

**Lesson:** The History of the Courts

**Objective:** Students understand how democratic ideas and institutions (courts) in the United States (Colorado) have developed, changed, and been maintained. (*Colorado Model Content Standards: History, Standard 5.1, grades 9-12*)

**Activities:** Teacher lecture (background material, lecture outline, and timeline provided); class discussion (questions and topics suggested); and homework assignment

**Outcomes:** Students learn about the history of Colorado's courts, helping them to understand how the system started and how it has evolved into the system that exists today.

**Grade Level:** Grades 9-12

**Anticipated classroom time:** 45-60 minutes

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### **Message from Colorado Court of Appeals Chief Judge Janice B. Davidson**

When groups of citizens decide to delegate to a few other citizens the authority to resolve civic and private disputes, the latter group must carry with it the confidence of the people who gave them that power. Otherwise, the system will fall apart. It is the confidence in the integrity and impartiality of the judges who comprise the courts that is the true backbone of our court system. In order to keep that confidence, judges must be independent and work in an atmosphere of independence.

The need for judicial independence is most apparent when courts decide cases between individuals and the government and between branches of government. A judge must be free to rule against the governmental entity without fear of reprisal. Indeed, since World War II, although emerging countries have adopted the U.S. Constitution almost verbatim, each system has failed. The reason is the absence of an independent judiciary — there simply is no one to review what the other branches of government have done.

In order to secure the respect and trust of the people, judges also must be free from pressure from powerful non-governmental groups that may have an incentive to influence the outcome of cases. Thus, as former federal judge Avner Mikva said, "Judges must follow their oaths and do their duty, heedless of editorials, letters, telegrams, picketers, threats, petitions, panelists, and talk shows."

Colorado used to elect its judges. However, like many other states, Colorado has recognized that a system of electing judges through the political process is antithetical to the concept of an independent judiciary. Thus, Colorado judges now are selected on merit and seek additional terms of office through nonpartisan retention elections. Insulating judges from the pressures of fundraising and campaigning helps to ensure that judges are beholden to no one. Similarly, evaluating judges on their performance and not on their politics helps to ensure that every person appearing in a Colorado court receives fair and impartial treatment. Indeed, as citizens become better aware how an independent judiciary increased their access to justice, they will increase their resolve to maintain an independent judiciary.

## **Teacher background information:**

### **Judicial Independence**

*Taken from the American Bar Association website at:  
<http://www.abanet.org/publiced/courts/judicialindependence.html>*

Before the American Revolution, courts in the colonies were seen as instruments of oppression. Juries could be locked up until they reached the “right” decision. Judges were seen as puppets of the king. In fact, the Declaration of Independence criticized King George III for making “judges dependent upon his will alone for the tenure of their offices and the amount and payment of their salaries.”

This experience convinced our founders that Americans needed independent courts, courts that were protected from unreasonable searches, rigged trials, and other examples of overreaching government power. To guarantee rights such as freedom of speech and freedom of worship, and to make the rule of law a reality, the founders knew that judges had to be servants of law and the Constitution, not the political bosses, not the media, and not special interest groups. The Constitution protected judges from political and public pressure by:

- Specifying that they hold their office “during good behavior.” This means that their appointments are for life.
- Specifying that their salaries cannot be diminished during their tenure. This prevents Congress from retaliating against judges by cutting their pay.
- Making the removal process difficult (only on “impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors”).

These protections are still in place for federal judges. (While each state has its own judicial structure and constitutional provisions covering state judges, judicial independence is the cornerstone of all states’ judicial systems.)

Throughout American history, the independence of the judiciary has protected individual liberties and prevented a tyranny of the majority. Examples include extending voting rights, ending segregation, and protecting the average citizen from unwarranted government intrusion.

Emerging democracies look to our system of an independent judiciary as a model. They are all too familiar with the “telephone justice” of dictatorships, in which a judge adjourns court to wait for the call that tells him or her how to decide the case.

Judicial independence assures that cases will be decided on their merits. Decisions are based on what is right and just under the constitution and law, not what is popular at the moment.

### **History of Colorado’s Courts**

*From a public education brochure published by the Colorado Judicial Branch,  
available online at [www.courts.state.co.us](http://www.courts.state.co.us)*

The year 1858 glistens in Colorado’s history. People gripped by gilded dreams flocked here to seek their fortunes in the rivers and the hills. Despite many of those dreams getting tarnished along the way, Denver, the “Queen City of the Plains” was born on Nov. 17, 1858. But, as the population grew in what would be the Centennial State, so did the need for government and a system of justice.

Many and varied judicial systems emerged to satiate the need for order. In the mountains, this came in the form of “Miners Districts.” These organizations, which would spring up whenever a large enough group of miners settled in one area, established boundaries, defined property rights, elected officers, set up courts, tried lawsuits, and punished criminals. Among the

first of these districts were Gold Hill near present day Boulder, Jackson Diggins District in Clear Creek County, and Gregory District near Blackhawk, all of which were established in 1859.

The fledgling judicial system along the Front Range developed in a somewhat more conventional manner. Prior to 1861, most of what is now Colorado was part of Arapahoe County in the Territory of Kansas. In 1855, the legislature of the Territory of Kansas appointed Allen P. Tibbitts as the probate judge of Arapahoe County. Tibbitts was effectively Colorado's "first judge," although he never actually visited Arapahoe County, much less held court here. He never claimed his bench because, at that time in history, travel through this region could be treacherous, due to poor traveling conditions.

In March 1859, the first court was established in the "Pikes Peak Country." S.W. Wagoner was elected as its probate judge. Shortly after, however, a restlessness to secede from Kansas began to grow among the citizens. As a response, an election held on Oct. 24, 1859, established the extralegal Territory of Jefferson in what is now Colorado. This self-proclaimed government instituted the region's first Supreme Court with a chief justice and two associate justices. Within two months, Jefferson Territory's legislature expanded the judicial system to include district, county, and justice of the peace courts, in addition to the already established Supreme Court.

Many local citizens refused to acknowledge this judicial system's presumed authority, or that of its courts. Inevitably, conflict arose between the Arapahoe County courts and those of the Jefferson territory. Neither had a good grip on its claimed jurisdiction, and thus criminals frequently slipped through gaping loopholes in the system. As a result, People's Courts emerged. These were not permanent, or even official institutions, but they were summoned by the upper class to deal with serious crimes, such as murders. The court followed general procedures, allowing for both prosecution and defense, but the sentence was usually death, and it was carried out immediately after the ruling.

After Kansas made the transition from territory to state in January 1861, people living in Jefferson Territory recognized the necessity, and inevitability, of coming under the authority of the United States. An application for status as a territory was filed, and in February 1861 Congress passed a bill creating the Territory of Colorado.

Immediately upon becoming an official territory, the mass of existing governing entities all ceded power to the new government. The territory was divided into three judicial districts. President Abraham Lincoln appointed three justices to the first legal Supreme Court in the territory. Chief Justice Benjamin F. Hall was given jurisdiction of the Denver District; Justice Charles Lee Armour, the Central City District; and Justice S. Newton Pettis, the Southern District, near Pueblo. The first case to be tried before the Supreme Court was *Gardner vs. Dunn* on appeal from Park County.

Colorado was admitted to the union as a state on Aug. 1, 1876. The state's original constitution provided for a Supreme Court with a bench of three justices, as well as four judicial districts, with one judge serving each. The timeline below illustrates the early progression of the state's judicial structure.

### **Colorado Supreme Court**

As discussed above, the history of Colorado's highest court began even before Colorado became the 38th state in the nation. The first Supreme Court was established in 1859 by the Territory of Jefferson, an extra-legal government existing prior to the Territory of Colorado.

When Colorado became an official territory, a new Supreme Court was established. This court held its initial session in Denver on July 10, 1861. The court convened in a cozy 7-by-9 foot room in the 12-by-25 foot Commonwealth Building on the corner of Larimer and 13th Street.

Between 1861 and its eventual move into the north wing of the State Capitol in the early 1890s, the court convened in many other locations, including the Middal Building behind the Lincoln Hotel, the Old Planter's House on Blake and 16th, the Keller House on 11th, the Jackson Building on 18th and Larimer, George W. McClure's building on Larimer between 15th and 16th, and one last location on the corner of Lawrence and 15th.

In 1905, the court grew to seven justices, where it remains today, to help address the heavy caseload. These justices sit en banc, or in a full panel, for every case. Court of Appeals judges, in contrast, sit in panels of three to consider cases.

### **Colorado Court of Appeals**

Colorado's Court of Appeals has a fragmented, yet fascinating, history. The first Court of Appeals was established in 1891 by the Colorado General Assembly for an indeterminate term to help the Supreme Court with its heavy caseload. This court consisted of three judges and lasted until 1904, when it was no longer believed to be necessary.

In 1913, a second Court of Appeals was created, this time with five judges, but with a pre-established term of only four years. Its mandate expired in 1917. In 1970, the third and present Court of Appeals was established, with six judges at its inception. In 1974, this number was increased to 10, and on Jan. 1, 1988, the number was increased to 13. Effective July 1, 1988, three additional positions were created by the General Assembly, bringing the number of judges to 16. The most recent expansion of the court became effective on July 1, 2008, bringing the number of judges to 22.

The location of this court during its first two terms is unclear, but due to its close relationship with the Supreme Court, it may have been held in the same location. The third Court of Appeals began hearing cases in 1970 at the Supreme Court courtroom in the Capitol. When the court expanded to 10 judges in 1974, it moved to a new courtroom on the sixth floor of the Farmer's Union Building on 16<sup>th</sup> and Sherman. In 1977 it joined the Supreme Court in the former Colorado Judicial Department Building at 14<sup>th</sup> and Broadway. The court has since grown to 22 judges, and the Judicial building was demolished in 2010 to make room for a new headquarters for both courts, the State Court Administrator's Office and all other state agencies with legal or court-related functions.

### **Timeline**

The following timeline illustrates the early progression of the state's judicial structure.

**1876** – 4 judicial districts; 1 judge in each

**1881** – 7 judicial districts; 1 judge in each

**1887** – 9 judicial districts; 1 judge each, except Arapahoe County (incl. Denver) with 2

**1891** – 13 judicial districts; first Court of Appeals

**1893** – 2nd judge given to Pueblo area

**1895** – 2nd judge given to Colorado Springs area

**1905** – Supreme Court given 7 justices; first Court of Appeals abolished

**1913** – Second Court of Appeals established for a four-year life

**1917** – Second Court of Appeals abolished

**1921** – 14 judicial districts

**1945** – 15 judicial districts

**1953** – 16 judicial districts

**1958** – 18 judicial districts

**1963** – 22 judicial districts, the present number

- 1970** – Third and current Court of Appeals was established
- 1977** – Supreme Court and Court of Appeals moved into current building
- 2002** – 273 judges statewide: 7 Supreme Court justices, 16 in the Court of Appeals, 118 in district courts, and 132 in county courts
- 2008** – 304 judges statewide: 7 Supreme Court justices, 22 in the Court of Appeals, 164 in district courts and 111 in county courts
  - The General Assembly approves, and the Governor signs into law, a bill authorizing financing for the construction of a new headquarters for the Supreme Court, Court of Appeals, State Court Administrator’s Office, and all other state agencies with legal or court-related functions.
- 2009** – 311 judges statewide: 7 Supreme Court justices, 22 in the Court of Appeals, 168 in district courts and 114 in county courts
- 2010** – 316 judges statewide: 7 Supreme Court justices, 22 in the Court of Appeals, 174 in district courts and 113 in county courts
  - The appellate courts move out of the Judicial Building at 14<sup>th</sup> and Broadway, and that building and the adjacent Colorado History Museum are demolished to make room for construction of the Ralph L. Carr Judicial Center. The appellate courts and State Court Administrator’s Office temporarily relocate to the Denver Post Building at Colfax and Broadway.
- 2011** – 318 judges statewide: 7 Supreme Court justices, 22 Court of Appeals judges, 175 in district courts and 114 in county courts
- 2012** – The appellate courts and Office of the State Court Administrator move into the Ralph L. Carr Colorado Judicial Center.

The old Supreme Court courtroom in the north wing of the capitol building:



The old Supreme Court courtroom at 14<sup>th</sup> and Broadway:



The old Court of Appeals courtroom at 14<sup>th</sup> and Broadway:



### **Classroom activities:**

- Begin class by giving the students this scenario: You have recently arrived in the foothills (or mountains) of a largely unsettled western territory with no existing local government. As more people arrive, they start to have disagreements among themselves. What would you do to solve this problem?
- Give lecture-style overview of the evolution of Colorado's courts. (outline provided below)
- Hold a class discussion stemming from the following questions: What do you think about the early systems of justice in Colorado (i.e. Miners Courts, People's Courts)? How would you have solved the justice problems, such as the conflict between the Territory of Jefferson and Arapahoe County?
- Discuss what a typical disagreement in territorial times might have been and how would you resolve it with no established legal system yet in place?

### **Homework assignment:**

1. Choose one early system of justice that arose before the Territory of Colorado and critique it. Compare it to what you would have done in a situation without any existing system of justice.
2. Compare one of the early systems of justice in this area to the existing system of justice. In what ways are they similar? In what ways are they different?

### **Class Outline:**

#### **Judicial Independence**

- In many governments throughout history, courts were subject to the whims of the executive leader. The leader essentially made the courts' decisions for them, by forcing judges' decisions, either by threatening their job or their level of pay.
- In the United States, we have a system of judicial independence, which means that the ultimate force behind judicial decisions is the constitution (state and/or federal). Courts also uphold the law, though they do have the power to find individual laws unconstitutional. The Constitution protects federal judges from outside influence by:
  - Specifying that they hold their office "during good behavior." This means that their appointments are for life.
  - Specifying that their salaries cannot be diminished during their tenure. This prevents Congress from retaliating against judges by cutting their pay.
  - Making the removal process difficult (only on "impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors").
  - State constitutions have various provisions and protections for state judges.

#### **History of Courts in Colorado**

- Prior to the gold rush, which began in 1858, the area that would be Colorado was so sparsely populated that justice systems were hardly necessary.
- With the influx of people and no real local government, people began to devise ways to govern themselves.
- In the mountains, these makeshift governments were called Miner's Districts.
  - They established boundaries, defined property rights, elected officers, set up courts, tried lawsuits, and punished criminals.

- Among the first of these districts, all of which were established in 1859, were
    - Gold Hill near present day Boulder
    - Jackson Diggins District in Clear Creek County
    - Gregory District near Blackhawk.
- Most of Colorado at this point in history was officially called Arapahoe County, which was part of the Territory of Kansas.
  - In 1855, Kansas appointed Allen Tibbitts as the first judge to preside over the area. However, Tibbitts never actually presided over, or even visited, this court.
  - In March 1859, Kansas appointed S.W. Wagoner to the first court located within this western region.
- In October 1859, an election established the extra-legal Territory of Jefferson in what is now Colorado.
  - This territory established its own court system, including Colorado's first Supreme Court, with one chief justice and two associate justices.
  - Within two months, Jefferson territory's legislature expanded the judicial system to include district, county, and justice of the peace courts.
- There were jurisdictional conflicts between Jefferson territory courts and those of Arapahoe County.
  - Many criminals slipped through the cracks.
  - To help with this problem, the upper class would summon a temporary People's Court to deal with a serious crime, like murder.
    - People's Courts had both prosecution and defense.
    - The sentence was usually death, and was carried out immediately after the sentencing.
- In February 1861, the United States Congress passed a bill establishing the Territory of Colorado.
  - Immediately, all the conflicting and parallel governments ceded power to the territory.
  - The territory was divided into three judicial districts.
  - President Abraham Lincoln appointed three justices to the first legal Supreme Court in Colorado.
  - The first case to be tried before this Supreme Court was *Gardner vs. Dunn*, on appeal from Park County.
- Colorado was admitted to the union as a state on Aug. 1, 1876.
- The state's original constitution provided for a Supreme Court with a bench of three justices, as well as four judicial districts, with one judge serving each.

### **Colorado Supreme Court**

- Colorado's first legal Supreme Court:
  - was established when Colorado became a territory in 1861;
  - held its initial session in Denver on July 10, 1861; and
  - convened in a cozy 7-by-9 foot room in the 12-by-25 foot Commonwealth Building on the corner of Larimer and 13<sup>th</sup> Street.
- Locations of the Supreme Court:
  - Between 1861 and its eventual move into the north wing of the State Capitol Building in the early 1890s, the court convened in many locations, including
    - the Middal Building behind the Lincoln Hotel
    - the Old Planter's House on Blake and 16th
    - the Keller House on 11th

- the Jackson Building on 18th and Larimer
  - George W. McClure's building on Larimer between 15th and 16th
  - in quarters on the corner of Lawrence and 15th.
- In 1905, the court grew to seven justices to help address the heavy caseload. These justices sit en banc, or in a full panel, for every case. Court of Appeals judges, in contrast, sit in panels of three to consider cases.
- In 2010, the Supreme Court moved out of the Judicial Building, and that building and the adjacent Colorado History Museum were demolished to make room for construction of the Ralph L. Carr Judicial Center, which is to house the appellate courts, State Court Administrator's Office and other state agencies with legal or court-related functions.
- In 2012, the Supreme Court moved into the Ralph L. Carr Colorado Judicial Center, along with the Court of Appeals and the Office of the State Court Administrator.

### **Colorado Court of Appeals**

- The first Court of Appeals was established in 1891 by the Colorado General Assembly.
  - It was established for an indeterminate term.
  - Its role was to help the Supreme Court with its heavy caseload.
  - This court consisted of three judges.
  - It lasted until 1904, when it was no longer believed to be necessary.
- In 1913, a second Court of Appeals was created.
  - This court had five judges.
  - It had a pre-established term of only four years; its mandate expired in 1917.
- In 1970, the third and present Court of Appeals was established.
  - It had six judges at its inception.
  - In 1974, this number was increased to 10.
  - On Jan. 1, 1988, the number was increased to 13.
  - The most recent expansion of the court became effective on July 1, 2008, bringing the number of judges to 22.
- Locations of the Court of Appeals
  - The location of this court during its first two terms is unclear, but due to its close relationship with the Supreme Court, it may have been held in the same location.
  - The third Court of Appeals began hearing cases in 1970 at the Supreme Court courtroom in the Capitol Building.
  - When the court expanded to 10 judges in 1974, it moved to a new courtroom on the sixth floor of the Farmer's Union Building on 16th and Sherman.
  - In 1977 it joined the Supreme Court in the Colorado Judicial Building at 14th and Broadway.
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  - In 2012, the Court of Appeals, along with the Supreme Court and Office of the State Court Administrator, moved into the Ralph L. Carr Colorado Judicial Center.