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The high cost of dying is not the funeral: it's the legal and administrative costs of getting the dead man's estate . . . through the the probate or surrogate courts.[1]

In most areas of this country the probate procedure is a scandal, a form of tribute levied by the legal profession upon the estates of its victims, both living and dead.[2]

These remarks, perhaps most significant because they were made by laymen and not by lawyers, reflect an increasing public concern with the delay and expense involved in the process of passing a decedent's estate to his heirs and legatees.[3] The American system of probate has been described as antiquated, corrupt and hopelessly complex. It is viewed by many as being little more than a device for tying up an estate as long as possible so that more of it may be given to the lawyers and less to the beneficiaries.

Criticisms such as these are inspired by probate laws that are often hopelessly out of date. They are aggravated by all too frequent instances of greed and incompetence in the administration of estates. A large part of the probate problem, however, results from the fact that the American probate "system" is in fact 50 different systems. It is tempting to believe that this diversity has resulted from the specialized application of a general law that was carefully

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1. Bloom, *The Mess in Our Probate Courts*, READER'S DIGEST, Oct. 1966, at 102.
2. N. DACEY, HOW TO AVOID PROBATE! 7 (1965).
3. *See generally* Bloom, *Time to Clean up Our Probate Courts*, READER'S DIGEST, Jan. 1970, at 112; *Let's Rewrite The Probate Laws*, CHANGING TIMES, Jan. 1969, at 39; Myers, *Probing the Source of Our Probate Pains*, The Wall Street Journal, May 14, 1968, at 18, col. 3; Morgan, *The Probate Fuss*, LOOK. Nov. 29, 1966, at 36.
4. Wellman, *The Uniform Probate Code: Blueprint for Reform in the 70's*, 2 CONN. L. REV. 453, 458 (1970) [hereinafter cited as Wellman]. The only exception is the State of Louisiana which derives its probate system from the French civil law. *See* L.S.A. CIV. CODE (Rev. 1950) art. 1013.

tailored to meet problems peculiar to the areas in which it was adopted. Such flexibility is the beauty of a federal form of government. But an examination of the ways in which the various codes were actually brought into existence indicates that this was not the case. All but one of the states derive their probate systems from the English model[5] which, while far from ideal, at least had the advantages of uniformity. But in drafting their various codes, the states have engrafted numerous exceptions and additions onto the basic English system, and this multiplicity of systems has caused no end of problems for the lawyer trying to handle the estates of an increasingly mobile clientele.

In 1948, after making a detailed study of the history of American probate laws, Professor Simes concluded that:

> [M]ost variations in this legislation are the result of historical accident. When a given statute was drafted, the legislative committee happened to borrow from the statutes of Massachusetts or Virginia or New York or California because a copy of the revised statutes of that state was available to members of the committee. No one will ever know how much the excellent printing and book binding which went into the edition of the Massachusetts Revised Statutes of 1836 had to do with the adoption of those statutes in other states. . . . I think the probate statute is rare indeed which may be said to be peculiarly adapted to the social conditions of one state but not to those in another.[6]

Professor Wellman, on the other hand, attributes the diversity less to aesthetics than to cupidity. "The variety," he concludes,

> demonstrates that the dominant factor in growth of our probate institution has been the preoccupation of our legislative and legal community with the power represented by assets of decedents. The story of probate is a story of expansion and dispersal of this power among local politicians and the legal profession.[7]

Regardless of the reasons for their complexities, the procedures used for the administration and distribution of decedents' estates may be said to be uniform in only two significant respects; they are almost invariably lengthy and expensive.[8] In spite of this, or perhaps because of it, probate reform has been a long time in coming.

When the American Bar Association was formed in 1878, one of

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5. Wellman, *supra* note 4, at 455-59.
6. Simes, *Improving Probate Procedure*, 87 TRUSTS & ESTATES, 277, 281-82 (1948) [hereinafter cited as Simes].
7. Wellman, *supra* note 4, at 458.
8. Writing in 1948, Professor Simes noted that: "There is . . . a core of uniformity in our probate legislation. But, to one who studies it in detail, it is like some of the lurid advertisements of improved varieties of apples—the core is very small." Simes, *supra* note 7, at 277.

its primary objectives was to promote the uniformity of state legislation.[9] At its first annual meeting in 1879, the Association approved a resolution in favor of uniform legislation governing the execution and attestation of wills.[10] In 1886, the Association's Committee on Jurisprudence and Law Reform reported on the *Uniformity of Proceedings in the Settlement of Estates of Decedents who have left Property in Several States.*[11] In 1891, the Committee on Uniform State Laws reported its virtually unanimous support for greater uniformity of legislation in the areas of descent, distribution, wills and probate.[12]

In spite of these early expressions of support, it was not until 1922 that the first, halting efforts were made to achieve uniformity in probate related areas. In that year, the National Conference of Commissioners on Uniform State Laws (NCCUSL) promulgated its Uniform Fiduciaries Act. The Act was designed to govern the activities of all fiduciaries, including executors and administrators, in the administration of wills.[13] Nothing was done in the way of large scale reform, however, until Professor Thomas Atkinson, in a series of articles written in 1939 and 1940,[14] once again drew the attention of the legal community to the need for probate reform.

As a result of these articles, the Real Property, Probate and Trust Law Division of the American Bar Association appointed a committee to study Professor Atkinson's proposals.[15] In 1946, under the leadership of Professor Simes, the A.B.A.'s subcommittee on drafting published a book entitled *Problems in Probate Law*[16] that included a Model Probate Code. Substantial parts of this model code were

9. *Id.* at 282.
10. *Id.*
11. *Id.*
12. *Id.*
13. *Uniform Fiduciaries Act* (1922). Since then, the National Conference has also promulgated the following probate related legislation: *Uniform Veteran's Guardianship Act; Uniform Principal and Income Act; Uniform Simultaneous Death Act; Uniform Interstate Arbitration and Compromise of Death Taxes Acts; Uniform Ancillary Administration of Estates Act; Uniform Probate of Foreign Wills Act; Model Small Estates Act; Uniform Gifts to Minors Act; Uniform Estate Tax Apportionment Act; Uniform Simplification of Fiduciary Security Transfers Act; Uniform Testamentary Additions to Trusts Act; Uniform Trustees' Powers Act; Uniform Anatomical Gift Act;* and the *Uniform Probate Code.* The Conference has also recommended legislation in the areas of absentees' property, estate administration, trust administration, execution of wills, *cy pres,* powers of foreign representatives and death tax credits. *See* HANDBOOK OF THE NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS 421-25 (1973).
14. *E.g.,* Atkinson, *Wanted—A Model Probate Code,* 23 J. AM. JUD. SOC'Y 183 (1940).
15. *See* Fratcher & Straus, *Model Probate Code,* 35 PA. BAR ASSOC. Q. 206, 208 (1964) [hereinafter cited as Fratcher & Straus].
16. L. SIMES & P. BASYE, PROBLEMS IN PROBATE LAW INCLUDING A MODEL PROBATE CODE (1946).

adopted in 11 states,[17] and it may have influenced the adoption of probate legislation in others.[18] The response, while encouraging, was still considerably less than might have been desired, and in 1961 and 1962, the American Bar Association and the NCCUSL commissioned a joint committee to restudy the 1946 Act and to develop a Uniform Probate Code.[19]

The committee's task was to draft a probate code that would have the advantages of uniformity and would cut down on the time and expense involved in probate and administration. In 1966, the joint committee's subcommittee on drafting produced its first tentative draft consisting of five sections, each of which constituted a revision of a similar section in the Model Probate Code. This first draft included a general article, an article on intestate succession and wills, an article on the probate and administration of estates, an article on guardians and conservatorships and an article on foreign personal representatives and ancillary administration.[20] Between 1966 and 1969, four more drafts were produced and considered. The Official Text was finally adopted by the NCCUSL and by the House of Delegates of the A.B.A. during the summer of 1969.[21]

In its final form, the Uniform Probate Code contains, in addition to the five articles in the first tentative draft, an article on non-probate transfers and an article on trust administration.[22] The "heart of the Code," however, is article III[23] that deals with the probate of wills and the administration of decedents' estates. Article III introduces the concepts of informal probate and unsupervised administration. It is these provisions that have caused much of the controversy that has surrounded the Code since its promulgation in 1969.[24]

To date, the Uniform Probate Code has been adopted, in one form or another, in eight states[25] and has been proposed for adoption in

17. Arkansas, California, Colorado, Delaware, Hawaii, Illinois, Indiana, Missouri, North Carolina, Oregon and Texas. *See* Fratcher & Straus, *supra* note 15, at 208.
18. *E.g.*, Pennsylvania. *Id.*
19. *See* Fratcher, *Toward Uniform Succession Legislation*, 41 N.Y.U.L. REV. 1037, 1039 (1966).
20. *Id.* at 1040-41.
21. 55 A.B.A.J. 976 (1969).
22. UNIFORM PROBATE CODE, Official Text (West ed. 1970) [hereinafter cited as U.P.C.].
23. U.P.C. art. III, General Comment at 74.
24. *See, e.g.*, Mr. Zartman's critical analysis of article III in Zartman, *An Illinois Critique of the Uniform Probate Code*, 1970 U. ILL. L.F. 413, 471-528 [hereinafter cited as Zartman]; and Professor Wellman's reply in Wellman, *A Reaction to the Chicago Commentary*, 1970 U. ILL. L.F. 536. *See also* STATE BAR OF CALIFORNIA, THE UNIFORM PROBATE CODE: ANALYSIS AND CRITIQUE XX-XXVI, 63-129 (1973).
25. Eight states have adopted the Code more or less in its entirety. These include:

many others,[26] including Illinois.[27] In many of these states, one of the questions that is repeatedly being asked is whether the adoption of the Uniform Probate Code would significantly decrease the time and expense involved in the probate and administration of estates and, even if it would, whether it is the most effective means available for accomplishing that objective. This article reports the results of a survey of 500 estates probated in the Circuit Court of Cook County, Illinois, during 1969. The purpose is to determine whether replacement of the Illinois Probate Act[28] with the Uniform Probate Code would have significantly reduced the time and expense involved in the administration of those 500 estates.

THE ILLINOIS PROBATE ACT VS. THE UNIFORM PROBATE CODE

To evaluate the results of this survey of estates probated in Illinois it is important to understand the differences between the handling of estates under the Illinois Probate Act and the system proposed under the Uniform Probate Code.[29]

Probating the Estate

The most obvious difference between the Illinois Probate Act and the Uniform Probate Code is the need for any sort of probate proceeding at all. In Illinois, probate is required in all estates, testate or intestate.[30] Under the U.P.C., probate may be dispensed with entirely

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Alaska, ALASKA STAT. tit. 13 (1972); Arizona, ARIZ. REV. STAT. ANN. tit. 14 (1973); Colorado, COLO. REV. STAT. tit. 15 (1973); Idaho, IDAHO CODE tit. 15 (1971); Montana, REV. CODE OF MONT. tit. 91A (1974); Nebraska, REV. STAT. NEB. ch. 30 (1974); North Dakota, N.D. CENT. CODE tit. 30.1 (1973); South Dakota, S.D. LAWS ch. 196 (1974).

Maryland, ANN. CODE OF MD. art. on Estates and Trusts, § 1-101 *et seq.* (1973); Minnesota, MINN. STAT. ANN. § 524.1-101 *et seq.* (Supp. 1974); Oregon, ORE. REV. STAT. § 111.005 *et seq.* (1974) and Wisconsin, WIS. STAT. ANN. §§ 851.21-865.19 (1973) have also enacted probate laws which incorporate or are patterned after parts of the U.P.C.

26. *See generally* Joint Editorial Board for the Uniform Probate Code, Interim Status Report, Oct. 1973.

27. H.B. 713 and S.B. 354, 78th Ill. Gen. Assembly (1973).

28. ILL. REV. STAT. ch. 3 (1973) [hereinafter cited as I.P.A.].

29. A detailed analysis of the differences between the Illinois Probate Act and the Uniform Probate Code can be found in Zartman, *supra* note 24, at 471-529. In addition, a rather detailed attempt to reconcile the U.P.C. with the Illinois Probate Act and with the comments in the Zartman critique was made in 1973 by Professor Ronald Link, then of the Northwestern University School of Law, and is currently on file with the U.P.C. Joint Subcommittee of the Illinois State and Chicago Bar Associations.

30. I.P.A. section 324 does provide for informal distribution without probate of certain small estates having assets that include no real property and do not exceed a total value of $5,000. In addition, the standard techniques for transfer without probate, intervivos transfers, trusts, joint ownership and bonding are in general use among Illinois estate planners. *See generally* CORCORAN, ALTERNATIVES TO PROBATE (Ill. Inst. for Cont. Legal Ed. 1971); Waldman, *Small Estates*, in ADMINISTERING ILLINOIS ESTATES § 10.5 (Ill. Inst. for Cont. Legal Ed. 1970).

if the decedent died intestate or if the devisees are in possession of his property and if no court proceedings are instituted within 3 years of the decedent's death.[31]

In Illinois, if probate is required, full proceedings must be instituted. This includes a filing of the will,[32] or in the case of intestacy a petition for issuance of letters of administration,[33] a petition for probate,[34] notice to the heirs,[35] proof of heirship[36] and a hearing on the will.[37] These formalities are required regardless of the size of the estate[38] or the willingness of all parties to dispense with probate. Under the Uniform Code, if all interested parties consent, the will may be probated by the filing of a simple application with an administrative official.[39] If formal proceedings are used, the Code provides for a single hearing in which the will is proved, heirship is established, and any contest is heard and disposed of.[40] In Illinois, separate hearings may be required for proof of heirship and proof of the will,[41] and a separate hearing is always required whenever there is a contest.[42] The process of proving the will itself is also considerably simpler under the Code than it is under the Illinois Probate Act.[43]

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31. U.P.C. §§ 3-101, -102, -108.
32. I.P.A. § 60.
33. I.P.A. §§ 95-102. The procedure involves a formal petition and requires notice to all persons who may have preference in obtaining the letters under section 96.
34. I.P.A. §§ 62, 63.
35. I.P.A. §§ 64, 65.
36. I.P.A. §§ 57, 58.
37. This may involve the appointment of a guardian ad litem for any minor or incompetent heirs, I.P.A. § 67, and the testimony of at least two witnesses to the execution of the will, I.P.A. § 69.
38. Unless the estate meets the requirements of the small estate exception of I.P.A. § 324.
39. U.P.C. § 3-301. The Code provides for a series of options at each stage of the probate process. "Interested" parties, defined in section 1-201 to include "heirs, devisees, children, spouses, creditors, beneficiaries and any others having a property right in or claim against . . . the estate," may choose whether and to what extent a court will become involved in the probate process. If no interested person requests a formal proceeding and if there is only one known testamentary instrument, then the will may be informally probated under section 3-304.

In order to informally probate a will an interested person must file an application for informal probate stating, among other things, his interest in the estate, the names and addresses of all heirs and devisees, the name and address of any other appointed personal representative and that the iinstrument presented is, to the best of his knowledge, the decedent's last will. U.P.C. § 3-301(1), (2). If at least 120 hours have elapsed since the decedent's death and if the Registrar is satisfied that the will is entitled to be informally probated, he will enter an order of informal probate that is conclusive as to the validity of the will unless superceded in a formal testacy proceeding. U.P.C. § 3-303.

No notice of an informal probate proceeding need be given unless it has been demanded by an interested person under section 3-204 or unless there is another personal representative whose appointment has not been revoked. U.P.C. § 3-306.
40. U.P.C. §§ 3-401, -404.
41. I.P.A. § 64. This, however, is only infrequently the case.
42. *See, e.g.*, Practice Rule 14.2 of the Circuit Court of Cook County.
43. *Compare* U.P.C. §§ 2-504, -505, -506 *with* I.P.A. § 69.

Administering the Estate

In Illinois, a personal representative must be appointed to administer all probate estates unless the estate qualifies for summary administration.[44] Under the Uniform Probate Code, a personal representative need not be appointed unless the estate is to be administered or a claim is to be enforced against the estate.[45]

Under Illinois law, the personal representative must be appointed in a formal proceeding with notice to all interested parties.[46] He must post a bond before assuming his office and his bond must be secured unless surety has been waived by the will.[47] Under the Code, if an estate is to be administered, a personal representative may be appointed in informal, no-notice proceedings[48] or, if formal proceedings are required, he may be appointed at the hearing on proof of the will.[49] No bond is required of an informal representative unless it is required by the will or demanded by a substantial creditor;[50] and a formal representative need not furnish bond if it is waived by the will and is not demanded by an interested person.[51] In addition, under the U.P.C., the court may always excuse a representative from furnishing bond, even where it would otherwise be required.[52]

In Illinois, the personal representative's primary functions are to collect the assets of the decedent's estate, to maintain them until they can be distributed and to determine and pay the decedent's debts and taxes.[53] He is under the continuing supervision of the court and, unless he is given greater powers under the will, he must obtain court approval before he may sell, lease, mortgage, pledge, exchange or remove estate property,[54] perform the decedent's contracts,[55] pay certain taxes,[56] or continue the decedent's business for a period of more than 1 month.[57] He is also significantly restricted in the nature of the investments that he may make with the decedent's prop-

44. I.P.A. §§ 75, 95.
45. U.P.C. § 3-104.
46. I.P.A. §§ 62-65.
47. I.P.A. § 151. In practice, however, surety is almost invariably waived in the will.
48. U.P.C. § 3-301.
49. U.P.C. § 3-401.
50. U.P.C. §§ 3-603(3), -605.
51. U.P.C. § 3-603.
52. U.P.C. § 3-603, -604.
53. *See generally* 19 ILL. LAW & PRACTICE, *Executors and Administrators*, §§ 2, 5 (1956).
54. I.P.A. §§ 209, 215, 217, 221, 222, 222a, 225, 229.
55. I.P.A. §§ 218, 252.
56. I.P.A. § 249.
57. I.P.A. § 213a.

erty.[58] A Code representative, on the other hand, has all of the powers and liabilities of a trustee and may, without leave of court and unless otherwise restricted by the will or by an order of supervised administration,[59] retain and receive assets on behalf of the estate, perform, compromise or break the decedent's contracts, satisfy certain charitable pledges, make any investment that is "reasonable for use by trustees generally," acquire or dispose of estate assets, abandon valueless property, employ agents and advisors, borrow money, sell, mortgage or lease the decedent's property, and continue or even incorporate the decedent's business.[60] In addition, unless supervised administration is specifically requested, the Code representative is not subject to continuous supervision by the court but only to those court orders that interested persons may find it necessary to obtain.[61]

There are also significant differences under the two systems in the handling of claims against the estate. The period for filing claims in Illinois is 6 months[62] whereas under the Code, only 4 months are allowed.[63] Under the Code, a claim is presented to the personal representative who then decides whether it will be allowed,[64] and unless this determination is challenged in court, it becomes final 60 days after a notice of disallowance has been mailed.[65] Once the period for

58. I.P.A. § 259.

59. *See* U.P.C. §§ 3-501 to -505. Under the Code, administration is unsupervised unless the parties elect otherwise. Supervised administration may be requested by any interested person or by the personal representative "at any time," provided only that it is preceded or accompanied by a request for formal testacy proceedings, and it will normally be granted if it is requested by the decedent's will, if it is necessary to protect the interests of the parties or the estate (even though unsupervised administration may have been requested in the will), or in other cases where the court feels that it is required.

In spite of the rather detailed treatment given to "supervised administration" by the Code, the only significant differences between a supervised and an unsupervised administrator are that:

a) a supervised administrator must make a formal distribution of the estate, U.P.C. § 3-505, whereas an unsupervised administrator may distribute estate assets without court approval unless formal closing is required by an interested person, U.P.C. § 3-1001; and

b) a supervised administrator may be restricted *ab initio* by any limitations included in his letters, U.P.C. § 3-501, whereas an unsupervised administrator is bound only by those court orders that are obtained by interested persons during the course of administration. U.P.C. § 3-607.

60. U.P.C. §§ 3-711, -715. The list is by no means complete; it serves only to illustrate some of the more significant departures from Illinois law.

61. U.P.C. § 3-607 and art. III, General Comment 7.

62. This 6-month limitation became effective in October, 1972. Prior Illinois law had allowed a 7-month period for filing claims. ILL. REV. STAT. ch. 3, § 204 (1973).

63. *Compare* I.P.A. § 204 *with* U.P.C. § 3-803(a). There is now very little difference, however, since the Illinois claim period runs from the date of the issuance of letters, I.P.A. § 194, whereas the Code period runs from the date of first publication, which may be as late as 3 weeks after appointment. U.P.C. § 3-803(a)(1).

64. U.P.C. §§ 3-804, -806.

65. U.P.C. § 3-804.

filing of claims has expired, all allowed claims may be paid without any action by the court.[66] In Illinois, all claims "may be filed in the proceeding for the administration of the estate,"[67] and each claim so filed must then be allowed or disallowed by the court.[68] The personal representative may be surcharged for any payment made prior to a formal allowance if he is not able to satisfy the court as to its validity.[69]

Closing the Estate

The most significant difference between closing an estate in Illinois and closing an estate under the Code is, once again, the need for any sort of formal procedures at all. In Illinois, a final account or a motion for additional time must be filed with the court within 8 months of the personal representative's appointment.[70] Before the estate may be distributed, this account must be approved in a formal hearing after notice to all unpaid creditors and distributees.[71] After distribution, another order must be obtained to close the estate and to discharge the personal representative. Under the Code, distribution may be made without closing the estate, and all claims against the distributees will be barred after the running of the applicable period of limitations.[72] If the personal representative wishes additional protection, he may close the estate informally by filing a sworn closing statement with the court,[73] or he may close the estate formally and obtain his discharge in a single hearing after notice to all devisees.[74]

These, then, are the major differences between the procedures for administering a decedent's estate under the Illinois Probate Act and under the Uniform Probate Code. The proponents of the Code have asserted that its procedures would be both quicker and cheaper than those presently in use in Illinois,[75] but questions have been raised as to whether the Illinois system is really as costly and inefficient as it seems, and as to whether the savings of time and expense that would result from the adoption of the Code would be worth the

66. U.P.C. § 3-807(a). Claims may be made before the expiration of the 4-month period if the personal representative is willing to assume certain risks. *See* U.P.C. § 3-807(b).
67. I.P.A. § 192.
68. I.P.A. § 198.
69. I.P.A. § 203.
70. I.P.A. § 289.
71. I.P.A. § 290.
72. U.P.C. § 3-1006 and art. III, General Comment 7.
73. U.P.C. § 3-1003.
74. U.P.C. § 3-1002.
75. *See, e.g.*, Wellman, *A Reaction to the Chicago Commentary*, 1970 U. ILL. L.F.

problems of adopting an entirely new and untried system of probate. The balance of this article will deal with these two questions.

RESEARCH DATA

One of the principal purposes of the Uniform Probate Code is "to promote a speedy and efficient system for liquidating the estate of the decedent and making distribution to its successors."[76] Although launched before the recent wave of anti-probate sentiment,[77] the Code nevertheless received a good deal of impetus from the increasing public concern with the delays and financial expenses of probate.[78] In spite of all of the commentary that has dealt with the legal and social ramifications of various probate systems, very little has been done in the way of empirical research to determine what time and expense is actually required in the administration of a decedent's estate.[79] A logical first step in determining what efficiencies would result from the adoption of the Code is to determine what are the actual time and cost requirements of the systems presently in effect. Thus, it will be the primary purpose of this article to report

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76. U.P.C. § 1-102(b)(3).

77. *See, e.g.*, N. DACEY, HOW TO AVOID PROBATE! (1965).

78. *See* Wellman, *The New Uniform Probate Code*, 56 A.B.A.J. 636 (1970).

79. This writer has found only seven studies that have undertaken the kind of research that is presented here. J. WEDGWOOD, THE ECONOMICS OF INHERITANCE (1929) is a presentation of certain economic data from 239 British estates probated between 1924 and 1926. Harbury, *Inheritance and the Distribution of Personal Wealth in Britain*, 72 ECON. J. 845 (1962) is a similar study of estates probated in 1956 and 1957. In Powell & Looker, *Decedents' Estates—Illumination from Probate and Tax Records*, 30 COLUM. L. REV. 919 (1930), the authors reported on a comprehensive survey of probate and tax records in four New York counties for the years 1914-1929. Ward & Beuscher, *The Inheritance Process in Wisconsin*, 1950 WIS. L. REV. 393 contains a similar study in Dane County (Madison), Wisconsin for the years 1929, 1934, 1939, 1941 and 1944. In Dunham, *The Method, Process and Frequency of Wealth Transmission at Death*, 30 U. CHI. L. REV. 241 (1963) [hereinafter cited as Dunham], the author reported on a survey funded by the Ford Foundation, of 170 estates probated in Cook County (Chicago), Illinois during 1953 and 1957. More recently, a study financed by the Russell Sage Foundation surveyed 659 estates probated in Cuyahoga County (Cleveland), Ohio between November, 1964 and August, 1965. M. SUSSMAN, J. CATES & D. SMITH, THE FAMILY AND INHERITANCE (1970). The Sage Foundation study included, in addition to a survey of public records, a report of interviews with the survivors of the decedents and with the lawyers who had handled the surveyed estates. Although these studies collected and correlated data similar to that which is presented here, their primary emphasis was on the ways in which property passes at death and not on the working of the probate process itself. Most recently, Kinsey, *A Contrast of Trends in Administrative Costs in Decedents' Estates in a Uniform Probate Code State (Idaho) and a Non-Uniform Probate Code State (North Dakota)*, 50 N.D.L. REV. 523 [sic] (1974) [hereinafter cited as Kinsey], reported a statistical study of probate costs for estates probated in 1971, 1972 and 1973 in the two states. The author is also aware of a comprehensive American Bar Foundation study of probate and inheritance tax files in four Minnesota counties that has now been in progress for several years. *See* Stein, *Probate Administration: Distinguishing Fact from Fiction*, PROBATE AND PROPERTY NEWSLETTER, ABA SECTION OF REAL PROPERTY, PROBATE & TRUST LAW 3 (vol. 3, no. 1 summer 1974).

the results of a survey of 500 estates probated in the Circuit Court of Cook County, Illinois during May and November of 1969, to determine how long it took and how much it cost to administer those 500 estates, and to segregate that portion of the time and expense that was attributable to the probate process itself.[80]

Estates Actually Probated

In 1969, over 57,000 deaths were reported in Cook County, Illinois.[81] During the same period, only 8,070 estates were actually probated. Whether this disparity is due to the fact that most decedents do not accumulate enough assets during their lives to require the probate of their estates or whether it reflects a wide-spread use of probate avoidance devices such as joint tenancies and living trusts is not clear, but it is significant to note at the outset that in 1969, better than 85 percent of all of the decedents' estates in Cook County were not subject to the probate laws at all. Thus, whatever changes are made in those laws, they will affect only a small percentage of all Illinois estates.[82]

Nature of Estates Probated

Of the 500 estates surveyed, 289 were testate and 211 were intestate. Of the 211 intestate estates, 12 were opened solely for the purpose of settling a cause of action that had survived the deceased. Of these 12 estates, 10 involved a recovery of less than $20,000 and only one involved an amount greater than $60,000. The use of the probate courts for the sole purpose of recovering on a claim that accrued to the deceased raises a number of questions regarding possible abuse of the small estates procedure,[83] but since such proceedings are relatively infrequent and do not involve the use of probate in its traditional sense, these estates have been omitted from the balance of this survey.

Also omitted are seven estates, six testate and one intestate, that involved some form of formal contest. Both the Uniform Probate

80. A complete discussion of the research methods used in this study is included as Appendix A *infra*.
81. U.S. DEP'T OF COMMERCE, COUNTY & CITY DATA BOOK 126-27, tables 3 & 22 (1972).
82. This conclusion may be invalid if one accepts the questionable argument that a more efficient system of probate would discourage probate avoidance and increase the number of probate estates.
83. *See* Dunham, *supra* note 79, at 266.

Code and the Illinois Probate Act provide for the filing and resolution of contests,[84] but because so few of the estates appearing in the sample were contested, it was felt that they would not provide an adequate basis for a comparison of these provisions of the two Acts. The primary focus of this study, then, is the 481 uncontested estates that were probated for purposes other than the settlement of a cause of action.[85]

Size of Estates

For purposes of analysis, the estates surveyed were first classified on the basis of their size. In making this classification, the figure used for the size of the estate was the dollar value of the probate estate; that is, the amount of property that was subject to administration in the proceeding before the probate court. This figure, however, does not include all of the property that passes to a decedent's successors at his death since many assets, such as those held in joint tenancy and in living trusts, are not passed by the will and are not reflected in the records of the probate court. Nevertheless, the figures used do give an accurate idea of the amounts of property that are subject to the probate laws.[86]

The size of the probate estate in each instance was determined from the receipts section of the final account, whenever that document gave a dollar value to each asset received. In many estates, however, the value of property distributed in kind was not recorded in the final accounting. In those cases, reference was made to the inventory or, where that document was also silent as to value, to the court's estimate of the estate's value for the purpose of determining attorneys' and executors' fees. This latter figure was invariably recorded by the court on the last page of the final account, and values for real and personal property were separately stated. The court's figure thus provided a reliable estimate of value where total value was not stated elsewhere, and it also served as a check on the accuracy of other figures taken from the final account and from the inventory.

Once values were determined, the estates were classified as small,

84. *Compare* U.P.C. §§ 3-406, -407 *with* I.P.A. §§ 90-93.

85. Another 80 estates were omitted after preliminary consideration because they had not been closed by the date of the survey.

86. A more accurate determination of actual estate size might have been made by an examination of state inheritance and federal estate tax returns, but such a comparison was beyond the scope of this study.

0-$20,000; medium, $20,001-$60,000; or large, $60,001 or more. These categories were based primarily upon the exemptions allowed by the state inheritance and federal estate taxes. The $20,000 cut-off reflects the exemption provided by the Illinois inheritance tax to surviving spouses and children of the deceased, and the $60,000 cut-off is the basic exemption provided by the federal estate tax.[87] Table 1 shows the number of estates within each of these classifications.[88]

TABLE 1
NUMBER OF ESTATES PROBATED

Type of Estate	0-$20,000	$20,001-$60,000	$60,001 +
Testate	70	84	103
Intestate	86	38	20

Table 2 shows the average and median estate size within each of the three size classifications.

TABLE 2
SIZE OF ESTATES (IN THOUSANDS OF DOLLARS)

Type of Estate	0-$20,000		$20,001-$60,000		$60,001 +	
	Average	Median	Average	Median	Average	Median
Testate	10.46	10.20	35.7	32.3	256.6	124.9
Intestate	8.0	7.8	34.9	33.6	204.1	109.6

In comparing these two tables, it is interesting to note that the number of testate estates probated increased as the size of the estates increased, whereas the number of intestate estates administered decreased as the estates grew larger. This is consistent with an expected finding that the larger a person's estate, the less likely he is to die without a will. It may also suggest the successful use of estate planning for the purpose of probate avoidance in the smaller testate estates. Whatever the reason for the phenomenon, it should be of some interest in the drafting of new statutes to note that laws governing the administration of testate estates will apply primarily to larger estates, whereas more than half of the estates subject to the laws of intestate distribution will have a value of less than $20,000.

87. INT. REV. CODE OF 1954, § 2052. This figure may be somewhat misleading, since as applied here, it refers only to probate estates. Under the Code, the $60,000 exemption applies to the gross estate, a term which includes assets that are not subject to probate. Any probate estate falling in the *large* category may be assumed to have involved the filing of a federal estate tax return though not necessarily the payment of a tax. The fact that an estate did not fall within this category, however, does not necessarily mean that a return was not required to be filed.

88. Table 1 does not include the 80 estates that were still open as of Jan. 1, 1974.

Time Required to Probate Estates

Of great concern to many critics of the present systems of probate is the amount of time that it takes to administer a decedent's estate. In seeking to reform the probate laws, it would be useful to know how long it actually takes to distribute a decedent's property after his death and how the time required is actually spent. In making such a determination, there are two periods of time that must be considered: the period between the date of the decedent's death and the date that the estate is opened; and the period between the date that the estate is opened and the date that it is closed. Table 3 shows the periods of time elapsing between the date of death and the opening of the estate.

TABLE 3
TIME REQUIRED TO OPEN ESTATES (IN WEEKS)

Type of Estate	0-$20,000		$20,001-$60,000		$60,001 +	
	Average	Median	Average	Median	Average	Median
Testate	26.9	7.5	9.9	4.0	4.3	3.0
Intestate	33.3	7.0	10.3	3.0	6.2	2.5

The median figures here, as in most of the tables, are more accurate indicators of the norm than are the averages which tend to be distorted by a few atypical estates.[89] During the period between the death of the decedent and the opening of the estate, the family is primarily concerned with funeral arrangements and with providing for the survivors' living expenses. With few exceptions, however, most of the estates were opened within 2 months of the decedent's death.

Significantly, as the size of the estate increased, the time taken to open it decreased. This may be attributable to the fact that persons having an interest in estates of greater size are more concerned with their rapid distribution. It may also reflect a greater availability of counsel to persons with larger estates or perhaps even a greater efficiency of counsel in dealing with wealthier clients. Of greater interest to the legislative draftsman, however, are the relative times required to open testate and intestate estates of comparable size. When a decedent dies intestate, there is no requirement that his estate be opened within a fixed period of time.[90] But when a dece-

89. The testate estates in the 0-$20,000 category included one estate that took 519 weeks to open and another that took 332. In the 0-$20,000 intestate category, one estate took 407 weeks to open, a second took 365 and a third took 696!

90. I.P.A. § 95 provides only that letters of administration will be issued whenever a petition for them is filed.

dent dies testate, the person in possession of his will must file it in the probate court within 30 days of his death.[91] Filing alone does not open the estate, however, and a testate estate is not formally opened until the will is admitted to probate and an executor is appointed by the court. Under Illinois law, a petition to admit a will to probate must be filed by the nominated executor within 30 days after he learns of his nomination or he may forfeit his right to serve.[92] Furthermore, if a petition for probate is not filed within 30 days of death, the court may proceed to probate the will without the filing of a petition.[93]

With strict time requirements for opening a testate estate and the lack of such requirements for the opening of intestate estates, one would expect that most testate estates would be opened sooner than most intestate estates. The median figures in Table 3 indicate, however, that in most cases there is very little difference in the time required to open intestate and testate estates. In fact, most intestate estates were actually opened slightly faster than were most testate estates of comparable size. This might lead one to conclude that the self-interest of interested parties may be enough to insure the prompt opening of most estates, and that statutory restrictions have little, if any, motivating effect.

The second significant period of time in the administration of an estate is that elapsing between the date that the estate is opened and the date that it is closed. Of the 500 estates surveyed, 80, 26 testate and 54 intestate, were still open as of January 1, 1974. In many of these estates, very little had been done beyond the formal opening of the estate. In several, no assets were found and the petition for probate had been withdrawn. In many more, no inventory or accounting was ever filed. There was very little in these 80 estates that could be of use to this study without distorting the results. For these reasons, these estates will be excluded from further consideration.

For the remaining 401 estates, Table 4 shows the number of months that elapsed between the date that the estate was opened and the date that it was formally closed.[94]

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91. I.P.A. § 60.
92. I.P.A. § 62.
93. I.P.A. § 66. In practice, however, this is virtually never done.
94. It should be noted, however, that many, if not most estates are informally distributed before they are formally closed. *See* Dunham, *supra* note 79, at 268. Thus, the time it takes the decedent's heirs and legatees to receive his assets may actually be

TABLE 4
TIME REQUIRED TO CLOSE ESTATES (IN MONTHS)

Type of Estate	0-$20,000		$20,001-$60,000		$60,001 +	
	Average	Median	Average	Median	Average	Median
Testate	18.4	14.5	17.3	16.0	24.4	23.0
Intestate	22.7	18.0	21.4	15.0	22.2	20.0

During this period of time, the estate is primarily involved in the technicalities of administration. Assets must be collected and inventoried, claims must be filed and paid, taxes must be paid and the estate must be prepared for distribution. The figures in Table 4 seem to indicate that, at least with respect to the testate estates, the larger estates take the longest time to administer. With respect to the medium and large estates, they also seem to indicate that most intestate estates are administered faster than most testate estates.[95]

It is interesting to note that in 1969 the period for filing claims against a decedent's estate was 7 months from the date that the estate was opened. Since an estate may be closed at any time after the period for the filing of claims has expired, all of these estates theoretically could have been closed within 9 months of the date that they were opened. In even the fastest category, however, the mean time for the closing of estates was more than 5 months longer than the shortest time in which these estates might have been closed. The question then is, what factors are responsible for this additional delay?

One possibility is that delay is caused by actions required by the Illinois probate laws themselves. A survey of probate records cannot by itself reveal all of the actions that are taken by a personal representative in the administration of an estate, but a review of the probate court's docket books did reveal all of the actions taken in an estate that required the participation of the court. Since most of the procedural requirements of the Probate Act do require court participation, at least some idea of the amount of probate related delay can be determined through a review of these records.

Table 5 shows the types of probate related actions that were taken

somewhat less than that reflected in the figures of Table 4.

95. The apparent aberration in intestate estates between 0 and $20,000 may be due to inaccuracies in the sampling or it may be due to special characteristics inherent in this class of estates that required a greater expenditure of time. It should be recalled, however, that nearly twice as many of the estates still open as of January 1, 1974, were intestate rather than testate. If all of the estates still open were closed and added into the results, the figures in Table 3 might be considerably different.

with respect to the surveyed estates. The categories listed include: claims against the estate, both contested and uncontested; sales of estate property; distributions of estate property; determinations of taxes, attorneys' and representatives' fees; and a broad class of actions designated as Other. This last category includes such things as filing the will, opening the estate, proving up heirship, filing and approval of inventories, setting and altering bond, filing appearances, appointment of guardians ad litem, filing and approval of accounts and other miscellaneous activities related to the administration of the estate that required the participation of the court. Each entry in the docket book was treated as a separate action unless two actions on the same day were so related as to constitute only a single activity.[96]

Since relatively few actions fell within the Claims, Sales, and Distributions, Fees and Taxes categories, the first figure in each of these categories represents the percentage of estates in which the particular type of action was taken. The second figure shows the average number of times the particular action was taken in those estates that involved that action.[97] Since every estate involved actions falling in the Other category, only the class averages and medians are shown for this category of actions.

Table 5 indicates that the number of Other actions in the various classes of estates remains fairly constant. In the testate estates, the number decreases slightly as the size of the estates increases, whereas in the intestate estates, the reverse seems to be true. These changes are so small that they probably do not signify anything terribly important, but in the other categories the differences are a bit more pronounced.

Approximately four times as many small and medium size intestate estates and nearly three times as many large intestate estates involved contested claims as did testate estates of similar size. Similarly, the percentage of intestate estates involving uncontested claims and actions related to sales, distributions, fees and taxes was uniformly larger than it was for testate estates of the same size, the only

96. Thus, a court may have approved an inventory and, on the same day, ordered an alteration in the personal representative's bond because of a change in the estimated value of the estate. While this would appear as two separate entries in the docket book, it would be treated as only one "action" for the purposes of Table 5.

97. Thus, in the 70 testate estates of less than $20,000, there were only three estates, or 4.3 percent of the total, in which actions were taken with respect to contested claims. In these three estates, a total of seven contested claim actions were taken for an average of 2.3 per estate.

TABLE 5

ACTIONS TAKEN WITH RESPECT TO ESTATES

Appearance	0-$20,000				$20,001-$60,000				$60,001 +			
	Testate		Intestate		Testate		Intestate		Testate		Intestate	
Claims	Average	Median	Average	Median	Average	Median	Average	Median	Average	Median	Average	Median
Contested	4.3	5.7	16.4	5.0	4.8	3.2	15.8	6.8	6.8	3.3	20.0	5.0
Uncontested	15.7	2.5	33.7	3.5	21.4	2.9	29.0	3.6	30.1	3.0	40.0	2.4
Sales	10.0	2.7	19.8	1.9	10.7	1.7	31.6	2.3	5.8	1.7	35.0	3.9
Distributions, Fees & Taxes	10.3	1.2	20.9	1.4	16.7	1.1	47.4	1.7	29.1	1.3	25.0	1.2
Other	8.5	8.0	7.9	7.0	8.1	8.0	9.3	8.0	8.0	7.0	9.2	9.0

exception being in estates of $60,001 or more where actions related to distributions, fees and taxes appeared in a greater percentage of testate than intestate estates. Table 5 indicates that intestate estates require more court involvement than do testate estates of similar size. This would seem to suggest that intestate estates would be costlier and more time consuming to probate. As we have seen, however, intestate estates do not take significantly longer to close than testate estates and, as we shall also see, they do not involve significantly greater expense. The explanation apparently is that most of the actions required in intestate estates are also required in testate estates, but in the testate estates, the statutory requirement of court involvement has been waived by the will.[98] While the court records thus reflect a greater degree of court involvement in the intestate estates, the time and expense generated by this additional involvement does not appear to be substantial.

In view of this, one might conclude that statutory provisions requiring court approval of a personal representative's activities have very little to do with delays in the administration of estates, since they merely require formal approval of actions that would be taken in any event, and that there would be no significant change in the time required to distribute an estate if formal approvals were not required. It would appear that delays in the probate process are caused by factors other than the provisions of the Probate Act itself. It follows from this that changes in those provisions, whatever other ends they might serve, would not significantly lessen the time required to administer an estate.

Expenses of Administration

The second significant area of concern in probate reform is the expense involved in the administration of estates. Many seem to feel that the costs of probate would decrease significantly if the probate laws were simplified. Before it can be determined whether or not this would be true, it is necessary to determine just what expenses are actually incurred during the administration of an estate.

Table 6 shows the amount of shrinkage that took place in the estates that are included in this survey. For the purpose of this table, shrinkage is defined as the difference between the total value of the estate collected by the personal representative and the value of

98. *See, e.g.*, I.P.A. §§ 213.1, 246.

the estate distributed to the heirs and legatees after all expenses of administration had been paid. The term expenses of administration includes all disbursements made by the executor or administrator other than in final distribution of the estate.

TABLE 6

SHRINKAGE OF ESTATES (IN THOUSANDS OF DOLLARS)

Type of Estate	0-$20,000		$20,001-$60,000		$60,001 +	
	Average	Median	Average	Median	Average	Median
Testate	4.1	3.3	6.3	5.9	62.3	22.6
Intestate	3.4	2.9	8.3	5.8	48.6	24.5

Perhaps the most surprising thing about this table is the relationship between the shrinkage of testate and intestate estates. In the 0-$20,000 range, the median intestate estate actually experienced less shrinkage than the median testate estate. In the $20,001-$60,000 range, the amount of shrinkage was roughly the same for both. In estates of $60,001 or more, the shrinkage of intestate estates was slightly greater than that of testate estates. One would hardly expect there to be more shrinkage in testate than in intestate estates, but this appears to be the case in the two smaller classes of estates. Even in the larger estates one would expect the difference in shrinkage to be greater than it is. These figures by themselves, however, may be misleading.

In Table 2, the median testate estate in the 0-$20,000 category was $10,200 whereas the median intestate estate in the same category was $7,800. Table 6 shows the median shrinkage in 0-$20,000 testate estates to be $3,300, or roughly 32.4 percent of the median testate estate in that category. The median shrinkage in the same category of intestate estates was only $2,900, but this figure is 37.2 percent of the median intestate estate in that category. Similarly, in the $60,001 plus category the median shrinkage in the intestate estates was 22.4 percent of the median estate whereas in the testate estates it was only 18.1 percent of the median estate. This relationship breaks down in the $20,001-$60,000 category, where the percentage of shrinkage is still slightly higher in the testate estates than it is in the intestates.[99] The discrepancy, however, may be attributable to inaccuracies in the sampling rather than to any characteristics inherent in these estates.

99. 18.3 percent testate as opposed to 17.3 percent intestate shrinkage.

These problems aside, the primary questions for our consideration are what costs are primarily responsible for this shrinkage of estates and to what extent are these costs attributable to our present system of probate? In seeking to answer this question we will first consider those costs and expenses that are directly related to the court's involvement in the probate process itself. These will be referred to as Probate Expenses and include such things as court costs, witness fees, costs of publication, costs of locating heirs and the costs of obtaining certified copies of various documents. Table 7 reflects the average and median probate expenses in each of the three classes of estates.

TABLE 7

PROBATE EXPENSES (IN DOLLARS)

Type of Estate	0-$20,000		$20,001-$60,000		$60,001 +	
	Average	Median	Average	Median	Average	Median
Testate	$146.50	$144.50	$176.30	$153.50	$212.30	$172.00
Intestate	$110.15	$113.50	$171.24	$127.50	$162.42	$148.00

Relatively speaking, probate expenses account for only a small percentage of total shrinkage, and they increase only slightly with the size of the estate. In the testate estates, the median probate costs represented 4.4 percent of median shrinkage in the 0-$20,000 category, 2.5 percent in the $20,001-$60,000 category and only .8 percent in estates of $60,001 or more. In intestate estates, probate expenses represented 3.9 percent of median shrinkage in estates of $20,000 or less, 2.2 percent in estates of $20,001-$60,000, and .6 percent in estates of $60,001 or more. Thus, expenses directly generated by the probate process do not place a substantial financial burden upon the estate, and as the size of the estate increases, the proportional burden decreases dramatically.

All of this would be fine if persons interested in an estate handled its administration themselves, but such is not the case. The expenses engendered by the personal representative and the attorney for the estate are substantially more significant than those that result from the probate process itself. A personal representative must be appointed in all probated estates and, unless the representative is a qualified trust company or a public administrator,[100] he must post a bond as security for the performance of his duties. In addition, unless surety

100. *See* I.P.A. §§ 147, 164.

is waived in the will, the representative's bond must be secured by a commercial bonding company, and the cost of this bond will be an expense of administration. In testate estates, surety is almost invariably waived, and in this survey only seven testate estates were found in which a secured bond was required of an executor. In intestate estates, however, surety is required of every individual personal representative other than the public administrator. Table 8 shows the costs of administrator's bonds in the intestate estates surveyed.

TABLE 8

COST OF SURETY ON BOND (IN DOLLARS)

Type of Estate	0-$20,000		$20,001-$60,000		$60,001 +	
	Average	Median	Average	Median	Average	Median
Intestate	$109	$85	$313	$273	$1106	$700

In intestate estates of $20,000 or less, the median bond expense was 2.9 percent of the median shrinkage; in estates of $20,001-$60,000 it was 4.7 percent, and in estates of more than $60,000, median bond expense was 2.9 percent of median shrinkage. Thus, while the cost of surety in intestate estates was an identifiable cost of administration, it was not responsible for a significant amount of shrinkage.

A more significant expense was the personal representative's fee. This expense, however, was a difficult one to classify. It varied greatly depending upon whether the representative was a corporation or an individual, and upon the relationship that existed between the personal representative and the deceased. When the personal representative was a corporation, the fees charged tended to be higher than when the representative was an individual. When an individual personal representative was close to the deceased or had an interest in the estate, fees were often waived entirely. Table 9 shows the frequency with which corporate representatives were used in the administration of estates and Table 10 shows the percentage of estates in which individual representatives' fees were waived.

There is no real pattern in the use of corporate representatives except that, perhaps predictably, they were used most frequently in the larger testate estates. Table 10, however, does show some interesting patterns in the waiver of the personal representative's fee.

In the testate estates, the frequency with which the fee is waived decreases as the size of the estate, and perhaps not coincidentally,

TABLE 9

NUMBER OF ESTATES IN WHICH CORPORATIONS WERE USED AS PERSONAL REPRESENTATIVES

Type of Estate	0-$20,000		$20,001-$60,000		$60,001 +	
	Corporation	Individual	Corporation	Individual	Corporation	Individual
Testate	2	68	9	75	28	78
Intestate	4	65	0	32	3	14

TABLE 10

PERCENTAGE OF ESTATES IN WHICH PERSONAL REPRESENTATIVES' FEES WERE WAIVED

Type of Estate	0-$20,000	$20,001-$60,000	$60,001 +
Testate	76.5	57.3	59.0
Intestate	56.9	71.9	78.6

the size of the fee, increases. This tendency reverses slightly in the largest estates, but this apparent inconsistency might be explained by the greatly increased use of corporate executors in these estates. It might be argued that in these very large estates, where the executor's duties are extensive and complicated, an individual executor who might otherwise have claimed a fee would be more inclined to refuse to serve in favor of a corporate executor who is named as an alternate in the will.

In the intestate estates, the incidence of waiver increases with the size of the estate in a pattern that is almost directly opposite to that of the testate estates. One can only speculate as to the reasons for this. Perhaps because an administrator is more likely to be an heir of the decedent than is an executor,[101] he is more likely to waive his fee and take his distributive share in the larger estates than he would in the smaller estates where his distributive share would be significantly enhanced by his fee. All of this is pure speculation, however, and a good deal more research would be needed before any sound conclusions could be drawn.

Tables 9 and 10 show the incidence of the use of corporate and individual representatives other than the public administrator or administrators to collect. It might be interesting to look briefly at these

101. *See* I.P.A. § 96.

other two types of personal representatives before moving on to the question of fees.

Under the Illinois Probate Act, the court may appoint an administrator to collect:

> when any contingency happens which is productive of delay in the issuance of letters testamentary or of administration and it appears to the court that the estate of the decedent is liable to waste, loss, or embezzlement . . . .[102]

An administrator to collect has most of the powers of an administrator and must post a secured bond unless it qualifies as an exempt trust company.[103] A public administrator for each county, on the other hand, is appointed by the Governor for a term of 4 years[104] and administers all intestate estates for which there is no other person in the State with a prior right to act as administrator.[105] The public administrator has the same duties as other administrators but he is required only to post a single bond when he assumes his duties rather than to post separate bonds for each estate that he administers.[106]

Table 11 shows the frequency with which administrators to collect were used in testate and intestate estates, and the frequency with which the public administrator was appointed in intestate estates.

TABLE 11

NUMBER OF ADMINISTRATORS TO COLLECT AND PUBLIC ADMINISTRATORS USED IN TESTATE AND INTESTATE ESTATES

Type of Estate	0-$20,000		$20,001-$60,000		$60,001 +	
	Testate	Intestate	Testate	Intestate	Testate	Intestate
Administrator To Collect	0	2	0	2	1	0
Public Administrator		17		5		3

It would appear from these figures that administrators to collect are used only rarely, especially in testate estates, and that the use of the public administrator in intestate estates decreases as the size of the estates increases.

102. I.P.A. § 105.
103. I.P.A. §§ 107, 147, 148.
104. I.P.A. § 163.
105. I.P.A. § 166.
106. I.P.A. §§ 164, 166.

Tables 12 and 13 reflect the fees charged by corporate and individual personal representatives. The figures shown are the average and median fees for those estates in which a personal representative's fee was charged.

TABLE 12

CORPORATE PERSONAL REPRESENTATIVES' FEES (IN THOUSANDS OF DOLLARS)

Type of Estate	0-$20,000		$20,001-$60,000		$60,001 +	
	Average	Median	Average	Median	Average	Median
Testate	.7	.7	2.1	2.0	9.6	4.0
Intestate	.5	.6	—	—	6.3	4.4

TABLE 13

INDIVIDUAL PERSONAL REPRESENTATIVES' FEES (IN THOUSANDS OF DOLLARS)

Type of Estate	0-$20,000		$20,001-$60,000		$60,001 +	
	Average	Median	Average	Median	Average	Median
Testate	.5	.5	1.2	1.1	3.8	3.0
Intestate	.4	.2	1.4	1.3	3.3	3.6

As might be expected, the corporate representatives' fees in both testate and intestate estates were higher than the individual representatives' fees for the same size estates. Just as predictably, the fees charged in testate as well as in intestate estates increased with the size of the estate.

In those testate estates where a corporate executor was appointed, executors' fees represented 5 percent, 5 percent and 2 percent of the median probate estate and accounted for 24 percent, 31 percent and 15 percent of the median shrinkage in the small, medium and large estates, respectively. In the small intestate estates, the median corporate administrator's fee was 5 percent of the median probate estate and accounted for 14 percent of the median shrinkage. In large intestate estates, corporate administrators' fees were 3 percent of the median probate estate and accounted for 13 percent of the median shrinkage. No medium size intestate estates appearing in the survey were administered by a corporate administrator.

Individual executors' fees represented 4 percent, 3 percent and 3 percent of the median small, medium and large testate estates, respectively, and accounted for 14 percent, 20 percent and 16 percent of

median shrinkage. In the intestate estates, individual administrators' fees represented 3 percent, 4 percent and 3 percent of the median small, medium and large estates in which fees were not waived and they accounted for 8 percent, 28 percent and 18 percent of median shrinkage.

From these figures, we may at least conclude that the personal representative's fee is a significant expense of probate in those estates in which a fee is charged. It also appears, at least in estates of $60,000 or less, that the corporate representative's fee is greater than that of the individual representative and accounts for a greater percentage of estate shrinkage. In estates of more than $60,000, however, individual representatives' fees, viewed as a percentage of the probate estate, were actually somewhat higher than those charged by corporations. The reasons for this distribution are not clear; and because the sampling of estates involving corporate representatives was so small in some of the categories, these figures may be misleading. Finally, it appears that the personal representative's fee places the heaviest burden on estates between $20,001 and $60,000. Once again, however, the sampling of corporate representatives was so small that the results may not be entirely accurate.

Another class of expenses is somewhat easier to analyze. Every probate estate is represented by an attorney and virtually every attorney charges a fee. Table 14 shows the average and median attorneys' fees charged in the estates surveyed.

TABLE 14

ATTORNEYS' FEES (IN THOUSANDS OF DOLLARS)

Type of Estate	0-$20,000		$20,001-$60,000		$60,001 +	
	Average	Median	Average	Median	Average	Median
Testate	.8	.8	1.7	1.7	6.1	4.0
Intestate	.7	.6	1.8	1.8	4.1	4.0

In the testate estates of $20,000 or less, the median attorney's fee represented 7.8 percent of the median estate and 24.2 percent of median shrinkage. In the $20,001-$60,000 category, median attorneys' fees were 5.3 percent of the median estate and 28.8 percent of median shrinkage, and in the testate estates larger than $60,000, they represented 3.2 percent of the median estate and 17.7 percent of median shrinkage. In the intestate estates, median attorneys' fees represented 7.7 percent, 5.4 percent and 3.7 percent of the

small, medium and large median estates, respectively, and accounted for 20.7 percent, 31 percent and 16.3 percent of median shrinkage in the same classes of estates.

Percentage attorneys' fees were roughly the same for testate and intestate estates and as the size of the estate increased, the percentage of the estate paid in attorneys' fees decreased. Attorneys' fees also accounted for a fairly substantial portion of estate shrinkage. In both the testate and the intestate estates, attorneys' fees, like executors' fees, accounted for the greatest portion of shrinkage in estates of $20,001-$60,000, with 28.8 percent and 31 percent, respectively. In estates of more than $60,000, attorneys' fees accounted for 17.7 percent of the shrinkage of testate estates and 16.3 percent of the shrinkage of intestate estates, and in estates of less than $20,000, attorneys' fees accounted for 24.2 percent of intestate and 20.7 percent of testate shrinkage.

Like the personal representative's fee, the attorney's fee is a significant expense of probate, especially in the small and medium size estate, and unlike the representative's fee, it is charged in virtually every estate administered.

These, then, are the expenses of probate that were directly or indirectly related to procedures that were made necessary by the provisions of the Illinois Probate Act. The balance of estate shrinkage presumably resulted from other, non-probate expenses, and Table 15 shows the percentage of shrinkage attributable to expenses other than those discussed above.

TABLE 15

PERCENTAGE OF SHRINKAGE ATTRIBUTABLE TO NON-PROBATE EXPENSES

Type of Estate	0-$20,000	$20,001-$60,000	$60,001 +
Testate	71.4	68.7	74.5
Intestate	65.5	62.1	80.2

Table 15 confirms what has now become rather obvious; that probate related expenses are not responsible for most of the shrinkage in an administered estate. In large estates, less than one quarter of the median shrinkage is attributable to probate expenses, bonding costs, personal representatives' fees and attorneys' fees. Even in the medium size estates, which have traditionally shown the greatest amount of probate related shrinkage, only 30-40 percent of median

shrinkage is attributable to probate related expense. It is significant that even if all probate related expenses were to be eliminated, less than one half of the expenses of administering an estate would be saved.

While it is not the purpose of this article to investigate the nature of these non-probate costs,[107] at least one area of non-probate expenses may be of some special interest and will be treated briefly at this point. Table 16 shows the federal and State taxes paid out of the estates surveyed. Included in the federal taxes are the federal estate tax, the federal fiduciary income taxes and the income and other federal taxes owed by the decedent at the time of his death and paid out of the estate. Included in the State taxes are the Illinois inheritance tax, the Illinois income tax, for the estate as well as for the decedent, the personal property tax and any real estate taxes that may have been paid on estate property.

TABLE 16

STATE & FEDERAL TAXES (IN THOUSANDS OF DOLLARS)

Type of Estate	0-$20,000				$20,001-$60,000				$60,001 +			
	Testate		Intestate		Testate		Intestate		Testate		Intestate	
	Average	Median	Average	Median	Average	Median	Average	Median	Average	Median	Average	Median
Federal	.1	0	.01	0	.3	0	1.0	0	29.2	3.8	19.8	6.1
State	.4	.2	.1	0	.7	.5	.8	.7	10.5	3.4	9.8	1.5

From this table, it can be seen that while taxes are not a significant expense in the smaller estates, they account respectively for 31.9 percent and 31 percent of the shrinkage in the large testate and intestate estates and thus represent a substantial portion of the shrinkage attributable to expenses other than those related to probate.[108]

CONCLUSIONS

These, then, are some of the factors responsible for the delays and expenses of probate. The question that remains is the extent to which these delays and expenses would be reduced if the Uniform Probate Code were adopted in Illinois.

107. For a more thorough investigation of these expenses, see Dunham, *supra* note 79, at 272.

108. In addition to being responsible for a substantial amount of shrinkage, federal and state taxes may also account for a significant amount of the time required to close an estate. A federal estate tax return takes approximately 6-10 months to process once it has been filed and an Illinois Inheritance Tax return may take from 2-4 months for processing. Both of these returns must be approved before the estate may be closed.

Delay

There seems to be little question but that the adoption of the Uniform Probate Code would result in less work in the administration of a decedent's estate. Less court involvement and greater discretion in the personal representative would necessarily reduce the amount of paperwork presently involved in the probate process, and this in turn would reduce the amount of effort required of the attorney representing the estate. It is by no means clear, however, that this saving of *work* would result in significant savings of *time* in the administration of an estate.

It was pointed out that there are two relevant periods of time in the administration of a decedent's estate: the period between the date of death and the date on which the estate is opened; and the period between the date on which the estate is opened and the date on which it is closed. Under the Uniform Probate Code, an estate need not be opened at all if the decedent's heirs or legatees are in possession of his property at his death or if no one claims or takes possession of his property for a period of 3 years after his death.[109] Thus, if an estate is never opened, probate would, quite literally, take no time at all. The problem is that unless a decedent's successors are in possession of his property when he dies, they must wait for 3 years before they can take possession, and, if a third party is in possession of the decedent's property, his successors cannot take possession at all without probating the will.

If an estate is to be administered under the Code, it must be opened and a personal representative must be appointed within 3 years of the decedent's death or the decedent will be presumed to have died intestate and no administration will be allowed.[110] The only similar provisions under the Illinois Act are the penalties provided under sections 62 and 66 for failing to file a will and open an estate within 30 days of the decedent's death. As we have seen,[111] however, these provisions do not seem to be very effective since there is no substantial difference between the time required to open testate estates, which are subject to the 30 day requirements, and the time required to open intestate estates, which are not. Thus, one might predict that, under the Uniform Probate Code as well as under the Illinois Probate Act, the self interest of the decedent's heirs and lega-

109. U.P.C. §§ 3-102, -108.
110. U.P.C. § 3-108, Comment at 83.
111. *See* text accompanying notes 92 and 93 *supra.*

tees would continue to be the primary factor determining the time within which an estate would be opened; that the nature of the limitations imposed by law would have very little effect on the length of this pre-opening period; and that there would therefore be no significant change in the amount of time required to open most estates.

The same would probably be true of the time required to administer the estate after it is opened. Under the Code, an estate need not be closed unless there has been a supervised administration or an interested party requires a formal closing procedure, and the "date opened—date closed" time period would be irrelevant. The relevant period of time under the Code would be the period between the date the estate is opened and the date the decedent's assets are fully distributed.

If there is to be no administration, a decedent's heirs may, under the Code, take immediate possession of the assets to which they are entitled, but the assets taken remain subject to all claims, taxes and other expenses of administration.[112] If the estate is administered, the decedent's property may be distributed at the discretion of the personal representative, but the distributed property remains subject to the claims of creditors and of disappointed heirs and legatees until the expiration of 3 years from the date of the decedent's death or 1 year from the date of the distribution, whichever is later.[113]

In Illinois, an estate may be distributed at any time after the 6-month period for the filing of claims has expired. If the estate is large enough to pay all foreseeable claims, however, the personal representative may, after posting bond, obtain leave of court to distribute the assets within 6 months of the decedent's death.[114] Thus, under the Illinois Probate Act and under the Uniform Probate Code, the time for the distribution of the decedent's estate is largely within the discretion of the personal representative. The Illinois Act does restrict distribution within the period for the filing of claims when the estate is not sufficient to cover the claims that might be filed but, realistically, no representative will distribute assets when, in so doing he may become personally liable to the estate's creditors.[115] And when the assets are clearly sufficient to cover the estate's obligations, the largely formalistic requirements of section 292 do not significantly delay distribution.

112. U.P.C. § 3-901.
113. U.P.C. § 3-1006.
114. I.P.A. § 292.
115. *See* U.P.C. § 3-1005, Comment at 177.

In view of this, and in view of the fact that the time required to administer an estate is not significantly affected by the court involvement required by the Illinois Act, one might predict that the adoption of the Uniform Probate Code would not significantly shorten the period required to administer an Illinois estate.

Expenses of Administration

Our second area of concern is the expense involved in the administration of a decedent's estate. It should be remembered, of course, that in this regard, anywhere from 60 percent to 80 percent of the shrinkage in the average estate is caused by factors entirely unrelated to the probate process.[116] Thus, whatever savings may be effected by the adoption of the Code will only be in those areas which account for approximately 20-40 percent of the shrinkage of a decedent's estate.

Expenses arising directly out of the probate process itself could be partially or even completely eliminated under the Uniform Probate Code, depending upon the degree of formality with which the estate is administered. If no estate is ever opened and the decedent's assets are distributed without administration, there would be no probate expense at all since the court would never become involved in the estate and there would be no publication expenses, notice requirements, witness fees, guardian ad litem's fees or the like. If the estate is probated but distributed without administration, there would probably be a minimal filing or court fee,[117] but once again most of the expenses presently generated in Illinois would be avoided.

If an estate were formally probated under the Code, the expenses of probate presumably would be greater because of the increased involvement of the court and the additional requirements of

116. *See* Table 15 *supra*.

117. This discussion assumes that the filing fees charged by the court will bear some relation to the amount of effort required of it in the administration of the estate. There is evidence, however, that, at least in some states, this is not the case. In Wisconsin, for example, where a version of article III of the U.P.C. is now in effect, the courts are still charging filing fees based solely on the size of the estate. Thus, for an estate of less than $1,000, there is no filing fee at all, but for an estate of $100,000 or more, there is a fee of $100 for each $100,000 of the estate. This kind of fee is a de facto estate tax and its amount would probably not be greatly affected by the adoption of the U.P.C.

In Illinois, the court charges a flat fee of $10 for estates of less than $5,000 and $75 for estates of $5,000 or more. This seems to be somewhat more closely related to actual court expenses and it would probably reflect any decrease in the efforts of a court that may result from the adoption of the U.P.C.

notice.[118] If the estate were administered, probate expenses would be greater still; their exact amount depending upon whether the personal representative was formally or informally appointed and upon whether there was a supervised or an unsupervised administration. Even in a formal, supervised administration, however, probate expenses would probably be less under the Code than they are now in Illinois.[119]

The adoption of the U.P.C., therefore, would undoubtedly result in significant savings in the limited area of probate expenses, but it must be remembered that these expenses represent only a small percentage of total shrinkage, even in the smallest estates. These savings would not be very significant in relation to the overall expense of administering an estate.

Savings would also be realized under the U.P.C. in the area of the personal representative's bond. In informal proceedings under the Code, bond would not normally be required of a personal representative, and in formal proceedings, bond could be waived by the court even where it would otherwise be required by the Code.[120] When a bond is required, its amount would be considerably less than it is under the Illinois Act,[121] and when a surety is required on the bond, that requirement could be satisfied under the Code by a co-signer willing to pledge property sufficient to cover the amount of the bond.[122] It is predictable, therefore, that under the Code, most of the bonding expense involved in administering Illinois intestate estates could be eliminated. As with probate costs, however, bonding expenses represent only a small part of the total shrinkage in a given estate, and the savings realized would not be all that great in relation to the overall costs of administration.

Two probate related expenses that do account for a significant amount of shrinkage, however, are the personal representatives' and attorneys' fees.

The personal representative is primarily concerned with the collection and administration of the estate assets and not with the pro-

118. *See* U.P.C. §§ 3-401 to -403.
119. Even in a supervised administration, a personal representative has all of the powers of an unsupervised representative except as they are restricted by the court. U.P.C. § 3-501. Thus, unless a supervised administrator is made subject to all of the restrictions of Illinois law, there would still be less court involvement than there is under present Illinois practice.
120. U.P.C. § 3-603.
121. *Compare* U.P.C. § 3-604 *with* I.P.A. § 151.
122. U.P.C. § 3-604, Comment at 121.

cedural technicalities of probate. It is true, of course, that the personal representative is responsible for seeing that the legal requirements of administration are carried out, but in reality, it is the lawyer who normally sees to those details and who is compensated for handling them. The personal representative's compensation is paid primarily in return for his activities with respect to the estate property itself and, accordingly, it should not be significantly affected by a lessening of court involvement in administration. In fact, the nature of the duties imposed upon a personal representative under the Code is such as would probably justify an increase rather than a decrease in his fee.

In Illinois, the personal representative's duties are restricted to collecting the decedent's assets, preserving them during the period of administration and then distributing them in accordance with the will or the laws of intestate distribution. If he wishes to do anything other than collect, preserve and distribute and is not given additional powers under the will, he must seek the intervention of the court; and this is a matter that will normally be handled by the attorney for the estate. Once the estate is closed, as every estate must be under Illinois law, the personal representative is freed of any future liability to those persons who were notified of the hearing on his final account.[123]

Under the Code, the personal representative is given the status of a trustee.[124] He has broad discretionary powers and may take many actions with respect to the estate without testamentary authority and without the intervention of the court.[125] If the estate is not closed, as it need not be under the Code, the personal representative remains liable to all interested persons for the term of the applicable statute of limitations,[126] and he is entitled to a "reasonable compensation"[127] in return for his services. One would expect, therefore, that a "reasonable compensation" for the acceptance of the duties and liabilities imposed upon a personal representative under the Code might be considerably greater than it would be for the relatively limited duties and obligations of a personal representative in Illinois. One might also expect that, in view of these greater obligations, a testator would more frequently choose, and a nominated personal representative

123. *See* I.P.A. § 290.
124. U.P.C. §§ 3-711, -712.
125. U.P.C. § 3-704.
126. U.P.C. § 3-1005.
127. U.P.C. § 3-719.

would more frequently defer, to the more experienced and more expensive corporate trustee. Thus, personal representatives' fees would probably be greater and account for a larger percentage of shrinkage under the Code than they do under the present system of probate in Illinois.

Attorneys' fees, on the other hand, could be the one area of significant savings under the Code. With court involvement reduced to a minimum and with the personal representative taking on greater responsibilities and given greater discretion to act without leave of court, one would expect that the need for the services of an attorney would be greatly reduced in many estates and eliminated entirely in some. Presumably, the attorney's fee, which is frequently the most substantial probate related expense of administration, would be reduced accordingly, but the authors of the Uniform Probate Code have themselves suggested that this may not be the case.

The Code, unlike the Illinois Probate Act,[128] makes no provision for the payment of attorneys' fees. Section 3-715(21) authorizes the personal representative to employ an attorney, and section 3-715(18) authorizes him to pay "expenses incident to the administration of the estate." Unlike U.P.C. section 3-719, which entitles the personal representative to a reasonable compensation for his services, there is no provision in the Code that establishes how much the attorney is to be paid. It is suggested, however, that "expenses incident to the administration of the estate" would include the attorney's fee, and in the December 1972 issue of the *U.P.C. Notes*,[129] one of the Code's editors addressed this specific question.

After first noting that the Code would save lawyers both time and expense in probating an estate, the author suggested that the choice of procedures available under the U.P.C. would result in a more "creative" role for the estate attorney, and that this greater "creativity" calls for greater responsibility and, therefore, a *higher* fee.

> Responsibility . . . is certainly worth compensating, and I would submit that under the Code the personal representative and the attorney have more, not less responsibility because of the options available and the lack of court supervision. They've also got more liability, of course, and it seems to me that this deserves to be compensated. . . . [U]nder the UPC the attorney's role is . . . a creative one, a responsible one, and it deserves a fair fee.

128. *See* I.P.A. § 337.

129. Moore, Attorneys' Fees Under the Code, U.P.C. Notes, No. 3, Dec., 1972, at 1. U.P.C. Notes is the official publication of the Joint Editorial Board of the U.P.C.

> . . . [W]ork done that involves creativity and responsibility is going to be, or at least should be, better compensated than rather routine work.[130]

Whether this is mere pro-U.P.C. propaganda designed to win the support of the more money-conscious elements of the bar or whether it is a realistic estimate of how lawyers will be paid under the Code remains to be seen. Of possible interest on this point, however, is a 1966 survey of fees and commissions in all 50 states which showed that attorneys' fees in the only 2 states which then provided for the independent administration of estates were significantly higher than they were in many states which allowed only supervised administration.[131] Thus, while it might be a bit premature to predict that the U.P.C. will result in a financial windfall to the probate bar, it is probably safe to say that its adoption would not result in any significant savings of attorneys' fees.

Summary

The adoption of the Uniform Probate Code would probably be advantageous in several respects. It would standardize the probate laws of the various states, it would simplify the probate lawyer's task in handling the administration of an estate, and it would reduce the workload of overburdened state courts. The question that many lawyers have been asking, however, is whether, given the fact that the Code would contribute to the accomplishment of these desirable results, it is the best available means for doing so.

It would appear from this survey that the adoption of the Uniform Probate Code would not significantly reduce the time and expense involved in the administration of a decedent's estate in Illinois. As indicated above, some savings would be effected, particularly in the areas of court costs and administrators' bonds, but as we have seen, these expenses are only a minor portion of the total cost of probate. The major probate expenses, such as personal representatives' and attorneys' fees would probably not be significantly reduced.

In view of this, it might justifiably be asked whether the benefits that would attend the adoption of the Uniform Probate Code in its entirety would justify the confusion and expense that would accom-

130. *Id.* at 2.
131. Bauer, *Legal Fees in Probate*, 105 TRUSTS & ESTATES 850 (1966). A more recent study has suggested, however, that at least in some states, attorneys' fees will be lower under the Code than they were under prior practice. *See* Kinsey, *supra* note 79, at 527.

pany the abandonment of an admittedly antiquated, yet well-construed body of law in favor of a new and relatively untried one. It is the conclusion of this author that it would not, and that the same results could be more readily achieved through the revision and modernization of existing law.

Appendix A: Research Methods

This project was undertaken in the Fall of 1973 under the guidance of Professor William Chamberlin, of the Northwestern University Law School. It began with a plan to take some aspect of the Uniform Probate Code and to compare it with the provisions of the Illinois Probate Act. After preliminary research, however, it was discovered that this had already been comprehensively and expertly done by Mr. James Zartman, then Chairman of the Chicago Bar Association's Subcommittee on the Uniform Probate Code.[132] After discussions with Mr. Zartman and with Mr. Glenn Schmidt, another member of the Chicago Bar Association Committee, an alternative research plan was developed.

Mr. Zartman suggested that while an informal system of probate was thought by many to be a desirable means of avoiding the unnecessary delays and expenses of probate, there was very little data available as to what delays and expenses were actually being experienced in practice under the Illinois Act. It was felt that if a comprehensive review could be made of a sampling of probate records, some basis would then be available for determining what delays and expenses are actually involved in the probate process, and to what factors these delays and expenses were attributable. This accomplished, a comparison of the two Acts could be made in an effort to determine what economies would be effected through an adoption of the U.P.C.

The initial plan was to examine all of the estates filed within a single year. The year 1969 was selected because it was old enough to have included a substantial number of closed estates and yet recent enough so that the data collected would be relevant to current practice. A two part research approach was then developed. The first part would involve a survey of the probate court docket books, which include a record of each action taken by the court with respect to all probated estates. From these records, dates of death, opening and closing dates, bond amounts and all actions taken with respect to the surveyed estates were to be obtained. The second part would consist of a review of the probate file for each estate surveyed in the docket books. From the accountings, inventories and other documents in these files, we hoped to obtain information on estate size, the amounts of disbursements and the amounts of final distributions.

The next step was to gather the relevant data. To facilitate this process,

132. Zartman, *supra* note 24.

an estate information sheet was developed on which the information from each estate surveyed could be recorded and filed for future tabulation.[133] Using this information sheet, a test survey was run on 50 consecutive estates in a 1969 docket book selected at random. The results of this preliminary survey were twofold: the information sheet was slightly revised to better reflect the collected information, and the scope of the project was significantly reduced. Over 8,000 decedents' estates were probated in 1969 and we realized that, with our limited time and resources, we could not possibly survey all of these estates and still obtain the detailed information on each that was desired. It was therefore decided to confine the survey to a total of 500 estates.

The docket book used in the test survey (No. 732) was used for another 200 estates, and the result was a complete review of all of the probate estates opened during a 2-week period in May of 1969. A random sampling of estates might have been more scientific, but it was decided that the opening of probate estates would not be subject to pronounced seasonal variations and that the extra time and effort in using a true random sampling would not be required. Nevertheless, a check was made on the results by selecting a second docket book, also at random, for the second group of 250 estates. The estates taken from this book (No. 738) were all probated during a 2-week period in November of 1969, and a cross check indicated that estates in the same size and testacy classifications were filed in approximately the same numbers during both periods of time.

TABLE A-1
NUMBER OF ESTATES FILED IN MAY AND NOVEMBER, 1969

Type of Estate	0-$20,000		$20,001-$60,000		$60,001 +	
	May	Nov.	May	Nov.	May	Nov.
Testate	37	33	41	43	61	42
Intestate	42	44	15	23	10	10

As a result, it is felt that the 500 estates chosen are a fair representation of all of the estates probated during 1969.

After all of the data was gathered, it was categorized and tabulated, the arithmetic averages and median figures were computed and the results were set forth in 16 tables which are discussed in this article.

The most significant limitation of this research is that it was confined to records of *probate* estates. Thus, there is no reflection in the gross estate figures of the existence of non-probate assets, although such assets undoubtedly had some effect on the expenses of administration. A survey of State inheritance tax returns would have revealed the existence of most such assets, but such a survey was beyond our capabilities, and this may have given rise to some distortion in our results.

Another possible shortcoming is a lack of any kind of sophisticated statis-

133. A copy of this form is included as Appendix B *infra*.

tical analysis. Nevertheless, the data gives a fairly good indication of what is going on in an area where there is not a great deal of available data.

In conclusion, the author wishes to thank the following individuals, without whose assistance this project could not have been completed.

Professor William Chamberlin; Professor of Law, Northwestern University Law School.

Mr. Glenn Schmidt; Member of the firm of Kirkland & Ellis, Chicago, Illinois and member of the U.P.C. Subcommittee of the Chicago Bar Association.

Mr. James Zartman; Member of the firm of Chapman & Cutler, Chicago, Illinois and Chairman of the U.P.C. Subcommittee of the Chicago Bar Association.

Honorable Anthony Kogut; Judge of the Probate Division of the Circuit Court of Cook County, Illinois.

The employees of the Clerk of the Circuit Court of Cook County, Illinois, Probate Division, whose cooperation and assistance made a tedious job a lot easier than it might otherwise have been.

Appendix B: ESTATE INFORMATION SHEET

ESTATE OF _____ NO. _____
DATE OF DEATH _____ DATE OPENED _____
DATE CLOSED _____
TESTATE/INTESTATE CONTESTED? _____

PERSONAL REPRESENTATIVE

ADMIN. EXEC. A.T.C. P. ADMIN. CORP. INDIV.

APPEARANCES

CLAIMS SALES DIST., FEES & TAXES OTHER

CONT.

UNC.

GROSS ESTATE _____ BOND _____
ADMIN. EXPENSES _____ SURETY? _____
SPOUSE'S AWARD _____ COST _____

TAXES

FEDERAL:

ESTATE _____
INCOME _____

STATE:

INHERITANCE _____
INCOME _____
PERS. PROP. _____
OTHER _____

FEES

ATTORNEY _____
EXECUTOR _____

OTHER EXPENSES _____
ESTATE DISTRIBUTED _____

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