The State of the Colorado Judiciary
Chief Justice Edward E. Pringle, Colorado Supreme Court
Message to the Colorado General Assembly
February 8, 1971

Lieutenant Governor Vanderhoof, Mr. Speaker, Members of the Forty-eighth General Assembly, ladies and gentlemen:

I am deeply honored, both for myself and on behalf of the Colorado judiciary, to have been invited by you to address this joint session on the state of the Colorado judiciary. According to the Council of State Governments, this is the first time in any state that the Chief Justice has been so privileged. It is most fitting that, through your action, Colorado has set this precedent for the nation, because this general assembly during the past decade has played a major role in the re-organization and development of the Colorado judicial system – a system which is considered to be one of the best in the country – one which many other states hoped to emulate.

To put yourselves in perspective, let me review what a judiciary and a system of laws means to a free society: – there has never been any recorded history of any form of life on this planet free from strife and disharmony. The history of mankind can almost be summed up as one of peaceful interludes between disputes, disorders, and violence. From this we deduce the disputes between people and conflict between government and its citizens are a permanent part of the business of living. The experience of ages has taught us that one way or another such disputes must be adjusted. The Anglo-American system of jurisprudence is the system this nation has adapted to meet this problem. It is, we know, a terribly expensive and terribly time-consuming process, but for hundreds of years it has successfully settle disputes between citizens and has administered the community's conscience in response to the occurrence of violent and criminal acts. While we might hope for a world in which there would be no disputes between citizens and no crimes against persons or property, that world continues to elude us. In the meantime, while never abandoning the hope, society has concluded that it needs a system to perform the function. This is the role of justice in the administration of the legal system: to provide societies machinery so that citizens may have a fair and impartial tribunal within which to reach a final determination of their disputes and to assure that persons offending the public conscience has revealed through its criminal laws we'll meet and pay the penalty that conscience has formed into law after a trial which fully protects their rights. It is of Colorado's outstanding mechanism for overseeing this vital function of a free society that I speak to you today.

At the outset, it may be helpful to take a moment to review briefly the composition of our judicial system and some of the changes which have taken place. This brief review will help explain why our system is considered a national model.

The Colorado judicial system consists of the Supreme Court, the Court of Appeals, the District Courts, and the County Courts. There are also three special courts in Denver which are part of the system: the Probate, Juvenile, and Superior Court. There are also some 200 Municipal Courts, which are locally funded and whose jurisdiction is limited to ordinance violations. Over these municipal courts, very limited supervision is exercised by the Supreme Court. Adult and

juvenile probation and juvenile detention are also part of the judicial system, as is the state public defender for budgetary and administrative purposes.

Colorado has what is known as an integrated court system. In part, this means that the responsibility and authority for administering the system, which contains 186 judges and more than 1,300 employees, resides with the Chief Justice and the Supreme Court. This authority and responsibility is exercised in a number of ways, such as:

-- Promulgating both procedural and administrative rules;

-- Assigning the judges to courts outside of their home counties or districts to alleviate docket congestion and meet emergencies;

-- Appointing the Chief Judges of the District Court, who, intern, are delegated administrative authority and responsibility over the trial courts within their respective jurisdictions;

-- Monitoring case flow and backlog problems through continuous review of current statistical data;

-- Creating and operating a personnel system for employees of all state courts and court related agencies;

-- Exercising supervision and control over the allocation and use of funds and personnel in the operation of the courts and they're related agencies.

Another important aspect of an integrated system is the reorganization of trial courts with a resulting reduction in the number and types of courts. As you know, this reorganization was accomplished by constitutional amendment adopted in 1962 and implemented by the General Assembly in 1964.

Of equal importance is state funding and a judicial personnel plan to attract and retain competent, qualified court employees. State funding of the judicial system and the related creation of the personnel system were a result of legislation adopted in 1969 by the Forty-seventh General Assembly.

It was during that same session that the general assembly created the Court of Appeals and the public defender system, and also enacted a new, modern Municipal Court Act. So, you can see that you have contributed substantially to improvement in the administration of justice in this state.

You should feel proud of this contribution. Many states are still suffering from a multitude of trial courts with fragmented and overlapping jurisdiction, diffusion of administrative responsibility, misallocation or waste of judicial manpower and other resources, lack of coordination and cooperation among courts, judges, and other officials, and a number of other melodies in the body judicial which have been cited from time to time by the Chief Justice of the United States, Warren Burger.

Although our accomplishments are substantial, there are still problems. These problems will be covered in some detail in the course of these remarks, as will what we are doing or plan to do about them.

We have been fortunate in Colorado that are trial courts have not had the backlog of delays experienced by many other jurisdictions, especially those in metropolitan areas, where a three to five year delay in getting a personal injury case to trial is not uncommon.

There are several reasons why our backlog and delay problems have not assumed dangerous proportions.

First, the General Assembly has been willing to provide new trial judgeships to keep pace with increasing caseloads.

Second, the Chief Justice's constitutional authority to assign judges outside of their home jurisdictions has helped with heavy dockets in urban areas for both district and county courts. In fiscal year 1970, 1,042 days of judicial time were provided by judges sitting in other courts. This total does not include those districts where county judges, when available, sit as needed in the district court in their county.

Third, the trial bench, generally, has been hard-working, conscientious, and cooperative.

Fourth, the present judicial system, as provided by the people in the two judicial amendments enacted in 1962 and 1966, makes it possible for the Chief Justice to deal privately, but effectively, with any judge who might tend not to carry his share of the load or be somewhat remiss in his judicial duties. These situations have been and are being dealt with as they arise, so far with salutary effect. In this connection, our statistical reporting system now provides a monthly listing of civil cases under advisement more than 60 days in criminal cases more than six months old which have not been tried. These lists are being sent to the trial judges with a letter from the Chief Justice requesting that appropriate action to be taken with a return letter of explanation.

Fifth, the Judicial Qualifications Commission has proved to be an excellent watchdog, and more will be said about this commission's activities later.

Consequently, even in the most populous of our judicial districts, it is usually possible to get most civil cases to trial within six to 12 months from the time they are ready to be tried. There are some exceptions, however. One of these exceptions is in the 20th District (Boulder), but the addition of a fourth judge last July has greatly improved the situation there.

In the 4th District (Colorado Springs), the backlog in the delay is increasing. The rapid population growth in El Paso County and the impact of Fort Carson on the criminal justice system has caused a sizable caseload increase. For this reason, an additional judge has been requested for this district.

In the 2nd District (Denver), there has been a continuing increase in cases filed in District Court during the past four years. Some 14,309 cases were filed in 1970 as compared with 11,525 in 1967, an increase of approximately 25 percent. For time, the docket situation was kept under control through the new docket system introduced in 1967 by the Honorable O. Otto Moore who was then Chief Justice, and through the use of outside and retired judges. The docket system is still effective, but manpower requirements exceed those which can be met by the present complement of resident judges, plus outside help. For this reason, two additional district judges are requested for the Second District.

A 1970 calendar status study of time lag in personal injury cases was made by the Institute of Judicial Administration at New York University. This study covered cords and 55 metropolitan counties with more than 500,000 population. Denver, which was the longest delay time so far as Colorado courts are concerned, ranked 13th among those 55 jurisdictions, with a median delay of 15.7 months between issue and trial, as compare to the median delay for all 55 courts surveyed of 22.3 months. Although, compared to those other jurisdictions, Denver ranks well, we still think that 15.7 months' delay is too long, and we hope to reduce it to less than 12 months with the additional requested judicial manpower.

Statewide, district court case filings are increasing about 6.5 percent a year, with an increase of about 10% in the urban judicial districts. 66,599 cases were filed in fiscal year 1970 and an estimated 75,000 will be filed in the current fiscal year. This means that 876 cases were filed per judge in 1970 and 950 per judge are estimated for this fiscal year, an increase of 8.5%. The increase in cases close per judge during the same period is 9%, from 835 to 910. Generally accepted overall national standard is 800 cases per judge in a court of general jurisdiction.

The increase in case is closed per judge can be attributed to a hard-working judiciary, better docket management which we have been able to institute, and the use of referees and a few of the larger districts with very high caseloads.

It Is expected that almost 145,000 cases will be filed in county courts this year, exclusive of the Denver county court, which also has municipal ordinance jurisdiction. This total represents an increase of 9 percent or 12,000 cases over fiscal year 1970. As might be expected, this increase is composed primarily of traffic cases and is concentrated in urban areas and in counties located along the interstate and other major highways.

The county court should be a quart where matters are most speedily determined. A trial to court should be taken care of in less than a month, and a jury trial and no longer than 60 to 90 days. Unfortunately, this schedule has become difficult to maintain in some counties and impossible and others because of the increase in cases. For this reason we are asking new county judges in Arapahoe, Boulder, and El Paso Counties.

And this time of increasing crime rates, we share the public's concern for speedy disposition of criminal cases. With few exceptions, the court system's record is good in this regard. A recent study of the seven largest counties in the state, made by the Court Administrator's Office, shows that less than 10 percent of pending criminal cases are more than six months old from the time of arraignment. Roughly, two-thirds of this 10 percent was in Denver, and steps are being taken by

the chief judge and the new presiding judge of the criminal section of that court to reduce this number substantially. Even one criminal case pending over six months is too many, and we intend to watch the situation closely and take such steps as may be necessary. In this connection, the Institute for Court Management, located at the University of Denver, which is strongly supported by Chief Justice Burger, has been asked by us to make a criminal calendar study in Denver and other urban courts. It may be, however, that the problem cannot be solved completely in Denver without an additional judge and additional public defenders and deputy district attorneys to handle the cases before the new judge.

I turned now to another subject which concerns me greatly. It is no secret that there is much public criticism of the courts based on a widespread believes that people charged with crimes are being indiscriminately released by the courts in wholesale lots.

Several studies made by the State Court Administrator's Office dispel these criticisms as far as Colorado is concerned.

I should like to be clearly understood that what I'm about to say is not meant as a boast about a conviction record. The ultimate aim of our courts is justice, and we seek and pursue it diligently. What the results of that quest are, I think you entitled to know.

A study was made of criminal case dispositions and the nine largest counties in the state for fiscal years 1969 and 1970. These counties account for almost 70 percent of the state's population and better than 80 percent of the total criminal caseload. This study showed that acquittals occurred and only 2.7 percent of the cases, 244 out of 9,144. In an additional 1.9 percent (181 out of 9,144), the defendant was found not guilty by reason of insanity.

There is also a somewhat widely expressed of you that even if the trial court fines and offender guilty, the chances are he will be set free on appeal because of interpretations or technicalities in favor of the accused.

The right of appeal is inherent in our system of jurisprudence and due process, and this review is a proper and necessary safeguard to ensure that the accused has received a fair trial.

But the view that this almost always result in a reversal is not born out by the facts. Opinions were handed down by the Colorado Supreme Court in 100 criminal cases in 1970. In 79 of those cases, the judgment of the trial court was affirmed. In for more cases, the court upheld the prosecution and points of law by reversing the trial court. And the other 17 cases, the decision of the court resulted in only one person being set free. This was an extradition case where the court found that there were no grounds for extradition and ordered the appellant released. The other 16 cases were disposed of as follows: six were remanded to the trial court for a new trial; six or remanded to the trial court for further proceedings in accord with the Supreme Court's instructions. In four cases, the court upheld conviction on one charge but not on the second charge.

Beginning April 1, 1970, the Supreme Court instituted a new procedure whereby appeals in advance of trial could be taken to the Supreme Court to determine the legality of police action in

search and seizure and the taking of confessions. This was a procedural move which we hoped would cut down the necessity for full trials in most cases. In 35 of these cases, in which opinions have been announced, police proceedings have been upheld and 29. In three of the other six, the Supreme Court upheld the trial court's ruling that the procedures substantially violated constitutional rights.

There has also been some criticism that sentencing judges employ probation too often in dealing with those convicted of crime. I should like to point out the following statistics to illustrate that rehabilitation through probation is at least as important a tool in the war against crime as incarceration.

We have not yet compile data for a sufficient period of time to determine long range recidivism rates on probation. But, on the basis of data available, our studies show that the ratio of probation success to failure is five to one. In other words out of every six probation terminations, five are for the successful completion of probation and only one is for revocation. These data show a success rate of 83 percent, which is much better than the statistics show result from institutionalization.

Further, it is only costing the state of Colorado $183.40 per year for each probation case supervised as contrasted with an annual per inmate cost of $3,147 in the penitentiary and $3,964 in the reformatory. In addition, probationers are holding down jobs and supporting their families. In other words, they are paying taxes and keeping their families off the ever increasing welfare rolls. This would not be the case if they were incarcerated.

Under our present judicial system structure and organization as implemented by state funding, we now have full-time, qualified probation officers throughout the state, a situation which did not exist prior to January 1, 1970. We are constantly striving to improve the quality of probation services. With help from the Colorado law enforcement assistance administration, we have held two three-day and two five-day intensive in-service training programs for both adult and juvenile probation officers and administrators. Shortly, we will embark upon a study to determine the best way to organize, administer, and provide probation services for adult offenders in the Denver metropolitan area. This study is necessary to provide the services in the most efficient and economical way in anticipation of the large increase in caseload expected during the next decade because of population growth in the rising crime rate.

I would like to re-emphasize that the judiciary shares your and the public's concern, also expressed by Chief Justice Burger, over the efforts of our present programs to rehabilitate meaningfully those who have offended against society, so they become useful citizens rather than a continued menace to society or permanent words of the state. We are expressing our concern in a positive way by improving our probation services and the operation of the juvenile facilities and programs which are our responsibility. But, as you know, the quality and effectiveness of these services depend to a considerable extent on having enough trained people to do the job. The anticipated increase in criminal caseload without some additional help means that either more offenders will be committed initially who might otherwise be qualified for probation or that our success and probation will be lessened, especially with marginal

probationers, so that there will be more probation revocations and resulting costly institutional commitments.

We are concerned not only with the speedy determination of criminal cases, but of juvenile cases as well. A delay of several weeks, let alone months, negates the positive results that might be achieved in the proper disposition of juvenile cases. We have few problems in this regard, except in the Denver Juvenile Court, where the backlog has assumed alarming proportions. Accordingly, we have worked closely with that court in the last months to establish a new docketing system to expedite the flow of cases, and this system is being monitored daily by the State Court Administrator's Office. In addition, we have approved a re-allocation of professional positions in that court, so as to provide more people in the intake division, which has the responsibility of making a preliminary investigation on each juvenile case before it gets to court. The backlog in this division has been the major reason why it has taken so long for cases to be heard and disposed of.

We believe that the jury system is an essential element of American jurisprudence. The right to have a jury of one's peers is essential. We are very much concerned, however, with the amount of time wasted, by Poor administration, of persons called to jury duty. It is wrong for citizens who give of their time to jury service not to have that time utilized to its fullest extent. Accordingly, we have now launched a study of the jury selection process and other aspects of jury administration, so this waste of time can be halted.

The speedy disposition of criminal and juvenile cases also requires adequately staff prosecutor's offices and defense counsel. You took a major step in 1970 when you created the state public defender system, which also has received national recognition. The public defender is now providing counsel because of indigency in approximately three-fourths of the felony cases, a large proportion of juvenile cases, and then some misdemeanor cases at an overall cost of approximately $250 per case, far less than it would cost if handled entirely by court appointed counsel. The continued success of this system will require additional manpower. Each of the attorneys in the defender's office in Denver and Colorado Springs is now carrying a felony caseload of 150, when 75 is a sufficient maximum to provide proper defense and be prepared for trial in a few weeks after arraignment.

Many district attorney staffs are confronted with the same problem, and what to do about the needs of the district attorney, as far as salaries and increase state funding are concerned, as well as the staff needs of the public defender system, or among the many important matters facing the general assembly. And weighing priorities, I know that you will recognize the importance of both to the effective functioning of the criminal justice system.

The appellate backlog problem has been one of grave concern for both the judicial branch in the general assembly. Do the continued efforts of the Supreme Court and the tremendous assistance provided by the Court of Appeals, during its first year of operation, the situation is coming under some control. But, it is still taking much too long to get cases heard in the Supreme Court after they are ready for oral argument, and steps are being taken to improve the situation during the next few months.

In particular, we are concerned over the time lag in here in criminal cases. Because of the increase in the number of criminal appeals filed, there is no 19 month delay between issue and oral argument in criminal cases. To alleviate the situation, we have inaugurated a double schedule of oral arguments and, by this means, expect to reduce this delay to 10 months by fall. To provide the judicial manpower needed under this accelerated schedule, selected district judges are being invited to sit with the court during oral argument and will be assigned cases in which to write opinions, in conjunction with members of the Court. This plan went into effect this morning, and five district judges will be sitting one half day each during this week. The powers granted the Chief Justice to assign judges to any court makes this use of district judges as members of the Supreme Court possible.

The Supreme Court also expects that as a result of the new procedure is the delay between issue and oral argument in civil cases will be reduced from the present 30 months to 10 months as well by September 1 of this year. If these new procedures work as we hope they will, we will continue them past the fall and should be able to cut the waiting time to even less than the 10 months projected.

In connection with this, I would like to point out to you that for the last several months the Supreme Court's opinion production has ranked among the five highest in the country.

The Court of Appeals deserves much of the credit for the present and projected reduction in the civil case backlog. During 1970, 407 civil cases which were already at issue were transferred by the Supreme Court to the Court of Appeals, and another 50 cases will be transferred this month. In addition, there were 289 new cases filed. The Court of Appeals closed 369 cases during 1970, 327 by written opinion – an outstanding achievement.

The Supreme Court's record for 1970 was also very creditable, closing 521 cases, 252 by written opinion, despite the court being short one member for two months, and the many administrative matters involving all members of the court and the Chief Justice in particular. Most of this administrative burden is a consequence of fiscal and personnel responsibility. This burden is decreasing as transitional problems are worked out, but administrative matters will continue to occupy more of the courts time than in the past, and rightfully so, if the system is the system is to function as contemplated in present constitutional and legislative provisions.

Other administrative matters concerning the court in 1970 where the adoption of the new Rules of Procedure, the adoption of the new Code of Ethics, and administration of the Water Rights Adjudication Act.

While the Supreme Court still has a few civil cases which have been an issue 24 to 30 months, the Court of Appeals now has only a 12 month delay between issue and oral argument in the cases transferred by the Supreme Court.

In a report to the Legislative Council Committee on Appellate Courts in 1968, the State Court Administrator estimated the total number of filings in the Supreme Court and Court of Appeals to be 780 in 1970; 350 to 365 in the Supreme Court and 415 to 430 in the Court of Appeals.

This estimate was off in two respects colon first, it was low, the actual number of filings in both courts in 1970 was 822 instead of 780, and second, the distribution of case filings between the two courts was the reverse of what was expected: 533 in the Supreme Court and 289 in the Court of Appeals. Consequently, we have made an analysis of the cases filed in 1970 to find out what happened and whether any recommendation should be made to the General Assembly on changes in the Court of Appeals' jurisdiction. On the latter point, it is our considered opinion that no changes needed now. After two more years' experience, consideration of jurisdiction changes may be necessary in 1973.

It is possible for both appeals courts to function efficiently despite the unexpected distribution of new cases between them because of the statutory provision which allows us to transfer Supreme Court cases pending as of January 1, 1970, to the Court of Appeals if within the Court of Appeals' jurisdiction. It is this provision which has allowed us to transfer 407 cases in 1970 as previously mentioned and makes it possible for both courts to work cooperatively and reducing the backlog and delay that had become intolerable at the time the Court of Appeals was established.

I would like now to speak for a moment about the Commission on Judicial Qualifications, about which not much is known, because the Colorado Constitution requires that all proceedings before that body shall be confidential. I can assure you that the commission has been working since its creation in 1967, as indicated by the following summary of its activities:

The commission is composed of three district judges, two county judges, two attorneys, and two non-lawyers. The district and county judges are appointed by the Supreme Court. The attorneys must have practiced in Colorado at least 10 years and are appointed by majority action of the Governor, the Chief Justice, and the Attorney General. All appointments are for a term of four years.

The Constitution charges the Commission on Judicial Qualifications with the responsibility of investigating complaints concerning alleged willful misconduct, willful or persistent failure to perform duties, or intemperance by a member of the judiciary. The commission also investigates complaints concerning judicial incapacity because of physical or mental disability.

The Commission, after making an investigation, may order a hearing before it, or before masters appointed by the Supreme Court, concerning the removal or retirement of a justice or judge. Following this proceeding, the Commission, upon good cause, may recommend removal or retirement to the Supreme Court, which makes the final decision after a review of the record and any additional evidence which it may permit to be introduced.

The Commission on Judicial Qualifications has held 21 meetings since it was officially formed in April 1967, with four held during 1970 and one so far in 1971. Most of the cases were disposed of after preliminary investigation or informal hearing. Several complaints were dismissed for lack of jurisdiction, because the complaint was frivolous and not substantiated upon investigation, or because proper redress would be through the appellate process.

Three cases resulted in censure, and seven judges have either resigned or retired. One formal hearing was held in 1969, but none in 1970. Ten cases are still open for further investigation and action, with a formal hearing contemplated in one.

The Colorado Commission's experience has been quite similar to the one in California, which was the model for the Colorado Commission. Usually, and informal hearing followed by a letter from the commission is sufficient to eliminate the judicial behavior complained of or to have a judge resign or retire voluntarily without requiring a formal hearing and subsequent review by the Supreme Court.

Now, as I approach the end of this report, I would like to mention briefly some of the more important administrative improvements either accomplished or planned. Central budget and fiscal control has made it possible to allocate resources more equitably throughout the system, so that court services and personnel have been improved considerably in the less prosperous areas of the state. We still have much to do, however, before we will be satisfied with resource and personnel allocation and with administrative practices in the trial courts.

Several steps have already been taken with positive results: 1) the development of in-service training programs; 2) management studies of trial court administrative and clerical procedures, probation services, and detention; 3) development of uniform forms and procedures; 4) provision of technical assistance by the State Administrator's Office; 5) pooling of equipment and coordination of programs; and 6) last, but certainly not least, initial efforts in the mechanization of operations in the larger trial courts so that increased caseloads can be handled without commensurate increase in the number of employees.

The State Court Administrator is also in the process of automating personnel and budget information, as we have done previously with caseload data. The system will provide us with the information needed for sound management decisions. With the assistance of the state auditor and an outside consultant, a uniform accounting system is being developed for the millions of dollars handled through the court as trust funds.

All of these improvements cost money. To some extent, we have had help in this regard from the Colorado Law Enforcement Assistance Administration, but the pace at which we modernize and become more efficient will be determined primarily by the funds that you were asked to make available to us.

To summarize, the state of the Colorado judicial system is generally good. We have several problems which I have mentioned, some of major significance. But, as I have outlined, steps have been and are being taken to find solutions. The cost of operating the system may seem high to some of you because this is a recently acquired state responsibility. Unfortunately, it is not inexpensive to operate a system as complex as this one efficiently, so as to maintain and improve the quick determination of causes in the face of increasing caseloads over which we have no control. I wish to assure you that we are doing and will do our best to live up to the reputation the Colorado system now enjoys nationally. In some, it is our aim to provide for Colorado <u>sound justice exercised with a reasonable speed in an efficient and economical manner, with a minimum of technicalities</u>. The people and the General Assembly have provided us with the

tools to run a modern, effective, and efficient judicial system. The responsibility to use these tools properly is ours. We welcome your criticisms and suggestions.

In conclusion, I would like to thank you again for the opportunity to appear before you and for your continuing interest and concern in and your contribution to the operation and improvement of the Colorado judicial system.