SPECIAL COURT REFORM ISSUE

the Advocate

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HISTORY OF COURT REFORM

By R. Vern Kidwell, President of the Idaho State Bar

The proceedings of the Idaho State Bar has been reviewed as far back as 1942. The summary of prior years is adequately reported in the 1944 proceedings of the Idaho State Bar, commencing at page 36 and following. Prior years may be summarized by showing as follows:

1937, a resolution was adopted requiring the courts to confer on problems of improving and simplifying the practice.

1938, the bar sponsored a judicial improvement bill.

1941, a committee report favored abolition of Probate Courts and the transfer of its powers and duties to District Courts.

1942, a commitee was appointed to report on the improvement of methods of selection of judges.

1944, the Idaho Bar adopted a resolution recommending a judicial council.

1950, the convention provided for a permanent committee to study the selection of judges.

1953, a committee report entitled "Reorganization of Probate and Justice Courts" was presented by the now Honorable Fred M. Taylor, Senior Federal Judge. In this committee report, the committee pointed out that the improvement of lower court systems had been before the Bar Association for the past five years. Comment was made that in 1949 and 1951 the Bar had sponsored legislation to amend the Constitution to eliminate Probate Courts and Justice Courts as Constitutional Courts. Both proposals had been defeated. This aspect was again recommended by the Committee on Reorganization. At that time the committee report emphasized that the Idaho Bar Association can pass legislation if it will support it, but that unless and until the bar takes a stand the Idaho State Bar cannot expect lay members of the Legislature to do the work for the lawyers.

1954, recommendations were again made for a Constitutional revision.

1955, the Idaho State Bar unanimously adopted the following resolution:

"BE IT RESOLVED, that the Idaho State Bar Association sponsor through its local bar associations an educational program informing the public of the importance of the court reorganization and judicial reform, of ratifying the Constitutional Amendments relating to the elimination of the jurisdictional limits of Probate and Justice Courts at the next general election."

1957, a resolution was unanimously adopted to refer and attempt to secure passage of appropriate legislation to accomplish proper revision of the jurisdiction of the inferior courts and qualifications of the judges.

1958, a report of the Committee on Inferior Courts was referred to individual lawyers and bar associations to submit written comments and suggestions for final action at the 1959 annual meeting.

At the 1959 annual meeting a very comprehensive report of the Committee on Lower Courts was submitted. The committee recommended that justice be administred by qualified personnel; that

IDAHO ATTORNEYS URGED TO SUPPORT REFORM LEGISLATION

After years of effort and study, significant court reform legislation will be introduced into the Idaho Legislature in the next few days. The Idaho State Bar approved this legislation at its annual meeting. I ask each attorney and his friends to write his legislators supporting this much needed legislation.

Chas. F. McDevitt, Chairman
Legislative Committee
Idaho State Bar

The following attorneys have been appointed by the Board of Commissioners to the Legislative Committee of the Idaho State Bar. If you have any questions regarding the Bar sponsored legislative program, please feel free to contact the members of the Committee in your area, or the Chairman.

William W. Nixon, Bonners Ferry
William Dee, Grangeville
Michael E. McNichols, Orofino
Robert T. Felton, Moscow
Keith Jergensen, St. Anthony
E. W. Pike, Idaho Falls
Ralph H. Jones, Jr., Pocatello
Wallace M. Transtrum, Soda Springs
James B. Donart, Weiser
Edward L. Benoit, Twin Falls
Jess B. Hawley, Jr., Boise
Don J. McClenahan, Boise
Randall Wallis, Boise
J. Charles Blanton, Boise
Karl Jeppesen, Boise
Marion Callister, Boise
Richard Anderson, Boise
Byron Johnson, Boise
Thomas A. Miller, Boise
James B. Lynch, Boise

the inferior courts, including the municipal courts, should be integrated into the general court system of the State of Idaho and pointed out the desirability that administration of justice should be fast, efficient and flexible for counties of any size, large or small in population or in area.

The committee report recommended that all courts, including municipal courts, be under the administrative authority of the State Supreme Court through a coordinator of courts. The committee included lawyers, judges, probate judges, justices of the peace, practicing attorneys, a former Assistant Attorney General, Prosecuting Attorney, District Judge and a United States District Judge. At the 1959 meeting a resolution was unanimously adopted that the Idaho State Bar Committee on Inferior Courts continue its study and, if possible, further study through the legislature.

In 1960 the Idaho State Bar adopted a resolution urging the legislature to establish funds for the employment of qualified personnel for legislation and drafting.

The 1960 report again recommended that the Probate Courts be abolished and that its function be transferred to District Courts.

In 1961 the legislature had passed House Joint Resolution No. 10, for amendments to the judicial article of the Constitution to permit changes in lower courts system. The various District Bar Associations were urged to make a study of their areas to determine whether Probate Courts and Justice Courts should be combined and consolidated into a single court.

In 1962 the Idaho State Bar adopted a resolution recommending a judicial selection committee.

In the 1963 legislature Chief Justice McFadden pointed out that a program had been initiated to seek statistical information as to the case load of Justice and Probate Courts.

In 1964 a very comprehensive and well considered report was submitted. This summarized the long laborious process of court reorganization and made specific recommendations as follows:

(1) Recommending an adminstrator of courts as a business director and a servant of all courts to handle budget, salaries increases, etc.
(2) Consolidate probate courts into district courts.
(3) To abolish all present lower courts, justice courts, probate courts, police courts.
(4) Establish circuit courts of statewide jurisdiction.
(5) Provide for removal or retirement of judges, who during their term of office become incompetent by reason of physical or mental infirmities or inability.
(6) Recommending an appropriation of at least $25,000.00 for a complete study of court reform. (This was passed by the 1965 Legislature)

In 1965 the Idaho State Bar was advised the Legislature had appropriated $35,000.00 to the Legislative Council for a complete examination and recommendations for improvements in the judicial system.

The report of the Legislative Council was received in May 1966, and was mailed to every licensed attorney in Idaho. At the 1966 annual meeting the recommendations of the Committee on Courts of the Legislative Council were thoroughly studied and reviewed. In the business session at the 1966 Idaho State Bar Association the following resolution was unanimously adopted:

"WHEREAS, the Committee on Courts of the Legislative Council of the State of Idaho together with its staff and advisory committee during 1965 and 1966 have studied the Idaho court system and modernized court systems adopted and in effect in other states; and,

"WHEREAS, The bench and bar of this state are pleased to have had the opportunity to contribute to that study, and to the preliminary recommendations for court modernization proposed by that Committee; and,

"WHEREAS, The report and proposals of that Committee of the Legislative Council have been disseminated to the members of the Idaho State Bar for their careful consideration and recommendations; and,

"WHEREAS, Public hearings are scheduled to be held throughout the state during the coming months to afford to the citizens of Idaho the opportunity to make known to said Committee and to the Legislature of the State of Idaho any recommendations they may have with regard to any aspect of said report,

"NOW, THEREFORE, BE IT RESOLVED By the Idaho State Bar in convention assembled at Boise, Idaho on July 9, 1966, that the Committee on Courts of the Legislative Council, be commended for their diligent and exhaustive study of the matter of improvement of the organization and administration of the court system of this state; and,

"BE IT FURTHER RESOLVED, That the Idaho State Bar endorse and approve the general proposals set forth in the report and recommendation of said Committee; and,

"BE IT FURTHER RESOLVED, That the members of the Idaho State Bar, individually and collectively in their respective local bar associations, are strongly urged to contribute their best efforts toward the perfection, finalization and enactment into law of the recommendations of said Committee on Courts of the Legislative Council."

I have gone into what might be tedious detail to explain the position of the Idaho State Bar. For a period of twenty-five years the Idaho State Bar and the lawyers have been working toward Court modernization ..and..improvement. ..No other group in Idaho has studied or soon again will study the problem so long and hard, and from so many points of view as the Committee on Courts and the Legislative Council.

It is now the responsibility of the Idaho State Bar to achieve court reorganization that has been the goal of the Idaho lawyers for over twenty-five years. We request its lawyers, as officers of the court and those owing a duty to their profession, to take an active part in the court reorganization program.

COURT MODERNIZATION

By: **Glenn A. Phillips, President of the Idaho Magistrates Association**

It is my personal viewpoint that the proposed Court Modernization plan would be the biggest step forward in the Judicial history of the State of Idaho. It has amazed me to no end that the Courts that we are using today have done such a good job under the conditions that they have had to work under to the present time. I would not hesitate to say that in my conversations with the Justices of the Peace, Police Magistrates and Probate Judges that over 70 per-cent of them were either appointed or elected to the office of a Judge and told "now you are a Judge". The service to the citizens from these Judges has been outstanding under the conditions that they assumed these offices.

It gives the Idaho Magistrates Association a great deal of pride, I think, to say that they voted unanimously at their work shop meeting in Boise on November 17th, to accept the Court Modernization plan in general. Many of these Judges knew that they possibly were voting themselves out of a job, yet they accepted the responsibility of their offices and realized that the citizens of this State were demanding and expecting a

better Judicial system and that the only way that they might get this was to support the proposed plan. This certainly took a great deal of courage from these citizens who have served Idaho for a great number of years. Many of those present had served more than 20 years in office. I think that this is one of the best yard sticks we could judge the proposed Court plan on.

I think that the two level plan under the proposed seven-district re-organiznation would be a tremendous step in giving the citizens the most flexible and workable plan presented. This is based upon the theory that there will be at least one Magistrate in every County, and where the citizens can appear during regular work hours and find a Judge. With this type of two level Court, in considering the great fluctuations of our citizens at different times of the year, the two level court system could adopt itself to this trend.

One of the biggest advantages to this system is that the Banc of District Judges could determine from the experience, knowledge and behavior of the Magistrates many of the different cases that they could preside over. We do not agree that there should be any difference in the basic requirements between Lawyer and Non-Lawyer Magistrates. For many years, the Non-Lawyer Magistrates have handled some of the hardest type of cases and done a good job of it. We have all the confidence in the world in the District Judges making the assignments of the qualified Magistrates.

It has never ceased to be a wonder to me in traveling around the State of Idaho the past five years and observing the lower Courts in action, that the citizens of this State have received as good service from the Probate Courts, Justice of the Peace Courts and the Police Courts as they have. It has been well established that about 85 per-cent of the Judges were either elected or appointed and after being sworn into office told, "You are now a Judge". It has only been in the past four or five years that the Judges themselves, with the assistance of the Idaho State Bar, developed a training program for these lower courts. We have seen a tremendous improvement in these courts, but we have a long way to go to bring the courts up to the level that the citizens wish to see them. With this two level system and its requirements for continuous training programs, the Magistrates will be able to provide the citizens with the type of courts they wish and desire.

With the daily increase in our population and litigation, we must make our Judicial section of our Government modern to cope with these daily problems and affairs. It would be highly embarrassing to us, as citizens of Idaho, to continue with our old system and let our case-loads build up to the degree they have in some of our heavily populated states, when we are aware that we can and should modernize our system. I am sure that this is what our citizens had in mind when they voted the Constitutional Amendment to change our Judicial System in 1962. We are not too far behind yet to see what large case loads can do, but we should not let it happen to us, where even the most common traffic violation may take months or years to try, as they do in some of our states.

I believe it behooves all of us to modernize our courts, and the suggested two-level plan is one that is flexible enough to satisfy the many different types or areas that we have in Idaho. I believe that there are sufficient safeguards built into this proposal that the citizens will still have control over the courts but will, at the same time, give the Judges some type of security in their positions as long as they are doing their job. One of the biggest gains in this proposal is that it will remove our courts from the hands of the local politicians. No court should be tied to any political party or group. It was set up to be the one branch out of the three branches of our government that was not politically controlled. The two level system will provide this type of Judicial Branch.

EFFECTIVE COURT ADMINISTRATION

By Clay V. Spear
Justice of the Supreme Court of Idaho

The question is asked, "Why do we need an Administrator of the Courts in Idaho?" This I will try to answer as briefly as possible.

In 1962 the voting citizens in Idaho approved an amendment to Section 2 Article 5 of the Constitution of Idaho, which, among other things, provided as follows: "The courts shall constitute a unified and integrated system for administration and supervision by the supreme court." How can the court best comply with this directive?

At the present time the administration of the judicial system in the State of Idaho is left primarily to one of the supreme court justices who is designated the Coordinator of Courts. Idaho Code, Title 1, Chapter 6. This particular justice serves for a two-year period and is charged with the duties set forth in this chapter, in addition to carrying a full load of hearing cases and writing opinions and without additional compensation or without adequate staff of any kind. This system, in my opinion, falls only a little short of being ridiculous. In the first place the justices of the supreme court are educated, trained and experienced in the field of law, and it would be a rare instance indeed when any one of them would have the qualifications of a good administrator. Secondly, without an adequate staff, it is utterly impossible to perform these duties, in addition to his regular work, in the efficient and effective manner to which the citizens of this state are entitled.

After considerable study and after holding public hearings throughout the various sections of Idaho, the Legislative Council detected the obvious defects of the present system and suggested the creation of the office of Administrator of the Courts. The proposed legislation was taken almost verbatim from the model act suggested by the American Judicature Society. I personally can find nothing objectionable to this suggested act.

However, it is my understanding there are several district judges presently serving in Idaho, to whom the creation of such an office is objectionable. They feel an administrator could easily become a tyrant, a little Caesar who would soon turn his office into a bureaucracy that would ultimately usurp the judicial functions of the courts in Idaho. These same fears were expressed, but in each instance were proven groundless, in almost every state now having the office of an administrator.

However since these objections have been voiced, it has been suggested by Justice E. B. Smith that we amend Title 1, Chapter 6, Idaho Code, by providing an "Administrative Assistant of Courts" instead of a court coordinator and striking the portions requiring such administrative assistant to be a member of the supreme court or even a member of our profession. By doing this and by merely adding two additional duties to those already provided in said chapter, these being, (1) to examine the administrative and business methods in systems employed in the offices of the judges, clerks and other offices of the courts relating to and serving the courts and make recommendations to the supreme court for improvement thereof, and (2) to formulate and submit to the supreme court recommendations for the improvement of the judicial system, together with providing funds for adequately staffing the office of such administrative assistant, the same goals to be attained through the legislatioon suggested by the Legislative Council can be accomplished. Justice Smith is uniquely aware

of the needs for an administrator of our court system because he is just completing a two-year term as court coordinator. Additionally, this seems to be more palatable to the district judges who have some objection to the creation of the office of a court administrator, for it pinpoints more clearly the fact that the functions to be performed by such administrator are really those of an administrative assistant to the court, whose duties would include attending to the general housekeeping chores of the supreme court, the office of the clerk of the supreme court, and the law library. This administrative assistant would procure necessary data on the various courts and make recommendations to the supreme court on how the effectiveness of the judicial system could be improved.

Regardless of whether any portion or all of the proposed court reorganization or court modernization program being suggested is adopted, the establishment of an administrative assistant, court administrator, or whatever he may be called, who is qualified to perform the administrative duties incident to the judicial system in Idaho, is absolutely imperative. It is nothing short of phenominal that the present system has worked as well as it has throughout the years since 1949 when the office of coordinator of courts was first established in Idaho. I urge every attorney who is a member of the Idaho State Bar to lend his or her best effort to secure the adoption of some legislation to either, (1) create the office of an administrator of the courts as suggested by the Legislative Council, or (2) to amend Title 1, Chapter 6, Idaho Code, to allow appointment of a qualified administrator to assist the supreme court in providing efficient and effective administration and supervision of the Idaho judicial system.

THE TWO LEVEL COURT SYSTEM

By George M. Bell
Dean of the College of Law

One of the outstanding proposals of the proposed court modernization plan is to reduce the number of judicial districts to seven and increase the number of counties embraced in each judicial district so that a minimum of three district court judges would sit in each judicial district. With the new districts a population balance among the districts is attempted. This should make the judicial work load more even in the district court. This proposal would permit specialization by district court judges within the district and would facilitate the assignment of district judges upon a disqualification or unavailability of any district judge within a district. Furthermore, the panel of a minimum of three district court judges serves to make the magistrate court system function. The district court judges sitting en banc appoint and remove magistrates who will serve in the judicial district. The district court judges also determine what cases should be assigned to the magistrates and sit as an intermediate court of appeal from the magistrate court decisions.

The basic concept behind the two-level court system is to integrate the entire lower court system into one court with complete control over all aspects of the administration of justice centralized in the district courts. This is sharp contrast with the present system under which the district judges have little control over the administration of justice by the probate courts, city courts and justices of the peace. By eliminating the election of magistrates who replace the city court, justice court and probate courts and by concentrating the authority to select and supervise the activities of the magistrates, the district courts assume responsibility for the administration of justice within their respective judicial districts. It seems very clear that the election of lower court judges is a very poor method of selecting the best qualified man for the position. There are no issues in a judicial election contest which need airing before the voters. The election claim that "I will be more honest and more fair than my opponent" becomes ridiculous in the context of an election of judges. Since magistrates will be part of the district court they should be selected by the district court and serve at the pleasure of the district court and with the duties assigned by that court. (It should be noted that in the existing lower court system only the probate judges are elected.)

The second outstanding feature of the two-level court system is the elimination of numerous courts in which a case may be filed. With a two-level court system there is only one lower court, the district court, and all cases within the judicial district are filed in the district court even though the case may be heard by a magistrate. This eliminates the shopping around among the courts permitted by our present system where we have numerous lower courts, each of which could hear the particular case.

The civil jurisdiction of magistrates includes cases where the amount in controversy does not exceed one thousand dollars. In addition, magistrates may be assigned criminal matters where the fine does not exceed one thousand dollars or confinement for one year in the county jail or both. The basic jurisdiction of the probate court over probate, juvenile and incompetencies may be assigned under the proposed reform to magistrates. In short, the magistrates may take over essentially all of the work of the old probate courts and the justice courts with an increase in the civil jurisdiction to the thousand dollar limitation.

During the hearings on this legislative proposal for court modernization it was suggested to the legislative council committee on courts that magistrates who are not members of the Bar should not be allowed to hear contested cases except traffic and fish and game violations. However, this suggestion was not adopted by the committee so that the proposal which will go to the legislature permits untrained magistrates to continue to hear contested cases in Idaho, and in fact increases the dollar value of the civil cases which may be heard by the untrained magistrate. To many this is a serious defect in the proposal. However, it should be pointed out that it would be extremely difficult to staff the magistrate courts with members of the Idaho Bar in all cases, and any proposal to require that all contested matters be heard by members of the Bar sitting as magistrates is unrealistic. By concentrating the responsibility for the administration of justice in the district courts throughout their respective judicial districts, the hope is that gradually the district courts will eliminate the untrained magistrate and substitute members of the Bar. For this reason, the proposal that the magistrates be selected by the district courts seems all important in order to eventually up-grade the level of judicial competence in the magistrate courts.

It should be pointed out that the salary of the magistrates is left to the discretion of the district court judges sitting en banc, but this salary will be determined by the budget for the magistrate courts throughout the different districts. It is contemplated that the magistrates will be a part of a state judicial system the same as the district court judges so that a state appropriation will be made for not only the district court judges' salaries but for the magistrate court salaries as well. This effectively puts a ceiling on the salaries of magistrates but eliminates an arbitrary statutory ceiling which becomes unrealistic over a period of years.

In summary, the proposed modernization plan increases the administrative load of the district court judges to some extent. Initially there will be increased burdens on the district court in the selection of suitable magistrates and the deciding of what cases should be as-

signed to the magistrates. However, after the system goes into operation the administrative work should be nominal. In addition, the district court judges may delegate a broad group of cases to the magistrates and eliminate some of the case load now being assumed by our district courts. This saving in district court time by permitting the magistrates to hear more cases should more than off-set the time required by the district courts to administer the magistrate court division. With a flexible plan under the control of the district court judges, a gradual up-grading of our lower court system is not only possible but highly probable. Although the proposal does not eliminate the rather ludicrous spectacle of an untrained judge trying to conduct a trial with the parties represented by legally trained counsel, it does provide a basic machinery for the gradual elimination of such a travesty on justice.

CHANGES IN "SMALL CLAIMS" CASES

By Daniel A. Slavin, Senior Legal Analyst, Legislative Council

The Legislative Council proposal for the Small Claims Department of the Magistrate's Division of the District Court is very similar to the present small claims provisions found in Chapter 15 of Title 1, Idaho Code. But what appears to be minor changes will affect the conduct of small claims to a great degree.

The jurisdictional limits have been raised to $200.00 from the present $100.00 limitation found in Section 1-1501, Idaho Code. As will be pointed out later, the flexibility being proposed for small claims will offer better protection for unsatisfied claimants and defendants and allows a raising of the jurisdictional limitations.

Also, Section 1-1501, Idaho Code, is revised to allow for changes of venue when the residence of the defendant does not afford adequate opportunities to the parties to protect their claims.

Under the Legislative Council proposal, either party may appeal from a decision and judgment in small claims. The Small Claims Court has always been considered a plaintiff's court, and maybe rightfully so. Its advantage is fairly obvious, avoids the court's and counsel's expense and time where small liquidated damage claims are presented and may be forfeited as often as not.

By raising the jurisdictional limit, retaining counsel prohibition, and adding a dual appeal provision, the Legislative Council hopes to eliminate a greater percentage of jury trials in the courts of broader jurisdiction.

COST OF FINANCING COURTS

By Myran H. Schlechte, Staff Director Idaho Legislative Council

Financial data available on the operation of the present courts in Idaho is somewhat limited. There has been no sustained effort made on a state-wide basis to accumulate, analyze and disseminate the financial data of court operations on a continuing basis.

To overcome some parts of this lack of information about costs of courts, the Legislative Council has accumulated certain data. This data was assembled in conjunction with the study ordered by Senate Bill No. 142, Thirty-eighth Legislature. It is somewhat limited, and should be treated as such. The most apparent weakness of the total amount of the statistical date is that it is for a one-year period only, 1964. This enforced reliance on one year's material does not allow comparison with other years, and does not allow computation of trend data.

Source of Financial Data

Several sources were used for the financial data gathered for the Legislative Council. The data on the operation of the state's share of the district courts were obtained from the records maintained by the supreme court and the state auditor's office. These records are comprehensive and complete.

The source used for compiliation of the counties' share of the district court costs, the counties' costs of operating the probate courts, and the counties' costs of maintaining the justice of the peace courts was the county auditors' reports for calendar 1964. The detail in description of cost figures varied greatly from county to county. However, the auditors' reports were the most authoritative source available and have been relied upon. Auditors' reports were also used as a source for reported revenue collections.

The source used for compilation of the data on costs and revenues of the police courts was a questionnaire submitted to the cities. The response to the questionnaire was not complete, and certain projections were used to round out the data.

Costs of the Courts in 1964

From the accumulated sources noted above, a reasonable estimate of the amount spent in operating the district courts, the probate courts, the justice of the peace courts, and the police courts in Idaho in 1964 is $1,579,405.

District Courts. The district courts are financed at present from two distinct sources of funds. The state supports part of the district court expenses and the county supports the remaining costs. The state's share of district court expenditures is limited to the salaries of the district judges and court reporters and the travel expenses incurred by the district judges and reporters in attending to district court business outside their county of residence or chambers. The state's share of operating the district courts in 1964 was $438,316. The salaries paid the district judges and court reporters amounted to $422,400 or 96.36 per cent of the total state's share. The remaining 2.64 per cent of state expenditure was for the travel and subsistence of the judges and reporters.

The counties' share of district court expenses included all of the other operating costs, such as clerical salaries, jury and witness expenses, court appointed attorney fees, books, maintenance of the courtroom facilities, supplies, etc. In 1964, the counties' share of district court expenses was $246,771. Jury and witness fees accounted for the largest single item as an expense to the counties, as reported by the county auditors. In 1964, some $76,042 were spent for jury and witness fees. This single item was 30.81 per cent of the counties' share of operating the district courts. Court appointed attorney fees amounted to $24,932, or 10.10 per cent, of the counties' share of operating the district courts in 1964. Clerical salaries, as reported by the county auditors, amounted to only $23,600 in 1964, or less than 10.00 per cent of total county expenses for the district courts. All other expenses incurred by the counties for operating the district courts amounted to $122,197, or 49.52 per cent, of the counties' expenses. The "all other expenses" category included the books, supplies, maintenance, etc., necessary to keep the district courts operating.

The combined state and county costs to operate the district courts in 1964 were $685,087, or 43.37 per cent of the total costs of operating all of the courts. The state's share of operating the district courts was 63.98 per cent, and the counties' share was 36.02 per cent of district court expenditures.

Probate Courts. The probate courts are financed entirely from county funds. In 1964, the 44 probate courts in Idaho cost some $464,731 to operate, which was 29.42 per cent of the total costs of operating all of the courts. The largest single item of cost in the probate courts' expenditure was for the salaries of the probate judges. Judicial salaries in the probate courts totaled $259,683 or 55.88 per cent of the entire cost of operating the probate courts. Probation officers' salaries and expenses funded by the counties amounted to $59,704, or 12.84 per cent of the probate court expenses.

Other employees' salaries in the probate courts amounted to $48,473, or 10.43 per cent of the total. All other expenses of the probate courts were $96,871, or 20.84 per cent of the total.

Justice of the Peace Courts. Justice of the peace courts are also financed entirely from county funds. There was at least one justice of the peace in each of Idaho's 44 counties in 1964, and most counties provided more than one. The total number of justices of the peace was about 100 in 1964. The combined costs of all of the justice courts operated in 1964 was $241,806, or 15.31 per cent of the total costs of operating all of the courts. The largest single cost item in justice court expenditures was for salaries of the justices which amounted to $197,026, or 81.48 per cent of the justice court expenses. Other employees' salaries in the justice courts amounted to $15,869, or 6.56 per cent of justice court expenses. All other expenses of the justice courts was $28,911, or 11.95 per cent of justice court expenses.

Police Courts. The operation of the police courts is financed entirely from city funds. Not too much detail about expenditures of the police courts has been made available, but it is estimated that a total of $187,781 were spent in 1964, which was 11.89 per cent of the total spent for all court operations. Of this amount $100,395 was spent for salaries of the judicial officers, and the remaining $87,386 for operating expenses.

Summary of Costs. The state contributed $438,316 of the total amount spent on operating the courts in 1964, or 27.75 per cent of the total. The counties and cities spent $1,141,089 as their share of the total cost of operating the courts, or 72.75 per cent of the total. The counties alone spent $953,308 in providing their share of operating costs, which was 60.36 per cent of the total. The cities spent $187,781 to fund the police courts, or 11.89 per cent of the total operating expenses.

Revenue From the Courts in 1964

Using most of the same sources that reported costs of court operations as a source to provide information on revenue collected through court operations, it was estimated that $1,583,140 were collected in revenues from court operations in 1964. The revenue collections amounted to $3,735 more than the cost of the court operations. The disposition of the revenues generated by court operations is not discussed in this article, since disposition of court revenues is a subject worthy of a separate treatment.

District Courts. The district courts colected some $224,846 in revenues in 1964. This compares with $685,087 that were spent in operating the district courts in the same period. The revenues generated by the district courts amounted to 32.82 per cent of the total costs of operating the district courts. The district court revenues accounted for 14.20 per cent of all revenues generated by operation of all of the courts.

Probate Courts. The probate courts collected some $126,399 in revenues in 1964. This compares with $464,731 that were spent in operating the probate courts in the same period. The revenues generated by the probate courts amounted to 27.19 per cent of the total costs of operating the probate courts. The probate court revenues accounted for 7.98 per cent of all revenues generated by operation of all of the courts.

Justice of the Peace Courts. The justice courts collected some $565,951 in revenues in 1964. This compares with $241,806 that were spent in operating the justice courts in the same period. The revenues generated by the justice courts amounted to 234.05 per cent of the total costs of operating the justice courts. The justice court revenues accounted for 35.74 per cent of all revenues generated by operation of all of the courts.

Police Courts. It is estimated that the police courts collected some $665,944 in revenues in 1964. This compares with $187,781 that were spent in operating the police courts in the same period. The revenues generated by the police courts amounted to 354.63 per cent of the total costs of operating the police courts. The police court revenues accounted for 42.06 per cent of all revenues generated by operation of all of the courts.

Estimated Costs of Modernization Proposal

This discussion of estimated costs of the modernization proposal submitted by the Legislative Council Committee on Courts is limited to the "two-level" court system proposal. It does not include any cost figures on or for the judicial administrator's office, or for the operation of a judicial council. Both the administrator and the judicial council may be considered separately from the main proposal of a "two-level" court system.

In estimating the costs of the modernization plan, we have made these critical estimates: (1) we have estimated a more reasonable appearing salary amount for the office of clerk of the district court; (2) we have estimated the number of magistrates that may be required for each county; and (3) we have estimated the salary requirements that may be necessary for these magistrates. With these estimates added, all other cost figures used are the same as those reported for 1964.

Since under the modernization proposal, all court functions would be in the district court, or in a division of the district court, we cannot use the same format as above in reporting the 1964 costs. We have simply listed the estimated costs below, with certain remarks following the numbered items.

1964 Court Costs

	Under Present Plan	Under Modernization Plan
(1)	$ 422,400	$ 422,400
(2)	15,916	15,916
(3)	23,600	23,600
(4)	64,342	87,942
(5)	320,042	320,042
(6)	557,104	376,400
(7)	116,297	116,297
(8)	59,704	59,704
	$1,579,405	$1,422,301
	274,400*	274,400*
	$1,853,805	$1,696,701

(1) This item is the salary of the district judges and reporters, and had the modernization plan been in effect in 1964 would have remained unchanged.

* This amount is estimated to have been spent in 1964 in clerical salaries in the district courts, but not reported for that function. It has been shown here as a separate item.

(2) This item is the travel and subsistence of the district judges and reporters, and would have been the same.

(3) This item is the reported salaries of the clerks of the district courts and the clerical salaries for operating those offices. It is estimated that a more reasonable expenditure for these functions was $298,000, or $274,400 more than was reported. The additional $274,400 has been shown as a separate addition at the bottom of each column.

(4) This item shows the salaries of the other employees of the probate courts (except probation personnel) and the justice of the peace courts for 1964. We have added the $23,600 in item 3 for the amount shown under the modernization plan.

(5) This item shows all of the other current expenses of the district courts and the probate courts (except probation expenses). Even though certain economies may be readily apparent in this item, we have shown that these expenses would have remained the same as they were in 1964.

(6) This item in 1964 was the reported salaries of the probate judges, the justices of the peace, and the police

judges. These judges numbered over 200 in 1964. It is estimated that the same work load could have been handled by 60 district court magistrates with a salary expenditure of $376,400 instead of the $557,104 that was spent.

(7) This item reflects the other current expenditures of the justice of the peace courts and of the police courts, and would have remained unchanged.

(8) This item is the amount reported spent for probation services and would have remained unchanged.

Summary. It would appear that if the court modernization plan proposed by the Legislative Council Committee on Courts had been in effect in 1964, that a savings of $157,104 could have been effected that year. Since one of the ancillary concepts of a unified and integrated court system calls for central fundings of court functions, the state would have been called upon to finance the major portion of this spending. Rather than the $438,316 that the state did spend in supporting the district courts in 1964, the state would have spent $1,422,301, or 983,985 more than it did. This nearly one million dollars would have meant that much tax relief for the local units of government that now contribute the majority of the money to provide the courts' operating and salary expenses.

AN IDAHO JUDICIAL COUNCIL AND ITS ROLE IN THE SELECTION OF A JUDICIARY

By William D. DeCardy[1]

Pursuant to legislative direction,[2] the Legislative Council Committee on Courts has conducted a study of Idaho court systems over the past year which has repened into a set of proposals to be presented to the next regular session of the Idaho Legislature in January, 1967. Among these proposals is included "An Act Relating to a Judicial Council." The portions of this recommended statutory enactment which are pertinent hereto may be set forth as follows:[3]

"SECTION 1. Judicial council created —Members—terms of office. —There is hereby created a judicial council which shall consist of seven members. Three attorney members, one of whom shall be a district judge, shall be appointed by the board of commissioners of the Idaho state bar with the consent of the senate. Three non-attorney members shall be appointed by the governor with the consent of the senate. The term of office for an appointed member of the judicial council shall be six years except that of the members first oppointed, one attorney member and one non-attorney member shall each serve for two years, one attorney member and one non-attorney member shall each serve for four years, and one attorney member and one non-attorney member shall each serve for six years; thereafter, appointments shall be made for six year terms. Vacancies shall be filled for the unexpired term in like manner. Appointments shall be made with due consideration for area representation and not more than three of the appointed members shall be from one political party. The chief justice of the supreme court shall be the seventh member and chairman of the judicial council. No member of the judicial council, except a judge or justice, may hold any other office or position of profit under the United States or the state. The judicial council shall act by concurrence of four or more members and according to rules which it adopts.

"SECTION 2. Duties of judicial council. —The judicial council shall:

(1) Conduct studies for the improvement of the administration of justice;

(2) Make reports to the supreme court and legislature at intervals of not more than two years;

(3) Submit to the governor the names of not less than two nor more than four qualified persons for each vacancy in the office of justice of the supreme court or district judge, one of whom shall be appointed by the governor;

(5) Such other duties as may be assigned by law.

"SECTION 4. Compensation — Expenses. — Each member of the judicial council, except a judge or justice, shall receive an honorarium of twenty-five dollars per day for each day spent in actual attendance in meetings of the judicial council. Members of the council shall be reimbursed for actual expenses necessarily incurred in attending meetings and in the performance of official duties."

The committee, in submitting this proposed legislation, necessarily envisioned a constitutional change in the manner of selection of judges and justices. But under its final revised proposal, no change is indicated in the present method of non-partisan election of judges and justices in Idaho.[4]

However, the Idaho Commission on Constitutional Revision, also pursuant to direction of the 1965 legislature,[5] has approved a final draft for proposed revision of Article 5, the judicial article of the Idaho Constitution. A full report of these proposed constitutional amendments is being prepared by the Commission, under the chair of Hon. Raymond L. Givens, and will soon be submitted. While it will appear that some disparities will exist between the proposals of the Constitutional Revision Commission and the Legislative Council, they are reconcilable insofar as both bodies anticipate the creation of a "Judicial Council," consisting of lawyers and lay members, which would play some active part in the selection of the state's judiciary.

At this point, it is important to note that the functions and duties of the proposed judicial council extend beyond participation in the selection and tenure of the judiciary. Subsections (1) and (2) of Section 2 of the Act would make it incumbent upon such council to conduct continuing studies for the improvement of the administration of justice in this state. Subsection (5) retains authority to delegate additional duties as the need arises.

There is existing statutory authorization in Idaho for the Board of Commissioners of the Idaho State Bar to conduct studies for the advancement of jurisprudence and improvement of the administration of justice on its own motion, or upon request of the governer, Supreme Court, or the legislature.[6] The proposed plan would supplement and presumably improve this existing machinery in that the proposed statute is mandatory, i.e., the judicial council must conduct investigations and make reports at regular intervals, and also, provision has been made for the financing of such studies and reports by Section 4 of the proposed statute. In view of the history of the common law and of the history of the State of Idaho, it is difficult to realistically entertain an argument that such continuous study is not warranted and desirable.

Prior experience with what has been called a "judicial council" in this state has been neither lasting nor particularly fruitful. By appointment of the Board of Commissioners, a voluntary judicial council (under the auspices of the State Bar) was in operation from 1929 to 1932 and reported its recommendations to the 1932 bar convention.[7] Since that time the bar association has regularly recommended the establishment of a permanent judicial council to the legislature, with no apparent results.[8] Among the resolutions adopted by the voluntary council in 1932 there appears a recommendation for the establishment of a permanent judicial council by legislative enactment.[9]

The studies conducted by the 1932 council, before it died its natural death, are in large measure indicative of problems which continue to plague us today.

By account of that early council, these included:

"1. The volume, character, and trend of judicial business with a view of determining the necessity, desirability and method of redistricting the state, the number of justices required for the handling of work, methods of temporary transfer of judges from non-congested to congested districts, and to the Supreme Court, and the unification of the court system of Idaho, to attain the highest efficiency and flexibility.

"2. Methods for the selection of judges.

"3. The possibility of abolishing probate courts and transferring the jurisdiction now exercised by such courts to the district courts.

"4. Juvenile Delinquency.

"5. Further reforms in civil and criminal procedure."[10]

A permanent judicial council may be able to accomplish in these and related areas more than transient quasi-official bodies. Whatever the fact may prove to be here, one of the two primary functions to be performed by that particular species of judicial council now proposed for Idaho is characterized as service as a nominating council for the selection of judges. (The third primary function—to recommend retirement, discipline and removal of judges—is covered in another article in this issue.)

There is, by now, a broad historical basis for utilizing a combined lawyer-layman judicial council in this manner. This attribute was encompassed in a plan conceived by the American Judicature Society in 1913 after extensive study of the world's judicial systems. The precept originates (in more modern times) with a recommendation adopted by the American Bar Association in 1937.[11] This idea did not gain immediate widespread acceptance, but was implemented by the State of Missouri and, thus, has come to be known as a part of what is commonly called "The Missouri Plan."[12]

A Missouri Circuit Court Judge has recently spoken on the importance of the composition of the nominating commission (judicial council), based on the Missouri experience:

"The nominating commissioners are important under the Missouri Plan, for they set the pattern of the judicial appointments. Members of the Commission should be men of integrity and ability who will lay aside personal and political considerations and will select nominees who have all the qualities of an able judge. The nominating commission, composed of lay and lawyer members, combines the lawyer members' court experience and personal acquaintance with the nominees and the business acumen and common sense of the lay members, under the guidance of the presiding judge. The overall results have been most creditable. The lay members have been found to be valuable and necessary members of the commission. In a sense, they represent the general public, which must be fully informed and have confidence in the commission and its work if the nonpartisan court plan is to have public support . . ."[13]

In point of fact, the composition of the council is vital in that, as proposed, it could serve as a catalyst, a sort of weighted compromise wherein the continuing argument over whether Idaho's judges should be elected or appointed is partially resolved.

The arguments advanced for and against the appointment, rather than the election of judges, are conscientiously enumerated in the Legislative Council's report.[14] The arguments advanced against appointment are that such is (1) a denial to the people of the right to vote for their judges and (2) a denial to any aspiring candidate of the right to run for judicial office. The primary arguments for appointment are: (1) federal judges have always been appointed in the first instance; (2) of the major nations of the world, only the United States and Russia elect any trial judges; (3) election of judges is a comparatively recent development in America, the first instance of a judicial election in this country occurring in about the middle of the last century; (4) judges are not policy makers in the same sense that a legislature or the governor is; and (5) the fact that a candidate for judicial office is able to win a popular election is no indication of his competence or ability as a judicial officer.

Presently, of our sister states, thirteen follow the colonial practice of appointment by the governor or legislature or both, i.e., California (appellate judges only), Connecticut, Delaware, Hawaii, Maine, Maryland (until the next general election), Massachusetts, New Hampshire, New Jersey, Rhode Island, South Carolina, Vermont, and Virginia. Judges are also appointed in Puerto Rico and the federal courts.

Eighteen states hold a political-party election of judges, i.e., Alabama, Arkansas, Colorado, Florida, Georgia, Illinois (for initial election only), Indiana, Kansas (trial judges only), Kentucky, Louisiana, Mississippi, New Mexico, New York, North Carolina, Oklahoma, Pennsylvania, Texas, and West Virginia.

Sixteen states elect their judges on a non-partisan ballot similar to that now in effect in Idaho, i.e., Arizona, California, Idaho, Michigan, Minnesota, Montana, Nevada, North Dakota, Ohio, Oregon, South Dakota, Tennessee, Utah, Washington, Wisconsin, and Wyoming.

Some eleven states have adopted some or all portions of the plan for merit selection of judges through the vehicle of a lawyer-lay nominating council, and ten states, including Idaho, will have definite proposals this year.[15]

The interest displayed in judicial reform by the citizens of Idaho as well as by the Citizens Conference on the Courts, and the action of the Legislative Council Committee on Courts, leads one to earnestly hope that this interest will never lag. It is not the purpose here to magnify the present clamor over a strictly appointive versus a strictly elective judiciary. Rather, it is to be pointed out that a permanent judicial council can be a vital asset in any streamlined court system frankly designed to meet head-on the expanding tasks confronting our legal institutions.

NOTES

1. Mr. DeCardy is presently employed as a law clerk to the Idaho Supreme Court. He holds a J.D. degree from the University of Illinois, 1966, and is a member of the Illinois bar.
2. Idaho Sess. Laws, 1965, ch. 274, p. 712.
3. Report to the Idaho Legislature, Court Modernization in Idaho, Idaho Legislative Council, Research Publication Number 10, November 1966, p. 62 et seq.
   Subsection (4) of Section 2 and all of Section 3 of the proposed enactment, relating to removal, discipline and retirement of judicial officers, are deleted as beyond the purview of this article.
4. Report to the Idaho Legislature, supra note 3 at p. 83.
5. Idaho Sess. Laws, 1965, ch. 317, section 11.
6. Idaho Code SS 3-418 and 3-419.
7. Proceedings of the Idaho State Bar, vol. XXI, p.8 (1957).
8. See, e.g., Proceedings of the Idaho State Bar, vol. XIX, pp.137-8 (1944); vol. XX, p.125 (1946); vol. XXII, p.95 (1948); et cetera.
9. Idaho State Bar, Third Report of the Judicial Council of Idaho, 1932, at 6.25 (unpublished).
10. Id., at p.7.
11. 62 A.B.A. Rep., 893-897 (1937).
12. Mo. Const. (1945) Art.5, SS 29 (a)-29(g); see Roberts, "Twenty-five Years Under the Missouri Plan," 49 J. Am. Jud. Soc. 92 (Oct., 1965).
13. From an address given by Judge Harry Hall at the October 19, 1966, meeting of the Indianapolis Bar Association, reprinted in 10 Res Gestae 10 (Indiana State Bar Association, Oct. 1966).
14. Report to the Idaho Legislature, ssupra note 3 at p.83.

15. Survey of states taken from 10 Res Gestae, supra note 13 at p.12.

DISCIPLINE AND REMOVAL OF JUDGES IN IDAHO

By Thomas A. Miller, Chairman
Idaho State Bar Committe on Courts

The general competence and integrity of the district judges and supreme court justices in Idaho, to my knowledge has not been and is not now questioned. Our citizens may be justly proud of their judicial officers. Scandals that have rocked other states from time to time, causing wholesale loss of respect for the judicial system, have not and hopefully never will erupt in Idaho. The litigant rightfully feels that he has his "day in court" before a competent, impartial, unbiased tribunal immune from bribery or personal or partisan considerations.

However, should the need arise to discipline, remove or retire a district judge or supreme court justice we are woefully lacking in authority and procedure with which to act. This has been demonstrated in one or two instances in the past in which the judge, without any fault of his own, has become mentally or psychologically disabled from performing his duties, or from even recognizing his disability. None of the means for vacating the office—death, resignation, expiration of term of office, or defeat at the polls—were adequate to cope with the problem. Impeachment would not have reached the problem. In fact, it is questionable whether impeachment is available to remove a district judge for any cause since he is not elected on a state-wide basis.

Many states have reacted to the problem by providing procedures for discipline, removal and involuntary retirement of judges. The matter has been under study for some time in other jurisdictions, including at the federal level. The problem, of course, is to provide an effective procedure which, at the same time contains adequate safeguards to protect the judge against unmeritorious charges.

The Legislative Council Committee on Courts studied the systems in several states and proposed a plan based primarily upon adaptations of the California and Alaska systems which seemed ideally to suit condition and needs in Idaho.

The proposal calls for the appointment of a Judicial Council among whose duties shall be to "(4) Recommend the removal, discipline and retirement of judicial officers." (NOTE: See Mr. De Cardy's article in this issue "An Idaho Judicial Council and Its Role in the Selection of a Judiciary" for details as to the make up and appointment of the Council.)

Briefly stated the act would provide:

1. That a supreme court justice or district judge "may be disciplined or removed for willful misconduct in office or willful and persistent failure to perform his duties or habitual interperance, or he may be retired for disability seriously interfering with the performance of his duties, which is, or is likely to become of a permanent character."

2. The Council could investigate and hold a hearing, or request the supreme court to appoint as special masters three judges or justices to hear and take evidence and report their findings to the Council.

3. If the Council finds good cause it shall recommend to the supreme court the removal, discipline or retirement of the judge or justice.

4. The supreme court shall review the record and may allow introduction of additional evidence and then enter the order it deems warranted by the evidence.

5. A justice or judge who is a member of the Council or of the supreme court shall not participate in any proceeding involving his own removal, discipline or retirement. (NOTE: If the proceedings involved a supreme court justice, the supreme court might appoint five district judges to sit in their stead. See Article V, Section 6, Constitution and Section 1-301, Idaho Code.)

6. The record, prior to filing with the supreme court, would be confidential, to protect the judicial officer's reputation against the publication of charges which the Council finds to be unwarranted.

The Legislative Council also proposes an enabling amendment which would add a new Section 28 to Article V of the Constitution, to read:

> "SECTION 28. REMOVAL OF JUDICIAL OFFICERS.—Provisions for the retirement, discipline and removal from office of justices and judges shall be as provided by law."

A similar system in California appears to be working quite satisfactorily. Many complaints have been investigated. Many of the problems were not serious and were quickly rectified by informal interviews. Occasionally, the judge resigned rather than face a formal hearing. Very few cases have been required to be heard by the California supreme court.

It is anticipated that in Idaho, a much smaller and less urbanized state, the number of complaints and in particular the number of meritorious complaints would be minuscule. However, the alternative—not providing the mechanics for discipline, removal and involuntary retirement of judges and justices—could be extremely serious. One "bad" judge remaining in office for several months or years in spite of incapacity or moral unfitness for the position can have the most adverse consequences, including: (1) The denial to our citizens of life, liberty and property; (2) the unjustified delay in, and thus the denial of justice; (3) the erosion of public respect for our judicial system, one of the pillars of our system of government.

The various proposals of the Legislative Council's Committee on Courts have received extensive, "in depth" consideration by lawyers, judges and other citizens during the past months. The proposal outlined herein has been received with the most heartening enthusiasm. To my knowledge only a handful of persons have contended that such a proposal is not needed, and there has been surprisingly little criticism of the details of this particular proposal. Early enactment of such a proposal, it is submitted, will rectify a most serious latent weakness in our judicial system, and will help to ensure that our courts will continue to merit the general respect and confidence of our citizens.

JUDICIAL ELECTION AND TENURE

By Watt E. Prather, Judge
Eighth Judicial District

The purpose herein shall be to discuss and highlight some of the difficulties inherent in our present system of election of judges and their tenure in office.

Our present law provides that district judges shall hold office for a period of four years and that supreme court justices hold office for a period of six years. At the end of his terms of office, the judge must submit his future and his livelihood to the electorate. On the face of it this would not appear so onerous, but deeper examination reveals many inequalities.

First of all, our Idaho law wisely prohibits the district and supreme court judges from all practice of law. Assuming, as is usually the case, that a judge has ascended the bench after a good many years in which he has established a successful practice, he must immediately divest himself of his practice and his clients. Upon completion of his four or six years in office, his practice and his clients are gone. He has been stripped of his source of livelihood at a time when he may need it most. If his bid for re-election fails he is suddenly reduced to the same position of the neophyte lawyer. He must start anew and rebuild his practice. This hazard alone is a substantial obstacle to obtaining qualified persons to seek a career in the judiciary.

This especially affects younger men with family responsibilities.

The problem of insecurity is further aggravated by conduct limitations imposed upon judges. Not only must the judge win re-election, but at the same time the canons of judicial ethics demand that he shall not be swayed by partisan demands, public clamor or considerations of personal popularity or notoriety, nor be apprehensive of unjust criticism. He cannot even solicit for charities, and should not seek public acclaim. As any who has sought public office knows, the shrinking violet and those insensitive to public demand do not win elections.

In summary, our judges are faced with an impossible dilemma. Self interest requires that they be a successful election campaigner, but judicial ethics and proper dignity and decorum seriously handicap his campaign. Especially should it be noted that the non-incumbent opponent is not so limited. Thus the opponent has an immediate tactical advantage from his greater freedom of action.

Besides the problems of insecurity stemming from limited tenure of judges, the actual mechanics of judicial elections are most distressing for all involved.

Under our system non-partisan judicial elections the judicial candidate has no existing organization available to promote his campaign. Therefore he must build such an organization entirely around himself. For the incumbent seeking re-election, this is a most awkward undertaking. If he seeks help from either within or without the legal profession, he faces condemnation that the powers of the office are being used to enlist help. Even if help is volunteered the danger persists. Judicial ethics charge that a judge as a judicial candidate shall not suffer others to do anything improper on his behalf and that he should refrain from all conduct which might tend to arouse reasonable suspicion that he is using the power or prestige of his position to promote his candidacy.

It is most embarrassing to both the judge and the persons contacted to have the judge seek their aid in his bid for re-election. Yet experience dictates that if he is to be a successful candidate he must have such help.

The position of the legal profession is most acute in this situation. None know better than they the qualifications of their brethren for the bench. Canon two of the Canons of Professional Ethics admonishes that the bar should protest earnestly and actively against the appointment or election of those who are unsuitable for the bench. The public is frequently heard to say that they presume that any attorney has the legal training to be a judge, but in matters of character and personality they expect his fellow attorneys to advise them about the judicial candidates. Attorneys are asked and expected to speak, and yet if he opposes the successful candidate, he then must submit important questions touching upon his professional success and the welfare of his clients to the candidate he opposed. The situation for the unsuccessful candidate and his supporters is only worse by the very nature of things.

If judges and attorneys were not human beings, our present system would work to perfection. Unfortunately they are human and we now place a great burden upon the frailities of human nature. No parallel can be found for this anywhere in our laws providing for election of public officials.

Other difficulties attend our present system. To be a successful candidate, campaigning must be done. This requires a great deal of time be devoted to attending public meetings and making campaign tours of the constituency. This is all time on the part of an incumbent judge that deprives of him of opportunity to dispose of pending controversies or other administrative duties.

The cost of a campaign is a most significant matter. A judicial campaign, like any other election campaign, requires the use of extensive advertising by newspaper, radio, television, billboards, novelties and personal solicitation. It can fairly be predicted that these expenses will require between two and four thousand dollars.

This is an expenditure beyond the ordinary capacity of most members of the judiciary. Their salary will neither support nor justify it. Here again, the incumbent faces the potentially compromising position of having to seek financial aid for his campaign. All the evils discussed in seeking campain aid are present here and compounded with the inuendoes connected with monetary contributions. Some people are always ready to believe the adage that "he who pays the fiddler names the tune."

It seems to this writer that the problems and weaknesses of our present judicial election system can be eliminated by adoption of a plan whereby judges are selected by a judicial council and appointed from those recommended by such council. Thereafter, such incumbent judge can stand for a recall election strictly upon his own record. If he has not done a satisfactory job the people may terminate his service. He is not faced with the problems discussed above in defending himself in a personal campaign. Such a plan, in the opinion of this writer, will undoubtedly improve the quality of justice and judicial administration in the State of Idaho.

CITIZENS' VIEW OF COURT PROPOSALS

By Donna Kay Soderlund

Citizens' Committee on Courts, Inc., is the outgrowth of a June, 1966, Citizens' Conference on Idaho Courts sponsored by the Idaho State Bar and the American Judicature Society. At the conclusion of the three-day conference the citizens in attendance in a consensus statement approved in general the proposals of the Legislative Council Committee on Courts and appointed a committee to formulate an action program to stimulate interest in, and support of, the proposals. The organization is comprised entirely of citizens outside the legal profession and has representation on its board of directors from every geographical area in the state.

Initial activity of the organization has been the sponsoring of informative one-day conferences throughout the state patterned after the Boise conference, designed to acquaint citizens with present court structure, problems of the present system, and the court modernization proposals. At this writing seven such conferences have been held—Nampa, October 15; Twin Falls, November 10; Lewiston, December 2; Boise and Coeur d'Alene, December 3; Idaho Falls and Pocatello, December 10.

Observations herein contained, then, are limited to reactions in general to the Legislative Council proposals by lay citizens who have attended these conferences and other lay citizens who are reasonably well informed about the proposals and who are concerned with the functioning of our judicial system and revisions in it.

Generally speaking, response of laymen has been extremely favorable. Acceptance of the proposals has been expressed both informally and formally by way of adoption of endorsing resolutions at the conclusion of citizens' conferences. The number of knowledgeable citizens who are fully acquainted with the problems of our present system and with the recommended changes who express opposition is negligible, although a rather significant number have minor reservations. A minority feels that the suggested revisions do not go far enough, that a good start has been made but that considerably more needs to be done.

The concept of a two-level system appears to be very well received. To a great extent this is because laymen be-

lieve that our present court structure is archaic and cumbersome, that our present system functions as it does not because of the structure provided but because of the individuals on the bench and in the bar. It is possible that the two-level system is well accepted because it presents a solution or improvement to what exists (greatest criticism or concern is directed to our probate courts)—it could well be that another system would be as well received. The point is, laymen are not, in general, thoroughly versed in alternative solutions, and this is accepted because they feel a need exists and this appears to fill the need.

Real need has been expressed for establishment of the office of judicial administrator; however, there is at the same time a demand that such an office not become a bureaucratic octupus or that the officer not develop into a czar. Opposition that exists seems inspired by reservations contained within the legal profession itself. The concept of a line of administrative responsibility has occasionally been questioned by those who feel an inherent danger lies in the influencing of decisions of magistrates by district judges. This is perhaps because they fail to recognize the clear-cut distinction between "command" decisions and administrative decisions.

Proposed district consolidation and creation of seven judicial districts with the attendant equalization of workloads and more efficient utilization of judicial manpower has received almost unanimous endorsement. A few have questioned action of the legislature being required in establishment of resident chambers and additional judgeships.

The judicial council concept is extremely well received. Discussion concerning composition of the council ranges from a desire for make-up which will prohibit control by the bar association to questioning the need for laymen at all on the council. In all cases, the most pertinent suggestions are devoted to creation of a council as free as possible from politics.

Universal approval has been expressed for the provisions relating to removal, discipline and retirement of judges. It is in this area that probably the greatest demands for action lie, with frequent lamenting over the extreme lack of remedies at the present time for disciplining and removing judges. Inquiries about present salaries of judges leads to quite strong urging of substantial increases in compensation as additional incentive and partial solution of problems in finding well-qualified and able men for the judiciary.

It is in the proposal relating to adoption of the so-called "Missouri Plan" that the greatest concern lies. Even though initially many are reluctant about what they feel amounts to "giving up" their vote, in the main opposition here is overcome through thorough presentation of statistics concerning past appointments and elections, the review of difficulties in obtaining candidates for judgeships, emphasizing of the non-policy making position of the judiciary, and, in particular, the evaluating of an individual's vote presently in an election where a judge is unopposed on the ballot. The possibility of potential candidates for a judicial post being barred from running poses the aspect of further loss of individual rights.

Strongest concern, reservations and criticisms lie in the following specific areas:

Repeatedly the concern over loss of local autonomy arises. This appears particularly in the rural areas. There is a fear of cities and counties losing individuality by removing the appointing power over judicial officers from the city and county level to state or district selected judiciary. Hand in hand with this goes the concern over selection of judges being removed from the "common" people.

Citizen convenience through ready accessability to the courts is another factor critically evaluated, particularly in service to the violator-in-transit on minor traffic and game violations. Smaller communities fear there may be some slighting of their needs, that there will be too large a geographical gap in the provision of magistrates.

Because the Legislative Council's proposals are limited to court structure and the establishment of flexible practicability in a system which will be as adaptable to the future as the present, laymen frequently are concerned about the absence of provision for specialized courts, particularly in the area of domestic relations and the handling of juvenile matters. Very strong sentiment exists for provision of family courts, although there is frequently a failure to separate the need for actual substantive law from the proposals.

Absence of specific recommendations for the disposition of fees, fines, forfeitures and costs and failure to answer totally the details of finance have probably constituted the largest areas of complaint. Without specific, curative proposals, strong and valid opposition might be anticipated for these reasons alone.

Jurisdiction and qualifications of magistrates are other areas of critical inquiry. It is, after all, in the lower courts that the bulk of the population appearing in the courts receives exposure to our judicial system. Although many citizens consider that a law degree in itself does not mean judicial qualification, still, obviously, legal training is a highly-desirable requisite for magistrates. Strong demand exists for properly qualified, well-trained and competent personnel. Substantial opposition is found toward the minimum qualifications set for magistrates, particularly in the urban areas where citizens express fear of losing the degree of excellence achieved in the judiciary in the lower courts which has been brought about by purposeful local effort.

To summarize, at this time it appears, among informed laymen, that all recommendations of the Legislative Council for revision would receive endorsement, with some clarification, minor revisions and provisions being highly desirable if not necessary to satisfy the areas of concern above enumerated.

PROBLEMS OF COURT REFORM IN IDAHO

By Robert S. Fiedler
Dept. of Public Assistance

"Justice (is) that kind of state of Character which makes people disposed to do what is just and makes them act justly . . . ."[1]

At first this statement by Aristotle seems to be a circular definition: justice being defined in terms of justice. But the definition does accomplish something. It tells us that justice is a state of character. Character, is what determines the kind of actions that man eventually selects. Thus, Justice is the habit of acting justly.

In our order of things, we have established the courts as the final arena for the expression of justice. When things cannot be settled by the family, by the executive or legislative branch of government or the wider community, the courts are asked to intervene. This is our finest example of problem solving.

To handle this big and difficult job our courts should be the best possible in all respects. Efficient and effective constitutional structure, sound organization and talented personnel are all necessary to insure that our courts are strong and of good quality.

In the main, the record of our courts is a good one. It has had to be, otherwise our society would have broken apart long ago. The past record of our courts cannot be criticized; neither can we really criticize the courts as they exist today. I do believe, however, with our current rate of growth and change, we

have largely outgrown our present American court system. There are several reasons for this.

First, there are the pressures of the population. This includes population expansion, population concentration, and population mobility. In some of our cities in the United States, there is developing a tremendous jam in the courts simply because of the concentration of individuals. Approximately 47,000 significant traffic violation cases were handled in Seattle's only traffic court last year. If the judge worked eight hours per day, six days per week, he would be able to give an average of three minutes to each of those 47,000 cases.

As people live more closely together, the opportunity for disagreement increases; and as the disagreements increase, there has been a tendency in the past to pass more regulatory laws. This snowballing effect is not particularly evident in Idaho, but the day is coming when it will be part of our lives.

Our problem is one primarily of population concentration in terms of distribution. Consider the population pressures of say Camas County as against Ada County; yet both have essentially the same court systems.

The second thing which I believe necessitates a revision of our court systems is related to the pressures of our modern complex society in terms of the knowledge explosion. This increase in fundamental knowledge has led to advances in the field of human behavior, corrections, communication, and many, many more fields. As our problems become more complicated, and as we deepen our understanding of some of the causative factors, the courts are finding it more and more difficult to ensure that they are administering justice that is equal, prompt, and effective for all—regardless of age, depth of need or financial circumstances. As our population shifts and changes, as the needs and resources become more complex, then we must come to expect certain institutions to change also. Certainly the family of 1966 is far different than it was in 1900. Our courts cannot be considered exempt from this need to change also.

There are, however, some things which I firmly believe make it difficult for this change to come about.

The first of these impediments is an attitude by too many judges and lawyers to the effect that everything is all right with the courts and with the administration of the law. This somewhat cautious attitude is oftentimes an occupational characteristic of the legal profession. After all, lawyers pride themselves in their ability to touch all bases. If someone keeps moving home plate, it causes a great deal of discomfort.

Our system of selection, tenure, and seniority of judges, while adding stability to the system, also injects the system with a great capacity to enjoy inflexibility, and an aversion to change.

There seems to be an economic consideration that needs to be examined in order to really understand some additional resistance to change. Understandably, attorneys find it difficult to push for changes that might in the long run reduce their level of income or change their method of practice.

Maurice Rosenburg, in writing about Court congestion recently,[2] outlined an experiment in Philadelphia in 1952. In this plan, all small claims suits amounting to no more than $1,000 were transferred to a compulsory arbitration tribunal. Three attorneys were paid a total of $85 to hear the case and to reach an award. He reported that even though the experiment proved that the procedure spared the municipal court many thousand trials and sped up the adjudication process a great deal, there has been no adoption of this plan in other states. Mr. Rosenburg concluded that one reason the plan has not found favor is related to the low fee paid for the services of the attorneys who arbitrated the cases.

Another facet of resistance to streamlining the courts is based upon a lack of real information on the part of the public as to what really goes on in the courts. Most of us have little or no personal contact with the courts. When we do go to court, it is generally a traffic court. Very few of us (except, of course, Perry Mason fans) have any real contact with the trial courts of general jurisdiction.

The very language used by the courts tends, I think, to keep the public in the dark when it comes to understanding the process of justice. Instead of asking the court to do something, lawyers make motions. When you want to right a wrong, you must file a complaint. To move from one side of the hall to another, you get bound over.

Lack of public understanding goes beyond difficulty in understanding the process of law. It seems to me that the general public fails to understand many of our laws and, in many cases, they are ignorant of the laws altogether. It was Hegel who recognized this problem in the 18th century when he said, "If laws are to have a binding force, it follows that, in view of the right of self-consciousness, they must be universally known."[3]

Another reason for delay in court reform can be traced to an exaggerated emphasis upon the value of personal independence and freedom of action. Most people (and this includes judges and lawyers) resist modern business management methods because they fear the control inherent in the new systems. An example of this can be found in the reluctance of many to really use effectively the management possibilities presented in the data processing field. In reality though, it isn't too difficult to see why an old-time judge with years of service on the bench gets fidgety when he is faced with the prospects of being thrown into a pool each quarter and be handed an assignment from a univac computer.

One final consideration can be traced to the necessity for modernization and improvement of constitutional provisions related to the courts' structure. We are all aware of the difficult time faced by the legislature in achieving changes to the constitution; yet in many cases, this must be done to even start the court reform movement going.

If, then, our understanding of the reasons for delay are clear and accurate, shouldn't, then, our course of action be clear and accurate also? It isn't quite that simple. The reasons for the need for court reform as well as the causes of delay all seem to add up to a new consideration.

As a result of new sociological, economic, and political considerations and in view of the many built in resistances to changes, it seems to me that the task of law has dramatically changed. It will need to become an enterprise in public administration in order to be perceptive of changes that are occurring, and in order to effectively do something about the changes that are recorded.

Maurice Rosenburg has said ". . . it is as much a part of judicial responsibility to administer the courts effectively as to decide cases wisely."[4]

The problem of achieving modernization in our courts has many ingredients. Better administration, modernized procedures, analysis of work loads, review of the selection, tenure and assignments of the persons on the bench. Whatever the course of court reform, however, much will turn on the character, personality, and intellectual quality of the men and women who preside over the court.

With all these considerations, then, and there are many more I am sure, there is a great temptation for the average person to say that this all seems to be a problem of the legal profession and that they should get on with the task of cleaning their own house.

Obviously this is inaccurate and unlikely. The legal profession is hopelessly divided on certain issues that are central

to the matter of court reform. An illustration of this might be found in a proposal to have a liability-without-fault compensation system for court determination of automobile injury cases. This would make great sense to the corporation lawyer that rarely sees the inside of a courtroom, but would threaten the very bread and butter of over half of the members of the local bar association. It seems an extra burden to ask these good people to solve this difficult problem of court reform without help.

This means, then, that the wider public must become interested and involved in the matter of court reform. We must become involved for a very selfish reason in that we individually have a great deal at stake in this matter. If our court process seems callous, mechanical or unjust to the persons caught up in them, or if there is undue delay in administration of justice then respect for law and order can be undermined and the social order will be impared.

Another paragraph might well be added to Aristotle's conclusion that justice is the habit of acting wisely. I submit that justice must not only be done, but it must be seen to be done.

Let each of us work to make our courts more visable, more perceptive and responsive to change, and aware of our great interest in the administration of justice.

NOTES

1. Aristotle, Nicomachean Ethics, Book 5.
2. Maurice Rosenburg, "Court Congestion: Status, Causes, and Remedies" in The Courts, The Public and the Law Explosion, Prentice-Hall Inc. 1965.
3. George William Hegel, Ethical Life in The Philosophy of Right, Oxford University Press, Translated by T. M. Knox.
4. Maurice Rosenburg, Op Cit.