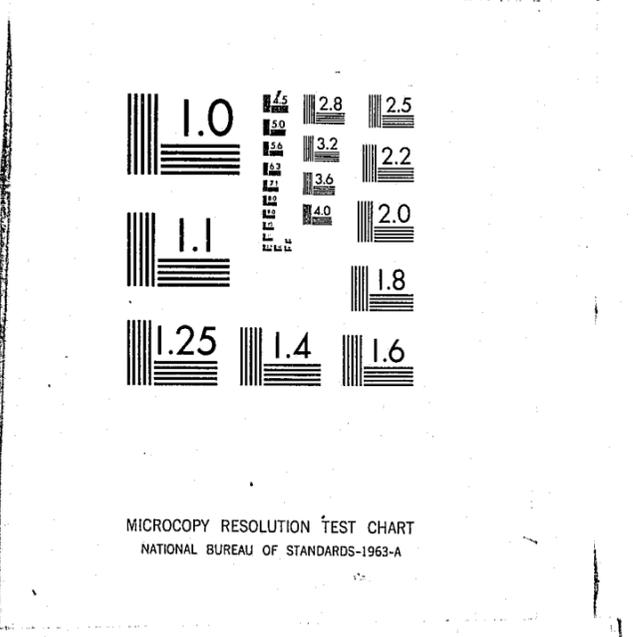


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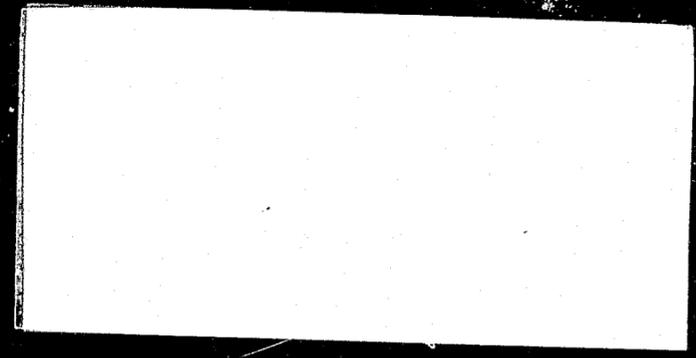
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Washington, D. C. 20531

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PUBLIC INFORMATION AND COMMUNITY RELATIONS  
ACTIVITIES OF STATE ADMINISTRATIVE  
OFFICES OF THE COURTS - A SURVEY

May 1981

Prepared by:  
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and  
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CRIMINAL COURTS TECHNICAL ASSISTANCE PROJECT  
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## I. INTRODUCTION

### A. Background

The need for effective court public information/community relations programs was documented formally in 1973 in the report of the National Advisory Commission on Criminal Justice Standards and Goals, Courts, in Standard 10.3. The Commission concluded that the major source of problems in this area was ambiguity concerning responsibility for furnishing information to the public. The Standard prescribed affirmative action by courts to provide the focal point of a coordinated approach to the problem.<sup>1</sup>

The results of a recent national survey of public attitudes toward state and federal courts demonstrate the continuing need for effective court public information/community relations programs.<sup>2</sup> Four of the six major conclusions of that survey lend particular support to this assessment:

1. "The general public's knowledge of and direct experience with courts is low."
2. "The general public and community leaders are dissatisfied with the performance of courts and rank courts lower than many other major American institutions."
3. "[T]hose having knowledge and experience with courts voice greatest dissatisfaction and criticism."

<sup>1</sup>Standard 10.3 and its commentary are displayed in Appendix B.

<sup>2</sup>Yankelovich, Skelly and White, Inc., The Public Image of Courts, The National Center for State Courts, 1978, p. 11.

4. "In spite of the limited knowledge and dissatisfaction, the interest of the general public in courts is high and there is impressive support for reform and improvement."<sup>3</sup>

Perhaps the most disturbing conclusion of the survey is number three, which has prompted one observer to note the following: "[T]he more people know about courts, the less confidence they have in them. Experience in court disillusion people whether they win or lose. The courthouse is no longer a symbol of fair, impartial, and effective justice to everyone today."<sup>4</sup> This finding, based on empirical evidence, leaves little doubt that in most jurisdictions, the courts' conventional methods of relating with the public should be reevaluated.

The importance of effective court public information/community relations activities is embraced in the American Bar Association's 1980 Model Code of Professional Responsibility and Code of Judicial Conduct.<sup>5</sup> The Code of Professional Responsibility states that as an ethical consideration, "lawyers should encourage and participate in educational and public relations programs concerning our legal system with particular reference to legal problems that frequently arise."<sup>6</sup> Canon Four of the Code of Judicial Conduct states that, to the extent his/her time permits, a judge is encouraged to "speak, write, lecture, teach,

<sup>3</sup>Ibid.

<sup>4</sup>Sarat, Austin, "The Role of Courts and the Logic of Court Reform," Judicature Vol. 64, no. 7, 1981, p. 304.

<sup>5</sup>American Bar Association, Model Code of Professional Responsibility and Code of Judicial Conduct, Chicago, Illinois, 1980.

<sup>6</sup>Ibid. E.G. 2-2. p. 5.

and participate in other activities concerning the law, the legal system, and the administration of justice."<sup>7</sup>

Court public information/community relations efforts serve the needs of the court and the community. "The needs of the courts in respect to staff, courthouses, or, for that matter, judicial manpower, are often overlooked because of lack of public pressure and the accompanying lack of concern by legislators with such needs."<sup>8</sup> Thus the public should be informed of what the courts are and what they do, who the judges are and what they do, and how all of this works to serve the court's needs. With this knowledge, the public can provide pressure for high quality personnel and physical facilities for courts.<sup>9</sup>

An important need of all communities is a law abiding atmosphere. When public scrutiny of the courts results in public dissatisfaction, e.g., the results of the Yankelovich survey, the law abiding atmosphere of the community suffers.<sup>10</sup> One method of reducing this dissatisfaction is by increasing citizen understanding of and participation in the efforts to evaluate and improve the complex systems that deal with crime and the resolution of civil disputes.<sup>11</sup>

<sup>7</sup>Ibid. C. 4-A. p. 64.

<sup>8</sup>Burger, M. M., "Public Relations and the Court," Judicature, Vol. 52, no. 9, Chicago, Illinois, 1975. p. 272.

<sup>9</sup>Ibid.

<sup>10</sup>Council on Criminal Justice Administration, Judicial Systems: Court Community Relations, Salt Lake City, 1977.

<sup>11</sup>Bradley, T., "A Court System in Which All People Have a Part," Judicature, Vol. 58, no. 6, Chicago, Illinois 1975. p. 272.

B. Survey Purpose and Methodology

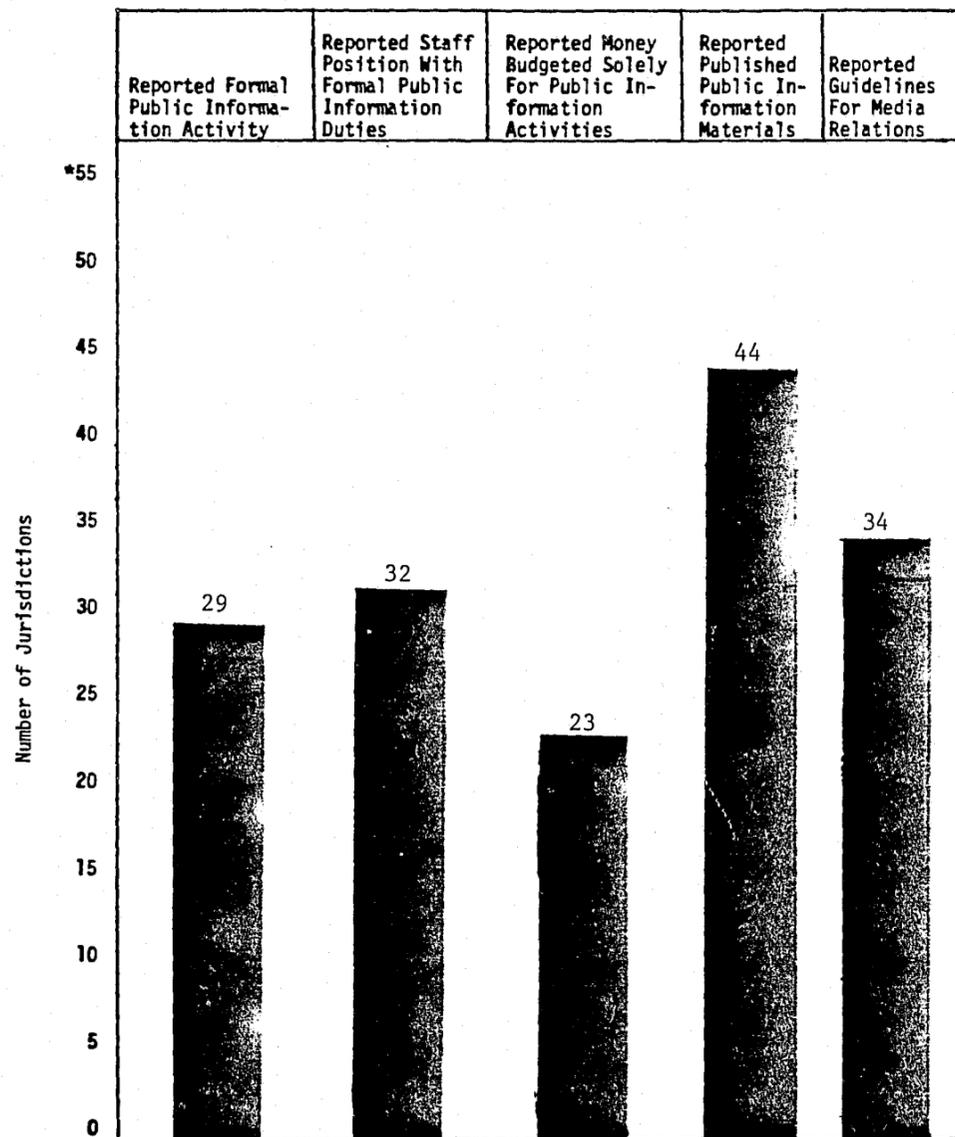
The Criminal Courts Technical Assistance Project has received numerous requests for information on the subject of courts' public information/community relations activities. Although this subject has been the topic of much discussion and research, basic data on the scope of these activities has not yet been assembled. The purpose of this survey was to document the public information/community relations activities conducted by state administrative offices of the courts (AOC's).

The data for this survey were collected by means of mail questionnaires completed by AOC directors, or their designates, in each of the fifty states, American Samoa, the District of Columbia, Guam, the Commonwealth of Puerto Rico, and the Virgin Islands. Data collection took place between August and November 1980. Several of the questionnaires were completed through phone interviews. (The survey instrument is displayed in Appendix A). A draft summary of responses was circulated in February 1981 to allow jurisdictions to verify the data. (The final summary of responses is displayed in Section IV). Samples of various community relations materials used by state court administrative offices are included in Appendix C.

This survey report is designed to offer readers an indication of what other jurisdictions are doing in the area of court community relations. There are many formal and informal activities under way, many of which have not been documented here. It is hoped that users of the survey will be prompted to explore these activities and consider implementing them as appropriate in their own states.

Preliminary information on public information/community relations activities at the local court level was gathered in this survey but not presented in this report. A second phase of this study will focus on activities that local court officials have found to be effective in bridging the gap between the court and the community.

II. BAR CHART OF SURVEY RESPONSES OF STATE COURT ADMINISTRATORS ON PUBLIC INFORMATION AND COMMUNITY RELATIONS ACTIVITIES



\*Includes the fifty states, American Samoa, the District of Columbia, Guam, the Commonwealth of Puerto Rico, and the Virgin Islands.

III. SUMMARY OF SURVEY FINDINGS

The survey of administrative offices of the courts on public information/community relations activities solicited information in five areas. This chapter summarizes the responses of the fifty-five jurisdictions that were surveyed according to the order of the survey instrument.

A. Formal Public Information and Community Relations Activities of State AOC's.

Each AOC was asked whether it conducted any formal public information/community relations activities on behalf of the state court system or its supreme court. Twenty-nine out of fifty-five jurisdictions reported that they conduct such activities. The following are examples of the activities that the AOC's reported:

- preparing press releases (Press releases are a common form of providing public information. A sample press release from the Kentucky AOC and sample press release forms used by the North Dakota AOC are displayed in Appendix C.1).
- establishing guidelines for media relations (Courts in many states have developed guidelines for dealing with news media. Sample media guidelines from the Judicial Council of Georgia, Delaware Bar-Bench-Press Council, the Supreme Court of Kansas, the New Hampshire Fair Trial-Free Press Committee, and the District of Columbia Superior Court are displayed in Appendix C.2).

- holding seminars for the bench, bar, and media (These meetings are held to discuss common concerns before they become major problems. Participants address such issues as conflicts over fair trial-free press, access to information, etc. AOC's in Arizona, Delaware, and Louisiana reported sponsoring these types of seminars).
- coordinating a speakers bureau (Pools of speakers have been organized to make presentations on the courts to civic groups, church, school, community organizations and other groups of interested citizens. Video presentations have been used to supplement the presentation. A sample speakers bureau brochure from the New York State Bar Association is displayed in Appendix C.3).
- maintaining a newspaper clipping file (AOC's have prepared clipping files or contracted with press clipping services to maintain a constant gauge of public reaction to the courts. This activity was noted by the New York and Georgia AOC's).
- Law-Related Education (These programs are designed to stimulate awareness of court-related information that should be incorporated into primary and secondary school curricula. Survey responses indicate that this activity is undertaken in Maryland and Massachusetts. A sample agenda from a Massachusetts law education teachers conference is displayed in Appendix C.4.a; a newsletter announcement from the Massachusetts District Court Department about a similar conference is displayed in Appendix C.4.b; a letter from Massachusetts Chief Justice Samuel Zoli to school board

- superintendents concerning student law related education is displayed in Appendix C.4.c).
  - providing a "hotline" to assist judges with media problems (The California Judges Association, a private nonprofit association of the state's judges, responds to judges' requests for assistance with media relations problems, such as gag orders, by offering direct advice or making referrals to judges who have had similar problems).
  - utilizing public television (The New Jersey AOC has launched a cost saving court information program by using free air time and assistance provided by N.J. Public Television. Live panel discussions and lectures on topics such as case delay reduction, matrimonial litigation, and jury management are televised from 12:00 to 1:00 P.M. on designated Fridays during a special public issues program. Justice system employees across the state gather in T.V. equipped conference rooms to watch the programs. Following each presentation, the speaker(s) field telephone calls from the viewing audience, which includes interested citizens as well as the primary audience of court employees. The N.J. AOC reports that the project has been quite successful so far and believes there is great potential for expanding the use of this medium).
- B. Existence of Public Information Officer Position
- Each AOC was asked whether it had a staff position formally titled Public Information Officer or if it had a staff member with public information functions as part of his or her job description. Thirty-two

out of fifty-five jurisdictions reported that they had a staff member with these duties.

#### C. Budget Allocations

Each AOC was asked whether it had any amount of money budgeted specifically for public information activities including staff costs. Twenty-three out of fifty-five jurisdictions reported that they had money budgeted solely for public information in FY 80, for a total of \$818,500. The range of reported annual expenditures for public information activities was from \$3,000 to \$132,000 with a median of \$33,000. Several states indicated that their public information/community relations budget allocations were made possible by LEAA grants.

#### D. Publication of Public Information Materials

Each AOC was asked whether it had published any public information materials, including literature, movies, video tapes, etc., over the past three years. Forty-four out of fifty-five jurisdictions reported that they had. The following are examples of print, audio, visual, and audiovisual materials on public information/community relations that are produced by state court administrative offices:

- newsletters (Newsletters are used to inform the court community and the public of the latest developments surrounding the life of the court. Copies of AOC newsletters from Colorado, Kentucky, Utah, and Wyoming are displayed in Appendix C.5).
- profiles on members of the judicial community (The distribution of pictures and biographical sketches of judges has been

one method of introducing the public to the men and women who administer justice in their community. Profiles on members of the judiciary from New Jersey and Utah are displayed in Appendix C.6).

- juror orientation films, slide presentations and manuals (Audiovisual juror orientation presentations and juror handbooks are used to make jury service more pleasant and understandable as well as more cost-effective. Grand and petit jurors' handbooks from Alaska and Maryland, respectively, are displayed in Appendix C.7).
- brochures (Brochures are used to explain the purpose and function of courts of different jurisdiction and court service agencies. Examples of these types of brochures from the Alabama, South Dakota, Maine, and New Hampshire AOCs are displayed at Appendix C.8).
- T.V. public service announcements (Public service announcements are used to explain particular courts or court activities to the public. Sample scripts of thirty and sixty-second public service announcements by the Alabama AOC are displayed in Appendix C.9).

#### E. Guidelines for Media Relations

Each AOC was asked whether it had any guidelines for handling inquiries from the news media or developing and distributing press releases. Eleven jurisdictions reported that they had written guidelines governing media relations. Twenty-three jurisdictions reported that they had unwritten guidelines; twenty-one reported that

they had no guidelines. (Examples of written media guidelines are displayed in Appendix C.2).

IV.

SUMMARY OF SURVEY RESPONSES OF STATE COURT ADMINISTRATORS  
ON PUBLIC INFORMATION AND COMMUNITY RELATIONS ACTIVITIES  
1980

State	Formal Public Information Activity	Staff Position with Formal Public Information Duties	Money Budgeted Solely for Public Information	Published Public Information Materials	Guidelines for Media Relations	Contact Person
ALABAMA	Yes	Yes	\$104,000	Video Tapes Annual Report Newsletter Pamphlets News Releases	Unwritten	Robert A. Martin Dir. Admin. Services 205/834-7990
ALASKA	Yes	Yes	\$35,000	Annual Report Pamphlets Newsletter	Written	Richard Barrier Deputy Administrator AOC 907/264-0547
ARIZONA	None	None	None	Annual Report Pamphlets	None	Noel K. Dessaint Admin. Dir., AOC 602/255-4359
ARKANSAS	None	None	None	None	None	Jim Petty State Court Admin. 501/375-7001
CALIFORNIA	Yes	Yes, Public Information Attorney	None	Annual Report News Releases Newsletter Reports	None	Patrick Clark Public Information Attorney 415/557-2326

SUMMARY OF SURVEY RESPONSES OF STATE COURT ADMINISTRATORS  
ON PUBLIC INFORMATION AND COMMUNITY RELATIONS ACTIVITIES  
1980

State	Formal Public Information Activity	Staff Position with Formal Public Information Duties	Money Budgeted Solely for Public Information	Published Public Information Materials	Guidelines for Media Relations	Contact Person
CONNECTICUT	Yes	Yes, Admin. Ass't to Chief Ct. Admin.	None	Pamphlets	Unwritten	Lawrence G. Moore Admin. Ass't. 203/566-8219
COLORADO	Yes	Yes, Director of Special Programs	\$40,000 State & LEAA	Annual Report Pamphlets Newsletter Slide Shows Video Tapes	None	Carl Jacobson Dir. of Special Programs 303/861-1111
DELAWARE	None	Yes, Director AOC	None	Annual Report	Written	Lowell L. Groundland Deputy Director, AOC 302/571-2480
DISTRICT OF COLUMBIA	Yes	Yes, Public Information Clerks	\$132,000	Annual Report Pamphlets	Written	Suzanne H. James Court Planner 202/727-1607
FLORIDA	Yes	Yes, Public Affairs Officer	None	Annual Report Newsletter	Unwritten	J. William Lockhart Public Affairs Officer 904/488-8621

SUMMARY OF SURVEY RESPONSES OF STATE COURT ADMINISTRATORS  
ON PUBLIC INFORMATION AND COMMUNITY RELATIONS ACTIVITIES  
1980

State	Formal Public Information Activity	Staff Position with Formal Public Information Duties	Money Budgeted Solely for Public Information	Published Public Information Materials	Guidelines for Media Relations	Contact Person
GEORGIA	Yes	Yes, Senior Communication Specialist	\$54,000	Annual Report Pamphlets	Written	Joyce Gauthier Admin. Ass't to Dir. of AOC 404/656-5171
HAWAII	Yes	Yes, Information Specialist	\$91,000	Annual Report Pamphlets	Written	Donald L. Eggerman Public Information Officer 808/548-4605
IDAHO	Yes	None	None	Pamphlets	Unwritten	Carl Bianchi Dir. of AOC 208/334-2246
ILLINOIS	None	Yes, AOC Director	None	None	Unwritten	Hon. Roy O. Gulley AOC, Director 312/793-3250
INDIANA	None	None	None	Annual Report	None	Lilia Judson Ass't. Dir., AOC 317/232-2542

SUMMARY OF SURVEY RESPONSES OF STATE COURT ADMINISTRATORS  
ON PUBLIC INFORMATION AND COMMUNITY RELATIONS ACTIVITIES  
1980

State	Formal Public Information Activity	Staff Position with Formal Public Information Duties	Money Budgeted Solely for Public Information	Published Public Information Materials	Guidelines for Media Relations	Contact Person
IOWA	None	None	LEAA, \$15,000	Pamphlet	None	Sandra Tedlock Director of Court Planning 515/281-6870
KANSAS	Yes	Yes, Education/ Information Officer	\$30,000	Annual Report Newsletter Pamphlets	Written	Paul E. Shelby Personnel Technician 913/296-2256
KENTUCKY	Yes	Yes, Public Informa- tion Officer	\$31,000	Annual Report Pamphlets Slide Show w/ Audio	Unwritten	Nancy Lancaster Public Information Officer 502-564-7486
LOUISIANA	Yes	Yes, Deputy Judicial Admin. for Public Information	\$18,500	Pamphlets History Films Newsletter Reports on Bench/media conferences	Unwritten	Paulette Holahan Deputy Judicial Admin. for Public Information 504/568-5749
MAINE	None	None	None	Annual Report	Unwritten	Debbie Olken, Court Systems Analyst 207/775-1500

SUMMARY OF SURVEY RESPONSES OF STATE COURT ADMINISTRATORS  
ON PUBLIC INFORMATION AND COMMUNITY RELATIONS ACTIVITIES  
1980

State	Formal Public Information Activity	Staff Position with Formal Public Information Duties	Money Budgeted Solely for Public Information	Published Public Information Materials	Guidelines for Media Relations	Contact Person
MARYLAND	Yes	Yes	\$7,000	Annual Report Juror orientation Slides	Unwritten	Deborah A. Unitus Judicial Staff Specialist, AOC 301/269-2141
MASSACHUSETTS	Yes	Yes, Public Information Officer	\$22,000	Annual Report Newsletter Pamphlets	Unwritten	Mary Jane Moreau Mgr., Research & Planning Dept. 617/725-8787
MICHIGAN	Yes	Yes, Director Information Services	No set amount	Annual Report Newsletter Pamphlets	Unwritten	Doris H. Jarrell Director Information Services 517/373-3727
MINNESOTA	Yes	Yes, Court Information Officer	\$46,000	Annual Report Pamphlets News reporter's Guide Newsletter	Unwritten	Jennifer Bloom Director Court Information Officer 612/296-2474
MISSISSIPPI	None	None	None	None	None	Martin McLendon Executive Assistant Supreme Court 601/354-6021

SUMMARY OF SURVEY RESPONSES OF STATE COURT ADMINISTRATORS  
ON PUBLIC INFORMATION AND COMMUNITY RELATIONS ACTIVITIES  
1980

State	Formal Public Information Activity	Staff Position with Formal Public Information Duties	Money Budgeted Solely for Public Information	Published Public Information Materials	Guidelines for Media Relations	Contact Person
MISSOURI	None	None	None	None	Written	Jane A. Hess State Courts Administrator 314/751-4377
MONTANA	None	None	None	None	None	Lee Jellison 406/449-2626
NEBRASKA	None	Yes	None	Annual Report Pamphlets	None	Mori Matulka 402/471-2643
NEVADA	None	None	None	None	None	Ted P. Bendure Deputy Director of AOC 702/885-5076
NEW HAMPSHIRE	Yes	Yes, Coordinator for Continuing Educa- tion & Public Information	\$4,000	Newsletter Pamphlets P.I. Manual	Written	Thomas T. Barry Coordinator of Continuing Ed., and Public Information 603/271-2521

SUMMARY OF SURVEY RESPONSES OF STATE COURT ADMINISTRATORS  
ON PUBLIC INFORMATION AND COMMUNITY RELATIONS ACTIVITIES  
1980

State	Formal Public Information Activity	Staff Position with Formal Public Information Duties	Money Budgeted Solely for Public Information	Published Public Information Materials	Guidelines for Media Relations	Contact Person
NEW JERSEY	Yes	Yes, Chief, Judicial Information Services	Yes, LEAA Grant	Annual Report Pamphlets	Unwritten	Kenn Munn Chief, Public Information 609/292-9580
NEW MEXICO	Yes	Yes, Public Information Officer/Judicial Educator	\$3,000	Pamphlets	Written	Diane Trainor Pick Judicial Education Coordinator/Public Information Officer 505-827-2771
NEW YORK	Yes	Yes, Public Information Officer	\$50,000	Annual Report Newsletter News Release	Unwritten	Harold Wolfe Public Information Officer for AOC  212/488-2900
NORTH CAROLINA	None	None	None	Annual Report Pamphlets	None	Ms. Diane C. Divine Sec. to the Director AOC 919/733-7107
NORTH DAKOTA	None	None	None	Annual Report Newsletter Brochures	None	Bill Bohn Director AOC 701/224-4216

SUMMARY OF SURVEY RESPONSES OF STATE COURT ADMINISTRATORS  
ON PUBLIC INFORMATION AND COMMUNITY RELATIONS ACTIVITIES  
1980

State	Formal Public Information Activity	Staff Position with Formal Public Information Duties	Money Budgeted Solely for Public Information	Published Public Information Materials	Guidelines for Media Relations	Contact Person
OHIO	Yes	None	None	Pamphlets	None	Douglas K. Somerlot Ass't. Administrative Director, AOC 614/466-2653
OKLAHOMA	None	None	None	None	None	Ms. Linda Argo 405/521-2318
OREGON	Yes*	Yes, Information Director	\$53,000	Annual Report Newsletter Pamphlets Fact Sheets	None	Robert Gangware State Courts Information Director 503/378-6046
PENNSYLVANIA	None	Yes, Special Ass't Legislative Liaison	None	Annual Report Newsletter	Unwritten	Susan Hathaway Special Assistant to the Court Administrator 717/787-8810
RHODE ISLAND	None	None	None	None	Unwritten	William Melone Educational Officer 401/277-3266

\* Public Information Office to be eliminated by legislative action.

SUMMARY OF SURVEY RESPONSES OF STATE COURT ADMINISTRATORS  
ON PUBLIC INFORMATION AND COMMUNITY RELATIONS ACTIVITIES  
1980

State	Formal Public Information Activity	Staff Position with Formal Public Information Duties	Money Budgeted Solely for Public Information	Published Public Information Materials	Guidelines for Media Relations	Contact Person
SOUTH CAROLINA	None	Yes, Director of AOC	None	Annual Report Juror hand- book	Unwritten	Louis Rosen Ass't. Director AOC 803/758-2961
SOUTH DAKOTA	None	Yes, State Court Administrator	None	Annual Report Pamphlets Newsletter	Unwritten	Mark Geddes State Court Admin.  605/773-3474
TENNESSEE	Yes	Yes, Director of Information & Publications	Printing Costs	Annual Report Newsletter Bulletin	Unwritten	Dixie K. Knoebel Judicial Planner 615/741-3154
TEXAS	None	None	None	Annual Report Pamphlets	None	Jim Hutcheson Chief Counsel AOC 521/475-2421
UTAH	None	None	None	None	None	Richard Peay Director AOC 801/533-6371

SUMMARY OF SURVEY RESPONSES OF STATE COURT ADMINISTRATORS  
ON PUBLIC INFORMATION AND COMMUNITY RELATIONS ACTIVITIES  
1980

State	Formal Public Information Activity	Staff Position with Formal Public Information Duties	Money Budgeted Solely for Public Information	Published Public Information Materials	Guidelines for Media Relations	Contact Person
VERMONT	Yes	Yes	\$4,000	Pamphlets Videotaped Juror Orientation	None	Sienna walton Public Information Project Coordinator 802/828-3281
VIRGINIA	None	None	None	Pamphlets Juror Orientation Film	None	Robert N. Baldwin Executive Secretary Supreme Court 803/786-6981
WASHINGTON	Yes	Yes, Public Information Officer	\$55,000	Annual Report Pamphlets	Unwritten	M. Carter Mitehell Public Information Officer 206/753-5780
WEST VIRGINIA	Yes	None	None	None	Written	P. Fletcher Adkins Assistant to the Director of AOC 304/348-0145
WISCONSIN	None	None	None	None	None	Edward F. McClain Deputy Director of State Cts. for Operations 608/266-3121

SUMMARY OF SURVEY RESPONSES OF STATE COURT ADMINISTRATORS  
ON PUBLIC INFORMATION AND COMMUNITY RELATIONS ACTIVITIES

1980

State	Formal Public Information Activity	Staff Position with Formal Public Information Duties	Money Budgeted Solely for Public Information	Published Public Information Materials	Guidelines for Media Relations	Contact Person
WYOMING	Yes	Yes, Director AOC	Yes, LEAA Grant	Pamphlet Newsletter	Unwritten	Sharon Vannett 307/777-7875
AMERICAN Samoa	None	None	\$24,000	Reports	None	Robert Gorniak Clerk of Courts (Overseas Operator) 633-4131
PUERTO RICO (Commonwealth of)	Yes	Yes, Public Informa- tion Officer	None	Pamphlets Newsletter Handbooks Bulletins	Unwritten	Mrs. Flor de Maria Rodriguez Public Relations Officer 809/763-1386
VIRGIN ISLANDS	None	None	None	Annual Report Jurors Hand- book	Written	Hon. Verne A. Hodge Presiding Judge 809-774-2231
GUAM	None	None	None	Brochures	Unwritten	Robert E. Leon Guerrero Administrative Director of the Courts

CRIMINAL COURTS TECHNICAL ASSISTANCE PROJECT  
The American University Law Institute  
Washington, D.C. 20015

APPENDIX A

QUESTIONNAIRE ON  
PUBLIC INFORMATION/COMMUNITY RELATIONS ACTIVITIES  
OF AOC's AND TRIAL COURTS

Date Sent: \_\_\_\_\_

State: \_\_\_\_\_

AOC Director: \_\_\_\_\_

Phone: \_\_\_\_\_

APPENDICES

1. Does your office currently undertake any formal public information or community relations activities on behalf of the state court system or the Supreme Court? \_\_\_\_\_ If so, please describe briefly: \_\_\_\_\_

2. Is a member of your staff formally titled a Public Information Officer or does a staff member have public information functions as part of her or his job description? \_\_\_\_\_. If either is the case, please list the public information functions of that position below, or attach a copy of the position description containing them: \_\_\_\_\_

3. During FY 1980, did your office have any amount of money budgeted specifically for public information activities, including staff costs? \_\_\_\_\_. If so, how much and for what purposes? \_\_\_\_\_

4. If your office has published public information materials, including literature, movies, video-tapes, etc., over the past three years, please list these materials below or attach a list: \_\_\_\_\_

5. Does your office have any guidelines for handling inquiries from the news media or developing and distributing press releases?

Yes, written ; Yes, unwritten/informal ; No guidelines

6. Are you aware of any formal (i.e., court-coordinated or controlled, as distinct from the independent activities of individual judges and other court personnel) community relations/public information program currently operating in your state? \_\_\_\_\_ If so, please identify the court, a contact person and any special feature of the program (e.g., weekly radio show, speakers bureau, etc.) you may be aware of:

<u>Court</u>	<u>City</u>	<u>Contact Person &amp; Title</u>	<u>Contact Phone No.</u>	<u>Special Feature If Applicable</u>
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7. Please designate a contact person in your office with whom we may discuss this questionnaire and follow-up information on trial court community relations activities in your absence: \_\_\_\_\_

<u>Name, Title</u>	<u>Date</u>
--------------------	-------------

Many thanks for taking the time to provide us with the requested information, including the attachments if any, necessary for questions #2 and #4.

Please call the project if you feel we can be of assistance to you or your staff.

Joseph A. Trotter, Jr.  
Director

## Standard 10.3

### Court Public Information and Education Programs

The court, the news media, the public, and the bar should have coordinate responsibility for informing and educating the public concerning the functioning of the courts. The court should pursue an active role in this process:

1. Each court should appoint a public information officer to provide liaison between courts and the news media. Where a court has a court administrator, he should act as the public information officer or should designate someone in his office to perform this function. The public information officer should:

a. Prepare releases, approved by the court, regarding case dispositions of public interest;

b. Prepare releases describing items of court operation and administration that may be of interest to the public;

c. Answer inquiries from the news media; and

d. Specify guidelines for media coverage of trials.

2. Each courthouse should have an office specifically and prominently identified as the office for receiving complaints, suggestions, and reactions of members of the public concerning the court process. All communications made to this office should be given attention. Each person communicating with

this office should be notified concerning what response, if any, has or will be made to his communication.

3. The court should take affirmative action to educate and inform the public of the function and activities of the court. This should include:

a. The issuance of periodic reports concerning the court's workload, accomplishments, and changes in procedure;

b. The issuance of handbooks for court employees concerning their function;

c. Preparation of educational pamphlets describing the functions of the court for the general public, and for use in schools;

d. Preparation of handbooks for jurors explaining their function and pamphlets for defendants explaining their rights;

e. Organization of tours of the court; and

f. Personal participation by the judges and court personnel in community activities.

These functions should be performed by the court information officer or by the court administrator's office, by associations of judges, or by individual judges.

4. The court should encourage citizen groups to inform themselves of the functions and activities of the courts and in turn share this information with other members of the public.

5. The court should work together with bar associations to educate the public regarding law and the courts. The judiciary and the bar should cooperate by arranging joint and individual speaking programs and by preparing written materials for public dissemination.

### Commentary

Public support of the courts is essential, but there is an understandable ambiguity concerning responsibility for furnishing information to the public so that intelligent public opinion can be formed and support mustered. Often judges view the function of education to be that of the bar association and the schools. The Commission believes that court personnel (including judges), the press, the public, and the bar all have a coordinate role in public information and education. Judges and other court personnel cannot be passive participants but must play an affirmative as well as a cooperative role in this process.

### Public Information Office

Provision for a public information office responsible to the court would identify for news media a central source of information regarding the courts. (Berger, "Public Relations and the Courts," *New York State Bar Journal* 383 (1969); Ballard, "News from your Courts," 12 *California Court Commentary* 5 (1972).)

Public information officers also could issue guidelines for news coverage of major trials. These guidelines would help prevent misunderstanding and would facilitate the transmission of news to the public. Such questions as whether cameras are allowed within the courthouse, whether a sketch artist is allowed, and the number of seats in the courtroom assigned to the news media should be answered before the trial begins. (Berger, "Do the Courts Communicate," 55 *Judicature* 318, 320 (1972).)

Two states, Illinois and California, have public information officers. In California, the Public Information Attorney is attached to the Administrative Office of the Courts and is the information officer for the Supreme Court of California and the Judicial Council of California. The Chief Judge of the Supreme Court is committed to a program of public information and has stated that the judicial system has "an affirmative duty to explain to the news media and to the public the exact details of its operations." (Erickson, "The California Su-

preme Court: How It Makes News," *California AP Report* 1 (March 5-11, 1972).)

The present Public Information Attorney in California prepares press releases concerning Supreme Court decisions, Judicial Council activities, and changes in the Rules of Court. In addition, she assists the news media on stories not covered by official releases. The court decides which decisions are significant enough for preparation of a press release. All press releases are approved by the author of the opinion concerned and the Chief Justice. The Public Information Attorney has reported increased interest by the media in court activities as a result of the program:

Reporters are becoming genuinely interested in the judicial system and more aware of the importance of judicial procedures. We now receive daily requests from reporters for information concerning the judicial system and interpretation of court decisions. More importantly, we are often consulted for an accurate assessment of the reporter's own nontechnical interpretation of the Supreme Court decisions involved. (Hepperle, Memorandum to Chief Justice Donald R. Wright and Associate Justices of the Supreme Court, From: Administrative Office of the Courts, Summary of 1971 Public Information Activities (Jan. 10, 1972).)

The court information officer of a trial court should include in press releases explanations of a trial judge's rulings on significant matters. For example, reasons for suppressing evidence obtained in a major police raid could be discussed. Similarly, the reasons for a judge's directed verdict of acquittal or for imposing a particular sentence could be explained. This would necessitate the judge's stating his reasons for his rulings on the record. Such explanatory news releases could do much to dispel public confusion regarding seemingly inexplicable or unjust judicial action. (Meyer, "Our Courts and Their Public Relations: A Judge's View", 41 *New York State Bar Journal* 647, 660 (1969).)

### Office for the Public

The standard also recommends the establishment of an office for the receipt of communications from members of the general public. It is important that courts be aware of the manner in which they are perceived by the public. This office would help foster such awareness. In addition, some of the suggestions or reactions are likely to have merit and their implementation may increase the efficiency of the court process. Finally, public confidence in the court process will be enhanced by public awareness that the courts not only are receptive to outside comments but actively solicit them. If these expectations are to be fulfilled, it is essential that com-

munications not only be received but that they be considered and, where appropriate, acted upon. Whatever the response, it is important that persons communicating with the court are made aware that their communications have been considered and, if found without merit, rejected.

The standard also recommends a variety of other programs that are likely to improve court-community relations.

An example of a handbook for court employees is the *Handbook for Bailiffs*, distributed through the Office of the Court Administrator of the Superior Court of King County, Wash. This handbook, prepared and updated by law clerks, states in detail the duties of the court bailiff. (Office of the Court Administrator, Superior Court of the State of Washington, *Handbook for Bailiffs* (5th Ed., 1971).)

The Conference of California Judges' Project Benchmark provides an example of a judges' association undertaking a project of public education. Although the primary purpose of Project Benchmark is to increase lawyers' and judges' understanding of the problems of the news media in covering a court, its secondary purpose is to educate students on the functions of the court.

Project Benchmark has produced a pamphlet entitled, *Welcome to Your Courts*, which is given to court visitors. This pamphlet describes the structure of the judicial system: what happens to a person before he can be brought to trial (pretrial process); the adversary process and the participants in the trial; the steps of a jury trial; and the sentencing process.

Immediate assistance and orientation can be provided court visitors or participants by means of a Court Information Booth. The booth can be operated by court personnel or volunteer groups and disseminate not only directions but also written pamphlets upon request. The Vera Institute successfully established a Criminal Court Information Booth in Manhattan in 1968, and the booth is still operated by court personnel as a regular city service. (*Programs in Criminal Justice Reform*, Vera Institute of Justice, Ten Year Report 1961-1971, May 1972.)

### Participation by Judges

Standard 10.3 also calls for personal participation on the part of the judges and other court personnel in community activities. It is essential to community acceptance of the courts that court personnel be active members of the community in which they function. Court-community relations cannot be better than the individual relationships between court personnel and the community.

### Citizen Study Groups

Law and law enforcement are of prime interest to the public. Thus, members of the public not only should be receptive to information about the courts but also should encourage established or ad hoc groups to study the courts and the criminal justice system with the aim of improving the system. Judges and lawyers should invite and encourage these activities. An ad hoc citizens group, which has set a pattern for other cities, is The Indianapolis Anti-Crime Crusade. The initial purpose of this organization was to make streets safe for women, but the program has other goals: to "curb one crime, get one dropout back in school, provide one job for one youth, get one bright light on a dark street, help one youth released from an institution, sit in one court." (Moore, "Crime Dips as 50,000 Women Act," *The Christian Science Monitor*, May 13, 1967, 1.) This objective of sitting in one court developed into what is known as the court watcher program, consisting of a concerted effort to have lay observers present at significant criminal proceedings.

To aid the court watching, the group wrote a pamphlet, *Court Watchers Guide*, a fact book about the courts. The book describes the various courts, participants in the courts, court procedures, and types of sentences; it also provides definitions of frequently used legal terms. Those who attended court recorded and charted their observations and showed them to judges and the police chief. The group counts among the reforms resulting from its activities the following:

- "Establishment of a presiding judge of municipal court providing uniformity and responsibility never before possible.
- Courts of record.
- Specialization—certain judges to hear alcoholics and premental cases with follow-up counseling.
- Night court established for minor traffic cases, day courts for reckless driving, drag racing, etc. with resulting decrease in traffic deaths.
- Pilot program in bail bonding, new in Nation.
- Drastic cut in 'judgment withheld' cases.
- Hallway bailiff named to clear loiterers from court halls.
- Judges appear on time and wear robes.
- Arresting officers are absent less often.
- Fewer pro-tem judges and fewer delays.
- Permanent driver improvement school established.
- Prosecuting attorney's deputies prepare cases more thoroughly.
- Citizens know that it is the right of the public to demand efficient, mannerly operation of the

courts." (Indianapolis Anti-Crime Crusade, *The Indianapolis Anti-Crime Crusade of 50,000 Volunteer Women Offers a Blue Print for the Nation in Crime Prevention* (undated).)

Court watching by citizen groups and individual citizens should be affirmatively encouraged by all courts and their personnel.

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4. Conference of California Judges, Project Benchmark. *Welcome to Your Courts*. Berkeley: Conference of California Judges, undated.
5. Erickson, Leif. "The California Supreme Court: How It Makes News," *California AP Report*, (March 5-11, 1972).
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10. Meyer, Bernard S. "Our Courts and Their Public Relations: A Judge's View," *New York State Bar Journal*, Vol. 41 (December 1969).

11. Moore, Margaret. "Crime Dips as 50,000 Women Act," *The Christian Science Monitor* (May 13, 1967).

12. Office of the Court Administrator, Superior Court of the State of Washington. *Handbook for Bailiffs, Fifth Edition*. Seattle: Office of the Court Administrator, 1971.

#### Related Standards

The following standards may be applicable in implementing Standard 10.3:

- 9.6 Public Input into Court Administration
- 13.13 Community Relations



APPENDIX C. 1.a.

COMMONWEALTH OF KENTUCKY  
ADMINISTRATIVE OFFICE OF THE COURTS

403 WAPPING STREET  
FRANKFORT, KENTUCKY 40601  
(502) 664-7486

CHARLES D. COLE  
DIRECTOR

JOHN S. PALMORE  
CHIEF JUSTICE

#### NEWS RELEASE

CONTACT: NANCY LANCASTER

#### FOR IMMEDIATE RELEASE

Chief Justice John S. Palmore of the Kentucky Supreme Court announced today that in recognition of the financial condition of state government, all judicial nominating commission activity including that relating to 13 new judgeships created by the 1980 General Assembly will be deferred in favor of filling the positions at the regular election in November, 1980. The decision was made in a cooperative effort to comply with a request to conserve funds by Governor John Y. Brown, Jr., issued after disclosure that the Commonwealth has a revenue shortfall of \$114 million dollars. The Chief Justice has declared his intention to examine closely every opportunity to keep expenditures of the judicial branch at a minimum.

The action of the Chief Justice to defer nominating commission activity will affect the four additional circuit judgeships and nine additional district judgeships which were created by the 1980 Regular Session of the Kentucky General Assembly and became effective July 15. Affected as well will be an additional vacancy recently created by the death of the circuit judge for the 38th Judicial Circuit.

In order to insure that the terms of the new judges will run concurrently with already existing positions, the General Assembly provided that the new judgeships will be filled for the unexpired terms of circuit judges until January 1984 and of district judges until January 1982. In accord with Section 118 of the Constitution, the procedure for filling vacancies on the bench is through judicial

NEWS RELEASE  
DEFERRED JUDGESHIPS  
2 2 2 2

nominating commissions established in each judicial circuit or district for the purpose of selecting and submitting to the Governor the names of three qualified individuals from which list he may make an appointment within 60 days.

If the commissions met as scheduled, the time of appointment would be very close to the general election in November when the appointed judges and opposition candidates would run for election. Under constitutional provisions governing such elections, the vacancies occurring as a result of the act creating additional judgeships are deemed to exist on July 15, 1980, the effective date of the act.

Charles D. (Bo) Cole, Director of the Administrative Office of the Courts, states that savings in excess of \$300 thousand dollars will be realized by deferring action on the judgeships until November. Furthermore, the Administrative Office of the Courts is currently tightening already extremely conservative expenditure patterns and advising the Chief Justice, on a continuous basis, of measures which may be undertaken to save money within the judicial branch appropriation.

APPENDIX C. 1.b.

SAMPLE SENTENCING NEWS RELEASE \*

(Can be used as a cumulative report or adapted to be used in conjunction with the "Important Cases" news releases.)

For Additional Information

Please Contact: \_\_\_\_\_ Phone Number: \_\_\_\_\_  
Court: \_\_\_\_\_ Date: \_\_\_\_\_

Sentencing which follows the admission of guilt by a defendant or the determination of guilt by a judge or jury in a trial, is the function of the judge in North Dakota. He has sole authority and is granted discretion within the penalty limits set by the State Legislature in choosing the proper sentence.

The North Dakota statutes have authorized seven basic sentencing alternatives: payment of costs; probation; imprisonment; fine; restitution for damages; restoration of damaged property; or commitment to a rehabilitation program.

Sentencing statistics for \_\_\_\_\_ Court during the year 19\_\_\_\_, are as follows:

Imprisonment \_\_\_\_\_  
Non-imprisonment \_\_\_\_\_  
Probation \_\_\_\_\_  
Conditions of which include:  
Fines \_\_\_\_\_  
Rehabilitation Programs \_\_\_\_\_  
Time periods which range from \_\_\_\_\_ to \_\_\_\_\_, depending upon such factors as \_\_\_\_\_  
These programs included (might list programs & the number referred) \_\_\_\_\_  
Restitution \_\_\_\_\_

In determining the proper sentence the judge considers various factors such as the defendant's conduct at the time of criminal act; previous record; victim's role; defendant's attitude following criminal act; circumstances involved; character of defendant; rehabilitativeness; age and health of defendant; hardship sentence imposes on defendants or dependants, and so forth.

(Could include a few comments regarding trends in crime type or Sentencing if desired).

\* From "Public Information And Education Package for North Dakota Trial Court Judges " 1977  
Cyndi J. Anderson

**"IMPORTANT CASES" \***

**For Further Information**

Please Contact: \_\_\_\_\_ Date: \_\_\_\_\_  
Phone Number: \_\_\_\_\_ Court: \_\_\_\_\_

**Case Press Brief**

Case:

Parties:

Attorneys:

Judge:

Facts of the Case:

Court/Jury (Judgment/Verdict):

Damages/Sentence:

Under Damages/Sentence you might follow the "Sentencing Report" format provided in another section. Specially, consider including information describing the key elements involved in the case and law which evoked the judgment verdict..

\* From "Public Information And Education Package for North Dakota Trial Court Judges " 1977  
Cyndi J. Anderson

**SAMPLE JURY NEWS RELEASE #2 \***

**For Additional Information**

Please contact: \_\_\_\_\_ Date: \_\_\_\_\_  
Phone number: \_\_\_\_\_ Court: \_\_\_\_\_

**CERTIFICATE OF JURY SERVICE AWARDED**

Certificates of Jury Service have been recently awarded to

\_\_\_\_\_ residents by the \_\_\_\_\_ Judge,

\_\_\_\_\_.

In presenting the awards Judge \_\_\_\_\_ said, " \_\_\_\_\_"

A new jury panel will now be drawn for the next service period of \_\_\_\_\_. Jury panels are drawn from a list of names of all adult drivers and voters who reside in \_\_\_\_\_.

The following people receiving certificates served for the period of \_\_\_\_\_ on a total of \_\_\_\_\_ criminal and \_\_\_\_\_ civil trials:

\_\_\_\_\_  
\_\_\_\_\_

Jurors receive Certificates following their service as an expression of court appreciation for fulfillment of their responsibilities in a very vital function of the judicial system.

\* From "Public Information And Education Package for North Dakota Trial Court Judges" 1977  
Cyndi J. Anderson

Samples of thank-you comments that could be included in Jury News \*  
Release #2.

1) In presenting the certificates, Judge \_\_\_\_\_ said, "I wish to thank the jurors on behalf of the \_\_\_\_\_ Court for their fine contribution these past weeks. Jury service is a serious responsibility. Your deliberations and conduct in the courthouse affected the quality of justice experienced by our local community. You bore your responsibility with care and dignity. I hope you are as proud of your experience as the court is having your service."

2) While presenting the certificates, Judge \_\_\_\_\_ expressed the court's appreciation for the dignified and careful manner in which these jurors carried out their responsibilities. The judge said, "It has been the court's privilege and the local community's benefit to have been represented by so fine a group of jurors. Your responsibility was a serious one and you measured up to the task. On behalf of the court and the local community I thank you for your dedicated service."

\* From "Public Information And Education Package  
for North Dakota Trial Court Judges" 1977  
Cyndi J. Anderson

APPENDIX C. 2. a.

JUDICIAL COUNCIL OF GEORGIA  
PUBLIC RELATIONS POLICY

## GOALS

The Judicial Council of Georgia and Administrative Office of the Courts are bringing to Georgia a concept which is new to the average layman, lawyer, judge, legislator, court clerk and other court-related personnel. In the past, the suspicion, hostility, and fear which greeted many projects were generated by a lack of knowledge of the purposes of the Judicial Council and Administrative Office of the Courts. Only through public understanding of the concepts of court administration will the proposals of the Judicial Council and AOC gain support. This, in turn, will lead to smoother transition to court modernization.

On the above premise, the primary goal of the communications sector of the Administrative Office of the Courts is to develop for the judicial system a comprehensive information service which:

1. Keeps the court system, state and local government and the public informed about AOC and Judicial Council activities, and other government operations relating to the courts;
2. Develops and maintains better judicial/press relations as well as relations with the State and local communities;
3. Keeps abreast of public opinion and takes all necessary steps to promote good public opinion.

## OBJECTIVES

The above-stated goals can be satisfied through these objectives:

1. To compile and distribute accurate information regarding the court system in Georgia and the activities of the Judicial Council and Administrative Office of the Courts through press and magazine articles, television and radio appearances, speeches and reports which have bearing on the modernization of the court system in Georgia and knowledge of which will promote better understanding of the Judicial Council's and Administrative Office of the Court's goals.
2. To increase understanding of the problems of Georgia courts and the changes proposed by the Judicial Council through establishment of better judiciary/press relations by the use of press conferences, annual joint training conferences and by closer individual contact with the news media.

3. To continuously keep abreast of and seek support from the Bench, the Bar, the public, court-related personnel, related government agencies and the news media by utilizing a news clipping service, magazines, attendance of meetings, coordination of engagements with local and state organizations and other means.

## METHODOLOGY

I. The following steps must be taken to fulfill the first objective:

### A. News Releases:

1. Press releases will be compiled concerning Judicial Council/AOC activities such as election of officers, committee appointments and activities, key staff personnel, organizational changes, new projects or programs, expansion of existing projects, major reports, committee reports of import, major meetings, policy statements, change in membership and other newsworthy activities of the Judicial Council, the AOC, its committees, commissions, boards and other groups which have direct bearing on the modernization of the courts system in Georgia.
2. News releases shall be compiled and written by the communications specialist upon the request of the Judicial Council, the director of the AOC or upon the initiative of the communications specialist.
3. A proposed list of press releases shall be presented to each meeting of the Judicial Council for the Council's input. Should AOC business require a press release not previously discussed by the Council in the interim, the director is authorized to approve such releases. Should the subject matter of a release not discussed by the Council be deemed by the director of such importance that the Council or executive committee should be apprised of it, and clear it or veto it, the appropriate parties will be contacted by the director or communications specialist prior to distribution of the said release.
4. News releases concerning individuals shall be compiled not only as a general release to the appropriate parties, but also as individual releases written especially for each person's hometown news media, shall be checked for

accuracy by the individual involved, and shall be distributed to that individual's hometown news media as well as other affected areas.

5. News releases of statewide import shall be distributed through the Southeastern Press Relations Newswire and the Georgia Press Association's weekly mailing service.

6. News releases of local importance shall be distributed by AOC mailing or hand delivery to the news media in that locality with such news media to be designated by the communications specialist.

7. All press releases from the Administrative Office of the Courts will be on Judicial Council letterhead stationary or special press release letterhead stationary if the latter is available. The date of release will be included on all releases as well as a contact for further information who will be the communications specialist or designee.

8. A news release of immediate import shall be distributed through the Southeastern Press Relations Wire Service within 24 hours of the event.

9. Copies of all releases shall be sent to members of the Judicial Council.

**B. Magazine Articles:**

1. Magazine articles concerning the AOC and Judicial Council's activities or related boards, committees and commissions will be compiled on a periodic basis at the request of the publications' management, the Judicial Council, the director of the Administrative Office of the Courts or upon the initiative of the Communications specialist.

2. Such magazines to which these articles will be sent include the State Bar Journal, ABA Journal, LEAA Newsletter, Criminal Justice Newsletter, and other professional publications of a similar nature.

3. Such magazine articles will be prepared by the communications specialist, the director, members of the Council or the staff and shall be edited by the communications specialist subject to final approval of the director.

**C. The Georgia Courts Journal:**

1. The Georgia Courts Journal shall be compiled, written, edited and published on a monthly basis by the communications specialist.

2. All articles included in the Georgia Courts Journal shall be subject to editing by the communications specialist.

3. Articles included in the Georgia Courts Journal may be derived from sources outside the Administrative Office of the Courts and Judicial Council but are subject to editing to conform to the style of the Georgia Courts Journal.

4. The final copy of the Georgia Courts Journal is subject to the approval of the director.

5. The Georgia Courts Journal shall be distributed on a monthly basis free of charge to all Federal and State judges, clerks, court reporters, committees working with the Administrative Office of the Courts, judges, associations, state agencies, federal agencies, court administrators and other non-profit organizations. (Attorneys, the public, libraries and others shall be charged a yearly subscription rate of \$15 to cover production, mailing and other costs associated with the Georgia Courts Journal.)

**D. Annual Report:**

1. An annual report will be issued each fall for the previous fiscal year and shall be prepared by the communications specialist.

2. The Annual Report shall include information analyzing Administrative Office of the Courts activities, court caseloads, changes in the law affecting the courts, budgets and other court-related information from the previous fiscal year.

3. The contents of the annual report are subject to the approval of the Judicial Council, or a committee of the Council and director of the Administrative Office of the Courts.

4. The annual report shall be distributed to members of the General Assembly, the governor, persons on the Courts Journal mailing list and other interested parties requesting a copy.

**E. Television and Radio Appearances:**

1. The Judicial Council and Administrative Office of the Courts may be promoted through the use of television and radio appearances.
2. The communications specialist will arrange such appearances, speeches, debates, forums, etc., upon request of the media, the Judicial Council, the director, or upon her own initiative with concurrence of the concerned parties.
3. Speakers on such radio and television shows will be furnished by the communications specialist. Necessary details such as date, time, length of program, proper dress and a fact sheet or prepared remarks if requested to do so, and will provide advance information to the broadcast media.

**F. Speeches:**

1. Upon request by the Judicial Council, the director or at her own initiative, the communications specialist may prepare speeches, speech outlines, or fact sheets to be used as a base for speeches for individual members of the Judicial Council, the director or the Administrative Office of the Courts staff.
2. Such speeches will reflect the duties and goals of the Judicial Council and Administrative Office of the Courts.
3. Speeches presented shall be distributed to the news media as soon as possible after oral delivery.
4. All speeches prepared by the communications sector are subject to the approval of the director.

**G. Proposed Editorials:**

1. An editorial suggestion sheet with pertinent facts or a suggested editorial will be mailed periodically to editors with a cover letter inviting the editors to suggest their views on the subject or to use the proposed editorial.
2. All such editorial mailings are subject to the approval of the director of the Administrative Office of the Courts.

**H. Reports and other Information:**

1. Reports designated "public" by the Judicial Council shall be publicized and distributed upon request by the communications specialist.
2. The communications specialist shall answer all inquiries for public information regarding the operation of the Administrative Office of the Courts and the Judicial Council or shall forward such verbal and written inquiries to the director of the appropriate parties.
3. All reports authorized as "public" by the Judicial Council and the Administrative Office of the Courts shall be released in their entirety.
4. Facts contained in interim reports shall not be released for publication without authorization of the Judicial Council or director of the Administrative Office of the Courts. If release of an interim report is authorized, it shall be in its entirety.

**II. The following steps must be taken to fulfill the second objective:**

**A. Press Conferences:**

1. At the request of the director of the Administrative Office of the Courts, the Judicial Council, or upon the initiative of the communications specialist with authorization of the Judicial Council and/or director of the AOC, a press conference may be called by the communications specialist.
2. The communications specialist will secure facilities for the press conference, provide a press kit concerning the subject to be discussed, and will inform the news media of such conference at least 24 hours before the conference is to be held.

**B. Conferences:**

1. Conferences sponsored by the Judicial Council and the Administrative Office of the Courts shall be publicized by the communications specialist in advance.
2. The communications specialist will be responsible for providing copies of speeches, fact sheets and other in-

formation involved in the conference to members of the news media.

3. The communications specialist will work with the training officer, the State Bar and the Press in coordination of the courts-media conference.

**C. News Media Contacts:**

1. The communications specialist will respond immediately to inquires from the news media.
2. The communications specialist will maintain news media contacts on a regular basis.
3. The communications specialist will take the initiative in supplying material or information to the news media regarding operation of the Administrative Office of the Courts and Judicial Council.
4. The communications specialist shall be active in communications' organizations as a means of promoting more personal contacts with the news media and public relations officials in other agencies. The Administrative Office of the Courts shall absorb costs associated with these professional memberships.

**III. The following steps must be taken to fulfill the third objective:**

**A. News Clipping Service:**

1. The Administrative Office of the Courts shall contract with a news clipping service to read newspapers throughout the State, and send to the communications specialist all articles concerning courts in Georgia.
2. Articles of interest to the Judicial Council shall be xeroxed and distributed to the Judicial Council on a monthly basis.
3. Articles of interest to the staff of the Administrative Office of the Courts shall be posted in the offices of the Administrative Office of the Courts.
4. News, magazine or feature articles containing facts regarding the Judicial Council and Administrative Office of the Courts shall be responded to by the

chairman of the Judicial Council, the director of the Administrative Office of the Courts or the communications specialist with the authorization of the Council or director. Such replies shall be courteous and factual.

5. The communications specialist shall keep subject filed on court-related articles which hold bearing on the Judicial Council's and the Administrative Office of the Courts' policies and activities.

**B. Meetings:**

1. In order to keep as up to date as possible of current activities in the Judicial Council and the Administrative Office of the Courts, the communications specialist will attend all major committee meetings involving the Judicial Council and the Administrative Office of the Courts.
2. Staff members involved with particular committees related to the operations of the Judicial Council/AOC will relay to the communications specialist copies of all minutes of those meetings, and if the communications specialist is unable to attend a particular gathering, a memo summarizing the major events of that meeting will be forwarded to the communications specialist within two days following the meeting.

**C. AOC Information Coordination with Other Agencies:**

1. The communications specialist shall provide upon request information requests from other government agencies, organizations or other court-related groups.
2. Upon request, the communications specialist shall assist in providing publicity for other government agencies, organizations and court-related groups on matters which directly concern the operation of the Administrative Office of the Courts.
3. Submittal of such information shall be with the knowledge and approval of the Director of the Administrative Office of the Courts.

**D. Printing:**

1. The communications specialist shall coordinate production and distribution of all printing generated by the Judicial Council, Administrative Office of the Courts, Board of

Court Reporting, Sentence Review Panel, Council of Superior Court Judges, Council of Juvenile Court Judges and other organizations for whom the Administrative Office acts as fiscal officer.

2. All printing must be cleared through the fiscal section of the Administrative Office of the Courts to insure adequate funds before production proceeds.

E. Publications Distribution:

1. The Administrative Office of the Courts publications shall be distributed by the communications section.
2. The communications specialist shall keep an accounting of the Administrative Office of the Courts publications distributed and those currently available.

# Bar-Bench-Press Declaration of Delaware and Conference Constitution

note: The subject of television in the courtroom is currently undergoing in-depth study by a committee of the Delaware Bar-Bench-Press Conference. The results of this study and the Committee's recommendations are expected to be made known in the not too distant future.

## FOREWORD

In 1975, a Delaware Bar-Bench-Press Conference consisting of Delaware news representatives, judges, and lawyers was formed, under the leadership of Norman E. Isaacs, then president and publisher of the News-Journal papers, and Chief Justice Daniel L. Herrmann, for the purpose of developing and fostering the mutual understanding essential for the conduct of fair and impartial court proceedings without encroachment upon the freedom of the press.

The Delaware Conference, which has been at work since then in the formulation of a declaration of guidelines addressed to that purpose, has consisted of the following in addition to Mr. Isaacs and Chief Justice Herrmann; Arthur F. DiSabatino, judge of the Court of Common Pleas of Delaware; Richard S. Gebelein, former chief assistant public defender; Frederick W. Hartmann, executive editor of the News-Journal papers; Aubrey B. Lank and Gerard P. Kavanaugh, former and current presidents of the Delaware State Bar Association; Richard E. Poole, chairman of the Delaware bar and media committee; Harvey C. Smith, station manager of WDEL; Joel D. Smyth, former editor of the Delaware State News; W. Laird Stabler Jr., former United States attorney; Clarence W. Taylor, associate judge of the Superior Court of Delaware; Robert D. Thompson, chief judge of the Family Court of Delaware, and Richard R. Wier Jr., attorney general.

The Delaware Bar-Bench-Press Declaration is the result of those efforts, as unanimously adopted by the Conference and as ratified by the Delaware State Bar Association and the Delaware Judicial Conference.

When this work was commenced, such statements of cooperation and voluntary compliance had been adopted in a great number of states and the American Bar Association had published a "typical" form of bar-bench-press declaration. Drawing on the voluntary guidelines in effect elsewhere, the Delaware Bar-Bench-Press Conference attempted to adopt the best features of each as well as to originate many other features.

It is the hope of those who have labored on the Delaware Bar-Bench-Press Declaration that it will serve to assure continued improvement of the generally good relations already existing in

*(continued on inside back cover)*

## BAR-BENCH PRESS DECLARATION OF DELAWARE AND CONFERENCE CONSTITUTION

### Preamble

This declaration is intended for voluntary compliance by members of the bar, the judiciary and news representatives in Delaware.

### I. Statement of Principles

1. Courts are institutions established to enforce the law and protect individual rights. The public must know what takes place in the court system in order to exercise the responsibilities of citizenship. Except in extraordinary circumstances, court proceedings will take place in public and records of those proceedings will be available for public inspection.

Likewise, all parties to litigation are entitled to have their causes tried fairly and verdicts should be the product solely of matters that are permitted to come to the attention of the jury at trial. The judiciary, the bar and news representatives must exercise good judgment to ensure both fair trials and the public's right to be informed.

2. Reporting by news representatives of criminal and civil cases both before and during trials should conform to the ethical standards of news representatives. Statements or actions by the bench or bar before or during trials should conform to the ethical standards of the legal profession.

3. It is the responsibility of the judge to preserve order in the court and to conduct proceedings in a manner that will serve the ends of justice. Among the steps the judge should take to protect the jury or potential jurors from prejudicial publicity are sequestration, change of venue or delay of trial.

4. Decisions as to the handling of news should be made with the following in mind:

(a) an accused person is presumed innocent until proven guilty;

(b) readers, listeners and viewers are potential jurors or witnesses;

(c) coverage should be factual and balanced so that both sides of cases are reported. It is unfair to report only a portion of the facts as though they were the only facts. This does not mean that news representatives shall be inhibited from reporting about a case if one side refuses to provide information.

5. Members of the bench and bar should cooperate with news representatives in providing information as to the administration of justice and in explaining technical legal points so that they may be interpreted faithfully by news representatives and so that the public may understand their significance. However, no lawyer should attempt to exploit any medium of public information to enhance his side of a pending case or his own reputation. It should also be recognized that judges must be careful always to maintain both the reality and appearance of impartiality.

6. Journalistic and legal training, both academic and on-the-job, should include instruction in the fundamental importance of the constitutional rights to a fair trial and to freedom of the press, and in the respective roles of the bench and bar and news representatives in guarding these rights.

## **II. Guidelines for the Reporting of Criminal Proceedings**

1. In a criminal proceeding, after charges have been brought, it is appropriate for the following information to be made public:

- (a) The name, age, residence, occupation, family status and similar background information of the accused.
- (b) The nature, substance, or text of the charge.
- (c) The identity of the investigating and arresting agency and the length of the investigation.
- (d) If the accused has not been apprehended, any information necessary to aid in his or her apprehension or to warn the public of any dangers he or she may present.
- (e) A request by law enforcement personnel for assistance in obtaining evidence to aid in the investigation and/or prosecution of criminal charges.
- (f) The circumstances immediately surrounding the arrest, including the time and place of arrest, resistance, pursuit, possession and use of weapons, and a description of the physical evidence seized.
- (g) The scheduling or result of any step in the judicial proceedings, such as the amount of bail and whether it was posted.
- (h) The identity of victims may be published; however, news representatives should consider whether such publication would subject such persons to danger, abuse or ridicule. News representatives should recognize their responsibility in protecting the identity of rape victims in particular

and toward that end agree not to publish their names in any pre-trial or trial stage.

2. It is the responsibility of the bar to ensure that possibly prejudicial matter not admitted as evidence be considered by the court before being made public. A complete record of hearings on such matter shall be kept and made available to news representatives upon completion of the trial.

News representatives recognize that reporting the following categories of information may tend to be prejudicial to a fair trial. They agree to use caution in handling such information:

- (a) Statements or purported confessions by suspects. An accused person may repudiate and thereby invalidate a confession, claiming undue pressure, lack of counsel or some other interference with his rights. The confession then may not be admitted into evidence but may have been publicly reported previously, raising the question of whether jurors can disregard it. If such a "confession" is reported, it should be described as a statement.
- (b) Any matter excluded from evidence but presented in open court.
- (c) Pre-trial disclosure of investigative results of tests such as polygraph, laboratory or ballistics tests.
- (d) Convictions and prior criminal charges are matters of public record and may be reported. In some cases, as when a previous offense is not linked in a pattern with the case in question, news representatives should avoid publishing or broadcasting the previous criminal record of a defendant near the time of trial. Terms such as "long record" should be avoided. There are, however, many circumstances — as with separate trials for related offenses or when parole is violated — in which reference to a previous conviction is warranted.

### **3. Photographs:**

- (a) Photographs of a suspect may be released by law enforcement personnel in response to a request by news representatives.
- (b) Law enforcement and court personnel should not prevent the photographing of suspects or defendants when they are in public places outside the courtroom or immediate approaches thereto. Photographers should not be barred from floors where trials are not in progress, from lobby areas or from sidewalks and approaches outside court buildings.

(c) The taking of photographs in a courtroom is governed by rules of the court.

(d) The possible effect on the fair trial of a defendant by the dissemination of photographs of the suspect should be considered by news representatives in the light of these guidelines.

### III. Supplemental Guidelines for Reporting on Juvenile Proceedings

1. The basic statement of principles delineated in the Bar-Bench-Press Declaration of Delaware is fully applicable to the reporting of juvenile proceedings.

2. These supplemental guidelines for the reporting of juvenile proceedings are designed to reflect a special concern for the handling of juveniles so as to enhance the opportunity for guidance and rehabilitation in such cases.

3. These supplemental guidelines for the reporting of juvenile proceedings are applicable in all cases handled other than by strictly adult standards, and also in cases involving any juvenile as the object of the proceeding, such as matters of support, neglect, dependency, custody, visitation, adoption, paternity and family offenses.

4. All sessions of court and all official records involving juveniles are open to news representatives except as prohibited by statute, by court rule or by court order in individual cases. Confidential records including arbitration proceedings, social and clinical studies and school and personal records should not be open to news representatives.

5. In delinquency cases news representatives are entitled to the following information: name and identifying data of the accused juvenile, text of the charge, name of the victim and/or complainant, identity of the investigating and arresting agencies, the length of the investigation and circumstances surrounding the arrest. If an alleged act of delinquency is publicized, news representatives should upon request be informed of and should publicize the ultimate disposition of the case.

### IV. Guidelines for the Reporting of Civil Proceedings

1. The chief sources of pre-trial information on civil matters are the files of the court, including pleadings, interrogatories, depositions, affidavits and orders. These official files in civil actions and probate matters will be open to news representatives

except as specifically prohibited by law, rule of court or court decision. Where the court orders a record sealed, the reasons therefor shall be set forth in a document of record which shall be available to news representatives. Reporting of contentions of the parties should be clearly described as such. Other contents of pre-trial documents should be reported with the cautionary explanation that such material does not constitute evidence until admitted by the court at trial.

2. A complete record shall be kept of any court proceedings conducted outside the presence of the public and shall be released to news representatives upon completion of the trial unless otherwise ordered by the court for reasons set forth in a document of record which shall be available to news representatives.

3. News representatives should make every effort to report the dispositions and reasons therefor of all cases previously publicized. The bench and bar should make every effort to provide news representatives with information explaining the reasons for the dispositions.

### V. Accessibility of Public Records

1. Court litigation records, on file in the offices of the clerks of the several courts of the State, may be routinely inspected during business hours by news representatives in the offices where such records are filed, except as otherwise provided by law. Such inspection shall be subject to reasonable regulation to assure the safety of the records and the orderly and efficient operation of the office and the court. News representatives should consider whether publication of information derived from such records would subject anyone to an unwarranted invasion of privacy.

**CONSTITUTION  
of the  
Bar-Bench-Press Conference  
of Delaware**

- I. The name of this organization shall be the Bar-Bench-Press Conference of Delaware.
- II. The purposes of this conference are:
  - (a) To encourage voluntary adherence to the Bar-Bench-Press Declaration, a statement of principles and guidelines adopted by news representatives, the legal profession and the courts.
  - (b) To serve as a forum for discussion of matters of concern to news representatives, the legal profession and the courts.
  - (c) To encourage understanding among news representatives, lawyers and judges.
- III. The conference shall be composed of twelve members. Three members shall be designated by the Chief Justice of the Supreme Court of Delaware to represent the interests of the Bench. Three members shall be designated by the President of the Delaware State Bar Association. Six members shall be designated by news representatives who are members of the founding conference, three of whom shall be members of the print media and three of whom shall be representatives of the electronic media. The members of the conference representing the media shall collectively designate a successor whenever a vacancy arises. Should a statewide news association be formed, it shall designate the members of the media to be members of this conference. Each member of the conference shall be designated to serve for a term of three years; provided, however, that the first twelve members shall be appointed four to a one-year term, four to a two-year term and four to a full three-year term.
- IV. The officers of the conference shall be a chairman, a vice chairman and a secretary who shall be elected from the conference's membership. They shall be elected annually to serve one-year terms. The chairmanship and vice chairmanship shall be rotated annually between the bar or bench and the media. One of such officers shall be a member designated by the bar or bench and one by the media.
- V. The conference shall meet annually in May to elect officers and conduct any other business before the conference. Additional meetings may be called by any of the officers or by any three members of the conference for the conduct of any business other than the election of officers.
- VI. A quorum for the transaction of business at any meeting shall consist of six members of the conference present in person, at least three of whom shall be bar or bench members and three of whom shall be media members.
- VII. Each member of the conference shall have one vote. As the purpose of the conference is to obtain voluntary compliance, no action shall be taken by the conference which does not obtain an affirmative vote of a majority of both the media members and the bar-bench members present at the meeting.
- VIII. The conference shall answer requests for interpretation of the Bar-Bench-Press Declaration.
- IX. Complaints alleging violations of the Bar-Bench-Press Declaration shall be reviewed by the conference and, if deemed meritorious, referred by the conference to the appropriate organization or agency. Complaints against judges or court personnel shall be referred to the Chief Justice; those against lawyers to the Delaware State Bar Association, and those against new representatives to the chief news executive of the publication or broadcast outlet involved. The referral should be accompanied by a letter from the conference encouraging compliance with the standards of the Bar-Bench-Press Declaration.
- X. Any vacancy on the conference coming to the attention of the officers shall be immediately called to the attention of the appropriate persons with the request that an appointment be made without delay for the remainder of the vacant term.
- XI. The chairman, or, in his absence, the vice chairman or a chairman pro tem, shall preside at all meetings of the conference. The officers shall perform such other duties as may be necessary or appropriate to further the purposes for which the conference was organized and as custom and parliamentary usage may require. The secretary shall perform the duties usual to such an office including the keeping of minutes, and other conference records and files, and the receipt and initiation of official correspondence.
- XII. Meetings of the conference shall be open to the public and all records of the conference shall be available for public inspection.
- XIII. Notice of the time and place of each meeting of the conference shall be communicated by mail, telephone, or in person to each member at a reasonable time in

advance of the meeting. To the extent practicable or convenient, the purpose of the meeting shall be stated in the notice.

- XIV. This constitution and the Bar-Bench-Press Declaration may be amended at any meeting of the conference; provided, however, that no amendment shall become effective until it has been approved by a majority of both the media and bar-bench members of the conference. In addition, such members may refer any such amendments to their respective associations for review and instructions. It is further provided that no such amendment will be made without notice having been given at least thirty days prior to the meeting to each member of the conference that such amendment would be considered.

Notes:

- 51 -

this state, that as the result of adherence to these voluntary guidelines news representatives will have greater access to reliable information while judges and lawyers will have fewer intrusions of prejudicial influences. Fair trials and a free press are the ultimate goals of all concerned. It is hoped that this work will contribute in an important way to the attainment of those goals.

Also contained herein is a Constitution designed to govern the future activities of the Delaware Bar-Bench-Press Conference as an on-going organization working on a voluntary basis to make modifications of the Declaration as circumstances warrant, to interpret the guidelines as circumstances may require and to attempt to avoid or settle controversy in the fair trial-free press field.

Comments and suggestions may be addressed to the Conference, c/o Director of the Administrative Office of the Courts, Delaware State Building, 820 North French Street, Wilmington, Delaware 19801.

June 1978

Gerard P. Kavanaugh  
President, Delaware State  
Bar Association

Daniel L. Herrmann  
Chief Justice, Supreme Court  
of Delaware

Frederick W. Hartmann  
Executive Editor,  
News-Journal papers

RULE 52

February 1, 1971

SUPERIOR COURT OF D.C. - CRIMINAL RULES

RULE 52

HARMLESS ERROR AND PLAIN ERROR

(a) HARMLESS ERROR. Any error, defect, irregularity or variance which does not affect substantial rights shall be disregarded.

(b) PLAIN ERROR. Plain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the court.

*COMMENT: This rule is identical to Federal Rule of Criminal Procedure 52.*

RULE 53

FREE PRESS - FAIR TRIAL

(a) DISCLOSURES BY COURTHOUSE PERSONNEL. All courthouse supporting personnel, including among others, marshals, court clerks, law clerks, messengers and court reporters, shall not disclose to any person information relating to any pending criminal or civil proceeding that is not part of the public records of the court without specific authorization of the court, nor shall any such personnel discuss the merits or personalities involved in any such proceeding with any members of the public.

(b) PHOTOGRAPHS, RADIO AND TELEVISION BROADCASTING, ETC.

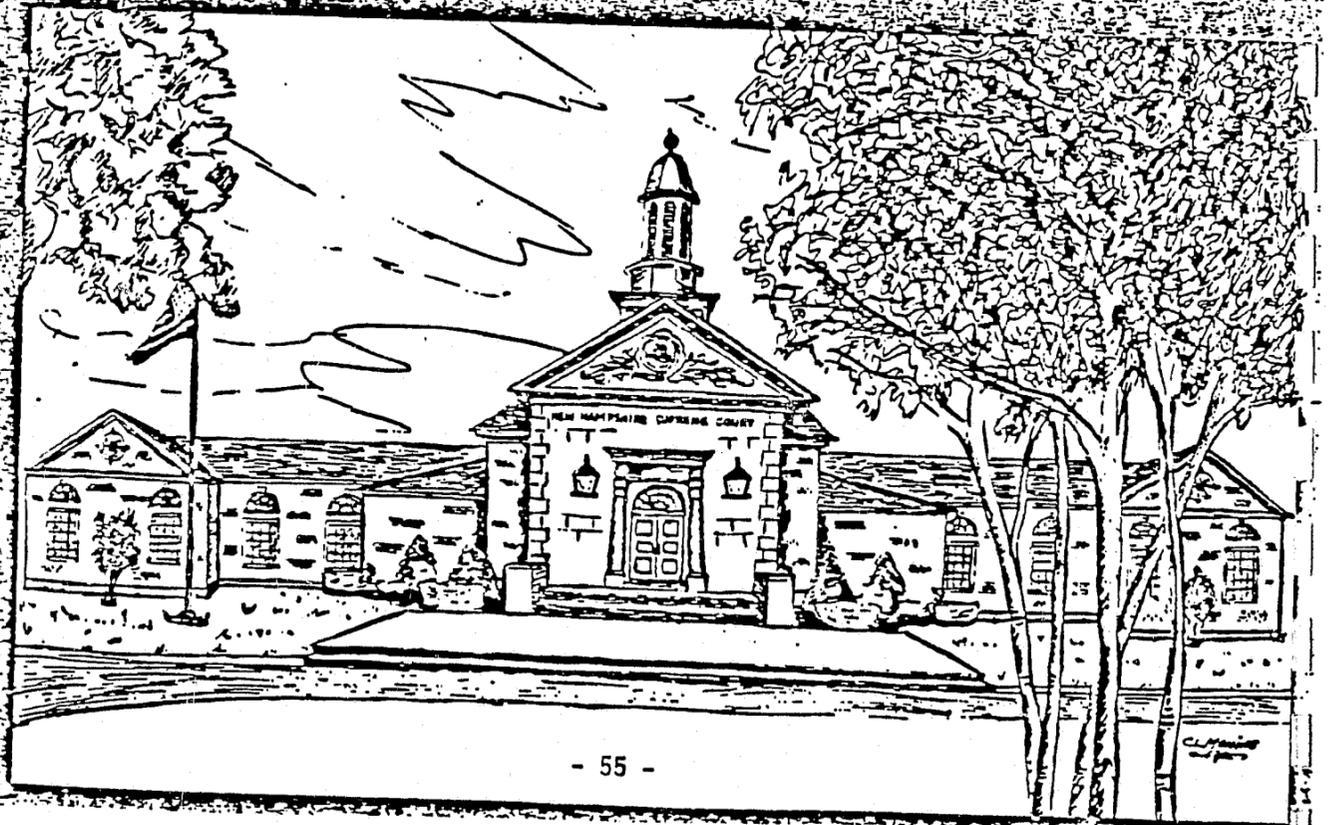
(1) IN GENERAL. The taking of photographs, or radio or television broadcasting, or except with the approval of the court the use of any mechanical recording device, shall not be permitted in any courtroom of this court during the progress of judicial proceedings, or in any of the anterooms adjacent thereto, in any of the cellblocks, in the lobby, or in the corridors of the court house.

(2) EXCEPTION. The taking of photographs in any office or other room of the court house shall be only with the knowledge and consent of the official or person in charge of such office or room and of the person or persons photographed.

(c) RELEASE OF INFORMATION BY OR OPINIONS OF COUNSEL. Neither an attorney who has undertaken the representation of a defendant nor the prosecutor in a criminal case, whether the case



PRESS AND PUBLIC INFORMATION MANUAL  
FOR NEW HAMPSHIRE JUDGES



JUDICIAL PLANNING COMMITTEE OFFICERS

Honorable Charles G. Douglas, III, Associate Justice,  
New Hampshire Supreme Court,  
Chairman,

Honorable William A. Grimes, Associate Justice,  
New Hampshire Supreme Court,  
Vice-Chairman,

James A. Gainey,  
Administrative Assistant to the Chief Justice,  
New Hampshire Supreme Court,  
Clerk.

NEW HAMPSHIRE  
FAIR TRIAL-FREE PRESS COMMITTEE OFFICERS

Honorable Charles G. Douglas, III, Associate Justice,  
New Hampshire Supreme Court,  
Chairman,

Thomas W. Gerber, Editor,  
Concord Monitor,  
Vice-Chairman,

William L. Chapman, Esquire,  
Concord, New Hampshire,  
Secretary.

\*\*\*\*\*

Honorable Edward J. Lampron  
Chief Justice, Supreme Court of New Hampshire

PRESS AND PUBLIC INFORMATION MANUAL  
FOR NEW HAMPSHIRE JUDGES

Edited and Prepared by The Honorable Charles G.  
Douglas, III on Behalf of the New Hampshire  
Fair Trial-Free Press Committee and the  
Judicial Planning Committee.

August 1978

Turn this

Judge was too strict

To The Sentinel:  
Whatever the future decision  
about the \$1.5 billion nucle-  
power plant at Seabrook-  
safety, need or value—there  
be no doubt that at the present  
time there are serious questions  
about it.  
All over this country new  
building of such plants has been  
halted in  
An Editorial

An Editorial  
Pusher Leniency  
Commentary

Victims of Crime Have Rights Too

Judicial Folly

Court System Assailed

Judges shun public issue comment

Confidence in court system wanes

Governor Urges  
Tougher Judges

DIXVILLE NOTCH — Gov.  
Thompson Jr. called for  
tougher

Appearance of judicial fairness  
Integrity and the Courts

The press lamented Superior Court Justice  
John W. King in a recent address to the Manches-  
ter Rotary Club

In an  
Hampshire Chiefs of Justice  
Assn. at their annual banquet,  
Thompson blamed permis-

Locking Courtroom Doors

Court-Ordered College?

Blasts  
Ruling

Hampshire's Supreme Court announ-  
ced last week which  
are not only out of  
are continuing on  
ference in priv.  
been at th-

Bar Board  
Votes Down  
Info Rules

...into this!

The Media-Law Parley  
Held In Concord  
Tuesday, Sept. 14, 1976

Keene Judge Clears Up Legal Maze  
Followed by 10,000 Cases Each Year

By ERNEST HERBERT  
Staff Writer

NH Court System  
Pamphlets Ready

Judicial reform is long overdue

By Judge William F. Batchelder

N.H. courts stack up favorably

It must be remembered  
time the counties  
well

Commentary

A SALUTE TO OUR STATE  
SUPREME COURT

Justice Administered With Style

In 30 hours, a major decision

A judge's view of court leniency

High Court Efficiency Paying Off

CONCORD, Aug. 5 — The N.H. Supreme Court has met a rapidly increasing caseload with efficiency. But in the same eight-year period the court increased its annual disposition of cases from 137 to 358. This year its backlog of 146 cases is the

Courts accessible to any citizen

Judges going public

system, in New which is an increase of nearly 13,000 (107 per cent) years ago.

Progress in media-law relations

PREFACE

THE JUDICIARY NEEDS THE SUPPORT OF THE PEOPLE to function effectively. This support depends on the public's confidence in the fairness and reasonableness of courts and judges.

Government officials --including judges-- are not held in the same esteem as they were in earlier years. Judges are criticized because they are "soft" on crime; or because they rule out certain "evidence" and let a "known" criminal off on a technicality; or because they issue a "gag" order in a sensational criminal case. Courts --and thereby judges-- are criticized for shoddy treatment of jurors, increasing case backlogs, the soaring cost of justice. Much of this criticism is the result of inaccurate information or a misunderstanding of the legal process.

Judges need to be aware of the opportunities they have to influence the way people think and feel about our judicial system. They need to realize that it is their responsibility to create positive attitudes towards courts and judges. They also need to know when and how to respond to inaccurate, unfair criticism of the courts or of their own judicial performance.

This booklet cannot provide definitive answers for all public information problems. It takes patience on the part of judges and knowledge on the part of the press and the public to realize that as imperfect as our legal system may be, it is still as good as there is.

Note: Parts of this Manual have been adopted from the Judges' Public Information Manual of the California Judges Association.

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**I. THE COURTS AND THE NEWS MEDIA**

THERE ARE STILL COMMUNITIES IN WHICH JUDGES AND REPORTERS for newspapers, radio and television perform their jobs with mutual respect. In the last ten years, however, there has been an increasing conflict between the courts and the news media. This is primarily the result of the continuing interpretation of the relationship between the First and Sixth Amendments to the United States Constitution.

When discussed by some proponents of the media, the First Amendment is claimed to be an absolute right. While acknowledging that even the rights to free speech and free press must bear some limitations, the courts have been very cautious in tampering with the First Amendment. The Courts recognize that the media provide citizens with the information that enables them to criticize and change --to check the abuse of power by government; to elect new office holders. The courts also recognize that the media protect the defendant's right to a public trial as well as a fair trial.

The Sixth Amendment is just as jealously guarded by the courts because it provides the authority to erect protection around parts of the court process in order to preserve the fairness of the trial. A recent series of appellate decisions have emphasized to the trial judge his duty to safeguard the defendant's right to a fair trial by an impartial jury.

A certain amount of free press-fair trial conflict is inevitable and certainly tolerable in a democratic society. But much of it can be mitigated by discussion and mutual education on the part of the courts and the news media.

**A. THE REPORTER'S PROBLEMS**

Newsman have many pressures and problems judges should know about. Among them are these:

1. Speed v. Accuracy -- Accuracy is sometimes sacrificed because of the need to be first. That we can see. But when a conscientious journalist sacrifices speed for accuracy we generally don't know it. The need to meet frequent and inflexible deadlines creates other problems for reporters:

a. Quotations -- When to quote, what to quote, how to be sure the quote is correct when the deadline is fifteen minutes away and the judge is on the bench?

b. Headlines -- Sometimes they are distorted in an attempt to draw attention to a story and to sell newspapers. Reporters rarely write the headlines for their stories. Often, the headline writer's bad interpretation of a story causes the reporter apoplexy, but we blame the reporter.

c. Pictures -- Do they accurately portray the scene? Or were they faked? Was the emotion or action shown induced?

d. Flack -- When is a story a hoax, a joke, or a publicity stunt? When is the reporter pressured to write something that really isn't news?

e. Mistakes -- Having made a mistake -- inevitable for even the most experienced reporter -- what is the best way to correct it?

2. Objectivity v. Interpretation -- Traditionally, journalistic emphasis was on objective reporting. Today the reporter may be called on for "backgrounding" or "in-depth reporting," which is frequently subjective.

- a. What Breshnev says about President Carter is news.
- b. Why he said it is interpretation.
- c. Whether he should have said it is opinion.

3. Balance -- Newspapers have an obligation to tell both sides of a story in their news pages. Editorials and columns state the newspaper or writer's viewpoint, and there is no legal right of reply to these opinion pieces. Most newspapers, however, will print letters to the editor, although they don't have to provide equal space. Radio and television are federally regulated, and while they may editorialize they must also give time for rebuttal.

4. Fairness v. Privacy -- The media have wide leeway to criticize, but they must be careful not to abuse it. A public official or a prominent person has less privacy than a private citizen. People like legislators and judges, who undertake careers that are a matter of public interest, must expect and accept a certain amount of criticism.

5. Reliability -- How credible is the news source? If the judge won't talk to the reporter, he may get inaccurate information from someone else at the court, or by reading and misunderstanding a public record.

6. Face and Voice -- The electronic media faces a special problem in that it needs a face and a voice to make its news. Recording and broadcasting actual courtroom scenes are permitted under amendments to the Superior and Supreme Court Rules effective January 1, 1978.

## B. DEALING WITH THE NEWS MEDIA

IN DEALING WITH THE NEWS MEDIA, the judge should keep in mind:

1. The Essentials -- Give the facts clearly, accurately, and promptly, even when it hurts. (More later on how to deal with the "hostile" story.)

2. Controversial Subjects -- Keep cool if the press asks you about a controversial matter. The best course is to explain your position thoroughly, fairly, and clearly. If you give personal views, clearly label them as such. Otherwise, you may find newsmen quoting you as a source of official court policy.

3. No Answer -- When you don't know the answer to a question, say so and be as helpful as you can. Ask somebody who knows for help. When you do have the facts, tell the reporter at once. Let him judge if the answer comes too late.

4. Evasions -- Don't wrap up an answer in evasion, red tape, or standoff treatment. As a rule, to put obstacles in a reporter's way makes him work all the harder for his story. Then, when published, it is likely to be full of errors.

5. Quotes -- There is no reason why you shouldn't be quoted by name in most stories. In special cases, reporters will honor requests not to quote you by name. But as a rule, keep your relations uncomplicated. Everybody will know or can find out who talked anyhow.

If there is any chance of misquotation -- and there often is -- take out your notebook or use the reporter's and write out your statement. Few things make reporters or editors angrier than for you to deny a quotation after publication, especially if you took no care to be properly quoted. Make the extra effort to put your quote in a brief context. Give a specific example to illustrate a complex legal concept.

Unless the point is vital, don't deny a misquotation. But, if it is important, try to make your denial affirmatively. Say, "I want to correct the impression that such-and-such. I wish that I could have made this point clearer to avoid a misunderstanding that does an injustice to the position I took."

Or, most important, if you have actually changed your position, say so out loud: "When I said such-and-such yesterday, I believed it expressed my views. Since then I have thought it over and changed my mind as follows... And this is why...."

6. Telephone Interviews -- More and more news is of necessity gathered over the telephone. On telephone inquiries about tough subjects, it may pay to promise to call back shortly and use this time to line up a clear reply. On a difficult story, ask to talk to the reporter in person. If there isn't time for this, write a short statement and read it to him slowly to avoid mistakes. Remember that the reporter has deadlines, sometimes several every hour.

7. Exaggeration -- Never color or stretch the facts. A good reporter will catch you. And if he doesn't, the public will. In case of doubt, make your stories understatement. Don't ever overstate. Or promise more than you can deliver. Newsmen resent windbags and prevaricators.

8. Previews -- Reporters don't like to show you their story before the paper prints it. Often, time is too short and they don't want a hassle. A reporter often has to report two sides of a controversial issue. He doesn't enjoy arguments about how he should handle the story. So, don't ask to see it. It's better to have both sides reported than just the other side.

On ticklish stories, however, newsmen may read back what they regard as the essentials over the phone. On stories with no urgency they may ask you to check their story for errors of fact. If they pay you this compliment, just clarify the facts. It is hard not to suggest revisions other than factual, but better to let an unsatisfactory story slide than to give a newsman cause to suspect that you want to influence his judgment unduly.

9. Mistakes -- Sometimes there will be errors. Expect some to happen. Do everything you can to avoid them. Then if the mistake is vital, tell the reporter about it -- courteously. Complaints to the reporter's boss only make ill will.

Believe it or not, editorial machinery is designed to catch errors, but sometimes it works to make them, such as when a reporter has to telephone in a story against a deadline. The reporter may well have reported accurately to the city desk, but in the process of rewriting and editing, it may become skewed. What you thought was a sidelight may be headlined.

10. Off-the-Record -- Sometimes it's wise to give background information and comment to help the reporter interpret the facts you offer. Make it clear and get prior agreement if you do not intend this information for publication. Also make it clear whether the background is "not to be attributed to you if published." You are on the record unless you specifically go off by agreement.

Most newsmen want nothing to do with off-the-record stories. They make their living by publishing stories. However, some reporters are glad, if the story warrants it, to have you tell them the background they need to understand the whole story. Be sure you say when you begin and when you end such off-the-record comments. But please keep such material rare. In fact, don't go off the record if there is any way to avoid it.

### C. PRACTICAL ASSISTANCE FOR THE MEDIA

THESE ARE THINGS THE COURT CAN DO FOR THE REPORTER to make his job easier and his stories better:

1. Reference Materials -- The novice court reporter may have difficulty understanding legalese, legal concepts, and complicated court procedures. These publications are designed to assist the reporter in covering the courts:

a. The Third Branch of Government: This booklet available from the Judicial Planning Committee is a brief overview of our judicial system.

b. A Layman's Guide to the Courts: This far more detailed publication was initially developed as a project of the New Hampshire Fair Trial-Free Press Committee and has been printed by the Judicial Planning Committee.

c. The Supreme Court of New Hampshire: Available from the Court, it is devoted exclusively to the appellate process.

d. OTHERS: Pamphlets on Small Claims Court and Probate Court are being prepared as well as other booklets. Call Claudia Chadwick at 271-2521 or Ann Manias at 271-3275 to order any pamphlets.

2. Announcements -- A judge's rulings should be announced at a time best suited to the court and its administration. However, when there is high media interest in a particular case, it is a good idea to announce in advance when a decision will be made available. This helps the reporter plan his time and meet his deadline. Be sure enough copies are made for the press.

3. Adequate Facilities -- Judges should make reasonable arrangements to accommodate the news media consistent with the opportunity of other members of the public to attend the proceeding. To date no courtroom has been built to meet all the needs of the security-oriented, high public exposure trials.

4. Acknowledgment of Good Work -- It is sometimes easier to criticize than it is to praise. The reporter who does an especially good job on a complicated story should be thanked. He has helped the courts tell their story to the public. The New Hampshire Bar Association annually gives awards to those members of the media who have done an outstanding job reporting on law and the courts. If a reporter who covers your court writes an extraordinary article or series of articles, you might suggest that he or she submit them to this competition.

5. Availability -- Judges are exceptionally busy. Often when a reporter needs to ask a question or clarify a fact, they are on the bench or in a conference in chambers. Keeping the reporter's deadline in mind, the judge should try to get back to the reporter as soon as possible. And judges should be willing to talk with reporters when requested to do so. It's better to tell your own story than to have it told for you.

#### D. ACCESS TO RECORDS AND PROCEEDINGS

The New Hampshire Constitution in Part I, Article 8 has made access to public records and proceedings a constitutional right by virtue of a recent 1974 amendment. Judges are by nature used to dealing only with attorneys and the parties before them and do not as a matter of course think about the interest of the press. This is a natural reaction to the fact that it is a rare event for the press to regularly appear in a courtroom, and thus the feeling of "out of sight, out of mind" can evolve.

Some court documents are sealed at the request of the parties because of their personal nature, because they may contain "trade secrets" (e.g., the formula to Coca Cola) or because they may be juvenile records made private under RSA ch. 169. In the usual course, however, any pleading or document filed and duly recorded in the clerk's office becomes public record at that time. Certain rules of court or agreements of the lawyers in a case may bar public access. See Thomson v. Cash, 117 N.H. \_\_\_\_ (No. 7765, August 1, 1977) a decision by the State Supreme Court regarding public access to a deposition filed in a court clerk's office.

When a problem does occur the reporter will try and contact the judge through the clerk's office to determine why access has been denied to a document or hearing. Some judges are more receptive to a call from the press than others. It may help to ask the clerk or secretary what matter the reporter wishes to discuss. When the judge comes on the phone he should determine if the conversation is an on-the-record conversation, off-the-record and not for attribution or just what ground rules will apply.

## II. FAIR TRIAL, FREE PRESS

Events in recent years have focused national attention on the issues involved in preserving the constitutional guarantees of impartial trial and free press. To an extent greater than ever before, members of the legal profession and the news media recognize the importance of finding an acceptable accommodation of these basic rights.

Fair trial and free press often have been viewed as rights in conflict. There has been a widely held but false assumption that one must be recognized to have precedence over the other. Such is not the case; the two rights were intended to be complementary, not contentious. The U.S. Supreme Court has refused to assert the primacy of any part of the Bill of Rights over any other part, and has consistently treated the parts as coequal.

Thus it has come to be recognized that the issues of fair trial and free press do not in fact impose an irreconcilable division between the courts and the media. This is one of the promising consequences flowing from the dialogue of recent years. The challenge is to find approaches through which both can be accommodated fairly.

In practical terms of day-to-day criminal law procedures and news reporting, this means developing acceptable patterns of practice to accomplish that result. It is a tripartite obligation of the bar and courts, law enforcement agencies and the news media.

Throughout the country, bench, bar and media organizations have formed panels of judges, lawyers and journalists for consideration of their respective responsibilities. This has occurred in at least 42 states (including New Hampshire); in some of them, voluntary codes of fair practice either have been adopted or are under consideration. This has occurred in New Hampshire.

The New Hampshire Fair Trial-Free Press Committee is a voluntary group of law enforcement personnel, members of the judiciary, bar, public and news media working together to resolve conflicts between important constitutional guarantees under the first and sixth amendments, that is, the right to a free press and the right to a fair trial by an impartial jury. The Committee was organized in 1976 and has functioned to remove sources of conflict and misunderstanding between the law and the press through a process of education and discussion.

A major accomplishment of the Committee has been the development of a set of guidelines to assist both the news media and those engaged in the administration of justice in avoiding conflicts in criminal proceedings, which could give rise to either prejudicial pretrial publicity or restrictions on freedom of the press. These proposed guidelines are based upon the following statement of principles the New Hampshire Fair Trial-Free Press Committee observes:

**CONTINUED**

**1 OF 3**

. Freedom of press is guaranteed by the First Amendment to the Constitution of the United States and by part 1, article 22 of the New Hampshire Constitution.

. The right to a speedy and public trial by an impartial jury is guaranteed in criminal cases by the Sixth Amendment to the Constitution of the United States.

. It is the responsibility of the judiciary and bar to preserve order and decorum in the courtroom and to seek justice by all proper available means.

. Decisions relative to the dissemination of news are the responsibility of the news media, and in exercising its judgment the news media recognizes that:

- An accused under our constitutional guarantees is presumed innocent until proven guilty.

- All litigants both civil and criminal are entitled to be adjudicated in an atmosphere free from passion, prejudice and sensationalism.

- Readers, listeners and viewers are potential jurors.

- Reputation should not be needlessly injured.

The judiciary, bar and law enforcement personnel recognize that:

- In a democratic society the public has the right to be informed about crime, law enforcement and the administration of justice.

- The public generally has the right to have judicial proceedings conducted openly.

- Dissemination of news about a crime will not necessarily prejudice an accused's right to a fair trial; and the knowledge of some facts about a crime, without more, is not sufficient to rebut the presumption of a prospective juror's impartiality."

1. THE JUDGE'S PRIMARY DUTY IS TO INSURE A FAIR TRIAL. If the trial is to be decided by a jury, the judge is concerned that the minds of the jurors not be influenced by publicity concerning matters of evidence not admissible at the time of trial or by the misinterpretation of evidence by the media, even though it is admissible at the time of trial. One of the serious problems a judge faces is the determination of what is likely to prejudice the mind of a juror or of such a substantial number of jurors that a fair trial cannot be had.

What are some of the tools available to the judge to prevent prejudicial publicity?

(1) Exclusion of Public/Media from Proceedings

- (2) Change of Venue
- (3) Admonitions to Jury
- (4) Sequestration of Jury
- (5) Contempt
- (6) New Trial
- (7) Joint Declaration
- (8) Restrictive Orders

See generally:

State v. Laaman, 114 N.H. 794 (1974)  
State v. Booton, 114 N.H. 750 (1974)  
State v. Stewart, 116 N.H. 585 (1976)  
Keene Publishing Corp. v. Keene District Court,  
117, N.H. \_\_\_\_ (11/23/77).

2. PRETRIAL AND COURTROOM ACCESS: A 1977 decision by the State Supreme Court adopted proposed A.B.A. guidelines for closure of hearings in advance of trial. In Keene Publishing Corp. v. Keene District Court, 117 N.H. \_\_\_\_ (No. 7953, 1977) the court said:

"A judge may not close to the public (including representatives of the news media) any preliminary hearing, bail hearing, or other pretrial hearing in a criminal case, including a motion to suppress, or seal any document unless the failure to close the proceeding or [to] . . . seal the document constitutes a clear and present danger to a fair trial in that:

- "(1) There is a substantial likelihood that information prejudicial to the accused's right to a fair trial would reach potential jurors; and
- "(2) The prejudicial effect of such information on potential jurors cannot be avoided by alternative means. In assessing whether alternative means are available, the court must consider whether the rights of the accused guaranteed by the fifth and sixth amendments can adequately be preserved through:  
(a) continuance; (b) severance; (c) change of venue; (d) change of venire; (e) voire dire; (f) additional peremptory challenges; (g) sequestration of the jury; (h) admonition to the jury; and (i) other less restrictive procedures."

This case overturned an order prohibiting the press from covering a criminal probable cause hearing in part because, as the Court said:

"In this state the press has been held to have a right, though not unlimited, to gather news so as to effectuate the policy of our constitution that a free press is 'essential to the security of freedom in a state.' N.H. Const., Pt. 1, Art. 22."

3. CHANGE OF VENUE. Sheppard v. Maxwell, 384 U.S. 333 (1966), holds "but where there is a reasonable likelihood that prejudicial news prior to trial will prevent a fair trial, the judge should continue the case until the threat abates, or transfer it to another county not so permeated with publicity."

At the hearing on a defense motion for change of venue in Corona v. Superior Court, 24 Cal. App.3d 872 (1972), the defense brought in oral testimony filling three volumes, twelve reels of television film containing composites of the daily news broadcasts and a voluminous collection of clippings from three daily and one weekly newspaper, plus public opinion surveys concerning the alleged slaying of twenty-five itinerant farm workers in a rural county of 42,000. In this case a reasonable likelihood of unfairness was shown to exist though the news coverage was neither inflammatory nor productive of overt hostility, and the appellate court issued a peremptory writ of mandate directing the trial court to grant a change of venue.

4. ADMONITIONS TO JURORS. From time to time judges should be reminded that carefully worded jury instructions may preserve the fairness of the trial.

The usual admonition given to jurors to remain free from outside influence should be supplemented when the case receives a great deal of publicity. Jurors should then be admonished not to read, watch, or listen to anything concerning the case which may appear in newspapers, on television or radio.

A sequestered jury may also need the admonition. Remember the day in the Charles Manson trial when someone at a counsel table displayed a newspaper story with a banner headline about the feelings of the President of the United States regarding the case?

5. SEQUESTRATION OF THE JURY. In its decision in Sheppard v. Maxwell, the United States Supreme Court reminded judges that they have the duty to give the defendant a fair trial. The Court indicated that sequestering the jurors -- or holding them together in the custody of the court before they begin their deliberations -- may be one of the means of assuring the fairness of the trial. Of course, this statement was made in a case in which massive amounts of publicity before and during the trial infected the case.

American Bar Association Standards Relating to Fair Trial and Free Press, Standard 3.5(b) provides in part:

(b) Sequestration of jury.  
Either party shall be permitted to move for sequestration of the jury at the beginning of the trial or at any time during the course of the trial, and, in appropriate circumstances, the court shall order sequestration on its own motion. Sequestration shall be ordered if it is determined that the case is of such notoriety or

the issues are of such a nature that, in the absence of sequestration, highly prejudicial matters are likely to come to the attention of the jurors. Whenever sequestration is ordered, the court in advising the jury of the decision shall not disclose which party requested sequestration.

The judge who considers sequestration of the jury should remember:

- (1) The inconvenience to jurors and to court attachés who care for them.
- (2) The juror's isolation from family and friends, frequently for long periods because of the nature of the case.
- (3) The cost of court personnel, hotels and meals.

Of course, these may be inconsequential compared to the cost of retrying the case.

Keep in mind that sequestration would be no remedy for massive pretrial publicity, but presumably would prevent exposure to publicity during the trial.

For further information, see "Sequestration: A Possible Solution to the Free Press-Fair Trial Dilemma," 23 AM. U.L. REV. 923-57 (Summer-1974).

6. RESTRICTIVE ORDERS. This judicial remedy to excessive prejudicial publicity should be used only when the judge believes that other remedies, e.g. change of venue, sequestration, admonition, are inadequate to safeguard the defendant's right to a fair trial.

The purpose of a restrictive order is to prevent the dissemination of information to prospective jurors, or, after the trial has begun, to unsequestered jurors. Before deciding to issue a restrictive order, a judge should consider the following:

- (1) When circumstances warrant it, the court may prevent dissemination of certain kinds of information by attorneys, witnesses, parties, law enforcement officers and court attachés.
- (2) To do this the court must at least find facts presenting a reasonable likelihood of prejudicial publicity that would make difficult the impaneling of an impartial jury and thus tend to prevent a fair trial.
- (3) At the present time there do not seem to be cases upholding the right of a trial court to prevent newspapers or other media from publishing what they can learn about a criminal case. That is, there are no cases upholding prior restraint of the press.
- (4) To attempt prior restraint, the court must find facts presenting a clear and present danger to the fairness of the trial of the accused.

(5) The appellate court must review the facts and make an independent determination applying the same test. Contempt against a lawyer, party, witness or court official is extremely tricky and will depend upon whether it is direct or indirect contempt, civil or

criminal, etc. Have a law clerk and a lot of preparation before jumping on board this tar baby. See re contempt generally. Nottingham v. Cedar Waters, Inc., 118 N.H. \_\_\_\_ (4/25/78).

### Nebraska Press Association v. Stuart

On June 30, 1976, the United States Supreme Court unanimously struck down as unconstitutional prior restraint on freedom of the press a judicial order that had limited pretrial publicity about a sensational Nebraska mass murder case and that had blacked out all coverage of a hearing open to the public.

Although the justices held that the Nebraska courts had no business telling the press what it could publish in the particular case under review, the high court refused to lay down an absolute prohibition against so-called "gag orders."

Chief Justice Warren E. Burger, delivering the court's main opinion, left open the possibility that direct restraints on the press could still be issued in extraordinary circumstances where they were clearly needed to protect a criminal defendant's right to a fair trial.

Three justices balked at that, however, and, in a separate opinion that concurred only in the court's judgment, declared that gag orders should be completely outlawed. Their opinion elicited some limited expression of support from two more justices, but they could not muster a majority for a total ban on gags.

Burger specifically warned lower court judges that if they leave their courtrooms open, any attempt to block reporting of testimony given in public proceedings would be "clearly invalid."

Mere speculation about the adverse effects of news coverage would not suffice, Burger indicated, for "pretrial publicity, even if pervasive and concentrated, cannot be regarded as leading automatically and in every kind of criminal case to an unfair trial."

The chief justice, although declining to lay out specific tests for determining when a gag order could be imposed, indicated certain factors for lower court judges to consider.

Among these were the "nature and extent of pretrial news coverage" and the possibility that other measures would sufficiently cool public passions. Among the alternatives the chief justice cited were delaying the trial several months, changing the site of the trial, and interrogating potential jurors in some depth about their exposure to publicity. Burger also suggested that courts might consider in each case whether gossip was already so strong and pervasive that gagging the press might do more harm than good.

Burger said that although Lincoln County District Judge Hugh Stuart was justified in concluding that the press coverage would be so pervasive that it would deprive Simants of a fair trial, Stuart should not have imposed a gag order without first exploring "alternative measures" for diluting the force of the publicity.

7. JOINT BENCH/BAR/MEDIA AGREEMENTS. There is another tool available to the judge. It is designed as preventative rather than a remedy.

A joint bench/bar/media agreement is a statement of principles drawn and submitted for voluntary compliance.

Such statements are recommendations, not rules. They bind no one. They are not always effective. Such a statement is, however, a starting point for mutual education and prompt discussion of specific problems. If we are to work at the problems the bench, bar, and media face, we must continue to believe that with discussion and understanding, progress in the accommodation of fair trial-free press needs can be made.

The New Hampshire Fair Trial-Free Press Committee is considering proposed guidelines with the following understanding: "By adopting the guidelines hereinafter set forth, the Committee does not intend that they be binding on its members or others. Rather the guidelines are intended to reflect a cooperative relationship and spirit which the Committee believes will minimize conflicts between the media, on the one hand, and law enforcement personnel or the judiciary, on the other hand, will promote the rights to a free press and to a fair trial by an impartial jury."

A. Release of Information. The Attorney General on March 10, 1977, issued a notice and checklist to all law enforcement personnel indicating what information can be released to the press. This appears as Appendix I.

B. Closure of Hearings. The American Bar Association and the National Conference of State Trial Judges have adopted a recommended court procedure basically calling for informal discussions between reporters, editors and the judge in a case likely to have

press coverage that may affect a jury. Many times the press, if consulted and treated courteously by a morning chambers conference, will agree that certain testimony will not appear in the paper provided the press may be present. What the reporters and editors basically want is access and they will often agree to restrain themselves from printing information so long as they can have it or be present. By a gentlemen's agreement and a handshake the judge can learn that if confrontation is avoided both a fair trial and a free press can co-exist. This is especially so in our State where every daily paper is in a one paper town.

### III. JUDGE'S RELATIONS WITHIN THE COURTHOUSE

1. WITH COURT PERSONNEL -- Since the judge is represented in many dealings with litigants, jurors and courthouse visitors by his bailiff, clerk and court reporter, he should be concerned with their attitudes and actions toward the public.

Do you know what kind of impression these people give of your court? If the impression is not the one you want to give, perhaps the court should create a policy manual to define for court personnel what is expected of them.

2. WITH JURORS -- Jurors probably have a better opportunity to view objectively the workings of the court than any other lay people. If jurors are to be friends of the court -- telling its story to the community -- they must leave the court with a clear understanding of what has happened and why. It is part of the judge's duty to see that jurors have this understanding.

During the trial there are many opportunities for the judge to explain language and procedure to the jurors. Of course, all judges give admonitions and instructions. But sometimes more information is necessary or helpful to the juror, particularly in a complicated case. When the jury has finished its deliberations, the trial judge should thank the jurors for their service. The judge's comments should not include praise or criticism of the verdict.

Whatever is done should be done to let the jurors know what they are doing -- or what they would have done if the case had not been settled -- and why they are important to the administration of justice. When they understand, their sentiments ripple into the community. When they don't understand, their criticism ripples the same way.

3. WITH VISITORS -- The court is a public place. Visitors are present for different reasons. Some -- usually family and friends -- are there because of an interest in a particular proceeding. Others because of curiosity, or because they like the "drama" of criminal proceedings. Among these are the veteran courtroom spectators, many of them retired people. Still others come to court to study and learn. They are classes of school children, members of the League of Women Voters. Finally, some come to court to keep tabs on the judges and to criticize. They are the court watchers.

Whether people come to be entertained, to learn, or to criticize, there are things the courts can and should do to educate their visitors.

Courts can distribute education material to visitors. Such material can be an annual report, a description of the state court system, material on trial procedure or a glossary of terms.

4. WITH SCHOOL CHILDREN -- Most schools send -- or would like to send -- students to observe the courts in action. This is desirable, although it creates additional work for the courts.

If the court itself schedules student visits, someone must be in charge. Visits must be scheduled so there aren't too many students present at one time. In smaller courts, someone must be sure there is a trial appropriate for students to watch -- not an x-rated rape or a complicated civil case younger students wouldn't understand.

One way to handle court tours is for the presiding judge to send a letter to the superintendent of the school district(s) encouraging class visits to the courts. Such a letter can outline the court's general schedule and the fact that visits should be scheduled with the court clerk. If a courthouse tour is provided, the letter should indicate what it includes and how long it takes.

Depending on the circumstances, the judge may want to speak to the class during recess. For example, he may tell the students what kind of trial is in progress and what they can expect to see. If court is not in session, the judge will be able to spend more time with the students. One thing students seem to enjoy and that makes the visit more meaningful is placing students in the position occupied during a trial by court personnel.

Student classes are among a court's most important visitors. Lifetime attitudes may be created by what students learn and the impressions they receive -- whether good or bad. Copies of THE THIRD BRANCH OF GOVERNMENT and other pamphlets may be distributed.

5. CEREMONIES -- Ceremonies provide an opportunity for judges to display the dignity of the court to the public through the news media.

What ceremonies?

The Opening of Court. It should be dignified and cause people to pause for a moment.

Law Day. This annual event needs more attention from judges and attorneys in their local communities.

Naturalization. In court it can be made a beautiful and meaningful ceremony for people who have worked hard for citizenship, for school visitors and the public through the news media.

Memorial Services. A judge dies. What should the court do? U. S. District Courts hold memorial ceremonies, and they are reported in the reporter system. Such a ceremony can offer the courtroom for a gathering that is meaningful to the judge's family and allows public expression of appreciation for his work.

Robing Ceremony for New Judge. It is a high point in the life of a new judge and his family. It is also important to the bar. It affords a great opportunity to invite the public into the court.

Swearing in New Attorneys. The State Supreme Court does this officially, but why not at least welcome new attorneys by some formal ceremony when the size of your bar and court permits.

#### IV. ANSWERING CRITICISM

THE QUESTION IS: SHOULD ALL, OR SOME, OR NO CRITICISM BE ANSWERED?

The object of the criticism, the source and the nature all have some bearing on whether criticism should be answered.

Criticism can be classified in several ways:

1. WHO IS CRITICIZED?

- (a) An individual judge
- (b) All or a substantial number of judges on a court
- (c) The whole judicial system

2. WHO IS CRITICIZING?

- (a) A member of the public by a letter to the judge or to an editor
- (b) Another judge
- (c) A news media representative

3. WHAT IS THE NATURE OF THE CRITICISM?

- (a) A complaint about a personality trait of a judge
- (b) A complaint about judicial action required by statute or appellate decision

- (c) A complaint about judicial action where discretion or judgment is required
- (d) A complaint about a decision by an appellate court
- (e) A complaint about the operation of the court or the administration of justice

4. WHO CAN ANSWER THE CRITICISM?

- (a) An individual judge
- (b) A group of judges, collectively or through the presiding judge
- (c) A judges' association
- (d) An attorney, attorneys or the bar association

What should the judge do when he finds himself with a public relations problem? He might begin by reading and thinking about the following:

1. Is the story important? If not, forget it. You might make a story seem more important than it really is by picking at it.
2. Is the story really harmful? Or could it be turned to your advantage? For example, when it's true, you might make the point that the judge has no control over a particular situation. If the Legislature or the Executive must make changes to correct the situation, say so. This will help the public better understand how their government works.
3. If the story contains legitimate criticism, get it over with. Don't let the story stretch out by trying to defend the indefensible, or that which is purely a matter of opinion.
4. Never deny a story once it's out. This is a challenge to the reporter. It makes for painful headlines when you deny a story that two weeks later turns out to be true. Oftentimes a news disaster can be avoided or at least diminished by a little candor on the spot.
5. What do you do if the story is really harmful? Does it threaten a valid program of your court or the system of justice? Then by all means reply. But do so quickly and without emotion. Tell your side of the story, correcting any factual mistakes made by your critics and let it go. Never engage in a dialog with a newsmen. He'll always have the last word because he buys his ink by the barrel.

V. SELF-EVALUATION BY JUDGES

The American Bar Foundation and the American Judicature Society in 1976 surveys found at least fifty bar associations having completed polls or evaluations of judges.

In Judge Donald Fretz' recent edition of "Courts and the Public," published by the National Judicial College, he observes that judicial polls may cause the judges to reflect and improve, yet publicized reports "more likely would create hostility and defensive reactions." Nonetheless the use of polls by the bar is sharply on the rise as the desire for "accountability" of all public officials -- including judges -- grows apace.

Is there a method by which judges may be evaluated without risk of publication and by persons who may be in a good position to point out a judge's strengths or weaknesses? What can be done for judges who have long terms of office? A recent successful experience of juror polling of members of the petit jury in New Hampshire may be an answer for those judges who are truly concerned about self-improvement and desire citizen impressions of the judicial system.

Trial jurors were selected for polling because they will have up to a dozen civil and criminal cases tried to them within a given term of court. The jurors are impartial citizen observers of the system and the judge at work. They see the delays, good lawyers and bad, cases where the judge is really on the spot and cases where the way the judge handles the courtroom participants makes a difference in the ultimate view of the system by the public.

At the end of several terms of court in four of New Hampshire's ten counties the trial jury array was sent a mimeographed two-page questionnaire and asked to return it to the clerk of court in a pre-stamped, pre-addressed envelope. No names of jurors were requested so as to insure anonymity and candor in responses.

The response rate was 47% or 70 of the 149 questionnaires mailed out. Some of the questions answered by the jurors were as follows:

"Do you have confidence in the integrity and ability of our judges and respect for the Superior Court system generally?" 98% Yes.

With regard to sentencing, 55% of the jurors felt that the sentences handed down by Superior Court Judges were generally appropriate. Over 90% felt that the Superior Court Judges worked hard enough, but most gratifying was the fact that 96% when asked if they could get a fair trial in the Superior Court answered in the affirmative. Very few public institutions, if observed over a several-week period, would obtain a similar high rating. The jurors felt that the court personnel, bailiffs and clerks, were helpful and courteous.

In addition to learning how citizens perceive the system, the judges who use this self-evaluation method have been able to quietly make adjustments in demeanor and attitude. Judges are now more conscious of criticisms about delay and have gone in to the jury room to explain why the first case has been delayed, e.g., a motion has been filed that must be considered by the judge. One judge tightened up on his sentences and another started getting to the courthouse on time. A coffee pot and reading material were purchased for the jurors in one county in response to comments to the last inquiry on the questionnaire.

Some judges do not use the questionnaire at all because they feel it serves no useful purpose. Newly appointed judges, however, have found it helpful to avoid what one judge called "getting into self-unrecognized bad habits that become a pattern of behavior after years on the bench."

This system of self-polling by judges can be useful for press releases about the system and public confidence in it. The data or rating of the judge can be retained by him for use as a self-improvement or self-correcting mechanism. Problems in scheduling or juror inconvenience can regularly be met and improved if the judge, through self-polling, becomes aware of them. Questions can be modified for multi-judge counties. The result of this system is accountability and self-improvement without comparisons or public disclosure.

A sample questionnaire follows as Appendix II.

APPENDIX I.



DEPUTY ATTORNEY GENERAL  
THOMAS B. BATH

ATTORNEYS  
PETER W. NILES  
RICHARD E. DIGNAMARA  
ANNE E. CREWYN  
DEBORAH A. COOPER  
ANDREW R. CRAINGER  
DAVID W. MARSHALL  
RICHARD E. MICHAUD  
EDWARD W. STEWART, JR.

THE ATTORNEY GENERAL  
CONCORD

March 10, 1977

THOMAS B. WINGATE  
JOSEPH A. DICLERICO, JR.  
ROBERT V. JOHNSON, II  
DONALD W. STEYER, JR.  
ROGER G. BURLINGAME  
EDWARD A. HAPPEE  
JOHN L. ALLGREN  
REGORY E. SMITH  
RICHARD V. WIEBUSCH  
JOHN Z. PAPPAS  
W. JOHN FUNK  
JOHN E. KITCHEN  
JAMES L. KRUSE  
EDWARD M. DAMON  
JAMES E. MORRIS  
JAMES C. BARGENT, JR.  
WILBUR A. CLARK, III

NOTICE TO ALL LAW ENFORCEMENT PERSONNEL

It is important that we endeavor to cooperate fully with the press while, at the same time, not jeopardizing the success of a criminal investigation or jeopardizing the Defendant's right to a fair trial. I have learned that there may be some confusion among law enforcement personnel as to what information may or may not be divulged to the press relative to the investigation or preparation of a criminal case.

You are encouraged to review carefully and use the provisions at page 57 (Chapter VIII) of the Law Enforcement Manual concerning pre-trial publicity. Please note that while certain matters in a criminal case must not be discussed to avoid infringing upon the Defendant's right to a fair trial, other basic information concerning the nature of the charge, the circumstances of the arrest, the identity of the person arrested, and the procedural status of the case may normally be divulged. You must, of course, refrain from divulging the identity of a juvenile defendant under all circumstances. Further, you are not to divulge any information in a homicide case unless and until approved by the Office of the Attorney General. I am attaching herewith a press release form which may serve as a guide in responding to press inquiries regarding most routine cases.

If you have any questions concerning the release of information in any case, do not hesitate to call our office or your county attorney.

David H. Souter  
Attorney General

Jay

CRIMINAL CASES

INFORMATION WHICH CAN BE RELEASED TO THE PRESS

1. NAME OF DEFENDANT \_\_\_\_\_
2. ADDRESS OF DEFENDANT \_\_\_\_\_
3. FAMILY STATUS \_\_\_\_\_
4. NAME OF VICTIM AND COMPLAINANT \_\_\_\_\_
5. NATURE OF ALLEGED OFFENSE \_\_\_\_\_
6. DATE, TIME, AND PLACE OF OFFENSE \_\_\_\_\_
7. OFFENSE FOR WHICH ARRESTED \_\_\_\_\_
8. PURSUIT, RESISTANCE, USE OF WEAPONS \_\_\_\_\_
9. BRIEF LIST OF MAJOR PHYSICAL EVIDENCE SEIZED \_\_\_\_\_
10. REQUEST ASSISTANCE IN OBTAINING EVIDENCE \_\_\_\_\_
11. DATE, TIME, AND PLACE OF ARREST \_\_\_\_\_
12. NAME OF OFFICER(S) OR AGENCY MAKING ARREST \_\_\_\_\_
13. ARRESTED WITH OR WITHOUT WARRANT \_\_\_\_\_
14. IF ARRESTED WITH WARRANT, COURT WHICH ISSUED WARRANT \_\_\_\_\_
15. LENGTH OF INVESTIGATION \_\_\_\_\_
16. FORMAL CRIMINAL CHARGE FILED, DATE \_\_\_\_\_
17. NAME AND ADDRESS OF ANY ATTORNEY APPOINTED OR RETAINED TO REPRESENT THE DEFENDANT \_\_\_\_\_
18. WHETHER DEFENDANT FREE ON BOND AND AMOUNT \_\_\_\_\_
19. SCHEDULING OR RESULTS OF ANY STAGE IN THE JUDICIAL PROCESS \_\_\_\_\_
20. COURT-ENTERED PLEA OF DEFENDANT \_\_\_\_\_

APPENDIX II

Dear Juror,

To aid the Court in more fully carrying out its duty to the fair administration of justice, I would appreciate your response to the following questions. This letter and your answers are not personalized because we do not need your name, but we do need a few minutes of your time to provide the Court with guidance and ideas. Your cooperation and that of the other jurors will be of great assistance and I thank you for your time.

1. Is the jury system necessary in our scheme of administering justice? Yes \_\_\_\_\_ No \_\_\_\_\_
2. Do you have confidence in the integrity and ability of our judges and respect for the court system generally?
 

In our Federal courts and judges?	Yes _____	No _____
In our State courts & judges?	Yes _____	No _____
In our local courts & judges?	Yes _____	No _____
3. Do you think there is a lack of public information about court and judicial functioning. Yes \_\_\_\_\_ No \_\_\_\_\_
 

If so, who is to blame? (check one)

The courts & judges? _____	The public? _____
The news media? _____	The schools? _____
4. Do you think governmental operations and public involvement therein would be improved by having greater contact between the public and judges in order to obtain first hand information about the administration of justice problems? Yes \_\_\_\_\_ No \_\_\_\_\_
5. Do you think that in sentencing the judge was (check one)
 

Harsh on criminals? _____	Soft on criminals? _____
Just about right? _____	
6. What do you believe the function of sentencing is? (check one)
 

To rehabilitate the accused? _____
To act as a deterrent? _____
To punish the accused? _____
7. Do you think judges work hard enough?
 

In the Federal courts?	Yes _____	No _____
In the State courts?	Yes _____	No _____
In the local courts?	Yes _____	No _____

8. Do you think that there was a double standard of justice depending upon who was being tried or accused? Yes \_\_\_\_\_ No \_\_\_\_\_
9. Do you think you could get a fair trial in this court? Yes \_\_\_\_\_ No \_\_\_\_\_
10. Were the "charges" or instructions by the judge on the law involved in a case (check one)
 

Understandable _____	Helpful _____	Confusing _____
----------------------	---------------	-----------------
11. Were the Clerk and his staff friendly, courteous and helpful? Yes \_\_\_\_\_ No \_\_\_\_\_
12. What suggestions would you make to improve the physical quarters jurors must wait or deliberate in?
13. Was the judge punctual? Yes \_\_\_\_\_ No \_\_\_\_\_
14. Did the judge possess a proper judicial temperament and demeanor? Yes \_\_\_\_\_ No \_\_\_\_\_
15. Did the judge act fairly towards all litigants and lawyers? Yes \_\_\_\_\_ No \_\_\_\_\_
16. Was the judge courteous to the litigants, witnesses and lawyers? Yes \_\_\_\_\_ No \_\_\_\_\_
17. Did you approve in general the manner in which the judge conducted the business of the court? Yes \_\_\_\_\_ No \_\_\_\_\_
 

If no, what could he do to improve?
18. What suggestions do you have for changing the methods used by the judge, clerk and bailiffs in the trial of a jury case based upon your personal experience as a juror?

Thank you again. Kindly mail the completed questionnaire in the enclosed stamped, self-addressed envelope.

**Appendix III:**

The following sections of this manual were reprinted (with changes) from the California Judges Association Public Information Manual:

**Preface**

**I. Courts and the News Media**

- A. Reporter's Problems
- B. Dealing with the News Media
- C. Practical Assistance for the Media (part)

**II. Fair Trial, Free Press**

- 1. The Judge's Primary Duty is to Insure a Fair Trial (part)
- 2. Change of Venue
- 3. Admonition to Jurors
- 4. Sequestration of the Jury
- 5. Restrictive Orders (part)

**III. Judge's Relations within the Courthouse**

**IV. Answering Criticism**

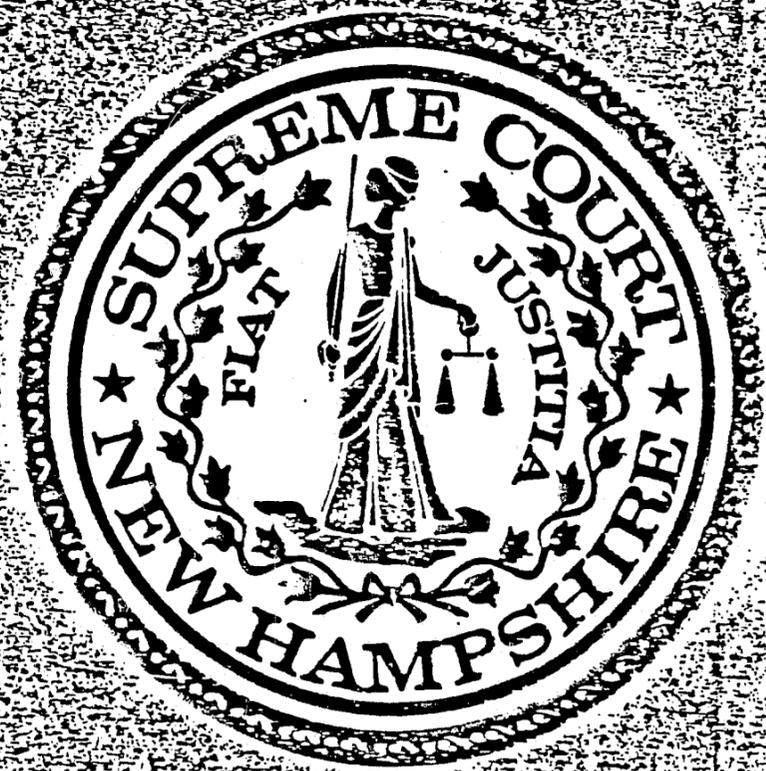
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Address comments, suggestions, and requests for additional copies of this publication to:

Honorable Charles G. Douglas, III,  
Frank Rowe Kenison Supreme Court Building,  
Concord, New Hampshire 03301

This pamphlet was produced with the assistance of the New Hampshire Governor's Commission on Crime and Delinquency Subgrants Nos. 78-I-A1950 E06 and 77-I-A2156 E04.

This pamphlet has been prepared to increase public understanding of the New Hampshire Court System. It is not meant as a detailed statement of law but merely as a general guide to how our courts work.



15M077

New York State Bar Association  
One Elk Street  
Albany, New York 12207  
(518) 445-1211



**JUDGES** THE NEW YORK STATE  
**SPEAKERS** BAR  
**BUREAU** ASSOCIATION  
A PROJECT OF THE COMMITTEE ON COURTS AND THE COMMUNITY OF THE NEW YORK STATE BAR ASSOCIATION

APPENDIX C. 3.a.

## The New York State Bar Association

Organized in 1876, the New York State Bar Association is the largest voluntary state bar group in the United States, with a membership of 24,000 lawyers.

The Association's original objectives remain the same today: "... to cultivate the science of jurisprudence, to promote reform in the law, to facilitate the administration of justice, to elevate the standards of integrity honor and courtesy in the legal profession..."

Throughout the years, the NYSBA has worked on the public's behalf to:

- Improve the court system
- raise standards for the practice of law
- establish machinery for professional discipline of lawyers
- see that the cost of legal services is within everyone's reach
- educate the people to the value and importance of law in their lives

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### PUBLICATIONS

Single free copies of the publications listed below can be obtained by writing to Publications Unit, New York State Bar Association, One Elk St., Albany, N.Y. 12207. Quantity rates available on request.

#### Pamphlets

- *Your Rights If Arrested*
- *Why You Need A Lawyer*
- *Do You Need A Will?*
- *What To Do In Case Of An Automobile Accident*
- *Buying and Selling Real Estate*
- *Do You Have A Tax Problem?*
- *Consumer Credit*

#### Other Publications

- *The Lawyer's Code of Professional Responsibility*
- *Four Ethics Quizzes For Lawyers*

### Speakers' Bureau Formed By Suffolk Surrogate

During his campaign for office last fall, Ernest L. Signorelli promised that if he was elected Surrogate of Suffolk County he would organize a speakers' bureau among members of his staff and accept invitations to talk to the public about matters handled by the court, such as wills and estates. He was elected and has fulfilled his promise. In a notice, Surrogate Signorelli said organizations who wish to hear about his court should communicate with Peter D. Sereduke, Surrogate's Court, Riverhead, N.Y. 11901 JAN 25 1977



The New York State Bar Association  
One Elk St. Albany, N.Y. 12207

Announcing the formation of  
The  
New York State  
Bar Association  
JUDGES  
SPEAKERS  
BUREAU



THE NEW YORK STATE BAR ASSOCIATION  
ONE ELK STREET  
ALBANY, N.Y. 12207

### Why Are Judges So Remote?

### Why Don't They Answer Public Criticism Of The Courts?

### Why Can't We Ever Meet Judges And Ask Them Questions?

### What Do Judges Really Do?

These questions — and many more like them — are constantly asked by concerned citizens, interested in the Courts but frustrated at their apparent remoteness. For their part, judges too are often frustrated that they do not have an adequate opportunity to meet the public and to discuss such questions.

In response to this problem, six New York judges, all members of the New York State Bar Association's Special Committee on the Courts and the Community, have volunteered to serve as an experimental Judges Speakers Bureau. They offer their services, free of charge, to speak informally to civic meetings, church, school and community organizations and to other groups of citizens interested in discussing the courts and the judges who sit in them.

If you are interested in inviting a member of the Speakers Bureau to speak to your civic group on one of the topics suggested on the following pages, please contact the Judges Speakers Bureau, New York State Bar Association, One Elk Street, Albany, New York 12207. Or you may telephone Bar Association representatives Daniel Goldstein in Albany (518) 445-1250 or Julius Roinitzky in New York City (212) 267-6646.

## The New York State Bar Association Speakers and Topics Available to Community Groups

**M. Marvin Berger,**  
*Judge of the Criminal Court of the City of New York.*

TOPIC:  
"Are Judges Walking Defendants Out of Prison?"



**Irving Kirschenbaum,**  
*Justice of the New York Supreme Court, First Department.*

TOPIC:  
"Anatomy of a Trial."



**Nat H. Hentel,**  
*Judge of the Civil Court of the City of New York.*

TOPIC:  
"The Ethics of Judges and Lawyers"



**Theodore R. Kupferman,**  
*Justice of the Appellate Division, First Department, New York State Supreme Court.*

TOPIC:  
"Is There Justice in the Courts?"



**Bentley Kassal,**  
*Judge of the Civil Court of the City of New York.*

TOPIC:  
"Should We Abolish the Jury System?"



**Seymour Schwartz,**  
*Judge of the Civil Court of the City of New York.*

TOPIC:  
"Does a Good Lawyer Make a Difference?"



**WHY ARE JUDGES SO REMOTE?  
 WHY DON'T THEY ANSWER PUBLIC  
 CRITICISM OF THE COURTS?  
 WHY CAN'T WE EVER MEET  
 JUDGES OUTSIDE THE COURTROOM?  
 WHAT DO THE COURTS REALLY ACCOMPLISH?  
 WHAT DO JUDGES DO EVERY DAY?**

These questions — and many more like them — are constantly being asked by concerned citizens who are interested in the courts but frustrated at their apparent remoteness.

In response to this problem, a group of judges has volunteered to serve on a Judges Speakers Bureau in the New York City area under the sponsorship of the New York State Bar Association's Committee on the Courts and the Community.

The judges offer their services, free of charge, to speak informally to civic meetings, church, school and community organizations and to other groups of citizens interested in discussing the courts and the judges who sit in them. Prosecutors and other court officials are also available to speak under the auspices of the Bureau.

In the past, community groups have requested speakers for the following specific topics:

- "Are Judges Walking Defendants Out of Prison?"
- "The Ethics of Judges and Lawyers"
- "Should We Abolish the Jury System?"
- "Does a Good Lawyer (or Judge) Make a Difference?"
- "Is There Justice in the Courts?"
- "Anatomy of a Trial"
- "Does the Criminal Justice System Work?"

In addition to these topics, speakers will discuss any other subjects concerning the courts which are of special interest to the group requesting to hear them. The speeches are informal, and ample time is provided for questions from the audience.

Most judges are available for speaking engagements in the evening or late afternoon only.

If you are interested in inviting a member of the Judges Speakers Bureau to speak to your organization, please telephone Hyman W. Gamso, Esq., Coordinator of the Bureau, at 212-749-6211. Or you may request a speaker by writing to: Hyman W. Gamso, Esq., Coordinator, Judges Speakers Bureau, 41 Madison Avenue, New York, N.Y. 10010

Please use the official letterhead of your organization, and be sure to include the following information:

- Nature of your organization.
- Location of meeting and suggested transportation or route.
- Date and time of meeting.
- Nature of meeting and estimated attendance.
- Topic requested.
- Name, address, telephone number(s) and position in organization of person whom speaker should contact.

Allow one month for the processing of your request.

APPENDIX C. 4.a.

STUDENT LAW-RELATED EDUCATION CONFERENCE

Sponsored By

The District Court Department of the Trial Court

AGENDA

- 8:30 a.m. Registration--Coffee and Pastry
- 9:00 a.m. Introductions and Rationale
- "Why the District Court is Involved"  
 Hon. Samuel E. Zoll,  
 Chief Justice, District Court Department
- "What is Law-Related Education?"  
 Arlene F. Gallagher, Ph.D.  
 Former Executive Director, Indiana Project  
 for Law Focused Education
- "How Courts and Schools Can Work As a Team."  
 Julie Van Camp  
 Court Services Coordinator  
 Student Law-Related Education  
 District Court Department
- 10:00 a.m. "Programs That Work"  
 Examples of court-school cooperation in the  
 area of student law-related education.
- 12:15 p.m. Lunch
- 1:15 p.m. "Problems and Potential of Student Law-Related  
 Education"  
 Small Group Discussions  
 A panel consisting of a Judge, an educator  
 and a project director will react to issues  
 addressed in the small group discussions.
- 3:45 p.m. Summary and conclusion: "Where Do We Go From Here?"

# COURTS and the CLASSROOM

VOLUME 1 NUMBER 3

PUBLISHED BY THE DISTRICT COURT DEPARTMENT OF THE TRIAL COURT  
IN COOPERATION WITH THE MASSACHUSETTS ASSOCIATION  
FOR LAW-RELATED EDUCATION

OCTOBER, 1980

## FIFTH ANNUAL LAW-RELATED EDUCATION CONFERENCE TO FEATURE LOCAL, STATE, NATIONAL PROJECT LEADERS



Woburn District Court Librarian Gertrude Allen assists Burlington High School students with legal research. From left, Josephine Diana, Andrea Saloman and Bernadette Moran.

### Woburn Court, Schools, Bar Offer Variety of Law-Related Activities

The Woburn District Court, in cooperation with Burlington High School, Woburn High School, the Fourth District Court Bar Association and area social agencies has developed a multi-faceted, law-related education program. Students involved in Burlington High School's "Introduction to Law" course regularly utilize the resources of the court's law library under the direction of Librarian Mrs. Gertrude Allen. As a result of the District Court-sponsored conference held last fall for court and school personnel, the Law Enforcement Education Program was developed at Woburn High School with extensive court and community

agency participation. In addition to providing funds for student law-related text books at the court's law library, the Fourth District Court Bar Association is offering an evening lecture series at the Woburn court this fall on topics of interest and concern to consumers.

#### BURLINGTON HIGH SCHOOL

For the past three years, Burlington High School has offered a one-semester course entitled "Introduction to Law". Developed by two social science tea-

cont. pg. 2, col. 3

### MALRE Conclave Open To All Persons Interested in LRE

The Massachusetts Association for Law-Related Education will hold its Fifth Annual "Teaching About the Law" conference on Tuesday, October 28 at the Campus Center, University of Massachusetts, Amherst, from 8:45 a.m. to 3:15 p.m. The Conference is addressed to educators and administrators at all levels; lawyers, judges, law enforcement and corrections personnel; students, LRE program directors and other citizens interested in law-related education.

The Conference's program will feature over twenty presentations and workshops, including demonstrations of successful programs and curriculum materials, teaching techniques and classroom ideas. Educators, program directors, judges, attorneys, consultants and experienced teachers in Massachusetts, New England and the country will be presenting workshops.

Workshops will be divided into three segments, providing participants the opportunity to attend two morning sessions and one afternoon session.

The following schedule includes the workshop title and coordinating presenter. Most workshops will involve more than one resource person.

#### SEGMENT I: 9:50 - 11:00 AM

- New Methods & Materials for Teaching Family Law: Edward O'Brien
- How to Use the District Court As a Resource for Teaching About the Law: Darryl Smith
- Search and Seizure in the Community & School: William Olds

cont. pg. 2, col. 2



## Trial Court of the Commonwealth District Court Department

SAMUEL E. ZOLL  
Chief Justice209 ESSEX STREET  
SALEM, MASSACHUSETTS 01970Telephone  
617/745-9010

May 2, 1980

Dear M. Superintendent:

I am taking this opportunity to write to you concerning a subject about which I am deeply interested: student law-related education.

All Judges share the frustrations incident to matters involving juvenile and other young adult offenders, and are aware that today's juvenile offender may be tomorrow's criminal adult defendant. We have all been searching to find some way to inculcate in the young a greater appreciation of the responsibilities of citizenship. While I know of no magic prescriptions to achieve these goals, one approach that some courts have found effective is to initiate or participate in programs with the schools to increase student awareness of the law, the courts and their own responsibilities. In a survey undertaken last year, it was demonstrated quite conclusively that the interest of the courts in this area is very high, both among courts who already have such programs, and there are many, and those that would like to similarly become involved.

The schools in many areas have been the focal point for advancing the cause of student law-related education. By this letter I want to encourage those school systems that are now engaged in these activities to continue and expand their efforts, and urge those not yet involved to join in this worthy effort.

To the extent of our limited resources, the staff of this office would like to be of assistance to you. We have sponsored a series of five regional workshops within the state, attended by a total of over two hundred court and school personnel. These meetings were extremely successful in exploring issues and, most importantly, improving lines of communication between local District Court and local school department personnel. I regret that limitations on funding did not permit us to invite every school superintendent in the Commonwealth. It is my goal, however, that every District Court and the local school systems in its judicial district will form a partnership to develop a program whether modest or ambitious, in the area of student law-related education. I have conveyed that view to the Presiding Justices and other personnel of the sixty-nine District Courts throughout the state.

The most important resource this office can provide to you is technical assistance and help in establishing relationships with your local court. To that end I would urge you to call upon Ms. Julie Van Camp, Court Services Coordinator in this office. The former Director of Project LEAD, a student law-related education project in the Concord

(over)

area, Ms. Van Camp is now coordinating our statewide effort on nearly a full-time basis. She is the author of Courts and the Classroom, a copy of which is enclosed. She is also editing a periodic newsletter on student law-related education which this office, in cooperation with the Massachusetts Association for Law-Related Education, sends to all school superintendents, at no cost.

This office is also setting up a clearinghouse of program information for use by courts and schools. At this time we are aware of programs being initiated by local District Courts, but nowhere in the state has there been a tabulation of law-related education courses and units being taught in the schools throughout the Commonwealth. In order to help this state-wide effort, I would be pleased if you would complete the enclosed brief questionnaire and return it to this office by June 1, 1980.

It is my hope that through active cooperation between schools and District Courts our youth can be better informed as to what the justice system (and courts in particular) is all about, that they will better understand the need for and the role of laws and rules in our society and, most importantly, that they will better appreciate the responsibilities of citizenship. As a former high school teacher, I have some understanding of both the problems the schools face in this area and of the commitment that many schools have already made to student law-related education.

I hope we can be of service to you, and I urge you to call upon Ms. Van Camp so that we can continue to strengthen the necessary bond between the schools and the local District Court.

Respectfully,

Samuel E. Zoll  
Chief Justice  
District Court Department of the  
Trial Court

SEZ:esp  
Enclosure

COLORADO

# COURTS

"The administration of justice is the firmest pillar of government." -George Washington

FEBRUARY, 1981

## Chief Justice Delivers Address

Chief Justice Paul V. Hodges delivered his biennial address on the State of the Colorado Judiciary to the General Assembly January 9, 1981. In reviewing the accomplishments and problems of the judicial system to the legislature, Hodges stated that during the past two years, filings in the Supreme Court had reached a new plateau just short of 1,000 per year, and predicted that filings would significantly grow and terminations increase in the future. He also remarked about the in-



Chief Justice Paul V. Hodges

crease of pending cases in the Court of Appeals, which disposed of over 1,100 cases in the past fiscal year, the highest number of terminations in the history of that court.

The Chief Justice stated that the trial court workload is continuing the dramatic increase noted in the previous fiscal year when an overall rate of 10% increase was noted, compared to a substantially lower percentage during each of the three preceding years. County Court activity in the recent fiscal year showed a 7% increase.

Already in the present fiscal year phenomenal growth is indicated, the Chief Justice stated, suggesting that the trend pointed to a 10% increase in District Court activity and an 8% increase in County Court work. He praised the use of the cost model as a basic management and budget tool and also a way of analyzing the need for additional judges.

Preliminary data review indicates several additional district and county judges are needed, with judicial manpower needs most critical in the metropolitan area, according to Chief Justice Hodges. He expressed the hope that the pay of judges and court employees would at least stay even with the cost of living in order to give the necessary incentive to maintain the high degree of accomplishment and performance.

Several important innovative measures to enhance the efficiency of court work were mentioned, including case management by (Continued on Page 2)

## An inside look at the latest from the Capitol



In the month which has followed the opening of the 53rd General Assembly on January 7, 1981, nearly 600 bills have been introduced, 292 in the House and 293 in the Senate as of February 2. Thirty-one have already been postponed indefinitely, and none have yet passed on third reading through both houses. Many more bills are expected to be introduced before the March 7 deadline.

A partial list of bills of possible concern to the court system was published in the January (Continued on Page 3)

## Chester Alter Honored

Six hundred fifty people, including state, city and federal officials, attorneys, and prominent Denver civic and business leaders gathered at the Hilton Hotel January 5, 1981 to pay tribute to Chester M. Alter, former Chancellor at the University of Denver and long time leader in judicial reform in Colorado. The testimonial luncheon was presided over by Walter K. Koch, former telephone company executive, active in many community affairs.

After greetings from Mayor William H. McNichols and Governor Richard D. Lamm, the 1980 Justice Award presented to Mr. Alter by the American Judicature Society last year, was cited by George H. Williams of the Society as richly deserved for "the model he provides as a citizen determined to make the judicial systems of his state and nation responsive to the needs of our times, . . . his commitment to better justice," and his role in accelerating "the dawn of genuine citizen impact on the

work of the courts in America."

The speaker of the day was Richard M. Schmidt Jr. of Washington, D.C., general counsel to the American Society of Newspaper Editors, former prominent Denver attorney and one-time member of the University of Denver Board of Trustees. In his address, Schmidt paid tribute to the dynamic leadership of Chancellor Alter at the University, and stated that Alter's involvement was not only in all aspects of education but in civil affairs, cultural affairs, human relations, commerce, industry and many facets of human behavior. Former Governor John A. Love appointed Alter to chair a volunteer commission for the nomination of Justices of the Supreme Court even prior to the present system of judicial selection in Colorado, Schmidt stated.

Schmidt declared that Alter's fame was nationally recognized and his work in judicial improvement had been the catalytic agent in many areas to bring about reform in judicial



Arvilla and Chester M. Alter

selection and tenure. Alter is noted for his ability to articulate the need for a strong and independent judiciary as a concerned citizen, but not as a lawyer or judge, the speaker said, continuing that Alter's work had not been limited to judicial improvement at the state level, but was one of the forces which started the movement for improvement of Federal judicial selection by creation of judicial commissions in many other states to pick Federal judges.

The speaker remarked that when Chester Alter was Chancellor of the University he was fond of quoting another famous university (Continued on Page 2)

## EDITOR'S Notes



During the past month we learned of the passing of former Chief Justice John C. Young, about whom a feature article was written in "Colorado Courts" December 1980. So often we fail to recognize the accomplishments of an individual during his lifetime, and I am very happy that Justice Young was still with us when the tribute was written, and that he was able to read it.

There are a number of former Chief Justices living in Colorado, most of whom are still active in the field of law. Included are William Jackson, who is in poor health; Al Frantz, Leonard V.B. Sutton, O. Otto Moore, Edward C. Day — are still engaged in the practice of law, and two sitting periodically as Senior Judges; Robert H. McWilliams on the U.S. Circuit Court and Edward Pringle, professor at the University of Denver College of Law. Much of Colorado's legal history is wrapped up in the careers of these men.

This week I was privileged to have a good visit with former Senator Harold McCormick from Canon City when he was in Denver. During his eminent career in the General Assembly he was responsible for much important legislation concerning the criminal statutes, corrections and institutions, all of which have strong court concern. He was always a good friend of the judicial system and helped us constantly on problems of importance. I shall always remember his valiant battle during three sessions to finally get the much-needed third judgeship for his district. He truly put his whole soul into that effort, and saw success before yielding his seat in the legislature at the conclusion of the last term. The best to you, Harold, always!

## Water Judges Designated

Chief Justice Paul V. Hodges announced an en banc order of the Colorado Supreme Court January 7, 1981, redesignating or designating the following district judges as the respective division Water Judges:

- Division 1 - Judge Robert A. Behrman.
- Division 2 - Judge John C. Statler.
- Division 3 - Judge Robert W. Ogburn.
- Division 4 - Judge Robert A. Brown.
- Division 5 - Judge Gavin D. Litwiler.
- Division 6 - Judge Claus J. Hume.
- Division 7 - Judge William S. Eakke.

COLORADO

# COURTS

Colorado Courts is published by Colorado Judicial Department, 2 East 14th Avenue, Denver, Colorado 80203. News items and photographs are to be mailed to the Editor, Box 13, Denver, Colorado 80201; Phone 861-1111.

Paul V. Hodges Chief Justice  
James D. Thomas State Court Administrator  
Carl Jacobson Editor

## Chief Justice

(Continued from Page 1)

Judges to reduce time for final disposition, and civil delay pilot programs, telephone conferencing projects slated to begin this year in three districts, an experimental program to convert from legal to letter size paper, the one day one trial jury system now extended to five counties with a long-term study directed by former Chief Justice Edward E. Pringle in process, improved methodology in managing probation workloads and many other items of a progressive nature.

The Chief Justice praised the work of the Judicial Planning Council chaired by Judge Donald P. Smith, Jr. of the Court of Appeals. He also alluded to the Committee on Judicial Performance which had been working the past two years, holding hundreds of hours of public hearings, study, and deliberation, resulting in an interim report to the legislature a year ago and a final report during the last month of 1980.

The public information program of the Judicial Department was discussed at length, including the publication of the book "You and Your Colorado Courts" in English and Spanish, which is being distributed throughout the state to students, teachers, speakers organizations, schools, libraries, attorneys, courts, jurors, and others.

Chief Justice Hodges praised the monthly newsletter "Colorado Courts" as a valuable tool in disseminating information not only to court employees statewide but to other agencies, libraries, and legislators.

The remarkable increase in restitution collections by probation departments was pointed out by the Chief Justice as an item of major assistance to victims of crime. In the fiscal year ending July 1, 1980, nearly two million dollars in restitution had been paid out

## Alter Honored

(Continued from Page 1)

president, who when asked "Why is there so much knowledge at your university, why is it so great?" replied, "Because our freshmen bring so much to it and the seniors take away so little, it just naturally accumulates."

In an address the Chancellor made in 1960 which Richard Schmidt quoted at the testimonial, he said, "Today we set our faces to the future, knowing the tasks of higher learning are never done. The day is not yet, nor will it come in our lifetime or that of our children's children, when the riddles of the expanding universe will have revealed themselves utterly, when all men shall measure up to the image of God within them, and when perfect wisdom shall reign over the lives of men. Yet men of wisdom and responsibility, of purpose and of faith will press onwards towards these goals because they must."

In conclusion Schmidt stated "Twenty years later we know that Chester Alter has faithfully followed the precepts enunciated in his address to the University students previously. We salute Chester Alter for his courage, his wisdom, his enthusiasm, his boldness, and his success for we are indeed the beneficiaries of the goals that he set and the challenges that he has met."

When Schmidt finished speaking, Alter was awarded the first Chester M. Alter Award of the Colorado Bar Association, by William C. McCleam, president of the Colorado Bar Association. Alter then responded with characteristic eloquence, stating that

to victims, from collections made by probation officers, the Chief Justice stated, this figure being nearly three times the amount four years ago.

Justice Hodges urged the legislature to look into the matter of juror and witness fees which had not been adjusted for many years. He also commented on the report of the Interim Committee on Judiciary, and complimented the members for their concern and diligence, urging the legislature to pay close attention to the suggestions developed by the committee. He praised the General Assembly for the consideration and understanding shown to the fiscal needs of the court system.

In conclusion, Chief Justice Hodges thanked the General Assembly for inviting him to give an account of stewardship and stated, "These are troubled times in the world, the nation and the state. The role which the courts play is equally awesome with that of the executive and legislative branches. All of us must work together to arrive at solutions to the problems, to balance innovation with solidarity of purpose, to maintain and improve upon the gains made in the administration of justice. We constantly strive to do the best job possible, and with your strong support we have been able to uphold high standards in our judicial system, and to serve the citizens of our great state in an economical and efficient manner as possible."

"Daniel Webster said that 'Justice is the great concern of man on earth,' and continued that 'whoever labors to strengthen the pillars of justice connects himself in name and fame and character with that which is as durable as the frame of human society.' Your efforts toward improving the administration of justice places you within the context of Webster's memorable words."

"I hope you will join in our efforts and aspirations to give the people of Colorado the finest system of justice, in the best tradition of our great state."



Richard M. Schmidt, Jr.

"recognition is the food that nourishes the spirit of achievement." He saluted the many organizations who are effective agents for change and progress in all fields including law, medicine, theology, teaching, social work, business administration, performing arts, engineering and accounting, not to mention many others.

As he finished his response, Alter declared "The longer I live, the more I appreciate the wisdom and dedication of our founding fathers. The United States Constitution has lasted longer than any other such document."

## Tributes Given To Judge Lilly

Many tributes were paid to retiring Judge Joseph N. Lilly January 12, 1981 in a ceremony held in the Denver District Courtroom of Chief Judge Clifton Flowers. Lilly was appointed to the Denver bench in 1971, and served as Chief Judge from May 2, 1977 until he stepped down late in 1980.

Judge Lilly was born June 5, 1909 in Denver, educated in the Denver Public Schools, graduating from North High School and later receiving his LL.B. degree from the University of Denver School of Law. He entered the practice of law in Colorado in 1933 and had a distinguished career in many governmental capacities as well as in private practice.

He was assistant City Attorney for Denver in 1935 and 1936, being appointed Assistant U.S. Attorney for Colorado in that year. He served in that capacity until 1952, except for an interruption during World War II when he was a Lieutenant in the Navy in the European Theatre serving in Africa and Italy. After his work in the U.S. Attorney's office he returned to private practice until his appointment as a



Judge Joseph N. Lilly with family at retirement ceremony. L to R: Greg Kanan, Linda M. Kanan (daughter), Joseph L. Lilly (son) and wife Sharon, Jeffrey Joseph Kanan (grandson), Judge Lilly.

Denver District Judge. He is a member of the Denver, Colorado, Federal and American Bar Associations, the International Society of Barristers and the American Board of Trial Advocates.

At the ceremony, many prominent people paid respects to Judge Lilly, beginning with Chief Justice Paul V. Hodges, who recounted first his association with Lilly when the two of them sang in the choir of the Immaculate Conception Cathedral in Denver many years ago. Lilly was also a member of the Denver Grand Opera Company in that era. Hodges praised Lilly for his able judicial leadership and civic dedication.

Mayor William H. McNichols followed, stating that Lilly was one of the most compassionate human beings he had ever known, a wonderful judge and a great lawyer.

County Judge Paul Weadick, representing

Presiding Judge George Manerino, praised Judge Lilly for his ability as a judge and his friendship to other members of the bench and the bar. Jim Thomas, State Court Administrator, called him "A judge's judge." Others who commended Lilly were District Attorney Dale Tooley; Public Defender David Manter; Donald McDonald, President-elect of the Denver Bar Association; Gerald Mellman, prominent Denver attorney; and J. Byron Young, fellow attorney. Chief Judge Flowers then presented a proclamation to the retiring judge, calling him a brilliant judge and an equally brilliant attorney.

Many friends, associates, and past and present employees of Judge Lilly were present to add their tributes personally, and to meet the Judge's family, including his daughter Linda M. Kanan and her children Jeffrey and Lisa, and Judge Lilly's son Joseph, all of Denver.

## Jury Changes Approved In Five Counties

In January 1981, James D. Thomas, State Court Administrator, reviewed and approved the jury system changes proposed by the five courts participating in the Juror Usage and Management Program. The Jury Commissioners in the five counties, Adams, Denver, El Paso, Larimer and Mesa, have each completed action plans which were reviewed by the JUMP staff and approved by their Chief Judges in December.

El Paso County, which began their one day/one trial term of service on an experimental basis in May 1979, will continue using this term of service. The jury performance has been very good and the focus of Commissioner Eldene Mosberger's action plan will be to continue this high level of performance.

The most visible change in the other four courts will be a reduction in the term of service. Denver County will reduce its term of service from two weeks to one week. Through the use of a telephone standby system, Bill Devereaux anticipates that each juror will be called to the jury pool only twice during the one week term.

Adams and Larimer Counties will begin a modified one day/one trial term of service in April. Jury Commissioners Gwen Hertz and

Dee Barthlama will call jurors for a one week term and with the use of a telephone standby system expect each juror only to appear one day during the week.

Mesa County will also be using a shorter term. Previously, District Administrator Ben Peters called jurors for a three-month term. This will be shortened to one month and jurors will be required to appear only when actually needed.

All four courts will receive the juror orientation that is currently in use in El Paso County. Additionally, panel sizes will be standardized and jury calendaring practices may be adapted to use jurors more efficiently.

Each court is expected to call significantly fewer jurors to the courthouse by eliminating juror appearances when trials have cancelled. This should result in a savings in jury fees and mileage paid as well as to reduce the burden of jury service on the community.

Legal Holidays observed by Colorado courts and state officials for 1981:

February 12  
Lincoln's Birthday  
February 18  
Washington's Birthday

## Judge Byrne Dies

Edward J. Byrne, 56, a Denver District Court Judge from January 1965 to February 1978, died of a heart attack January 26, 1981, at a residence in Mexico, where he spent several months each year since retiring three years ago because of poor health. Byrne was a graduate of Denver Law School, and worked as a deputy clerk and later clerk and administrator of the Denver Municipal Court in the early 1950's. During the following decade, he served two terms in the Colorado House of Representatives and one term in the State Senate. Since leaving the Denver bench in 1978 he has served as a judge under the retirement program in various Colorado courts. Byrne is survived by his wife Barbara Jean and a brother Charles D. Byrne, Auditor of the City and County of Denver, and three children from a previous marriage.

Memorial Services were conducted February 3, 1981 at Olinger's by the Reverend Dennis E. Dwyer of Higgins Memorial Chapel. Denver Chief Judge Clifton A. Flowers gave the eulogy, describing Judge Byrne as "affable, compassionate, a hard worker, always willing to help someone — one who served the judiciary well."



## Upcoming Training

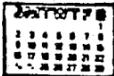
The following workshop is being offered for probation personnel by the Judicial Training Grant:

Alternatives in Counseling: How the Field of Learning Disabilities and Nutrition Interface with Probation Counseling — Feb. 25, 1981, Heritage Center, Denver.

If you have any questions, call Judith Zeiger at 861-1111, ext. 148.

## 18th Gets New Administrator

Greg Langham, 34, Court Administrator in Orange County, Texas, has been appointed 18th Judicial District Administrator at Littleton, effective March 16, 1981, according to Chief Judge Robert F. Kelley. Langham is presently managing the work of three district courts and one county court, and was formerly Chief Probation Officer. He is a graduate of North Texas State University, and earned his Master's degree in 1974 at Stephen F. Austin State University, Nacogdoches, Texas. The newly selected administrator is married and has two children. The family is moving to Colorado within the next few weeks.



## CALENDAR OF UPCOMING EVENTS

Court Reporters Examination Denver, Colorado	February 28, 1981
Colorado Trial Court Administrators Association Spring Workshop - Ramada Inn, Fort Collins, Colorado	April 8-10, 1981
National Toronto Association Canada of Pretrial Services Agencies, Toronto, Canada	July 25-28, 1981
Pretrial Services Resource Center Symposium On Pretrial Services, Toronto, Canada	July 28-29, 1981
First National Symposium on Court Management San Diego, California	September 13-16, 1981

Please report any important events for future calendars to the Editor of Colorado Courts.

## Here And There

Al M. Haas of Durango, has been selected by Governor Richard D. Lamm as District Judge of the 8th District, effective March 31, 1981, to succeed Judge Frederic B. Emigh upon his retirement. Haas received his A.B. and J.D. degrees from the University of Denver, and was District Attorney at Durango from 1961 to 1967.

Wayne K. Patterson, Director of Corrections for the City and County of Denver the past eight years, has been appointed Chairman of the Colorado Parole Board by Governor Lamm, replacing Gordon Heggie. Patterson is a former warden of the Penitentiary and Reformatory, and was Director of Parole, Civil Service Commissioner and State Patrolman previously.

Shirley Sanders, Juvenile Probation Counselor at Grand Junction for the past 13 years, resigned December 31, 1980. Leah Feinman, recently a Pittsburgh school teacher, has been appointed to succeed her.

Robert W. Ogburn, District Judge of the 12th District at Alamosa since July 15, 1976, was appointed Chief Judge January 5, 1981, to replace the late Judge Whitford W. Myers.

Former Colorado Chief Justice John C. Young of Colorado Springs, died January 23, 1981 at the age of 94. He served on the Supreme Court from 1935 to 1945, and in 1947 was named by President Harry Truman as one of the Nuremberg war criminal trial judges.

Kenneth V. J. Heinle, long time 18th District Judicial Administrator at Littleton, resigned January 9, 1981. He came to the Arapahoe County District Court as Clerk in 1961, after five years of administrative employment by Sheriff Charles L. Foster. Heinle majored in business administration at the University of Denver, and plans to enter private business.

Congratulations to Johanna Tonzell Kamp, former Water Clerk at Glenwood Springs, and her husband John, upon the arrival at their home January 10, 1981 of a 7 lb. 2 oz. baby girl, Andrea.

CP Bryant, Clerk of the Bent County District Court at Las Animas, resigned January 1, 1981, to devote full time to the abstract business. CP, better known as "Jerry," served the court with great distinction 29 years. The district and county courts are now combined, and Iris Jean Wolf, Clerk of the Bent County Court for several years and a deputy clerk in the district court, is the new Clerk of the Combined Court, with Vicki A.

Morian as her deputy.

John C. Davidson of Nuclea was appointed by Governor Lamm Associate County Judge of the Montrose County Court at Nuclea January 13, 1981, upon resignation of Gordon M. Barrett.

Dolores County Judge Paul Spitzer of Dove Creek resigned as of January 31, 1981. Justice George E. Lohr, Chairman of the 22nd District Nominating Commission has called a meeting of the commission February 13 to select nominees for the position.

Pueblo County Judge Gordon R. Cooper and Custer County Judge Whitney B. Sullivan, joined in performing a wedding ceremony January 3, 1981, uniting in marriage Dascha Nichol and Dale L. Tural. Tural was sworn in as a Judge of the Colorado Court of Appeals on January 5th.

Three new members of the Seventh Judicial District staff were announced in January 1981 by administrator Jim Clayton: Jamie Winslow became Clerk of the San Miguel County Court at Telluride, Rhonda Johnson as Deputy Clerk. Cynthia Faulk is a new Deputy Clerk in Montrose County, and Martha Carriere has retired from the latter position.

Jean Robenstein, a clerk in the District Court at Golden, has been named Division Clerk for Chief Judge Daniel J. Shannon.

O. John Kuenhold of Alamosa, a graduate of the University of Michigan Law School, has been appointed District Judge of the 12th Judicial District by Governor Lamm, replacing the late Judge Whitford Myers. From 1969 to 1975 Kuenhold was employed by Colorado Rural Legal Services, and has been in private practice since.

Frank G. Gallo, Director of Accounting Operations at the Air Force Accounting and Finance Center in Denver has been appointed Director of Financial Services in the State Court Administrator's office, effective March 9, 1981, replacing Max James, who recently retired.

Two new probation officers have joined the 17th District Probation Department, filling vacancies created by the retirement last year of Richard J. Barnwell and the death of Shirley Lowe. The new officers are John Leone, whose background includes the adult probation field in Chicago, and Kathy Phillips, a former alcohol evaluator in Adams County.

D. Richard Toth, Juvenile Court Commissioner at Colorado Springs, was appointed as an El Paso County Judge February 5 by Governor Lamm, succeeding Judge David D. Parrish, previously named as District Judge. Toth graduated from Colorado College in 1968, and received his law degree at Drake University.

### COMMISSION APPOINTMENT

The office of Governor Richard D. Lamm has announced the following appointment to a judicial district nominating commission: 18th District - John P. Leopold, D, Englewood, Attorney, for a term ending December 31, 1981, succeeding Richard Francis, resigned.

APPENDIX C. 5.b.

STATE LAW LIBRARY

New Book Arrivals

All books mentioned in this feature are in the collection of the State Law Library, Room 100 State Capitol, Frankfort, Kentucky 40601. Telephone (502) 584-4848. Books which are not in frequent demand will be loaned for two weeks, renewable for an additional two weeks.

Robert F. Bouchard & Justin D. Franklin, comp. & ed., *Guidebook to The Freedom of Information and Privacy Acts, 1980*. N.Y., Clark Boardman Co. xiv, 443 pp. \$35. A compilation of materials intended as a practical guide to the federal acts. Explains the acts and tells how to obtain information under them. The Freedom of Information Act (5 U.S.C. Section 552) gives any person a right of access to everything in agency records except for nine statutory exemptions. The Privacy Act (5 U.S.C. Section 552a) gives individuals a right of access to certain records that contain information about themselves. Includes, among other things, sample letters and forms, addresses of selected federal government agencies which may be contacted for various information, and the full text of the federal acts and each state's statutes concerning privacy and freedom of information. Bibliography of selected law review articles and notes, 3 pp. General index, 7 pp.

David J. Meiselman, *Attorney Malpractice: Law and Procedure, 1980*. Rochester, N.Y., and San Francisco, Lawyers Co-Operative Pub. Co. and Bancroft-Whitney Co. xv, 316 pp. \$47.50. "The purpose of this book is not necessarily to instruct lawyers on how to avoid liability when defending a legal malpractice action but rather to preclude the occurrence of a lawsuit in the first instance." Intended as a fundamental starting point and not as a conclusive answer. Contains 22 chapters which discuss, among other things, proximate cause in legal malpractice, statute of limitations, attorney liability to third parties, defenses to legal malpractice actions, appellate attorneys, court appointed counsel, vicarious liability of attorneys, conflict of interest, malicious prosecution, other attacks against attorneys, and malpractice insurance. Code of Professional Responsibility, 96 pp. Table of cases, 39 pp. Index, 36 pp. Supplementation intended.

Pike & Fischer, John W. Willis, et al., eds., *Federal Rules of Evidence Service, 1979*. Wilmette, Ill., Callaghan & Co. (7 v.) \$325. Brings together in one place decisions of courts and administrative agencies interpreting and applying the Rules. Includes finding aids and monthly advance parts. According to Kestel, *The Kentucky Trend Toward the Federal Rules of Evidence*, 7 Northern Kentucky Law Review 189 (No. 2, 1980), "Since the Federal Rules of Evidence were adopted in 1973, they have exerted a growing influence on Kentucky law."



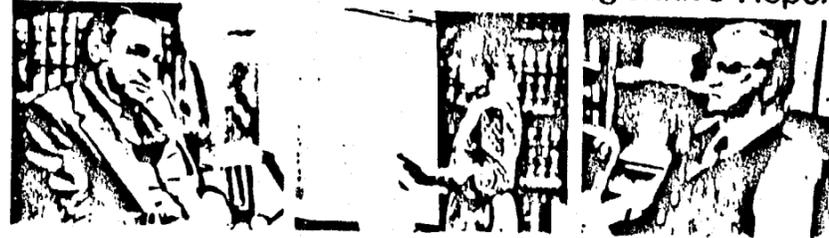
# ACCENT ON COURTS

A Publication of the Administrative Office of the Courts, Frankfort, Kentucky 40601

Volume III, Issue I

January/February 1981

## Judicial Workload Examined For Legislative Report



Circuit judges in four regions and district judges in one region have met with staff members of the AOC Division of Regional Services in a statistical study of their caseloads and working conditions. During the Northeastern Regional meeting, Information Analyst Pat Sims (center) explained the information collection procedure to Circuit Judges Ralph Walters (left) and Charles Sinnette. Other regions which have participated thus far are the Pennyrite, Eastern, Mountain, and Green River, involving a total of 19 circuits and six districts. Staff members plan to visit all the regions throughout the state by May 1981.

The AOC Division of Regional Services is conducting an on-going statistical study pertaining to caseload and working conditions of the Commonwealth's judicial circuits and districts. This examination of the equality of workload distribution among the state's trial court judges is in accord with Supreme Court direction that such information be made available to the next session of the General Assembly.

Meeting with the judges on a regional basis, AOC staff members have presented an explanation of the information collection procedure and have sought the judges' evaluations, recommendations, suggestions as to their needs, and what information they perceive as important to be considered.

The foundation of the information collection procedure relies on caseload data obtained from statistical cards received at AOC from circuit clerks' offices on a scheduled basis. The statistical data obtained from the case opening and closing cards prepared by the circuit clerks provides "hard" or factual information regarding number of case filings and dispositions, clearance rates, pending caseload status, case types, and case age.

It is obvious, however, that a judge's workload involves more than the number or type of cases docketed for his or her court. Other factors contribute heavily to the judge's case handling, including geographical considerations such as mileage to other counties within the circuit and district, road conditions, and number of trips which are required. Personnel support must be analyzed. Questions such as those which follow must also be considered: Are there commissioners authorized to handle particular responsibilities? Are special judges appointed to relieve caseload difficulties? The circuit and district population, number of attorneys and law enforcement agencies in the counties, and general community description such as universities, correctional institutions, state parks, military posts, among others, all influence the judicial workload.

During two recent regional meetings, the judges involved completed questionnaires in which they evaluated their circuits on the above factors. Some judges indicated winding, undivided roads with heavy coal-haul traffic between the courthouses they must visit, while others enjoy principal thoroughways or interstate highways, or

(Continued on page 13)

## ACCENT ON COURTS

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## TWO CIRCUIT JUDGES RETIRE; COYLE AND NAFF APPOINTED TO VACANCIES

Effective January 7, Judge J. T. Hatcher, 9th Judicial Circuit, Second Division (Hardin County) retired.

Born in Hart County in 1910, Judge Hatcher received his LL.B. from the University of Kentucky, served three years with the Judge Advocate General Corps, U.S. Army, during which time he served on the prosecuting attorney's staff at the Nuremberg war crimes trials after WWII. The judge then practiced in Elizabethtown until 1972 when he was appointed to the circuit bench. During his judicial career, he presided either as a regular or special circuit judge in 24 different counties in Kentucky.

An avid supporter of quality education, the judge has been a member of the Hardin County School Board, president of the Kentucky School Board Association, president of the School Board Association of Southeastern States, and served on the Governor's Council on Higher Education. He has also been a member of the Kentucky Human Rights Commission.

The judge is a resident of Elizabethtown. He and his wife have four children.

D. Michael Coyle was appointed by Governor John Y. Brown, Jr., to fill the 9th Judicial Circuit vacancy.

Judge Coyle, 40, received his bachelors degree in commerce and his law degree from the University of Kentucky. Upon graduation, the judge served for three years as staff accountant in the tax department of the Cincinnati firm of Arthur Andersen & Company. From 1968 until his appointment to the bench, Judge Coyle practiced law in Elizabethtown.

He is a member of the Kentucky and Hardin County Bar Associations, the Kentucky and Ohio Societies of Certified Public Accountants, and past president of the Hardin County Chamber of Commerce. The judge and his wife are the parents of two children.

Judge Coyle, who was sworn in on January 20, must run in the 1981 May primary and November general election in order to complete the term, which expires December 31, 1983.

After 30 years in private practice and 11 years on the circuit court bench, Judge Stephen P. White, 3rd Judicial Circuit (Christian County) retired effective February 2, citing reasons of health.

A native and resident of Hopkinsville, the judge, 66, received his J.D. from the University of Kentucky in 1939. During his legal career, the judge did graduate and post graduate work at the National Judicial College in Reno, Nevada. He and his wife have two sons.

District Judge Alfred A. Naff was appointed to fill the Christian County circuit judge vacancy, effective February 23.

Born in Lexington in 1909, Judge Naff did his undergraduate studies at Transylvania University and received his J.D. at the University of Kentucky. The judge began practicing law in 1932, served as a title attorney for the Tennessee Valley Authority, an enforcement attorney and chief of field operations for the Office of Pricing Administration, and an administrator and attorney for the Office of Housing Expeditor, Rent Control. While practicing law from 1953 until his election to the district judgeship, Judge Naff was friend of the Court, Hopkinsville city attorney from 1957 until 1963, and mayor from 1966 until 1972. He also has been a member of the Workmen's Compensation Board, and the State Board of Tax Appeals.

The judge resides in Hopkinsville and is a member of the Christian County and American Bar Associations. He has been a member of the Kentucky State Bar Association's House of Delegates from its inception until 1974, and chairman from 1973 until 1974. He and his wife have two children.

Judge Naff must run in the 1981 May primary and November general election in order to complete the term. A Judicial Nominating Commission has been selected to submit three nominees to Governor John Y. Brown, Jr., for his appointment of one to fill the district judgeship vacancy created by Judge Naff's appointment to the circuit bench.

## JUDGE FUQUA NAMED CITIZEN OF THE YEAR

Judge William G. Fuqua, 7th Judicial Circuit (Logan and Todd Counties), has been named Citizen of the Year by the Logan Leader and News Democrat of Russellville for his contributions toward the economic growth of Logan County. The two newspapers have jointly named Citizens of the Year since 1964 and Judge Fuqua is the 17th recipient of the honor.



Long an advocate of industrial development and planned growth, Judge Fuqua has combined his public service as city attorney and circuit judge with a continuing interest in his community. During the past 20 years, he has spearheaded movements by the local Chamber of Commerce to attract industry to Logan County, which has resulted in the employment of 3,500 workers. Most recently he has provided leadership to negotiations with Anaconda Aluminum Company, which is in the final stages of plans to locate a \$300 million processing plant in the county. It will take two years and 1,000 construction workers to build the plant, which will be operated by 300 to 400 permanent employees.

Robert L. Kirkpatrick, president of Southern Deposit Bank, quoted in the News Democrat, said that Judge Fuqua "is this county's number one salesman. He believes in the people, he believes in the county, he believes that Logan County people will work together for the common good. And when he talks to strangers, to outsiders, he makes them believe it, too."

In addition to his interests in economic development, Judge Fuqua has been especially concerned with airport development, beautification and preservation, and the Boy Scouts of America. In the latter respect, he was instrumental in the construction of the Boy Scout Camp and Lake Herndon in Logan County.

His service as a public official has been as distinguished as his civic service. He was city attorney of Russellville for ten years before becoming circuit judge in January 1970. He is a member of the Executive Committee of the

Kentucky Circuit Judges' Association, serving regional representative for the First Appeal District. He is chairman of the Kentucky F Association Liaison Committee and a member of the Committee on Closing Criminal Trials the same association.

Judge Henry V. Pennington, president of the Kentucky Circuit Judges' Association, said "Bill Fuqua is one of the truly outstanding judges in the system, and is broadly respected and admired by his colleagues."

A native of Russellville, where his father was mayor for 15 years, Judge Fuqua graduated from Washington and Lee University in 1952, earned his law degree from the University of Louisville in 1955.

He is married to the former Mrs. Randall of St. Joseph, Missouri and the father of three children, Renee, Anne, and Randy.

## JUDGE COMMENDS ELEVEN ATTORNEYS

Eleven attorneys received judicial commendations on December 29 from the court. District Judge William L. Schmaedecke, 1 Judicial District (Kenton County) in conjunction with the Department for Human Resources their services to the "dependent, neglected, abused children" of the county who have been brought to the attention of the court.

According to Judge Schmaedecke's General Order of Judicial Commendation, the juvenile session of district court has been enlisting aid of various attorneys throughout the year since January 1980, to serve as Guardian Litem "to advocate in the best interests of children who are brought to the attention of court on petitions alleging abuse, neglect or abandonment."

The following members of the Kenton County Bar Association rendered these services without expectation of compensation for their time and energies imparted on behalf of children: Michael Baker; Robert Calve; David Drake; Michael Hammons; Martin Jay Bruce McClure; Michael McKinney; Da O'Bradovich; Steven Starke; Timothy Thelms; and Michael Skerch, all of Covington.

The commendation was issued by Judge Schmaedecke "with the deepest appreciation this Court for the expression of human compassion shown by these members of the Bar."

**KOPOWSKI SELECTED ONE OF FIVE  
OUTSTANDING YOUNG MEN BY JAYCEES**

The Kentucky Jaycees has selected District Judge Leonard L. Kopowski, 17th Judicial District (Campbell County), as one of five Outstanding Young Men in Kentucky.

Each year, for over two decades, the Kentucky Jaycees has honored from three to five young men between the ages of 21 and 35 for their contributions, both professional and civic, to the welfare of their community. Nominations are



accepted from throughout the state and the five are selected by a committee comprised of established leaders who are not necessarily Jaycees, from around the Commonwealth.

Judge Kopowski, 33, was recognized in ceremonies at the Kentucky Jaycees' Convention held at the Owensboro Executive Inn, February 21 and 22, along with David Williams, an assistant vice-president for Lexington's Citizen's Fidelity Mortgage Company, Dr. Richard M. Levin, director of the Louisville Surrogate Parenting Associates, Inc., Robert Goetz, director of advertising marketing, planning and sell support for the *Louisville Courier Journal* and the *Louisville Times*, and David Adisson, executive vice-president of the Owensboro Chamber of Commerce.

The judge, a Highland Heights resident and father of two daughters, is originally from Cleveland. He received his B.S. from Xavier University and his law degree from Case Western Reserve University, Cleveland. Upon graduation, he went into private practice until his 1978 election to the district judgeship. He is a member of the Kentucky, Ohio, Cincinnati, Campbell County, and American Bar Associations, as well as the Federal District Bar for Southern District of Ohio, Eastern District of Kentucky, and the U.S. Sixth Circuit of Appeals Bars. As a member of the Kentucky District Judges' Association, he serves as vice-president and a member of the Education Committee.

The judge is extensively involved in numerous civic activities, including the Knights of

Columbus, and is president of both the Campbell County Jaycees and the Brighton Street Neighborhood Center.

Some past Outstanding Young Men named by the Jaycees over the years include: Dr. Grady Stumbo, Secretary, Department for Human Resources; Todd Hollenbach, Louisville attorney and former Jefferson County judge/executive; Dr. Harvey Sloane, former mayor of Louisville; Senator Wendell Ford, former Governor of Kentucky; Terry McBrayer, former majority floor leader in the Kentucky House of Representatives; and Larry Townsend, former Development Cabinet Secretary under Governor John Y. Brown, Jr.

**- SCHEDULE -**

**1981 Educational Programs  
AOC Division of Education**

Judicial Conference  
May 11-13, 1981  
Hyatt-Regency  
Louisville

Circuit Clerks' Summer Conference  
June 18-20, 1981  
Galt House  
Louisville

Court Reporters' Seminar  
July 23-24, 1981  
Louisville

District Judges' Traffic Program  
August 19-21, 1981  
Hyatt-Regency  
Lexington

Circuit Judges' Judicial College  
October 11-16, 1981  
Northern Kentucky

Circuit Clerks' Fall Conference  
November 11-13, 1981  
Jenny Wiley State Park  
Prestonsburg

District Judges' Judicial College  
November 29-December 4, 1981  
Galt House  
Louisville

**SENIOR JUDGES REDUCE CASELOADS**

There has been recent national publicity about a California judicial process which allows litigants to "rent-a-judge" to hear a case.

The California statute, which has been on the books since 1872, applies only to civil cases and provides that a retired judge, agreed upon by the disputing parties, can be hired to hold a private trial. The decision is just as binding as any regular court judgment and can be appealed to a higher court. At the going rate of \$100 per hour, the cost runs from \$300 to \$750 per case, and is split equally by the litigants.

In Kentucky, retired judges are being used to hear cases, but without cost to the litigants. Through their willingness to serve as special judges, the judicial system and ultimately the general public benefit from their efforts to reduce caseloads and expedite the delivery of justice. For reasons of economy, however, the services of retired judges are not utilized unless it is impossible to secure the assignment of judges presently serving in the Kentucky Court of Justice. Under Section 110(5)(b) of the Constitution, the Chief Justice has authority to "assign temporarily any Justice or Judge of the Commonwealth, active or retired, to sit in any Court other than the Supreme Court when he deems such assignment necessary for the prompt disposition of causes."

Under the Regional Administration Program, created pursuant to provisions of the Constitution and by order of the Supreme Court, the Chief Justice delegated to the chief regional judge of each of the ten established regions the authority to assign active or retired judges within their region who agree to handle cases. This delegation of authority, however, does not preclude the Chief Justice from making special assignments in any judicial circuit or district in the state. The charter under which regional administration is carried out designates retired judges as "Senior Judges."

Special assignments are made for reasons of disqualification, illness, absences or vacations, and senior judges are used extensively in this respect. Burgeoning caseloads have resulted in an ever-increasing need in some judicial circuits for special judges to handle motion days. For example, Judge Henry V. Pennington, Chief Regional Judge of the Southeastern Region (13th, 26th, 27th, 28th, 39th, 44th, and 50th Judicial Circuits), has assigned Senior Judge Don A. Ward,

Barbourville, on ten occasions during the past two years for most of the reasons stated, but also has given him a continuous assignment to conduct motion hour in Whitley County every other Friday and to serve as special judge in domestic relations cases on the same day. Judge J. B. Johnson, Jr., 34th Judicial Circuit (Whitley and McCreary Counties) has one of the highest per-judge caseloads in the Commonwealth, and needs the assistance in order to maintain a current docket.

Justice Pleas Jones, a former circuit judge and retired member of the Supreme Court, who also resides in the Southeastern Region, has had 14 special assignments made by Judge Pennington. Chief Justice John S. Palmore has assigned Justice Jones to serve several weeks in the 3rd Judicial Circuit (Christian County) due to the illness of the circuit judge, and additionally has assigned him to preside over district court in Harlan County where the district judge is on suspension from office. Judge Ward has also served in Harlan County.

The third senior judge residing in the Southeastern Region, Judge Lawrence Hall, Somerset, has received 14 special assignments within the region.

There are 38 senior judges in Kentucky. Although some prefer to remain retired and are not anxious to accept special assignments, records at the AOC indicate that 11 of those are serving the judicial branch of government regularly. Even though there is no mandatory retirement age for Kentucky judges, many have chosen retirement over the everyday problems facing a duly elected judge and the growing pressures of heavy caseloads.

During 1980, the senior judges who have been temporarily assigned to hear cases both under the regional administration program and by order of the Chief Justice include: Judge Arthur T. Her, Central City; Judge Frederick M. Warren, Ft. Thomas; Judge Thomas W. Hines, Bowling Green; Judge J. Paul Keith, Jr., Louisville; Judge Don A. Ward, Barbourville; Judge Oscar Sammons, Greenup; Judge Faust Y. Simpson, Morganfield; Justice Pleas Jones, Williamsburg; Judge Lawrence Hall, Somerset; Judge Woodard C. Tipton, Hickman; and Judge Terrill Wilson, Russell Springs.

Senior judges are compensated for service on a per diem basis, computed in accordance with KRS 21A.110, and are reimbursed for actual expenses incurred. Since the computation for (Continued on page 14)

**JOHNSTONE NAMED  
JUDGE OF THE YEAR**

Chief District Judge Martin E. Johnstone, 30th Judicial District (Jefferson County), was honored recently as Judge of the Year by the Louisville Bar Association at its 1980 Annual Bar Dinner. Also honored during the awards ceremony as Lawyers of the Year were Wilson W. Wyatt, former Lt. Governor of Kentucky, and Bert T. Combs, formerly a judge on the old Court of Appeals, Governor of Kentucky, and a federal judge.



Judge Johnstone

Judge Johnstone was elected to the bench in November 1976 to fill an unexpired term as judge of Jefferson County's Third Magisterial District. With the inception of the district courts, he was elected as a district judge for the 30th Judicial District on January 2, 1978. At that time, he was one of the youngest of the 110 district judges who took office across the state. In December 1979, he was elected chief judge by his 22 colleagues, to serve a two-year term. As chief judge, he has administrative responsibility for the operation of the district courts in the 30th Judicial District.

A native of Fairdale, Judge Johnstone graduated from Fairdale High School, Western Kentucky University, and received his Juris Doctorate from the University of Louisville School of Law in 1975. He was named Man of the Year in 1978 by the Okolona Jaycees.

Judge John Daughaday, president of the Kentucky District Judges' Association, stated that, "Our entire association has been honored by the Louisville Bar in naming Judge Johnstone as Judge of the Year, especially when you consider that there are 16 circuits, 23 district, and three appellate judges in Jefferson County who are extremely competent and deserving." He added, "We are especially proud that Judge Johnstone's achievements reflect the success of the district court system."

Judge Johnstone, 31, is married to the former Mayna Ray and is the father of one son, Dustin, who is six years old.

**Pretrial Contacts**

The Division of Pretrial Services held its quarterly regional meetings in February and March.

There were several topics for discussion, including the new personnel rules, new travel regulations, and new optional state benefits which are available to the Court of Justice employees.

**Urban Director's Meeting**

The Urban Director's meeting will be held 10:00 a.m. on March 10, 1981, in the third floor Conference Room of the Bush Building.

**Pretrial Services Resource Center Regional Training Institutes**

The Pretrial Services Resource Center, Washington, D.C., has scheduled a series of five Regional Training Institutes for 1981.

The meeting for Kentucky's region will be held April 6 and 7, 1981, in Cincinnati, Ohio. The two-day training will focus on "Strategies for the Eighties" and "Practitioner Skills Development" including interview techniques and diversion case planning.

If interested, contact the Division of Pretrial Services' central office, (502) 566-7486.

**February Vacation Schedule**

15-Mar. 1	7-Sherie Lane	A. Wilson
7-13	10-M. Wheeler	L. Perrin
1-20	32-D. Lewis	J. McKnight
21-Mar. 1	37-P. Barker	J. McKnight
21-27	Jim Ealey	OFF
26-28	L. Perrin	OFF
28-Mar. 13	37-G. Crowe	J. Ealey

**March Vacation Schedule**

7-16	50-J. Cocanougher	L. Perrin
6-13	47-D. Dinsmore	J. McKnight
17-31	1-W. Bell	J. Ealey
16-29	32-D. Lewis	J. McKnight
28-Apr. 12	6-B. Coppage	L. Perrin
30-Apr. 3	J. McKnight	OFF
12-13	43-S. O'Bryan	A. Wilson

Note: Vacations have been booked up through May 1981. Those pretrial officers wanting leave should contact Debbie Chaffin for available dates, (502) 566-7486.

**KENTUCKY PRETRIAL SERVICES  
MONTHLY STATISTICAL SUMMARY**

MONTH: December, 1980

I. Arrests	15,858	Contacts	10,486	Contact Rate	65.71
Interviews	8,428	Interview %	62.88	Eligible S, 888,781	Ineligible 2,522,388
Agency Releases	4,488	Total Non-Financial Releases	7185	Total Financial Releases	1,482
II. FTAs					
Program FTAs	228	FTAs Reason			
Ineligible, yet released to Agency Supervision FTAs	87	No. Arrest. Delit.			
Varrants	156	A. 2,881	1,881	Aggregate (All Agency Released)	
Fugitives	144	B. 6,881	1,481	Technical (VS, Other, Reported, Ineligible)	
FTA Charges		C. 7,881	1,581	Deliberate (Non-Technical)	
Public Intoxication	46	D. 1,881	1,281	Fugitive (Not Apprehended)	
Misc. Misdemeanor	46	Rearrests	182-A-276		
Traffic Violation	39	Misdemeanor	188-803	Felony	26-188
DUI	34	Receiving Stolen Property - F	5		
Theft - M	28	Wanton Endangerment - F	3		
Drugs - M	13	Burglary - F	3		
Drugs - F	9	Receiving Stolen Property - M	1		
Theft - F	7	Assault - F	1		
		Bail Jumping - F	1		
		Criminal Mischief - F	1		
		TOTAL	228		
III. (A) Diversion Reports Prepared 157 (B) Number Defendants Diverted 116					
(C) Diversion Contracts Completed 118 # Successful 128 # Unsuccessful 18					
IV. (A) Number of Criminal Complaints Received During Month 2,188					
Varrants	715	Mediation	402	Other Action	471
(B) Number of Mediation Hearings Scheduled 718					
Cancelled	115	Rescheduled	18	Actually Held	416
(C) Number of Call-Backs Made During Month 241					
# Successful	158	# Unsuccessful	14	No Report	18

December, 1980

PRETRIAL RELEASE STATISTICS

Month	Total Arr.	Total Confd.	Total Interv.	Prog. Release	Month	Total Arr.	Total Confd.	Total Interv.	Prog. Release
1	86	57	56	20	31	179	-	-	-
2	308	302	235	81	32	184	108	108	45
3	369	153	133	84	33	297	264	256	208
4	254	132	105	48	34	273	173	165	147
5	124	60	33	23	35	305	145	125	68
6	353	238	235	143	36	180	61	61	41
7	118	87	87	42	37	184	88	88	58
8	518	324	275	127	38	146	36	30	18
9	289	209	184	182	39	261	85	62	50
10	221	86	81	48	40	326	45	26	22
11	217	85	62	29	41	167	122	87	24
12	167	103	95	41	42	102	89	89	34
13	198	115	76	57	43	178	41	28	18
14	222	48	38	21	44	212	150	103	48
15	158	88	19	9	45	173	79	73	47
16	591	502	476	213	46	158	109	34	24
17	223	191	182	47	47	125	86	84	19
18	69	27	23	18	48	249	131	114	65
19A	169	92	60	24	49	219	50	34	19
20A	77	68	53	38	50	235	129	114	32
21	298	182	144	58	51	210	26	3	3
22	1,158	736	717	342	52	79	73	59	48
23	148	102	93	87	53	121	114	114	75
24A	172	117	78	66	54	247	122	117	75
24B	148	100	101	65	55	105	93	74	54
25A	497	346	121	101	56	76	44	40	17
25B	173	160	122	77	57A	131	70	70	37
26	248	90	72	46					
27	310	158	124	30					
28	244	79	60	7					
29	169	104	48	19					
30	2,876	2,876	2,046	1,059					

KENTUCKY PRETRIAL SERVICES  
MONTHLY STATISTICAL SUMMARY

MONTH: November, 1980

I. Arrests	16,978	Contacts	11,013	Contact Rate	65%
Interviews	9,985	Interview %	53%	Eligible	6,343
Agency Releases	4,695	Total Non-Financial Releases	7,817	Total Financial Releases	6,183

II. PTA's	241	PTA Rates	
Program PTA's	241	No.	241
Ineligible, yet released to Agency Supervision PTA's	76	App.	1,183
	170	Defl.	1,113
	147		

Warrants	203	Rearrests	224-4,276
Fugitives	147	Misdemeanor	244-918
PTA Charges		Felony	12-28
Public Intoxication	57	Drugs - F	2
DWI	50	Assault - F	2
Traffic	50	Robbery - F	2
Misc. Misdemeanor	43	Receiving Stolen Property - F	1
Theft - M	14	Wanton Endangerment - F	1
Drugs - M	9	Wanton Endangerment - M	1
Burglary - F	6		
Theft - F	3	TOTAL	241

III. (A) Diversion Reports Prepared	161	(B) Number Defendants Diverted	118
(C) Diversion Contracts Completed	135	# Successful	118
		# Unsuccessful	16

IV. (A) Number of Criminal Complaints Received During Month	2,318
Warrants	738
Mediation	772
Other Action	808
(b) Number of Mediation Hearings Scheduled	723
Cancelled	311
Rescheduled	21
Actually Held	393
(C) Number of Call-Backs Made During Month	284
# Successful	26
# Unsuccessful	162
No Report	76

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November 1980

PRETRIAL RELEASE STATISTICS

Month	Total Arr.	Total Conv.	Total Interv.	Prog. Release	Month	Total Arr.	Total Conv.	Total Interv.	Prog. Release
1	87	72	78	78	31	214	-	-	-
2	338	328	230	78	32	198	120	116	56
3	318	108	108	85	33	323	301	292	188
4	225	143	116	36	34	345	266	266	182
5	182	52	52	71	35	287	136	124	52
6	426	416	415	274	36	208	89	89	48
7	122	102	102	64	37	140	74	61	30
8	553	352	282	120	38	149	21	19	18
9	218	218	180	130	39	323	72	71	47
10	178	71	78	48	40	305	52	41	30
11	215	71	56	78	41	182	142	102	11
12	200	151	143	60	42	124	95	95	45
13	228	121	81	45	43	207	69	64	24
14A	266	38	36	28	44	156	124	75	56
15	158	88	41	38	45	153	78	61	35
16	678	563	537	213	46	195	100	27	17
17	108	96	82	28	47	132	84	80	20
18	73	28	28	24	48	265	159	129	74
19A	171	82	58	24	49A	177	34	34	19
20A	53	41	36	26	50	230	106	89	20
21	281	173	132	62	51	238	27	19	10
22	1,274	888	683	278	52	87	89	81	42
23	116	83	81	81	53A	90	89	89	53
24A	180	96	96	96	54	230	113	89	71
24B	178	182	108	55	55	142	111	104	18
25A	598	440	285	85	56	95	51	43	18
25B	104	82	71	52	57A	180	111	107	56
26	305	125	113	58					
27	328	198	154	32					
28	244	87	82	15					
29A	182	103	48	26					
30	2,892	2,892	2,148	1,160					

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JUDICIAL ETHICS OPINION 3E-23

Formal

**QUESTION:** Must a commissioner of the Court of Justice resign when he becomes a candidate for a public office?

**ANSWER:** Yes, if the office which he is seeking is a non-judicial office. He need not resign if he is seeking a judgeship in the Court of Justice.

**REFERENCES:** SCR 4.300, Code of Judicial Conduct, Canon 7A(3) and Compliance Provisions.

**OPINION:** (February, 1981)

SCR 4.300, the Code of Judicial Conduct, provides in its compliance provisions that "a court commissioner ... is a judge for the purpose of this Code." A court commissioner is, therefore, bound by Canon 7A(3) which provides that "a judge should resign his office when he becomes a candidate either in a party primary or in a general election for a non-judicial office."

The terms "judicial" and "judicial office" refer to judges and judgeships and are so used throughout the Code of Judicial Conduct. See, for example, the blackletter statement of Canon 7: "A judge should refrain from political activity inappropriate to his judicial office." (Emphasis added.)

It is clear, then, that the only offices for which a commissioner or judge may become a candidate without resigning his office are judgeships within the Court of Justice. He must resign when he becomes a candidate for any other office, including that of Commonwealth's attorney and county attorney, as well as all offices in the executive and legislative branches of government. For a case holding that a Commonwealth's attorney is not a judicial officer, see Commonwealth ex rel. Breckinridge v. Wise, 351 S.W.2d 693 (1961).

As for the timing of the resignation, we think that Canon 7A(3) does not prohibit preliminary surveys of financial and voter support, for the prospective candidate needs to learn whether he has a realistic chance of election. Once having made his decision to run, however, he must resign whenever he announces his intentions to the public, whether by filing with the county clerk, making a press release, or any

other method by which he lets his candidacy become generally known. To hold otherwise would permit the very appearance of impropriety to which the strictures of Canon 7A(3) are directed.

COURT FACILITIES COMMITTEE MEETS IN FRANKFORT

The Court Facilities Standards Committee met in Frankfort on January 30.

In a report on facility reimbursement payments, it was noted that counties are not seeking approval before they administer capital improvements. Some counties may make improvements not knowing if they are capital improvements, or repairs and replacements. Courthouse improvements are encouraged but not as operational expenses. The Facilities Committee must approve the inclusion of capital improvements costs in the facility payment total.

The Committee discussed the facilities reimbursement legislative proposal which has been submitted to a special facilities committee for review and recommendations (see *Accent On Courts*, Vol II, Issue 7).

On the question of transferring ownership of courthouses to the state (see *Accent On Courts*, Vol. II, Issue 7), it was determined that until further study is made, the Committee would adopt a policy of not taking fee simple title to courthouses. A committee would be appointed to examine the cost of operating and maintaining such facilities, including parking availability.

There was a report and discussion on the status of facilities projects previously approved in Rowan, Boyd, Ohio, and Jefferson Counties, and proposed improvements in Carlisle and Magoffin Counties. The Committee approved the planning concept for a new facility in Carlisle, however, no vote was taken on Magoffin County's courthouse renovations pending the county's request for Committee approval.

Additional matters pertaining to the progress of a facilities inventory survey currently underway, energy conservation, and the courthouse operational expense verification for FY 1978-79 were discussed.

The next meeting was tentatively scheduled for March 27 in Frankfort.



Senator Sullivan

Representative Johnson

Senator Moseley

**LEGISLATORS WORK FOR A SUCCESSFUL COURT SYSTEM**

*Editor's Note: The following is part of a continuing series of feature articles on the members of the Senate Judiciary-Courts, Judiciary-Statutes, and House Judiciary Committees to help familiarize our readers with the legislators who are directly concerned with the successful operation of Kentucky's court system. Three legislators will appear in each successive issue, followed subsequently by other members in the order of their district numbers.*

Senator William L. Sullivan, 60, is a Harrodsburg native who represents the 8th District and serves on the Judiciary-Courts Committee.

The senator received his A.B. from Centre College and his LL.B. from the University of Kentucky. A Democrat and practicing attorney, Senator Sullivan has served in the legislature since 1934 and has been majority leader, and president pro-tem. From 1974 until 1975, he was acting Lt. Governor, and has served as acting Governor on more than 60 occasions. The Capitol Press Club selected him as the legislator most valuable to the Democratic Party in 1972.

Along with his legislative responsibilities, Senator Sullivan has served as Kentucky Commissioner of Aeronautics, commonwealth's attorney, Kentucky Democratic chairman, and an honorary member of the Kentucky Law Enforcement Council.

The Jaycees honored the senator as an Outstanding Young Man of Kentucky in 1936, he received the Kentucky Law Enforcement Award in 1972, Centre College selected him Outstanding Alumnus in 1974, and in 1980, the Circuit Judges' Association presented him with a Distinguished Service Award for his diligent efforts in support of the Judicial Article and the improvement of Kentucky's court system.

He is a former district commissioner and now on the executive board of the Audubon Council, Boy Scouts of America, and is a Rotarian. He is also a professional racing pilot, having served as a fighter pilot during WWII. His skill as a racing pilot has ranked in the national top ten, and he has been winner of the Silver Race National Air Race Championship, Reno, Nevada in 1973, and the French Grand Prix International Air Race, 1976. He was the first American to win an international air race in 42 years.

Senator Sullivan is a resident of Henderson, is married, and has two sons.

(Continued on page 13)

(Legislators Continued from page 12)

A Democrat and member of the House Judiciary Committee, Representative E. Louis Johnson has represented the 13th District since 1978.

Representative Johnson, 43, resides in Owensboro where he practices law. He received his B.S. and Juris Doctorate from the University of Kentucky and is a member of the Army Reserve.

Active in his community, he has been or is currently president of the Owensboro-Daviess County Committee on Aging, Owensboro High School Board of Directors, and the Daviess County United Way. Representative Johnson is a member of the Serra Club, the Family Y, and the board of directors of Our Lady of Lourdes Grade School, and the Voluntary Action Center.

• • •

Born in Bowling Green in 1928, Senator Douglas D. Moseley, Republican, 16th District, serves on the Judiciary-Statutes Committee and has been a legislator since 1973. He also serves on the Agriculture, Energy, and Transportation Committees, and states that he has sponsored such causes as legislation favorable to farmers and small businessmen; legislation (other than professional negotiations, which he opposes) that will benefit both school teachers and pupils; the abolition of the Administrative Regulation and Review Committee and turning of the responsibilities of that committee over to regular Interim Standing Committees; and the repeal of legislation that allows undue intrusion by government into the life and work of the citizenry.

The senator is a Methodist minister and is pastor of the Albany United Methodist Church. In the past, he has served as a junior high school teacher, professor of Bible and assistant to the president at Lindsey Wilson College. Senator Moseley has also been a member of the State Personnel Board, district superintendent for the Department of Parks, a member of the board of directors of the State Parole and Probation Board, and the board of directors of Professional Services, Inc. The senator is also an after-dinner speaker.

He is a graduate of Kentucky Wesleyan College and Emory University. He and his wife reside in Columbia, Kentucky, where he maintains his collections of antiques, autographed books, knives, political memorabilia, and rocks from around the United States and the world. He is a golfer, and spectator of all sports, and an avid reader of Western novels. He and his wife have three children.

(Workload Continued from page 1)

have no travel requirements if their circuit encompasses a single county. They noted increases in population which affect their caseloads, or union vs. non-union companies within the area which increased applications for temporary restraining orders and injunctions. Various judges asserted that criminal filings exceed available trial days, or that local attorneys sometimes delay civil cases, or inadequate office and courtroom facilities hamper their efforts. Whether a county is wet or dry contributes to both the number and types of cases. The judges indicated that consideration should also be given to other judicial responsibilities which add to the workload but are not necessarily reflected in the statistical information, including the time involved in jury selection and motion filings.

The AOC statistical information staff has devised a means of measuring these evaluations on the basis of whether the described situation is, in the view of the judge, good, acceptable, or unsatisfactory. The judges' evaluations of road conditions, population, economic climate, and other factors regarding the community are combined with data provided by other agencies such as the Department of Transportation, Department of Education, Bureau of Corrections, and Alcoholic Beverage Control, among others.

All information gathered from the statistical cards and regional meetings will reflect FY 1980-81 figures and will be synthesized in a report to the legislature.

**KSP CENTRAL CRIME LAB  
REQUESTS FIREARMS**

Firearms and related paraphernalia, including old ammunition, confiscated by law enforcement agencies for the courts, may be awarded for retention or disposal by the presiding judge, to the Kentucky State Police Central Crime Laboratory in Frankfort upon final disposition of the case in which the weapon was used as evidence.

The central lab, according to Firearms Supervisor Dave Williams, is establishing a reference collection of firearms and related parts and ammunition to be used in identification, restoration and location of serial numbers, or restoration of damaged firearms for purposes of test firing to achieve ballistics verification. At the judge's discretion, weapons confiscated by city, county, or metro law enforcement agencies may be awarded to the state police central lab for its official use, instead of to such local agencies. All state police confiscated firearms must be awarded to the state agency (see KRS 300.090(1)(d)). Or the judge may order the firearms destroyed or sold (KRS 300.090(1)(a) and (b)).

Firearms may be packaged and sent, accompanied by the order, to:

Kentucky State Police Crime Lab  
1250 Louisville Road  
Frankfort, Kentucky 40601  
Attention: Firearms Section

The judge may also release the weapons to the local state police post. An officer, upon the judge's request, will pick up the weapons, sign a receipt, and forward the package to the central lab.

The five area crime labs located throughout the state, Mr. Williams states, will receive regular property lists indicating the number and description of weapons retained by the central lab. If the area labs have need of a particular weapon to complete an investigation, the central lab will forward the item to them, to be returned upon completion of the investigation.

Further information may be obtained by contacting Dave Williams, firearms supervisor, at the above address, or telephone (502) 364-3874.

**LEGAL ISSUES TO BE ADDRESSED  
AT PSYCHOLOGICAL ASSOCIATION  
CONFERENCE**

The Kentucky Psychological Association will be holding its Spring Conference at the Continental Inn in Lexington on April 9, 10 and 11. The program will include workshops, panels, and papers on the following topics: expert testimony, civil commitment, the Kentucky juvenile code, jury selection, competency assessment, insanity as a defense, psychologists in the correctional system, and issues in domestic law such as divorce and child custody.

Members of the legal community will be involved in several of the presentations, promoting dialogue between the legal and psychological professions. Dr. Stan Brodsky, who has been instrumental in reforms in the Alabama prison system, will give the keynote address, "The Psychologist as an Agent of Legal and Social Change."

For more detailed information, contact Dr. Marilyn Marx (606) 266-8064, Dr. Carol Lowery (606) 237-1696, or the Kentucky Psychological Association, 231 Dickey Hall, University of Kentucky, Lexington, Kentucky 40506.

**(Senior Judges Continued from page 5)**

compensation is based on the amount an individual judge is receiving from the Judicial Retirement System, the per diem payments range from \$48.18 to \$147.00. These figures compare more than favorably to the \$300 to \$750 per day cost under the California process, and it should be further noted that Kentucky litigants are not required to bear the additional expense.

Account On Courts is published by the Administrative Office of the Courts and paid for with state funds. News items are welcome and should be submitted by the 15th of each month to: Nancy Lancaster or Pam Vest, Administrative Office of the Courts, 403 Wapping Street, Frankfort, Kentucky 40601.

**JUDICIAL COUNCIL RECOMMENDS GUIDELINES FOR COLLECTION  
OF FINES AND COSTS**

The Judicial Council, at its December 3 meeting, reviewed the status of accounts receivable of the Court of Justice. It was observed that in excess of \$1.7 million in accounts receivable were payable to the state in fines and costs issued for criminal misdemeanor and/or traffic cases. The Council recommended the following guidelines as of October 30, 1980, to district judges for the collection of such fines and costs:

- (1) Prior to the calling of the docket for criminal misdemeanor and traffic cases, the presiding judge should advise all the defendants that if they plead guilty to or are found guilty of the offense and wish to have the payment of fine and costs deferred or paid in installments due to inability to pay, they will be required to remain in the courtroom until all the cases on the docket are called.
- (2) At the conclusion of all the cases, the judge should then recall those defendants who indicated that they wished to have payment deferred. If the judge determines that there are valid reasons for deferring payment, he should continue that particular case until a date certain, allowing the defendant to pay the fine and costs in the interim, either in lump sum or in installments. (The period of time to continue the case may vary from 30 days to several months depending upon whether the defendant can pay in lump sum or in installments.)
- (3) At the same time, the judge should issue an order to the defendant to either have completed payment of the fine and costs or appear back in court on that date certain. The judge should then advise the defendants that their failure to pay the fine and costs or their failure to appear in court on that day will result in a warrant being issued for them, and might further result in the loss of their driving privilege.
- (4) If the defendant does not pay the fine and costs and if he does not show up on the date on which he was ordered to appear, the judge should issue a bench warrant for the arrest of the defendant to show cause why the defendant should not be jailed for

failure to make payment (as provided in KRS 534.060).

- (5) At the same time, if the defendant is convicted of a traffic violation, the clerk will automatically issue a "failure to appear" notice to the Department of Transportation for the purpose of suspension of the person's driver's license.

Where these steps have been implemented, the courts have found a substantial decrease in the amounts of accounts receivable, especially if there has been a cooperative effort between all three elements in the collection process: the judge who follows specific procedures or local rules to collect such fines and costs; the clerk who maintains an accurate record of the status of the case and notifies the defendant as to payments to be rendered; and the sheriff who serves the bench warrant and brings the defendant into court for failure to appear. Additionally, the county or commonwealth's attorney are vital to the collection process as they must thoroughly pursue possible civil litigation in non-payment situations.

It is suggested by AOC legal counsel that a forfeited appearance on bail bond for a defendant should not be applied to the fines and costs accounts, but should be forfeited and placed in the bond accounting system. For out-of-state offenders, a performance bond, if applicable, can be issued, a date for a hearing set, along with an explanation of what will occur if the offender fails to appear. The performance bond is designed to allow a defendant to plead guilty to a charge, post an amount to cover the fine and costs, and then allows him to leave with the choice of appearing or not on the trial date. It is not designed to guarantee appearance at trial, that being the purpose of the bail bond. If the defendant fails to appear, the judge may dismiss the charges, or try the defendant in absentia after notice of hearing, convict the defendant, apply the posted performance bond to fines and costs, notify the Department of Transportation which will then notify the home state of the violation.

Questions concerning these suggestions may be referred to Bill Thurman, AOC legal counsel, 403 Wapping Street, Frankfort, Kentucky 40601 - (502) 364-7486.

**AOC DIRECTOR ADDRESSES  
NEVADA JUDGES' MEETING**

"Courts cannot be more effective than they are perceived to be," asserted AOC Director Charles "Bo" Cole in an address given at the Nevada Judges' Association Winter Meeting, conducted by the National Judicial College, Reno, Nevada, January 20-23. Mr. Cole, who was invited by the College to address the approximately 50 participating judges on upgrading court operations, emphasized the need for judges to maintain a competent, fair, and consistent performance in their judicial function in order to accomplish a positive perception of effectiveness. "All court operations ... and the individual judge's conduct, are under close scrutiny from the news media, interested citizen groups, and the public generally. Respect for the rule of law must exist. In order for respect for the legal process to exist, the court function must earn that respect," stated Mr. Cole.

Methods for creating a positive perception of the judicial system through effective delivery of judicial services were expanded upon throughout his presentation. Mr. Cole suggested the use of an advisory committee of interested citizens, including representation from the bar, law enforcement, local government, and lay citizens. Such a committee can be used to enhance both the public image of the judiciary and to resolve problems which adversely affect effective and sound judicial service, he stated.

Educational programs, especially on a regular basis at the local and regional level, serve to increase judicial effectiveness by "upgrading" and rendering current the judge's knowledge of both procedural and substantive law," he stated. Court rules and procedures throughout the state could be made substantially uniform through educational programs which keep judges apprised of changing statutes, input from practicing lawyers, and litigant response to the court and its function.

Adequate allocation of financial resources for the judicial function was proposed by Mr. Cole as vital to the court's effectiveness. The court should "develop statistical information regarding the financial needs of the court, both current and projected," he stated, in order to present a legitimate and successful request to the appropriate funding authority. Each component of the court system should be incorporated into any budget analysis.

It was noted that judicial effectiveness may be achieved through proper conduct of court proceedings and administrative duties, notice to the general public regarding time for court opening and decorum expected, notice of how the docket is to be called or sequence of cases, the policy of the court in granting continuances, reasonable courtroom control, and the judge's assuming full responsibility for superintending the entire judicial process. "It should be clearly recognized that the judge has control of and responsibility for the judicial function. This is true as such relates to the law enforcement or clerical functions," he stated.

In closing, Mr. Cole emphasized that "the judge is the architect, builder and inspector general of the justice system. The people can ratify constitutions, the legislature can implement systems and the appellate courts can pass rules. However, the trial judge is the person who can appear to assure and can assure, that the individuals in the system, either voluntarily in civil cases, or involuntarily in criminal cases, get what we all expect to receive in an American court, fair and equal justice under the law."

**CONTINUING CURRENT LEGAL  
INFORMATION AVAILABLE FOR  
JUSTICES AND JUDGES**

Justices and judges who wish to be kept up-to-date concerning particular topics of law may request continuing current legal information service from the State Law Library.

Copies of new law review and bar journal articles, and book titles dealing with the topics selected will be furnished the requesting justice or judge from day to day, over a three month period from the time the request is made. The request may be renewed after the expiration of three months.

The purpose of this service is to: (a) aid justices and judges in dealing with unusual problems that have arisen or are apt to arise in their courts, and (b) furnish continuing self-education concerning topics with which justices and judges feel a need to keep abreast.

Please register requests with Wesley Gilmer, Jr., State Law Librarian, Room 200 State Capitol, Frankfort, Kentucky 40601.

**CASE SUMMARIES**

**SUPREME COURT OF THE UNITED STATES**

Dennis v. Sparks, \_\_\_ U.S. \_\_\_ (11/17/80)  
"Judicial immunity was not designed to insulate the judiciary from all aspects of public accountability. Judges are immune from 42 U.S.C. Section 1983 damage actions, but they are subject to criminal prosecutions as are other citizens. A judge is not exempt from the normal obligations to respond as a witness when he has information material to a criminal or civil proceeding."

**KENTUCKY SUPREME COURT**

Ex Parte Auditor of Public Accounts, \_\_\_ S.W.2d \_\_\_ (11/25/80)  
"The Auditor of Public Accounts has no legal authority with respect to the Kentucky Bar Association."

Smith v. Commonwealth, \_\_\_ S.W.2d \_\_\_ (11/25/80)  
Any restraint on a victim which is tantamount to an unlawful imprisonment must be close in distance and brief in time in order for the exemption statute, KRS 509.030, to apply.

Seay v. Commonwealth, \_\_\_ S.W.2d \_\_\_ (11/26/80)  
Joinder of offenses under RCr 6.18 and RCr 9.12 is proper where the crimes are closely related in character, circumstances and time.

Pack v. Commonwealth, \_\_\_ S.W.2d \_\_\_ (11/26/80)  
There are four instances in which a vehicle may be impounded without a warrant. They are:

- (1) The owner or permissive user consents to the impoundment.
- (2) The vehicle, if not removed, constitutes a danger to other persons or property or the public safety and the owner or permissive user cannot reasonably arrange for alternate means of removal.
- (3) The police have probable cause to believe both that the vehicle constitutes an instrumentality or fruit of a crime and that absent immediate impoundment the vehicle will be removed by a third party.
- (4) The police have probable cause to believe both that the vehicle contains evidence of a

crime and that absent immediate impoundment the evidence will be lost or destroyed.

Gregory v. Commonwealth, \_\_\_ S.W.2d \_\_\_ (11/26/80)

The element of penetration for the crime of sodomy may be proved by circumstantial evidence.

Daugherty v. Daugherty, \_\_\_ S.W.2d \_\_\_ (11/26/80)

An injured plaintiff can recover all medical expenses incurred in an army hospital even though he was not obligated to repay the federal government.

**KENTUCKY COURT OF APPEALS**

Straub v. Chemical Bank, \_\_\_ S.W.2d \_\_\_ (11/7/80)

The right of a debtor to direct whether payments made by him on a debt shall be applied to principal or interest exists only where the payment is voluntarily made and not in a bankruptcy proceeding.

Ellis v. Ellis, \_\_\_ S.W.2d \_\_\_ (11/26/80)

As a general rule, evidence of character is inadmissible in civil litigation. A witness or party who has been impeached by the use of a prior inconsistent statement may not seek to be rehabilitated by the use of evidence of his good reputation for truth and veracity.

Fayette County Education Association v. Hardy, \_\_\_ S.W.2d \_\_\_ (11/14/80)

In public cases, the Board of Trustees does not have the authority to enter into collective bargaining agreements recognizing one organization designated as bargaining agent by one group of employees as the exclusive representative of all employees.

White v. Commonwealth, \_\_\_ S.W.2d \_\_\_ (11/26/80)

The sole issue to be determined in a persistent felony offender phase of a trial is that of status and mitigating character evidence is inadmissible.

Ashland Publishing Company v. Asbury, \_\_\_ S.W.2d \_\_\_ (11/26/80)

"A pretrial hearing should be closed to the public and press only after a determination is made that there is a substantial probability that the right of the accused to a fair trial or his other constitutional rights will be otherwise irreparably damaged."

**ARTICLE DISCUSSES MIRANDA RIGHTS OF JUVENILES**

An article in *California Law Review* by an associate professor of psychology discusses waivers of Miranda rights by juveniles. Courts have generally followed one of two approaches in this area, says the article. Either (a) they require an after-the-fact review of all the circumstances attending the waiver, or (b) they require initial safeguards followed by a review of whether the safeguards were effected. The first approach has been adopted by the majority of jurisdictions, and mandates a consideration of the "totality of the circumstances" in determining whether a juvenile's waiver of Miranda rights was knowingly, intelligently, and voluntarily made. The second approach, developed in case law and legal commentary, reduces the court's discretion in determining whether the waiver was in fact voluntarily made. No Kentucky statutes or precedent cases concerning this point have been found.

The article offers empirical studies of the legal and psychological capacities of juveniles and adults to waive Miranda rights knowingly. Among other things, it determines that juveniles younger than 13 manifest significantly poorer comprehension than adults of comparable intelligence. The article urges that a per se approach, which assures a suspect of nonwaivable right to counsel in pre-interrogation waiver proceedings, be adopted for both younger and older juveniles. The article determines that waivers of rights by younger juveniles cannot be intelligently, knowingly, and voluntarily made. It says that, compared with that of adults, the comprehension of Miranda rights by younger juveniles is so deficient as to mandate a per se exclusion of waivers by juveniles made without legal counsel. While older juveniles generally understand their rights as well as adults do, the results of the study indicate that an adult level of understanding is an imperfect standard for determining the adequacy of older juveniles' comprehension.

Justices and judges who wish to obtain copies of the article may request them from the State Law Library by asking for:

Grisso, "Juveniles' Capacities to Waive Miranda Rights: An Empirical Analysis," 68 *California Law Review* 1134-1166 (No. 6 December 1980)

Justices and judges who wish to obtain copies of a nine-page section from a legal textbook concerning the substantive law on this point from a national perspective should ask the Library for:

Samuel M. Davis, *Rights of Juveniles: The Juvenile Justice System* Sec. 3.13. "Waiver of Miranda Rights by a Minor" (2d ed. 1980)

State Law Library  
Room 200 - State Capitol  
Frankfort, Kentucky 40601  
Phone: (502) 566-4848

**MOTOR VEHICLE LAWS 1980 PUBLICATION AVAILABLE**

The Department of Transportation, Bureau of Motor Vehicle Regulation, has published a 195 page, paperback, 7 1/2" by 10 1/2" booklet entitled *Commonwealth of Kentucky Motor Vehicle Laws 1980*. It contains the statutes relative to claims upon the treasury (motor vehicles, purchase for state use, and the like), appropriations, excise taxes (motor vehicle usage, motor carriers, and penalties), licensing of motor vehicles, operators, and trailers, automated registration code, financial responsibility law, traffic regulations, vehicle equipment and storage, motor vehicle sales, state boating act, motor carriers, motor vehicle reparations act, and statutory liens.

Circuit court clerks who wish to obtain copies of the booklet for their official use may do so by submitting a completed AOC-3 form to the State Law Library, Room 200 State Capitol, Frankfort, Kentucky 40601. The cost of the booklet, \$4 per copy, will be paid from the circuit court clerk's general operating account.

**INFORMATION/STATISTICS NOTE FOR CLERKS**

Please remember to send the closing card to the AOC when the judge disposes of the case. **DO NOT** hold the closing card until the fine is paid and the accounts receivable are closed.

**STATE LAW LIBRARY**

**STAFF ATTORNEY REQUESTS**

Memoranda of law concerning the following subjects have been furnished recently to various judges. Copies may be obtained from the State Law Library by any judge. When requesting a copy, please identify the memorandum by date and subject heading. For persons not members or employees of the Court of Justice, there will be a charge of \$1.00 plus \$.10 per page. No enclosures will be sent with the memoranda unless requested; if requested, enclosures will cost \$.10 per page.

**Attachment and Garnishment**

"Proceeds from a liability insurance policy might be liable to execution under the garnishment laws or by other proper process." Garnishee-insurance company should be made a party defendant so that final judgment will be rendered against it, too.

October 3, 1980.

**Attachment and Garnishment**

Post-judgment garnishment is practically an equivalent to execution; it is not the provisional remedy of pre-judgment attachment by garnishment against wages. In some states, "execution" includes writ of garnishment. KRS 426.030 requires that execution should not issue on a judgment until ten days have passed or unless the court orders otherwise. A local rule of court should be made so that the local bar will know whether to wait ten days or to proceed immediately with an order of garnishment.

October 22, 1980.

**Conversion**

Courts tend to protect the title of innocent third parties and those who purchased from them. A person with a voidable title may transfer good title to a bona fide purchaser. Compensatory damages, and interest may be awarded against tortfeasors; punitive damages are proper when the wrongful act is wanton, malicious, or reckless.

October 8, 1980.

**Criminal Procedure**

Federal courts and about half of the state courts do not require corroboration of accomplice testimony. After the abolishment of RCr 9.62, corroboration of accomplice testimony, effective

September 1, 1980, this testimony is treated the same as that of an ordinary witness; the jury decides whether it is credible.

October 9, 1980.

**Defenses**

An escaped prisoner's use of the affirmative defense of choice of evils (KRS 503.030) is limited. Situational requirements for this defense are: (1) specific threat of death, forcible sexual attack or substantial threat of bodily injury in the immediate future; (2) no time for a complaint to authorities or such would be futile; (3) no time to resort to the courts; (4) no evidence of force or violence toward innocent persons or prison personnel; (5) prisoner immediately reports to proper authorities when he's in a safe position. Not all jurisdictions require No. 3.

October 25, 1980.

**Inheritance and Succession**

A will must be dispositive. When testator died and his beneficiaries had predeceased him, his will did not dispose of his property, and his heirs, therefore, were not disinherited. Testator's wish to disinherit his half-brother and half-sister will not repeal the state's laws of intestacy.

November 17, 1980.

**Jurisdiction**

When a plaintiff in district court wants to amend his complaint and ask for an amount exceeding the jurisdictional amount, the court has no statutory power to transfer the case. Since jurisdictional amount is determined by the amended petition, the court should discuss the case.

November 18, 1980.

**Municipal Corporations**

Kentucky requires literal compliance with KRS 411.110 (Action against city for injury from defect in thoroughfare; service of notice). The legislature did not add a saving clause as it could have.

November 18, 1980.



# UTAH JUDICIAL BRIEFS

Vol. 5 No. 1

April, 1980

## Circuit Court Performance Audit Recommends Changes

Utah's circuit court system is efficiently and effectively handling its caseload. This is the finding of a performance audit done by Mont Kenney, Auditor General, at the request of the Office of the Court Administrator, concurred with and authorized by the Legislature. The Circuit Court Act, in Sec. 78-4-22(g), provided that the 1979 Legislature would review the formula for allocating court revenue to either state or local government. That review was not accomplished so this performance audit was authorized.

The Auditor General concentrated on three questions:

1. Are the circuit courts being efficiently managed?
2. Is the revenue allocation formula being complied with?
3. What changes and readjustments are needed to more equitably allocate revenue to the state, cities and towns?

### Court Management

In reviewing court management, the report shows that 95.5% of the criminal cases studied were processed correctly and within the constitutionally required time for a speedy trial. Traffic court cases also reached a 96% efficiency level. Problems of timeliness of process in traffic cases were attributed to a too heavy workload for existing court support personnel. The Auditor General also noted some solutions that specific courts had made to alleviate this management problem.

### Revenue Formula

The revenue allocation formula has pro-

ven difficult to apply. Different interpretations of the conflicting instructions for allocating revenue during the fiscal year 1978-1979 were made by the cities and counties. The Circuit Court Act was also unclear about any changes in the allocation formula to be made when a municipality or county adopts state statutes by general reference. The statute does not indicate that the cities are to receive any revenue collected from violations of the state penal code and also fails to indicate how to divide revenue from citations or arrests by university or college security officers. The Auditor General recommended clarification by the Legislature of these points and that the State Court Administrator be given the responsibility of reviewing the allocation procedures of the cities and counties.

### Recommended Changes

The audit revealed a basic inequity in the revenue allocation formula as it stands today. Because the funds are shared on a percentage-of-revenue basis which ignores costs, some cities and counties do not get sufficient revenue to cover their operating costs while others receive revenue in excess of all costs. The present formula also provides a financial incentive for cities and counties to control the kinds of cases being filed in the circuit court to maximize the percentage-of-revenue returns. In addition, there is no practical method provided by which cities and counties can be assured that their allocation of revenue is correct.

To correct these problems, Mr. Kenney suggested that the collection and distribution of the circuit court revenues be consolidated into a politically independent

trust fund. Judicial and administration expenses, court operating expenses and prosecution expenses would be paid from this trust fund. The state would appropriate a specific amount to help defray costs of the judges' salaries and related expenses. The balance of the revenue in the trust fund would be distributed to the cities and counties on the basis of their local court costs and the revenues produced.

### Administrator's Response

According to Richard V. Peay, State Court Administrator, a housekeeping bill will be sent to the Legislature to clarify elements of the revenue allocation formula. Mr. Peay's office will continue to train circuit court personnel in the allocation system and will advise city and county treasurers of the proper application of the current revenue formula. No evaluation of the Auditor General's recommendations were made since any changes to be made in the formula are to be made by the Legislature, after careful consideration of the fair and equitable means to meet the needs of the state and also those of the cities and counties.

## Law Day Program

A special Law Day program will be broadcast from 9:00 to 10:00 p.m. on May 1, on KBYU. The show will begin with the film

continued on page 4

**TRIAL COURTS  
1980-1981 BUDGET**

	REQUEST	APPROPRIATION
<b>State Court Administrator</b>		
Administration	\$ 249,900	\$ 228,500
Judicial Planning	64,700	63,700
Judicial Information	168,100	147,200
Judicial Education	45,900	40,900
Justice Training	24,300	22,900
Sub Total	552,900	503,200
<b>District Court</b>		
Judicial Expense	2,089,300	1,993,200
Trial Court Executive	233,100	222,200
Sub Total	2,322,400	2,215,400
<b>Circuit Court</b>		
Judicial Expense	2,163,800	2,151,700
Trial Court Executive	192,800	178,200
Sub Total	2,356,600	2,329,900
<b>Grand Total</b>	<b>\$5,231,900</b>	<b>\$5,048,500</b>

## Personnel Study To Begin

The Office of the Court Administrator will be developing a workable personnel administration system for the state's court system. By September 1, 1980, the Judicial Council and the Judicial Planning Committee will have reviewed the current organization of the state court system and will recommend to the Legislature a statewide uniform plan to classify all non judicial positions at the State Supreme Court, the trial courts and the Juvenile Court. A uniform salary administration plan is to be established to be sure all salaries of employees of the judiciary are determined by a rational, equitable and deliberate process. In addition to classification and salary administration, the new personnel system will include recruiting, examinations, compensation and benefits, retention and promotion, discipline and employees' rights and other personnel rules.

All state employed court personnel, including trial court executives, State Court Administrator staff, Juvenile Court Administrator staff, Supreme Court Clerk and staff and the secretarial staff of all three courts, will be surveyed to identify compensation issues and disparities. A similar study will be made of local government employed court support personnel such as

court clerks and bailiffs. The study will include a survey of present salary levels including the pay grades of administrators, professional level staff and secretarial staff. A current job description of each court support staff position will be made, including the practical experience of current staff members to correct inequities in pay among court support personnel working at comparable positions. Juvenile Court probation personnel, for example, will be compared with adult probation personnel and recommendations will be made to eliminate any inconsistencies in compensation and benefits.

In addition, a uniform system of retention and promotion will be developed including opportunities for in-service training, performance evaluations, merit increases and promotion and career ladders.

The proposed system, when completed, will be reviewed by a project steering committee of judges representing the Supreme Court, the trial courts and the Juvenile Court. The plan will then be submitted to the State Judicial Council and the Judicial Planning Committee. Once approved, it will be sent to the 1981 Legislature for evaluation and approval, prior to implementation by July 1, 1981.

## Review Of Budget Session Bills

The Utah State Legislature in its 1980 Budget Session passed several bills of major importance to the judiciary.

### Criminal Procedure

Sweeping changes were made in this area by repealing Title 77 and enacting an entirely new Code of Criminal Procedure and accompanying Rules of Procedure.

### Children's Rights

An amendment was made to Sec. 73-3a-48 U.C.A. which provides criteria and circumstances to be considered in determining the best interests of the child, relating to the termination of parental rights by the Juvenile Court.

### Support of Stepchildren

In amending U.C.A. Sec. 78-43-41 and Sec. 78-45b-2, the Legislature affirmed the duty of stepparents to support stepchildren even during a pending divorce action or legal separation.

### Child Custody Home Evaluations

The Division of Family Services is charged with the responsibility of conducting home evaluations if ordered by the district court. One or both parties to the litigation may be ordered to reimburse the Division for the cost of the study.

### Utah Uniform Child Custody Act

The enactment of this uniform act provides procedures for determining custody issues when the parties involved live in different jurisdictions. It also provides for recognition and enforcement of custody decrees of other jurisdictions, minimizing repetitious litigation.

### Intoxicated Driver's Fees

Persons convicted under statutes or local ordinances of driving under the influence of intoxicating liquor may be assessed an additional sum, up to \$150 above any fine imposed, to support local alcohol rehabilitation programs.

### Disposition of Forfeited Bail

Any forfeited bail is now dispersed to the county of the originating court, not to the state.

The Legislature also acted to increase Sheriff and Constable fees.

## Court Notes



**Judge Kenneth Rigtrup**

KENNETH RIGTRUP has been appointed a Judge in the 3rd District. Originally from Burley, Idaho, Judge Rigtrup is a graduate of the University of Utah with a degree in accounting. He received his juris doctor degree in 1962 from the University of Utah College of Law. His professional experience includes a clerkship for Justice Crockett at the Utah Supreme Court, service as Administrative Law Judge for the Utah State Industrial Commission and several years in active general law practice. In addition, Judge Rigtrup is active in many professional and civic organizations including the Disabled American Veterans and the Governor's Committee on the Employment of the Handicapped. During 1976 and 1977, he was the Chairman of the Utah White House Conference on Handicapped Individuals.

He is married to the former Susanne Remund and is the father of five children.

EDWARD A. WATSON, veteran city and county attorney, was appointed 6th Circuit Court Judge for Tooele County in September, 1979. He replaced the resigning judge, Ralph Milburn. Judge Watson graduated from the University of Utah in 1963 with a degree in history and received his J.D. degree from the University of Utah College of Law in 1968. He has served as post judge advocate for the Tooele Army Depot and as Tooele County Attorney. Judge Watson has also held the positions of attorney for the Tooele County School District and Grantsville City Attorney.

## Paper Change Reconsidered

The Utah Supreme Court vacated its decision amending the state's Rules of Civil Procedure to require all legal documents to be on standard sized paper (8½ x 11 inches). The Court is reconsidering the potential problems and benefits which would result from abandoning the traditional "legal" sized 8½ x 14 inch paper. A conversion in paper size would conform to the practice followed in other state and federal courts, including the 10th Circuit Court of Appeals. Potential savings in microfilming court records are also to be considered. The proposed change is unpopular with some attorneys who prefer the extra space provided by the traditionally sized paper. The Court will make a final determination on whether or not to change the size of the paper after carefully considering all aspects of the change.

Readers who wish to send suggestions for articles about Utah courts and court personnel for future issues of "Judicial Briefs" should send them to:

Office of the State Court Administrator  
807 East South Temple  
Suite 201  
Salt Lake City, Utah 84102

## Improvements Sought In Collecting Information

The Office of the Court Administrator requested funding for a State Judicial Information System in the 1980-1981 Budget Proposal to the Legislature. The proposed system would provide timely, accurate and complete court activity statistics including court revenue and expenses. The Court Administrator's Office would then become the central collection and dissemination agency for information on case dispositions, court revenue and judicial workload.

The Annual Report of Utah Courts now produced by the Court Administrator's Office is compiled manually from monthly written reports submitted by each court. This report is limited by the summary nature of the data collected and more detailed information about the caseloads in Utah courts is needed. The volume of the caseloads in the courts and the need to process the data requires an automated system for data entry and retrieval. During 1977-1978 alone, the district courts handled 56,564 case filings, circuit courts handled 598,894 filings and the Justice of the Peace courts 223,488. Furthermore, an automated system would facilitate monitoring of the

continued on page 4

## UTAH SUPREME COURT BRIEFS

*Albrecht vs. Uranium Services, Inc., No. 15996, May 29, 1979*

Uranium Services appealed from a summary judgment quieting title in mining claims in the plaintiffs. In dismissing Uranium's appeal, the Court clarified the proper time for appeal to the Supreme Court under Rule 73(a), as amended June 14, 1978. Under that rule, an appeal when permitted from the district court must be made within one month from the date of entry of the judgment in the Register of Actions. Rule 6 controls computation of time and excludes the day of the month on which the judgment is entered in the Register. The last day of the period is the same date in the following month, unless that day is a Saturday, Sunday or legal holiday. In that case, the period extends to the end of the next available date (not a Saturday, Sunday or legal holiday). Uranium's appeal, filed on August 7, 1978, from a judgment entered on July 5, 1978 was timely because August 5, 1978 fell on a Saturday.

# Law Program

continued from page 1

"Defenders of Freedom", a docu-drama produced by Utah Hands Up, a volunteer community and State effort to halt crime. "Defenders of Freedom" tells the story of a juvenile offender who has been certified over to the adult court system and is tried before a jury on charges of burglary and aggravated arson. The purpose of the film is to instruct all citizens and especially young citizens on proper court procedures giving them a better understanding of their rights and responsibilities in the judicial process and on aspects of due process of law. The film accurately portrays courtroom procedures and the duties of courtroom personnel.

Following the film, Allan Moll, of the Judicial Council Advisory Committee, will moderate a panel discussion. The participants in the discussion will be Judge Christine Durham of the 3rd District, Rex Lee, Dean of the J. Reuben Clark Law School at Brigham Young University and David Young, legal counsel for Utah Hands Up.

## Information System

continued from page 3

trial courts' adherence to Judicial Council policies and standards.

The Budget Proposal recommends to the Legislature that a mini-computer be purchased to implement the new State Judicial Information System. State funds of \$36,500 would be supplemented by \$132,400 in Federal funds. The system would result in cost reduction for local governments by reducing the number of reports that a trial court must prepare and reducing the personnel hours needed to complete forms for various other agencies.

## Research Aid Available

The 1979 Utah Legislature allocated funds for a law clerk to aid the district judges. Prior to that time, several law clerks for district judges were funded through the Law Enforcement Assistance Agency (LEAA). Craig Boorman, as research attorney, has been serving all twenty-four district court judges' requests for more information on case law. The success of his endeavors has resulted in additional funds being allocated by the State Court Ad-

ministrator's Office to hire additional researchers on a contingency basis to assist in the workload. By freeing judges from time consuming case research, the program results in decreasing case backlogs and expediting the resolution of many cases.

Mr. Boorman can be contacted at:  
240 East 400 South  
Salt Lake City, Utah 84111  
Telephone: 535-7881

## Calendar of Upcoming Events

- May 1, 1980 Law Day  
Watch "Defenders of Freedom"  
9:00 - 10:00 p.m. KBYU
- May 15, 16 and 17, 1980  
Circuit Judges' Seminar  
Sherwood Hills Resort, Utah
- May 16 and 17, 1980  
Circuit Court Clerks' Conference  
International Dunes Hotel, Salt Lake City, Utah
- May 28, 29, and 30, 1980  
Justices' of the Peace Seminar  
Hilton Inn, St. George, Utah
- June 11, 12 and 13, 1980  
Southwestern Judicial Conference  
Hotel Utah, Salt Lake City, Utah
- Court Reporters' Conference  
Holiday Inn, Park City, Utah
- September 25, 26, and 27, 1980  
Judicial Conference  
Holiday Inn, Park City, Utah

## UTAH JUDICIAL BRIEFS

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Suite 201  
Salt Lake City, Utah 84111

Richard V. Peery  
Court Administrator



APPENDIX C. 5.d.



# WYOMING COURTS

## Newsletter of the Wyoming Court System

VOLUME 2, NO. 2

MAY/JUNE 1980

## New District Judges Appointed; Taylor in Eighth District and O'Brien in Sixth District

William A. "Al" Taylor has been appointed District Judge for the Eighth District, and Terrence L. O'Brien has been appointed District Judge in the Sixth District. Both positions are new judgeships created by the Legislature this year to deal with increasing work loads in the two districts.

Judge Taylor, who assumed his position on July 1, is establishing his court in Douglas. His is the second judgeship in the Eighth District which consists of Converse, Niobrara, Platte, and Goshen Counties. Judge George Sawyer, who resides in Torrington, had previously served all four counties in the district.

Judge Taylor is a native of Niobrara County. He has been the executive director of the Wyoming State Bar since 1976. Prior to that, he practiced law in Lusk for 17 years, and he served as County Attorney for Niobrara County for 14 of those years and City Attorney in Lusk for much of the same period. He received his bachelor's degree from the University of Wyoming in 1951, after which he served in the U.S. Army for two years and taught school in Lusk. He received his law degree from UW in 1959. He is married, and he and his wife Jane have three daughters.

O'Brien will assume the other new judicial position August 15th, 1980. He will set up his court in Gillette and serve the Eighth District, which includes Campbell, Crook, and Weston Counties. Judge Paul T. Lamos, Jr. of Newcastle had previously been the only judge serving the district.

Terrence L. O'Brien has practiced law in Buffalo, Wyoming since July 1974, and has been the Justice of the Peace for Johnson County since August 1975. He received his bachelor's degree from the University of Wyoming in 1965 and served in the U.S. Army for four years, rising to the rank

of Captain. He then returned to law school at UW, receiving his law degree with honors in 1972. He worked as Staff Attorney with the Appellate Section of the Department of Justice from 1972 to 1974, serving in the Land and Natural Resources Division. O'Brien has been a member of the Community College Commission since 1979. He and his wife Dorothy have two children, Sean Brendan and Heather Kathleen.

The addition of these two judgeships brings to 17 the number of district judges throughout the state.

## Minor Court Seminar Features Jury Trial

The annual seminar for justices of the peace, and municipal judges was held at Casper College from June 16th to the 18th. For the second year, clerks of these courts also attended. Court Coordinator J. Reuel Armstrong directed the program, along with Assistant Court Coordinator Gayle Stewart. Attendance at the seminar was very good, with 35 justices of the peace, 26 municipal judges, and 39 clerks present.

The main feature of the seminar was a mock jury trial in which the participants ran a jury trial in four small

groups. After John E. Stanfield of Laramie lectured on jury procedure, the groups met under the leadership of Robert B. Brodie, Ronald P. Jurovich, Craig Kirkwood, and Terry O'Brien. On the same day, the Supreme Court handed down its decision in *Ladd v. City of Worland*, No. 5270, preserving the right to jury trial in many municipal court cases at the municipal court level, so the instruction in jury procedures was extremely valuable and timely.

On the second day, the program (continued on page 4)

## Plans to Expand Scope of State Financing in the Courts Proceed; Comments Invited

After several months of consideration and staff work, the Judicial Planning Committee has announced a study of a proposal to widen the state funding for the court system. Under the proposal, clerks of district court, county courts, and some other expenses now borne by the counties would be transferred to the state.

There are three principal reasons to move to state funding. The first is to be able to allocate resources to individual courts on a statewide basis, which would help to make uniform the services and facilities of each court around the state. The second is to relieve the counties of a portion of the demands on their funds. Finally, wider state funding would also lead to greater accountability, since it would squarely fix the responsibility for expenditures and all justifications would have to be made to the Legislature.

According to the proposal being advanced by the Judicial Planning Committee, the clerk of district court office would become part of the district court, and the state would assume its personnel and operating expenses, along with witness and jury fees and bailiff services. This part of the proposal includes a constitutional amendment to make the clerks appointed by the district judges rather than elected by the county voters. In fiscal year 1979, the counties spent about \$2 million on the clerks of district court offices and related expenses.

In addition, the JPC proposal calls for the state assumption of all county court expenses. By next year, county courts will be operating in at least the five most populous counties: Natrona, Laramie, Fremont, Sweetwater, and Albany. The state would assume all expenses, including judicial and non-judicial personnel and operating expenses. For those counties where county courts were not established, the JPC proposal provides for the payment of the salaries of the justices of the peace. In fiscal year 1979, the counties spent about \$1 million on the county and justice courts, but the wider implementation of county

courts will increase this amount in future years, with or without state funding.

The Judicial Planning Committee is proposing that the counties would continue to provide court facilities, but that the state would reimburse them for the use of the facilities based on a negotiated lease.

The JPC is discussing several ideas for budget submission. According to one plan, the judiciary would submit three consolidated budgets to the Legislature. One would cover

### Minor Court Judges Elect Meacham; Plan Activities

At the Casper seminar, the Minor Court Judges Association elected its officers for the coming year. Margie Meacham, Carbon County Justice of the Peace and Rawlins Municipal Judge, was elected president. Craig Kirkwood, Albany County JP and outgoing president of the Association, was elected vice-president. And Bob Brodie, Teton County JP, was re-elected secretary-treasurer.

The association members decided to set aside funds to pay part of the costs for attendance for association members at educational programs of the National Judicial College. Interested judges may contact Margie Meacham for details.

The members also discussed the production of a bench book for minor courts, which should be ready in approximately six months. Hunter Patrick is the chairman of the bench book committee, and Bob Brodie, Craig Kirkwood, Fred Berry, and Arlene Carlton are serving on that committee.

The association members also discussed the importance of working together on legislative matters. They are forming a committee to develop legislative proposals, and interested members should contact Margie Meacham or Fred Berry.

(continued on page 4)

Supreme Court and general administrative expenses, one would cover the district courts, and one would include county court and justice of the peace expenses. In that way, the advantages of consolidation, such as shared use of resources and more effective legislative review, can be accomplished, but the budgets will still be responsive to the needs and perspectives of each level of court.

While the Judicial Planning Committee has been discussing the topic of state financing of the courts for several months, its work was accelerated by Wyoming's participation in a national seminar on state court funding sponsored by the National Center for State Courts and the Institute for Court Management in Denver in May. The seminar included presentations on the topic by national experts and discussions of experiences in other states, but it was highlighted by the discussions within each state's delegation. Wyoming's five participants, Chief Justice John F. Raper, District Judge Joseph F. Maier, State Auditor Jim Griffith, Senate Judiciary Committee Chairman Rex Arney, and Court Administrator Ted Fetter, discussed the particular needs and possibilities of Wyoming and developed the outlines of a plan which the Judicial Planning Committee has expanded upon.

This proposal is now being shared with interested persons in the state. Comments are invited, and more information is available. If you are interested, please contact any member of the Judicial Planning Committee or Court Administrator Ted Fetter at the Supreme Court, 777-7875.

The Judicial Planning Committee is composed of representatives of the various levels of court in Wyoming, two legislators, a county attorney, the State Public Defender, a practicing attorney, and representatives of the public. It is chaired by Chief Justice Raper. Its function is to identify problems in the administration of justice and to discuss ways of meeting those problems.

## State Financing of the Courts

As another article in this newsletter indicates, the Judicial Planning Committee has proposed a significant change in the administration of the courts in Wyoming. The committee is studying a proposal that the state should assume all expenses for clerks of district court offices, all county courts, and some of the justice of the peace court expenses. All of these expenses, over \$3 million in fiscal year 1979, are currently the responsibility of the several counties.

Why should the courts be financed by the state rather than the counties? What are the advantages and disadvantages of such a change?

The judiciary is a branch of state government, responsible to the Legislature and the Constitution of the state. It is controlled in criminal matters by state law, not local codes; and in civil matters there are statewide procedures and statutes involved. The only exceptions to this basic assumption are the municipal courts to the extent that they enforce municipal ordinances rather than state criminal law. Largely because of this distinction, the Judicial Planning Committee's proposal does not include municipal courts.

Beyond that basic identity with state government, there are several perceived advantages to state financing. Broadly, these concern more uniformity in services available, greater accountability and better administration, and access to a funding source with more total funds available. The demands for local governmental services other than judicial leave in some instances inadequate funding for the judicial function.

The first perceived advantage concerns level of service. With state funding, decisions about allocation of re-

sources can be made on a statewide basis, by the Legislature and the appropriate judicial group. This statewide allocation of resources is considered by most experts to be preferable to a dependence on the relative wealth of individual counties, under which the courts in richer counties have good facilities, salaries, and services while those in poorer counties struggle with less. Under state funding, court services might grow in poor counties or counties with very low populations. Salaries and benefits for court personnel in these counties could rise, so that the courts could attract and retain top-quality personnel.

Second, many persons point to improved accountability and better administration of the courts with state funding. Instead of courts oriented to the governmental and funding variables of each county, they would be more a part of the court system as an independent branch of government. Resources may be more easily shared and transferred temporarily to areas of need. The Legislature will be able to receive comparable information about all courts, so that more rational decisions in appropriations could be made. Finally, state funding would more easily allow programs found successful in a local court to spread into other parts of the state.

Third, it is clear that the state's fiscal resources are greater than most counties'. While of course many others make demands on state funds, it is likely that the resources available to the courts would increase under state funding.

These considerations should not blind us to what may be some disadvantages of state funding. Generally, the arguments against the idea may be divided into two parts: cost and

control.

Opponents of state finance point out that the total cost will increase. They are probably correct, but so will the quality of judicial service. With state funding, the poorer courts will seek uniformity of services at the levels achieved by the richer courts. There is also likely to be a modest increase in the administrative and accounting staff of the courts. This extra cost will be slight and is likely to be offset by the efficiencies gained by pooling resources and using common budgeting and accounting procedures.

Opponents also may assert that there would be a loss of local control with state funding. In part this may be true, since county governments would no longer make budget decisions in areas they now do. But the proposal preserves local input in budgeting at the county court level, and it preserves district judge control over the district court budget request. The plan does not at all contemplate centralized decision-making by persons insulated from local needs or perspectives.

The development of a proposal for state financing of the courts is just beginning, and the final structure may be significantly revised. It is certainly not a panacea for instant reform. It seems clear, however, that the Wyoming courts have an opportunity to move toward an improved judicial system, with better services, improved administration, and more adequate funds. As we undertake this effort, we seek the advice and suggestions of interested persons within the courts and those outside of them.

JOHN F. RAPER  
Chief Justice

### FISCAL YEAR 1979 COURT-RELATED EXPENDITURES

State Paid		County Paid	
Supreme Court*	\$ 700,803	Clerks of District Courts	\$2,050,856
District Courts	1,180,225	County Courts/JP Courts	981,231
<b>Total</b>	<b>\$1,881,028</b>	<b>Total</b>	<b>\$3,032,087</b>

\*Includes related agencies—Nominating Commission, Supervisory Commission, and Law Library.

### Seminar—Cont.

featured addresses on several items. Peter Feeney of Casper discussed the closing of preliminary hearings and the legal representation of justices of the peace. John Lang and Dick Honaker presented the programs of the Department of Probation and Parole and the State Public Defender, respectively. Attorney General John Troughton briefly discussed plea bargaining, and representatives of the Highway Patrol outlined the computerized information system for tracking traffic offenses. Finally, Gene Rugotzke discussed driving under the influence, and that evening five volunteers imbibed, purely for demonstration purposes, and submitted to field sobriety tests. The five volunteers were Jim Adsit, Gayle Stewart, Bill Cramer, Paul Galeotas, and Tony Villela.

On the last day, the seminar was devoted to civil matters. Gary Hartman had recently returned from a seminar on small claims sponsored by the National Judicial College, and he presented what he had learned there. Margie Meacham spoke on other civil procedures in JP courts.

The clerks of court attended some of the sessions that the judges had. In addition, Fay Johnson discussed record keeping and reporting requirements of the State Examiner's Office, and Larry Pitman from the Motor Vehicles Division discussed the handling of traffic citations.

Judicial Planning Committee of Wyoming  
Supreme Court Building  
Cheyenne, Wyoming 82002

## Wyoming Courts Host Asian Judges

From March 12th to 14th, two foreign judges were in Wyoming as part of a tour through several Western states. Judge Supradit Hutasingh of Thailand, and Judge and Mrs. Lorenzo Relova of the Philippines were in Cheyenne and Torrington as part of a tour sponsored by the Asia Foundation of San Francisco.

Judge Hutasingh works in the Ministry of Justice in Bangkok, Thailand. He is beginning this summer a tour of duty as a trial judge in rural Thailand. He has studied at the University of California at Berkeley, and this was his third trip to the United States.

Judge Relova's legal career in the Philippines has included duty as a prosecutor and a judgeship with both trial and appellate courts. He was recently named Court Administrator of the Supreme Court of the Philippines.

When the visitors arrived in Wyoming, Court Administrator Ted Fetter

### Minor Court Judges—Cont.

Two other activities are in the planning stages. One is the creation of a committee to investigate the particular problems of municipal courts. Municipal judges are needed to serve on this committee. Finally, the asso-

acted as their host. He introduced them to Chief Justice Raper and the other Supreme Court justices, and they observed oral argument at the Supreme Court. Fetter also introduced them to District Judge Alan Johnson, who briefly discussed the work of the district courts with them.

On March 14th, Retired Chief Justice Rodney M. Guthrie and Mrs. Guthrie drove the visitors to Torrington, where they met with Judge George Sawyer. Judge Sawyer arranged a luncheon with members of the local bar and other guests.

The Asia Foundation supports the continuing education of Asian judges in this country. Judges Hutasingh and Relova took part in seminars of both the National Judicial College and the Institute for Court Management. In between, they met with court personnel in Colorado, New Mexico, and Arizona as well as Wyoming.

ciation members discussed the possibility of setting up regional meetings to foster communication and to provide better means of contributing to association activities.

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APPENDIX C. 6.a.

## The Justices of the Supreme Court



Seated, left to right: Associate Justices Sidney M. Schreiber, Morris Pashman, Worrall F. Mountain, Chief Justice Richard J. Hughes, Associate Justices Mark A. Sullivan, Robert L. Clifford, Alan B. Handler.



RICHARD J. HUGHES, Chief Justice of New Jersey, was born August 10, 1909 in Florence, Burlington County. He did undergraduate study at Saint Joseph's College in Philadelphia and received a LL.B. degree in 1931 from the New Jersey School of Law, now part of Rutgers University. He commenced the private practice of the law in Trenton in 1932. From 1939-45 he was Assistant United States Attorney for the District of New Jersey. He served as Judge of the Mercer County Court from 1948-52. He was appointed Judge of the Superior Court in 1952, and was assigned to the Appellate Division of that Court in 1957. Later he resigned from the bench to return to the private practice of the law. He was twice elected Governor of New Jersey, serving from 1962-70 the two consecutive terms permitted by the New Jersey Constitution. After leaving the State House in 1970, he re-entered the private practice of the law.

Following the death of Chief Justice Pierre P. Garven, Governor William T. Cahill appointed Mr. Hughes to be Chief Justice of the Supreme Court, and he was sworn in on December 18, 1973. He married the former Mrs. Betty Murphy in 1954. At that time, he was a widower left with four children, and she was the widowed mother of three children. They had three additional children. The Hughes family resides in Princeton.



**WORRALL F. MOUNTAIN**, Associate Justice, was born June 28, 1909 in East Orange. He received his A.B. degree from Princeton University in 1931 and a LL.B. degree from Harvard Law School in 1934. He was a partner in the law firm of Jeffers and Mountain, Morristown. He was appointed Judge of the Superior Court in 1966, and was assigned to the Appellate Division of that Court in 1970. Governor William T. Cahill appointed him Associate Justice of the Supreme Court, and he was sworn in on March 15, 1971. Governor Brendan T. Byrne re-appointed him Associate Justice and he was sworn in for a second time on March 15, 1978. He served in the naval forces as a commissioned officer in 1943-45. He also served as President and Trustee of the North Jersey Conservation Foundation. He and his wife, the former Mrs. Grace Oram, reside in Morristown. Each has two children by former marriages.

**MARK A. SULLIVAN**, Associate Justice, was born August 11, 1911 in Jersey City. He received his A.B. degree from Georgetown University in 1932 and a LL.B. degree from Harvard Law School in 1935. He commenced the private practice of the law in 1936. He was appointed Judge of the Second District Court of Jersey City in October, 1945 and Judge of the Hudson County District Court in 1949. In 1953 he was appointed Judge of the Superior Court, and was assigned to the Appellate Division of that Court in 1959. Governor William T. Cahill appointed him Associate Justice of the Supreme Court, and he was sworn in on March 23, 1973. During World War II, he served in the U.S. Navy from 1942-45. He and his wife, the former Mary Josephine Hamill, reside in Spring Lake. They have a son, Mark.



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**MORRIS PASHMAN**, Associate Justice, was born September 27, 1912 in Passaic. He attended New York University, the University of Michigan and the New Jersey Law School, now part of Rutgers University, where he received a LL.B. degree in 1935. He commenced the private practice of law in 1936. He served as Police Judge of the City of Passaic from 1946-48 and Magistrate of the Municipal Court in that City from 1948-51. In May 1951, he was elected Mayor of Passaic continuing in that post until 1955. He was re-elected Commissioner of the City of Passaic in 1955 and 1959 and served as Director of Revenue and Finance from 1955-59. In July 1959, he was appointed Judge of the Passaic County Court and in 1961, Judge of the Superior Court. He served in the Chancery Division in Hudson and Bergen Counties. He was Assignment Judge in Passaic County and was serving as Superior Court Assignment Judge in Bergen County when Governor William T. Cahill appointed him Associate Justice of the Supreme Court. He was sworn in on June 17, 1973. He and his wife, Tema L. Pashman, have two children Linda Blair and Louis Pashman. The Pashman family resides in Clifton.

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**ROBERT L. CLIFFORD**, Associate Justice, was born December 17, 1924 in Passaic. He received his B.A. degree from Lehigh University in 1947 and a LL.B. degree from Duke University School of Law in 1950. He commenced the private practice of the law in 1950 and was from 1962-70 a partner in the firm of O'Donnell, Clifford, Conway and Leary, Morristown. He served as State Commissioner of Banking and Insurance for the first two months of 1970. After separate Departments of Banking and Insurance were established, he was State Commissioner of Insurance from 1970-72 and State Commissioner of Institutions and Agencies from 1972-73. Governor William T. Cahill appointed him Associate Justice of the Supreme Court, and he was sworn in on September 4, 1973. He is married to the former Joan Sieben, and they have three sons. The Clifford family resides in Chester.



**SIDNEY M. SCHREIBER**, Associate Justice, was born November 18, 1914 and has lived most of his life in Elizabeth. He received his B.A. degree from Yale University in 1936 (Phi Beta Kappa) and a LL.B. degree in 1939 from Yale Law School where he was an editor of the Yale Law Journal. He was an attorney for the U.S. Railroad Retirement Board and Securities and Exchange Commission. He served in the Army from 1943-46. His service included direction of the War Crimes Review Section of the Judge Advocate's Office for the Third Army. He was engaged in the private practice of the law for twenty-five years, and was senior partner in the firm of Schreiber, Conway, Reisman and Michals, Newark, at the time of his appointment as Judge of the Superior Court in 1972. He was appointed Associate Justice of the Supreme Court by Governor Brendan T. Byrne, and was sworn in on March 1, 1975. He is married to the former Ruth Butt. They have one daughter, Florence.

**ALAN B. HANDLER**, Associate Justice was born July 20, 1931 in Newark. He attended the Woodrow Wilson School of Public and International Affairs at Princeton University and received his A.B. degree from that institution in 1953. He obtained a LL.B. degree from Harvard Law School in 1956. He was engaged in the private practice of the law from 1956-61 in Newark. He served as Deputy Attorney General of New Jersey from 1961-64 and First Assistant Attorney General and Director of the Division of Law of New Jersey from 1965-68. He was appointed Judge of the Superior Court in 1968, and was assigned in 1973 to the Appellate Division of that Court. He resigned from the bench in 1976 to become Counsel to Governor Brendan T. Byrne. He was appointed Associate Justice of the Supreme Court by Governor Byrne, and was sworn in on March 23, 1977. He is married to the former Rose Marie Kudroch, and they have five children. The Handler family resides in Delaware Township, Hunterdon County.



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THE UTAH JUDICIAL COUNCIL and JUDICIAL PLANNING COMMITTEE



**Judge Thornley K. Swan,  
Chairman & Chief Judge,  
Kaysville  
Second Judicial District**

Past President of Davis County Board of Education; former Mayor of Kaysville; Davis County Attorney, two years; former partner of Ray Quinney and Nebeker Law Firm; member Utah State Bar; President of Junior Bar Section, Utah State Bar; American Bar Association; American Judicature Society; Past President of Kaysville Rotary Club; Utah's Representative to the Council of State Court Representatives for the National Center for State Courts, appointed District Judge July, 1961. (Replaced D. Frank Williams as Chief Judge February 1, 1974.) \* Term expires 1981.



**Justice Richard  
Johnson Maughan,  
Associate Justice,  
Utah Supreme Court  
Salt Lake City**

B.S., Utah State University, 1948; J.B., University of Utah, 1951; Assistant to the Attorney General for Utah 1951-52; Member of the Utah State Board of Regents, 1961-75; Member Utah State Bar (Chairman, Continuing Legal Education Commission), 1966-69; Davis County (past president 1961-62) Bar Association. Term expires 1980.



**Judge George E. Ballif,  
Provo,  
Fourth District**

Former Provo City Attorney; Assistant District Attorney of the Fourth Judicial District; Assistant County Attorney for Utah County; Member of American Judicature Society; Juris Doctorate University of Utah Law School 1954; Utah State Bar Association 1955; Practiced law Provo, Utah, 1955-1971; District Judge 1971 to present. Term expires 1982.



**Judge Peter F. Leary,  
Salt Lake City  
Third District Judge**

Graduated from University of Utah Law School in 1950; passed Utah Bar in 1951; appointed to Third District Bench in 1973 by Governor Calvin Rampton. Term expires 1982.



**Judge James S. Sawaya,**  
Salt Lake City  
Third Judicial District

Graduated from University of Utah College of Law, 1954; Utah State Bar Association, 1955; practiced law in Salt Lake City, Utah from 1955-59; Murray City Court Judge 1959-70; District Judge 1970 to present. Term expires 1981.



**Judge Warren D. Cole,**  
Midvale  
Justice of the Peace

Current Judicial Council representative for Utah State Justice of the Peace Association; former Vice President of Utah State Justice of the Peace Association; former President of Salt Lake County Justice of the Peace Association; Midvale City Justice of the Peace since 1962; completed judicial education courses at the University of Utah and the Judicial College in Reno, Nevada; veteran of United States Marine Corps. Term expires May 1981.



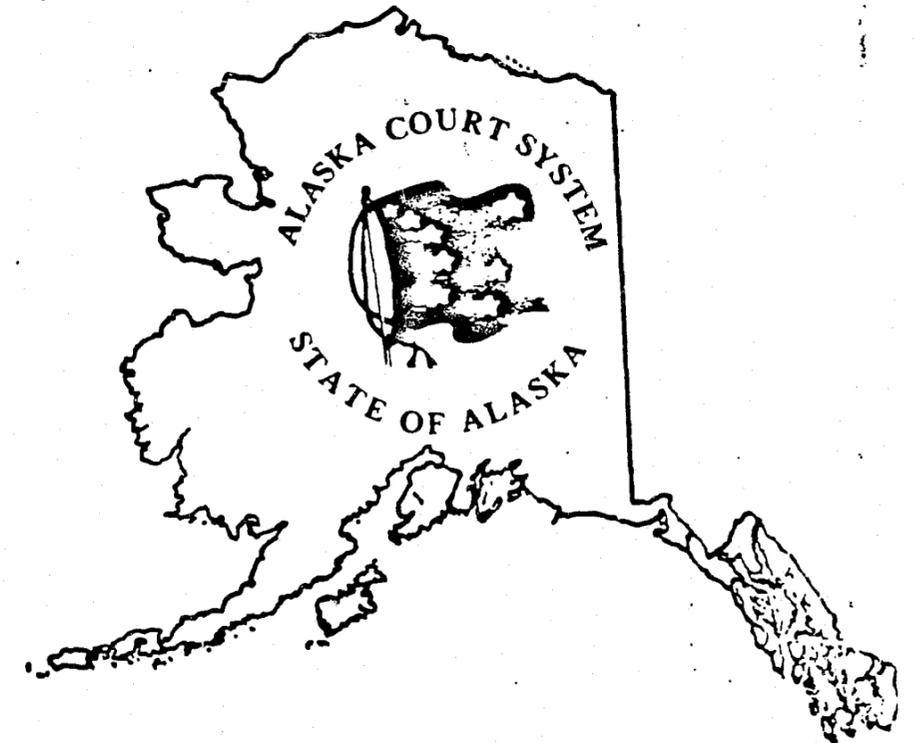
**Judge Stanton M. Taylor**  
Third Circuit Court Judge  
Ogden, Utah

First Circuit Court Representative to the Utah Judicial Council; 1964 graduate of University of Utah College of Law; past president of the Weber County Bar Association; past president of the Utah City Judges Association; former member of the law firm of Lamph, Newey and Taylor of Ogden, Utah; former chief deputy City Attorney for Ogden, Utah; chairman of LEAA Criminal Justice Planning, District I and II; member Advisory Boards of State of Utah and Weber County boards of Alcoholism and Drugs; member Advisory Board Moweda youth Home; active in church and civic affairs. Term expires October 1980.



**James B. Lee**  
Attorney at Law

Ex Officio Member, President, Utah State Bar, 1977-78; chairman of Board, Utah Legal Services, 1978-79; President, Salt Lake County Bar Association 1967-68; Member, Utah Bar Commission 1971-78; Member, Board of Pardons, 1975; Chairman of Board, Judicial Qualifications Commission 1969-72; B.S., United States Military Academy 1952; Juris Doctor, George Washington University, 1960; Brigadier General, Utah National Guard. Term expires 1980.



**ALASKA GRAND JURY  
HANDBOOK**

DISTRIBUTED BY

**The Supreme Court of Alaska**

## Alaska Grand Jury Handbook

### I. IMPORTANCE OF THE GRAND JURY.

This Handbook is intended for citizens who have been selected as members of the Grand Jury, and are about to report to carry out their duties in that regard.

Clearly a "... government of the people, by the people, and for the people," as Abraham Lincoln tersely described the American form of Government, requires the active participation of every citizen in at least two important civic duties, first to exercise the voting privilege, second to serve on juries. As Harlan Fiske Stone, late Chief Justice of the United States Supreme Court, said:

"Jury service is one of the highest duties of citizenship, for by it the citizen participates in the administration of justice between man and man and between government and the individual."

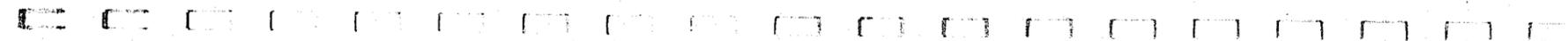
In time of peace no citizen can perform a higher duty than that of Grand Jury service. No body of citizens exercises public functions more vital to the administration of law and order.

The powers and functions of Grand Juries differ widely from those of trial or petit juries. The petit jury actually tries the case and renders the verdict after hearing both sides. The Grand Jury does not try the case. The Grand Jury does not hear both sides. Its function is simply to hear witnesses as to a charge of crime and to determine whether or not the person or persons so charged should be brought to trial on such charges.

The Grand Jury is both a sword and a shield of Justice-- a sword, because it is the terror of criminals, a shield, because it is the protection of the innocent against unjust prosecution. These important powers obviously create equally grave responsibilities to see that such powers are in nowise perverted or abused. With its extensive powers, a Grand Jury might unless motivated by the highest sense of justice, find indictments not warranted by the evidence and thus become a source of oppression to our citizens. On the other hand, a

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Grand Jury might dismiss charges against those who should be proceeded against. The importance of its powers is emphasized by the fact that it is an independent body answerable to no one except the court itself.

## II. ORIGIN OF GRAND JURY

Not only in theory, but in actual historical fact, the importance of the Grand Jury has been demonstrated. It had its origin more than seven centuries ago, in England, from which, in large part, this country inherited its legal system. It was recognized in Magna Carta granted by King John of England at the demand of the people in 1215 A.D., and some say its origin was even earlier. This power of the Grand Jury to protect the citizens from the despotic abuse of power has been repeatedly exerted not only in England, but in this country, even before the Declaration of Independence. For instance, in New York City, in 1735, a Colonial Governor demanded that a Grand Jury find a formal criminal charge against the editor of a newspaper called the Weekly Journal, who had held up to scorn certain of the deeds of the Royal Governor. The Grand Jury denied this demand, and refused to indict. Many similar instances could be cited.

However, such cases are exceptional. As a rule the Grand Jury is the source of indictments which authorize the prosecution of those accused of crime. Such is the importance of the Grand Jury in its control of the initiation of prosecutions for serious crime, as distinguished from petty offenses, that the authority of the Grand Jury is recognized in the Constitution of the United States and in the Constitutions of most of the states of the Union, including that of Alaska.

## III. NATURE OF THE GRAND JURY

### (a) The Accusing Body as to Serious Crimes

As above indicated, the Grand Jury is the principal body which has the right to determine whether a person shall be tried for a serious crime unless that person himself waives, or gives up, that right. This means that no one can be prosecuted for serious crime except by vote of the Grand Jury.

Thus the citizens themselves, by this representative body of Grand Jurors, hold in their own hand the control of the maintenance of law and order throughout the state, through prosecution for crime. The importance of this power cannot be overestimated.

The above does not apply to minor crimes and traffic violations, for which prosecution is generally initiated by the district attorney, without action by the Grand Jury, through proceedings called informations or complaints. Indeed, if this were not so, the Grand Jury would be so submerged with complaints on minor offenses that it could not perform its more important duties.

In performing its duties, the Grand Jury should bear in mind that it does not finally try the case. Generally it hears only the evidence presented by the district attorney; but when it has reason to believe that other evidence within reach will explain away the charge, the Grand Jury should order such evidence to be produced, and for that purpose may require the district attorney to issue process for witnesses. The Grand Jury then determines whether or not the evidence presented, without considering the defense, justifies an indictment, which is a formal charge of crime, according to the legal principals of which the presiding judge and district attorney will advise the Grand Jury. If the evidence is sufficient, it votes an indictment, "a true bill," to be formally drafted by the district attorney. If not, the Grand Jury will vote "not a true bill."

Charges of crime may be brought to your attention in several ways: (1) by the Court, (2) by the district attorney, (3) from your own personal knowledge, or from matters properly brought to your personal attention, (4) by private citizens heard by the Grand Jury in formal session, with the Grand Jury's consent.

The bulk of your work will probably be concerned with charges falling within classes (1) and (2) above. Here the defendant will probably have been held preliminarily on a charge by a committing Magistrate for action by the Grand Jury. The defendant will therefore either have given bail or be in custody, in default of bail awaiting your action.

Your action should therefore be reasonably prompt, and result in voting either for or against an Indictment. As to matters brought to your attention in classes (3) and (4) above, emanating directly or indirectly from the Grand Jury itself, it would be wisest to consult with the district attorney or the Court, in advance of undertaking a formal investigation by the Grand Jury, although this is not mandatory. In any event, you will generally have to consult with them in the end, if the Grand Jury decides that a person should be proceeded against criminally, in order to obtain aid in drafting the proper form of Indictment. In most instances this type of Grand Jury investigation will concern persons not then in custody. In the event you vote a true bill, indictment or presentment against such person, such indictment or presentment should be endorsed by you as "secret"—not to be given publicity until released by the Court.

In order that the Grand Jurors may not be subjected to partisan secret influences, no one has the right to approach an individual member of the Grand Jury in order to persuade him that a certain Indictment should, or should not, be found. Any such individual should be referred to the district attorney, in order that he may be heard by the Grand Jury as a whole. On the other hand, a citizen is at liberty to apply to the Grand Jury for permission to appear before it in order to suggest or urge that a certain situation should be investigated by it.

You will further bear in mind that as a Grand Juror you are a public official, with the duty of protecting the public by enforcing the law of the land. Thus even if, perchance, you should think a certain law unduly harsh, that should not influence your judgment in carrying out your duties as a Grand Juror. As a citizen you have the right to endeavor to change the law. As a public official and Grand Juror it is your duty to enforce the law as it exists.

(b) Grand Jury as an Investigatory Body

In addition to the duty of the Grand Jury to hear evidence and decide whether formal criminal charges should be proceeded with, the Grand Jury has the additional important duty of making investigations on its own initiative,

which it can thereafter report to the Court. Thus a Grand Jury may investigate how officials are conducting their public trust, and make investigations as to the proper conduct of public institutions, such as prisons and courts of justice. This gives it the power to inspect such institutions, and if desired, to call before them those in charge of their operations, and other persons who can testify in that regard. If as a result of such investigation the Grand Jury finds that an improper condition exists, it may recommend a remedy.

On the other hand, there are distinct limitations as to what a Grand Jury may do in the course of such investigations and in its Report. Specifically, "a Grand Jury cannot forage at will upon any whim it may entertain." It can only investigate such matters as are within its jurisdiction, geographic and otherwise. Nor, can a Grand Jury in such a Report specify individuals as being personally responsible for the conditions which it criticizes. This is because such a Report gives the individual criticized no opportunity to give his reply thereto, as he could were this criticism to be the subject of an Indictment for crime. Further, the Grand Jury should bear in mind that both in these investigations and as to indictments, the duty of secrecy is paramount.

IV. ORGANIZATION. OATH. OFFICERS.

When you report for duty as a Grand Juror, the presiding Judge will consider such excuses as may be presented. But because of the great importance of your duty as a member of the Grand Jury, and because it is a distinct honor to serve as a member of the Grand Jury, obviously you will not permit anything but a real emergency to stand in the way of your performing this outstanding civic duty. You will already have been properly selected as a qualified Grand Juror when you read this, but the Court will be glad to advise you with regard to exemption from service if you so desire.

When you report with the other members of your Grand Jury, you will be conducted to Court, where your Foreman—your presiding officer—and your Deputy Foreman or Assistant will be appointed by the Judge. The Court will have

them and you sworn in, under an oath which itself states your important powers and responsibilities.

After you have been sworn, the presiding Judge will advise you formally by written instructions, and in greater detail, as to how to conduct these duties and the responsibilities that are yours. This address is called "The Charge to the Grand Jury." This charge by the Court, plus such other instructions as may be given you by the Court, are your controlling guide. The district attorney will also give you his advice, as a skilled official, as to how your duties should be performed. But in the event of question, the Court will rule authoritatively on these matters. You will note that this Handbook does not purport to state the principals of law that govern you as a Grand Juror. Its purpose is simply to give you a clearer understanding of the general nature of your functions, with some practical suggestions as to carrying out such functions. You should go to your oath and to the Court itself for the sole authoritative statement of your powers, functions and duties as Grand Juror.

Upon receiving from the Court its "Charge to the Grand Jury" you will become a part of the Grand Jury. You will then be escorted to the Grand Jury Room, where you will prepare to hear the testimony, and see the documentary evidence, as presented by the district attorney, in the cases to be brought to your attention.

## V. PROCEDURE

### (a) Quorum

A Grand Jury consists of not less than 12 nor more than 18 members; of the total membership not less than twelve must always be present to constitute a quorum for the transaction of business. If less than this quorum exists, even for a moment, the proceedings of the Grand Jury must stop. Hence it is important that any Grand Juror who finds that an emergency interferes with his presence at a scheduled meeting of the Grand Jury, should advise the Grand Jury Foreman promptly, in order to see whether his absence will prevent the Grand Jury from acting at all at the meeting.

### (b) Hearing Witnesses

Most of the work of the Grand Jury is concerned with hearing witnesses and determining the sufficiency of the evidence, in order to determine whether, considering that testimony alone without regard to defense testimony, an indictment is justified. When so proceeding, the district attorney will present and explain the charge to the Grand Jury, and advise as to the witnesses to be presented, either voluntarily, or at the request of the district attorney or the Grand Jury, or under order of subpoena from the Grand Jury or the Court. Indeed the Grand Jury itself may insist on the calling of additional witnesses.

These witnesses will be called one by one and sworn to tell the truth by the Foreman in a dignified, deliberate manner, indicative of the solemnity of the occasion. The witness will ordinarily be questioned first by the district attorney, then by the Foreman, and then, if desired, by other members of the Grand Jury, each of whom is free to ask all proper questions of any witness. But as to what is a proper question the advice of the district attorney should be requested, and in the event of doubt, a ruling may be obtained from the Court.

All questioning should be impartial and objective, without indicating any viewpoint on the part of the questioner. A stenographer may be present to take down the proceedings, as may an interpreter, if needed.

Should a witness, when brought before the Grand Jury to testify, refuse to answer questions, this refusal must be carefully recorded. Then accompanied by the district attorney, the Grand Jury may bring the matter before the Court, with a copy of the record, in order to obtain the ruling of the Court as to whether the answer may be compelled or not. This probably involves the technical question of whether the question asked violates the witness' constitutional freedom from self-incrimination. If it does, the witness cannot be compelled to answer. If it does not, the Court will order the witness to answer, and if he fails to do so, will order the witness held, or tried, for contempt of court.

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You will note from the above that the defendant named in the criminal charge has not been heard as a witness, nor have any witnesses for him probably been called. This is because, as stated above, the Grand Jury does not try the merits of the case, but only the sufficiency of the evidence supporting the charge. However, the Grand Jury has the right to offer the defendant the opportunity to appear before it. This is not usually done and should not be done unless the Grand Jury really feels that it is desirable. If the defendant is given this opportunity, and appears, he cannot be forced to testify because of the constitutional provisions above alluded to. Indeed, if the Grand Jury attempts to force him to testify, the indictment of the defendant may be nullified. Further, even if the defendant is willing to testify voluntarily, in order that it may be clear that he is testifying voluntarily, he should first be warned of his right not to testify, and should then sign a formal waiver of his constitutional privilege against self-incrimination before he does so testify. This last is his agreement not to rely upon the above constitutional right, and to be prosecuted even though he testifies, and the Grand Jury should be fully satisfied that he understands what he is then doing.

From the above, it is clear that the matter of forcing a witness to testify, or of giving the defendant an opportunity to testify, raises complicated legal questions. The advice of the district attorney and the ruling of the Court thereon should be sought if any such question arises.

Further legal questions may arise as to whether certain evidence is proper. The law of Evidence is technical, and here you must be guided by the district attorney or by the Court.

Finally, bear in mind that neither a defendant nor an ordinary witness, when appearing before a Grand Jury, is entitled to have his counsel present in the Grand Jury Room.

(c) Determination to Indict or Dismiss

When the Grand Jury has heard all necessary or available witnesses, and all persons except the Grand Jury have left the room, the Foreman will ask the Grand Jury to discuss and vote on the question of whether a True Bill should be found on the charge. Every Grand Juror now has the right to

comment on the evidence and his view of the matter. Thereafter, and only after each member has been properly heard, the vote will be taken. No indictment can be found unless a majority of the members present concur.

Similar proceedings are taken when the matter to be discussed is not a formal charge or Indictment, but a Report, as noted above—the result of an investigation into public affairs with which the Grand Jury has concern, but which do not constitute a formal charge of crime.

When the hearing of the witnesses on a certain charge is closed, all persons present, other than the Grand Jury, should leave the room. Only the members of the Grand Jury can be present when the Grand Jury deliberates or votes on a charge. If this is not done, an Indictment may be nullified.

VI. DISTRICT ATTORNEY

The district attorney will be actively engaged before the Grand Jury in presenting one by one the formal charges, and in calling the witnesses to support them. Since he is a public official, usually of experience in this work, and of both intelligence and sincerity, he will naturally be the constant legal advisor to the Grand Jury.

However, the best of advisers sometimes are in error. Thus, if a difference of opinion arises between him and the Grand Jury, the matter should be brought before the presiding Judge for his ruling.

Finally, you will remember that neither the district attorney nor any of his assistants, nor anyone else, may be permitted to be present while the Grand Jury is actually deliberating or voting on an Indictment or Presentment. If this occurs, an Indictment may be nullified.

VII. SECRECY

Secrecy as to all Grand Jury proceedings, including not only action upon an Indictment or Presentment, but the fact that any such matter was considered or any witnesses called, is of the utmost importance. Thus only can the Grand Jurors

themselves be protected from being subjected to pressure by persons who may be involved in the action of the Grand Jury. Thus only can persons be prevented from escaping while an Indictment against them is under consideration. Thus only can witnesses before the Grand Jury be prevented from being tampered with, or intimidated, before they testify at the trial. Thus only can such witnesses be encouraged to give the Grand Jury information as to the commission of crime. Thus only can an innocent person who has been improperly subjected to a charge, but where the Indictment has been dismissed, be saved the disgrace attendant upon the making of such a charge. Note that to achieve the above protection for the Grand Jury for the individuals involved, including the witnesses, and for the citizens at large, this pledge of secrecy is paramount and permanent.

No more need be said as to the importance of a Grand Juror's not communicating to his family, to his friends, to anyone, that which takes place in the Grand Jury Room. The only time he may do so is when the Court under certain circumstances itself orders such disclosure, in order to do justice.

#### VIII. PROTECTION OF GRAND JURORS

The secrecy to which Grand Jurors are sworn is of itself one of the major sources of protection of the members of the Grand Jury.

The Grand Jury is further protected by being an independent body answerable to no one except the Court itself. No inquiry may be made to learn what a Grand Juror said or how he voted. The law gives a Grand Juror complete immunity for his official acts within the authority of the Grand Jury regardless, for instance, of the ultimate result on an indictment returned by the Grand Jury. The one apparent exception to this is, if he himself testifies before the Grand Jury to the commission of a crime, and his testimony is perjured. With this complete protection for their official acts, it is obviously vital that our Grand Jurors should be citizens of unquestioned integrity and high character.

#### IX. PRACTICAL SUGGESTIONS

Attend the sessions of the Grand Jury regularly; not only each of your fellow jurors, but the public, is depending on you to do your job well.

Pay close attention to the testimony given and the evidence presented; the reputation or freedom of someone depends on what is being told.

Be courteous to the witnesses and to your fellow jurors; do not try to monopolize the hearing or the deliberations.

In fixing the time and place of your meeting, consider the convenience of the public and the witnesses, as well as of yourselves and the district attorney.

The oath should be administered to witnesses in an impressive manner, so that they will realize that it is a serious, judicial hearing, and that they must tell the truth.

Wait until the district attorney has finished, ordinarily, before asking questions of a witness. It usually happens that the evidence you are seeking will be brought out.

Listen to the evidence and the opinions of your fellow jurors, but don't be a rubber stamp.

Be independent, but not obstinate.

Be absolutely fair—you are acting as a judge. Because of the secrecy of the hearing, no one else may inquire into what you have done.

All jurors have an equal voice in determining on an indictment. Each juror has the right to state his reasons for his views.

Express your opinion, but don't be dictatorial. Every juror has a right to his own opinion. You may try to persuade another juror, but do not try to force him to change his mind and agree with you. He might be right.

Do not keep silent when the case is under discussion, and begin to talk about it after a vote has been taken.

A reckless Grand Jury can do as much harm to the community and to law enforcement as a weak Grand Jury.

Do not investigate matters out of the province of the Grand Jury, or merely because someone suggested an investigation, without sufficient information, or merely because it would be an interesting matter to investigate.

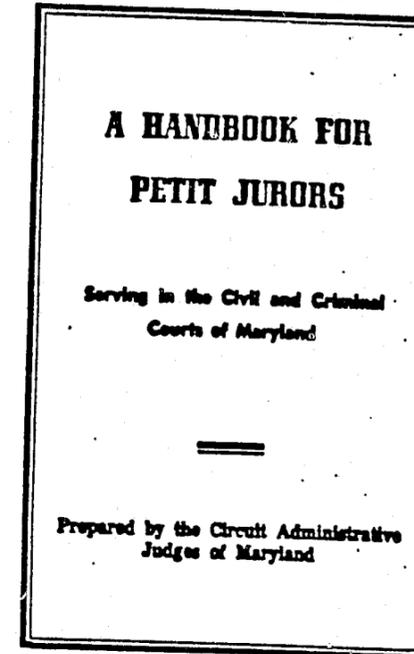
Do not discuss cases with your fellow jurors outside of the jury room.

It is of great importance that your attendance be regular and on time. If you are unable to attend the session, or desire to be excused, ask permission. The unexpected lack of a quorum causes a great loss of time and money to the individual jurors as well as to the authorities and witnesses.

When considering undertaking any special investigation, it is wise to consult the district attorney beforehand, so that he may arrange routine business accordingly and advise you as to other matters bearing on such an investigation.

Each juror has a duty and responsibility equal to yours. Each juror is entitled to be satisfied with the evidence before being called upon to vote. Although your mind may be made up, if others wish to pursue the matter further, you have no right to dismiss the witness or shut off proper discussion.

Your membership on the Grand Jury is a high honor. You are among a relatively small number of citizens of your community who are chosen to serve on the Grand Jury. This should therefore mean devoted, responsible participation in performing Grand Jury duty.



Foreword

Jury service is one of the highest duties of citizenship. By service on the jury a citizen participates directly in the administration of justice.

This handbook describes in general terms the functions of the juror in our courts.

Jurors in the trial courts of Maryland may be called on to serve in both civil and criminal cases.

By reading this handbook and following it, you will be better able to make your contribution to the administration of justice more valuable.

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I. INTRODUCTION

This handbook is intended to assist those who have never served as jurors in the courts, and to refresh the memories of those who have had past experience in jury work.

The members of the jury are a part of the court itself. Their work is just as important as that of the judge who presides at the trial. To achieve the proper result it is necessary that the jury and judge cooperate in a common effort to assure that justice is accomplished.

The chief requirements for the rendition of satisfactory jury work are intelligence, sound judgment, integrity, and impartiality upon the part of each juror.

The work of the juror requires the utmost responsibility, and in the discharge of that responsibility he must be diligent in effort and conscientious in thought. Otherwise grave injustices may result.

It is necessary that persons charged with crime be fairly and justly tried, that the public safety and welfare be protected on the one hand, and private rights and liberties be safeguarded on the other. It is the business of every citizen to make sure that this is done, and it is a duty which the people must do for themselves, if life, liberty, and property are to be kept secure.

In civil cases which involve the personal and property rights of litigants, it is the function of jurors to make sure that these rights, whatever they may be under the law, are upheld and vindicated.

A juror's reward lies in the knowledge that he has performed a high duty of citizenship and has aided in the administration of justice.

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### III. THE COURTS

In the Courthouse there are one or more civil law, equity, and criminal courts. You may be called for service in civil law or criminal cases.

Some of the comments in this handbook apply to both the civil law and criminal trials while others apply only to one or the other. Since there are important differences in the trials of cases in the two jurisdictions, perhaps a brief reference separately to a trial in each will be helpful.

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### II. HOW WERE YOU CHOSEN AS A POTENTIAL JUROR?

In Maryland, most registered voters 18 years old or older are eligible for jury service. In each county and Baltimore City, from time to time the names of an appropriate number of eligible people are randomly selected. This procedure, and all other procedures relating to jury selection are conducted without reference to the race, creed, sex, color, national origin or economic status of the prospective juror.

Those selected are sent questionnaires designed to insure that they meet all legal qualifications and are not disabled for serving by serious illness or other grave reasons.

Next, a number of persons who are both eligible and not entitled to be excused are actually summoned for jury service. You are one of those persons, and from this "pool" of potential jurors will be chosen at random those who will actually make up the trial juries in civil and criminal cases.

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### IV. THE TRIAL OF A CIVIL LAW CASE

#### A. Terms Frequently Used

At the outset you should be familiar with certain terms constantly used.

The person who brings an action against another is the *plaintiff*.

The person against whom the action is brought is the *defendant*.

The *plaintiff* and the *defendant* are the *parties*.

The plaintiff has stated his claim in a paper called the *declaration*.

The defendant sets out his reply in a paper called a *plea*.

These papers are the principal *pleadings* in the case.

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Sometimes a defendant has a *counter-claim* against the plaintiff.

In the trial of a civil law case, the jury's duty is to determine the facts of the case, and, after doing so, the jurors must apply to those facts the law of the case as the judge declares it to be in his charge or instructions. This is different from a criminal case, in which the instructions of the judge are advisory only.

#### B. Examination and Selection of the Trial Jury

Sometimes at the outset of the trial of a civil case jurors are questioned in open court to find out if they are disqualified from sitting in the particular case. The judge or clerk and the attorney then strike a certain number from the list and the remaining twelve go into the jury box as the jury. A juror who is excused during this process should not feel that there is any implication of unfitness or discourtesy to him.

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administers the obligation substantially in the following form:

"Members of the jury, you and each of you solemnly declare and affirm that you will well and truly try the issues joined between . . . . . plaintiff, and . . . . . defendant, and a true verdict give according to the evidence."

This is a solemn pledge by the jurors that they "will well and truly" try the case. It means that they will bear and consider carefully all the evidence and will weigh the issues intelligently and impartially. It means also that they will put out of their minds all sympathy and prejudice and will be concerned with only the law and evidence. Finally, it means they will render a true verdict that accords with the law and the evidence.

When the obligation has been taken, the jury no longer consists of twelve ordinary citizens, — they are now a part of the court itself.

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The judge will designate one of the twelve jurors as foreman.

If the case is expected to be a lengthy one, one or more alternate jurors may sit with the jury during the trial. An alternate may become a jury member if one of the regular jurors is taken sick or is otherwise unable to continue as a juror during the trial of the case.

#### C. The Juror's Obligation

When the jury has been selected, twelve persons have been chosen to assure that justice under the law is done in the case to be tried. They are seated in the jury box and addressed by the Clerk:

"Members of the jury, stand and raise your right hands."

The jurors then rise; each holds up his right hand. They face the judge as the clerk

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#### D. Stages of Trial

After the jury has been sworn, the trial begins. Here are the various stages of the trial:

1. The opening statements of the lawyers in which counsel for the plaintiff and for the defendant give the jury a preview of what each side expects to prove. Counsel for the defendant may defer his opening statement until after the plaintiff's witnesses have testified. *These statements are not evidence.*

2. The plaintiff calls witnesses to prove his case.

3. If considered necessary or desirable, the defendant calls witnesses to disprove the plaintiff's contentions, or to prove his own case, or both. (Each party has a right to question opposing witnesses and to present evidence to rebut new matter offered by the opposing party.)

4. The judge charges the jury as to the

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law, and may refer to the evidence.

5. The case is argued by counsel. *These arguments are not evidence.*

6. The jury retires to consider its verdict.

7. The jury deliberates in the privacy of the jury room, and reaches its decision.

8. The jury returns to the courtroom and renders its verdict.

#### E. The Charge to the Jury Functions of Judge and Jury

The law is what the judge declares the law to be in his rulings or instructions. After the verdict is rendered these rulings and instructions are reviewable by a higher court, if desired by the disappointed party, for the purpose of correcting any mistakes. The evidence is what has been presented to the jury by oral testimony, documents or other-

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### V. THE TRIAL OF A CRIMINAL CASE

#### A. Terms Frequently Used

At the outset you should be familiar with certain terms constantly used.

*Indictment, information, or warrant* — The charge or complaint in a criminal case may be in the form of an indictment, information, warrant or other charging document. No such document can be considered as evidence of the guilt of a defendant. Each constitutes merely a method of bringing a defendant to trial and informing him of the charges against him. An accusation may be set forth in separate numbered paragraphs known as counts.

The State prosecutes a criminal case on behalf of the people.

The accused is referred to as the *defendant* or the *traverser*. The terms mean the same. They refer to the person on trial.

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wise under the guidance of the judge. From this evidence the jury reaches its conclusions as to what are the facts in the case.

The judge and the jury are the two disinterested agencies in the administration of justice in the courts. The parties and counsel, naturally, are interested. But the jury and the judge have no interest except that justice and right shall prevail.

The judge will state the law in the case. The jury must accept his statement of the law and decide the case based on the law as he has been given it. The jury cannot substitute its views on the law for those of the judge.

The jury makes the sole decision on the evidence in the case. It is the jury's duty to reach its own conclusions on the evidence without regard to what it thinks may be the view of the judge with respect to the facts. If the judge comments or refers to the evidence in the case in his charge, he will be careful to advise the jury that the jury alone decides the facts, but the jury must accept the judge's instructions as to the law.

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#### B. Examination and Selection of the Trial Jury

Sometimes at the outset of the trial of a case jurors are questioned in open court to find out if they are disqualified from sitting in the particular case. Sometimes they merely step forward to be identified, before they are accepted or challenged. The State and the defendant each have a certain number of peremptory challenges (without stating a reason) in a particular case, and challenges are exercised according to the judgment of counsel. For peremptory challenges no reason need be given, and a juror should not feel that when he is so challenged there is any implication of unfitness or discourtesy to him.

The judge will designate the foreman of the jury in each case.

If the case is expected to be a lengthy one, one or more alternate jurors may sit with the jury during the trial. An alternate may become a jury member if one of the regular jurors is taken sick or is otherwise unable to

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continue as a juror during the trial of the case.

#### C. The Juror's Obligation

When the jury has been selected, twelve persons have been chosen to assure that justice under the law is done in the case to be tried. They are seated in the jury box. The clerk then speaks:

"Members of the jury, stand and raise your right hands."

The jurors then rise; each holds up his right hand. They face the judge as the clerk administers the obligation, substantially in the following form:

"Members of the jury, you and each of you, do solemnly declare and affirm that you will well and truly try the issues joined between the State of Maryland, and . . . ., defendant, and a true verdict give according to the evidence."

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1. The opening statement of the State's Attorney or his assistant gives the jury a preview of what the State expects to prove. Counsel for the defendant has the right to make a statement in behalf of his client at this stage of the case, but is not required to do so. *These statements are not evidence.*

2. The State calls witnesses to prove its case.

3. The defendant may call witnesses in his behalf; he also may testify, but he is not obliged to do either, because the burden of proof is on the State to prove the defendant guilty beyond a reasonable doubt. As the presumption of innocence attends the defendant throughout the trial, no prejudicial inference is to be made against him if he elects not to testify. (Each party has a right to question opposing witnesses and to present evidence to rebut new matter offered by the opposing party.)

4. The case is argued by counsel. *These arguments are not evidence.*

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This is a solemn pledge by the jurors that they "will well and truly" try the case. It means that they will hear and consider carefully all the evidence and will weigh the case intelligently and impartially. It means also that they will put out of their minds all sympathy and prejudice and will consider only the law and evidence. Jurors must not allow bias or prejudice to influence them in the slightest degree. Finally, it means they will render a true verdict according to the law and the evidence, that is, a just and righteous judgment.

When the oath has been taken, the jury no longer consists of twelve ordinary citizens, — they are now an important part of the court itself.

#### D. Stages of Trial

After the jury has been sworn the trial begins. Here are the various stages of the trial:

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5. The judge may give the jury his advisory instructions either before or after the argument of counsel.

6. The jury retires to consider its verdict.

7. The jury deliberates in the privacy of the jury room, and reaches its decision.

8. The jury returns to the courtroom and renders its verdict.

#### E. The Charge to the Jury Functions of Judge and Jury

The judge and the jury are the two disinterested agencies in the administration of justice in the courts. The parties and counsel, naturally, are interested. But the jury and the judge have no interest except that justice and right shall prevail.

The judge will state his view of the law applicable to the case in the form of advisory

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instructions, but the jury is not bound by the advisory instructions, because under our law the jury is judge of the law and the facts on the question of guilt or innocence. The jurors are bound by their obligation to apply what they determine the law to be, rather than their views as to what it ought to be.

The jurors' function is to decide whether the defendant is guilty or not guilty. They should have no concern with the sentence which may be imposed if the defendant is found guilty, and should not permit consideration of punishment to influence their verdict. Our laws generally give a wide range in the sentences which may be imposed, and if the jury finds a defendant guilty, it is the duty and responsibility of the judge to decide what the sentence in the case shall be, within the limits prescribed by law. The judge has the same knowledge of the facts as the jury. He also has the right, if he considers that it may be desirable or helpful, to obtain additional information about the defendant by requiring (a) a written presentence report and recommendation and (b) an examination of the

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## VI. GENERAL COMMENTS

The following comments relate to both civil and criminal trials, unless otherwise stated.

### A. Questions of Law

At every stage of a trial, questions of law may be presented to the judge in the presence and hearing of the jury. Usually they have to do with objections to testimony that one side or the other wishes to present. The law requires the judge to settle these questions. This does not mean that the judge is taking sides; a legal question has been raised and he has to decide if the evidence is permissible under the law. It is the right of the lawyers to object to testimony which may be legally inadmissible. The decision by the court on the objections does not indicate in any way the views of the judge as to the merits of the case or how it should be decided. The evidence is

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defendant and report by the medical adviser of the court.

It is the jury's duty to reach its own conclusions on the evidence without regard to what it thinks may be the view of the judge with respect to the facts. If the judge comments or refers in his charge to the evidence in the case, he will be careful to advise the jury that the jury alone decides the facts.

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what the judge determines to be proper under the law for the jury to consider in the case, and from this evidence the jury reaches its conclusions as to what are the facts in the case.

Exceptions, if any, to the charge of the court to the jury and the reasons for certain other objections are usually presented or discussed by counsel with the judge at the bench or in chambers. The purpose of such procedure is to prevent the jury hearing matters which may be inadmissible.

### B. The Arguments of Counsel

The arguments of counsel for the parties, after all the evidence has been introduced, mark an important point of any trial. The discussion of the evidence by the lawyers may help the jury to recall many things in the testimony that might have otherwise slipped from memory. Their chief service to the jury is in arranging the evidence into a composite

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picture, fitting part to part, so that the evidence is no longer a mere jumble of disconnected facts, but a connected narrative. The attorney naturally has a one-sided view because he is an advocate. His side appears to him to be right, but his presentation is counterbalanced by that of his adversary. This clash of opposing views helps the jury to arrive at the truth from what is often a mass of conflicting evidence. It should be borne in mind, however, that the arguments of counsel are not evidence in the case.

### C. Courtroom Procedure

Proceedings in court are formal. Entrance of the judge into the courtroom signifies the beginning of proceedings for the day or resumption of proceedings after a recess; and upon the entrance of the judge the jurors and all others in the courtroom should rise. Courtesy and politeness in the courtroom, as elsewhere, are always the safest and

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The rules of evidence are based on experience of courts over many years. Some of these rules may not be understood by you, but it should be remembered they have been developed in trials over the centuries. A juror should not be prejudiced for or against one side or the other on account of objections made to the introduction of evidence, or rulings thereon by the court.

Sometimes a juror may himself wish to ask a question of a witness after examination by counsel for both parties has been completed. Such questions are usually not necessary and are proper only for the purpose of getting information, and not for the purpose of discrediting or arguing with the witness. However, if a juror has a question which he feels should be asked, he should write his question and present it to the judge upon the conclusion of the examination of the witness. The court will then ask the question if the information sought is material to the issue and admissible under the rules of evidence.

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best guide for all jurors. Jurors are expected to be neatly and appropriately attired.

The court will consider the comfort and convenience of jurors. When a juror wishes to bring to the attention of the judge some matter affecting his service, such as a personal emergency, he is at liberty to send word to the judge through the court bailiff, or he may ask to see the judge privately.

### D. Conduct of the Jury During Trial

Jurors should guard against making up their minds concerning a case or even discussing it among themselves or with anyone else before the testimony has been completed and the case has been finally submitted to them by the judge. In human experience it is often true that when once a person expresses his views, he hesitates to change them.

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The opening and closing statements of the lawyers are not evidence in the case. A juror should disregard any statement of fact made by a lawyer in his opening statement or in the closing argument which the juror does not think has been proven by the evidence.

Sometimes testimony is admitted which the court later rules should be *stricken* from the record. When the judge says that certain evidence is stricken, or ruled out, he means that the jury must not consider it in arriving at its verdict.

In deciding a case jurors are expected to bring to bear the experience, common sense, and common knowledge they possess, but they are not to rely upon any private sources of information. If a member of the jury should happen to know something about the case and should disclose his knowledge in the jury room, the party adversely affected would have no opportunity to answer it. The knowledge of the juror might be only half true or, perhaps, could be explained, and ought to have no influence on the outcome of the case, even if true. If a juror happens to know some

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facts about the case, he should at the earliest possible time inform the judge and should not in the privacy of the jury room mention any fact that has not been disclosed in the trial of the case.

While a trial is in progress, a juror should never inspect the scene of an accident or other event involved in the case. Under appropriate circumstances, however, the judge may arrange for the whole jury to be taken to view the place or object involved in the proceeding. Jurors must not discuss the case with others or read about it in the newspaper or listen to broadcasts about it until after the trial is ended and the verdict returned. Their decision must be controlled by the evidence in the case and by nothing else.

If any person tries to talk with a juror about a case on which he is sitting and while it is pending, the juror should refuse to listen. He should tell that person it is improper for him to discuss the case or receive any information except in the courtroom. If the person persists, the juror should attempt to

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just result possible. The issues, details of the evidence, inferences to be found from the evidence, and all other matters should be subjected to as much discussion as the jurors wish before there is any vote.

Jurors should freely exchange their views and should not hesitate to change their original views or opinions if they are convinced that these are wrong. Jurors should understand that, in civil cases, they are not responsible for the law since it is stated to them by the judge. It is their duty to make their decision on the basis of the law as explained by the judge in his charge or instructions, whether they agree with his view of the law or not. In criminal cases the instructions of the judge as to the law are advisory only, and the jury is judge of the law as well as the facts but jurors are bound by their obligation to apply what they determine the law to be, rather than their own views as to what it ought to be.

If the jurors feel they are in need of further instructions, the foreman may send

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learn his identity and the incident should be reported to the judge at once.

Jurors should be careful while the case is on trial not to communicate on any subject with any lawyer or witness in the case. Such a contact, even though entirely innocent, is subject to misunderstanding and misrepresentation and may result in a mistrial.

#### E. Conduct in the Jury Room

After the lawyers have finished their concluding arguments, and the charge of the court has been delivered, the jury retires to the jury room to consider the verdict.

How shall the jury proceed? The jury proceeds as the members desire. The foreman acts as presiding officer. In the jury room all jurors should have a free opportunity to express their views and in such a way as will tend to produce the most intelligent and

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word to the judge, and it is then for the judge to decide if the request should be granted.

The verdict must represent the considered judgment of each juror. In order to return a verdict, it is necessary that each juror agree to it. The verdict must be unanimous. If the jury cannot agree, a mistrial must be declared and then the same case must be tried again before another jury.

It is the duty of jurors to consult with one another and to deliberate with the view to reaching an agreement, if they can do so without violence to individual judgment. Each juror must decide the case for himself, but only after an impartial consideration of the evidence with his fellow jurors. In the course of the deliberations, a juror should not hesitate to re-examine his own views and change his opinion if convinced it is erroneous. But by the same token a juror should not surrender his honest conviction as to the weight or effect of the evidence solely because of the opinion of his fellow jurors, or for the mere purpose of returning a verdict.

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The jurors are not partisans. They are judges of the facts or, in a criminal case, of both the law and the facts. Their sole interest is to ascertain the truth from the evidence in the case.

Jurors may draw logical inferences from any facts established by evidence which they believe to be true. In other words, members of a jury, in reaching their verdict, should use the kind of common sense which they employ in the ordinary affairs of life. They should carefully weigh the evidence, consider the personal interest of any witness, and the weight to be given any particular evidence. Jurors should bear in mind that they are pledged to pass judgment in a particular case, and they should understand that they have no concern beyond that case.

After the trial is over, a juror is not required to discuss the verdict or the jury deliberations with anyone except the judge who presided in the case.

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#### VII. CONCLUSION

These are some of the matters the jurors should know. In order to decide cases correctly jurors must be honest and intelligent. They must have both integrity and judgment. They must decide the facts and apply the law impartially, without prejudice and without favor to rich and to poor alike, to men and to women, and to all persons without regard to race, color, or creed.

The performance of jury service is the fulfillment of a civic obligation. The democratic system depends in a large measure on the integrity, intelligence, and general quality of citizenship of the jurors who serve in our courts.

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# Alabama Courts Come to Order

APPENDIX C. 8.a.



The  
Unified Judicial  
System



State of Alabama  
ADMINISTRATIVE OFFICE OF COURTS  
817 South Court Street  
Montgomery, Alabama 36130

BULK RATE  
U.S. POSTAGE  
PAID  
MONTGOMERY, AL  
PERMIT 109

***“ . . . The judicial power of the state shall be vested exclusively in a unified judicial system which shall consist of a supreme court, a court of criminal appeals, a court of civil appeals, a trial court of general jurisdiction known as the circuit court, a trial court of limited jurisdiction known as the district court, a probate court, and such municipal courts as may be provided by law.”***

**Excerpt from Amendment No. 328,  
Section 6.01, Article VI,  
Constitution of Alabama of 1901.**



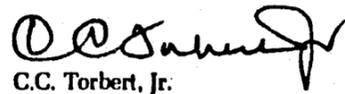
**A MESSAGE FROM CHIEF JUSTICE  
C.C. "BO" TORBERT, JR.**

In past years, there was no structure to provide for adequate management or administration of the judicial system of our state.

Today, we have that structure, and we are saving tax dollars with a businesslike approach to the management of the system. The 1,400 judges, officials, and employees of the judicial branch of state government, located in 353 different offices across the state, are working in concert to properly administer the trial court operations of Alabama.

We have today a system in which accountability rules—accountability which demands justification for all expenditures; accountability which requires justification before new judges or personnel are added to the payroll; accountability in managing and moving cases through the courts; accountability in utilizing jurors and witnesses; and perhaps most importantly, accountability in the service and conduct of your judges.

The cause of justice is served by wise decisions carefully made. This is our ultimate task, and I pledge to you our continuing effort to ensure swift and sure justice for all and to do so in the most economical way possible.

  
C.C. Torbert, Jr.  
Chief Justice

**ALABAMA COURTS, 1875-1977**

Alabama's trial court system operated virtually unchanged since the early 1900's. Before 1977, there were 85 courts under 23 different names operating in Alabama's 67 counties.

The only method available to citizens for collecting small claims (under \$500) was through a justice of the peace. Many people felt they could not take action to recover their claims when attorney's fees and court costs exceeded the amount of their claims.

There were no means by which to discipline or remove corrupt or incompetent judges—no way for a citizen to complain about judicial impropriety. A heavy backlog of cases clogged the courts.

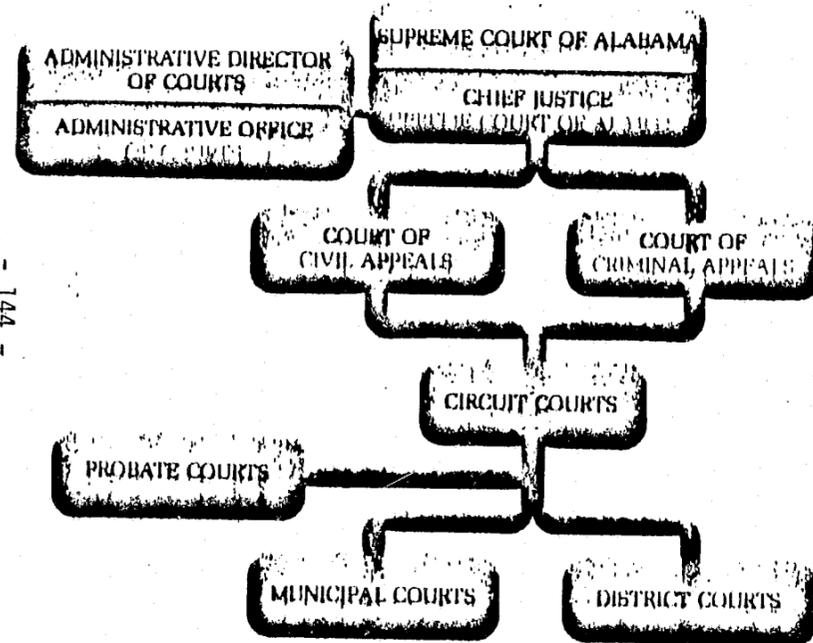
**CITIZENS DEMAND CHANGES**

As the courts got further and further behind with their work, and as crime continued to increase, taxpayers demanded that something be done.

The Alabama legislature passed a new Judicial Article in 1973, and the people approved it in a statewide vote, making it a part of their Constitution.

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# THE ALABAMA JUDICIAL SYSTEM



## THE CHIEF JUSTICE, THE SUPREME COURT, AND THE ADMINISTRATIVE OFFICE OF COURTS

In addition to hearing appeals, our highest state court, the Supreme Court, is charged with the responsibility of adopting rules of procedure to be used by the courts of our state. The Administrative Office of Courts provides coordination and service for trial court administration.

Under this authority, rules of practice and procedure and judicial administration have been adopted to eliminate many of the technicalities which caused delay in the trial courts and needless reversals in the appellate courts.

In less than five years, the procedures for all courts in Alabama have been revised.

The Supreme Court is composed of a chief justice and eight associate justices. The chief justice is the administrative head of the state judicial system.

## THE APPEALS COURTS

The intermediate courts of appeal in Alabama are the Court of Criminal Appeals and the Court of Civil Appeals.

The Court of Criminal Appeals hears appeals of all misdemeanor cases, including violations of town and city ordinances, and all felony cases prior to review by the Supreme Court.

The Court of Civil Appeals hears appeals of all civil cases where the amount involved does not exceed \$10,000; appeals from administrative agencies other than the Public Service Commission; and appeals in workmen's compensation and domestic relations cases prior to review by the Supreme Court.



### THE CIRCUIT COURTS

Alabama's trial courts of general jurisdiction are the circuit courts which exercise both criminal and civil jurisdiction. The circuit courts have exclusive original jurisdiction of all civil matters where the amount exceeds \$5,000 and of all criminal felony prosecutions. The circuit courts have original jurisdiction concurrent with the district courts on civil matters exceeding \$500; guilty pleas in felony cases not punishable by death; and juvenile cases. The circuit courts also exercise appellate jurisdiction of civil, criminal and juvenile cases from the district courts and prosecutions for ordinance violations from municipal courts, unless a direct appeal is provided to the court of civil or criminal appeals by rule or law. The state is divided into 39 circuits.

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### THE DISTRICT COURTS

The district court, a trial court of limited jurisdiction, has replaced a hodgepodge of local county courts. It has original jurisdiction concurrent with the circuit court of all civil matters in which the amount does not exceed \$5,000; felony guilty pleas in offenses not punishable by death; and juvenile cases. It also has exclusive jurisdiction of misdemeanor prosecutions, unless these are prosecuted within a municipal court; preliminary hearings in felony cases; and civil matters (small claims) in which the amount in controversy does not exceed \$500. There is a district court in each county.

Citizens can file actions of \$500 or less in the small claims court without being represented by an attorney. A free booklet explaining how to file a small claim is available at all district courts.

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### JUVENILE PROCEEDINGS

In 1975 the juvenile laws of the state were revised so that today the circuit court and the district court exercise original concurrent jurisdiction as the juvenile court. The juvenile court is defined as either the juvenile division of the district or circuit court. In those districts having only one district judge the judge of the district court serves as the juvenile judge. In districts having more than one judge the presiding circuit judge designates either a district judge or a circuit judge to serve as the judge hearing juvenile cases. Juvenile jurisdiction is exercised by a circuit judge in eleven counties at this time. In the remaining 58 counties and the Bessemer Division of Jefferson County, a district judge sits as the juvenile judge.

### THE MUNICIPAL COURTS

Under the Unified Judicial System, municipalities may choose to maintain their courts or to abolish them and utilize the new district courts for prosecution of municipal ordinance violations.

Municipal judges, as all other state judges, are required to be licensed attorneys.

### THE PROBATE COURTS

Probate courts have general jurisdiction over all matters having to do with the probate of wills; the administration of estates of persons who died without wills; the business of orphans; and the ascertainment of property rights of widows.

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### THE JUDICIAL SYSTEM STUDY COMMISSION

Under Alabama law, this commission has the responsibility of continuously studying and making recommendations concerning the judicial system of the state and the administration of justice, including criminal punishment and rehabilitation.

The commission is chaired by the Chief Justice of the Supreme Court, and is composed of six members of the House of Representatives Judiciary Committee, six members of the Senate Judiciary Committee, the Speaker of the House, the Lieutenant Governor, members of the Judicial Conference, the legal advisor to the Governor, and a member of the staff of the Attorney General.

### THE JUDICIAL COORDINATING COMMITTEE

The Supreme Court of Alabama has established a Judicial Coordinating Committee under the provisions of the Law Enforcement Administration Reauthorization Act of 1976.

This Committee, composed of representatives of the judiciary and the criminal justice community, is chaired by the Chief Justice of the State Supreme Court. The committee establishes priorities for the improvement of the courts of the state; defines, develops, approves, and coordinates programs and projects for the improvement of our courts; and develops an annual State Judicial Plan for the improvement of the courts.

### THE JUDICIAL INQUIRY COMMISSION

The Judicial Inquiry Commission is a seven-member commission established to investigate complaints of wrongdoing made against a state judge. The commission may bring charges against judges for violation of any canon of judicial ethics, misconduct in office, failure to perform their duties or for being physically or mentally unable to perform their duties.

### THE COURT OF THE JUDICIARY

This five-member court hears charges brought by the Judicial Inquiry Commission and may censure, suspend, retire or remove a judge from office. Appeals from this court go to the State Supreme Court.

### THE ALABAMA JUDICIAL COLLEGE

Prior to the establishment of the Alabama Judicial College, efforts to provide professional education and training for judges and other court personnel were fragmented at best, and, in most cases, nonexistent. New judges and court employees had to "learn by doing", which sometimes proved to be a long and costly process.

To meet these needs, the Alabama Judicial College was established as an affiliate of the Administrative Office of Courts. The judicial college is located on the campus of the University of Alabama, with offices, classrooms, and conference facilities located in Farrah Hall. In addition to physical facilities, the University provided a grant to the judicial college to help operate its programs.

The Alabama Judicial College provides a wide range of continuing educational programs for judges, clerks, registers, court reporters, and other court officials and employees within the Unified Judicial System, and classes and workshops for other members of the criminal justice community.

### THE ALABAMA STATE BAR

The 6,000 members of the Alabama State Bar who try cases in the courts of the state are an integral part of the Alabama Judicial System. Through past efforts and continued support, the lawyers of the state have contributed greatly to improvements in the administration of justice in Alabama. The State Bar is also active in judicial system educational programs through its support of the Alabama Judicial College. Additionally, the state's lawyers serve on numerous advisory commissions and committees appointed by the Alabama Supreme Court.



### THE ADMINISTRATIVE OFFICE OF COURTS

The Chief Justice of the Supreme Court is the chief administrative officer of the state judicial system and is charged with the responsibility of insuring that our courts operate efficiently and effectively.

The Administrative Office of Courts (AOC) assists the Chief Justice in carrying out these duties. AOC provides the management service for the efficient operation of the Unified Judicial System, and works with local court officials to improve procedures for juror and case management. This ensures that all persons accused are guaranteed a speedy trial. Victims of crime no longer have to sit by while offenders go free because of long delays, during which key evidence may be lost or vital witnesses may die.

With the assistance of the Administrative Office of Courts, trial courts have initiated sound jury practices that have brought about substantial savings in cost and, at the same time, have improved juror satisfaction.

To help save time for jurors and witnesses, telephone call-in systems for jurors and/or witnesses have been installed in several courts. Where these systems are in operation, jurors or witnesses may call the court after 5 P.M. to learn if they will be required in court the following day. If not, they may report to their regular jobs instead of wasting countless hours in courthouse halls or jury rooms.

The AOC is working daily to develop and implement new methods and techniques to provide cost-effective management of jurors and to make juror service for Alabama citizens convenient and rewarding.

### More AOC Accomplishments

- The number of court forms has been reduced from more than 10,000 to approximately 300.
- Uniform records management and filing procedures have been established for all courts.
- Court records have been inventoried, and a records retention and destruction schedule has been established. This will free thousands of feet of courthouse space of useless records.
- A uniform court personnel system is in operation.
- Centralized budgeting has increased cost effectiveness.
- An expense accounting system increases financial accountability within the courts.
- The uniform information system provides detailed information on the operation of the courts, including a criminal case history system which tracks criminal cases from filing to disposition—a valuable tool for law enforcement officers.
- The Uniform Traffic Citation Control Program provides more security and control for uniform traffic citations, accounting for each ticket as it enters the court system. This program is adding hundred of thousands of dollars to state revenue collections.

 **VITAL MEMBERS OF THE ALABAMA JUDICIAL SYSTEM**



Judges	Court Clerks	
Jury Commissioners	Other court personnel	
Registers	Warrant Clerks	
Court Reporters	Lawyers	Law Clerks
Referees		Magistrates
Court Administrators		Secretaries
Clerks		Bailiffs

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**IMPORTANT GROUPS VITAL TO THE ALABAMA JUDICIAL SYSTEM**



Chiefs of Police	Department of Conservation and Natural Resources
Juvenile Probation Officers	Board of Pardons and Parole
District Attorneys	Probation Officers
Department of Public Safety	Department of Youth Services
Sheriffs	County and City Government
Attorney General's Office	The Executive and Legislative Branches of state government
State Toxicologist	Examiners of Public Accounts
Alabama Law Enforcement Planning Agency	Alabama State Bar
Alabama Criminal Justice Information System	Department of Corrections

### ACCOMPLISHMENTS OF THE UNIFIED JUDICIAL SYSTEM

- Alabama's court system was rated as one of the ten best in the United States by the National Center for State Courts survey.
- A recent audit report by the Law Enforcement Assistance Administration rated Alabama and Kentucky as having the best court systems in the United States.
- In spite of rising case loads, the Supreme Court, the Court of Criminal Appeals and the Court of Civil Appeals have maintained current dockets since 1973.
- Backlogs in circuit and district courts have been reduced. The number of case dispositions is exceeding the number of case filings in both jurisdictions—and the number of case filings has increased in both.

### THE COURT SYSTEM BUDGET AND REVENUES

Only 2% of the State of Alabama's total expenditure in 1978-79 was made by the judicial branch of state government, and court-generated revenue contributes greatly to many important state services. In fiscal 1978-79, money from the courts went to the following:

- \$12.7 million to the state general fund.
- \$2.5 million to county government funds.
- \$1 million to District Attorney funds.
- \$2.6 million to other state and county funds.

Expenditures  
for Courts: 2%

All Other  
State Expenditures: 98%



**A MESSAGE FROM ALLEN L. TAPLEY**

You have a right to be proud of Alabama's court system. Its rise from a situation of confusion to a model system is due to the dedication and cooperation of many people—the Chief Justice and Associate Justices of the Supreme Court, judges of the appellate courts, trial judges, clerks and registers and court employees, city and county government officials, educational institutions, the executive and legislative departments of government, the state's lawyers, and most of all, the citizens of our state.

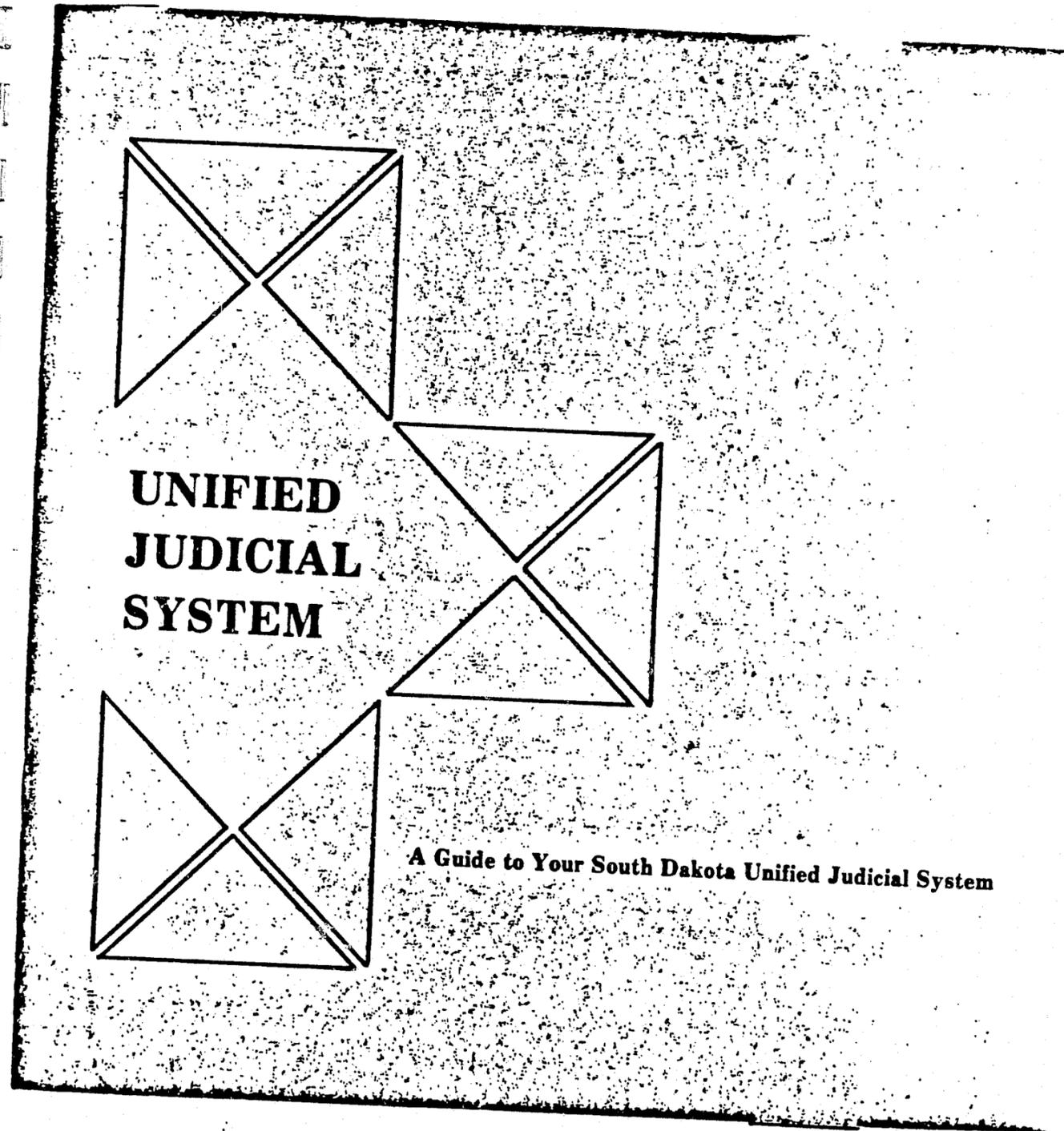
The Administrative Office of Courts is an organization dedicated to serving the cause of justice for every citizen. We will work to make a good system even better; to solve problems; and to plan and implement improvements.

With your cooperation and help, we will keep Alabama's court system among the best in the nation.

A handwritten signature in cursive script that reads "Allen L. Tapley".

Allen L. Tapley  
Administrative Director of Courts

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**UNIFIED  
JUDICIAL  
SYSTEM**

**A Guide to Your South Dakota Unified Judicial System**

'The judicial power of the state is vested in a unified judicial system consisting of a Supreme Court, circuit courts of general jurisdiction and courts of limited jurisdiction as established by the Legislature.'

Article V,  
section 1.  
State Constitution



Left to Right: Hon. Frank E. Henderson, Associate Justice, Hill City; Hon. Francis G. Dunn, Associate Justice, Sioux Falls; Hon. Roger L. Wollman, Chief Justice, Aberdeen; Hon. Robert E. Morgan, Associate Justice, Chamberlain; Hon. Jon Fosheim, Associate Justice, Huron.

May, 1979

TO THE CITIZENS OF SOUTH DAKOTA:

In response to the many inquiries you have made regarding the organization and functions of your unified judicial system, the Supreme Court has directed this booklet to be prepared.

We trust that the explanation contained in this booklet will lead to a better understanding of your judicial branch of government. Further, its purpose is to provide a basic understanding of the judicial process of justice in South Dakota.

Additionally, we would like to take this opportunity to thank the members of the task force who assisted the judiciary in preparing this booklet.

For the Court,

ROGER L. WOLLMAN  
CHIEF JUSTICE

# The Unified Judicial System

In January, 1975, South Dakota's courts were reorganized into a unified judicial system when an amendment to the State Constitution took effect. There are now two basic levels, a Supreme Court and the circuit courts. A subsystem of magistrates' courts functions under the authority and supervision of the circuit courts.

The unification brought together at the state circuit court level a number of functions formerly delegated to other governmental bodies:

- Juvenile, probate and mental health matters formerly handled by the district county judges;
- Less serious criminal matters formerly handled by the district county judges and justices of the peace; and
- Municipal ordinance violations formerly handled by the municipal courts, justices of the peace and police magistrates.

The circuit courts have been provided staffs of professional court service officers to perform adult and juvenile probation services. Adult services formerly were provided by agents of the State Board of Pardons and Paroles, and juvenile services, by county employees under supervision of district county judges.

The clerk of court was changed from an elected to appointed office.

The Supreme Court was given the responsibility for administering the statewide system, and all court personnel are now paid by the state.

## The Supreme Court

The South Dakota Supreme Court, the highest court in the state, consists of the Chief Justice and four associate justices. One justice is elected from each of five districts for a term of eight years. The five justices select one of their number to serve a four-year term as Chief Justice.

There are some cases which start in the Supreme Court, but mostly the Court hears appeals from circuit court decisions. The Chief Justice administers the unified judicial system, including the circuit courts, the magistrates' courts, and the admission of attorneys to the practice of law.

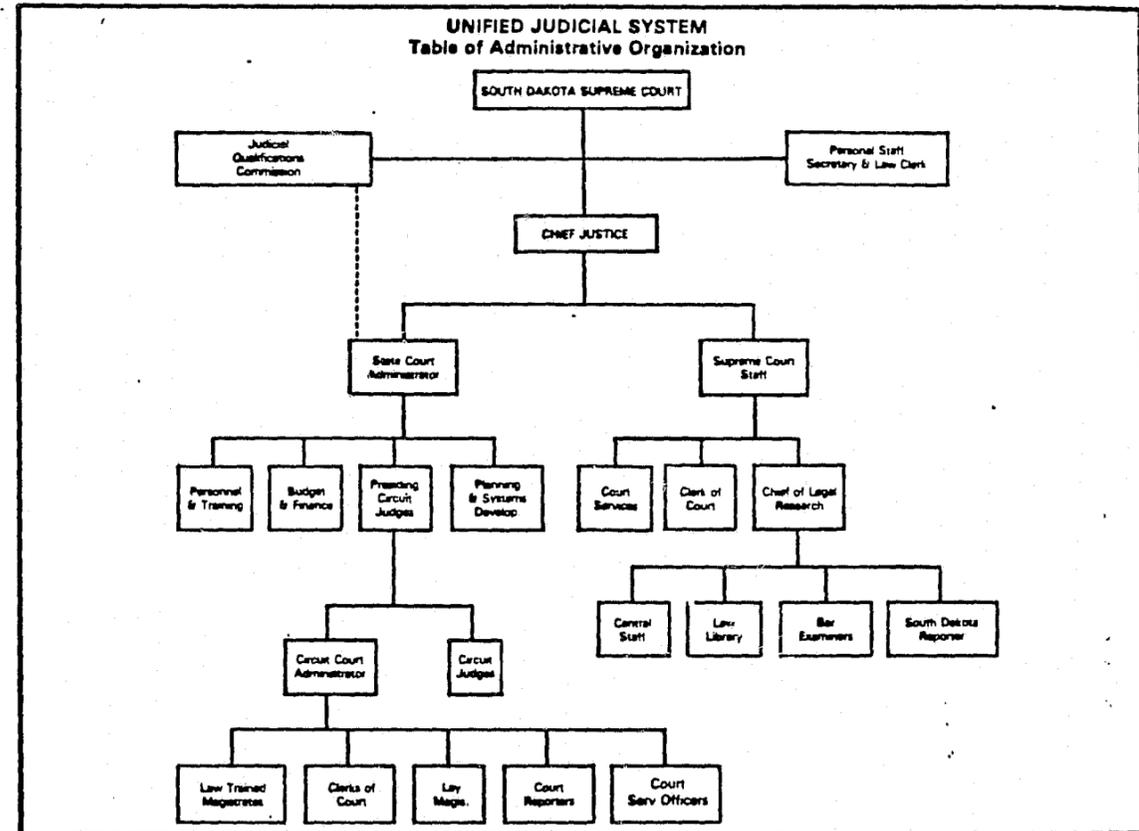
The secretary of the Board of Bar Examiners of the State of South Dakota is appointed by the Supreme Court.

Law Clerks assist in researching the law that must be applied to a particular case pending before the Court.

The Clerk of the Supreme Court is appointed by the Court and is responsible for the filing, indexing and preservation of all Court records.

The State Court Administrator's Office is the non-judicial office which assists the Court in administering the unified system;

- A budget and fiscal office supervises the budget for all state courts, and purchases and maintains control of court property;
- A personnel and training office administers the system's position and salary classifications and recruitment activities, and is responsible for training of court personnel;
- A court services office provides guidance and support to staffs at the circuit level to insure a uniform statewide probation program; and
- A research and development office operates the judiciary's computerized management information system. It provides caseload and offender analyses and related information necessary to support the other administrative functions of the Court.



## Other Courts Located in South Dakota

Although not part of the state unified judicial system, there are two other judicial systems in the state which should be mentioned, since often the public is confused as to their functions. One of

these is the federal district court and the other is the tribal court.

There are three federal district judges in the state, who hear cases which involve federal questions or where there are law-suits involving persons from other states, Indians, or actions arising on In-

dian reservations. Under their supervision are U.S. Magistrates who function under federal law similarly to state law-trained magistrates.

Indian reservations in the state usually have a tribal court which hears cases involving violations of tribal ordinances and civil suits involving a tribal member.

### Circuit Courts

The trial courts of the judicial system are the circuit courts. South Dakota is divided into a number of judicial circuits, or areas, and the judges of a single circuit may be holding court in several counties at the same time.

The number of circuits, their boundaries, and the number of judges in each circuit are established and subject to change by a Supreme Court Rule. There are now 36 circuit judges serving in eight circuits.

The judges are elected for eight-year terms by voters in the circuit they will serve.

One judge in each circuit is appointed by the Chief Justice of the Supreme Court to act as the presiding circuit judge. The presiding judge is responsible for the administration of the courts in the circuit. In some of the circuits the presiding judge appoints a court administrator to assist him.

The presiding judge and the other judges in the circuit hear both civil and criminal cases. In cases tried without a jury, the judge decides the outcome of the case. In the cases tried before a jury, the judge rules on what evidence may be considered by jurors in reaching their verdict and instructs them on the law.

Under the 1975 reorganization, the circuit judges also perform the duties of the former district county judges, including juvenile and probate functions. The circuit judge may hear contested small claim actions, contested misdemeanor cases and preliminary hearings in criminal cases.

### Magistrates

In each circuit there are magistrates who act as judges in cases involving less serious criminal acts and smaller amounts of money. Most of the magistrates in South Dakota are lay magistrates, meaning that they are not lawyers. Training is provided by the Supreme Court through the State Court Administrator's Office.

Lay magistrates perform functions similar to those of the former justices of the peace and police magistrates. They may:

- Perform marriages;
- Set bond in criminal cases;
- Accept pleas of guilty and impose fines in minor criminal cases and city ordinance violations according to a schedule fixed by the presiding circuit judge;
- Hear preliminary hearings in criminal cases unless a demand is made by the accused to have it conducted before a circuit judge or law-trained magistrate; and
- Issue arrest warrants and search warrants.

They are state employees who receive a salary fixed by the presiding judge of the circuit.

Some circuits have law trained magistrates. These persons are lawyers. Their powers are broader than the lay magistrates and they may also:

- Hear contested civil cases involving suits for money judgments and misdemeanor criminal offenses;
- Conduct preliminary hearings in all criminal cases; and
- Hear cases and impose fines and sentences in any criminal action or municipal ordinance violation where the sentence does not allow a person to go to the penitentiary.

They, too, are state employees whose salary is set by the presiding circuit judge.

### Other Personnel

There is a clerk of court in each county who maintains the official court files of all cases before the court. Clerks of court are also empowered to act as lay magistrates at the discretion of the presiding judge, and in many counties they perform both functions. The Clerks are appointed by and serve at the pleasure of the presiding judge.

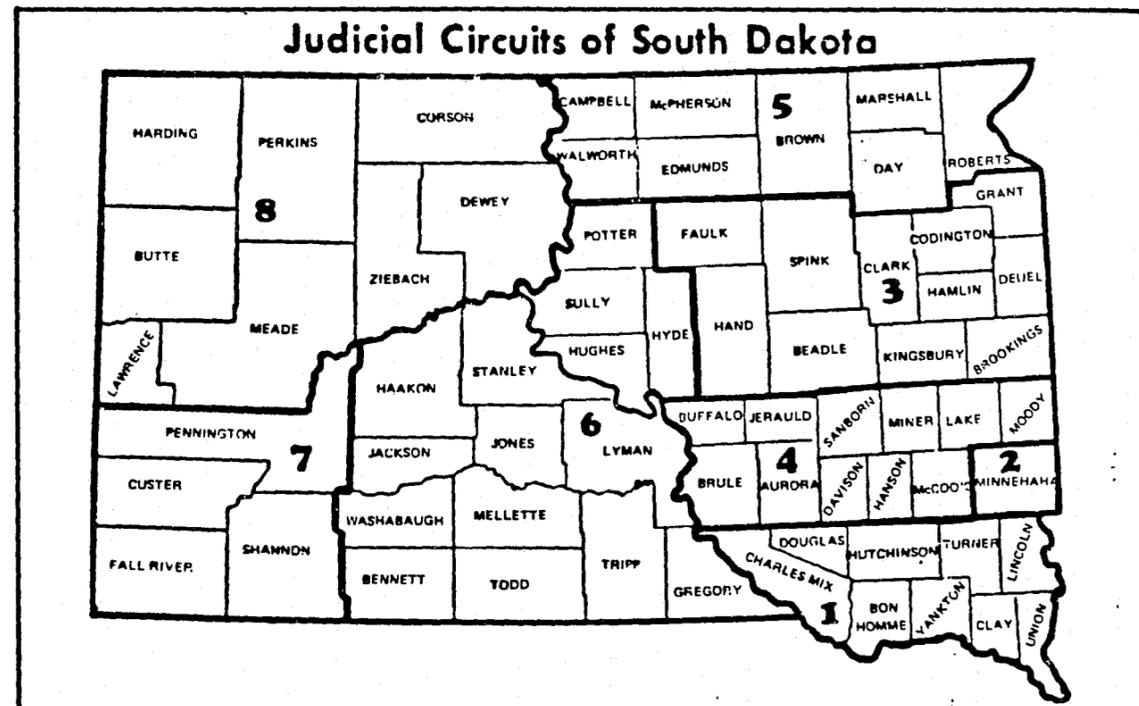
Court service officers perform probation functions in both adult and juvenile cases. They work with the circuit judges in supervising adults and juveniles who are placed on probation by the courts. In many areas the circuit judge uses the court service officers to assist in investigating child custody and child abuse cases. They are state employees who are appointed by the presiding judge. There is a chief court service officer in each circuit who supervises the other officers and works in cooperation with the Director of Court Services.

Each circuit judge has a court reporter who takes verbatim notes on all that is said in court and prepares transcripts on appeal or if requested by the judge or attorneys involved in the case.

Some of the circuits employ law clerks who are lawyers and who assist judges in researching the law applied to specific cases.

Bailiffs are used when a case is tried before a jury. They see that no one talks to or improperly influences the jury while it is hearing a case or deliberating its verdict. They open the court and follow the directions of the judge in keeping order in the courtroom.

## Judicial Circuits of South Dakota



## Juries and Attorneys

The Grand Jury is a body of six to eight citizens selected from the master jury list, which is selected at random from the county voter registration list.

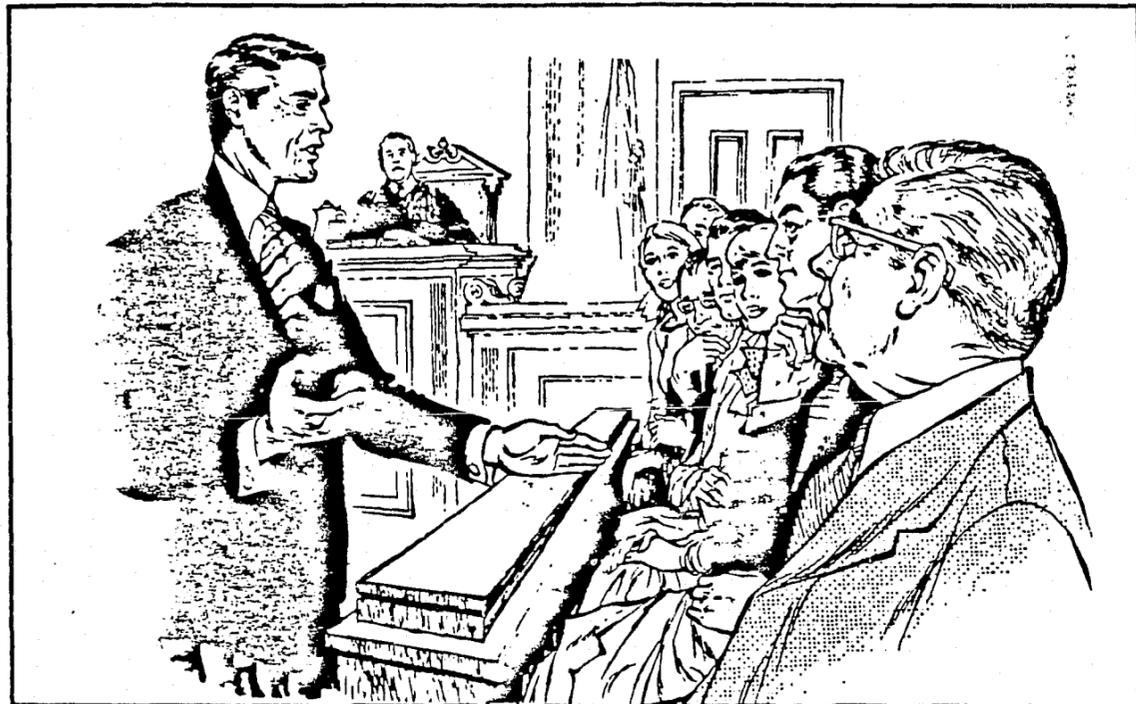
This group is empowered to inquire into misdemeanors and felonies which are committed and triable in its county. It must investigate and inspect jails and inquire into their management. It must also investigate alleged misconduct of public officials.

Its proceedings are private and secret, and it has broad investigatory powers. It may call witnesses, require sworn testimony, and demand the production of records on its own in addition to whatever information the state's attorney provides. It may call upon the state's attorney or circuit judge for advice.

The state's attorney may appear before the grand jury to give information and

may interrogate witnesses. No person is permitted to attend its sessions except the witness actually under examination, and even the state's attorney and judge may not be present while the grand jury is discussing the case or voting.

After its investigation, the grand jury can return an indictment, a presentment, or determine no crime has been committed. Under an indictment, the defendant is brought before a circuit judge for arraignment and trial. Under a presentment, the defendant is brought before a magistrate or circuit judge for preliminary hearing.



Except in the federal courts, the grand jury is not widely used in South Dakota. Most criminal cases originate with a complaint or information. Traditionally, the grand jury in state courts has been used for alleged crimes in public office and criminal events which require a special investigation by a judicial body before charges are brought.

#### Trial Jury

Both the Constitution of the United States and of the State of South Dakota guarantee the defendant the right of trial by jury.

The petit jury, or trial jury as it is commonly called, is a body of citizens, usually 12 in number, who decide the outcome of a civil or criminal trial. The jurors are chosen from a master jury list selected at random from the county voter registration list.

The first step of the trial is the voir dire, or examination of potential jurors, to insure that the jury selected is fair and unbiased. Attorneys for both sides, and sometimes the judge, examine the potential jurors to determine the jurors' ability to render an unbiased verdict. Those selected as jurors then hear the

testimony and view the evidence introduced throughout the trial.

After all the evidence has been presented, the judge instructs the jury as to the law which it should apply to the evidence presented and the different verdicts it may return. After closing arguments by the attorneys, the jurors are sent out to a jury room to deliberate in private until they reach a verdict.

While the judge interprets the law in every case, in a jury trial the jury has the responsibility of determining the facts from the evidence presented.

The verdict reflects these facts as they relate to the law. Thus, citizens who serve as jurors have a very important role in the administration of justice.

#### Prosecution

The Attorney General, an elected official of the State of South Dakota, is the principal law enforcement officer in the state. As such, he maintains general supervision over all law enforcement in the state, and, upon request, renders legal opinions to state's attorneys and various departments of government. When requested by the Governor or the Legislature, or when in his judgment the welfare of the state demands, he repre-

sents the state in any criminal or civil action in any court.

A state's attorney is elected in each organized county in the state. He defends or prosecutes on behalf of the state or the county all actions, civil or criminal, in which the state or county is interested. He attends and advises grand juries when in session.

#### Defense

In criminal cases, the defendant has the right to be represented by a lawyer. If he can't afford to hire a lawyer, it is the duty of the court, in all cases involving a sentence of imprisonment, to appoint a

lawyer for the defendant at county expense if the defendant wants one.

In some areas in the United States, including Pennington County in South Dakota, a public defender's office has been set up at county expense. In these places, the public defender represents defendants who can't afford a lawyer.

It is important to remember that appointed counsel and the public defender, even though paid by the state or county, work for the defendant and must do the same things for him that retained counsel would do if the defendant could afford one.

# Criminal Cases

## Petty Offenses

A petty offense is a violation of a state law which is subject to a judgment of \$25. Some of the more common petty offenses include non-moving traffic violations, the use of vehicles of transportation that have improper equipment, defective accessories or do not have the necessary accessories.

When a law enforcement officer stops someone for the commission of a petty offense the accused may do one of four things:

(1) If he has a South Dakota driver's license he may give a written promise to appear;

(2) If he does not have a South Dakota driver's license he may sign an admission and in the officer's presence either mail a deposit to the office of the clerk of courts or in the company of the officer go to the office of the clerk and personally make the deposit;

(3) He may make a deposit as set forth in number 2 above, but without an admission. If the accused does this the officer must notify him in writing that a failure to appear after making a deposit will be deemed an admission of the offense and forfeiture of the deposit; or

(4) He may appear in court for a hearing. If the accused appears in court and denies the allegations a court trial will be held. This court trial will not be a trial by jury since one accused of a petty offense does not have a right to a trial by jury because a trial by jury is



only a right when one is accused of an offense which is punishable by imprisonment.

## Misdemeanors

A misdemeanor is any crime having as its maximum penalty something less than imprisonment in the state penitentiary.

Misdemeanors are divided into two classes distinguished from each other by

their maximum penalties. Conviction of a class 2 misdemeanor may result in thirty days in a county jail, or a one-hundred-dollar fine, or both. A class 1 misdemeanor conviction may result in twelve months in the county jail or a one-thousand-dollar fine, or both. The procedure followed is similar to that used in felony cases.

After being informed of the charges against him and of his constitutional rights at his first appearance in court

The verdict reflects these facts as they relate to the law. Thus, citizens who serve as jurors have a very important role in the administration of justice.

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In criminal cases, the defendant has the right to be represented by a lawyer. If he can't afford to hire a lawyer, it is the duty of the court, in all cases involving a sentence of imprisonment, to appoint a

lawyer for the defendant at county expense if the defendant wants one.

In some areas in the United States, including Pennington County in South Dakota, a public defender's office has been set up at county expense. In these places, the public defender represents defendants who can't afford a lawyer.

It is important to remember that appointed counsel and the public defender, even though paid by the state or county, work for the defendant and must do the same things for him that retained counsel would do if the defendant could afford one.

for a class 2 misdemeanor, the defendant pleads guilty or not guilty. If he pleads guilty, he is sentenced. If he pleads not guilty, he has the right to a jury trial if he desires it.

The defendant cannot be tried again for charges arising from the same incident if the court or jury finds him innocent of the charges against him. If the defendant is convicted, the judge will sentence him. Misdemeanor convictions in magistrate court can be appealed to circuit court.

Moving traffic violations are, for the most part, classified as misdemeanors.

Whenever a person is arrested for a traffic violation punishable as a misdemeanor, the arresting officer issues a summons after taking the violator's name, address, and numbers of the motor vehicle and driver's licenses. The summons specifies the time and place that the violator is to appear in court. If the violator signs a written promise to appear he will be released from the officer's custody. An intentional violation of the promise to appear will constitute a class 2 misdemeanor. If, however, he refuses to sign the promise to appear, he will be immediately taken before the nearest magistrate.

#### Felonies

A felony is a crime punishable by imprisonment in the state penitentiary. Felonies are divided into six classes, distinguishable from each other by their maximum penalties. For example, a class 1 felony may result in life imprisonment plus a twenty-five-thousand-dollar fine. For a class 6 felony, the punishment may be a maximum of two years imprisonment in the state penitentiary or a two-thousand-dollar fine, or both.

Felony cases begin with the filing of a complaint, information, or by grand jury indictment, which must set forth the charges against the defendant.

After an arrest warrant is issued the defendant is brought before a magistrate or circuit judge for an arraignment hearing. At the arraignment the complaint or information is read to the defendant. The defendant is informed of his rights, including the right to an attorney. Bond may be set to insure the defendant's appearance at the trial.

The defendant has the option of having a preliminary hearing, if the proceeding was commenced by information. At this hearing, a magistrate determines whether the state has enough evidence to show that a crime has been committed and that there is reason to believe the defendant committed the crime. If the magistrate determines that the state has established these two things, or if the defendant has waived his right to the hearing, the defendant is bound over to stand trial in circuit court on the charges against him.

In cases where the defendant was indicted by a grand jury, the preliminary hearing before a magistrate is bypassed and the defendant is arraigned. When a defendant appears in circuit court he is asked to plead either guilty or not guilty. If he chooses to plead guilty, there is no trial and the defendant is sentenced by the judge.

If the defendant pleads not guilty, a date is set for his trial by jury, unless he chooses to waive the jury trial and be tried by the judge. If he is acquitted, the case is over. If he is convicted, it is left to the court to sentence him.

If the defendant feels that errors were made, he has the right to appeal his conviction to the Supreme Court.

## Court Services

Each circuit has a professional, trained staff of court service officers, formerly called probation officers, who provide a variety of services to judges, offenders, and the community at large.

These court service officers conduct presentencing studies and recommend treatment plans for juvenile and adult offenders, taking into account the best interests of both the offenders and the community. They also provide counseling and community referral services to those placed on probation.

Court Services administers an alternative care program through purchase of service contracts with foster homes and private residential child-care facilities for adjudicated youth who must temporarily be removed from their parental homes but who do not require the services of state-operated correctional institutions.

Another important service provided by the court service officer is the initial screening of juvenile cases prior to the preparation of formal charges. The purpose of this screening is to separate those cases actually requiring formal prosecution from those which best can be handled by other agencies in the community. Often it is in the best interest of the child, his family and the community to divert certain cases from the courts, especially where the offense is minor in nature and directly related to family problems.

The staff also provides services in domestic cases coming before the courts.

## Civil Actions

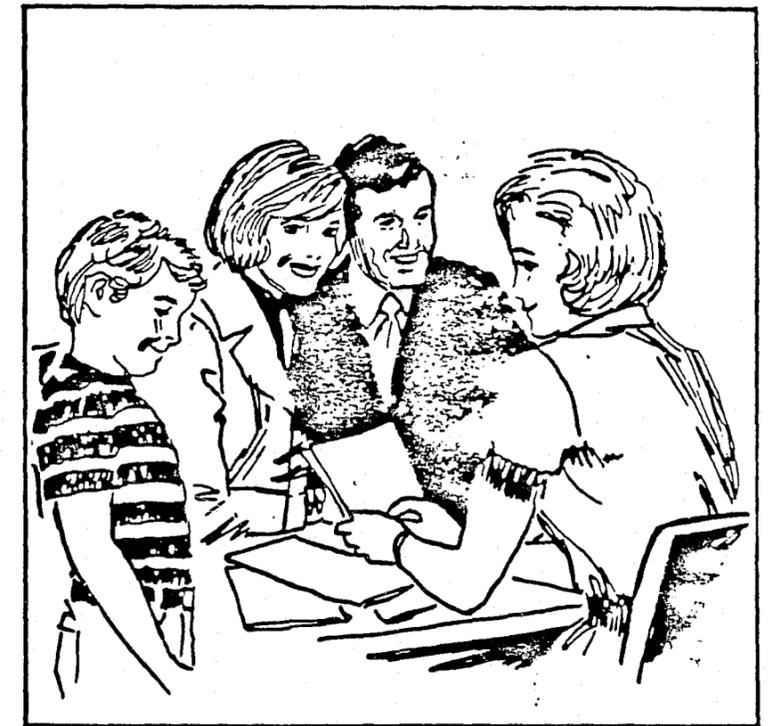
When a person thinks he has been injured or damaged by another he consults with an attorney, relating the facts and circumstances which the attorney uses to determine if the person has a case. The attorney may interview possible witnesses and study statutes and previous court decisions in order to make this determination.

If the attorney concludes that his client has a case, he prepares a complaint (a written claim against another party), files it with the circuit clerk of court, and has a copy served upon the party being sued.

At this point, the client becomes the plaintiff in the case which he has brought against the defendant. The defendant is served with a summons along with the complaint, which is a formal notice that a law suit has been initiated against him. The defendant may then consult with an attorney who will prepare an answer to the complaint. This answer is served upon the plaintiff's attorney and also is filed with the clerk of court's office.

When the complaint, answer, and other pretrial papers have been filed, the case is ready to be heard. Discussions between the parties through their attorneys may result in a settlement of the cases without a trial. Otherwise, the case goes on the court calendar for a trial date.

A civil case is heard in court by a judge, unless one of the parties demands a trial by jury. Usually the jury is 12 persons. The parties may agree to a six-person jury. In civil cases five-sixths of the jury must agree to a verdict, but in a criminal case the jury must unanimously agree.



#### Small Claims Court

The Supreme Court has established rules which provide for a simple, informal method of deciding claims of \$1,000 or less. The procedure provides a court in which one citizen may present a claim against another with a minimum of expense and without hiring a lawyer.

The small claims procedure may be used in all claims involving contracts and most claims involving wrongful acts for which the law provides a remedy. A

contract is an agreement, written or spoken, between parties.

A person wishing to start a small claims action goes to the office of the clerk of court or a magistrate, pays a small fee, and tells the clerk or magistrate the nature and size of the claim.

The clerk or magistrate will write up the claim as a simple statement and send it by certified or registered mail to the defendant, and also will set a date for a hearing.

When a party files a small claims action, the right to a jury trial is waived. However, the defendant has the right to move the case out of small claims court. This means that it becomes a formal civil suit.

If the case goes to hearing under the small claims procedure, the clerk or magistrate will issue, at no cost, subpoenas to require witnesses to appear at the hearing. The hearing, if it is contested, (that is, if the claim is denied by the defendant) is held before a circuit court judge or a law trained magistrate. Each side is given an opportunity to present its case, and the judge may ask questions to make sure all of the facts are presented. In most cases, the judge will decide the case at that time. There is no appeal from a decision in small claims court.

The small claims procedure provides the fastest, least expensive, and least complicated method of providing a just result in controversies involving small amounts of money, and is available to all.

#### Probate and Guardianships

Probate is the administration of estates of deceased persons. When a person dies, his property, referred to as an estate, must be distributed to his heirs. The function of the court is to protect the property rights of the decedent and his heirs.

Guardianships are created to protect the property rights of minors, to represent minors who are involved in law suits and

to protect the rights of persons who are physically or mentally incompetent.

#### Juvenile and Family Relations

The circuit court has the responsibility for violations of the law committed by juveniles. Intake and screening procedures insure that only those juvenile offenders who require sanctions of the court appear for formal court hearings. Those who do not require formal hearings because of the nature of the offense or the nature of the offender and his family are referred to the court services department or community-based private and public social service agencies. Those juveniles who present a danger to themselves and their communities are formally charged and their cases are supervised by the court.

At times parents cannot cope with the pressures of their responsibilities and cause emotional and physical harm to their children. It then becomes the responsibility of the court to provide protective services to the child and his family. Such cases may include non-support, dependency and neglect, and child abuse.

Additionally, the circuit court hears cases involving divorce, separations, annulments, and child custody. These cases, which are considered as civil matters, also demand special attention due to their domestic nature.

In view of the nature of these juvenile and family relation cases, the court service officers are called upon to assist the judge.

## Appellate Procedure

Appeals to the Supreme Court are cases that have been before a circuit court and have been taken to the Supreme Court because the party appealing believes some error or errors were committed in the circuit court that adversely affected the outcome of the trial. There also is a procedure for an appeal from a magistrate court to a circuit court.

Presently, under South Dakota law, an appeal can be a lengthy process. Appeals to the Supreme Court can be filed anytime within 60 days after final judgment in the circuit court is entered. Then there are time periods established to allow the parties involved in the appeal to prepare their case prior to the case being argued before the Supreme Court. Within 10 days after filing a notice of appeal, an appellant must order a transcript of the trial from the court reporter. The court reporter has 45 days to prepare the transcript, unless an extension is requested.

The appellant then has 45 days to file his brief. The brief will set out the errors that the appellant believes were committed at the trial and cite cases which he believes support his contentions.

A 45-day period then begins during which the nonappealing party (appellee) must file a brief. In his brief he will answer the points raised by the appellant and cite law and cases which he believes support his position.

Following the filing of the appellee's

brief, a 15-day period begins to run during which time the appellant may file a reply brief in answer to points in the appellee's brief. Therefore, a case is not ready to be heard on appeal until seven months after a decision in the lower court.

Without approval of the Supreme Court, attorneys can stipulate to extend time of filing briefs for an additional 15 days each. If such stipulations were entered on each brief, an additional month would be added on the time it takes to have an appeal ready for argument before the court.

After the foregoing procedures have been completed, the case is ready for oral argument.

The attorneys for the parties appear before the Supreme Court and present their arguments to the Court on the points they have covered in their briefs. The Court hears the case "en banc," meaning that all five of the justices hear the case as opposed to the case being before a single judge on the trial level. Usually, the appellant has 20 minutes to present his case. The appellee has 20 minutes to answer, and the appellant then has 10 minutes to reply to the appellee.

Following the oral arguments, the Court has a conference during which the cases that were argued that day are discussed.

The justice to whom the case has been assigned will research the case, study the settled record, and write an opinion, which affirms, reverses or modifies the ruling of the circuit court. The proposed opinion is circulated among the members of the Court. Each justice reviews the settled record and the proposed opinion. If he concurs in the opin-

*"The duty to hear all proceedings fairly and with patience is not inconsistent with the duty to dispense promptly of the business of the court. Courts can be efficient and business-like while being patient and deliberate."*

*South Dakota Code of Judicial Conduct*

ion, he initials it; if he generally agrees, but has some suggestions, he will write a memorandum to the Court; if he disagrees, he will write a dissent. When a proposed opinion has obtained the approval of at least a majority of the five justices of the Court, it becomes the decision of the Supreme Court.

Up to this time, every appeal that has reached the stage of being ready for oral argument before the Supreme Court has been placed on the Court's calendar within one month of that time. In many states, after an appeal is ready for oral arguments, there is as much as a two-year waiting period before it is placed on the calendar. Also, in a number of states a person does not have a right to appeal his case to his Supreme Court. In South Dakota, with the exception of small claims, every individual has the right to an appeal.

In addition to appeals, the Supreme Court has original jurisdiction (meaning the matter has never been before the circuit court but is filed directly with the Supreme Court) of many proceedings. Included in these original proceedings are writs of mandamus (ordering certain acts to be performed), writs of prohibition (ordering certain acts not to be performed), and many kinds of motions, as well as advisory opinions requested by the Governor.

Except for small claims cases, an appeal from a magistrate court to a circuit court may be filed within 10 days after the final judgment in magistrate court. Within 30 days after the filing of the transcript, the appellant must file his brief. The appellee then has 30 days to file an answering brief. Within 10 days after receipt of the appellee's brief, the appellant may file a reply brief.

## Related Supreme Court Activities

### Presiding Judges

Once a month the eight presiding circuit judges meet with the Chief Justice and the administrative staff of the Supreme Court to discuss policy regarding equal application of services throughout the unified judicial system. Thus, they are able to design and implement uniform programs and procedures affecting the citizens in each of the communities served by the circuit courts.

These monthly conferences also afford the executive and legislative branches of state government an opportunity to meet with the leadership of the judiciary. Through this process, governmental programs and procedures of mutual concern are developed on a more cooperative basis.

### Judicial Qualifications Commission

Article V of the State Constitution provides for a Judicial Qualifications Commission to investigate complaints against judges believed to be acting improperly.

The commission serves as a non-partisan group to hear and investigate complaints and to recommend to the Supreme Court whether any disciplinary action should be taken. If the Commission finds a complaint is justified, it may recommend that the judge be censured, removed from office or retired.

Under a Governor's Executive Order the Judicial Qualifications Commission reviews applicants for vacancies on the Supreme Court and circuit court bench and nominates the most qualified to the Governor who in turn appoints a person to fill the vacancy.

The membership of the Commission consists of two circuit judges, three attorneys and two laymen.

### Conduct of Lawyers

Because the work of the courts depends to a great extent on the cooperation and assistance of the lawyers, it is necessary to have rules governing the way lawyers deal with their clients, the courts and the public.

In South Dakota, the Supreme Court has the final supervision of lawyers. A body of rules, called the Code of Professional Responsibility, has been adopted by the Supreme Court. This Code sets standards for lawyers' conduct and provides for disciplinary proceedings if a lawyer acts improperly.

The State Bar Association also administers a client security fund. Persons who feel an attorney has mishandled their money may seek and attain reimbursement under certain circumstances.

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*"The law must serve everyone, those it protects as well as those it punishes."*

*Declaration of the Rights of Man, 1789*

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*"If we want to improve the administration of justice in our country, we must experiment and search constantly for better ways, always remembering that our objective is fairness and justice, not efficiency for its own sake."*

*Chief Justice Warren E. Burger*

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## Some Results of Court Unification

The goal of the Unified Judicial System is to dispense justice equally and expeditiously throughout all areas of the State of South Dakota. The system has been in effect since January, 1975. It is already apparent that the system provides for:

- Uniformity of procedure and forms throughout the state.
- Accountability for work done and money received.

- More uniform work loads as the system permits the moving of court personnel from circuit to circuit where the caseload requires it.
- More cases are being tried and disposed of per judge than under the old system.

Problems still exist with respect to financing the court system on a statewide basis, and the method of allocation of

some of this cost to the counties and cities.

The statewide system has also brought administrative issues to the judges in addition to their caseload. These issues have been taken over by court administrators in the busier areas and will subside as the system progresses and becomes better understood.

## Citizens for Modern Courts, Inc.

South Dakota has a number of public-spirited citizens who are interested in the continuing improvement of our court system. They have formed a nonprofit corporation called South Dakota Citizens for Modern Courts. Any South Dakota citizen, except a lawyer or a judge, is

eligible to join. The group is interested in matters such as judicial selection, tenure and salaries, reorganization and staffing of courts and, in general, any improvement designed to give South Dakota a more fair and efficient judicial system.

Information about this organization can be obtained writing to the  
Executive Secretary  
State Bar of South Dakota  
Sahr Building  
Pierre, SD 57501

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*"All the great administrative improvements in recent years came through the efforts of laymen. It has to be laymen. They're the ones who are hurt by the malfunctions in the administration of justice system."*

*Chamber of Commerce of the United States*

## Task Force Membership

Ms. Ann Elkjer, Courts Planner, Division of Law Enforcement Assistance, Pierre

Mr. Dexter Gunderson, Chairman, Citizens for Modern Courts, Inc., Irene

Hon. Marvis T. Hogen, State Senator, Kadoka

Hon. Robert A. Miller, Presiding Judge, Sixth Judicial Circuit Court, Pierre

Mr. William K. Sahr, Executive Secretary, State Bar of South Dakota, Pierre

Mr. Morton Wilkins, Assistant Attorney General, Attorney General's Office, Pierre

Revised May 1, 1979 and supersedes the January, 1977 pamphlet entitled Unified Court System.

Requests for additional copies or inquiries may be directed to:  
State Court Administrator  
State Capitol  
Pierre, South Dakota 57501  
605-773-3474

O Justice,  
When expelled  
from other  
habitations,  
make this thy  
dwelling place.

# Citizens' handbook on Maine courts



Citizens for modern courts

## CITIZENS' HANDBOOK ON MAINE COURTS

November, 1976

Prepared for:

The Office of the State Court Administrator  
Supreme Court of Maine

By:

The American Judicature Society  
National Center for State Courts

Editor  
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**THE NEW HAMPSHIRE COURT SYSTEM:  
YOUR THIRD BRANCH OF GOVERNMENT**



Prepared by the  
SUPREME COURT JUDICIAL PLANNING COMMITTEE  
Concord, New Hampshire  
1977

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THE NEW HAMPSHIRE COURT SYSTEM:  
YOUR THIRD BRANCH OF GOVERNMENT



June, 1977

This pamphlet was produced with the assistance of the New Hampshire Governor's Commission on Crime and Delinquency Subgrants Nos. 76-I-A1206 E02 and 77-P-1571 G01.

"To d a y we can say . . . that  
the Judiciary in this state may  
be fairly described a s alive,  
well and awake. We have many  
problems to solve. The task is  
not an easy one and we need . . .  
your continued cooperation in  
making the court system more  
effective and more efficient."

Honorable Frank R. Kenison,  
Chief Justice, Supreme Court of  
New Hampshire, "The State of The  
Judiciary," delivered to the  
New Hampshire General Court,  
March 3, 1977.

Introduction

This pamphlet has been prepared to increase public understanding of the New Hampshire Court System. It is not meant as a detailed statement of law but merely as a general guide to how your courts work.

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#### CREATION OF THE COURTS

The New Hampshire Constitution says that the "judicial power of the State shall be vested in the supreme court, a trial court of general jurisdiction known as the superior court, and such lower courts as the legislature may establish under Article 4th of Part 2." Thus under Article 72-a of Part 2, the Supreme and Superior Courts are "constitutional" courts, which may only be changed by amendment to the Constitution, while the District and Municipal Courts may be changed or abolished by the Legislature. Probate Court is also a constitutional court under Article 80 of Part 2 of the Constitution.

#### THE WORK OF OUR COURTS

Like other court systems of our country, the New Hampshire courts were established to settle disputes between citizens and to hear cases involving crimes against the public. Consider the following: John Q. and Mabel Citizen are driving through downtown Concord. Suddenly, their vehicle is struck from behind by a drunken driver. The impact sends John into the dash. He is hospitalized for two weeks, and his spouse receives a serious back injury that doctors agree will cause her pain the rest of her life.

Fortunately for John Q. Citizen and his spouse, two sets of rules have been established that will provide them with the means of settling their problems: (1) Civil law, which will allow both John and Mabel to seek money damages from the drunken driver for the injuries they received, and (2) Criminal law, the law that gives the State the authority to prosecute the drunken driver for his wrong. Because ignorance of the law is no excuse for its violation, the drunken driver is responsible for his actions; John and Mabel will have their "day in court" and the law will have once again demonstrated its power to influence human behavior and relationships.

Our civil law has developed from the Constitution, court decisions in previous cases, and from the specific laws passed by the Legislature. In civil actions a jury generally finds the facts, unless the parties to the action decide to try the case in front of a judge only, and the resulting money awarded to the winning party is known as a verdict. In certain cases, a verdict in dollars will be inadequate to cure the damage done or continuing damage, as in the case of the smoldering dump whose smoke or smell drives a homeowner out of his home. In such circumstances, a court exercises what is known as its "equity powers" and issues a "decree" which, in the example stated, would order the manager of the dump to correct the situation.

Criminal law is almost entirely defined by statutes (laws passed by our Legislature and signed by our Governor) although court decisions interpret the statutory law. Crimes are divided into two categories: (1) Felonies, where the penalty may be a state prison sentence from one year and a day to life imprisonment; and (2) Misdemeanors, where the possible jail sentence is less than one year and a day. Minor infractions, such as offenses against city ordinances or motor vehicle rules are called "violations," not crimes, and are punishable by a fine only.

Appeals may be made from decisions of the trial courts and governmental agencies to the New Hampshire Supreme Court. Appeals are made on issues of law, such as a challenge of a trial judge's application of law to the facts found by a jury. Criminal convictions may be appealed by the defendant but only certain rulings in criminal cases may be appealed by the prosecution. The Supreme Court of New Hampshire is in Concord and consists of five judges. Unlike the trial courts, witnesses are rarely called upon to testify at the Supreme Court. The Supreme Court may hear the attorneys for both sides and the attorneys also submit written analyses, known as "briefs," which support their arguments. Generally, the opinions of the five Justices of the Supreme Court are handed down approximately 30 to 60 days after they hear the oral arguments. These opinions may affirm, reverse, or modify the decisions of the trial court or agency. The Supreme Court may send the case back for a new trial in the lower court or for further decision in the governmental agency.

The decisions of the Supreme Court interpret the law so as to set standards that may be followed in future cases. All the Supreme Court decisions are published in a book called the New Hampshire Reports.

A newly organized Sentence Review Division of Superior Court has been established for review of sentences set by judges in criminal cases. This three-judge panel has the power to affirm, decrease or increase a criminal's sentence to our state's prison.

The ten Probate Courts in the state deal exclusively with estates, trusts, and wills as well as adoptions and related matters. The ten Probate Judges open over 8,000 new files a year.

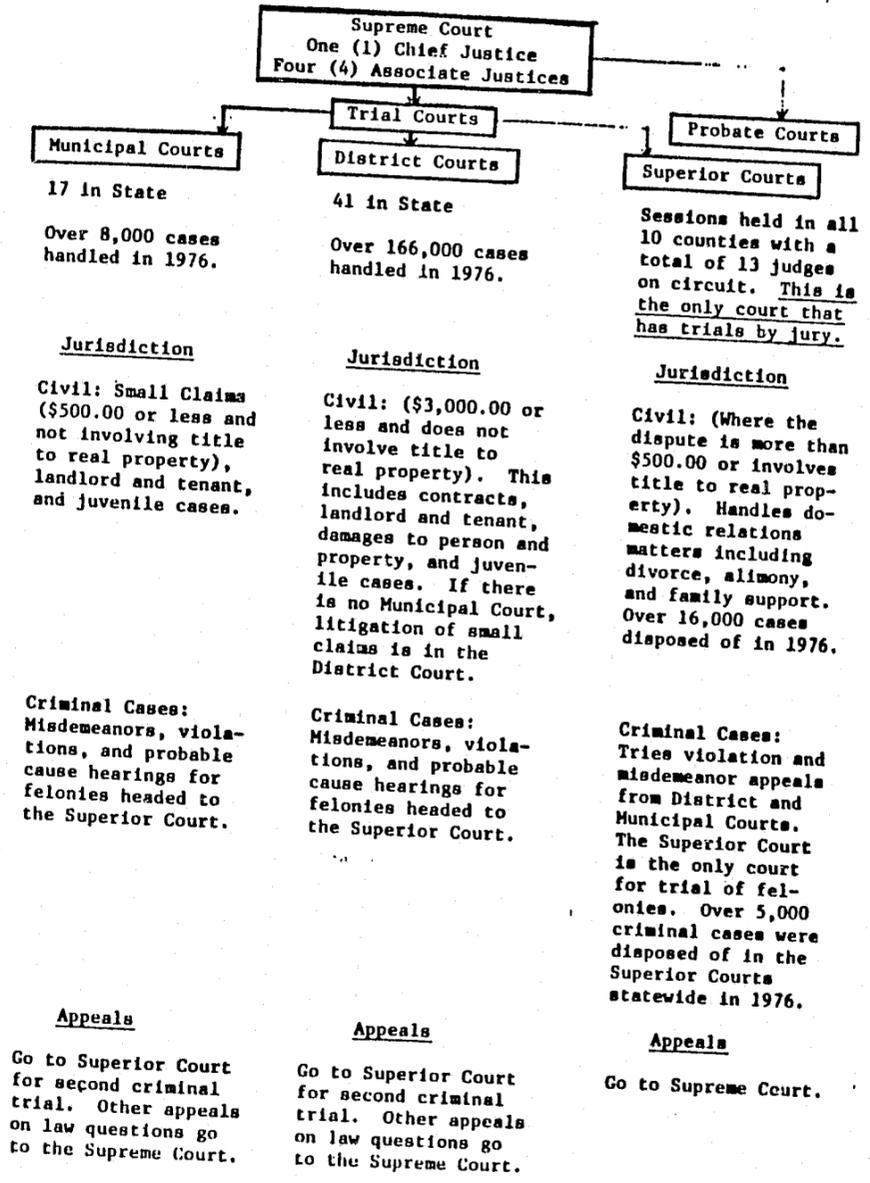
THE JUDICIARY

In New Hampshire all judges are nominated by the Governor and confirmed by the five-member Executive Council. By law, all judges must retire from the New Hampshire Court System at age seventy. All judges are subject to a code of ethics, known as the Code of Judicial Conduct, that is enforced by the State Supreme Court. The Judges of the Supreme and Superior Courts, as well as some District Court Judges, serve full time and may not maintain a law practice.

THE ADVERSARY SYSTEM

The court system in New Hampshire, like other American court systems and the system in Great Britain, utilizes the adversary system of justice. This system assumes that two lawyers arguing the opposite point of view will establish the facts and present the law involved in the case. The judge is there to maintain impartiality and to render judgment in a jury-waived trial in light of the law and the facts involved in the case.

COURT STRUCTURE FOR THE STATE OF NEW HAMPSHIRE



All of these courts dispose of over 200,000 cases

THE FEDERAL COURT

Many controversies in New Hampshire go to the United States District Court for the District of New Hampshire. This court is operated solely by the Federal Government and handles cases where the amount disputed is over \$10,000 and where the parties to the action are from more than one state. Cases involving civil rights and violations of Federal Laws are tried in this court. Criminal cases involving violations of federal criminal laws are also heard in the Federal District Court.

CRIMINAL CASES IN SUPERIOR COURT

Bringing the Charge. Criminal charges are instituted against an individual in one of two ways in Superior Court:

- (1) Through an Indictment or true bill (which may be waived)
- (2) Through the filing of an Information in court by the County Attorney.

In either case, the charge must set forth the name or description of the person accused and the time, date and place of the alleged criminal act as well as the nature of the charge. Multiple charges in an Indictment are called "counts."

The Grand Jury. The Grand Jury is a body of citizens (not more than 23 nor less than 12) summoned by the court to inquire into felonies committed in the county. Grand Jury proceedings are private and secret. Possible criminal defendants are not entitled to be present at the proceedings, and no one appears to cross-examine witnesses on the defendant's behalf. Ordinarily, the Grand Jury hears such cases and witnesses as the County Attorney calls before it and determines if enough evidence exists to charge an individual with a crime. The Grand Jury may investigate and call witnesses on its own initiative.

Arrest Procedure. When an Indictment is returned by a Grand Jury, or an Information is filed by the County Attorney, the Clerk of the Court issues a Warrant for the arrest of the person charged, if he has not already been arrested and taken into custody. One charged with a crime may, before trial, be either released on his own recognizance (where the judge determines that the accused and the public will not be harmed and that the accused is more than likely to show up for his scheduled trial), or held until bail is posted. Bail is not a fine; bail is required only to help insure the appearance of an accused at his trial. Failure to appear may result in a forfeiture of the deposited cash or bond and may result in being charged with the criminal act of defaulting on bail.

The defendant formally charged with a crime is entitled to an attorney at all times. If he is unable to procure an attorney and if he requests one, the court will appoint an attorney to represent him at public expense and without cost to him providing he is indigent. These rights are guaranteed to all citizens under the Constitution.

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Arraignment. In most instances, unless a Waiver of Arraignment is filed, a criminal case is placed on the court's calendar for arraignment. On the date fixed, the accused appears, the Indictment or Information is read to him, his rights are explained by the judge, and he is asked whether he pleads guilty or not guilty to the charge. If he pleads not guilty, his case will be set later for trial; if he pleads guilty, sentence may be imposed immediately or his case will be set later for sentencing.

Plea Bargaining. Plea bargaining is an arrangement between the prosecution and the accused and his attorney whereby the accused pleads guilty in exchange for a predictable recommended sentence. One purpose of plea bargaining is to reduce court time and delay before trial, to give the defendant some certainty in the disposition of his case, to confine the upper limits of the judge's sentence or to decrease pre-trial confinement. Both prosecution and defense participate because they are interested in limiting the uncertainties inherent in adversary proceedings. It is important to recognize that plea bargaining, which is essentially the criminal counterpart to the common civil practice of "settling out of court," allows the courts to manage their caseloads with very limited resources. The court is not obligated to accept a bargained plea; if it declines to do so, the case is then tried.

Preparation for Trial. As in civil cases, very careful preparation on part of the state and the defense precedes the trial. However, the defense may first enter a motion challenging the jurisdiction of the court over the particular offense involved, or over the particular defendant, and may file a motion for dismissal, as in a civil suit. Other motions, of course, may be filed as well.

Because the Constitution requires that an accused in a criminal case must receive a "speedy" trial, criminal cases consume the bulk of the Superior Court's time, and as a result, civil suits are often delayed because of the lack of enough judges, even though seventy per cent (70%) of the cases on the Superior Court docket are civil.

CIVIL CASES

Civil cases involve everything people and companies ever have disputes about. Civil cases often involve personal injury and property damage. In cases of this nature, the victim or his surviving family begins a civil suit by filing a writ or bill in equity. These pleadings are a formal statement that tell the court the pertinent facts about a dispute and request appropriate relief.

The party who begins a civil suit or action is the plaintiff. The other party is the defendant, who must respond by filing a written answer. Personal injury cases involve such matters as automobile accidents, products liability and libel or slander.

The courts often hear civil cases in which people have made agreements, contracts, and one claims that the other hasn't kept them. The court may also handle disputes over the ownership of real estate. Some one may ask the court to decide who really owns a certain piece of land or who has what rights to it.



Once the answer has been filed, the case moves into the pre-trial stage. This stage involves a number of alternative steps which an attorney for either side may want to take. These steps may include what is known as discovery procedure whereby either attorney tries, through subpoenas, depositions, and interrogatories, to find out what evidence the other side has developed. Subpoenas are used to require the production of documents; depositions and interrogatories are a means by which a set of questions are used to give the attorneys a good idea of the evidence and a chance to study the evidence before the trial.

At any time during the proceedings, the attorneys will usually try to work out an agreement settling the case. However, if the two parties can't agree on a settlement, the case will go to trial and verdict.

In New Hampshire civil cases may be heard by a judge alone, or by a judge and a jury. There are certain instances, such as in the case of a bill in equity, where no provision is made for a jury trial.

#### THE JURY TRIAL IN SUPERIOR COURT

Juror names are drawn at random by the office of the Clerk of Superior Court for a given county from lists of names submitted by local authorities. Some persons, for example, attorneys, sheriffs, practicing doctors, firemen and policemen, are exempt from serving as jurors. Persons over the age of seventy who are selected for jury duty may ask to be discharged as jurors. The court also has authority to discharge any selected juror upon a showing that such person is unfit to serve as a juror.

After a jury panel has been chosen for a term of court (most counties have three a year) the 12 or 6 person juries are chosen for various trials from the available jurors sitting that term. The trial jurors are called petit jurors. A case starts when the attorney for the plaintiff (the person or company who brought the civil action) or the attorney for the state (in a criminal action) makes an opening statement telling what his client claims and outlining the evidence he expects to present to prove his case. The defendant's attorney, after the plaintiff rests his case, usually will make a similar statement, telling what his client claims and the evidence he expects to produce. These statements of the attorneys are used only to "paint the picture" of the case and are not evidence.

Evidence may be in the form of a written document, an object, such as a gun or an implement, a photograph, an X-ray, or some other tangible thing and is called an exhibit. Normally, however, most of the evidence consists of the sworn testimony of the witnesses. Occasionally, an attorney may feel that a trip to the scene of the accident (or crime) will help the jury's understanding of the facts in a case. This "view" of the scene is also evidence.

After all the evidence has been introduced, the lawyers for both sides may present their final arguments, with each attorney giving

the reasons why he thinks his client should win. The judge then instructs or "charges" the jury on the laws which apply to the case. The jury then retires to a jury chamber where their discussion of the case is informal and secret. In New Hampshire, all juries must be unanimous in their decisions. The verdict in criminal cases is given orally in open court by the foreman of the jury. In civil cases, verdicts are returned in writing.

Sentencing: Sentencing of a criminal defendant by the Judge can be viewed as the final product of the judicial system. Sentences are the principal means at the disposal of courts to bring about lawful behavior in society. They may reflect trends in public opinion, the availability of community resources and the statutory levels set for a given crime.

Civil and criminal trials in Municipal and District Courts are by a judge alone and generally follow the same manner just described for the Superior Court, but with modifications due to the absence of the grand and trial juries.

#### THE PEOPLE WHO WORK IN THE COURT

Judges are vital and central to the court system. Their ability and behavior have much to do with the quality of justice in the courts. In addition to the judge, in the courtroom itself, there are a great many other people who are part of the proceedings. In almost every proceeding there are present:

- (1) A court reporter, who is either a Certified Shorthand or Stenographic Reporter or a Court Recording Machine Operator. The reporter sits near the judge and takes down everything that is said during a trial. If a case is later appealed to the Supreme Court, the court reporter types the record and a copy is sent to the Supreme Court to aid the Justices in their determination of whether error was made in the original trial.
- (2) A bailiff (usually a deputy sheriff). The bailiff keeps order in the court.
- (3) A clerk or deputy clerk.

In a criminal case, the following are present also:

- (1) The County Attorney, Assistant County Attorney, or a member of the Attorney General's staff. These people are responsible for prosecuting the case.
- (2) Defense lawyer or lawyers.
- (3) The defendant (accused).
- (4) Witnesses and complaining parties.

- (5) If it is a jury trial, the jurors.
- (6) Arresting officer (policeman).

In civil cases, there are present:

- (1) The plaintiff (the person bringing the lawsuit).
- (2) The defendant, who is being sued.
- (3) The attorney(s) for both parties.
- (4) Witnesses.
- (5) Expert witnesses, for example, doctors, and accountants, who unlike most witnesses, may be permitted to give their opinions on matters within the scope of their training and expertise.
- (6) If it is a jury trial, the jurors.

CLERKS

The Clerks of Court are appointed by the judges and are paid by the district or county except for the Clerk of the Supreme Court who is paid by the State. The Clerk is the heart of the court and is responsible for all scheduling, paperwork, phone calls, and other arrangements that are necessary for the efficient handling and disposal of cases. Because much of the paperwork in the Supreme Court and Superior Court involves legal procedure and other matters of law, the Clerks for these courts are usually lawyers.

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A limited number of copies of this publication  
are available on request:

New Hampshire Supreme Court  
Judicial Planning Committee  
Supreme Court Building  
Concord, New Hampshire 03301

:30 second Public Service Announcement for Television  
Alabama's Small Claims Court

Video

Chyron or Videfont Roll  
over scales of justice and  
blue background

Chief Justice Torbert holding  
small claims booklet

Slide showing judicial system  
seal

Audio

You now have the means to  
settle a minor dispute  
inexpensively in a court of  
law. It's the Small Claims  
Court, a part of Alabama's  
judicial system, and if the  
amount in question is \$500 or  
less, you can tell your story  
to a judge without a lawyer.

This free booklet tells you  
step-by-step how to file a  
small claim. It's available  
from the district court in your  
county courthouse.

A public service from the  
Administrative Office of Courts.

:60 second Public Service Announcement for Television  
Jury Service

Video

Chief Justice Torbert speaking  
with empty jury box in background

Audio

If you are called for jury service  
you may be apprehensive about what  
to expect and may be somewhat scared  
about going into a courtroom to make  
decisions which affect the life,  
liberty or property of your fellow  
citizens.

Jurors in courtroom scene. Chief  
Justice doing voice over

You won't be alone. In Alabama this  
year, more than 100,000 people will be  
asked to participate in our government  
as jurors. Men and women, citizens  
like you, drawing on everyday experience  
and common sense, decide the facts and  
render verdicts. The pay is low, but  
your presence and willingness to serve  
is vital to your court system.

Closeup of Chief Justice speaking

No one, including the chief justice, is  
exempt from being summoned for jury  
service. If you are asked to serve, I  
hope you will respond with a sense of  
pride and responsibility, because citizen  
participation is what democracy is all  
about.

Slide with judicial system seal

A public service from your Alabama  
court system.

**END**