cases closed is important, it is only one factor to be considered. Because of the important matters coming before the court and the effect of the court's decisions on Colorado law, there should be sufficient time for consideration of these matters and for each member to review carefully the opinions written by his colleagues. For this reason, the opinion has been expressed that only the most important cases should come before the Supreme Court, and the court should have the right to determine whether it wishes to review less important cases. Consistent with this point of view is the position that if only the most important cases are considered, then the average number of opinions written annually per judge should be from 25 to 30.

^{19/} This discussion and the following discussion is based upon a 1963 Legislative Council staff memorandum to the Legislative Council Committee on Amendment No. 1 on the subject of appellate procedure and the need for an intermediate court of appeals.

Dispositions without written opinion. Judging from the experience each year from 1960 through 1967, an annual average of 167 cases are closed without written opinions. Therefore the court may be expected to dispose of a total number of cases annually of 392 to 517 cases. As long as the filing rate continues to exceed this maximum, no reduction in the number of cases pending can be anticipated. In fact, the number of pending cases can be expected to increase.

Delay from issue to disposition. In 1960 the Legislative Council Committee on Judicial Administration conducted a docket analysis of cases filed in the Supreme Court in 1959 to determine the kind of cases and the origin of cases before the court. The analysis also sought to determine the delay in the court. It was demonstrated that the average delay between the time a case became at issue before the Supreme Court and was disposed of was 20 months. Half of the cases were disposed of more quickly and half took longer. At the time the analysis was made, September 1959, there were 311 pending cases at issue before the court. Of these cases, the earliest had come of issue in the third quarter of 1957. Only 21 cases, less than seven percent, were at issue prior to 1958, and almost half of the 311 cases became at issue in 1958.^{20/} This information is shown in Table II.

Time lag -- filing to issue. Another factor in the delay in disposition of cases before the Supreme Court is the length of time it takes for cases to be ready for trial (at issue). At the time the 1959 analysis was made, half of the cases took more than 5.2 months from filing to issue, with the average for all cases, 6.3 months. Forty-eight cases or 15.4 percent of the total took three months or less from filing to issue; 144 cases or 46.3 percent took from three to six months; 106 cases or 34 percent took from six to 12 months; and only 13 cases or 4.2 percent took more than one year. Of these latter 13, three cases took two years or more from filing until issue.^{21/}

When the delay from filing to issue is added to the time from issue to disposition, it shows that the average case disposed of by the Supreme Court by the end of 1959 had probably been filed 25 to 26 months previously.^{22/}

Present delay. The committee directed that a similar analysis be made of the Supreme Court docket in an attempt to disclose the present delay. An analysis was thus made of the

^{20/} Judicial Administration in Colorado, Colorado Legislative Council, Research Publication No. 49, p. 102 (Dec. 1960).

^{21/} Id. at p. 104

^{22/} Ibid.

Table II

Cases At Issue Pending Before the Colorado Supreme Court
By Type of Case, As of September 30, 1959

Type of Case	Time When Cases Became At Issue												1957- 1959 Total	Per Cent Of Cases At Issue
	1957				1958				1959					
	3rd Q	4th Q	Total	1st Q	2nd Q	3rd Q	4th Q	Total	1st Q	2nd Q	3rd Q	Total		
Personal Injury ^a	4	4	8	3	5	8	5	18	4	6	7	17	39	12.54%
Tort ^b	1	1	2	1	1	2	2	7	2	1	2	5	13	4.18
Money Demand		1	1	3	7	8	8	26	10	5	8	23	50	16.08
Contract				3	4	3	3	13	4	2	5	11	24	7.71
Municipal and Local Gov't. ^c	3	1	4	2	2	3	1	8	4	2	6	12	24	7.71
Water rights	1	2	3	2	1	2	1	6	1	2	2	3	12	3.86
State Agencies ^d				1	2	3	1	3	2	1	3	6	9	2.90
Property	1	1	2	3	5	1	3	12	3	3	4	10	23	7.40
Domestic Relations ^e	1	1	2	1	6	3	1	11	5	1	1	7	19	6.11
Probate				4	2	2	1	9	3	3	6	12	21	6.75
Other ^f	1	1	2	2	4	4	11	21	5	5	13	23	46	14.79
Not Shown ^g	1	3	4	7	7	1	2	17	5	2	3	10	31	9.97
TOTAL	7	14	21	32	46	35	38	151	46	33	58	139	311	100.00

- a. Includes auto.
- b. Other damages.
- c. All cases involving municipal, county, school districts and special districts.
- d. All cases involving the state of Colorado and its agencies.
- e. Includes divorce, separate maintenance, annulment, custody, dependency, etc.
- f. Includes the few criminal cases not disposed of.
- g. Not indicated in docket book.

Source: Judicial Administration in Colorado, Colorado Legislative Council, Research Publication No. 49 (Dec. 1960).

civil, criminal and workmen's compensation cases at issue and awaiting oral argument in the court as of June 1, 1968. This analysis determined the time lapse from the date a case becomes at issue until the date it is orally argued. The median time from issue date to oral argument is 10 months in civil cases, six months in criminal cases, and one month in workmen's compensation cases. This information is set forth in Tables III, IV, and V.

The committee also determined that the average length of time from the date a case is filed until it becomes at issue is approximately six to eight months. In other words, six to eight months precede the date the case becomes at issue. It was noted that the court often grants extensions of time within which the attorneys must file their briefs. All extensions of time, of course, increase the length of time from filing to issue date. The average length of time from oral argument to final decision is approximately two months. This means that there is a lapse of approximately 18 to 20 months from the filing date to the date of final disposition; some litigants now have to wait for a period of approximately two years before a final decision is reached in their case.

Table III

Workmen's Compensation Cases at Issue
Awaiting Oral Argument

Colorado Supreme Court,
As of June 1, 1968

<u>Time at Issue</u>	<u>No.</u>
6 mo.	1
5	
4	
3	1
2	
1	4
0	
Total	6
Median	1 mo.

Table IV
Criminal Cases at Issue Awaiting
Oral Argument

Colorado Supreme Court,
As of June 1, 1968

<u>Time at Issue</u>	<u>No.</u>	<u>Percent</u>
9 mo.	3	5.4%
8	10	17.9
7	9	16.1
6	6	10.7
5	6	10.7
4	5	8.9
3	4	7.1
2	4	7.1
1	6	10.7
0	3	5.4
Total	56	100.0%
Median	6 mo.	

Table V

Civil Cases at Issue Awaiting Oral Argument
Colorado Supreme Court, As of June 1, 1968

<u>Time at Issue</u>	<u>Total Civil Cases</u>		<u>Dom. Rel.</u> No.	<u>Personal Injury</u> No.	<u>Real Property</u> No.	<u>Agency and Local Govt.^a</u> No.	<u>Money Demand</u> No.	<u>Breach of Contract</u> No.	<u>Damages (Other)</u> No.	<u>Water Rights</u> No.	<u>All Other</u> No.
	No.	Pct.									
27 Months	1	.2%					1				
26											
25											
24											
23	2	.5					1		1		
22	8	2.1			1	1	2	1	2		1
21	13	3.4	1	3	2	2			2	1	2
20	14	3.7	1	6	2			1	2		2
19	11	2.9	3	2	1	3	2				
18	16	4.2	2	3	5	1	3		2		
17	10	2.6		1	2		3	1	1		2
16	26	6.8	1	6	1	1	4		5		8
15	20	5.3	1	6	3	2	2	1	5		
14	13	3.4		2	2	1	2	1	2		3
13	19	5.0	4	5	1		1	1	2		6
12	13	3.4	1	2		2	5		2	1	
11	8	2.1	2	1		2	2	2	1		
10	24	6.3	1	4		7	2	2	2		6
9	23	6.1	3	8		1	2	4	2		3
8	17	4.5		3	2	1	5	1	2		3
7	15	3.9	1	1	1	3	2	1	1	2	3
6	24	6.3	2	3		7	3	2	2	1	4
5	23	6.1	3	5	2	2	3		3	2	3
4	23	6.1	1	7	2	3	2	3		1	4
3	15	3.9	1	5					2		7
2	17	4.5	1	4	1	3	4	1			3
1	23	6.1	3	3	1	6	3			1	6
0	2	.5					1				1
Total	380	99.9%^b	32	80	29	48	52	22	41	9	67
Median	10 mo.		11 mo.	10 mo.	15 mo.	8 mo.	10 mo.	9 mo.	14 mo.	6 mo.	8 mo.

a. Does not include Workmen's Compensation.
b. Does not equal 100% because of rounding.

Comparison With Other States

That a serious backlog problem exists in the Colorado Supreme Court is demonstrated by the above data. It may be relevant at this point to ask how the record in Colorado compares with the record in other states. An analysis conducted by the Office of Judicial Administration shows that in 1967 the Colorado Supreme Court had one of the best records in the country, both in the number of cases closed and in the number of written opinions. Table VI shows the number of justices, appeals accepted, and the number of written opinions in 1967 for the 30 states which do not have an intermediate appellate court. Only Kentucky, with the equivalent of 11 justices, exceeded Colorado in the number of written opinions, and only Kentucky and Washington exceeded Colorado in the number of appeals accepted.

Table VI

States Without Intermediate Appellate Courts
Number of Justices, Appeals Accepted, and
Written Opinions in 1967*

<u>State</u>	<u>No. of Justices</u>	<u>Appeals Accepted</u>	<u>Written Opinions</u>	<u>Written Opinions Per Justice^a</u>
Alaska	5	105	61	12.2
Arkansas	7	342	350	50.0
COLORADO	<u>7</u>	<u>639</u>	<u>378</u>	<u>54.0</u>
Connecticut	6	141	127	25.4 ^b
Delaware	3	126	80	26.7
Hawaii	5	102	42	8.4
Idaho	5	190	96	19.2
Iowa	9	395	230	25.6
Kansas	7	312	234	33.4
Kentucky ^c	11	803	637	57.9
Maine	6	87	72	12.0
Massachusetts	7	320	232	33.1
Minnesota	7	430	245	35.0
Mississippi	9	367	267	29.7
Montana	5	172	105	21.0
Nebraska	7	321	257	36.7
Nevada	5	157	67	13.4
New Hampshire	5	124	95	19.0
North Dakota	5	102	96	19.2
Oregon	7	612	305	43.5
Rhode Island	5	244	182	36.4
South Carolina	5	143	143	28.6
South Dakota	5	105	45	9.0

Table VI (Continued)

<u>State</u>	<u>No. of Justices</u>	<u>Appeals Accepted</u>	<u>Written Opinions</u>	<u>Written Opinions Per Justice^a</u>
Utah	5	333	170	34.0
Vermont	5	137	70	14.0
Virginia	7	260	133	19.0
Washington	9	734	350	38.9
West Virginia	5	53	57	11.4
Wisconsin	7	347	275	39.3
Wyoming	4	75	71	17.8
MEAN	6	276	182	27.5
MEDIAN	5	217	130	26.2

*This table was taken from a memorandum "An Intermediate Appellate Court: A Proposal and Alternative," prepared at the request of the Legislative Council Committee on Appellate Courts, presented by the Colorado Supreme Court, Aug. 30, 1968.

- a. Computed for actual number of justices, even though several states (including Colorado) had some assistance from retired and trial court judges.
- b. Computed for five justices; the sixth justice has administrative duties only.
- c. Seven justices and four full-time commissioners.

SOURCE: Workload of State Courts of Last Resort - 1965-67, a compilation prepared for The Conference of Chief Justices, The Council of State Governments, Chicago, Illinois 1967.

A Look at the Future

Without reform of some type to ease the continuing backlog of cases in the Supreme Court, it is anticipated that by 1980 the backlog will be at almost 3,800 cases. The anticipated backlog by 1980 is based upon a projection of the annual filing rate using past population-case filing ratios and population projections. This projection was made by Mrs. Winifred Lewis, Judicial Department Statistical Analyst. The assumption was made that the court would close 550 cases per year, which means that the court would have to write approximately 325-335 opinions. This assumption is very optimistic, but even if the court could close an average of 550 cases per year, the backlog as of the end of 1980 is estimated at almost 3,800 cases. (See Table VII.)

The time lag between issue and oral argument in civil cases in 1980 is estimated at between 5 and 5.5 years. In other words, it would take more than six years from filing to termination for a case on the civil docket.

Table VII

Estimated Annual Number of Cases Filed and Backlog,
Colorado Supreme Court, 1968-1980*

<u>Year</u>	<u>New Cases Filed</u>	<u>Cases Closed</u>	<u>Yearly Remainder</u>	<u>Backlog</u>
				861 ^a
1968	626	550	76	937
1969	652	550	102	1039
1970	679	550	129	1168
1971	705	550	155	1223
1972	731	550	181	1404
1973	757	550	207	1611
1974	783	550	233	1844
1975	809	550	259	2103
1976	835	550	285	2388
1977	862	550	312	2700
1978	888	550	338	3038
1979	914	550	364	3402
1980	940	550	390	3792

a. As of December 31, 1967.

*This table was taken from a memorandum "An Intermediate Appellate Court: A Proposal and Alternative," prepared at the request of the Legislative Council Committee on Appellate Courts, presented by the Colorado Supreme Court, Aug. 30, 1968.

SUPREME COURT DOCKET ANALYSIS

Introduction

At the request of the committee, the Judicial Administrator, with the assistance and cooperation of the Legislative Council staff, was directed to conduct an analysis of the Supreme Court docket. The committee believed that such an analysis would be helpful in pointing toward what kind of action is necessary to solve the backlog problem. In terms of the possible creation of an intermediate court as a solution to the backlog problem, such an analysis was felt necessary in order to determine the size of the caseload that could be expected in such an intermediate court. It was felt that the analysis might also suggest several appropriate ways in which the intermediate court could be structured and organized. The analysis thus prepared was primarily concerned with the kinds of cases filed in the Colorado Supreme Court and the origin of these cases.

Period covered and data base. Cases filed in the Supreme Court in 1966 and 1967 were used as the data base for the analysis, regardless of the current status or prior disposition of those cases. It was felt that an examination of cases filed would provide a more accurate analysis of the types and origin of cases than would pending cases, because the composition of the latter is affected by the advancement of certain kinds of cases on the docket (e.g., criminal and workmen's compensation). Original proceedings, including disciplinary actions, filed in 1966 and 1967 were excluded, leaving 922 cases during the two-year period which were brought on writ of error or in three instances (county court cases) by writ of certiorari.^{23/}

Origin of Cases Filed

The origin of cases filed in the Colorado Supreme Court in 1966 and 1967 is presented in Tables VIII and IX. Table VIII shows this information by a straight numerical listing of judicial districts. Judicial districts have been grouped geographically in Table IX. A judicial district boundary map has been included (Figure A) to identify the counties in each district.^{24/}

Table IX shows that 71 percent of the cases came from the Denver metropolitan area, with 44 percent being from Denver itself. Table IX shows that 6.2 percent of the cases came from the

^{23/} Supreme Court Docket Analysis, Memorandum from State Court Administrator, p. 1 (June 6, 1968).

^{24/} Ibid.

Table VIII

Origin of Cases Filed
Colorado Supreme Court
By Judicial District 1966-67^a

<u>Judicial District</u>	<u>No.</u>	<u>Pct.</u>
1st ^b	84	9.1%
2nd ^c	405	44.0
3rd	6	.6
4th	71	7.7
5th	4	.4
6th	11	1.2
7th	18	2.0
8th	24	2.6
9th	11	1.2
10th	31	3.4
11th	15	1.6
12th	9	1.0
13th	14	1.5
14th	2	.2
15th	14	1.5
16th	4	.4
17th ^d	42	4.6
18th ^d	78	8.5
19th	19	2.1
20th	44	4.8
21st	9	1.0
22nd	6	.6

- a. Writs of error only, does not include original proceedings, and disciplinary proceedings.
- b. Includes one county court case (Gilpin).
- c. Includes 24 Superior Court, 11 Probate Court, 2 Juvenile Court.
- d. Includes one county court case (Arapahoe).

Table IX

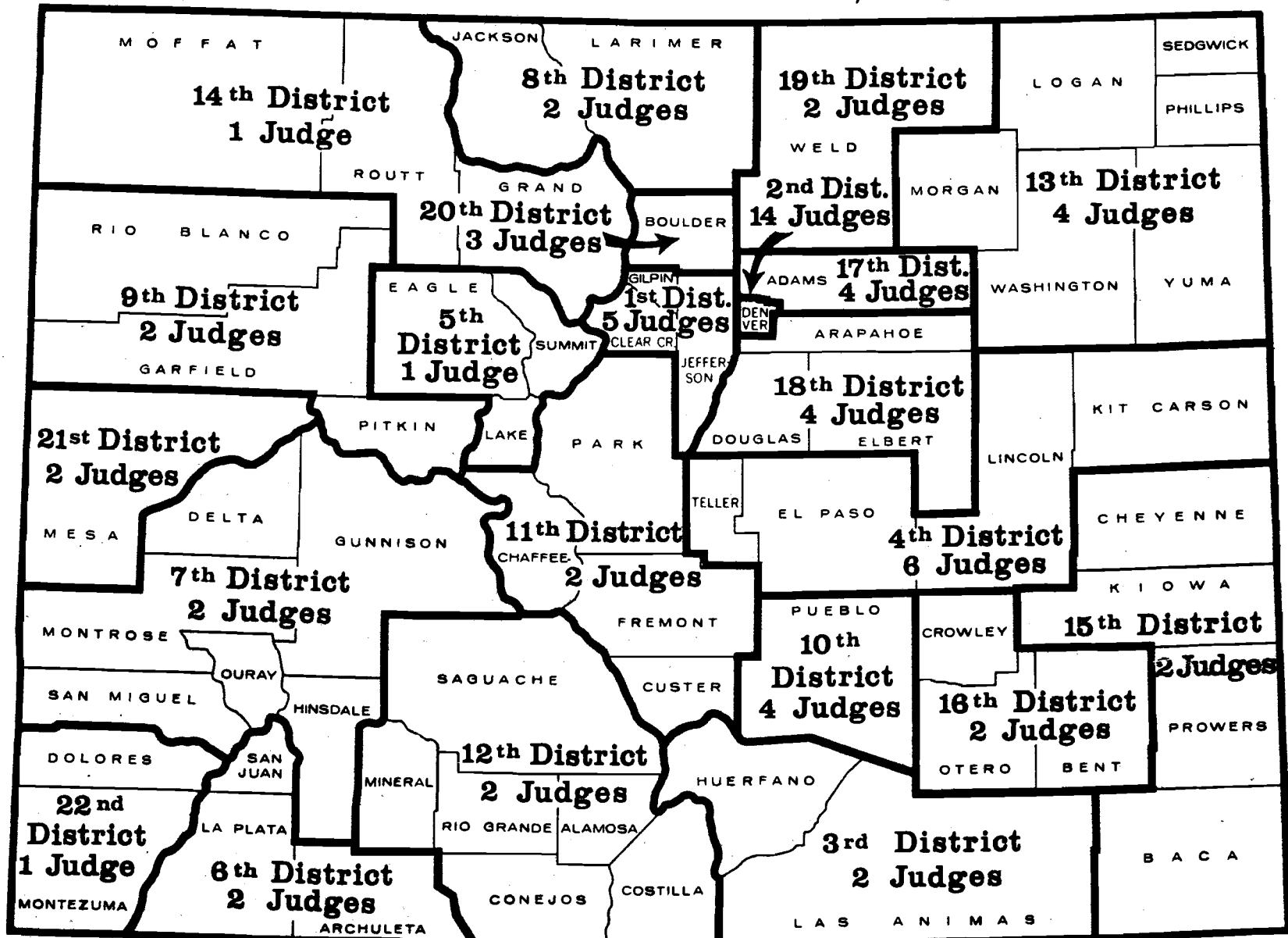
Origin of Cases Filed, Colorado Supreme Court
By Region and Judicial District

<u>Region and District</u>	<u>No.</u>	<u>Pct.</u>
<u>Denver Metro</u>		
1st	84	9.1%
2nd	406	44.0
17th	42	4.6
18th	78	8.5
20th	44	4.8
Total	<u>654</u>	<u>71.0</u>
<u>North East</u>		
8th	24	2.6
13th	14	1.5
19th	19	2.1
Total	<u>57</u>	<u>6.2</u>
<u>Western Slope^a</u>		
5th	4	.4
6th	11	1.2
7th	18	2.0
9th	11	1.2
12th	9	1.0
14th	2	.2
21st	9	1.0
22nd	6	.6
Total	<u>70</u>	<u>7.6</u>
<u>South Eastern</u>		
3rd	6	.6
10th	31	3.4
15th	14	1.5
16th	4	.4
Total	<u>55</u>	<u>5.9</u>
<u>Central</u>		
4th	71	7.7
11th	15	1.6
Total	<u>86</u>	<u>9.3</u>

a. Includes San Juan Basin and San Luis Valley.

JUDICIAL DISTRICTS OF COLORADO

EFFECTIVE JANUARY 12, 1965



NOTE: Each of the four districts (1st, 8th, 17th, and 18th) will receive an additional judge in January 1969--to be elected at the 1968 general election.

Prepared by State Planning Division
May 1964

Figure A

Northeast region of the state, 7.6 percent from the Western Slope, 5.9 percent from the Southeast region and 9.3 percent from the Central region of the state.

The 1959 docket analysis disclosed that 87.5 percent of the cases originated in the district courts, and almost nine percent of the cases originated in the county courts. Almost four percent of the cases were original proceedings. In 1959, 35 percent of the cases filed originated from the Denver district, as compared with 44 percent in 1966 and 1967. Table X shows the source and type of cases filed in the Supreme Court in 1959 and is included so that this information may be compared with information in Tables VIII and IX from the 1966-1967 docket analysis.

Origin of cases in relation to creation of intermediate court. Assuming that an intermediate appellate court is to be created, it can readily be seen from Tables VIII and IX that it would not be a simple matter to divide the state geographically. Because 44 percent of all cases filed during 1966 and 1967 were generated from the Denver district and 71 percent came from the Denver metropolitan area (including Boulder), it would be difficult to equalize case loads and travel time if two or more divisions or circuits are considered.

It was suggested that one possible division might be between the 2nd, 17th, and 18th judicial districts (57.1 percent) and the rest of the state. Under this division considerable time would be required in travel in the second circuit to cover 42.9 percent of the case load. If three divisions are considered, it appears that the Denver case load would have to be divided in some way between two of them, and perhaps, the metropolitan area divided among all three so that the division would be a pie shape with Denver in the middle.^{25/}

Types of Cases Filed

The kinds of cases filed in the Colorado Supreme Court are analyzed in Tables XI, XII, and XIII. Table XI shows the number of cases by major type and judicial district of origin. During 1966 and 1967, criminal cases accounted for 23 percent of the filings, exclusive of original proceedings. The next largest category was administrative (agency) review and local government cases, 13.3 percent, followed by personal injury (9.7 percent) and money demand (9.3 percent).

^{25/} Id. at p. 5.

Table X

Source and Type of Cases Docketed in Supreme Court During 1959

<u>Metropolitan District Courts</u>	<u>Cases Appealed</u>				<u>% of Total</u>
	<u>Civil</u>	<u>Crim.</u>	<u>Orig. Proc.</u>	<u>Total</u>	
1st Dist. (Golden)	23	4	2	29	7.1
2nd Dist. (Denver)	113	21	10	144	35.4
4th Dist. (Colorado Springs)	16	4	0	20	4.9
8th Dist. (Boulder, Greeley, Fort Collins)	27	3	5	35	8.6
10th Dist. (Pueblo)	9	9	0	18	4.4
17th Dist. (Brighton)	7	0	2	9	2.2
18th Dist. (Littleton)	17	3	6	26	6.4
Total-Metro. Dists.	212	44	25	281	69.0
<u>Non-Metropolitan District Courts</u>					
3rd Dist.	4	1	1	6	1.4
5th Dist.	1	0	0	1	.25
6th Dist.	2	1	2	5	1.2
7th Dist.	4	6	0	10	2.4
9th Dist.	2	0	1	3	.7
11th Dist.	8	6 ^a	0	14	3.4
12th Dist.	2	0	0	2	.5
13th Dist.	12	6	0	18	4.4
14th Dist.	2	0	0	2	.5
15th Dist.	6	2	0	8	1.9
16th Dist.	3	4	0	7	1.7
Total-Non-Metro. Dists.	46	26	4	76	18.5
District Court Total	258	70	29	357	87.5
County & Superior Courts	34	0	0	34	8.6
Other - Original	0	0	16	16	3.9
Total for State	292	70	45	407	100.0

a. Writs of error from denials of habeas corpus from state penitentiary.

Source: Judicial Business of Colorado Courts, 1959, Annual Report of Judicial Administrator.

Table XI

Cases Filed in Colorado Supreme Court
By Judicial District and Major Type
1966 - 67

Major Type of Case	Judicial Districts																				Total			
	1st	2nd ^a	3rd	4th	5th	6th	7th	8th	9th	10th	11th	12th	13th	14th	15th	16th	17th	18th	19th	20th	21st	22nd	No.	Pct.
1) Domestic Relations	3	12		5			1	1	1	1						2		2	4	2	3		38	4.1%
2) Personal Injury	11	31		8	1	1	1	6		1			1		1		5	10	3	8	2		89	9.7
3) Real Property	6	4		6		1			1	2	2		1	2				1	4	2	2		34	3.7
4) Agency & Local Govt.	8	65		8	1	1	1	3		4			3		3			17	5		1		123	13.3
5) Money Demand	8	41	1	5				4	1	2		2	3				3	8		6		2	86	9.3
6) Breach of Contract	5	11		1									2					1			1		22	2.4
7) Damages (Other)	6	15		2		2	2	1		2					1	1		5	4		3	1	46	5.0
8) Water Rights			2	1	1		2	2	3	1													10	1.1
9) Injunction	1	3		2			1	1							1								9	1.0
10) Specific Performance	1	4		2														1					8	.9
11) Replevin		2														1	1						4	.4
12) FED		1													1								2	.2
13) Rescission of Contract	1	4		1				1										1	1				9	1.0
14) Construction of Contract		4								2													6	.7
15) Declaratory Judgment	3	1					1																5	.5
16) Habeas Corpus		7									1												9	1.0
17) Extradition	1	3											1						1				6	.7
18) Probate	2	10		3			1	1	1						2	1		2					23	2.5
19) Juvenile		2											1										4	.4
20) Mental Health		1		1																			2	.2
21) Criminal	12	114	2	16		4	2	3	2	11	5	5	2		1	1	8	5	5	9	4	1	212	23.0
22) Other and N.I.	15	70		10	1	2	6	3	2	5	7	2	1		2		16	18	2	7	1	2	172	18.6
23) County Court	1	1																					3	.3
Total	84	406	6	71	4	11	18	24	11	31	15	9	14	2	14	4	42	78	19	44	9	6	922	100.0%

-22-

- a. Includes Probate, Juvenile, and Superior Courts
- 1) Includes contested divorces, property settlement, alimony, child support and custody.
- 2) All personal injury actions, such as motor vehicle accidents, malpractice suits etc.
- 3) Includes quiet titles, condemnations, mechanics liens, boundary questions, etc.
- 4) Includes workmen's comp., unemployment comp., P.U.C. orders and rate decisions, liquor and beer licenses, zoning, annexations, bank charters, special district formation and elections, etc.
- 5) Includes contracts, promissory notes, attorney's fees, etc.
- 7) Includes all damage cases, not covered in personal injury and breach of contract (or otherwise identified), such as property damage, false arrest, libel, etc.
- 12) Forcible entry and detainer
- 18) All probate matters
- 19) All juvenile cases
- 20) All mental health cases
- 21) All criminal cases
- 22) Includes cases for which case files not available for identification, contempt proceedings, partnership accounting, receivership, stockholders' derivative suits, and other cases not classified above.

Approximately 19 percent of the cases were in the "other or not identified" category. Approximately one-half of the cases shown in this category were civil cases for which the files were not readily available, i.e., they were either checked out or incomplete (active cases) or in the archives (closed cases). If this category is apportioned according to the distribution shown in Table XI, agency and local government cases would be almost 15 percent of the total number filed; personal injury, 11 percent; and money demand, 10 percent.

For comparative purposes, the 1959 docket analysis disclosed that money demand cases constituted the greatest percentage of cases filed (16 percent). Thirty-nine or 12.5 percent were personal injury cases, as compared with 9.7 percent in 1966-1967. Cases involving local governmental units totaled 24 cases or almost eight percent, as compared with almost 13.3 percent in 1966-1967. In 1959, property, probate, and domestic relations cases each accounted for more than six percent of the total. (see Table II.)

Dollar amounts. Considerable committee interest has been indicated in the monetary value of cases filed in the Colorado Supreme Court. Accordingly, the amounts involved were analyzed for four different kinds of cases (personal injury, money demand, breach of contract, and other damages) in Table XII.

Table XII indicates that 55 percent of all cases in these four categories filed in 1966 and 1967 involved \$10,000 or less. This figure should be used with caution, however, because a number of cases in the "not identified" category are likely to have involved more than \$10,000 initially, even if the amount was not an issue in the appeal. Therefore, the 55 percent figure may be inflated.^{26/}

Agency and local government cases. Because the category of administrative (agency) review and local government cases accounted for more than 13 percent of all the cases filed in 1966 and 1967 (the second largest category), a separate analysis was made of this category. This analysis is contained in Table XIII. Workmen's compensation cases accounted for the largest proportion in this category, 39 percent, followed by liquor and beer licenses (11.4 percent), and Public Utilities Commission cases (10.6 percent). Altogether, workmen's compensation, unemployment compensation, and P.U.C. cases comprised slightly more than 55 percent of the agency and local government cases.^{27/}

^{26/} Supreme Court Docket Analysis, Memorandum from State Court Administrator, p. 5 (June 6, 1968).

^{27/} Ibid.

Table XII

Dollar Amount; Cases Filed
Colorado Supreme Court, 1966-67

	<u>Personal Injury</u>		<u>Money Demanded</u>		<u>Breach of Contract</u>		<u>Damages (Other) ^{a/}</u>		<u>Total</u>		<u>Cumulative Total</u>	
	<u>No.</u>	<u>Percent</u>	<u>No.</u>	<u>Percent</u>	<u>No.</u>	<u>Percent</u>	<u>No.</u>	<u>Percent</u>	<u>No.</u>	<u>Percent</u>	<u>No.</u>	<u>Percent</u>
Not Indicated ^{b/}	5	5.6	13	15.1	5	22.7	5	10.9	28	11.5	--	--
Under \$1,000	2	2.3	11	12.8	--	--	3	6.5	16	6.6	44	18.1
\$1,000-\$2,500	1	1.1	9	10.5	3	13.6	8	17.4	21	8.6	65	27.7
\$2,500-\$5,000	9	10.1	18	20.9	2	9.1	3	6.5	32	13.2	97	40.9
\$5,000-\$10,000	10	11.2	13	15.1	4	18.2	8	17.4	35	14.4	132	55.3
\$10,000-\$15,000	7	7.9	3	3.5	2	9.1	1	2.2	13	5.3	145	60.6
\$15,000-\$25,000	14	15.7	9	10.5	3	13.6	6	13.0	32	13.2	177	73.8
\$25,000-\$35,000	9	10.1	5	5.8	1	4.5	2	4.3	17	7.0	194	80.8
\$35,000-\$50,000	4	4.5	2	2.3	1	4.5	2	4.3	9	3.7	203	84.5
\$50,000-\$100,000	14	15.7	1	1.2	--	--	3	6.5	18	7.4	221	91.9
Over \$100,000	<u>14</u>	<u>15.7</u>	<u>2</u>	<u>2.3</u>	<u>1</u>	<u>4.5</u>	<u>3</u>	<u>10.9</u>	<u>22</u>	<u>9.1</u>	243	100.0
Total	89	99.9 ^{c/}	86	100.0	22	99.8 ^{c/}	46	99.9 ^{c/}	243	100.0		

^{a/} Includes all damage cases not covered in personal injury and breach of contract (or otherwise identified) such as property damage, false arrest, libel, etc.

^{b/} Either amount not indicated or not an issue in the case.

^{c/} Total does not equal 100% because of rounding.

Table XIII

State Agency and Local Government Cases
Filed in the Colorado Supreme Court, 1966-67

<u>Type</u>	<u>No.</u>	<u>Percent</u>
Workmen's Compensation	48	39.0
Unemployment Compensation	7	5.7
Public Utilities Commission	13	10.6
Liquor and Beer Licenses	14	11.4
Taxation and Assessment	8	6.5
Civil Service <u>a/</u>	6	4.9
Bank Charters	3	2.4
Zoning Ordinances and Orders	5	4.1
Agency Orders and Regulations	3	2.4
Bond Elections	2	1.6
Annexation	2	1.6
Municipal Ordinances	4	3.3
Other	<u>8</u>	<u>6.5</u>
Total	123	100.0

a/ Includes both state and local.

County Court Appeals

Appeals from the county court presently lie to the district court, with further review possible upon writ of certiorari to the Supreme Court. It was felt that information concerning county court appeals should be available to the committee in case it determined to establish an intermediate appellate court. In determining the jurisdiction of an intermediate appellate court (should one be recommended), consideration perhaps should be given to changing county court appellate procedure, so that county court appeals would lie to the intermediate court rather than the district court. It was felt by some that this procedure might possibly help eliminate any diversity which exists between districts in construing the validity of county court practices, such as the verification of traffic tickets.

The quantitative impact of this possibility can be seen from Table XIV. The proportion of county court appeals from each area varies somewhat from the distribution shown in Table XI for appeals to the Supreme Court, but the differences are slight. In other words, the addition of county court appeals to an intermediate court of appeals case load would not have much effect on the geographic distribution of cases.^{28/}

Administrative Review and Local Government Cases

Another possibility in designing the jurisdiction of an intermediate appellate court (should one be recommended) might be to have the initial review of workmen's compensation, unemployment compensation, and similar cases made by the intermediate court rather than the district court, as presently provided by law. Several other jurisdictions with an intermediate court follow this procedure. With respect to workmen's compensation cases, some states grant direct appeal only to the highest court (New Jersey), while others vest appellate jurisdiction in this class of cases in both the intermediate and highest appellate courts. In New Mexico and North Carolina, appeal as of right lies to the intermediate court to review decisions of workmen's compensation cases. In New Mexico, the Supreme Court may review by certiorari the decision of the intermediate court in a workmen's compensation case, but in North Carolina no appeal from the decision of the court is allowed to the Supreme Court. In Arizona, Florida, and Pennsylvania, the intermediate court has jurisdiction to issue writs of certiorari to review awards of workmen's compensation.

^{28/} Id. at p. 9.

Table XIV

County Court Appeals Filed in District Court, 1967
By Region and Judicial District

<u>Region and District</u>	<u>No.</u>	<u>Pct.</u>
<u>Denver Metro</u>		
1st	7	3.2%
2nd	85	38.5
17th	12	5.4
18th	16	7.2
20th	19	8.6
Total	<u>139</u>	<u>62.9</u>
<u>North East</u>		
8th	7	3.2
13th	6	2.7
19th	7	3.2
Total	<u>20</u>	<u>9.1</u>
<u>Western Slope^a</u>		
5th	6	2.7
6th	0	-
7th	4	1.8
9th	3	1.4
12th	9	4.1
14th	2	.9
21st	2	.9
22nd	3	1.4
Total	<u>29</u>	<u>13.2</u>
<u>South Eastern</u>		
3rd	1	.4
10th	7	3.2
15th	6	2.7
16th	0	-
Total	<u>14</u>	<u>6.3</u>
<u>Central</u>		
4th	12	5.4
11th	7	3.2
Total	<u>19</u>	<u>8.6</u>
Grand Total	221	100.1 ^b

- a. Includes San Juan Basin & San Luis Valley.
b. Does not equal 100 percent because of rounding.

Table XV is included to demonstrate the possible impact of the addition of these matters to an intermediate appellate court, should one be established. Table XV divides agency review and local government cases into three categories and is derived from information supplied to the Judicial Administrator's Office under the district court statistical reporting system. The three categories are workmen's compensation, other administrative review cases, and local government. The last category is not really important for this purpose, because most local government actions (annexation, incorporation, etc.) must start in the trial court. It is included only to show a comparison with the administrative review cases.

Table XV shows that there were 108 workmen's compensation cases filed in the district courts in 1967. Table XIII shows that there were 48 workmen's compensation cases filed in the Supreme Court in the years 1966 and 1967. Assuming that half of these (24) were filed in 1967, it means that approximately 25 percent of the workmen's compensation cases filed in the district courts are coming to the Supreme Court for review (24 of 108 cases).

As more than 90 percent of the workmen's compensation and other administrative review cases are filed in the Denver metropolitan area (more than 50 percent in Denver), inclusion in the intermediate court case load of these cases would further unequalize the potential case load between Denver and the rest of the state. This is important to keep in mind if an intermediate court is established and if the court is to sit in geographical subdivisions of the state.

Table XV

Agency Review and Local Government Cases
Filed in District Court, 1967
By Region and Judicial District

<u>Region and District</u>	<u>Workmen's Comp.</u>		<u>Other Admin. Review</u>		<u>Local Government</u>		<u>Total</u>	
	<u>No.</u>	<u>Pct.</u>	<u>No.</u>	<u>Pct.</u>	<u>No.</u>	<u>Pct.</u>	<u>No.</u>	<u>Pct.</u>
<u>Denver Metro</u>								
1st			5	6.6%	3	4.2%	8	3.1
2nd	60	55.6%	38	50.0	15	20.8	113	44.1
17th			1	1.3	2	2.8	3	1.2
18th	41	38.0	14	18.4	10	13.9	65	25.3
20th			11	14.5	3	4.2	14	5.4
Total	101	93.6	69	90.8	33	45.9	203	79.1
<u>North East</u>								
8th	1	.9			1	1.4	2	.8
13th	1	.9	1	1.3	2	2.7	4	1.6
19th	1	.9	1	1.3	1	1.4	3	1.2
Total	3	2.7	2	2.6	4	5.5	9	3.6
<u>Western Slope^a</u>								
5th					7	9.7	7	2.7
6th	1	.9			1	1.4	2	.8
7th	1	.9			1	1.4	2	.8
9th					4	5.5	4	1.6
12th	1	.9	1	1.3	3	4.2	5	2.0
14th					2	2.8	2	.8
21st					4	5.5	4	1.6
22nd								
Total	3	2.7	1	1.3	22	30.5	26	10.3
<u>South Eastern</u>								
3rd					3	4.2	3	1.2
10th	1	.9	3	3.9	2	2.8	6	2.3
15th								
16th								
Total	1	.9	3	3.9	5	7.0	9	3.5
<u>Central</u>								
4th			1	1.3	5	6.9	6	2.3
11th					3	4.2	3	1.2
Total			1	1.3	8	11.1	9	3.5
Grand Total	108	99.9 ^b	76	99.9 ^b	72	100.00	256	100.0

a. Includes San Juan Basin and San Luis Valley.

b. Does not equal 100 percent because of rounding.

ALTERNATIVE APPROACHES IN COLORADO

Introduction

Judicial reformers for many years have sought for solutions to overcome the delay in the courts from the backlog of cases. Current approaches and means that have been tried are many and varied. The judges themselves have been shifted about, have been added to appellate benches, have been divided into panels, have been assisted by court commissioners and have been restricted in the cases they could hear. Temporary "stop-gap" measures designed to overcome court congestion suggested by reformers include assigning of court commissioners to aid appellate judges, employing law clerks to assist in legal research, using Bar Association members to function as part-time arbitrators and referees. In addition, there are those who suggest solutions to court congestion which tend to reduce the amount of judicial time spent on cases. These measures include appealable cases through certiorari, writs of error or certification from the lower courts, and reducing the number of written opinions through memorandum and per curiam opinions.

In handling excessive case loads, many states have found that their first basic need has been to recruit additional qualified appellate judges. It was found that any workable solution must in some way provide for more judges. Adding judges to the high court has been done through the selection of new judges and/or by following a similar pattern executed by Colorado in 1960 wherein district court and retired supreme court judges were temporarily called back into service to help reduce the case load on the Supreme Court level.^{29/}

All of these measures have been tried in an attempt to bring balance and a semblance of order to appellate procedure. Yet no one of these methods seems to be the panacea which will totally alleviate the problem. While all of these methods aid and assist in overcoming court congestion and delay, it is generally felt that none are sufficient measures in themselves to be solely relied upon.

Probably the most controversial of all approaches tried has been the creation of an intermediate appellate court system. Many of those states which have used some of the "stop-gap" measures mentioned above still experienced excessive case loads. As a result many of them turned to the intermediate appellate court system as a more permanent and long lasting solution to their court problems. There are currently 20 states which use one form or another of the intermediate appellate court system.

^{29/} Brown, Solutions for the Backlog of the Supreme Court of Colorado, 36 Univ. of Colo. L. Rev. 554 (1964).

Approaches in Colorado. There is no reason to believe that Colorado's current rate of population and economic growth will diminish appreciably in the near future, rather it appears that the converse is more likely. Consequently, a continued increase in new matters coming before the Supreme Court can be anticipated. When the filing rate trend over the past several years is projected into the future, it is estimated that the number of cases filed annually will approach 700 by 1970 and will be approximately 940 by 1980. By 1970 the backlog of cases in the Supreme Court is estimated to be 1,168. By 1980 the backlog will approach 3,792 cases. (See Table VII.) Thus, it is becoming more and more evident from the continuing increase in the annual filing rate that additional steps are necessary to cope with the backlog problem.

There have been several alternative solutions proposed and considered by various study committees and groups to ease the burden upon the court caused by the continued high filing rate. The Committee on Appellate Courts also considered these suggested proposals in an attempt to arrive at a workable solution to the problem. These alternatives are: (1) increase the number of Supreme Court judges from seven to nine; (2) more extensive use of retired and outside judges; (3) some limitations on the right of appeal; (4) a Supreme Court Commissioner plan, such as the one used in Kentucky; (5) improvement in the internal efficiency of the court; (6) creation of a separate Criminal Court of Appeals; and (7) the creation of an intermediate court of appeals.

Increase in the Number of Supreme Court Justices

The 1959 Legislative Council Committee on Judicial Administration considered increasing the number of Supreme Court judges from seven to nine.^{30/} It was felt that this increase would allow the court to sit in three departments instead of two (as at present), and thus increase the court's productivity. The idea was rejected as a short-term means of providing assistance to the court, partially because it would have required a constitutional amendment. Consequently, it would have been at least 1961, and possibly 1963, before the additional judges could be appointed. In addition, the idea was opposed by some on the grounds that the nine-member court would be cumbersome and would so complicate administration and procedure that the efficiency of the court would not be improved.

Even though this proposal was rejected as an immediate method of assisting the court in 1959, the committee included a

^{30/} Judicial Administration in Colorado, Colorado Legislative Council, Research Publication No. 49, p. xi (Dec. 1960).

possible future increase in the number of Supreme Court judges in its proposed constitutional amendment (Amendment No. 1, 1962) to the judicial article. This amendment was adopted in 1962. Section 5 of the judicial article (Article VI) in part provides the following: "Upon request of the supreme court, the number of justices may be increased to no more than nine members whenever two-thirds of the members of each house of the General Assembly concur therein." This provision was included as a possible solution to problems which might arise in the future from increased case loads. To avoid any possibility or suggestion of court packing on the part of the General Assembly, such increase would be possible only if requested by the court itself.

It is argued on the one hand that increasing the number of judges would preclude the necessity of creating an intermediate appellate court to handle the increased case load. On the other hand, it is argued that a nine-member court would be too unwieldy and would not increase the court's production appreciably, because each member would be required to review the opinions of eight other justices instead of six as at present. Consequently, the extra time involved in such a review might offset or at least minimize the increase in the number of written opinions which might be expected from the addition of two justices.

Only four states (Iowa, Oklahoma, Texas, and Washington) currently have nine-member Supreme Courts; most states of Colorado's size have Supreme Courts with either five or seven members. None of these states, however, have a filing rate as great as Colorado's.

Because of the constitutional provision, the possibility of adding two justices cannot be considered by the General Assembly unless the court so requests. However, there appears to be some resistance within the court to such an increase. This resistance is based upon the proposition that an increase in the size of the Court, while it would provide more judges to write opinions, would also provoke more discussion, disagreement and diversity within the court, thus causing a substantial reduction in net gain of judicial time.

The only hope for a solution to the problem along these lines is by an increase in the size of the court to nine members, coupled with a practice of sitting in three-man departments. This was the recommendation of the 1959 Legislative Council Committee on Judicial Administration. Several states, including Colorado, presently have their highest courts sitting in divisions. Generally, there are three judges to each division who make the decisions, but considerations by the whole bench are infrequently required. Proponents of this system claim it saves time and money and is far less complicated than instituting an additional appellate level. Those who favor divisional sitting also point out that under normal conditions each judge would not be required to

make an investigation of all cases coming before the court, and thus fewer judges would normally be required to participate.

The criticism of sitting in divisions or departments of three has many facets. One obvious concern is the likelihood of conflicting opinions from the different divisions. With the court seated in divisions, there seems to be no single authoritative determiner of the law which would seem to make uniformity of law impossible. Another criticism is the fact that all three judges would probably have to concur in order to render a judgment. Thus, any dissent would require a reargument, with a consequent waste of judicial time. Another criticism is that there is too much "luck of the draw" involved in which judges sit on which cases. If the divisions are permanent the result, in effect, could be two or three supreme courts. Finally, there is a feeling that a Supreme Court should sit en banc as much as possible.

As indicated above, there are some advantages to an increase in the size of the court to nine members, provided that it is coupled with a practice of sitting in three departments of three judges each. For whatever reasons, however, the court has not chosen to request an increase in the size of the court. For this reason, and because it was felt by the committee that increasing the court to nine members would provide an excessive and unwieldy number, this solution appeared to the committee to be impractical and probably ineffective.

Use of Outside Judges to Assist the Supreme Court

The use of outside judges was first advocated by members of the court in 1960 as a temporary expedient to reduce the number of pending cases. The Legislative Council Committee on Judicial Administration ultimately adopted this proposal as being the best of several alternatives considered by it. It decided that the immediate need to reduce the cases pending before the Supreme Court outweighed the proposal's drawbacks. Thus in 1960, the General Assembly appropriated \$15,000 to the court to be expended to pay honorariums and expenses to judges assisting the court. During 1960 and early 1961, outside judges accounted for approximately 70 written opinions.

At the time the proposal was adopted there were some reservations expressed by some committee members and others. Opposition was based upon the following three reasons:

- 1) Opinions would be written by judges who did not participate in making the decision.
- 2) There was a possibility that a backlog could develop in the courts of those district judges called up to assist the Supreme Court.

3) There was a question as to whether it was desirable to have such a close relationship between active trial court judges and the highest appellate court.

Because of these reservations the court was careful to avoid the possibility of backlogs developing at the trial court level by not inviting trial judges to assist the court unless they could provide assistance without jeopardizing their own dockets.

During 1967, four retired judges and four active district judges were assigned to assist the court. These assignments resulted in 20 written opinions. This assistance was of considerable help to the court in achieving its record productivity in 1967.

It was noted by the committee that Chief Justice Moore will retire the second Tuesday in January, 1969, and will be available to assist the court after his retirement, if necessary. In addition to the assistance of Chief Justice Moore after retirement, it was noted that Justice Edward Day will also soon retire and that his assistance could be anticipated. However, even with the assistance of Chief Justice Moore and Justice Day and other district court judges, it is anticipated that the court still will not be able to keep up with the case load.

This program of using active district court judges and retired Supreme Court judges was first adopted as a temporary solution to the immediate backlog problem in 1960 and received legislative approval on that basis. At present, the committee agreed that the use of outside judges to assist the court is simply not facing the problem. They are what their name implies, a temporary expedient. The committee concluded that the need is for a more permanent solution to the problems caused by the increased filing rate, which is no longer viewed as a temporary condition. Any solution to the problem of appellate congestion should look to a gradual phasing out of temporary solutions, rather than an increase, as permanent solutions replace temporary expedients.^{31/} Therefore, the committee concluded that the visiting judges' program is not a satisfactory long term solution.

Pro tempore judge system. At the July 26, 1968 meeting, the committee heard from Mr. William M. Lowry, Clerk of the Supreme Court of Washington, who explained to the committee the operation of the pro tempore judge system in the state of Wash-

^{31/} Doyle, Battle of the Backlog in the Supreme Court, 33 Rocky Mountain Law Review 494 (June 1961).

ington. This system was created in 1962 when a constitutional amendment was adopted and implemented by legislation in 1963 which empowered a majority of the regular members of the Supreme Court to authorize judges or retired judges of courts of record to serve temporarily in the Supreme Court. Under this system the judge pro tempore has the same power and authority as a judge of the Supreme Court, except he is not allowed to function on opinions written by members of a department of the court of which he was not a member, did not hear oral argument, or did not participate in departmental conference discussion of the case. Not more than one judge pro tempore is to sit with a department at any one time. A judge pro tempore writes opinions for the court that have been assigned to him and when these opinions become the opinion of the court they are published in regular form, except that a reference symbol is placed after the name of the pro tempore judge, directing attention to the fact that he is serving as a judge pro tempore.^{32/}

It was reported by Mr. Lowry that the pro tempore judge system was commenced in 1963 and that maximum use has been made of it since 1965. While the additional manpower of the pro tempore judge system has been enormously helpful, increasing the number of decided cases by approximately 90 per year, it has not been capable of stemming the growth of the backlog. Mr. Lowry reported that the average time required for the regular judges to write an opinion is 12 days while the average time required for a pro tempore judge is 8.4 days. One limitation on the use of active judges is that they cannot hear appeals from their own districts. With respect to cost, Mr. Lowry reported that it averages out to a cost of \$672.18 per case for the pro tempore judges.

Mr. Lowry reported that three of the regular members of the Supreme Court feel that the use of pro tempore judges results in a looseness in the definition and clarification of issues. More revisions of opinions are required for opinions written by pro tempore judges (3.03 percent) as compared with opinions written by regular judges (2.9 percent). In addition, Mr. Lowry reported that the Court Reporter has stated that the opinions of the pro tempore judges are more difficult to headline because they usually lack experience in opinion writing.^{33/}

Limitations on the Right of Appeal

Changes in the prevailing method of appellate review, or restrictions on the right of appeal to the Supreme Court, have

^{32/} See note 36, *infra*, at p. 12.

^{33/} *Id.*, at p. 13

also been suggested as methods for curtailing the number of cases filed in the Colorado Supreme Court. There are two general methods of cutting down the input of appeals by restricting the right of appeal. The first is by increasing the jurisdictional limits, or by making certain types of cases non-appealable. A system of permitting at least one appeal, however, is deeply ingrained in the Colorado judicial system, as in the American procedure generally. In almost no jurisdiction has it been found acceptable to eliminate the right of appeal in certain types of cases.

It was also suggested that a monetary limit could be placed on cases appealed to the Supreme Court. For example, it could be provided that cases wherein the amount in controversy was less than \$20,000 are not appealable. It was felt, however, that it is the issues of law in the case which are important and not necessarily the dollar amount. A monetary limit on the amount involved in an appeal not only would eliminate too few appeals to make any great difference, but would probably eliminate the wrong ones. It is most unusual for a \$2,500 case to be appealed, unless there is an important legal question involved, justifying consideration by the Supreme Court; a \$25,000 case, on the other hand, is likely to be appealed simply because of the amount involved, irrespective of the importance of the questions involved.

The other way of eliminating appeals is by permitting discretionary review of at least certain types of cases, as in the certiorari practice of the United States Supreme Court. The term "certiorari" means a discretionary appellate proceeding for review and re-examination of the action of an inferior court or tribunal. Once again, however, the tradition has been to permit at least one appeal as of right in practically every American jurisdiction. Almost the only states having courts with certiorari powers are those which provide an appeal as of right to an intermediate appellate court.

The committee, in its deliberations, has abided by what seems to be an unvarying thesis: a litigant is entitled to at least one appeal as a matter of right in every case. The thesis that there should be no limitation on the right to at least one appeal in every case still persists. Therefore, the committee ruled out serious consideration of devices designed to reduce appellate congestion which would preclude in all or some instances one's absolute right to an appeal in every case.

Supreme Court Commissioner System

Several jurisdictions have commissioners to assist the judges of their highest courts in the performance of their duties. A recent survey of the Institute of Judicial Administration indicates that eight states utilize commissioners in their

highest courts, and Missouri has two commissioners in each of its intermediate appellate courts. The duties relegated to these commissioners vary vastly.^{34/}

In Michigan the commissioners are older and experienced lawyers. Everything addressed to the Supreme Court, after being docketed by the clerk, is assigned to one of the commissioners. He studies the application for leave to appeal, the motion, or whatever it is, and the briefs in opposition, and prepares a written report stating: (1) the subject; (2) the facts and proceedings below; and (3) the issues. The commissioner then analyzes the law of the case and concludes with a formal recommended order. If it be a denial of the appeal, the reasons are briefly stated. If an appeal is granted, the order may limit the appeal to certain issues. Copies of the commissioner's report are placed in the hands of each member of the court. If there is no objection from any justice within a certain period of time the chief justice signs the order. If any justice dissents or wants to discuss the matter with his colleagues, he advises the commissioner's office and the matter is held for the next conference of the justices.^{35/}

In Kentucky the commissioners are elected by majority vote of the justices of the Supreme Court. These commissioners are lawyers who have had considerable legal experience and meet the same qualifications as the regular members of the court. The commissioners are given the same power as a regular justice, except the power to vote. The commissioners are directed to write opinions for the court and these opinions, if approved by a majority vote of the Supreme Court, are adopted by the court as their opinions. In addition, each District Court judge is designated as an ex-officio commissioner and can be called upon to assist the court as a commissioner. For this service they are paid an additional \$2,400. The justices of the Supreme Court receive an annual salary of \$26,000 and the commissioners are paid a salary of \$22,500.^{36/}

The Oklahoma Supreme Court, in 1964, adopted a rule authorizing panels of three attorneys, recommended by the Oklahoma Bar Association, to prepare advisory opinions for the court. Several panels were established and cases were assigned to the panels for advisory opinions. Justice Pat Irwin of the Oklahoma

^{34/} Special Report of the Committee on Judicial Administration of the Maryland State Bar Association, 1 Md. App. Rep. XVIII (1965-66).

^{35/} A Report of the Judicial Council of Virginia to the General Assembly and Supreme Court of Appeals of Virginia, 1966 and 1967, p. 15.

^{36/} Minutes of Meeting, July 26, 1968, p. 2.

Supreme Court reported to the committee that this system did not prove to be successful and the plan has now been abandoned. ✓

The main criticism of this plan or suggested solution is that the use of commissioners or other outside help is not really that beneficial to the court. Persons who are called to assist the court are just not as precise and clear with respect to opinion writing as are the regular judges who are responsible for their opinions and who are familiar with opinion writing techniques. The most important challenge which may be leveled at this plan is that litigants are entitled to a decision in a case made by judges, not by assistants of the court. If the court is to be expanded by providing for additional personnel, there is no reason why they should not be full fledged justices, rather than a judge in fact but not in name. The same arguments militating against the addition of additional judges to the Supreme Court apply to the employment of commissioners.

Improvement of the Efficiency of the Supreme Court's Operations

Other solutions to the backlog problem have been proposed in the past. These proposals are mainly concerned with improving the internal efficiency of the Colorado Supreme Court. The committee, during its deliberations, gave consideration to several of these proposals, including (1) the use of memorandum opinions, (2) doing away with oral argument in some instances, (3) not granting extensions of time, and (4) providing for more assistants.

Memorandum opinions. There are two approaches to writing an opinion. One approach is termed "result opinion writing," i.e., an opinion that merely decides the case without setting forth any reasons why the particular result was reached. The second approach is termed "legal opinion writing," i.e., an approach that sets forth the legal reasoning behind a particular result or decision. In this approach, an opportunity is afforded the bench to set down legal principles that will serve to guide others in their actions.

The Supreme Court of Colorado tried to gain on the backlog several years ago by not writing a full detailed opinion for every case. In other words, some cases were disposed of by a memorandum opinion which merely announced the decision of the court without the statement of reasons therefor. However, this procedure did not meet with the favor of the bar and has practically been discontinued. Nevertheless, the court began using the memorandum opinion again in 1967.

37/ Memorandum No. 5, Oklahoma Appellate Court System, p. 7 (July 25, 1968).

The past court procedure of not utilizing the memorandum opinion was criticized because, when one case is governed by a prior decision, the extensive written opinion often adds nothing to the body of law and sometimes proves detrimental to discovering the true rules of decision. In addition, it takes a great deal of time, study and effort to prepare a full dressed, detailed opinion and/or to study an opinion submitted by another judge. The time and effort expended in preparing an opinion by the judge to whom it is assigned and consideration of the same by the other judges are not always devoted to the results to be obtained, but to the verbage employed and what should be and should not be in the opinion.

It is argued that if no new legal issue is presented, and only one or two decisive issues are presented, and the court is of the view that the case should be either affirmed or reversed, and a detailed opinion is not necessary to avoid errors on retrial if reversed, there is very little reason to promulgate a detailed written opinion under such circumstances. For these reasons, it is suggested that it would be preferable for the court merely to write a memorandum decision declaring that the case is governed by a prior decision or the result that was reached by the court when circumstances permit. This technique, it is hoped, will reduce the work of the court to some degree.

The committee generally concluded that the Supreme Court is already using the memorandum opinion or the per curiam system wherever it thinks it possible to do so. At the present rate of filing, even more extensive use of the memorandum opinion is not likely to be effective in reducing substantially the backlog of cases. Therefore, the committee determined that this method could not be an effective long term solution. The committee also noted that the Supreme Court has considered the practice of affirming the judgment of the trial court without written opinions and decided not to implement the practice because of various policy reasons.

Less use of oral argument. It has been suggested in the past that the court abandon the practice of hearing oral argument, at least in some cases. The court now hears oral argument in almost all cases. Pursuant to Rule 117 of the Colorado Rules of Civil Procedure either party may request an oral argument or the court may, of its own motion, order oral argument at any time. Oral argument is limited to 30 minutes to a side unless the court, by order, extends the time thereof. It is felt by some that if the court did not hear oral argument in most cases it could devote that time to the writing of opinions and other duties. However, the hearing of oral argument is very important and valuable to the individual judges and the court presently has no inclination to abolish the practice.

Extensions of time. The committee recognized that the court has often been criticized for and accused of not accomplishing more work because of its liberal attitude toward the granting of extensions of time within which to file briefs and records. That the court could adopt a get tough attitude and stop granting extensions is admitted; however, the committee considered that one should not forget the litigant in this matter and that the litigant should not be penalized because of the delay of his attorney. Because of the present delay in the court, there is no sound reason for not granting extensions of time as it would not aid the court in any event. It was noted that if other things could be done to expedite the process of cases through the courts, any problems with respect to the granting of extensions will work itself out.

Use of more assistants. Some of the states authorize the appointment of more than one assistant for the judges on their appellate courts. For example, each judge of the California Supreme Court employs two research attorneys and one research assistant.^{38/}

It is believed by some that the employment of additional law clerks for the judges of the Supreme Court would not bear appreciably on the workload of the judges. Assistants could not help out in many of the time-consuming tasks such as reading briefs, hearing arguments, and attending conferences.

Summary. The committee generally concluded that the present case load appears to be well beyond what even the most efficient court can reasonably be expected to handle with the present number of personnel. To expect the present judges to write more opinions appears to be unreasonable for the quality of judicial opinions is more likely to be deficient when a judge is expected to write more than the optimum number of opinions. The effect of poor quality opinions is to produce uncertainty in the law. This uncertainty has the effect of encouraging more appeals.^{39/} Thus, even if there should be an increase in the internal operating efficiency of the court, it would not furnish a complete solution to the existing problem.

A Separate Court of Criminal Appeals

The committee expressed some interest in the possible creation of a separate Court of Criminal Appeals. The docket

^{38/} Special Report of the Committee on Judicial Administration of the Maryland State Bar Association, 1 Md. App. Rep. XVIII (1965-66).

^{39/} Minutes of Meeting, June 14, 1968, p. 8.

analysis disclosed that 23 percent of the cases before the court were criminal cases. The total of all criminal, habeas corpus, extradition, and juvenile cases amounts to approximately 25 percent of the total case load. For this reason, the suggestion was made that the creation of a separate Court of Criminal Appeals, with jurisdiction to hear all criminal cases, would help alleviate the backlog problem in the Colorado Supreme Court.

A Court of Criminal Appeals could be established by any one of the following three alternative methods: 1) a Court of Criminal Appeals with final jurisdiction; 2) an intermediate appellate Court of Criminal Appeals with further appeal to the Supreme Court; and 3) an increase in the size of the Supreme Court and establishment of a Criminal Appeals Department.

Separate court of criminal appeals. Only Oklahoma has a separate court of criminal appeals with final jurisdiction. Thus, there is little precedent for dividing the appellate business between civil and criminal courts. In addition, the creation of such a court would require a constitutional amendment.

In Oklahoma, appellate jurisdiction is divided between two courts: the Supreme Court (nine members) has appellate jurisdiction in all civil cases at laws and equity; the Criminal Court of Appeals (three members) has exclusive jurisdiction over all criminal cases appealed from courts of record.^{40/} The Criminal Court of Appeals is composed of three judges elected for six-year terms and who receive the same annual salary as Supreme Court Justices (\$22,500).^{41/} The court may issue writs of habeas corpus and other writs as may be necessary to exercise its jurisdiction. In addition, the court may prescribe its own rules, and ascertain matters of fact upon affidavit or otherwise as may be necessary in the exercise of its jurisdiction.^{42/}

Until July 1, 1968, the Court of Criminal Appeals operated with only three judges, each of whom is provided with one secretary. Commencing July 1, 1968, the court has employed one referee. It is the plan to utilize the referee to meet the deluge of original proceedings, especially the petitions for issuance of the writ of habeas corpus filed pro se by inmates in one of the penal institutions.

It is argued that the greatest single advantage found in having a separate court for criminal appeals with exclusive jurisdiction in all criminal appeals lies in the relief provided

^{40/} Okla. Const. Art. 7, § 2.

^{41/} 20 Okla. Stat. Ann. § 31, § 285 (1962); Okla. Session Laws 1967, ch. 128; Senate Bill 351, 1968 Session.

^{42/} 20 Okla. Stat. Ann. §§ 41, 42 (1962).

the Supreme Court. Notwithstanding the urgency attached to criminal processes, there are many instances when civil matters require the same urgent attention. The Oklahoma system, it is argued, prevents any interference in this respect because the Court of Criminal Appeals makes a final determination of all criminal appeals.^{43/}

Intermediate appellate court of criminal appeals. Three states, Texas, Tennessee, and Maryland, have created an intermediate appellate court with exclusive criminal jurisdiction. The decisions of these courts are not final and are subject to further review, by certiorari or otherwise, by the Supreme Court in that state.

Texas has two intermediate appellate courts, the Court of Criminal Appeals and the Courts of Civil Appeals. The Court of Criminal Appeals consists of three judges elected for six-year terms. The current annual salary for the judges of the Court of Criminal Appeals is the same as for Supreme Court justices, \$27,000.^{44/} There are 14 separate Courts of Civil Appeals, and each court is composed of three judges elected for six-year terms and who receive an annual salary of \$24,000.^{45/}

The Constitution of Texas grants the Court of Criminal Appeals appellate jurisdiction over all criminal causes with the proviso that exceptions and regulations may be prescribed by law. The court and the judges have the power to issue writs of habeas corpus and other writs necessary to enforce the court's jurisdiction. The court also has the power, by affidavit or otherwise, to ascertain matters of fact in cases pending before it.^{46/}

Tennessee presently has a Supreme Court (five members), and an intermediate Court of Appeals (nine members) which was created in 1925. In addition, in 1967, the state established a Court of Criminal Appeals, which is an intermediate court with criminal jurisdiction only.^{47/} The Court of Criminal Appeals is composed of three judges who, after 1968, will be elected for eight-year terms.^{48/} Salaries of judges of the Court of Criminal Appeals are to be the same as the judges of the Court of Appeals, \$17,500.^{49/}

^{43/} Letter from Vice Chief Justice Pat Irwin of the Oklahoma Supreme Court to Colorado Legislative Council Committee on Appellate Courts, dated July 16, 1968.

^{44/} Vernon's Ann. Civ. St. Art. 1801 (1964); Texas Const. Art. 5, § 4.

^{45/} Vernons Ann. Civ. St. Art. 1817 (1964).

^{46/} Texas Const. Art. 5, § 5.

^{47/} Public Acts of Tenn. 1967, ch. 226.

^{48/} 16 Tenn. Code Ann. §§ 442, 443 (1956, Supp. 1967).

^{49/} 16 Tenn. Code Ann. § 445 (1956, Supp. 1967); \$20,000 as of 1970.

The jurisdiction of the Court of Criminal Appeals is appellate only and extends to all criminal cases, both felony and misdemeanor. The court also has jurisdiction over all cases arising under any post conviction procedure statute and cases involving or attacking the validity of a final conviction or judgment in a criminal case. The court does not have jurisdiction of any case in which the sole question for determination involves the constitutionality of a statute or municipal ordinance.^{50/} Before the court was created the Supreme Court heard all criminal cases. Now, however, they go to the new intermediate Court of Criminal Appeals and to the Supreme Court on petition for writ of certiorari. During the first year of operation over 400 cases were filed in the new court. This has created a heavy case problem and consideration is now being given to increasing the number of judges.^{51/}

In 1966, the Maryland legislature created an intermediate court of appeals, known as the Court of Special Appeals.^{52/} By these acts, the court's jurisdiction was prescribed to include, inter alia, (a) appeals of criminal convictions where the death sentence had not been imposed, and (b) applications for leave to appeal under the Uniform Post Conviction Procedure Act, where the sentence was other than death, and (c) applications for leave to appeal from determinations and redeterminations of defective delinquency under the Maryland Defective Delinquent Act. The court is composed of five judges, elected to serve a term of 15 years. They currently receive an annual salary of \$27,500. The concurrence of a majority of the entire court is necessary for the decision of any cause and the court is not allowed to sit in one or more panels or divisions.^{53/}

A similar proposal to create a three-man intermediate appellate court with criminal jurisdiction only was considered and recommended in Oregon in 1966. The court was to have final jurisdiction subject to further appeal at the discretion of the Supreme Court. However, this recommendation was never adopted.^{54/}

Advantages and disadvantages of a court of criminal appeals. The number of criminal cases being appealed continues to increase. The large number of crimes being committed will generate inevitably a greater number of criminal appeals. Often groundless appeals are taken because an individual convicted of a crime feels that he has nothing to lose by appealing. Also,

^{50/} 16 Tenn. Code Ann. § 448 (1956, Supp. 1967).

^{51/} Letter from Mr. T. Mack Blackburn, Exec. Secretary to Supreme Court of Tennessee, to Legislative Council, dated August 5, 1968.

^{52/} Acts of Maryland 1966, ch. 11 and 12.

^{53/} Md. Code Ann. 26-130 (1957, Rep. Vol. 1966).

^{54/} Minutes of Meeting, July 26, 1968, p. 25.

counsel is provided by the state for a large percentage of all criminal appellants. In addition, recent decisions of the Supreme Court of the United States have contributed in large part to the increasingly dominant role of criminal cases on the docket of the Supreme Court. Also, new trials often result from a finding that such U.S. Supreme Court cases must be given retrospective application. All of these factors, it is believed, will result in a continued increase in the number of criminal cases before the Colorado Supreme Court.

It is claimed that the major advantage to the creation of a separate court of criminal appeals, whether final or intermediate, is that it will greatly alleviate the burden on the Supreme Court. It is believed that it would be of material benefit to the administration of justice to have an appellate court specializing primarily in criminal law. This area of law has been developing in recent years as rapidly as any and probably more rapidly than most. With the criminal law in a state of change, it seems desirable to establish a court with expertise in this critical area.

If it is desirable that the business of the Supreme Court be divided between it and another court, whether final or intermediate, it is argued that the division between civil and criminal cases is as simple and convenient as any other. It is felt that this division will avoid any conflicts of jurisdiction or vague categorization of classes of cases.

The objections to the court of criminal appeals approach have principally been along the line that judges should not be specialists. Another area of criticism of the idea, at least the idea of having a court of criminal appeals with final jurisdiction, is that the decisions between the Supreme Court and the Court of Criminal Appeals might conflict, and there would be no method of resolving differences of opinion regarding, for example, the law of evidence. On the other hand, it is argued that this is a criticism of little merit, because in different contexts the same question may well lead to different answers, and there appears to be no reason why evidence which is admissible for the purpose of a civil trial may not be admissible for purposes of a criminal trial, and vice versa.

In any event, if a separate court of criminal appeals is to be established, a decision has to be made whether the court is to be intermediate or final. Arguments in favor of having a court with final jurisdiction are that it would avoid double appeals and relieve the Supreme Court of all responsibility for hearing criminal cases. This approach is criticized because it would create two Supreme Courts, one with civil and one with criminal jurisdiction. It is felt that two courts with final jurisdiction is undesirable.

Advantages to an intermediate court of criminal appeals are that it would relieve the Supreme Court of its criminal case

load while at the same time avoiding the objections raised with respect to the establishment of a court with final jurisdiction. This approach is criticized because it would probably lead to double appeals in many instances. Because many litigants in criminal cases have their appeals financed by the state, it is presumed that virtually all of them will petition the Supreme Court for review of any intermediate decision. For example, if it is assumed that there would be 90 such petitions, and the Supreme Court deems one out of six worthy of its consideration, there would be some 75 cases which the Supreme Court would have to discuss, study, consider, and vote on, which would nevertheless be finally determined in the court of criminal appeals. Thus, while there might be a considerable saving of judicial time, there would, at the same time, be a considerable waste.

Increase size of Supreme Court and provide for criminal appeals department. Consideration of the two foregoing alternative approaches suggested another alternative approach. Assuming that it is desirable that a court of criminal appeals have final jurisdiction and to have it utilize the same facilities as the Supreme Court, a question was raised as to why it is necessary to have a separate court at all. It was thus suggested that perhaps the Supreme Court could be increased in number, with the provision that three members of the court, on assignment by the Chief Justice, sit as a Department of Criminal Appeals. It is argued that this approach would achieve every advantage of a separate court of criminal appeals without the necessity of an actual separate court. This approach, however, would require a constitutional amendment if the Supreme Court were increased to more than nine members. Thus, if more than nine members were necessary in order to establish the suggested plan, there would be a delay of two or more years before the system could be operative. On the other hand, it is arguable whether the implementation of the plan with just nine members (thus obviating the necessity for a constitutional amendment) would be effective in reducing the case load.

The advantages to the approach are that a statutory structure necessary to establish a new court would be eliminated and it would not be necessary to establish new budgetary provisions, new administrative provisions, and new procedural provisions. Moreover, the objection of specialization could be avoided by permitting the judges of the criminal department to serve terms of one, two or three years, on a rotating basis, depending upon the preference of the individual judge and the needs of the court as determined by the Chief Justice.

The primary objection to this proposal is that it will require a constitutional amendment if more than nine judges are necessary. The problem of the backlog is an immediate problem. The delay inherent in obtaining voter approval of a constitutional amendment will create further delay in the court. Furthermore, it is argued that more than nine judges will be too many for the

Supreme Court. If an intermediate appellate court is eventually established, the Supreme Court would be larger than necessary to handle its case load.

Creation of Intermediate Appellate Court

As indicated previously, many states which have used some of the methods discussed above for reducing court congestion have eventually turned as well to the intermediate appellate court system as a more permanent and long lasting solution to their court problems. The creation of an intermediate court of appeals on a temporary basis and/or on a permanent basis has also been considered several times in the past as a solution to the Supreme Court backlog problem in Colorado. Many are of the opinion that the creation of an intermediate court of appeals would provide the best solution to the appellate case load problem. Others feel that the problems can be solved without creating another appellate court.

Prior courts of appeal in Colorado. An intermediate appellate court has been established twice before in Colorado (1891-1904 and 1911-1915) to assist the court in disposing of a large number of pending cases. On both occasions, the Court of Appeals was created by statute.

The Colorado Court of Appeals (1891-1904) was created by Senate Bill 98, adopted at the 1891 legislative session. The Court of Appeals was granted appellate jurisdiction only. The legislation provided for three judges to be appointed by the Governor. The first appointments were to be made for staggered terms of two, four, and six years. Subsequent appointments were to be made for six-year terms. The appointed judges were to possess the same qualifications required of Supreme Court judges and they received an annual salary of \$5,000.

The Court of Appeals was granted final jurisdiction to review the final judgments of inferior courts in all civil cases where the amount involved in the judgment, or in replevin, was \$2,500 or less. It also had jurisdiction, not final, to review all criminal cases, except capital criminal cases. This final jurisdiction was subject to the limitation that it was not final in cases where the controversy involved a franchise or freehold, or where the construction of a provision of the constitution of Colorado or the United States was necessary to a decision in the case. Thus, no writ of error from, or appeal to, the Supreme Court would lie to review the final judgment of any inferior court, unless the judgment exceeded \$2,500, except when the matter in controversy related to a franchise or freehold or where the construction of a constitutional provision was involved. However, none of the foregoing limitations applied to writs of error to county courts.

Writs of error from, or appeals to, the Court of Appeals to review final judgments were to be made within the same time and in the same manner as was provided by law for such reviews by the Supreme Court. The Court of Appeals was given authority similar to that of the Supreme Court to issue all necessary and proper writs and other processes on causes within its jurisdiction. The statute also provided that any cases pending before the Supreme Court which were within the jurisdiction of the Court of Appeals could, by order of the Supreme Court, be transferred to the Court of Appeals for determination. Every final judgment of the Court of Appeals, in cases which could have been taken to the Supreme Court in the first instance, could be appealed to the Supreme Court. Cases filed in the Court of Appeals which were not within the final jurisdiction thereof could, before decision, be transferred to the Supreme Court upon motion of any party.

The Court of Appeals was a court of record and its opinions were to be delivered as required by the Supreme Court and published in a like manner. That the Court of Appeals did a vast amount of work was shown in the 20 volumes of its reports. However, the existence of two appellate courts apparently created a certain degree of friction, so that in 1904 the Court of Appeals was abolished and a constitutional amendment was adopted increasing the number of Supreme Court judges from three to seven and terms from nine to ten years.

In 1911, the Colorado General Assembly again created an intermediate court of appeals by the adoption of Senate Bill No. 351, 1911 session. This court was created for a four-year period. The court was composed of five judges, not more than three of whom could belong to the same political party. These judges were to have the same qualifications and were to receive the same salary as Supreme Court judges. The judges were to be appointed by the Governor, with the approval of the Senate, to serve during the existence of the court.

The Court of Appeals was given the jurisdiction to review and determine all judgments in civil cases pending before the Supreme Court and all cases that could thereafter and during the life of the Court of Appeals be taken to the Supreme Court for review, except in those cases from county courts on writs of error. The legislation provided that the Supreme Court should transfer to the Court of Appeals, for hearing and determination, as many civil causes, then or thereafter pending before the Supreme Court, as it deemed advisable. All jurisdiction of the Supreme Court on appeal was repealed.

The decision of the Court of Appeals in all such cases was final and conclusive, except in causes wherein the decision necessarily involved the construction of a provision of the Colorado or United States constitution, or related to a franchise or freehold, or involved a judgment for more than \$5,000. Such cases could be reheard in the Supreme Court by writ of error from the

Court of Appeals. Or if, before any hearing in any case, either party thereto advised the Court of Appeals that the case belonged to one of the classes of cases above, and if the court upon investigation so found, it was at once and without further proceedings remanded to the Supreme Court for determination.

The Court of Appeals was given the power to issue all necessary and proper writs and processes in aid of its jurisdiction, in the same manner and with the same effect as the Supreme Court. The court was created as a court of record and its opinions were required to be published in the same manner as were the opinions of the Supreme Court. However, the preparation of written opinions giving reasons for the conclusion reached, especially in the affirmance of judgments, was discretionary, and the court could at its option dispense therewith in such cases as it desired.

The statute provided that the Court of Appeals would terminate and cease to exist at the end of four years from the taking effect of the act. The General Assembly did not re-enact the statute in 1915 at the expiration of the four-year period and Colorado has not had an intermediate court of appeals since that time.

Possibility of intermediate court in Colorado. As indicated before, many feel that the creation of a permanent intermediate appellate court is the best long-run solution to Colorado's backlog problem. If an intermediate court of appeals were to be of immediate help to the court, it would have to be provided for by statute rather than by the more time-consuming process of constitutional amendment. One possible disadvantage of creating this court by statute is that its jurisdiction might be limited by the provisions of the judicial article concerning appeals. These limitations would probably require the Supreme Court to review certain decisions made by the intermediate appellate court or at least consider their review on writ of certiorari. At least the question has been raised as to whether the new judicial article permits the creation of an intermediate appellate court whose decisions would be final unless the Supreme Court granted a writ of certiorari. Unless cases could be terminated at the intermediate appellate level, the addition of such a court would probably only add to the problem; the cost involved and the complications arising out of double appellate review might offset the advantages to be gained from having two appeals courts.

Article VI, Section 2 (2) of the judicial article provides the following:

(2) Appellate review by the supreme court of every final judgment of the district courts, the probate court of the city and county of Denver, and the juvenile court of the city and county of Denver shall be allowed, and the supreme court shall have such other appellate

review as may be provided by law. There shall be no appellate review by the district court of any final judgment of the probate court of the city and county of Denver or of the juvenile court of the city and county of Denver.

It has been the opinion of some that the above section makes it mandatory for the Supreme Court to allow all appeals from district court and from the Denver juvenile and probate courts. Therefore, an intermediate court would be of little value because all of its decisions could be appealed as a matter of right to the Supreme Court. Others have been of the opinion that the section can be interpreted in such a way that Supreme Court review to determine whether a case should be heard by the court on a writ of certiorari would be sufficient to satisfy the appellate review provision. If this is the case, it would be possible to establish an intermediate Court of Appeals with specific statutory jurisdiction. Cases falling within the jurisdiction of the intermediate court could be taken up to the Supreme Court on a writ of certiorari. Cases falling outside of the statutory jurisdiction given the intermediate appellate court would go from the trial court to the Supreme Court on appeal as a matter of right.

Assuming that the creation of an intermediate appellate court is feasible, many problems arise as to the court's structure, composition and jurisdiction. It has been suggested that an intermediate appellate court would not be effective unless there were at least two divisions of three judges each, with these divisions established geographically so that they would in effect be circuit courts of appeal. Indeed, most of the states which utilize an intermediate appellate court system have either (1) a single court with several divisions thereof, each division serving a different region of the state, or (2) several district courts of appeal, each district serving a different region of the state. It is felt by some that an intermediate appellate court with only one division -- even one with more than three judges -- would very rapidly build up a backlog of pending cases, so that the problem would merely be transferred from one appellate level to the other.

Arguments for and against intermediate court system.

Those who favor an intermediate court maintain that its creation has dramatically reduced the case load at the highest appellate level in most states, and has thus enabled the highest appellate court to take more time to deliberate cases and in this way has improved the complexion of appellate jurisdiction overall. Others, in favor of the system, emphasize that the intermediate appellate system increases the capacity of the court system to accommodate more litigants. Defenders of the system suggest, as well, that the intermediate court's main virtue is its flexibility in organization which allows it to counter excessive case loads

in many different areas depending on the area most burdened.^{55/}

Opponents of the system disagree that the advantages of an intermediate system outweigh its disadvantages and suggest that separation of appellate jurisdiction breeds confusion in rules and procedure and makes uniformity impossible. Those who are against the system maintain that adding an inferior appellate structure decreases the quality of the state's appellate judiciary and weakens the respectability of precedent law. Others in opposition argue that an intermediate appellate system encourages double appeals. Still others are in opposition to the plan because of the expense to establish and maintain it.^{56/}

Intermediate courts in other jurisdictions. A summary of the organization, power, and jurisdiction of the intermediate appellate courts in the 20 states which have such a court is contained in the next section of this report.

Questionnaire to District and County Court Judges

At the June 14, 1968 meeting, the committee directed that a questionnaire be sent to district and county court judges in an attempt to solicit comments and suggestions on various methods to alleviate the backlog problem. The judges were asked to answer specific questions on the questionnaire and these replies were compiled by the staff. (See Appendix B for copy of questionnaire.) Forty-seven of 70 district judges and 42 of 94 county judges completed the questionnaire. The compilation of these replies, in relation to the specific questions asked, follows:

1. Do you think that more extensive use of outside and retired judges would aid the Supreme Court in its attempt to reduce the current backlog of cases?

	<u>District judges</u>	<u>County judges</u>
Yes	20	18
No	24	23

^{55/} Intermediate Appellate Courts, American Judicature Society, Report No. 20, p. 9 (Aug. 1967).

^{56/} Ibid.

2. Do you think that increasing the number of judges in the Supreme Court from seven to nine would be effective in reducing the backlog?

	<u>District judges</u>	<u>County judges</u>
Yes	14	18
No	30	21

3. Do you think that an enlarged court, with possibly 12 judges, sitting in separate criminal and civil divisions, would alleviate the backlog problem?

	<u>District judges</u>	<u>County judges</u>
Yes	21	17
No	22	18

4. Do you think that the prevailing method of appellate review should be changed, such as by limiting the right of appeal or by changing the method from writ of error to writ of certiorari?

	<u>District judges</u>	<u>County judges</u>
Yes	15	12
No	27	23

5. Do you think that an intermediate appellate court between the trial courts and the Supreme Court should be established?

	<u>District judges</u>	<u>County judges</u>
Yes	33	32
No	11	10

6. Assuming that an intermediate court of appeals is established, do you think the intermediate court should be (1) one court with jurisdiction coextensive with the entire state, (2) one court with several separate divisions, each division having jurisdiction over a particular geographical region of the state, or (3) two or more separate courts of appeal, each court

having jurisdiction over a particular district of the state?

	<u>District judges</u>	<u>County judges</u>
{1}	21	13
{2}	10	11
{3}	4	5

7. Assuming that an intermediate appellate court is established, do you think that county court appeals should go (1) to the intermediate court or (2) continue to go to the district courts?

	<u>District judges</u>	<u>County judges</u>
{1}	8	11
{2}	33	27

8. Assuming that an intermediate appellate court is established, do you think that it should be granted jurisdiction to review administrative decisions (workmen's compensation, unemployment compensation, Public Utilities orders and decisions, etc.) rather than having the district courts review such decisions?

	<u>District judges</u>	<u>County judges</u>
Yes	17	14
No	24	12

Summary. It appears that most of those who replied to the questionnaire favor the establishment of an intermediate appellate court as the best solution to the Supreme Court backlog problem. A majority of those responding apparently thought that none of the first four proposed solutions (the first four questions) was the best answer or solution. Questions six through eight relate to specific problems involved in the establishment of an intermediate court. The majority of those responding to question six believed that the intermediate court should be one court with jurisdiction coextensive with the state. Question seven demonstrates that the majority believe that county court appeals should continue to go to the district courts rather than the intermediate court, should one be established. Question eight shows that there is a split of opinion by those responding as to whether administrative review cases should go to the intermediate court or the district courts, should an intermediate court be established.

INTERMEDIATE APPELLATE COURTS IN OTHER JURISDICTIONS

Twenty states (and the federal government) now have tribunals or intermediate appellate courts between the trial courts and the court of last resort. These states are as follows:

Alabama	Illinois	Missouri	Ohio
Arizona	Indiana	New Jersey	Oklahoma
California	Louisiana	New Mexico	Pennsylvania
Florida	Maryland	New York	Tennessee
Georgia	Michigan	North Carolina	Texas

The jurisdiction of these intermediate bodies is primarily appellate. Some have no original jurisdiction whatsoever; others have limited original jurisdiction. These intermediate courts purportedly serve two main purposes. They relieve the state supreme court of its caseload, while at the same time giving litigants at least one appeal, and they provide for specific disposition of appeals in certain classes of cases.

The constitutions of eight of these states provide for an intermediate court. In Illinois, the creation of such courts is discretionary. The legislatures of Alabama, Indiana, Pennsylvania, and Tennessee have established intermediate courts under general powers to create additional tribunals. Three states have abandoned the plan -- Colorado (1915), Kansas (1901) and Kentucky (1894).

Court Structure

Intermediate appellate courts are of two organizational types: a central court serving the entire state, or a regional system with a number of courts, each covering a judicial district. The first form is in operation in Alabama, Arizona, Georgia, Indiana, Maryland, Michigan, New Jersey, New Mexico, North Carolina, Oklahoma, and Pennsylvania. Regional courts are used in California, Florida, Illinois, Louisiana, Missouri, New York, Ohio, Tennessee, and Texas. Table I outlines the structure of these courts.

The number of judges in states having one central body ranges from three (Alabama and Oklahoma) to twelve (New Jersey). Judges are elected in all but one of these eleven states, with terms varying from four to fifteen years. In New Jersey, the Chief Justice of the Supreme Court assigns Superior Court judges to the Appellate Division for a one-year period. New Jersey's Appellate Division may be, and has been, enlarged by the addition of parts corresponding to divisions.

TABLE XVI

ORGANIZATION OF INTERMEDIATE APPELLATE COURTS

<u>Central Court</u>	<u>Number of Judges</u>	<u>Term (years)</u>	<u>Method of Selection</u>	<u>Salaries</u>	<u>Type of Court</u>
Alabama	3	6	Elected	\$19,500	One central body. Located in Montgomery.
Arizona	6	6	Elected	\$22,500	One court -- two divisions of three judges each. Division 1 at Phoenix and Division 2 at Tucson.
Georgia	9	6	Elected	\$26,500	One court -- three divisions of three judges each. All divisions located at Atlanta.
Indiana	8	4	Elected -- four judges each from two districts.	\$22,500	One court -- two divisions of four judges each. Both divisions located at Indianapolis.
Maryland	5	15	Elected	\$27,500	One central body. Criminal jurisdiction only.
Michigan	9	6	Elected	\$32,500	One court -- three divisions of three judges each. Divisions located at Detroit, Lansing, and Grand Rapids.
New Jersey	12	1	Supreior court judges are assigned to appellate division by chief justice	\$27,000	One court -- separate divisions established as necessary. Four divisions in 1967. Are appellate divisions of superior courts. Located at Trenton and Newark.
New Mexico	4	8	Elected	\$19,500	One court. Located at Santa Fe.
North Carolina	6	8	Elected	\$24,000	One court. Located at Raleigh. Court to have 9 judges by 1969.
Oklahoma	6	6	Elected	\$22,500	One court -- two divisions of three judges each in Tulsa and Oklahoma City.
Pennsylvania	7	10	Elected	\$35,500	One court -- sits at three different districts at different times of year.

<u>Regional Court</u>	<u>Number of Judges</u>	<u>Term (years)</u>	<u>Method of Selection</u>	<u>Salaries</u>	<u>Type of Court</u>
California	39	12	Nominated by governor. Approved by a committee on qualifications. Run for re-election upon record.	\$30,000 Amended to -- \$36,216 (Sept. 1, 1968)	Five appellate districts, with four divisions in first district, five divisions in second district, two divisions in fourth district, and one division in each of the third and fifth districts. Each division has three judges each.
Florida	18	6	Elected	\$28,000	Four appellate districts, each with a District Court of Appeal. Five judges in three districts and four judges in one district.
Illinois	24	10	Elected	\$35,000	Five judicial districts, each with an appellate court. There are four divisions in the first district, with three judges in each division, and one division in each of the other four districts, with three judges to a division.
Louisiana	22	12	Elected	\$24,000	Four appellate circuits, each with a Court of Appeals. Six judges in First Circuit, three judges in Second Circuit, five judges in Third Circuit, and eight judges in Fourth Circuit.
Missouri	9	12	Appointed by governor from list submitted by nominating commission. Run for re-election upon record.	\$25,000	Three courts, one in each of three districts. Three judges each.

<u>Regional Court</u>	<u>Number of Judges</u>	<u>Term (years)</u>	<u>Method of Selection</u>	<u>Salaries</u>	<u>Type of Court</u>
New York	26	5	Appointed by governor from among judges of supreme court.	\$33,500 to \$40,000	Appellate divisions in each of four judicial departments of state. Seven judges in two departments, five judges in other two. Additional judges may be assigned. Appellate terms may be established in first and second department.
Ohio	34	6	Elected	\$27,000	Separate court of appeals in each of ten judicial districts. Eight districts have three judges, two districts have six and four judges respectively.
Tennessee	9	8	Elected	\$20,000	Court of Appeals.
	3	8	Elected	\$20,000	Court of Criminal Appeals. Two separate intermediate appellate courts. Court of Appeals sits in three divisions of three judges each. Court of Criminal Appeals is one court.
Texas	42	6	Elected	\$24,000	Court of Civil Appeals.
	3	6	Elected	\$27,000	Court of Criminal Appeals. Two separate intermediate appellate courts. There are fourteen separate judicial districts, each with a Court of Civil Appeals composed of three judges. Court of Criminal Appeals is one court.

Source: Council of State Governments, State Court Systems (Revised, 1968); "Judicial Salaries in Major Trial and Appellate Courts," 51 J. Amer. Jud. Soc. 240, 241 (July 1968); Martindale-Hubbell Law Directory, Vol. V; Constitutions and Statutes of the various states.

The nine jurisdictions having regional courts present a variety of forms. The number of separate intermediate courts ranges from a low of three (Missouri) to a high of fourteen (Texas). In addition, New York authorizes appellate terms of the trial court (Supreme Court), Illinois permits creation of branch appellate courts, and divisions in Missouri may be created by having pro tempore judges sit with one or more regular judges. The number of judges on the intermediate courts of these nine states is as high as 42 (Texas with 14 courts). Usually there are three judges for each court or division thereof.

In New Jersey and New York, judges of the intermediate appellate courts are appointed by the Chief Justice and Governor, respectively, from among the judges of the trial court. In California and Missouri, judges are appointed or nominated by the Governor and approved by a commission and run for re-election on their record. The other states elect their judges, either on a district basis or on a state-wide basis.

Each court or division usually has a presiding judge designated variously as Presiding Judge, Chief Judge, Chief Justice, Presiding Justice or President. Presiding judges are generally selected by the court or division thereof. The office rotates in Indiana. The Governor of New York designates the presiding justice in each department and he acts as such during his time in office. In Ohio, the chief justice for all ten Courts of Appeals is chosen annually by the membership of the court. Tennessee has a presiding judge for the whole court as well as for each division.

Most of the larger states use regional courts -- California, Illinois, New York, Ohio, and Texas; however, Florida, Louisiana, Missouri, and Tennessee also have regional courts. Michigan and Pennsylvania, both with large populations, utilize a central court. All of these variations are designed to meet the particular needs of each state.

A state's size and location may make one appellate system more preferable for one jurisdiction than for another. Since New Jersey is a small Eastern Coast state, for example, a state-wide central court system is easily adaptable to its needs without inconveniencing its lawyers who must travel to Trenton to try their cases. California, on the other hand, because of its size, has found it impossible to establish the same type of appellate system, preferring to set its courts in several convenient geographic locations throughout the state.

Expense -- Salaries

The most obvious direct cost of an intermediate appellate court is the salaries and expenses of the judges and staff. Salaries of intermediate appellate court judges in 1968 ranged from

a high of \$40,000 in New York to a low of \$16,500 in Oklahoma, with \$26,500 approximately the median state salary. Intermediate court judges usually receive from \$1,000 -- \$3,000 less in salary than do justices of the highest court.

Double Appeals - Jurisdiction

Finality of decision is one of the most vital problems in a court system having an intermediate appellate court. A balance should be maintained between limiting review in order to curtail double appeals, while at the same time giving the highest court enough authority to assure uniformity of decision and granting review by the highest court on questions of general interest and importance. It appears that in the twenty states surveyed there is a tendency toward giving finality to the intermediate courts in increasing classes of cases.

The state-by-state survey indicates the broad division of appeals assigned to the supreme court and to the intermediate court and the method used in each state for granting double review. Appellate jurisdiction of intermediate courts in some of the states is residual, after specific grants of appeals to the supreme court. In the other states, the classes of cases appealable to the intermediate court are specifically set forth by constitution or statute.

Direct appeal to the supreme court, by-passing the intermediate body, is generally to be had in criminal causes, especially capital cases and felonies, and those cases involving a constitutional question. Other direct appeals as of right to the highest court are not uniform from state to state and include: all equity cases; land title or homestead cases; revenue matters; condemnation proceedings; divorce or alimony; probate or matters concerning wills; election contests or right to public office; annexation and zoning; workmen's compensation; public utilities decisions and orders; quiet title actions; etc. Some states grant direct appeal only to the highest court in workmen's compensation cases (New Jersey), while others vest appellate jurisdiction in this class of cases in both the intermediate and highest appellate courts. In New Mexico and North Carolina, appeal as of right lies to the intermediate court to review decisions of workmen's compensation cases. In New Mexico, the Supreme Court may review by certiorari the decision of the intermediate court in a workmen's compensation case, but in North Carolina no appeal from the decision of the court is allowed to the Supreme Court. In Arizona, Florida, and Pennsylvania, the intermediate court has jurisdiction to issue writs of certiorari to review awards of workmen's compensation.

Some states place a monetary limit on civil appeals. For example, in Alabama the intermediate court has final appellate jurisdiction of all suits at law where the amount involved does

not exceed \$1,000. For there to be jurisdiction in the intermediate courts of Indiana and Louisiana the amount in controversy must exceed \$50 and \$100 respectively. In Missouri, the intermediate court has appellate jurisdiction in civil causes where the amount involved is less than \$7,500. If the amount involved is over \$7,500 the highest court has sole appellate jurisdiction.

Appeals from the intermediate court to the highest court may be taken either as a matter of right or by leave. Another pronounced tendency has been to cut down appeal as of right and to provide some form of discretionary review, usually by supreme court certiorari or intermediate court certification or both. Some states either allow or require review by the highest court on the basis of some objective standard in addition to discretionary review. These criteria include conflict with a prior decision, lack of unanimity in the intermediate court, and reversal or modification of the trial court.

Most of the intermediate courts in addition to the highest appellate courts, have power and authority to issue various writs. In Ohio the intermediate court has original jurisdiction in issuing writs of mandamus, habeas corpus, prohibition and quo warranto. In Pennsylvania, the intermediate court has no original jurisdiction except when issuing writs of habeas corpus. Besides these variations, grounds for judicial decisions often differ. Certain intermediate courts, for instance, have jurisdiction to decide appeals on the grounds of facts as well as law as in the case of Louisiana's intermediate court. In California, however, the intermediate court must decide questions only on the basis of law.

Divergency of Rules of Law

Conflicting interpretations among courts in states with one central intermediate body may not present too many problems. However, the possibility of conflicting decisions exists in regional intermediate court systems. This possibility is enhanced when there are as many as nine or fourteen such courts. In all of the states having regional intermediate courts, some provision is made for discretionary review by the highest tribunal. This serves as a means of maintaining uniformity of jurisprudence. In addition, the intermediate court in some jurisdictions has the power to certify cases to the supreme court because of conflict with prior decisions.

Jurisdiction of Intermediate Appellate Courts

Jurisdictional delineation between the intermediate and highest courts is as varied as the number of states with intermediate courts. Summaries of the major provisions for each state are included in Appendix A.

States Currently Considering Establishment of Intermediate Appellate Court

In addition to the 20 states which currently have an intermediate appellate court, there are three states with Supreme Court filings and backlog problems somewhat similar to Colorado's which are considering the creation of an intermediate appellate court: Minnesota, Oregon, and Washington.^{57/} At the July 26, 1968 meeting, the committee consulted with Mr. William M. Lowry, Clerk of the Supreme Court of Washington, and Justice Ralph M. Holman, Justice of the Supreme Court of Oregon, who reported on their respective state appellate court systems, problems, and proposed solutions.

In Washington, there is currently a proposed constitutional amendment providing for the creation of a court of appeals. This constitutional amendment is to be submitted to the voters in November. The implementing legislation has been drafted and there is an extensive campaign being conducted to obtain passage of the amendment. In Oregon, a proposed bill to create an intermediate court of appeals is to be introduced in the 1969 legislative session. This bill apparently has the support of most interested groups or bodies in the state.^{58/}

^{57/} Memorandum from State Court Administrator, July 8, 1968, p. 11.

^{58/} Minutes of Meeting, July 26, 1968, pp. 14, 25.

COLORADO SUPREME COURT PROPOSAL FOR AN INTERMEDIATE APPELLATE COURT

On July 26, 1968, the committee requested that the Colorado Supreme Court present to the committee its proposed solutions to the backlog problem. The committee determined that since this study uniquely involves the Supreme Court it should be given an opportunity to present any recommendations it may have with regard to proposed solutions and alternatives. Pursuant to this request, the Supreme Court submitted its report and recommendations to the committee on August 30, 1968. The report sets forth a proposal for the creation of an intermediate appellate court to meet the ever growing appellate backlog in Colorado. This proposal was approved in principle by the Colorado Supreme Court, sitting en banc, on August 15, 1968.

The report by the Colorado Supreme Court discusses two different ways in which an intermediate court might be organized and function. These two proposals, as recommended by the Supreme Court, are set forth below exactly as they appear in the report, except for the renumbering of pages, figures, and footnotes.

Plan A: Organization and Jurisdiction

Organization

The intermediate court of appeals would comprise three circuits of three judges each. The boundaries of the three circuits are shown in Figure B. Because 71 percent of all Supreme Court appeals (1966-67) are filed from the Denver metropolitan area (including Boulder), caseloads can be equalized among circuits most easily by: 1) dividing Denver between two circuits; and 2) dividing the Denver metropolitan area among all three.

As can be seen from Figure B, one-half of Denver and the 1st District would be combined with the 1st Circuit; the other half of Denver, plus the 17th District (Adams) and the 20th District (Boulder) would comprise the 2nd Circuit, with the addition of the 8th District (Larimer). The remaining judicial districts, including the 18th (Arapahoe) would comprise the 3rd Circuit.

It is necessary to divide Denver, because 44 percent of all Supreme Court appeals originate in the Denver Courts. The division of Denver could be accomplished in the enabling legislation by providing that appeals originating from Divisions 1, 3, 5, 7, and 13 of the Denver District Court and from the Denver Superior Court will lie to the 1st Circuit, and appeals from Divisions 2, 4, 6, 8, and 12 of the Denver District Court and from

the Denver Probate and Juvenile Courts shall lie to the 2nd Circuit, except as otherwise provided.^{59/}

Court Location. Two of the three circuits would headquarter in Denver, and the 3rd Circuit would headquarter in Colorado Springs. Each circuit, however, would be permitted to sit anywhere within its boundaries. Although the statute should not be specific, it would appear logical for each circuit to restrict where it sits as follows:

1st Circuit: Denver, Grand Junction, Durango, and (possibly Glenwood Springs and Steamboat Springs)

2nd Circuit: Denver, Brighton, Boulder, and Fort Collins

3rd Circuit: Colorado Springs, Pueblo, Littleton, Greeley, and (possibly Alamosa)

Judges and Other Personnel. The nine judges of the intermediate court (three in each circuit) should have eight year terms.^{60/} The salary for intermediate court judges should be halfway between that of Supreme Court justices and district court judges. The presiding judge of each circuit would be appointed by the Chief Justice and exercise authority in the same way as is provided for judicial district chief judges in Article VI, Section 5 (4) of the Colorado Constitution.

Probably there should be a provision that no more than two of the three judges appointed in each of the 1st and 2nd Circuits should be from the Denver metropolitan area.

One clerk's office could serve the 1st and 2nd Circuits, with a smaller office serving the 3rd Circuit because its headquarters would be in a different location.

Facilities. If this proposal is adopted, inquiry should be made as to the possibility of housing the 3rd Circuit in the new court building in Colorado Springs, which may be completed about the time the intermediate court would be created.

While the two intermediate circuits headquartering in Denver might be able to use the Supreme Court chambers for oral argument under the best and most efficient scheduling conditions,

^{59/} The divisions of the Denver District Court enumerated above are the ones handling civil and domestic relations cases. Criminal appeals under this proposal would lie directly to the Supreme Court.

^{60/} After initial appointment and two years' service before referral to the voters on a non-competitive ballot at the next following general election, which would be 1974.

there is no available space in the Capitol for offices for the six judges and their law clerks and secretaries, nor is there any apparent space available for the clerk's office. This problem (along with the other space needs of the Supreme Court and its various adjuncts) suggests that immediate legislative attention should be given to the construction of a separate judicial building and for temporary quarters during the construction period.

Jurisdiction

Supreme Court. All criminal cases, except those brought on judgments of the county court, and all habeas corpus cases arising out of criminal actions would be filed directly in the Supreme Court. In addition, Supreme Court jurisdiction would include: 1) all original proceedings; 2) all cases attacking the constitutionality of a statute or an ordinance; 3) all P.U.C. cases; and 4) all water cases involving priorities and adjudications.

Any case which results in a different or conflicting opinion from that rendered by another circuit in a similar matter would be heard automatically by the Supreme Court. The Supreme Court would also have the authority to raise any case from an intermediate circuit court prior to decision by that court, either on the Supreme Court's own motion or upon petition of an intermediate circuit court. The losing party in any case before an intermediate circuit court could petition the Supreme Court for a writ of certiorari.

Intermediate Court. The intermediate circuit courts would have appellate jurisdiction over all final judgments in civil, juvenile, probate, and mental health cases, except as restricted above. In addition, the intermediate circuit courts would have jurisdiction over all appeals from county courts, both civil and criminal.^{61/}

Appeals from Industrial Commission decisions in workmen's compensation and unemployment compensation cases would also lie to the intermediate court, bypassing district court review. All other agency review cases would continue to be taken to the district court, with appeal lying to the intermediate court, except in P.U.C. cases (as already indicated). The intermediate court would have no original jurisdiction.

Additional Provisions. The Supreme Court would have the authority:

1) to transfer to the intermediate court any case within the intermediate court's jurisdiction, even if filed in the Supreme Court; and

^{61/} The district courts and the Superior Court of the City and County of Denver would no longer have appellate jurisdiction.

2) to transfer cases among circuits to equalize caseload, regardless of circuit boundaries.

These provisions would provide considerable flexibility in the handling of appellate cases. Further, it would eliminate the necessity of refileing an appellate case if docketed in the wrong court initially, nor would a case be dismissed for this reason.^{62/}

It would also be possible for the Supreme Court to transfer to the intermediate court appropriate cases already filed in the Supreme Court prior to the creation of the intermediate court. This procedure would provide an immediate workload for the intermediate court and greatly assist in the reduction of the backlog.

Type of Opinions. The intermediate court should write brief memorandum opinions of two of three pages in all cases where possible. In those instances where longer opinions are required, their publication could be determined perhaps by a committee composed of the three presiding judges of the intermediate circuit court and three members of the Supreme Court.^{63/}

Plan A: Estimated Caseloads

Supreme Court

As of January 1, 1970, it is estimated that the annual filing rate in the Colorado Supreme Court will be approximately 680 cases. The estimated backlog as of that date will be 950 cases, of which approximately 50 percent, or 475 will be at issue. Approximately 85 percent, or 400, of the cases at issue will be civil.

Total Appellate Filings

Assuming that: 1) county court appeals will be taken to the intermediate court; and 2) initial judicial review of workmen's compensation and unemployment compensation cases will be in the intermediate court, the total estimated appellate cases which will be filed in 1970 is 1,000, broken down as follows:

^{62/} In this connection, there should also be a provision that any case filed in an intermediate court which should have been filed in the Supreme Court would automatically be transferred to the Supreme Court.

^{63/} As an alternative, all regular full-length opinions could be published - either separately or as part of Colorado Reports.

Supreme Court	680
County Court Appeals	220
Workmen's Compensation and Unemployment Compensation	<u>100</u>
	1,000

Division Between Supreme Court and
Intermediate Circuit Courts

Supreme Court. Of these 1,000 cases, approximately 350 will be in the Supreme Court:

All criminal and habeas corpus arising out of criminal actions	135-150
Original Proceedings	150
All cases attacking the constitutionality of a statute or ordinance; water cases concerning priorities or adjudications; P.U.C. cases (from district court); cases in which circuits differ; cases transferred from circuits; granting of certiorari	<u>50-65</u>
Total	350

Intermediate Courts. This will leave a balance of 650 new cases which would be divided as follows:^{64/}

1st Circuit	215
2nd Circuit	225
3rd Circuit	<u>220</u>
Total	650

Division of Backlog. Experience in other states which have recently created intermediate courts indicates that it will be several months before a sufficient number of cases are at issue for an intermediate court to become fully operative. It would be possible, however, for the intermediate court to begin work immediately by transferring cases from the backlog on the Supreme Court civil docket that are within the jurisdiction of the intermediate court.

^{64/} Based on the data contained in the June 6, 1968 memorandum to the Legislative Council Committee on Appellate Courts.

There are several ways in which this might be done, for example:

- 1) transfer only those cases which are at issue;
- 2) transfer all civil cases, whether at issue or not; or
- 3) transfer only those cases which are at issue a specified length of time (i.e., 12 months) or longer.

The first alternative is recommended, as it would provide a more efficient means of docket control during the formative period of the intermediate court. It would also provide fewer cases for the Supreme Court to screen to determine if they are within the jurisdiction of the intermediate court. It is likely (statistically) that 350-375 of the estimated number of civil cases at issue on January 1, 1970 would fall within the jurisdiction of the intermediate court. Transfer of these cases would give each intermediate circuit court an immediate oral argument docket of approximately 115-125 cases. As the other cases on the Supreme Court civil docket become at issue, they could be assigned, either to the proper circuit or to any other circuit (under the Supreme Court transfer authority) as deemed necessary to keep caseloads equalized and avoid the problem of one circuit becoming unduly overburdened or behind the other two.

Plan A: Budget

The annual initial cost of operating three three-judge intermediate appellate circuit courts is estimated to be between \$425,000 and \$475,000, the most important varying factor being the salary to be paid the intermediate appellate judges. The details of this estimate are as follows:^{65/}

Judges, Clerks, Secretaries

Judicial salaries (including PERA and Health Insurance)	\$215,000-\$250,000
Nine law clerks (at Supreme Court rates of \$7,920 per year)	72,000
Nine secretaries (Grade 16, Step 2 or \$469 per month plus PERA and Health Insurance)	<u>55,000</u>
Sub Total	\$342,000-\$377,000

65/ All totals are rounded.

Denver Clerk's Office

Clerk (Grade 30, Step 1 or Grade 29, Step 2)	\$10,500
Assistant Clerk (Grade 20, Step 1)	6,500
Two Deputy Clerks (Grade 14, Step 1) ^a	10,200
Intermediate Clerk-Steno (Grade 12, Step 2)	4,600
(PERA and Health Insurance on above)	<u>2,200</u>
Sub Total	\$34,000

a. One could also serve as bailiff.

General Operating Expenses (based on Supreme Court budget)	\$ 7,500
Travel	<u>10,000</u>
Sub Total	\$17,500
Sub Total - Denver Office	\$51,500

Colorado Springs Clerk's Office

Clerk (Grade 22, Step 1)	\$ 7,200
Deputy Clerk (Grade 15, Step 1)	6,500
Clerk-Bailiff (Grade 12, Step 2)	4,600
Intermediate Clerk-Steno (Grade 12, Step 2)	4,600
(PERA and Health Insurance on above)	<u>1,800</u>

Sub Total \$24,700

General Operating Expenses	\$ 3,500
Travel	<u>5,000</u>

Sub Total \$ 8,500

Sub Total - Colorado Springs Office \$33,200

Grand Total \$426,700-\$461,700*

* This total does not include any provision for an intermediate court reporter, which would add another \$12,000 or so. It also assumes that the Colorado Springs based circuit would use the El Paso District Court law library. In which event, it might be

necessary to provide at least one-half of a librarian's salary (\$5,000) and also to include library additions as part of initial capital outlay. The salary grades and number of employees are an educated guess and will be checked further with our personnel officer.

Initial Capital Outlay. It is very difficult to estimate initial capital outlay costs. According to purchasing office estimates, it costs about \$1,000 per official or employee to outfit an executive office and approximately \$700 per employee to outfit other offices. On this basis, the initial capital outlay cost would be approximately \$30,000 to \$35,000. This estimate assumes that space is made available without rental in Denver. It also does not include possible rental of space in the new El Paso County Hall of Justice, nor does it include library additions which may be required. If \$10,000-\$15,000 is added for this purpose, total initial capital outlay would be approximately \$45,000.

Plan B

Under Plan B, county court appeals would remain in the district court with certiorari to the Supreme Court. All other jurisdictional provisions would be the same as in Plan A, with the exception of circuit boundaries. Consequently, only two three-man divisions would be needed initially. Both divisions would be based in Denver, but would have the authority to sit in other locations. Through proper administrative control, transfer of cases between divisions would eliminate the likelihood of both divisions sitting in the same out-state location, e.g., Grand Junction, within a few weeks of each other.

Caseload

By eliminating county court appeals (which would remain with the district court), the estimated appellate workload in 1970 would be:

Supreme Court	680
Workmen's Compensation and Unemployment Compensation	<u>100</u>
	780

As 350 of these will be in the Supreme Court (see Page 65), it would leave a remainder of approximately 430 cases for the two intermediate appellate jurisdictions. It should be recognized, however, that the anticipated increase in the annual filing

rate^{66/} will require one and maybe two additional intermediate appellate divisions during the next decade to keep up with the workload.

Supreme Court Recommendation

The Supreme Court recommends Plan B over Plan A for several reasons.

1) Plan B would cost approximately \$150,000 less per year to operate than Plan A, and the initial capital outlay expense would be reduced by at least one-third. There would also be no need for library additions and the partial salary of a librarian, because both additions would be housed in Denver.

2) There would be greater flexibility if geographic circuits are not required; yet, attorneys and litigants would have the convenience of having their causes heard in or closer to their home communities.

3) County Court appeals have not yet become a burden on district courts. By handling these appeals in the same way as now provided, litigants would not be discouraged from taking appeals in minor cases because of a possible increase in the cost of perfecting the appeal. Also, the possibility of the intermediate court's docket becoming clogged with relatively minor matters would be avoided.

4) Appointments to the intermediate court would be considered on a statewide basis, similar to Supreme Court appointments, thus providing for the appointment of the best qualified men regardless of place of residence.

^{66/} More than 800 by 1975, and more than 900 by 1979.

APPENDIX A

SUMMARY OF JURISDICTION OF INTERMEDIATE APPELLATE COURTS

Alabama

The Court of Appeals (intermediate court) of Alabama is composed of three judges possessing the same qualifications of the supreme court judges. They serve for a term of six years and are paid an annual salary of \$19,500.^{1/}

The Court of Appeals has final appellate jurisdiction of all suits at law where the amount involved does not exceed \$1,000, and of all misdemeanors, bastardy, habeas corpus, and felonies where the punishment has been fixed at 20 years or under.^{2/} The court has original jurisdiction of quo warranto and mandamus in relation to matters over which it has appellate jurisdiction. The court also has authority to issue writs of injunction, habeas corpus, and such other remedial and original writs as are necessary to give it a general superintendence and control of jurisdiction inferior to it and in matters over which it has final appellate jurisdiction.^{3/} The judges each have authority to issue writs of certiorari and supersedeas to all inferior courts.^{4/}

The Court of Appeals may approve the constitutionality of a statute. But when it entertains the view that a statute is unconstitutional, and the law has not been struck down previously by the Supreme Court, the case is submitted to the Supreme Court, which court's decision controls the Court of Appeals in this as in all matters. A Court of Appeals' decision upholding an assailed statute, and the question not previously having been decided by the Supreme Court, may be reviewed by the Supreme Court upon writ of error.^{5/}

Appeals to the Court of Appeals are taken in the same manner and with the effect and subject to the limitations and restrictions provided by law with respect to appeals to the Supreme Court, and the rules and regulations obtaining with respect to applications for rehearings in the Supreme Court also apply to the Court of Appeals.^{6/}

- ^{1/} "Judicial Salaries in Major Trial and Appellate Courts," 51 J. Amer. Jud. Soc. 240 (Feb. 1968), and Code of Ala., Tit. 13 § 29 (1958, Supp. 1967).
- ^{2/} Code of Ala., Tit. 13 § 86 (1958).
- ^{3/} Code of Ala., Tit. 13 § 89 (1958).
- ^{4/} Code of Ala., Tit. 13 § 91 (1958).
- ^{5/} Code of Ala., Tit. 13 § 98 (1958).
- ^{6/} Code of Ala., Tit. 13 § 90 (1958).

Decisions of the Supreme Court control the Court of Appeals, and the former court has general superintendency over the latter. The Supreme Court makes rules for both courts.^{7/} Cases improperly submitted to one court are transferred to the other court.^{8/} Cases pending in the Court of Appeals may be transferred to the Supreme Court when advisable or necessary for the prompt dispatch of business.^{9/} Whenever the members of the Court of Appeals are unable to reach a unanimous decision, any one member may certify the point of law to the Supreme Court, and the Supreme Court must decide the question.^{10/}

Arizona

In 1964, Arizona created a Court of Appeals, a single court of record divided into two divisions, each division having three judges who serve a six-year term from the date of election.^{11/} The annual salary of each judge is \$22,500.^{12/}

The Court of Appeals has original jurisdiction of habeas corpus and appellate jurisdiction in all actions and proceedings originating in or permitted by law to be appealed from the superior court, except criminal actions involving crimes punishable by death or life imprisonment. The Court also has jurisdiction to issue writs of certiorari to review awards of the industrial commission. In addition, jurisdiction to issue injunctions, writs of mandamus, review, prohibition, habeas corpus, certiorari, and other writs necessary and proper to the complete exercise of its appellate jurisdiction is granted to the Court of Appeals.^{13/}

Appellate procedure to the Court of Appeals is the same as the procedure for appeals to the Supreme Court and within the same time limits. If the case is not brought within the proper court or division, it is transferred to the proper place.^{14/} Also, the Supreme Court may transfer to the Court of Appeals for decision a case or appeal pending before the Supreme Court, if the case or appeal is within the jurisdiction of the Court of Appeals.

Section 12-120.24, Ariz. Rev. Stat. (1967 Supp.) provides for a rehearing review by the Supreme Court. Because of its length and importance it is quoted in full.

- 7/ Code of Ala., Tit. 13 § 95 (1958).
- 8/ Code of Ala., Tit. 13 § 96 (1958).
- 9/ Code of Ala., Tit. 13 § 102 (1958).
- 10/ Code of Ala., Tit. 13 § 88 (1958).
- 11/ Ariz. Rev. Stat. § 12-120.01 (B) (1967 Supp.).
- 12/ Legislation adopted in 1968 session.
- 13/ Ariz. Rev. Stat. § 12-120.21 (1967 Supp.).
- 14/ Ariz. Rev. Stat. § 12-120.22 (1967 Supp.).

A party against whom a decision has been rendered in the court of appeals may file in such court a motion for rehearing after the rendition of the decision, setting forth with particularity the reasons why he believes the decision erroneous. The opposite party may file his response to such motion. If the motion is denied, and the party against whom the decision has been rendered desires a further review by the supreme court, he shall serve upon the opposite party and file with the clerk of the division a statement that he desires such review. The clerk of the division shall thereupon transmit the record in the case to the clerk of the supreme court. The supreme court shall either grant or deny the request for review. No further briefs or oral argument shall be filed or had unless the supreme court so directs. If no request for review by the supreme court has been filed, or upon the receipt from the clerk of the supreme court of notification that the request for review has been denied, the clerk of the division shall issue the mandate of the court of appeals.^{15/}

California

The state of California is presently divided into five appellate districts, in each of which is a District Court of Appeal, consisting of a division or several divisions having three judges in each.^{16/} The Legislature may create and establish additional District Court of Appeal and divisions thereof as it deems necessary.^{17/} At the present time, there is a total of 39 judges, as shown in the following table:

<u>Appellate Dist. No.</u>	<u>No. of Divisions in District</u>	<u>No. of Judges in Division</u>	<u>Total No. of Judges</u>
1	4	3	12
2	5	3	15
3	1	3	3
4	2	3	6
<u>5</u>	<u>1</u>	3	<u>3</u>
TOTAL 5	13		39

^{15/} Ariz. Rev. Stat. § 12-120.24 (1967 Supp.).

^{16/} Martindale-Hubbell Law Directory, Vol. 5, p. 3488 (1968).

^{17/} Calif. Const. Art. VI, § 4a.

These judges are appointed by the Governor with the approval of the Commission on Judicial Appointments. They serve a term of 12 years and run for re-election on a nonpartisan ballot on their record. They receive an annual salary of \$30,000.^{18/} and this will go up to \$36,216 on September 1, 1968.

The District Courts of Appeal have jurisdiction in all cases in law appealed from the superior courts (trial courts of general jurisdiction). These classes of cases do not include those appealed directly to the highest court, the Supreme Court.^{19/} The District Courts of Appeal also have jurisdiction in all cases of forcible or unlawful entry or detainer; in proceedings in insolvency; in actions to prevent or abate a nuisance; in proceedings of mandamus, certiorari, prohibition, usurpation of office, removal from office, contesting elections, eminent domain, and in such other special proceedings as may be provided by law. The courts' jurisdiction also extends, on questions of law alone, to all criminal cases presented by indictment or information, except where judgment of death has been rendered.^{20/}

The District Courts of Appeal also have appellate jurisdiction in all cases, matters, and proceedings pending before the Supreme Court which the Supreme Court orders transferred to a District Court of Appeal for hearing and determination.^{21/} The Supreme Court can order any cause pending before a District Court of Appeal to be heard and determined by the Supreme Court. The Supreme Court can also transfer cases between intermediate courts and divisions thereof.^{22/}

The District Courts of Appeal have the power to issue writs of mandamus, certiorari, prohibition, habeas corpus and all other writs necessary or proper to the complete exercise of their appellate jurisdiction.^{23/} In addition, the District Courts of Appeal have appellate jurisdiction on appeal in certain cases within the original jurisdiction of municipal and justice courts.^{24/}

^{18/} State Court Systems, 1966, The Council of State Governments (1966); and "Judicial Salaries in Major Trial and Appellate Courts," 51. J. Amer. Jud. Soc. 240 (Feb. 1968).

^{19/} Martindale-Hubbell Law Directory, Vol. 5, p. 3489 (1968).

^{20/} Calif. Const. Art. VI § 4b.

^{21/} Calif. Const. Art. VI § 4c.

^{22/} Ibid.

^{23/} Calif. Const. Art. VI § 4b.

^{24/} Calif. Const. Art. VI § 4e.

Florida

The state of Florida is presently divided into four appellate districts, in each of which there is a District Court of Appeal, consisting of three or more judges. In the first three districts, there are five judges in each district, and in the fourth district there is just three judges, making a total of 18 judges.^{25/} The Legislature may provide for more judges or may reduce the number in any district to not less than three.^{26/} The judges serve for a term of six years and are paid an annual salary of \$28,000.^{27/}

The jurisdiction of the District Courts of Appeal includes appeals as of right from the trial courts in each appellate district, and from final orders or decrees of county judge's courts pertaining to probate matters or to estates and interests of minors and incompetents, excepting those from which appeals may be taken directly to the Supreme Court or cases in which the circuit courts have final appellate jurisdiction.^{28/}

The District Courts of Appeal have such powers of direct review of administrative action as may be provided by law. Rule 4.1 states that all appellate review of the rulings of any commission or board shall be by certiorari. The statute relating to judicial review under the Administrative Procedures Act and the statutes relating to review by certiorari of final administrative orders of certain regulatory boards should be consulted in the preparation of certiorari proceedings, as well as the appropriate governing statute, relating to the particular agency or board, to determine the appropriate court wherein review will lie. The scope of review under certiorari is narrowly limited to a determination of whether the administrative agency acted without or in excess of its authority or whether it departed from the essential requirements of law in entering the order sought to be reviewed. Before an administrative order may be reviewed by certiorari, such order must be quasi-judicial in character, rather than purely executive in character. The District Courts of Appeal specifically have jurisdiction to review industrial commission orders and decisions as to workmen's compensation claims. District Courts of Appeal may issue writs of habeas corpus, mandamus, certiorari, prohibition, and quo warranto and all writs necessary and proper to the complete exercise of its jurisdiction.^{29/}

^{25/} Martindale-Hubbell Law Directory, Vol. V, p. 3500 (1968).

^{26/} Fla. Const. Art. 5, § 5.

^{27/} "Judicial Salaries in Major Trial and Appellate Courts," 51 J. Amer. Jud. Soc. 240 (Feb. 1968).

^{28/} Fla. Const. Art. 5, § 5 (3).

^{29/} Ibid.

Georgia

The state of Georgia has one Court of Appeals which is divided into three divisions, consisting of three elected judges in each division, making a total of nine appellate court judges.^{30/} They serve a term of six years and receive an annual salary of \$26,500.^{31/}

The intermediate Court of Appeals has jurisdiction for the trial and correction of errors in law or equity from the superior courts and city courts of Atlanta and Savannah, in all cases in which jurisdiction is not conferred on the Supreme Court. The Supreme Court has jurisdiction, denied to the intermediate court, in the following matters: cases involving constitutional questions; land titles in equity cases; validity or construction of wills; capital felonies; habeas corpus cases; extraordinary remedies; divorce and alimony; and in all cases certified to it by the Court of Appeals.^{32/}

The Court of Appeals can certify cases for determination by the Supreme Court if the intermediate court is divided and may certify cases to the court of last resort for instructions as to a proper action. The Supreme Court can review and determine, by certiorari or otherwise, cases certified to it from the Court of Appeals. In actual practice, it appears that most matters are funneled to the Court of Appeals, and the Supreme Court affords double appeal by means of certiorari or certification.^{33/}

Precedents of the Supreme Court govern the intermediate court, which can be compelled to obey orders of the highest court. Cases improperly appealed are transferred to the correct tribunal under rules of the Supreme Court.^{34/}

Illinois

The Appellate Court of Illinois is organized in five Judicial Districts. The court consists of 24 judges, 12 selected from the First District and three from each of the other four districts.^{35/} Their selection (election at general election) and

^{30/} Ga. Code Ann. § 24-3501 et seq. (1958, Supp. 1965).

^{31/} Ga. Code Ann. § 24-3503 (1958, Supp. 1965); "Judicial Salaries in Major Trial and Appellate Courts," 51 J. Amer. Jud. Soc. 240 (Feb. 1968).

^{32/} Intermediate Appellate Courts, Kentucky Legislative Research Commission, Informational Bulletin No. 12, p. 7 (Jan. 1956); Martindale-Hubbell Law Directory, Vol. V, p. 3504 (1968).

^{33/} Martindale-Hubbell Law Directory, Vol. V, p. 3504 (1968).

^{34/} Ga. Code Ann. § 24-3501 et seq. (1958, Supp. 1965).

^{35/} Ill. Const. Art. VI, § 6.

terms (ten years) are the same as for the Supreme Court judges.^{36/} They receive an annual salary of \$35,000.^{37/}

In all cases, other than those appealable directly to the Supreme Court, appeals from final judgments of a Circuit Court (trial court) lie as a matter of right to the Appellate Court in the district in which the Circuit Court is located, except that after a trial on the merits in a criminal case, no appeal shall lie from a judgment of acquittal.^{38/} The Appellate Court has such original jurisdiction as may be necessary for complete determination of any cause on review. The Appellate Court also has such powers of direct review of administrative action as may be provided by law.^{39/} Any final decision, order, judgment or decree of the Circuit Court entered in an action to review a decision of an administrative agency may be reviewed by the Appellate Court and Supreme Court.

Appeals to the Supreme Court from Appellate Court lie as a matter of right only (a) in cases in which a constitutional question arises for the first time in and as a result of the action of the Appellate Court, and (b) upon the certification by the Appellate Court that a case decided by it involves a question of such importance that it should be decided by the Supreme Court. Appeals in all other cases are by leave of the Supreme Court.^{40/}

Indiana

The Appellate Court of Indiana is composed of eight judges, serving a term of four years. The judges usually sit in two divisions, except that the court may sit en banc for the consideration of important cases.^{41/} The judges receive an annual salary of \$22,500.^{42/}

The Appellate Court has jurisdiction in all appealable cases, not given exclusively to the Supreme Court.^{43/} It has no jurisdiction of appeals in criminal cases.^{44/} The court's jur-

^{36/} Martindale-Hubbell Law Directory, Vol. V, p. 3512 (1968).

^{37/} State Court Systems 1966, The Council of State Governments (1966); "Judicial Salaries in Major Trial and Appellate Courts," 51 J. Amer. Jud. Soc. 240 (Feb. 1968).

^{38/} Ill. Const. Art. VI, § 7.

^{39/} Ibid.; and see Administrative Review Act, Ill. Stat. Ann. ch. 110, § 264 (Smith-Hurd 1967).

^{40/} Ill. Const. Art. VI, § 5.

^{41/} Ind. Stat. Ann. § 4-202 (Burns, 1966 Supp.)

^{42/} "Judicial Salaries in Major Trial and Appellate Courts," 51 J. Amer. Jud. Soc. 240 (Feb. 1968).

^{43/} Ind. Stat. Ann. § 4-214 (Burns, 1966 Supp.)

^{44/} Martindale-Hubbell Law Directory, Vol. V, p. 3514 (1968).

isdictional amount in civil cases is the same as that of the Supreme Court. No appeal in civil cases lies to either court unless the amount in controversy, excluding interest and costs, exceeds \$50, except in cases involving the validity of a franchise or ordinance; the construction or constitutionality of a statute; or a constitutionally guaranteed right. In these instances the case may be appealed to the Supreme Court, regardless of the amount involved.^{45/} These cases go directly to the Supreme Court for the purpose of presenting the question only.

Appeals in criminal prosecutions, condemnation proceedings, election contests, cases of mandate, prohibition and quo warranto, habeas corpus, proceedings to establish drains, change or improve watercourses, establish gravel roads, establish or vacate public highways, contempt proceedings, actions involving members of the bar, various interlocutory orders, probate matters, and child custody cases are taken to the Supreme Court. All other appealable cases are taken to the Appellate Court.^{46/} Misdemeanor cases may be appealed to either court.^{47/}

If the three judges of a division of the Appellate Court do not agree, the case is submitted to the entire court. If four do not then concur, the case is transferred to the Supreme Court.^{48/} Rules of the Appellate Court are the same as those of the Supreme Court. A judge in vacation or recess has the same authority in regard to writs as does a Supreme Court judge. Appeals are taken to the intermediate court in the same manner, with the same effect, and subject to the same limitations and restrictions, as appeals taken to the Supreme Court.^{49/}

Jurisdiction of the Appellate Court in cases determined by it is final with two exceptions: First, if two judges of any division are of the opinion that a ruling precedent of the Supreme Court is erroneous, upon written reasons therefor, the case is transferred to the Supreme Court. Second, within 30 days after a petition for rehearing is overruled in the Appellate Court, application may be made to the Supreme Court on the basis that the intermediate court's ruling contravened a precedent of the Supreme Court or that a new question of law is involved and has been decided erroneously. The Supreme Court has discretion in granting such application.^{50/}

- 45/ Ind. Stat. Ann. § 4-213 (Burns, 1946 Rep.).
- 46/ Ind. Stat. Ann. § 4-214 (Burns, 1966 Supp.).
- 47/ Ind. Stat. Ann. § 4-212 (Burns, 1946 Rep.).
- 48/ Ind. Stat. Ann. § 4-209 (Burns, 1946 Rep.).
- 49/ Ibid.
- 50/ Ind. Stat. Ann. § 4-215 (Burns, 1946 Rep.).

Appeals to the wrong court are transferred to the proper court and stand as if so originally filed. Cases are distributed among divisions in the order of submission and may be transferred between divisions to equalize the caseload. The Supreme Court may transfer to itself the oldest cases pending in the Appellate Court if a disparity in caseload exists between the two courts. Cases pending in the Appellate Court appealable to the Supreme Court as a matter of right on the basis of the amount in controversy are transferred by the Supreme Court to its own calendar.^{51/}

Louisiana

The state of Louisiana is presently divided into four appellate circuits, each of which has a Court of Appeal. Each circuit is subdivided into three districts.^{52/} There are six judges in the First Circuit (Baton Rouge), three judges in the Second Circuit (Shreveport), five judges in the Third Circuit (Lake Charles), and eight judges in the Fourth Circuit (New Orleans), a total of 22 judges.^{53/} Provision is made for increasing the number of judges upon the recommendation of the Judicial Council and approval of two-thirds of each house of the legislature. The Supreme Court can assign district court judges to the Courts of Appeal if the docket of any of them becomes congested.^{54/} Judges are elected and serve a term of twelve years.^{55/} They are currently paid an annual salary of \$24,000.^{56/}

The jurisdiction of the Courts of Appeal extends only to appellate cases of which the Louisiana Supreme Court is not given appellate jurisdiction. These cases include: (1) all matters appealed from the Family and Juvenile Courts, except the criminal prosecutions against persons other than juveniles; (2) all civil and probate matters of which the District Courts have exclusive jurisdiction; and (3) all civil matters involving more than \$100, exclusive of interest, of which the District Courts have concurrent jurisdiction.^{57/} No appeal lies to the Courts of Appeal in criminal cases.

The Supreme Court has appellate jurisdiction over: (1) cases in which the constitutionality or legality of any tax, lo-

^{51/} Ind. Stat. Ann. s 4-127, 4-218 (Burns, 1946, Rep.).

^{52/} La. Const. Art. VII, § 20, 21 (1921, as amended).

^{53/} Martindale-Hubbell Law Directory, Vol. V, p. 3530 (1968);
La. Const. Art. VII, § 21 (1921, as amended).

^{54/} Ibid.

^{55/} La. Const. Art. VII, § 19 (1921, as amended).

^{56/} "Judicial Salaries in Major Trial and Appellate Courts," 51
J. Amer. Jud. Soc. 240 (Feb. 1968).

^{57/} La. Const. Art. VII, § 29 (1921, as amended).

cal improvement assessment, toll or impost levied by the state or by any municipality, board or subdivision of the state is contested; (2) cases in which an ordinance of a municipality, board or subdivision of the state, or a law of the state has been declared unconstitutional; (3) cases in which orders of the P.U.C. are in contest; (4) cases involving election contests, but only if the election district from which the suit or contest arises does not lie wholly within a Court of Appeal circuit; and (5) criminal cases in which the penalty of death or imprisonment at hard labor may be imposed, or in which a fine exceeding \$300 or imprisonment exceeding six months has actually been imposed.^{58/}

Control of and general supervisory jurisdiction over all inferior courts is vested in the Supreme Court.^{59/} It has the authority to assign district judges to the Courts of Appeal if the docket becomes congested.^{60/} The Supreme Court can require by writ of certiorari, or otherwise, any case to be certified from the Courts of Appeal to it for review if the application for review is made within 30 days after a rehearing is refused by the Court of Appeal. Where the application is based solely upon the ground that the decision of the question of law involved is in conflict with a decision of the Supreme Court or another Court of Appeal upon a question not yet decided by the Supreme Court, then the application shall be granted as a matter of right.^{61/}

Each Court of Appeal has the power to certify to the Supreme Court any question of law arising in any case pending before it which, for its proper decision, requires the instruction of that court. The Supreme Court may either give its instructions on the question certified to it, which shall be binding upon the Court of Appeal in such case, or it may require that the whole record be sent up for its consideration, in which case the whole matter in controversy is decided in the same manner as if it had been on appeal directly to the Supreme Court.^{62/}

Appeals to the Courts of Appeal may be on both the law and facts,^{63/} and all cases are to be tried on the original record, pleadings, and evidence.^{64/} The rules of practice regulating appeals to and proceedings in the Supreme Court shall apply to appeals and proceedings in the Courts of Appeal, so far as

^{58/} La. Const. Art. VII, § 10 (1921, as amended).

^{59/} Ibid.

^{60/} La. Const. Art. VII, § 12 (1921, as amended).

^{61/} La. Const. Art. VII, § 11 (1921, as amended); La. Rev. Stat. of 1950, Tit. 13, § 4450 (1962 Cumulative Supp.).

^{62/} La. Const. Art. VII, § 25 (1921, as amended); La. Rev. Stat. of 1950, Tit. 13, § 4449 (1962 Cumulative Supp.).

^{63/} La. Const. Art. VII, § 29 (1921, as amended).

^{64/} La. Const. Art. VII, § 27 (1921, as amended).

they may be applicable.^{65/} Concurrence of two appellate court judges is necessary for a decision. No specific provision exists for review by the Supreme Court when the three court of appeals judges cannot reach a decision. If the court is deadlocked, a district judge or qualified lawyer may be appointed to serve temporarily.^{66/}

Maryland

In 1966, the Maryland legislature created an intermediate court of appeals, known as the Court of Special Appeals. The court is composed of five judges, elected by the qualified voters, who serve a term of 15 years.^{67/} They currently receive an annual salary of \$27,500.^{68/}

The Court of Special Appeals has appellate jurisdiction coextensive with the limits of the state and includes direct appeals from the circuit courts of the counties (trial courts) and from the Criminal Court of Baltimore City in all criminal cases where the sentence is other than death, which appeals are subject to further appeal to the Court of Appeals.^{69/}

Four of the judges constitute a quorum, and the concurrence of a majority of the entire court shall be necessary for the decision of any cause. There is no provision which authorizes the court to sit in one or more panels or divisions.^{70/} The Maryland General Assembly may provide by law for additional judges as it deems necessary.^{71/}

Michigan

The Court of Appeals of Michigan was created in 1965 and is composed of nine judges who serve for six-year terms.^{72/} The court sits in divisions of three judges each, except as otherwise directed by the Supreme Court, and a majority of the judges assigned to each division shall constitute a quorum for hearing

^{65/} Ibid.

^{66/} La. Const. Art. VII, § 26 (1921, as amended).

^{67/} Md. Code Ann. 26-130 (1957, Rep. Vol. 1966); Acts of 1966, ch. 11, § 1.

^{68/} "Judicial Salaries in Major Trial and Appellate Courts," 51 J. Amer. Jud. Soc. 240 (Feb. 1968).

^{69/} Op. cit. note 67, supra.; Md. Code Ann. 5-21A (1957, Rep. Vol. 1968).

^{70/} Md. Code Ann. 26-130 (1957, Rep. Vol. 1966).

^{71/} Md. Code Ann. 26-131 (1957, Rep. Vol. 1966).

^{72/} Mich. Stat. Ann. § 27A.301 (1962, Cum. Supp. 1968); Pub. Acts 1964, No. 281, as amended by Pub. Acts, 1966, No. 306.

cases and transacting business.73/ The current annual salary for the judges is \$32,500.74/

The administration of the Court of Appeals is under the control of the Supreme Court, and the Supreme Court may transfer judges to the Court of Appeals to act as temporary judges to replace disabled or disqualified judges or to enlarge the court to not more than 12, if the business of the court is deemed by the Supreme Court to warrant it.75/

The Court of Appeals has jurisdiction on appeals from: (1) all final judgments from the recorder's court, superior court, circuit courts, and court of claims; (2) all final judgments from justice courts, police courts, municipal courts, probate courts, common pleas courts, or other court inferior to the circuit courts, which on appeal are not triable de novo (all appeals from final judgements from the aforementioned courts which are triable de novo shall continue to be taken to the circuit courts); and (3) such other judgments or interlocutory orders as the Supreme Court may by rule determine.76/ All appeals pursuant to the Court of Appeals' jurisdiction are a matter of right. All other appeals permitted by statute or by Supreme Court rule are by right or by leave as provided by statute or Supreme Court rule.77/

The Court of Appeals has original jurisdiction "...to issue prerogative and remedial writs or orders as provided by rules of the Supreme Court, and has authority to issue any writs, directives and mandates that it judges necessary and expedient to effectuate its determination of cases brought before it."78/

The decisions on appeal to the Court of Appeals are final, except as provided by Supreme Court rule.79/ Appeals may be taken to the Supreme Court prior to a decision by the Court of Appeals on leave granted by the Supreme Court upon a showing by petitioner of any one of the grounds listed below and by the appellant showing a meritorious basis for the appeal. Petitioner must show that (1) the subject matter of the appeal involves a substantial question as to the validity of an act of the legislature, (2) the subject matter of the appeal has significant public interest and involves a suit brought by or against the state or an agency or subdivision thereof or by or against officers of the state or an agency or subdivision in their official

- 73/ Mich. Stat. Ann. § 27A.311 (1962, Cum. Supp. 1968).
- 74/ Mich. Stat. Ann. § 27A.304 (1962, Cum. Supp. 1968).
- 75/ Mich. Stat. Ann. §§ 27A.305-306 (1962, Cum. Supp. 1968).
- 76/ Mich. Stat. Ann. § 27A.308 (1962, Cum. Supp. 1968).
- 77/ Mich. Stat. Ann. § 27A.309 (1962, Cum. Supp. 1968).
- 78/ Mich. Stat. Ann. § 27A.311 (1962, Cum. Supp. 1968).
- 79/ Mich. Stat. Ann. § 27A.314 (1962, Cum. Supp. 1968).

capacity, (3) the subject matter of the appeal involves legal principles of major significance to the jurisprudence of the state, or (4) delay in final adjudication of the litigation is likely to cause substantial harm.^{80/}

Appeals on interlocutory or final decisions of the Court of Appeals may be taken to the Supreme Court only upon application and leave granted by the Supreme Court on a showing of a meritorious basis for appeal and any one of the following grounds: (1) the subject matter of the appeal involves legal principles of major significance to the jurisprudence of the state; (2) the decision of the Court of Appeals is clearly erroneous and will cause material injustice; (3) the decision is in conflict with decisions of the Supreme Court or other Court of Appeals decisions; or (4) the appellant would suffer substantial harm by awaiting final judgment before taking appeal when appealing an interlocutory order of the Court of Appeals.^{81/}

Missouri

In Missouri the three Courts of Appeals are composed of three judges each,^{82/} a total of nine judges, who are appointed by the Governor for 12-year terms.^{83/} The current annual salary for the judges of the Courts of Appeal is \$25,000.^{84/}

Each separate Court of Appeals has final appellate jurisdiction in its district of all cases from circuit courts and inferior courts of record and control over these courts, except in those cases in which direct appeal lies to the Supreme Court.^{85/} The Courts of Appeals have superintending control over all inferior courts within the court's jurisdiction, and the Courts of Appeals may issue and determine original remedial writs.^{86/} The rules of practice for the Courts of Appeals are promulgated and established by the Supreme Court.^{87/}

The Supreme Court has exclusive appellate jurisdiction in all cases involving: (1) the construction of the Constitution of the United State or Missouri; (2) the validity of a statute or treaty of the United States; (3) any authority exercised under the laws of the United States; (4) the construction of Missouri revenue laws; (5) title to any office; (6) title to real

^{80/} Mich. General Court Rules of 1963, Rule 852.1 (1968 Cum. Supp.).

^{81/} Mich. Gen. Court Rules of 1963, Rule 853.1 (1968 Cum. Supp.).

^{82/} Missouri Const. Art. 5, § 13.

^{83/} Missouri Const. Art. 5, §§ 23, 29.

^{84/} Missouri Stat. Ann. § 477:130.

^{85/} Missouri Const. Art. 5, § 13.

^{86/} Missouri Const. Art. 5, § 4.

^{87/} Missouri Const. Art. 5, § 5.

estate; (7) civil cases where the state or its political subdivisions or officers are a party; (8) felonies; (9) cases where the amount in dispute, exclusive of costs, exceeds the sum of \$7,500; and (10) all other cases provided by law.^{88/} Appeals in these cases lie directly to the Supreme Court.

A case before any Court of Appeals is transferred to the Supreme Court when any member of the Court of Appeals dissents from the majority opinion and certifies that he deems the decision contrary to a previous Supreme Court decision or a Court of Appeals decision, or upon order of the Supreme Court or a Court of Appeals because of the general interest or importance of the question involved.^{89/}

New Jersey

The Appellate Division of the Superior Court of New Jersey was established by the Constitution of New Jersey.^{90/} There is no statutory or constitutional provision for the number of judges to be assigned to the Appellate Division; however, there is provision for the Chief Justice of the Supreme Court to assign judges to particular divisions of the Superior Court.^{91/} The current number of judges assigned to the Appellate Division is twelve,^{92/} and their annual salary is \$27,000.^{93/}

Appeals in all causes may be taken to the Appellate Division from: (1) the Law and Chancery Divisions of the Superior Court; (2) the county courts; (3) civil causes determined by the county district courts; (4) causes determined by juvenile and domestic courts, except bastardy proceedings; (5) causes determined by the criminal judicial district courts; (6) causes determined in statutory proceedings and decisions of state agencies, except those of the Workmen's Compensation Division and the Wage Collection Section of the Wage and Hour Bureau of the Department of Labor and Industry; and (7) in such other causes as may be provided by law.^{94/} Appeals may be taken on interlocutory order or judgment or interlocutory decision or action of any state administrative agency.^{95/} Appeals may also be taken from judgments

^{88/} Missouri Const. Art. 5, § 3.

^{89/} Missouri Const. Art. 5, § 10.

^{90/} N.J. Const. Art. 6, § 3, para. 3.

^{91/} N.J. Const. Art. 6, § 7, para. 2.

^{92/} "Judicial Salaries in Major Trial and Appellate Courts," 51 J. Amer. Jud. Soc. 240 (Feb. 1968).

^{93/} *Ibid.*

^{94/} N.J. Const. Art. 6, § 5, para. 2; the Revision of the Rules Governing the Courts of the State of New Jersey, Rule 2:2-2 (1958).

^{95/} The Revision of the Rules Governing the Courts of the State of N.J., Rule 2:2-3 (1958).

nisi in matrimonial causes,^{96/} and in criminal causes in lieu of prerogative writ.^{97/} The Appellate Division may exercise such original jurisdiction as may be necessary for the complete determination of any cause on review.^{98/}

A direct appeal of right may be made to the Supreme Court in capital cases. All other appeals are channeled to the Appellate Division. Appeal as of right lies to the Supreme Court if there is a dissent in the Appellate Division or if the cause involves a question arising under the United States or New Jersey constitutions. Appeal also may be allowed on certification of the Supreme Court to the Superior Court and other inferior courts.^{99/}

The Supreme Court may also at its discretion grant appeal from the Appellate Division. Factors considered in granting this discretionary appeal include cases where: (1) the Appellate Division has decided a question of substantive law not previously determined by the court of last resort (Supreme Court), and decided it probably not in accord with other Supreme Court decisions; (2) the decision conflicts with another decision of the Appellate Division; (3) the judges concur in the result, but cannot agree on a common ground of decision; (4) the Appellate Division has decided an important question of procedural law not previously decided by the Supreme Court, or has departed so far from the accepted and usual course of judicial proceedings (or sanctioned such departure by a lower court) as to call for the exercise of the Supreme Court's supervision; or (5) the Appellate Division has decided a question of substance relating to the construction or application of a statute, which has not been but should be settled by the Supreme Court.^{100/}

New York

The Appellate Division of the Supreme Court is the intermediate appellate court in New York, and the Court of Appeals is the highest court. There is an Appellate Division for each of the four judicial departments of the state. The First and Second Appellate Divisions are allowed to split into "Appellate Terms", terms are thus similar to the three-man divisions or sessions of other states.^{101/}

^{96/} Ibid., Rule 2:2-2.

^{97/} Ibid., Rule 2:2-4.

^{98/} N.J. Const. Art. 6, § 5, para. 3.

^{99/} N.J. Const. Art. 6, § 5, para. 1.

^{100/} Intermediate Appellate Courts, Kentucky Legislative Research Commission, Informational Bulletin No. 12, p. 11 (Jan. 1956).

^{101/} N.Y. Judiciary Law, Art. 3.

The Constitution of New York specifically provides for twenty-four justices elected to the Supreme Court to be assigned by the governor to the Appellate Division. The governor may also assign additional justices as the need arises.^{102/} The current number of justices assigned to the Appellate Division is 26, and they receive an annual salary of \$33,500 to \$40,000.^{103/} Justices of the Supreme Court are elected for fourteen years.^{104/}

Most appeals are taken to one of the Appellate Divisions. Notable exceptions are direct appeal from the trial court to the Court of Appeals in capital cases or where the sole question is the constitutionality of a statute. The Appellate Divisions hear appeals:

1. from any final or interlocutory judgment except one entered subsequent to an order of the appellate division which disposes of all the issues in the action; or
2. from an order not specified in subdivision (b), where the motion it decided was made upon notice and it:
 - (i) grants, refuses, continues or modifies a provisional remedy; or
 - (ii) settles, grants or refuses an application to resettle a transcript or statement on appeal; or
 - (iii) grants or refuses a new trial; except where specific questions of fact arising upon the issues in an action triable by the court have been tried by a jury, pursuant to an order for that purpose, and the order grants or refuses a new trial upon the merits; or
 - (iv) involves some part of the merits; or
 - (v) affects a substantial right; or
 - (vi) in effect determines the action and prevents a judgment from which an appeal might be taken; or

^{102/} N.Y. Const. Art. 6, § 4.

^{103/} "Judicial Salaries in Major Trial and Appellate Courts," 51 J. Amer Jud. Soc. 240 (Feb. 1968).

^{104/} N.Y. Const. Art. 6, § 4.

(vii) determines a statutory provision of the state to be unconstitutional, and the determination appears from the reasons given for the decision or is necessarily implied in the decision; or

3. from an order, where the motion it decided was made upon notice, refusing to vacate or modify a prior order, if the prior order would have been appealable as of right under paragraph two had it decided a motion made upon notice.105/

Orders are not appealable to the Appellate Division as of right where it:

1. is made in a proceeding against a body or officer pursuant to article 78; or

2. requires or refuses to require a more definite statement in a pleading; or

3. orders or refuses to order that scandalous or prejudicial matter be stricken from a pleading.106/

An appeal may be taken to the Appellate Division from any order which is not appealable as of right in an action originating in the supreme court or a county court by permission of the judge who made the order granted before application to a justice of the appellate division; or by permission of a justice of the appellate division in the department to which the appeal could be taken, upon refusal by the judge who made the order or upon direct application.107/

The Appellate Divisions also hear appeals from the supreme courts and county courts when these sit as intermediate appellate courts. Appeals from the supreme courts and surrogates' courts may be reviewed on questions of fact or law.108/ In addition, an appeal may be taken to the Appellate Division from any judgment or order of a court of original instance other than the supreme court or a county court.109/

105/ N.Y. Civil Practice Laws and Rules, § 5701.

106/ Ibid.

107/ Ibid.

108/ N.Y. Civil Practice Laws and Rules, § 5702--§ 5501 (c),(d).

109/ N.Y. Civil Practice Laws and Rules, § 5703.

The Appellate Divisions have original jurisdiction in certain cases, e.g., admission to or removal from practice;110/ petitions directed against a justice of the Supreme Court, a judge of the county courts or the courts of general sessions;111/ and trial of issue of law on submission of agreed statement of facts.112/

Appeals as of right are taken to the Court of Appeals in: (1) criminal cases where the judgment is death; (2) civil causes from a judgment or order of final decision of the Appellate Division involving the construction of the constitution of the United States or New York; (3) civil causes where an Appellate Division justice dissents or where judgment or order is one of reversal or modification; (4) cases where the only question arises under the constitution of the United States or New York; (5) cases where an order of the Appellate Division granting a new trial or new hearing was entered and the appellant stipulates that, upon affirmance, judgment absolute or final order shall be entered against him; (6) causes where the Appellate Division certifies that a question of law should be reviewed by the Court of Appeals; (7) and causes in which the Court of Appeals determines that a question of law should be reviewed.113/

Review by the Court of Appeals is limited to questions of law except on judgment of death or when the Appellate Division reverses or modifies a lower court on new findings of fact. The right of appeal does not depend on the amount in controversy. The legislature has the power to abolish appeal based on dissent, reversal, or modification in the Appellate Division. In this event, certification by either court becomes the basis of appeal.114/

The Appellate Divisions have the power to promulgate rules and supervise the administration and operation of the courts in their department.115/

New Mexico

Pursuant to chapter 28 of the Laws of 1966, Sections 16-7-1 through 16-7-14, N.M. Stat. Ann., 1953 Comp. (P. Supp.), the Court of Appeals was created and commenced operations on April 1,

- 110/ N.Y. Judiciary Law, § 90.
111/ N.Y. Civil Practice Laws and Rules, § 506.
112/ N.Y. Civil Practice Laws and Rules, § 322.
113/ N.Y. Const. Art. 6, § 7.
114/ Ibid.
115/ N.Y. Judiciary Law, § 216.

1966.116/ The Court of Appeals is composed of four judges elected for eight-year terms at an annual salary of \$18,500.117/

The Court of Appeals is an intermediate appellate court between the district courts and the Supreme Court. Under New Mexico law prior to creation of the court of appeals, every final judgment of a district court could be appealed as a matter of right to the Supreme Court. Now, certain statutorily-defined cases (N.M. Stat. Ann. § 16-7-8, 1953 Comp.) must be appealed to the Court of Appeals, and there is no absolute right of appeal from this court to the Supreme Court. Application may be made to the Supreme Court for a Writ of Certiorari for review of the final action of the Court of Appeals, and the Supreme Court may either grant or deny the Writ.

The jurisdiction of the Court of Appeals includes review on appeals from:

A. any civil action which includes a count in which one or more of the parties seeks damages on an issue based on tort, including but not limited to products liability action;

B. all actions under the Workmen's Compensation Act 59-10-1 to 59-10-37, the New Mexico Occupational Disease Disablement Law 59-11-1 to 59-11-42, the Subsequent Injury Act 59-10-126 to 59-10-138 and the Federal Employers Liability Act;

C. criminal actions except those in which a judgment of the district court imposes a sentence of death or life imprisonment;

D. post-conviction remedy proceedings except where the sentence involved is death or life imprisonment;

E. actions for violation of municipal or county ordinances where a fine or imprisonment is imposed;

F. decisions of those administrative agencies of the state where direct review is provided by law; and

116/ Annual Report of the Director of the Administrative Office of the Courts, State of New Mexico (1967).

117/ N.M. Stat. Ann. § 16-7-1, 1953 Comp. (P. Supp.).

G. decisions in any other action as may be provided by law.118/

The Court of Appeals has no original jurisdiction, but it "may be authorized by rules of the Supreme Court to issue all writs necessary or appropriate in aid of its appellate jurisdiction."119/ The method of appeal to the Court of Appeals of New Mexico is the same as it is for the Supreme Court of New Mexico,120/ and the rules of practice and procedure of the Supreme Court are the same for the Court of Appeals.121/

The Supreme Court has jurisdiction to review by writ of certiorari to the Court of Appeals any matter in which the Court of Appeals decision: (1) conflicts with a Supreme Court decision; (2) conflicts with a decision of the Court of Appeals; (3) involves a "significant question of law" arising under the New Mexico or United States Constitution; or (4) "involves an issue of substantial public interest that should be determined by the Supreme Court."122/ The Court of Appeals may request the Supreme Court to consider cases which it has not decided and which it determines to be described by categories 3 and 4 above.123/

When necessary the Chief Justice of the Supreme Court may designate any justice of the Supreme Court or any district judge to act as a judge of the Court of Appeals. Also a judge of the Court of Appeals may be assigned to sit as a district judge or a Supreme Court Justice.

North Carolina

In North Carolina the Court of Appeals, which was created in 1967, is composed of six judges who are elected for eight-year terms. The number of judges will increase to nine in 1969.124/ They receive an annual salary of \$24,000.125/

The Supreme Court and the Court of Appeals respectively "have jurisdiction to review upon appeal decisions of the lower courts and administrative agencies, and upon matters of law or legal inference..."126/ Appeal lies of right to the Supreme Court

118/ N.M. Stat. Ann. § 16-7-8, 1953 Comp. (P. Supp.).

119/ N.M. Const. Art. VI, § 29.

120/ N.M. Stat. Ann. § 16-7-9, 1953 Comp. (P. Supp.).

121/ N.M. Stat. Ann. § 22-2-2, 1953 Comp. (P. Supp.).

122/ N.M. Stat. Ann. § 16-7-14, 1953 Comp. (P. Supp.).

123/ Ibid.

124/ Gen. Stat. of N.C., § 7A-16.

125/ "Judicial Salaries in Major Trial and Appellate Courts," 51 J. Amer. Jud. Soc. 240 (Feb. 1968).

126/ Gen. Stat. of N.C., § 7A-26.

on criminal causes involving a life imprisonment or death penalty sentence.127/ Specifically appeal lies of right to the Court of Appeals:

1. From any final judgment of a superior court [except any judgment which includes a sentence of death or life imprisonment] or one entered in a post-conviction proceeding, including any final judgment entered upon review of a decision of an administrative agency;

2. From any final judgment of a district court in a civil action;

3. From any interlocutory order or judgment of a superior court or district court in a civil action or proceeding which:

(a) Affects a substantial right, or

(b) In effect determines the action and prevents a judgment from which appeal might be taken, or

(c) Discontinues the action; or

(d) Grants or refuses a new trial.128/

Also, appeals from the decisions of the North Carolina Utilities Commission and the North Carolina Industrial Commission lie of right directly to the Court of Appeals.129/ Decisions of the Court of Appeals rendered upon review of post conviction proceedings are final and are not subject to review.130/

Any decision of the Court of Appeals which: (1) involves a "substantial" question arising under the Constitution of the United States or North Carolina; (2) in which there is a dissent; (3) or which involves a review of a rate-making decision by the North Carolina Utilities Commission; can be appealed as of right to the Supreme Court.131/ In addition, the Supreme Court exercises discretionary review over appeals to the Court of Appeals, except in causes involving the North Carolina Utilities Commission, other than a rate-making decision, and the North Carolina

<u>127/</u>	Gen. Stat. of N.C., § 7A-27.
<u>128/</u>	Gen. Stat. of N.C., § 7A-27.
<u>129/</u>	Gen. Stat. of N.C., § 7A-29.
<u>130/</u>	Gen. Stat. of N.C., § 7A-28.
<u>131/</u>	Gen. Stat. of N.C., § 7A-30.

Industrial Commission, and in cases reviewing a post conviction proceeding, in which case no review is allowed.132/

The Court of Appeals has power to issue writs of habeas corpus and prerogative writs, including mandamus, prohibition, certiorari, and supersedeas, in the aid of the court's jurisdiction or to supervise and control proceedings of trial courts and of the Utilities Commission and the Industrial Commission.133/

Ohio

In Ohio, there is a separate Court of Appeals in each of the ten judicial districts; eight districts have three judges; two districts have six and four judges respectively.134/ The judges are elected for six-year terms at an annual salary of \$27,000.135/

The Courts of Appeals have original jurisdiction, as does the Supreme Court, in quo warranto, mandamus, habeas corpus, prohibition, and procedendo. These courts have jurisdiction to review, affirm, modify, set aside, or reverse judgments or final orders of boards, commissions, officers, tribunals, and courts of record inferior to the Courts of Appeals within their respective districts. The Supreme Court has appellate jurisdiction over constitutional questions, felony cases, cases in which the Courts of Appeals have original jurisdiction, and cases of public or great general interest in which the Supreme Court may direct any Court of Appeals to certify its records. Concurrence of a bare majority of the three appellate judges is necessary, except that no judgment of any court of record entered on the verdict of a jury can be set aside except by concurrence of all three judges of a Court of Appeals.136/

In addition to the jurisdiction conferred by Section 6 of Article IV of the Ohio Constitution, the Courts of Appeals have the following jurisdiction: (1) Upon an appeal on questions of law to review, affirm, modify, reverse, set aside judgments or final orders of courts inferior to the Court of Appeals, including findings of a juvenile court that a child is delinquent, neglected or dependent, for prejudicial error committed by such lower court; (2) Upon an appeal on questions of law and fact the court of appeals, in cases arising in courts of record inferior

132/ Gen. Stat. of N.C., § 7A-31.

133/ Gen. Stat. of N.C., § 7A-25.

134/ Ohio Rev. Code Ann., §§ 2501.01-2501.012 (Page 1954).

135/ Legislation adopted in 1968 session.

136/ Ohio Const. Art. IV, § 6.

to the court of appeals within the district, shall weigh the evidence and render such judgment or decree as the trial court could and should have rendered upon the original trial of the case, in the following classes of actions, seeking as a primary and paramount relief:

(1) The construction or enforcement of a trust, including the enforcement or establishment of constructive or resulting trusts;

(2) The establishment or enforcement of equitable estates arising from the conversion of property;

(3) The foreclosure of mortgages and marshalling of liens, including statutory liens;

(4) The appointment, removal, and control of trustees and receivers;

(5) The restraint of commission of torts;

(6) The reformation and cancellation of instruments in writing;

(7) The restraint of actions or judgments at law;

(8) The quieting of title to property, the partition of property, and the registration of land titles;

(9) The specific performance of contracts, or the restraint of the breach thereof;

(10) Injunction, accounting, subrogation, or interpleader.^{137/}

In cases not listed above, Courts of Appeals have jurisdiction to proceed as in an appeal on questions of law only.^{138/} In addition, the Courts of Appeals may issue writs of supersedeas in any case, and all other writs not specifically prohibited or provided for by statute which are necessary to enforce the administration of justice.

The Courts of Appeals promulgate their own rules of procedure, subject to alteration and amendment by the Supreme Court.^{139/}

^{137/} Ohio Rev. Code Ann., § 2501.02 (Page 1954, Supp. 1966).

^{138/} Ibid.

^{139/} Ohio Rev. Code Ann., § 2501.08 (Page 1954).

The Chief Justice of the Court of Appeals may assign a judge of the Court of Appeals to a district court.140/ The Chief Justice of the Supreme Court may assign any judge of the Court of Appeals to any county to hold court and shall determine the disability or disqualification of any judge of the Court of Appeals.141/

Oklahoma

In Oklahoma, appellate jurisdiction is divided between two courts; the Supreme Court has appellate jurisdiction in all civil cases at law and equity; the Criminal Court of Appeals has exclusive jurisdiction over all criminal cases appealed from courts of record.142/

The Court of Criminal Appeals is composed of three judges elected for six-year terms and who receive the same annual salary as Supreme Court Justices (\$22,500).143/

The Court of Criminal Appeals may issue writs of habeas corpus and other such writs as may be necessary to exercise its jurisdiction.144/

In addition the Court of Criminal Appeals may prescribe its own rules, and ascertain matters of fact upon affidavit or otherwise as may be necessary in the exercise of its jurisdiction.145/

Pennsylvania

The Superior Court of Pennsylvania is composed of seven judges elected for ten-year terms.146/ The annual salary of the President judge of the Superior Court is \$36,000; the annual salary of the associate judges is \$35,500.147/ The Superior Court has the power to grant every lawful writ pursuant to the exercise of its jurisdiction.148/

The Superior Court has no original jurisdiction, except in actions of mandamus and prohibition to inferior courts where such

- 140/ Ohio Rev. Code Ann., § 2501.14 (Page 1954).
141/ Ohio Rev. Code Ann., § 2501.12 (Page 1954).
142/ Okla. Const. Art. 7, § 2.
143/ 20 Okla. Stat. Ann. § 31, § 285 (1962); and Okla. Session Laws 1967, ch. 128.
144/ 20 Okla. Stat. Ann. § 41 (1962).
145/ 20 Okla. Stat. Ann. § 42 (1962).
146/ 17 Penn. Stat. Ann. § 111 (Purdon's 1962).
147/ 17 Penn. Stat. Ann. § 830.25 (Purdon's 1962).
148/ 17 Penn. Stat. Ann. § 123 (Purdon's 1962).

actions are ancillary to Superior Court appellate proceedings, and the Superior court may issue writs of habeas corpus under similar conditions.149/

The Superior Court has exclusive and final appellate jurisdiction of all appeals in the following classes of cases:

1. All proceedings of any kind from court of quarter sessions of the peace, oyer and terminer and general jail delivery, except cases involving right to public office, and felonious homicide. Appeals are by right to the Superior Court, but it shall not operate as supersedeas unless allowed by the court or judge thereof, who has power to admit to bail and to make an order of supersedeas and other writs.150/

2. All actions and proceedings at law in courts of common pleas and in the county courts of Allegheny County and Philadelphia County and all similar courts, if the subject of controversy be either money, chattels, real or personal, or the possession of or title to real property, and if the amount or value thereof in controversy is not greater than \$10,000, exclusive of costs.151/

3. All actions arising from proceedings and orders of any commission or state agency, unless specifically excluded by law, and all orders of courts of common pleas, or court of quarter sessions of the peace and oyer and terminer involving summary proceedings before aldermen, magistrates or justices of the peace.152/

4. Appeals from orders, judgment, or sentence of the Allegheny County Court, or the Municipal Court of Philadelphia, or any similar courts, not provided by law to be taken to court of common pleas or court of quarter sessions of the peace of the particular county, shall be taken to the Superior Court, and shall not be appealable to the Supreme Court.153/

- 149/ 17 Penn. Stat. Ann. § 181 (Purdon's 1962, Supp. 1967).
150/ 17 Penn. Stat. Ann. § 182 (Purdon's 1962, Supp. 1967).
151/ 17 Penn. Stat. Ann. § 184 (Purdon's 1962, Supp. 1967).
152/ 17 Penn. Stat. Ann. § 184.1 (Purdon's 1962, Supp. 1967).
153/ 17 Penn. Stat. Ann. § 187 (Purdon's 1962).

5. Appeals or proceedings from divorce and joint appeals by labor claimants shall be taken to the Superior Court.154/

In the following cases appeal is under the sole jurisdiction of the Supreme Court:

- (1) Felonious homicide;
- (2) The right to public office;
- (3) Petitions, orders and decrees arising out of or within the jurisdiction of the orphans' court;
- (4) Actions and proceedings in equity;
- (5) Civil actions arising under the provisions of the act known as the "Banking Code," and under the provisions of the act known as the "Banking Code of 1965," and under the provisions of the act known as the "Department of Banking Code," and under the provisions of the act known as the "Building and Loan Code," and all amendments to said acts;
- (6) Matters relating to actions and orders of the Department of Revenue arising under the provisions of the act known as "The Fiscal Code", as amended;
- (7) Appeals from orders of the courts of common pleas and courts of quarter sessions of the peace involving or arising out of acts, ordinances, regulations or orders relating to zoning;
- (8) Direct criminal contempt in lower courts, and other contempt proceedings in lower courts relating to orders, judgments, decisions and decrees which are appealable directly to the Supreme Court;
- (9) Disbarment from the practice of law;
- (10) Suspension from the practice of law;

154/ 17 Penn. Stat. Ann. § 191.3 (Purdon's 1962, Supp. 1967).

(11) Suspension of a district attorney by an Attorney General or by a court.155/

(12) In actions of personal injury to a wife or child brought by husband and wife or child and parent, if more than one judgment is entered, and if any is greater than \$10,000, exclusive of costs.156/

The Superior Court may deny any appeal for want of due prosecution and it may affirm, reverse, amend or modify, any judgment or decree as it may think and determine just, or return the record to the inferior court for further proceedings.157/ The Superior Court may allow an appeal over which it normally has jurisdiction to be taken directly to the Supreme Court.158/

Tennessee

Tennessee has two intermediate appellate courts, the Court of Appeals and the Court of Criminal Appeals. The Court of Appeals of Tennessee is composed of nine judges who are elected for an eight-year term.159/ Judges of the Court of Appeals receive \$17,500 per annum.160/ The Court of Criminal Appeals is composed of three judges who, after 1968, will be elected for eight-year terms.161/ Salaries of judges of the Court of Criminal Appeals are to be the same as the judges of the Court of Appeals, \$17,500.162/

The jurisdiction of the Court of Appeals is appellate only and extends to all civil cases, except cases involving: the constitutionality of a statute or city ordinance which is the sole determinative question in litigation; the right to hold public office; workmen's compensation; state revenue; mandamus in the nature of quo warranto; ouster; habeas corpus in cases where the relator is being held under a criminal accusation or a rendition warrant issued by the Governor of the state; and excepting cases which have been determined finally in the lower court on demurrer or other method involving a review or determination of the facts or in which all the facts have been stipulated.163/

- 155/ 17 Penn. Stat. Ann. § 191.4 (Purdon's 1962, Supp. 1967).
156/ 17 Penn. Stat. Ann. § 191.2 (Purdon's 1962, Supp. 1967).
157/ 17 Penn. Stat. Ann. § 192 (Purdon's 1962).
158/ 17 Penn. Stat. Ann. § 190 (Purdon's 1962, Supp. 1967).
159/ 16 Tenn. Code Ann. § 401, 403 (1956).
160/ 8 Tenn. Code Ann. § 2303 (1956).
161/ 16 Tenn. Code Ann. § 442, 443 (1956, Supp. 1967).
162/ 16 Tenn. Code Ann. § 445 (1956, Supp. 1967); \$20,000 as of 1970.
163/ 16 Tenn. Code Ann. § 408 (1956).

The Court of Appeals has power to grant writs of error, certiorari, and supersedeas.^{164/} The court may and does sit in sections of three and is a court of record. The presiding judge of the court has the power to assign and reassign judges and sections. Concurrence of two judges is necessary in the section, five is necessary en banc, and four if two sections sit together.^{165/} The state is divided into three grand divisions with three judges elected from each. Cases are taken directly to the Court of Appeals in the division within which the case arose. A case may be transferred to another grand division if a member residing in the first division is disqualified and the transfer is approved by two judges of the initial division. There is also a transfer of jurisdiction to the Supreme Court or Court of Appeals when a case is taken to the wrong court.

The jurisdiction of the Court of Criminal Appeals is appellate only and extends to all criminal cases, both felony and misdemeanor. The court also has jurisdiction over all cases arising under any post conviction procedure statute and cases involving or attacking the validity of a final conviction or judgment in a criminal case. The court does not have jurisdiction of any case in which the sole question for determination involves the constitutionality of a statute or municipal ordinance.^{166/}

The Supreme Court has no original jurisdiction. It hears all appeals and writs of error from the circuit, criminal, and chancery courts in cases where jurisdiction has not been given to the Court of Appeals. Supreme Court review of cases finally determined by the Court of Appeals is by certiorari granted by the Supreme Court or any judge thereof.^{167/}

Texas

Texas has two intermediate appellate courts, the Court of Criminal Appeals and the Courts of Civil Appeals. The Court of Criminal Appeals consists of three judges elected for six-year terms.^{168/} The current annual salary for the judges of the Court of Criminal Appeals is the same as for Supreme Court justices, \$27,000.^{169/} There are 14 separate Courts of Civil Appeals, and

^{164/} 16 Tenn. Code Ann. § 410 (1956).

^{165/} 16 Tenn. Code Ann. § 413 (1956).

^{166/} 16 Tenn. Code Ann. § 448 (1956, Supp. 1967).

^{167/} 16 Tenn. Code Ann. § 452 (1956).

^{168/} Vernon's Ann. Civ. St. Art. 1801 (1964); Texas Const. Art. 5, § 4.

^{169/} "Judicial Salaries in Major Trial and Appellate Courts," 51 J. Amer. Jud. Soc. 241 (Feb. 1968).

each court is composed of three judges elected for six-year terms.^{170/} They receive an annual salary of \$24,000.^{171/}

The Constitution of Texas grants the Court of Criminal Appeals appellate jurisdiction over all criminal causes with the proviso that exceptions and regulations may be prescribed by law.^{172/} The Court and the judges have the power to issue writs of habeas corpus and other writs necessary to enforce the Court's jurisdiction.^{173/} The Court also has the power, by affidavit or otherwise, to ascertain matters of fact in cases pending before it.^{174/}

The Courts of Civil Appeals have appellate jurisdiction over all civil cases in which the district courts and county courts have jurisdiction. Decisions of the Civil Courts of Appeal are conclusive as to findings of fact.^{175/} Jurisdiction is final, except for those classes of cases wherein additional appeal to the Supreme Court is reserved.

Article 1821, as quoted below, describes the cases which cannot be appealed from Court of Civil Appeals, and in which it has final jurisdiction.

Article 1821. Except as herein otherwise provided, the judgments of the Courts of Civil Appeals shall be conclusive on the law and facts, nor shall a writ of error be allowed thereto from the Supreme Court in the following cases, to wit:

1. Any civil case appealed from the County Court or from a District Court, when, under the Constitution a County Court would have had original or appellate jurisdiction to try it, except in probate matters, and in cases involving the Revenue Laws of the State or the validity or construction of a Statute.
2. All cases of slander.
3. All cases of divorce.
4. All cases of contested elections of every character other than for State officers,

^{170/} Vernon's Ann. Civ. St. Art. 1817 (1964).

^{171/} See note 169, supra.

^{172/} Texas Const. Art. 5, § 5.

^{173/} Ibid.

^{174/} Ibid.

^{175/} Texas Const. Art. 5, § 6; Vernon's Ann. Civ. St. Art. 1819, 1820 (1964).

except where the validity of a Statute is questioned by the decision.

5. In all appeals from interlocutory orders appointing receivers or trustees, or such other interlocutory appeals as may be allowed by law.

6. In all other cases as to law and facts except where appellate jurisdiction is given to the Supreme Court and not made final in said Courts of Civil Appeals.

It is provided, however, that nothing contained herein shall be construed to deprive the Supreme Court of jurisdiction of any case brought to the Court of Civil Appeals from an appealable judgment of the trial court in which the judges of the Courts of Civil Appeals may disagree upon any question of law material to the decision, or in which one of the Courts of Civil Appeals holds differently from a prior decision of another Court of Civil Appeals or of the Supreme Court upon a question of law, as provided for in Subdivisions (1) and (2) of Article 1728.176/

The Supreme Court has appellate jurisdiction on all questions of law over the following cases brought on appeal to the Courts of Civil Appeals:

1. Cases in which judges of the Courts of Civil Appeals may disagree upon any question of law material to the decision.

2. Cases in which a Court of Civil Appeals renders a decision different from another Court of Civil Appeals, or of the Supreme Court, upon any question of law material to a decision of the case.

3. Cases involving the construction or validity of statutes necessary to a determination of the case.

4. Cases involving state revenues.

5. Cases in which the Railroad Commission is a party.

176/ Vernon's Ann. Civ. St. Art. 1821 (1964).

6. Cases in which it is made to appear that an error of substantive law has been committed by a Court of Civil Appeals which affects the judgment, excluding cases over which judgment of courts of civil appeals is final (1821 above).177/

All of the above causes of which the Supreme Court has appellate jurisdiction may be transferred to the Supreme Court by writ of error or by certificate from the Court of Appeals.178/

The state legislature has the power by statute to authorize direct appeals to the Supreme Court on order of any trial court granting or denying an interlocutory or permanent injunction on the question of constitutionality of a statute or on the validity or invalidity of any administrative order issued pursuant to statute.179/

The Supreme Court promulgates rules for all courts.180/ The Supreme Court has the exclusive power to issue mandamus and other mandatory or compulsory writs to officers of the state,181/ but the Court of Appeals may issue mandamus and other compulsory or mandatory writs on officers of political parties.182/ The Supreme Court may transfer causes within the Courts of Civil Appeals to equalize dockets.183/

The Supreme Court can issue writs of procedendo, certiorari and all writs of quo warranto or mandamus to the Courts of Civil Appeals or a judge thereof.184/

Courts of Civil Appeals have the power to determine, by affidavit or otherwise, matters of fact as may be necessary to exercise their jurisdiction,185/ and to issue writs of mandamus and all other writs necessary to enforce their jurisdiction.186/ In addition, the Courts of Civil Appeals may mandamus judges of district courts to proceed to trial and judgment in a cause returnable as the nature of the case may require.187/

- 177/ Vernon's Ann. Civ. St. Art. 1728 (1964).
178/ Vernon's Ann. Civ. St. Art. 1729 (1964).
179/ Texas Const. Art. 5, § 3b; Vernon's Ann. Civ. St. Art. 1729 (1964).
180/ Vernon's Ann. Civ. St. Art. 1731 (1964).
181/ Vernon's Ann. Civ. St. Art. 1735 (1964).
182/ Vernon's Ann. Civ. St. Art. 1735a (1964).
183/ Vernon's Ann. Civ. St. Art. 1738 (1964).
184/ Vernon's Ann. Civ. St. Art. 1733 (1964).
185/ Vernon's Ann. Civ. St. Art. 1822 (1964).
186/ Vernon's Ann. Civ. St. Art. 1823 (1964).
187/ Vernon's Ann. Civ. St. Art. 1824 (1964).

Finally, the Courts of Civil Appeals can certify questions on an issue of law to the Supreme Court, but the Courts of Civil Appeals are bound to conformance with the judgment of the Supreme Court.^{188/} The Supreme Court may review final judgments of Courts of Civil Appeals upon writ of error when good cause can be shown.^{189/}

^{188/} Vernon's Rules of Civil Proc., Rule 461 (1968).
^{189/} Vernon's Rules of Civil Proc., Rule 467 (1968).

APPENDIX B
QUESTIONNAIRE

Questionnaire to District and County Court Judges
For Use By
Legislative Council Committee on Appellate Courts

Name of court _____

Judge completing questionnaire _____

1. Do you think that more extensive use of outside and retired judges would aid the Supreme Court in its attempt to reduce the current backlog of cases?

2. Do you think that increasing the number of judges in the Supreme Court from seven to nine would be effective in reducing the backlog?

3. Do you think that an enlarged court, with possibly 12 judges, sitting in separate criminal and civil divisions, would alleviate the backlog problem?

4. Do you think that the prevailing method of appellate review should be changed, such as by limiting the right of appeal or by changing the method from writ of error to writ of certiorari? Do you foresee any problems (constitutional problems) if the method of appellate review were changed? Do you think such a change would effectively reduce the Supreme Court backlog?

5. Do you think that an intermediate appellate court between the trial courts and the Supreme Court should be established?

6. Assuming that an intermediate court of appeals is established, what do you think should be the division of jurisdiction between the intermediate court and the Supreme Court, if any? Do you think the intermediate court should be one court with jurisdiction coextensive with the entire state; one court with several separate divisions, each division having jurisdiction over a particular geographical region of the state; or two or more separate courts of appeals, each court having jurisdiction over a particular district of the state? How many judges do you think an intermediate appellate court should have? What qualifications should the judges have and what salary should they be paid?

7. Assuming that an intermediate appellate court is established, do you think that county court appeals should go to the intermediate court or continue to go to the district courts? Do county court appeals present any problems in the district courts?

8. Assuming that an intermediate appellate court is established, do you think that it should be granted jurisdiction to review administrative decisions (workmen's compensation, unemployment compensation, Public Utilities orders and decisions, etc.) rather than having the district courts review such decisions? Does the review of administrative decisions present any problems or crowding of the docket in the district courts?

9. Do you have any other comments regarding possible solutions to the Supreme Court backlog problem?

Please use additional sheets as needed. Send your reply to:

Mr. Lyle C. Kyle, Director
Colorado Legislative Council
Room 341, State Capitol
Denver, Colorado 80203