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THE ILLINOIS JUDICIAL SYSTEM

Robert C. Underwood*

I. Introduction

After a continuing struggle, spanning a period of more than 40 years, carried on by dedicated lawyers, laymen and legislators, a plan was presented to the Illinois electorate proposing sweeping reforms in its judicial machinery. The Constitutional amendment containing the new Judicial Article,¹ commonly designated as the "Blue Ballot," was adopted in November of 1962, to become effective on January 1, 1964. This new court system involved radical changes in, and a restructuring of, the entire judicial system, from the highest court to the lowest. Never before had any state adopted so sweeping a court reform. The constitutional convention which recommended the new constitution adopted in 1970 retained intact the structural substance of that Article, making several additions and improvements which the experience of the intervening six years had shown desirable.

As a result, Illinois now finds its court system being studied by judges and court administrators from our sister states and foreign countries. All who observe this unified structure in operation depart with the hope and expectation of duplicating it within their own jurisdiction.

In order to accurately appraise the revolutionary concepts involved in these constitutional amendments some understanding of the structure of the Illinois judicial system under the previously controlling Constitution of 1870 will be helpful.²

Under that constitution, its predecessors, and subsequent legislation, the Illinois judicial system had proliferated into a labyrinth of trial courts, many of which had restricted, specialized and frequently overlapping jurisdiction, and an intermediate appellate court staffed by trial judges assigned by the Supreme Court to appellate work but who, in many instances, carried their share of trial court work as well.

Members of the seven-man Supreme Court were elected from seven separate districts composed of contiguous counties, and the Court had original jurisdiction in cases of *mandamus*, revenue, *habeas corpus*, and impeachment and only appellate jurisdiction in other cases. Direct appeals from the trial court to the Supreme Court were a matter of right in specified categories of cases.³

All other appeals were heard by the appellate court which was authorized

* Chief Justice, Illinois Supreme Court.

¹ The adoption of this Judicial Article amended Article VI of the Illinois Constitution of 1870. The amended Article VI shall hereafter be designated: ILL. CONST. 1870 art. vi (1964).

² For a more extensive review of the history of the previous structure and the problems it posed, see the INTRODUCTION, AND HISTORICAL AND PRACTICE NOTES, relating to the old Judicial Article. S. H. A. ILL. CONST. 1870, art. vi.

³ ILL. REV. STAT. ch. 110, § 75 (1961), provided as follows:

Appeals shall be taken directly to the Supreme Court (a) in all cases in which a franchise or freehold or the validity of a statute or a construction of the constitution is involved, (b) in all cases relating to revenue, or in which the State is interested as a

by the constitution and established by the legislature in 1874. As existing prior to 1964, the appellate court benches were filled by circuit court judges assigned by the Supreme Court, and many of the circuit court judges so assigned, particularly those outside Cook County, also continued to perform circuit court duties. The number of appellate courts and judges assigned thereto substantially expanded in the century between 1870 and 1970.

The major problems, however, were at the trial court level, and are, perhaps, best exemplified by the Cook County situation. In 1963 Cook County had 208 courts: the Circuit Court, the Superior Court, the Family Court, Criminal Court, Probate Court, County Court, Municipal Court of Chicago, 23 other city, village, town and municipal courts, 75 justice of the peace courts, and 103 police magistrate courts. Many of these courts had limited jurisdiction, many possessed overlapping jurisdiction. While not so numerous in other, less populous counties, the same basic problems existed throughout the state. Uniformity of rules and procedures was impossible to achieve; judges were almost entirely independent in the operation of their courts because of the absence of authority for administrative supervision and coordination. Much lawyer and judge time was frequently wasted in determining whether a plaintiff had brought his action in the proper court.

Transformation of this complex and inefficient system of administering justice into a simple, efficiently designed framework which, in my judgment, has no structural peer, was accomplished, as earlier indicated, by the adoption in 1962 of a new Judicial Article for the 1870 constitution, and by retention of that Article, as modified and improved, in Illinois' new Constitution of 1970.⁴

II. The Judicial Article of 1964 and the Constitution of 1970

The Judicial Article vested judicial authority in Illinois in a Supreme Court, an appellate court and circuit courts.⁵ At the trial court level all courts other than the circuit courts were abolished and their jurisdiction, judicial functions, powers and duties were transferred to the respective circuit courts.⁶

The Supreme Court continued to be composed of seven judges, but now elected from five judicial districts. Cook County became the First Judicial District, electing three judges to the Court, and the remainder of the state was divided into four judicial districts, each of which elected one judge. Four judges constitute a quorum and concurrence of four continues to be necessary for a

party or otherwise and (c) in cases in which the validity of a municipal ordinance or county zoning ordinance or resolution is involved and in which the trial judge certifies that in his opinion the public interest so requires.

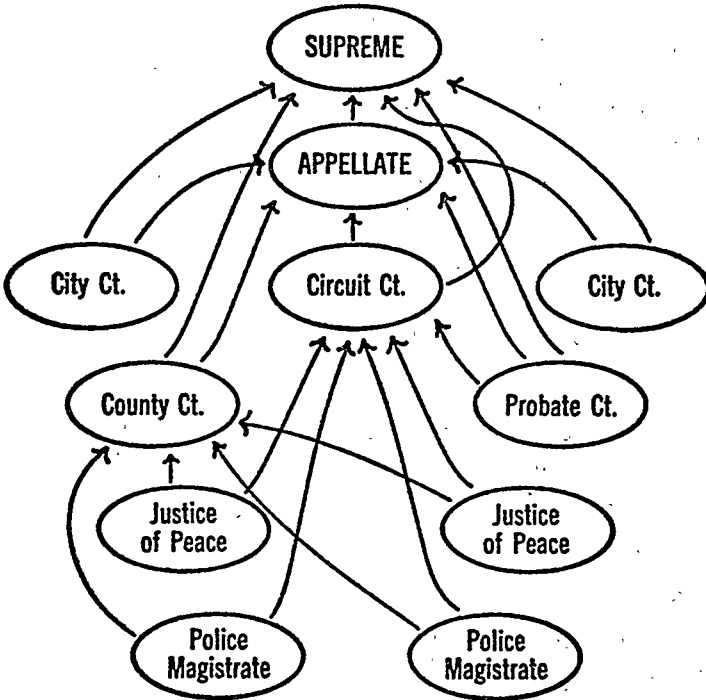
In addition, the Supreme Court received direct appeals of lower court orders entered in review of a variety of administrative decisions. ILL. REV. STAT. ch. 110, § 276 (1961); *see, e.g.*, ILL. REV. STAT. ch. 16¾, § 14.90 (1961) (barber license revocation).

⁴ The Judicial Article of the present Constitution shall hereafter be designated: ILL. CONST. art. vi (1970).

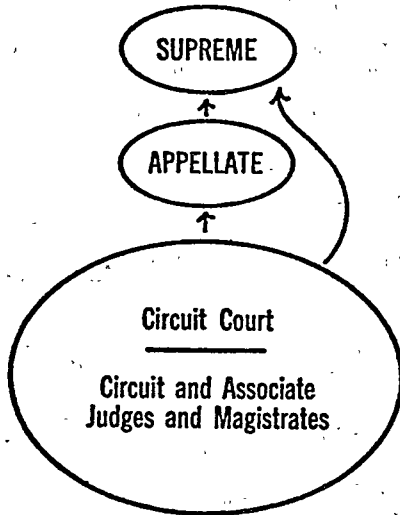
An understanding of the dramatic simplification of the judicial system is assisted by reference to the accompanying chart. It should be remembered that the pre-1964 system included a number of courts (town, village, municipal, etc.) omitted from the chart because of space limitations. Additional material explanatory of these changes appears later in the text.

⁵ ILL. CONST. 1870 art. vi, § 1 (1964); ILL. CONST. art. vi, § 1 (1970).

⁶ ILL. CONST. 1870 art. vi, § 9 (1964); ILL. CONST. art. vi, § 9 (1970).



CHANNEL OF APPEALS PRIOR TO 1964



**CHANNEL OF APPEALS AFTER JANUARY 1, 1964,
THE DATE THE JUDICIAL ARTICLE BECAME EFFECTIVE**

decision.⁷ The terms of Supreme Court members were extended to ten years.⁸ The Court was given original jurisdiction in cases relating to revenue, *mandamus*, prohibition, and *habeas corpus* and only appellate jurisdiction in other cases.⁹ Appeals from the final judgments of the circuit courts directly to the Supreme Court as a matter of right were limited to cases involving revenue, a question arising under the federal or state constitutions, *habeas corpus*, or appeal by the defendant from a death sentence in capital cases.¹⁰ The right of direct appeal was further limited by the new constitution to include only death penalty cases.¹¹

Appeals from the appellate court to the Supreme Court as a matter of right were possible, but limited to (a) cases in which a question under the Constitution of the United States or of Illinois arose for the first time in and as a result of the action of the appellate court, or (b) upon the certification by a division of the appellate court that a case should be decided by the Supreme Court.¹² Appeals from the appellate court to the Supreme Court in all other cases is only pursuant to leave granted by the Supreme Court.¹³

The Supreme Court was granted authority to establish procedural rules. General administrative authority over all courts was vested in that court to be exercised by the Chief Justice¹⁴ who was selected for a three-year term by the members of that court.¹⁵ To assist the Chief Justice in his administrative duties, the Article provided for the appointment of an administrative director and staff by the Supreme Court.¹⁶

7 ILL. CONST. 1870 art. vi, § 4 (1964); ILL. CONST. art. vi, § 3 (1970).

8 ILL. CONST. 1870 art. vi, § 14 (1964); ILL. CONST. art. vi, § 10 (1970). The terms had previously been nine years. ILL. CONST. 1870, art. vi, § 6 (1964).

9 ILL. CONST. 1870 art. vi, § 5 (1964); ILL. CONST. art. vi, § 4(a) (1970). Illinois Supreme Court Rule 381, amended July 1, 1971, governs procedure in these original actions. Of note is the Rule's provision (d), whereby:

In an original action to review a judge's judicial act the prevailing party in the proceeding before the judge shall also be designated as a respondent. Process shall be served on the respondents, but the judge is a nominal party, only, and need not respond to the process. His failure to do so will not admit any allegation. Counsel for the prevailing party may file appropriate papers for that respondent but shall not file any paper in the name of the respondent judge.

This procedure avoids the need for a judge to align himself even temporarily with one side in litigation. See *Rapp v. Van Deusen* 350 F.2d 806, 813 (3d Cir. 1965); see also Rule 21 of the FEDERAL RULES OF APPELLATE PROCEDURE.

10 ILL. CONST. 1870 art. vi, § 5 (1964).

11 ILL. CONST. art. vi, § 4(b) (1970). By rule, the Supreme Court has further provided for direct appeal in cases holding a statute of the United States or of Illinois invalid, and in workmen's compensation cases, and also provided for the transfer of appeals from the appellate court to the Supreme Court in cases in which the public interest requires expeditious determination. ILL. SUP. CT. RULE 302, as amended July 1, 1971.

12 ILL. CONST. 1870 art. vi, § 5 (1964); ILL. CONST. art. vi, § 4(c) (1970). Rules 317 and 316 of the Illinois Supreme Court govern the procedure in these cases, respectively. Rule 318 provides general rules governing all appeals from the appellate court to the Supreme Court.

13 ILL. CONST. 1870 art. vi, § 5 (1964); ILL. CONST. art. vi, § 4(c) (1970). Rule 315 of the Illinois Supreme Court establishes the procedure for petitions for leave to appeal, and states in part:

Whether such a petition will be granted is a matter of sound judicial discretion. The following, while neither controlling nor fully measuring the court's discretion, indicate the character of reasons which will be considered: the general importance of the question presented; the existence of a conflict between the decision sought to be reviewed and a decision of the Supreme Court, or of another division of the Appellate Court; and the need for the exercise of the Supreme Court's supervisory authority; and the final or interlocutory character of the judgment sought to be reviewed.

14 ILL. CONST. 1870 art. vi, § 2 (1964); ILL. CONST. art. vi, § 16 (1970).

15 ILL. CONST. 1870 art. vi, § 4 (1964); ILL. CONST. art. vi, § 3 (1970).

16 ILL. CONST. 1870 art. vi, § 2 (1964); ILL. CONST. art. vi, § 16 (1970).

The appellate court was organized in the same five judicial districts as the Supreme Court. Initially it consisted of 24 judges—12 in the First District (Cook County), and three in each of the other four districts.¹⁷ It is required that the appellate judges sit in divisions of three designated by the Supreme Court, with concurrence of two judges necessary for decision.¹⁸ Three additional judges were authorized in 1970 in the First District, and three more by the 1971 General Assembly. Appellate court judges are elected for ten-year terms. One of the truly significant improvements in the appellate court has been the provision for full-time, elected, appellate court judges, for the caseload of that court is such that nothing less than full-time judicial manpower would suffice.

Final judgments of the circuit court, except those directly appealable to the Supreme Court and acquittals on the merits in criminal cases, are, as a matter of right, appealable to the appellate court for the district in which the circuit is located. To assure a complete determination of any case being reviewed, the appellate court is authorized to exercise any necessary original jurisdiction.¹⁹

In keeping with its general administrative authority over all courts, the Supreme Court has promulgated rules concerning appeals from the appellate court to the Supreme Court.²⁰ It has assigned additional judges to the appellate court and transferred divisions from one district to another when increased case-loads have made it necessary to do so. It has provided by rule for "expeditious and inexpensive appeals."²¹

The Article provided that the state could be divided into judicial circuits of one or more contiguous counties.²² There are 21 such circuits: Cook and DuPage counties are one-county circuits;²³ the remaining circuits are composed of not less than two nor more than twelve counties.

The circuit court was granted "unlimited original jurisdiction of all justiciable matters,"²⁴ later restricted to withdraw jurisdiction in cases concerning legislative redistricting and disability of the Governor, wherein the Supreme Court has exclusive jurisdiction.²⁵ By the grant of general and essentially unrestricted jurisdiction to the circuit court and its establishment as the only trial court, the earlier problem of complex, often overlapping, jurisdiction and all

17 ILL. CONST. 1870 art. vi, § 6 (1964). The 1964 Judicial Article established this numerical framework, subject to change by law. The new Constitution leaves the number of appellate court judges entirely within legislative control, and grants discretion to the Supreme Court to determine the number of divisions for each district. ILL. CONST. art. vi, § 5 (1970).

18 ILL. CONST. 1870 art. vi, § 6 (1964); ILL. CONST. art. vi, § 5 (1970).

19 ILL. CONST. 1870 art. vi, § 6 (1964); ILL. CONST. art. vi, § 7 (1970).

20 See notes 12 and 13, *supra*.

21 ILL. CONST. art. vi § 16 (1970). This is explicitly required by the current constitution (ILL. CONST. art. vi, § 16 (1970)); procedures governing appeals are the subject of Illinois Supreme Court Rules 301-09, 315-18, 321-31, 341-45, 351, 352, 361-73 (all civil) and 601-15, 661 (all criminal).

22 ILL. CONST. 1870 art. vi, § 8 (1964); ILL. CONST. art. vi, § 7(a) (1970).

23 That Cook County comprise a single circuit is constitutionally mandated. ILL. CONST. 1870 art. vi, § 8 (1964); ILL. CONST. art. vi, § 7(a) (1970). Beyond that requirement, the Constitution is silent as to the boundaries and the number of circuits, leaving to the legislature the authority to establish circuits by law, and preserving thereby a valuable flexibility to meet future needs.

24 ILL. CONST. 1870 art. vi, § 9 (1964).

25 ILL. CONST. art. vi, § 9 (1970). See art. iv, § 3, and art. v, § 6(d), ILL. CONST. (1970). Illinois Supreme Court Rule 382, adopted July 1, 1971, is designed to give the Court the flexibility of procedure enjoyed by the United States Supreme Court under its Rule 9, enabling the Court to deal with original cases requiring the taking of evidence.

the unnecessary legal difficulties stemming from such complexities have been eliminated.

The circuit courts under the Judicial Article had three categories of judges: circuit judges, associate judges, and magistrates.²⁶ All judges of courts of record (county courts, probate courts, city courts, etc.), except circuit judges, automatically became associate judges of the circuit court. The circuit judges, elected on a circuit-wide basis, exercised the full jurisdiction of the circuit court²⁷ and the power to make the rules of the court.²⁸ The circuit and associate judges elected a chief judge of the circuit to exercise general administrative authority in his circuit subject only to the administrative authority of the Supreme Court.²⁹

Associate judges, by the Constitution, had the same jurisdiction over cases.³⁰ They voted for the chief judge but did not share in the rule-making authority of the court and could not be elected chief judge. It was provided that at least one associate judge be elected in each county of the state. Both circuit judges and associate judges had six-year terms.³¹

Magistrates were appointed by the circuit judges to serve at their pleasure, without terms. While they possessed the full jurisdiction of the circuit court, only certain cases were assignable to them. The legislature specified certain matters as assignable to magistrates and enabled the Supreme Court to expand the matters assignable to lawyer magistrates.³² The chief judge could further restrict matters assigned to magistrates in his circuit. Magistrates, generally, were assigned civil cases when the amount of damages or the value of personal property claimed did not exceed \$15,000; and quasi-criminal and criminal cases, where the maximum punishment did not exceed a fine of \$1,000 or imprisonment for one year or both. Magistrates were also assigned internal administrative duties within the court.

The authorized number of magistrates to be appointed was based on a population formula. In addition to the number of magistrates authorized by statute, the General Assembly empowered the Supreme Court to allocate the appointment of a total of 40 additional magistrates to the circuits upon a showing of need.

A significant improvement made by the 1970 Constitution lies in the classification of judges. Some friction between the associate judges and the circuit judges was apparent on a sort of "caste system" basis. Whatever the cause, it has been overcome by the fact that the new constitution eliminates the

26 ILL. CONST. 1870 art. vi, § 8 (1964).

27 ILL. CONST. 1870 art. vi, § 8 (1964); ILL. CONST. art. vi, § 7 (1970).

28 Rule 21(a) of the Illinois Supreme Court provides that:

a majority of the circuit judges in each circuit may adopt rules governing civil and criminal cases which are consistent with these rules and the statutes of the State, and which, so far as practicable, shall be uniform throughout the State.

29 ILL. CONST. 1870 art. vi, § 8 (1964); ILL. CONST. art. vi, § 7(c) (1970). The Supreme Court has likewise provided by rule for the local exercise of this administrative responsibility:

The chief judge of each circuit may enter general orders in the exercise of his general administrative authority, including orders providing for assignment of judges, general or specialized divisions, and times and places of holding court.

30 ILL. CONST. 1870 art. vi, § 8 (1964); ILL. CONST. art. vi, § 8 (1970).

31 ILL. CONST. 1870 art. vi, § 14 (1964).

32 Prior to adoption of the 1970 constitution, Illinois retained the practice of occasionally utilizing nonlawyers to perform judicial roles with limited jurisdiction. This practice has been eliminated by the provision that the judiciary consist solely of licensed attorneys (ILL. CONST. art. vi, § 11 (1970)), subject to the "grandfather" provision permitting retention of previously serving nonlawyer magistrates. ILL. CONST. TRANSITION SCHEDULE, § 4(b) (1970).

distinction between the former associate judges and the circuit judges, all of whom are now circuit judges.³³ The term "associate judge" as used in the Constitution now applies to the appointed judges, formerly known as magistrates, who are now appointed for four-year terms by the circuit judges.³⁴ The Supreme Court has authority to provide by rule for matters to be assigned to the associate judges,³⁵ and to regulate their appointment.³⁶

The Judicial Article introduced other important innovations in the Illinois judicial system. Judges, once elected, are permitted to run for re-election, not as members of a political party or against a candidate, but on their own record, as under the Missouri plan.³⁷ The electorate votes *yes* or *no* on retention of the individual judge. However, any candidate seeking an elective judicial office for the first time must now be nominated by a party primary or independent petition and elected on a partisan ballot at general elections.³⁸

Section 16 of the Judicial Article provided that judges could not "engage in the practice of law or hold any office or position of profit under the United States or this state or any other municipal corporation or political party."³⁹ The 1970 Constitution extends the range of prohibited activities to include the holding of private, as well as public, positions of profit.⁴⁰ That section now also requires that: "The Supreme Court shall adopt rules of conduct for Judges and Associate Judges."⁴¹ Section 15 provided "no person shall be eligible for the office of judge unless he shall be a citizen and licensed attorney at law of this state and a resident of the judicial district, circuit, county, or unit from which elected."⁴² The Constitution had not previously required that judges be lawyers; the 1970 Constitution continues the requirement⁴³ except as to those nonlawyers heretofore appointed magistrates and still serving in that capacity,⁴⁴ a situation prevailing in only a few counties where no qualified lawyer is interested in serving.

33 ILL. CONST. art. vi, § 7 (1970).

34 ILL. CONST. art. vi, § 8 (1970).

35 Illinois Supreme Court Rule 295, amended July 1, 1971, based on the premise that the Chief Judge of each circuit best knows the capabilities of the circuit's associate judges, and recognizes the circuit's needs most clearly, places broad discretion with the Chief Judge in this area:

The Chief Judge of each circuit or any circuit judge designated by him may assign an associate judge to hear and determine any matters except the trial of criminal cases in which the defendant is charged with an offense punishable by imprisonment for more than one year.

36 ILL. CONST. art. vi, § 8 (1970). See Illinois Supreme Court Rule 39, effective July 1, 1971, which establishes detailed procedures for the appointment of associate judges, and the filling of vacancies in that office.

37 ILL. CONST. 1870 art. vi, § 11 (1964); ILL. CONST. art. vi, § 12(d) (1970).

38 ILL. CONST. art. vi, § 12(a) (1970). Prior to modification by the 1970 Constitution, the nomination provision did not encompass the alternative of petitioning and did permit nomination by party convention as well as by a primary. (ILL. CONST. 1870 art. vi, § 10 (1964)). The present method of judicial selection was chosen by the voters in preference to an alternative proposition for the appointment of judges by the Governor from nominees submitted by Judicial Nominating Commissions, in spite of vigorous efforts by the Bar and others in favor of the appointive system.

39 ILL. CONST. 1870 art. vi, § 16 (1964).

40 ILL. CONST. art. vi, § 13(b) (1970).

41 ILL. CONST. art. vi, § 13(a) (1970). This mandate has been satisfied by our adoption of Illinois Supreme Court Rules 61 to 71.

42 ILL. CONST. 1870 art. vi, § 15 (1964). As noted earlier, this provision did not apply to magistrates, but due to the subsequent reclassification of judges, the current provision does apply to those officers, under their new title of associate judge. ILL. CONST. art. vi, § 11 (1970).

43 ILL. CONST. art. vi, § 11 (1970).

44 See note 32, *supra*.

The Judicial Article contributed significantly to the machinery available for resolving personnel difficulties within the judiciary, by the establishment of a commission of judges composed of one Supreme Court judge selected by the Supreme Court, two appellate court judges selected by the appellate court, and two circuit judges selected by the Supreme Court.⁴⁵ That commission has the power to retire for disability or to suspend or remove any judge from office for cause. Substantial developments in this area will be discussed later herein.

Section 19 required the Supreme Court to convene an annual judicial conference "to consider the business of the several courts and to suggest improvements in the administration of justice," and to report thereon to the General Assembly in each legislative year.⁴⁶

III. Does the Illinois Unified Court System Work?⁴⁷

Illinois has had 7½ years' experience under a unified court system. I believe we are now in a position to determine if it works. And I believe it does.

Administration. From an administrator's standpoint, it is ideal. The chain of authority is clear. The Chief Justice, acting for the Supreme Court, through the Administrative Office, has overall administrative control. The chief judge of each circuit, elected by the circuit and associate judges, has administrative authority over his circuit subject to the Supreme Court's overall administrative control.

The Reviewing Courts. In 1970, in the Supreme Court 347 cases were decided with full opinions, an average of approximately 50 opinions for each of the seven justices. In addition, the Court ruled on a total of 344 petitions for leave to appeal, and 1,258 motions. Each justice is assisted in his work by one senior law clerk, one junior law clerk and one secretary. During the same periods the Court was attempting to resolve the many administrative policy questions presented by its staff as well as give consideration to planning for the future.

The five districts of the appellate court disposed of 1,496 cases in 1970, on motion or by opinion. They were assisted in some areas by the assignment of circuit judges to temporary duty in the appellate court. Each appellate judge has two law clerks to assist him with his opinions. The caseload in the appellate court has increased to such an extent, especially in Cook County, that the Legislature, as earlier noted, authorized the election of three additional judges in the November, 1970, election in the First District, and three more in the 1972 election. This will eventually increase the appellate bench to 30 judges, 18 in Cook County and 12 in the four downstate districts.⁴⁸

As earlier indicated, the appellate court prior to 1964 was manned by circuit

45 ILL. CONST. 1870 art. vi, § 18 (1964); ILL. CONST. art. vi, § 15(e),(f),(g) (1970).

46 ILL. CONST. 1870 art. vi, § 19 (1964); ILL. CONST. art. vi, § 17 (1970). This directive is implemented by the provisions of Illinois Supreme Court Rule 41.

47 All statistical data hereinafter presented has been derived from the appropriate Annual Report to the Supreme Court of Illinois by the Administrative Officer of the Illinois Courts.

48 A recently adopted rule of the Illinois Supreme Court (Rule 310), patterned after Rule 33 of the Federal Rules of Appellate Procedure, offers hope for increasing the efficiency of the appellate court:

In an appeal pending in the Appellate Court, the court or a judge thereof, on request of a party, may order a prehearing conference to consider the simplification of the issues and any other matters that may aid in the disposition of the appeal. A judge who will not participate in the decision of the case shall preside at the confer-

and superior judges, assigned by the Supreme Court. Downstate, these trial judges handled their appellate duties in addition to their trial court duties; that system would now be completely unworkable in view of the increase in both trial and appellate litigation. Under our present system, the majority of the cases are being heard and opinions written within one year from the time the appeal is filed. Where necessary, however, because of the urgency and importance of the issues, appeals may be expedited and final decisions rendered in a matter of weeks or even days by the Supreme Court upon transfer thereto from the appellate court.⁴⁹

The Trial Courts. The single trial court in our state is organized into 21 circuits. They have original jurisdiction over all justiciable matters. The simplicity of this structure is the cornerstone of our unified court system. I believe and have frequently said that the structure of our court system has no peer. All courts of inferior jurisdiction have been abolished, and it is now impossible to file a case in the wrong trial court.

The flexibility of the Judicial Article permits each circuit court to be organized according to its needs, population and location. The larger circuits have divided their court into divisions. Cook County naturally has the most elaborate system of departments, divisions and districts. Some of the smaller circuits have no need for divisions, and all cases—from the smallest traffic violation to a murder charge, from a small claim to a million-dollar lawsuit—are handled by the same court and often by the same judge. Regardless of size and the number of divisions—or lack thereof—there is only one court—the circuit court. The system gives us unlimited flexibility in the handling of the court's work depending upon the size, amount of business and needs of the community.

Ours is a complex and diverse state. We have areas of concentrated population with quite large caseloads per judge in civil, in quasi-criminal (especially in traffic cases) and criminal law areas. We have large, sparsely populated rural areas, where the caseload per judge is less burdensome. Our 21 circuits in Illinois vary in size from the 150,000 people in the 8th Circuit to more than 5,000,000 people in Cook County.

As heretofore indicated, each circuit is headed by a chief judge who is elected by his fellow circuit judges and has, subject to the authority of the

ence. The judge may enter an order which recites the action taken at the conference and the agreements made by the parties as to any of the matters considered and which limits the issues to those not disposed of by admissions or agreements of counsel. The order controls the subsequent course of the proceeding, unless modified to prevent manifest injustice.

The caseload of the appellate court will no doubt be increased, and quite possibly require additional attention to personnel requirements, as a result of a recently adopted rule of the Supreme Court which places appeals from the final judgment of a circuit court in any postconviction proceeding in the appellate court, rather than the Supreme Court, as previously provided. ILL. SUP. CT. RULE 651, amended July 1, 1971.

49 ILL. SUP. CT. RULE 302(b), amended July 1, 1971. This rule allows the Supreme Court broad discretion to choose cases appropriate for such direct review:

After the filing of the notice of appeal to the Appellate Court in a case in which the public interest requires prompt adjudication by the Supreme Court, the Supreme Court or a justice thereof may order that the appeal be taken directly to it. Upon the entry of such an order, any documents already filed in the Appellate Court shall be transmitted by the clerk of that court to the clerk of the Supreme Court. From that point the case shall proceed in all respects as though the appeal had been taken directly to the Supreme Court.

Supreme Court, general administrative authority in his circuit. That authority empowers him to determine where courtrooms are located and who is to use them. He assigns judges to their specific duties. He assigns duties to the clerks and bailiffs. He determines the hours and days of holding court, and controls the judges' vacations. In short, he is the general manager. Like the chief executive officer of a well-run corporation, he directs, controls, appoints, supervises and manages.

One of the administrative powers of the Supreme Court is the power to assign judges to duty in courts other than in the county in which they are elected. In 1969, 215 judges were assigned to duty in counties other than that of their residence for a total of 2,600 judge days. This represents eleven working years of judicial service rendered by judges from areas where caseloads were light to areas where caseloads are heavy.

In 1969 there were 331 circuit, associate circuit and magistrate judges in the 101 downstate counties. There were 785,000 cases filed in the 20 downstate circuits. This averages out to 2,370 cases per judicial officer—ranging from 4,400 cases per judge in the northern area to 1,300 cases per judge in the southernmost areas.

In most of the downstate circuits there is no undue delay in the trial of cases. In 1969 the average time elapsed from the filing of the complaint to the date of jury verdict was less than 18 months; in only two circuits was the average time beyond 24 months, and in those circuits the assignment of additional judges promises to reduce the delay. In general, barring delay caused by the defendant, competency proceedings, defendant's physical incapacity, or an interlocutory appeal, criminal cases in Illinois must be tried within 120 days if the defendant is incarcerated and within 160 days if the defendant has posted bond and has demanded a speedy trial.⁵⁰

Financial. Many of the opponents of the 1964 Article issued dire predictions of the cost to the state for a unified court system. Expenses of up to 50 million dollars per year were predicted. Our total budget for the 1970 fiscal year for the salaries and travel expenses of judges, court reporters and court personnel, and the expenses of the Supreme and appellate courts was 23 million dollars.

No court system, including our present one, should be designed as a money-making operation. The sole purpose of the 1964 Judicial Article was to create a modern, efficient court system designed to protect the liberties and guarantee the rights of our citizens. However, an amazing situation has developed. In 1963, the last year before the effective date of the Article, the total income to the various municipalities in the suburban area of Cook County from fines and costs was about \$500,000. In 1969 that figure rose to over \$5,000,000. In Chicago, the results have been the same; court revenue in Cook County in 1967 alone exceeded 27 million dollars. Figures from downstate, while not as spectacular, all indicate greatly augmented revenue. Two to three times more revenue is being generated now than under the old system.

⁵⁰ ILL. REV. STAT. ch. 38, § 103-5 (1969). This statutory provision is designed to implement the constitutional guarantee of a speedy trial, which is framed in general terms without specifying the permissible time limit. ILL. CONST. art. i, § 8 (1970); see also ILL. CONST. art. ii, § 9 (1970).

How do we account for this? A substantial factor, of course, is that courts which handled traffic cases, ordinance violations and misdemeanor cases—where most of the fines and costs were generated—were manned primarily by justices of the peace or police magistrates, and they were fee officers, permitted to keep the costs imposed on a defendant. As a result, their interest in fines—as opposed to costs—may have been considerably less than is now true. The fines had to be turned over to the appropriate governmental body. They retained the costs. Happily, since 1964 there are no fee officers in our court system. Additionally, it seems likely that the recordkeeping within the system is now substantially more accurate.

The Judicial Article merged the functions of the clerks of the separate courts into one clerk's office in each county.⁵¹ The circuit clerk now reports caseload and revenue information to the Administrative Office. All salaries of judicial officers (with the exception of a county supplement)⁵² are paid by the state and their salaries are not affected by the amount of costs or fines collected.⁵³ The efficiencies of the unified court system must be given the credit for this and the resulting benefits to the taxpayers of the state.

IV. The Development of a Unified Court System: Problems and Solutions

A court system must be a growing, changing, developing and viable branch of government—continually striving for perfection. In Illinois we have had less than eight years' experience under our unified court system. Much progress has been made, but, if we are to continue to improve and to develop, we must review our progress and examine the areas that require additional improvement.

Administration. It seems impossible to discuss our failures except in the light of our successes because it so often appears that we achieve success in one area at the expense of another. I believe that this is particularly noticeable in two areas.

The first is the Supreme Court's administrative duties. I have detailed the jurisdiction of the Supreme Court under the 1870 Constitution and the 1964 Judicial Article to demonstrate the trend away from mandatory review by the Supreme Court in favor of the right to review in the appellate court. The framers of the 1964 Article, in my opinion, clearly intended to reduce the caseload of the Supreme Court by transferring substantial portions of it to the appellate court, thus permitting the Supreme Court more flexibility in determining which cases merit the attention of a state court of last resort and affording more time for handling the new administrative responsibilities imposed by the Article. The desired effect was not achieved. In 1970, the Supreme Court members averaged

51 ILL. CONST. 1870 SCHEDULE PAR. 6(c),(d) (1964).

52 Under the terms of the 1964 Judicial Article (ILL. CONST. 1870 art. vi, § 17 (1964)), only Cook County was permitted to supplement the salaries of its judges, but this situation was thought unfair by many downstate residents, and the limitation to Cook County was eliminated in the 1970 Constitution. The present supplement provision encompasses appellate, circuit and associate judges only; the salary of members of the Supreme Court cannot be so supplemented. ILL. CONST. art. vi, § 14 (1970).

53 ILL. CONST. 1870 art. vi, § 17 (1964); ILL. CONST. art. vi, § 14 (1970).

very nearly 50 full opinions each. Needless to say, all too little time could be devoted by them to administrative duties.

The framers of the 1970 Constitution, wisely I think, limited the absolute right of direct appeal from the trial court to the Supreme Court to capital cases in which a death sentence is imposed, giving to our court complete discretion in selecting the other cases we hear.⁵⁴

It is likely that one major change will be a substantial reduction in the number of cases heard by us. It is apparent that only by this means will our caseload be brought within manageable limits. The appellate court will be hearing those cases not taken by us. But the cases which we do hear will be cases meriting the attention of a state court of last resort, and will not be cases before us solely because of an inflexible constitutional provision conferring an absolute right of direct appeal to our Court.

Elimination of a substantial portion of an overwhelming caseload will, in addition to providing more time for consideration of the cases embodying truly significant problems, enable us, I believe, to devote more attention to our administrative responsibilities. To be completely candid, I must confess that I have never felt that time permitted us to do all that is needed in the administrative area. We have an excellent administrative director and he has an excellent staff. But in order for him to be completely effective, he must have the firm understanding and backing of the Court. The fact is that our preoccupation with the successful management of a heavy caseload has hindered our effectiveness in the administration of the judicial system. I believe significant improvement in this area will begin to appear, as we implement the changes brought by the 1970 Constitution, effective since July 1, 1971.

The second area where success in one area has been achieved at the possible expense of another exists in the Circuit Court of Cook County. Too often, I believe, what has been said and written has not given a completely accurate view of the Cook County situation. The transformation in the courts of Cook County in the last eight years has been substantially greater than is generally known. Its massive caseload staggers the imagination. Its building program is the envy of many, if not most, metropolitan areas although it is even now becoming inadequate. Its intricate organization, so carefully designed to efficiently handle its massive caseload, is studied by courts and administrators from all over the world.

Cook County has approximately one-half of the state's population. Its numerous highways and streets, highly concentrated population, and huge volume of business generate proportionately more litigation than other parts of the state. There are 253 judicial officers in Cook County. The average caseload per judge is far greater than downstate. There were more than 1,935,000 cases begun or reinstated in 1969 and 1,958,000 in 1970. It is the busiest single court system in the country and has the largest number of judicial officers working under one head. Amazingly, there was a decrease in inventory in almost every category of case—that is, fewer cases were pending at the end of the year than at the beginning—in both 1969 and 1970. There were increases in some categories, but they were minor and fall within tolerable limits of fluctuation.

54 ILL. CONST. art. vi, § 4(b) (1970).

There is, however, one area in Cook County where intolerable delay in the trial of cases does exist. That is in the County Department, Law Jury Division, which handles, primarily, negligence cases involving claims for damages of more than \$15,000. This single area of "backlog," which accounts statistically for less than 1/100 of the cases filed in Cook County each year, continues to tarnish not only the image of Cook County but the entire state.

Statistically, the number of law jury cases pending on December 31, 1970, was 36,196 as compared to 49,292 on December 31, 1964. Actually, however, this is not an accurate comparison, for the 1964 figure includes 4,629 cases involving *ad damnum*s of less than \$20,000 which were subsequently transferred to the municipal division. The time lapse between date of filing of a case and the date of jury verdict averaged 61.7 months in 1970 as compared to 62.4 months in 1964. Our concern is with this time lapse.

Numerous people have assigned equally numerous and varying reasons for the delay: plaintiff lawyer's contingent fees; defense tactics and *per diem* fees; law firms with too many cases; nonworking judges; nonworking lawyers; the fiscal policies of insurance carriers; too few trial lawyers; "ambulance chasers"; too few judges and courtrooms; the need for judges to try other cases (especially criminal) in other divisions of the court at the expense of the law division. I believe there to be no doubt that each of the assigned reasons is, to some extent, a factor in causing delay in disposition of these cases; each contributed to the momentum which ultimately produced the "backlog."

In resolving the problem, the principal question was: where were we to begin? It is obviously true that some cases cannot be settled and must be tried by judge and jury. The records indicate that of all the cases terminated in one year, approximately 96% are settled or otherwise terminated before or during trial and only 4% go to verdict. It is this 4% which must be tried within a reasonable time after filing. By getting the 4% to trial and verdict, the 96% will be leveled out—settled or otherwise terminated. We thus begin by examining the number of trial judges and the efficiency in the system of assigning cases ready for trial with available lawyers and available judges.

In June of 1970, as a result of a conference between the Supreme Court and Chief Judge John S. Boyle of the Circuit Court of Cook County, a series of changes were agreed upon to assure the free flow of ready cases through the central assignment system to the trial judges. These changes were not considered to be exhaustive of the possibilities for improvement, but they were intended to provide a beginning for a systematic attack upon the "backlog." To shorten the average time between the date of the filing of a case and the date of jury verdict will require that more cases be assigned for trial to more judges (both Cook County judges and downstate judges assigned to Cook County); that lawyers be available to try their cases or hire other lawyers to try the cases for them; that insurance carriers be willing to settle appropriate cases or go to trial in a very short time; that the assignment system be freed from as many cases not ready for trial as possible by status calls and an effective pretrial system consistently operated; and that the assignment system become predictable so that lawyers can determine with some degree of accuracy when their cases will be assigned out to trial.

Within the framework of our unified court system, the problem of the backlog is solvable. Very substantial progress is now being made and will be reflected in the statistics at the end of this year. The time lapse had been steadily increasing prior to 1964 when we had both the superior and circuit courts. Had it not been for the judicial reorganization in 1964, it seems likely that we would be facing substantially greater delay than we now are, instead of being well started on our way to elimination of the backlog in the civil law jury division. A burgeoning problem of delay in the disposition of criminal cases, attributable in part to the substantial increase in crime, and in part to the broadening in recent years of the rights and remedies of defendants in criminal cases, will also require attention if a crisis in that area is to be averted.

Judicial Ethics. The problem of judicial ethics always has been troublesome to the judicial branch of government and to the legal profession generally. The American Bar Association and many state bar associations have through the years adopted "Judicial Codes of Ethics" which were loosely binding upon members of the judiciary but acted only as guidelines without any provision for enforcement if they were not followed. In 1964, the Illinois Judicial Conference adopted a voluntary code of ethics which became binding upon all the judges in Illinois, but once again provided no sanctions if a judge failed to follow them.

In September, 1969, the Supreme Court of Illinois appointed a special committee of outstanding lawyers and judges chaired by Dean John E. Cribbet of the University of Illinois. The committee was charged with the responsibility of drafting a new code of ethics for judges in Illinois for incorporation into the Supreme Court Rules. It made its report in December, and on January 30, 1970, the Illinois Supreme Court adopted Rules 61 through 71⁵⁵ which define standards of judicial conduct and provide for sanctions for violations of those standards. These rules became effective on March 15, 1970, except for two as to which the effective date was postponed to January 1, 1971. With the adoption of this set of rules, Illinois has the most comprehensive and stringent code of ethics regulating judicial conduct of any judicial system in the United States. Their violation is punishable in proceedings before the Illinois Courts Commission.

The Courts Commission. The Illinois Courts Commission was created by Section 18 of the 1964 Judicial Article.⁵⁶ As earlier noted, it consists of a member of the Supreme Court, appointed by that Court, who serves as chairman, two members of the appellate court appointed by that court, and two circuit judges appointed by the Supreme Court.

During 1964 and 1965, 92 written complaints were received by the Director of the Administrative Office acting as Secretary of the Illinois Courts Commission. Each was investigated. The results of the investigations were reported to the Illinois Supreme Court. No formal complaint seeking the removal of a judge was before the commission in those two years.

In 1966, 101 written complaints were received by the Administrative Director concerning either the misconduct or the disability of judicial personnel. Each was investigated. Of these complaints, 31 were of sufficient validity to

55 43 ILL. RUL. 2d 61-71.

56 ILL. CONST. 1870 art. vi, § 18 (1964).

cause an extensive investigation to be made of the charges, and reports were made to the Illinois Supreme Court. Three of the complaints were sufficiently serious to cause a formal complaint for removal of the judge to be prepared, but in each instance the judge voluntarily retired and thus made further proceedings unnecessary. In addition, reprimands were given or corrective measures taken in four other cases to make certain that the judges' mistakes would not be repeated.

In 1967, 107 written complaints were received. All of these complaints were investigated and 23 of them were deemed sufficiently important for a complete report to be made to the Supreme Court. Formal complaints seeking removal were filed during 1967 against two judicial officers. One of them resigned before the public hearings and made further proceedings unnecessary. The other formal complaint culminated in a complete public hearing before the commission in early 1968 and resulted in censure but not removal of the judicial officer involved. In four other instances where a hearing by the commission may have been warranted, the judges voluntarily retired and thus made any further proceedings unnecessary. In two other cases, reprimands were given.

From January 1, 1968, through June 30, 1969, when the Supreme Court Rule⁵⁷ was amended to create a continuing commission, 227 complaints from citizens about the conduct or the disability of judicial officers were received and processed. In each instance an investigation was conducted, the extent of which depended upon the seriousness of the charges made. Twenty-one of the complaints warranted a full report of the investigation being made to the Illinois Supreme Court. During this period there were seven resignations in Illinois of judicial officers under investigation.

In 1969 the Supreme Court adopted a rule convening the commission as a continuing body, holding regular monthly meetings to consider disciplinary and disability problems of the judiciary. Complete review of all pending investigations is made by the secretary at the monthly meetings, and appropriate action is taken by the commission on the investigative reports.

Between July 1, 1969, and May 1, 1971, 346 complaints about either the disability of judges or misconduct of judges had been received. An investigation was either completed or is now in progress in connection with each of the complaints. As a result of the investigation, 25 of the complaints have been assigned commission numbers and placed on the docket of business of the Illinois Courts Commission.

One major case handled by the commission in 1970 deserves detailed mention because it demonstrates the workability of this system of judicial discipline even in vigorously contested matters. Misconduct of a judge became known in January, he was temporarily suspended from active judicial duties, and, as a result of a February request by the courts commission, the Illinois Attorney General prepared a formal complaint, seeking his removal from the bench. The

⁵⁷ Under section 18 of the 1964 Judicial Article, the Illinois Supreme Court was charged with authority to establish rules of procedure for the Commission. (*See* ILL. SUP. CT. RULE 51 (since rescinded).) The commission was to be convened by the Chief Justice upon order of the Supreme Court, or at the request of the Senate. The 1970 Constitution altered the commission's status somewhat, providing that it be permanently convened (as earlier ordered by the Supreme Court) (ILL. CONST. art. vi, § 15(e) (1970)), and governed by its own rules of procedure. ILL. CONST. art. vi, § 15(g) (1970).

complaint was filed on March 19, 1970, charging him with unethical and improper judicial conduct.

During the week of July 7, 1970, the courts commission held a public hearing in the matter, and on July 14, 1970, the commission found: "That the evidence in this case is clear and convincing that the conduct of . . . [the judge] constitutes conduct unbecoming a Judge in that it violates applicable canons of judicial ethics including canon No. 4 of the Canons of Ethics adopted by the Illinois Judicial Conference and constitutes cause within the meaning of Section 18, Article 6 of the Illinois Constitution warranting his removal from office." And the commission ordered "that [the judge] be, and he is hereby removed from his office as a Judge of the Circuit Court . . ." effective July 14, 1970.

The respondent appealed to the Illinois Supreme Court and on September 23, 1970, our court rejected the petition, noting that the Illinois Constitution does not provide for appeals from the courts commission's order.

On December 22, 1970, he appealed from the commission and our Court's order to the United States Supreme Court. His petition for review alleged *inter alia* that Section 18, Article VI of the Illinois Constitution and Illinois Supreme Court Rule 51, which governed the commission's actions, were void for vagueness and overbreadth.⁵⁸ On March 8, 1971, the United States Supreme Court entered an order that "the appeal is dismissed for want of a substantial federal question."⁵⁹

In addition to this removal case, several resignations during this period made formal commission action unnecessary.

The requirement of confidentiality precludes greater detail in connection with the activities of the commission. That requirement has also precluded the members of the commission from publicly discussing their activities.

The Supreme Court Rules Committee, in commenting on the confidentiality requirement contained in the Rule which governs the commission,⁶⁰ said:

This is important in view of the virtual certainty that some of the charges which are made will be clearly unfounded. Fairness to the judge, as well as the public interest in preserving his effectiveness as a judge when the charges are not well-founded, require that no publicity be given charges which are found so unsubstantial as not to warrant a commission hearing. The requirement of confidentiality will also permit the disposition of some proceedings on an informal basis by the acceptance of a resignation or voluntary retirement of a judge.⁶¹

The requirement of confidentiality has, I believe, contributed to the unfortunate belief by those not familiar with the facts, that the commission has been inactive. That belief found acceptance in the recent constitutional convention,

58 39 U.S.L.W. 3380 (1971).

59 39 U.S.L.W. 3388 (1971).

60 As noted earlier, Illinois Supreme Court Rule 51, adopted pursuant to the authority of section 18 of the 1964 Judicial Article, governed commission procedures until the effective date of the 1970 Constitutional provision in section 15(g), which placed with the commission the authority to adopt rules of procedure. In distinction to the earlier Constitution, which was silent on the subject, the 1970 Constitution specifically provides that all proceedings prior to filing of a complaint with the commission shall be confidential. ILL. CONST. art. vi, § 15(c) (1970).

61 S. H. A. Committee Comments to ch. 110 A, § 51, par. (b).

and as a result, the 1970 Constitution, effective July 1, 1971, in section 15 provides not only for the continuation of the courts commission but also establishes a Judicial Inquiry Board, permanently convened, "with authority to conduct investigations, receive or initiate complaints concerning a judge or associate judge and file complaints with the Courts Commission."⁶² That Board will consist of two circuit judges appointed by the Supreme Court, and three lawyers and four persons who are not lawyers appointed by the Governor.

While the creation of the Judicial Inquiry Board was opposed by the members of the Supreme Court as unnecessary, and as creating a potential threat to the independence of the judicial branch of government, I am sure that the members to be appointed will be selected with care and will be sincere, conscientious individuals, aware of the seriousness of their responsibilities. It is their constitutional obligation to maintain the confidentiality of all complaints until such time as a formal charge, if warranted, is filed against a judge. A working knowledge of the judicial process will be imperative for the board members if they are to distinguish between improper judicial conduct as opposed to mere dissatisfaction with a judicial ruling or opinion. While a potential threat to judicial independence has been created, I trust that will never become a reality. That independence can, in fact, be enhanced if the Board performs its duties in a responsible, impartial and nonsensational manner.

Financing the Courts. Previously discussed was the greatly augmented revenue to the counties and municipalities from fines and costs as a result of the amalgamation of all of the separate trial courts and all of the various clerks' offices into a single circuit court and circuit clerk's office in each county. While the cost to the state has not approached the predictions of opponents of the 1964 Judicial Article, the costs have increased, as the concept and operation of a unified state court system develops. As an example of increased expense to the state since 1964, all official court reporters and the administrative secretaries of the chief judges are state-salaried. The circuit court clerks, now on county salaries, are, in ever-increasing numbers, urging that they should be employees of the state and on state salary. Just recently, there have been serious efforts to make all probation officers and personnel state, rather than county, employees. The Judicial Article of 1964 was carefully designed to be a flexible document. It provided the fundamental structure for a court system, permitting expansion and change in operation as necessitated by further needs. As the system develops and matures, it seems to call for more unification and central management which in turn will place greater burdens on the state treasury. A point will be reached, if it has not already, when the state will have to reevaluate the method of distribution of fines and costs to offset the ever-increasing financial burden of the state. The Constitution of 1970 does not specifically deal with this problem, and the solution will have to come about through the legislative process.

Vacancies in Judicial Office. Section 10 of the Judicial Article of 1964⁶³

62 ILL. CONST. art. vi, § 15(c) (1970). It is this Board, charged with the investigatory and accusatory roles previously undertaken by the commission itself, which is the subject of the confidentiality provision referred to in footnote 60, *supra*, and set forth in art. vi, § 15(c) of the 1970 Constitution.

63 ILL. CONST. 1870 art. vi, § 10 (1964).

provided for the election of judges at general elections. It also provided that:

. . . the General Assembly may provide by law for the selection and tenure of all judges provided herein as distinguished from nomination and election by the electors, but no law establishing a method of selecting judges and providing their tenure shall be adopted or amended except by a vote of two-thirds of the members elected to each House, nor shall any method of selecting judges and providing their tenure become law until the question of the method of selection be first submitted to the electors at the next general election. If a majority of those voting upon the question shall favor the method of selection or tenure as submitted it shall then become law.

With regard to judicial vacancies, Section 10 further provided:

The office of any judge shall be deemed vacant upon his death, resignation, rejection, removal or retirement. Whenever a vacancy occurs in the office of judge, the vacancy shall be filled for the unexpired portion of the term by the voters at an election as above provided in this Section, or in such other manner as the General Assembly may provide by law as set out in this Section and approved by the electors.

It was not long after the Judicial Article became effective that the effect of these sections became apparent in the administration of the circuits, especially the highly populated ones. Deaths or resignations caused vacancies that could not be filled for as long as two years. It was anticipated, I am certain, by the framers of the Article that the Supreme Court's power to assign judges from one circuit to another would solve this judicial shortage. But viewed realistically, temporary assignment of judges is not a total solution. The judge who is assigned to a distant county for a substantial period is seriously inconvenienced by his absence from home. Experience has proved that it is expensive to have large numbers of judges living in areas other than their home counties. It is also sometimes inconvenient for the home circuit of a judge to have him away for substantial periods of time. On the other hand, the degree of usefulness of an assigned judge is to some extent dependent on his remaining for more than brief periods in the area to which he is assigned.

In 1967, the Legislature enacted HB 1310 which purported to empower the Governor to fill vacancies. That bill was not passed by 2/3 vote of both Houses and was not submitted to a vote of the electors.

On January 11, 1969, the then Governor announced he would fill by appointment eleven existing judicial vacancies. With two days left in his term, the Governor administered the oath of office to the eleven as one of his last official acts. The newly elected Attorney General, after assuming office on January 13, 1969, filed suit in the Supreme Court challenging the constitutionality of the statute authorizing the appointments. The Court entered a preliminary order on January 15 preventing the appointees from performing judicial duties until the case was decided. On January 28, fifteen days after the complaint was filed, the Supreme Court ruled that the statute and appointments were unconstitutional.⁶⁴

⁶⁴ People ex rel. Scott v. Powell, 42 Ill.2d 132, 246 N.E.2d 297 (1969).

Section 12, paragraph (c) of the 1970 Constitution provides as follows:

A vacancy occurring in the office of Supreme, Appellate or Circuit Judge shall be filled as the General Assembly may provide by law. In the absence of a law, vacancies may be filled by appointment by the Supreme Court. A person appointed to fill a vacancy 60 or more days prior to the next primary election to nominate Judges shall serve until the vacancy is filled for a term at the next general or judicial election. A person appointed to fill a vacancy less than 60 days prior to the next primary election to nominate Judges shall serve until the vacancy is filled at the second general or judicial election following such appointment.⁶⁵

To date, no legislation has been enacted to implement section 12 (c), but, happily, whether legislation is enacted or not, there is now a method whereby vacancies can be filled.

Judges. Viewed in the context of 1963, the consolidation of all trial courts into a single circuit court was a revolutionary concept. Many judges, administrators, scholars and practitioners doubted its feasibility. Simultaneous elimination of distinctions between classes of trial judges proved to be impossible. The framers ultimately determined as hereinbefore noted to have three classes of trial judges: circuit judges, elected from an entire circuit; associate judges, elected from a county (or in the case of Cook County from the City of Chicago and outside the City of Chicago); and magistrates, appointed by the circuit judges to serve at their pleasure. Problems, deeply rooted in the "caste" system, quickly surfaced. Associate judges, having the same case authority as a circuit judge and in many instances handling the same types of cases, received a lesser salary, did not share in the rule-making power of the court and could not serve as chief judge of the circuit.

The Constitution of 1970 has remedied this problem by eliminating the distinction between circuit and associate judges. Elimination of the caste system on the circuit level should be of substantial benefit in improving trial judge morale and the administration of the judicial system. With the distinction removed, the psychological position of a former associate judge will be enhanced and his overall responsibility increased.

The problem of the appointed magistrates was somewhat different. The 1964 Article authorized the appointment of magistrates by the circuit judges to serve at their pleasure without term or tenure. Magistrates did not share in the rule-making power of the courts or elect the chief judge. Though constitutionally empowered to hear any case, it was clearly the constitutional intent that the legislature, Supreme Court and their chief judge regulate the matters that could be assigned to them. The judicial independence of magistrates was questioned by some; because they served at the pleasure of the circuit judges without terms, unpopular decisions might subject them to immediate dismissal, without a hearing.

Dissatisfaction with the status of magistrates resulted in the formation of a study committee of the Illinois Judicial Conference. A report was presented to the Supreme Court at approximately the same time the referendum to have

65 ILL. CONST. art. vi, § 12(c) (1970).

a constitutional convention was decided in the affirmative. The Court took no action, pending the outcome of the vote on the proposed constitution, which ultimately remedied the problem.

The Constitution of 1970 has made significant changes in the status of the former magistrates. Their title is now associate judge. They are appointed by the circuit judges, but for four-year terms and as provided by Supreme Court Rule. Matters assignable to associate judges are regulated by Supreme Court Rule. While they no longer serve at the pleasure of the circuit judges, they may be removed from office for cause during their term by the courts commission.

V. Conclusion

As a result of enlightened constitutional draftsmanship, the dedicated work of many laymen, judges and lawyers, and the force of events, Illinois has forged a unified court system which stands as a model for others.

There was little or no precedent to guide the development of much of our revolutionary new system. We have innovated and we have erred, but in the main we are proud of the results. There remain problems to be resolved, but we are progressing towards their solution. We need more lawyers, judges, facilities and personnel, but that is a topic for another time. We now have an excellent basic structure, and the coming decade should see implementation of its operational needs.