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THE CONTINUING NEED FOR JUDICIAL REFORM IN ILLINOIS

WAYLAND B. CEDARQUIST

The need for judicial reform in Illinois was briefly stated in 1952. The need has since then become urgent. The measure of the need is the gap between our aim of prompt justice for all and our performance. Today’s performance is marked by delay, inefficiency and widespread lack of confidence in the courts. The gap between aim and performance has become so great that, in order to restore justice and preserve liberty, the people must recur to fundamental principles and take action to revise the judicial system of Illinois in accordance with those fundamental principles.

The purpose of this article is to re-state the need and to describe the solution presently proposed. In order to place the matter in perspective, there will first be a description of the Illinois courts as now organized, followed by a statement of the ways in which these courts are inadequate for today’s needs, and, finally, a discussion of the proposed Amendment to the Judicial Article to the Illinois Constitution, which grew from these needs and which, on March 8, 1955, was introduced in the Illinois General Assembly.

THE ILLINOIS COURTS OF 1955

The Illinois courts of 1955 are organized substantially along lines set forth in the Illinois Constitution of 1848. That constitution provided for most of the constitutional courts as we now know them—a supreme court, circuit courts, county courts, and justices of the peace.

2 The currently proposed Amendment to the Judicial Article was introduced in the Illinois General Assembly on March 8, 1955, as H.J.R. 16 in the House and S.J.R. 17 in the Senate.

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peace; and it authorized the legislature to create local courts in cities. The Constitution of 1870 made possible the creation of appellate courts and probate courts, and provided additional courts for Cook County. Aside from the Chicago Charter Amendment of 1904, which abolished justices of the peace, police magistrates and constables in Chicago and made possible the creation of the Municipal Court of Chicago, there have been no constitutional changes in the Judicial Article from 1870 to the present day.

The supreme court, the court of ultimate appeal in the state, has seven judges elected from seven judicial districts. The judicial districts are seven geographic areas, the boundaries of which have not been changed in any important respect since 1870. In 1870, the Seventh District, which includes Chicago and its surrounding industrial and metropolitan complex, had a population of about 500,000 people as compared with the present population for that area of almost 5,000,000 people.

The supreme court not only has jurisdiction to take an appeal in any case, but is required to take appeals in certain specified instances, with power in the legislature to specify additional classes of cases. The legislature, subject to political pressure from many sources, has specified about forty classes of such cases. A survey in 1947 indicated that these compulsory appeals made up 84% to 90% of the business of the supreme court. In other words, the supreme court has no choice as to the great majority of cases to be reviewed. The system of compulsory appeals makes it almost impossible for the supreme court to separate the wheat from the straw. The burden of compulsory appeals, moreover, leaves the court little time to review other cases involving important questions of law and matters of great importance to the state, the business community and the people.

The supreme court has indicated that it believes it has rule-making and administrative authority over the judicial system of the state. But the burden of appeals under the present system is such that the court has found it difficult to exercise this authority. Indeed, aside

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4 "The outstanding characteristic . . . is that the Supreme Court of Illinois is today operating in a jurisdictional strait-jacket." Edmunds, Jurisdiction of the Courts [1952] Ill. L. Forum 480, 518.

from promulgating rules of practice to supplement the Civil Practice Act as enacted by the legislature, and aside from assigning circuit court judges to serve in the appellate courts, the supreme court exercises no authority whatsoever over the running of the judicial system.

There are four appellate courts in Illinois, one in each of four districts. The appellate courts are staffed, not by judges elected specifically to that position, but by circuit judges assigned by the supreme court to the appellate court. The appellate court, as the court of intermediate appeal, has jurisdiction to take appeals in all cases other than those in which the right of direct appeal to the supreme court is given.

The trial courts of the state make up the balance of the judicial system. There are a large number of these courts and they present a confusing and conflicting picture. In counties outside of Cook County there are 101 county courts, 17 circuits with 54 judges holding court at set terms in each county, 13 probate courts, 26 city courts and about 400 police magistrates and 2700 justices of the peace. In Cook County there is a county court, a circuit court with 20 judges, a superior court with 36 judges, a criminal court (whose judges are assigned from the circuit and superior courts), a juvenile court (staffed by a judge of the circuit court), a probate court, the Municipal Court of Chicago with a chief justice and 36 judges, the city courts for Chicago Heights and Calumet City, the Municipal Courts of Evanston and Oak Park, and in that part of Cook County outside Chicago, about 125 justices of the peace and 90 police magistrates. Most of these judges devote full time to their judicial duties. County judges, however, have many quasi-administrative duties as well as judicial duties. Moreover, a recent study shows that only one in eight justices of the peace and one in five police magistrates spend any appreciable amount of time performing judicial duties. To sum it up, the trial courts of the state are manned by 192 full-time judges and 102 part-time judges; and there are about 100 justices of the peace and 450 police magistrates performing some judicial service.

These courts are all trial courts in the sense that they hear evidence and decide cases for the first time. However, each class of court has a separate jurisdiction, with power to hear some cases but not others. The matter is complicated by the fact that the jurisdiction of many courts overlaps that of others. There are so many trial courts that the
question of what court should be chosen for the filing of a suit takes up time and energy all out of proportion to its real importance. The problems of one family in Chicago, for instance, may give rise to law suits in as many as five different courts. Adoption is handled by the county court, guardianship by the probate court, divorce in the circuit court, non-support in the Municipal Court of Chicago, and juvenile offenders may find themselves in the criminal court, the Boys Court Branch of the Municipal Court, or the Juvenile Court. Or, a personal injury suit can be filed in a municipal or city court, circuit or superior court, and possibly the county court, depending on where the accident happened and how much had to be claimed in the way of damages. The worst feature of this jurisdictional maze is that, if a case is filed in the wrong court, it must be dismissed and filed in the right court, a process in which time and money are lost and in which justice may be denied.

Superimposed on this complex system of trial courts is the fact that some of the trial courts are regarded as superior and others as inferior, so that when an inferior tribunal has decided the matter, the decision can be "appealed" to another trial court, which re-tries the entire case. This is trial de novo and involves hearing the evidence all over again. There can be such a second trial in cases decided by justices of the peace and police magistrates, as well as in some matters decided by county and probate courts.

Moreover, every one of these trial courts is, so far as the business of running the court is concerned, separate and independent. The various classes of courts and indeed the individual judges are practically isolated. If the judges in one area are overloaded with work and the judges in another area haven't enough work, there is no authority anywhere to assign judges to assist in disposing of the backlog. All that can be done is for the less busy judges to volunteer to serve temporarily in the busy areas.

Each courtroom is literally a kingdom unto itself. There is no real authority in any one court to supervise the administrative affairs of any other court. There is no administrative office of any kind in the entire judicial system in Illinois. The creation of the Municipal Court of Chicago in 1904 was a step forward, in that it was practically the first court in any large metropolitan center in the United States to have a chief judge with authority to run the administrative affairs of the court. Aside from this one court, however, there is no other
court in Illinois with a similar administrative system. The circuit and superior courts of Cook County each have their own executive committee and chief judge, but these have no constitutional or statutory power and have only such authority as is vested in them by the judges themselves.

These trial courts are the courts closest to the people. It is here, as Judge Vanderbilt has said, that the people feel the keen, cutting edge of the law. It is here that the suit for damages for a broken leg, the suit for an injunction against breach of a business contract, the divorce case, the adoption case, or the simple traffic violation are heard for the first time. The volume of such judicial business in a state of 9,000,000 people is enormous. There are few accurate statistics, due to the lack of any over-all administrative office for the courts. The clerks of the circuit and superior courts of Cook County report, however, that in the one month of February, 1955, there were 1533 new cases filed in the circuit court and 1355 in the superior court, as against 1615 disposed of in the circuit court and 1611 in the superior court. A study in 1951 indicated that each of the 17 downstate circuit courts receives about 1800 new cases a year and disposes of 1400 on the average. A 1952 study estimated that cases filed before justices of the peace and police magistrates in 1951 amounted to approximately 47,000 civil cases and 163,000 minor criminal cases. The Municipal Court of Chicago receives and disposes of about 190,000 civil (of which 8,000 are jury cases) and 125,000 criminal cases a year, together with over 1,000,000 traffic violations. The business of the trial courts is, in short, big business. But it is for the most part not possible to run it in a business-like manner.

The judges are so handicapped by the lack of administrative machinery for running the courts that they are unable to cope with today's volume of judicial business. The backlog of cases awaiting trial in the circuit and superior courts of Cook County has increased until it stands at the astronomical figure of about 47,042 pending and undisposed of cases as of March 1, 1955. A jury case filed today must take its place at the end of the lists and, unless there are compelling

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Footnotes:


8 Local Government Notes, op. cit. supra note 6.

reasons for advancing it on the list, will have to wait 40 to 48 months before being reached for trial. This situation is not limited to Cook County. The backlog in some downstate circuits is such that jury cases must sometimes wait from 6 to 12 months before being reached for trial. Some circuits include so many counties that a person arrested or indicted shortly after the adjournment of court may have to wait six months before the circuit judge returns to hear the indictment or trial, as the case may be.

The lawyers and the judges know it is as true today as it was in June of 1215 A.D. when the Barons entered into the Magna Carta with King John that justice delayed is justice denied. Heroic efforts are being made to end delays by using new techniques in assignment of cases for trial, by obtaining legislative increases in the number of judges, by requesting judges from other areas of the state to volunteer their help, and by the judges working additional hours or weeks. But the volume of judicial business is such that there is no real prospect that these efforts will eliminate delays; and it is a major obligation of the bench and bar in Illinois today to revise the judicial system itself so that every citizen will receive prompt justice.

**ELECTION OF JUDGES IN 1955**

The Illinois Constitution of 1818 provided that judges should be elected by the legislature. This was a variation of a system which had prevailed in most of the states since colonial days, namely, appointment by the governor. This was changed by the Jacksonian revolution, a wave of popular feeling which demanded that most officers of state government be elected by popular vote and be required periodically thereafter to go before the voters. The 1848 and 1870 Constitutions each provided for popular election of judges.

The legislature, within the constitutional framework providing for popular election, has established two systems of nomination and election, one for the supreme, circuit and superior courts, and one for the other trial courts. Under the first system, candidates are nominated by each party in conventions of political leaders and elected by the voters at a special judicial election. The other system involves nomination in a party primary and election at a general election.

The methods of selecting judges in Illinois, therefore, are today substantially those adopted in the 1800's. Changes since the 1800's, however, have too often transformed the popular election of judges
into the *political selection* of judges. Public interest in judicial elections is generally slight. In the 1951 election for supreme court justices, out of about 4,573,000 registered voters, only 1,050,000 voted, so that five supreme court judges were chosen at an election in which less than one-fourth of the voters voted. In the 1954 election for a supreme court justice from the Fifth District, the two political parties each nominated the same candidate, so that, with no contest, only 93 out of 18,135 voters in Galesburg bothered to vote and voter participation in the "popular" election was almost non-existent.

Moreover, the traditional predominance of one political party over the other in some parts of the state is sometimes so great that only one party nominates candidates for judgeships. In still other parts of the state the temporary political situation is often such that the two political parties find it expedient to agree in advance of their conventions that the slate to be offered the voters will be a "coalition" slate, whereby each party offers the voters the *same* slate of candidates. In 1945 through 1948, out of 53 circuit judges elected in the seventeen downstate circuits, there were coalition tickets of three judges each in three circuits, or nine judges, in effect, appointed by the two political parties. In five other circuits, only one party nominated any candidate so that fifteen judges were appointed by that party. In four other circuits, one party nominated a full slate of candidates and the other party nominated only one candidate in each circuit, so that the voters had no choice as to eight out of twelve candidates. In other words, *in the years 1945 through 1948, sixty per cent of the circuit judges downstate were not elected by popular vote but were in effect selected by the political parties.*

In Chicago and in the other growing metropolitan areas of the state, because of the large numbers of people in the election districts, the voters rarely know the candidates and vote only for the political party of their preference. With the voters not knowing the candidates, and in no position to weigh their qualifications, the task of selecting judges in such metropolitan centers has more and more been left to the political parties.

Under these circumstances, neither the convention method nor the primary method has operated so as to produce the popular election of judges which was the aim of the 1870 Constitution.

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10 Joint Committee on Judicial Article, Explanatory Statement on Proposed Judicial Article 75 (1953).
CHANGES NEEDED

This system of courts and this way of choosing judges needs changes in three respects. First, the court structure should be simplified and fitted to today's needs. Second, the courts should be given the administrative tools with which they will be able more efficiently to manage their business, expedite the disposition of cases, and reduce the expense of litigation. Third, the methods of selecting judges should be improved so as to give deserving judges greater security of tenure in office and to make possible a method of selecting judges in which the candidate's qualifications to be a judge, and not his political party affiliation, will be the principal consideration.

NEEDED—SIMPLIFIED AND MODERN COURT STRUCTURE

The Illinois court structure was designed to meet the needs of the state in 1848 and in 1870. Some of those needs no longer exist. For instance, in 1848 and 1870 there was need to have some court in each county to appoint conservators for mentally ill persons, to appoint guardians for minors, and to settle the estates of deceased persons. The volume of such business was not so great as to require the full time of a judge in every county. At the same time, there were not enough lawyers to be certain that one could be found in every county to serve as judge. To meet this situation, the constitutional conventions of 1848 and 1870 provided for a county court in every county. In the heavily populated counties, in addition to the county court, there was to be a probate court to settle decedents' estates. Since it was doubted that there was enough judicial business to keep a county judge occupied on a full time basis in all the counties, it was provided that the legislature could assign additional jurisdiction to the county courts. As a result, the county courts today have jurisdiction of all sorts of unrelated matters, ranging from the review of orders of the Department of Agriculture for destruction of diseased bees, to jurisdiction in some areas to appoint election commissioners. Since it was believed that there would not be enough lawyers to staff all the county courts, no requirement was made that the county judge be a lawyer. Since it was realized that county and probate judges would not always be lawyers, it was provided that certain matters decided by them could be appealed to the circuit court for a trial de novo, or a re-trial of the whole case just as if there had never been a trial in
the county or probate court. Finally, since it was not easy to go from county to county at all times of the year, the courts were to be self-sufficient and independent of each other.

The situation which gave rise to these constitutional provisions no longer exists. There is still the need for courts in local areas to handle the appointment of conservators and so on, but there are now enough lawyers so that it should be required that the county and probate judges be lawyers. If the judges are lawyers, and if they spend full time on their judicial duties, there is no longer any reason for permitting trial de novo. Moreover, communication and travel between counties is today so rapid that there is no longer any reason to have the courts separate and independent.

A single trial court for each circuit is today not only possible but sensible. A single trial court, with branches created to meet special needs, will provide simplicity of organization, will avoid the problems of overlapping jurisdiction and duplication of effort, and will conserve judicial manpower. This will end the loss of time and money over the question whether the suit has been filed in the right court. There will only be one trial court. If the suit is in the wrong branch of the court, it can be transferred to the right branch by a simple order of reassignment. There will be no costly trials de novo. Where special needs exist, these needs can be best met, not by statutes providing for a new court for every such need, but by the simple expedient of an order of the circuit court providing for an additional branch of that court to meet the need. Such a trial court would have the flexibility to meet the changing requirements of the times. If the problem of sex offenders is acute, the court could create a branch to deal with such matters. The complex problems of family life could be handled by such branch or branches as might be required. The need is not for a large number of specialist courts, but for a single trial court with such numbers of specialist judges as are required. There is clearly a need for a unified trial court in each circuit.

Similar considerations indicate need for change in the jurisdiction of the supreme and appellate courts. In 1848 and 1870, the ownership of land was such an important element in the economy that it was provided there could be direct appeal from a trial court to the supreme court in any case involving a freehold. Today, the ownership of land is not of such preeminent importance, and there is no reason

\(^{11}\) Edmunds, op. cit. supra note 4, at 510.
why the supreme court should be *compelled* to take every case involving any question of ownership of land, any more than it should be *compelled* to take every question involving ownership of a corporate security. Yet, because of the 1870 constitutional provision, the supreme court in 1946-47 was compelled to devote over twenty per cent of its published opinions to questions relating to freeholds and was able to devote only about two per cent of its opinions to cases involving questions of business law.\(^\text{12}\) It has already been pointed out, moreover, that the burden of compulsory appeals is such that the supreme court presently has little control over what cases it will hear and little or no time to devote to the rules of practice and the administrative affairs of the courts. There is clearly need for revising the jurisdiction of the supreme and appellate courts to fit today's needs.

**NEEDED—CENTRAL ADMINISTRATIVE AUTHORITY**

The judicial department is the only department in Illinois with no administrative office and no central administrative authority whatsoever. The supreme court is supreme in the sense that it is the court of ultimate appeal, but it is not supreme in any way related to the actual running of the system. It has no means of determining how much judicial business is carried on in the appellate and trial courts. Even if it had the statistics, it has no authority to assign judges from the less busy courts to the courts desperately in need of assistance. The supreme court does have authority to assign circuit judges for service in the appellate court and limited authority to assign circuit judges to other circuits.\(^\text{18}\) But it has no authority freely to assign judges from one circuit to another, or from the appellate court to the supreme court, or between the great variety of other courts in the state. There is no administrative supervision whatsoever over justices of the peace and police magistrates. There are few statistics concerning the flow of judicial business, other than those collected from time to time by the clerks of court or by legislative or private agencies.

This disorganized state of affairs hurts the lawyers and the judges themselves. The lack of up-to-date statistics on the work of the courts makes it difficult for the judges to compete before the legislature with more efficiently run departments in requests for appropriations or additional personnel. The inefficiency of the courts sometimes results in demands that administrative agencies be created to take over func-

\(^{12}\) Speck, op. cit. supra note 3.

The need for judicial reform in Illinois

R e q u i r e d a n d p r e s e n t a t e d c a s e l i n g s t r o n g l y t h a t t h e c o u r t s a r e g r e a t l y n e e d e d t o f u n c t i o n m e r i t i f i c a n t l y . I n t h e p r e s e n c e o f a l l t h e s e f a c t s , t h e j u d i c i a l d e p a r t m e n t m a y k e n o p r o f i t a n d c e n t r a l i z e d a d m i n i s t r a t i o n . T h e n e e d f o r m o d e r n e f f i c i e n t a d m i n i s t r a t i o n f u n c t i o n s s h o u l d b e c e n t r a l l y a d m i n i s t r a t e d .

T h e s y s t e m o f p o p u l a r e l e c t i o n o f j u d g e s u n d e r t h e 1870 c o n s t i t u t i o n h a s c e r t a i n i n h e r e n t l i m i t a t i o n s . I n t h e f i r s t p l a c e , i t u n d u l y l i m i t s t h e g r o u p o f l a w y e r s f r o m w h o m j u d g e s a r e c h o s e n , t o t h o s e w h o a r e a b l e a n d w i l l i n g t o p a r t i c i p a t e a c t i v e l y i n p a r t i s a n p o l i t i c s . T h e r e a r e m a n y l a w y e r s w h o a r e n o t w i l l i n g t o e n t e r p o l i t i c s b u t w h o a r e b y t e m p e r a m e n t a n d t r a i n i n g w e l l q u a l i f i e d t o s e r v e a s j u d g e s . I n t h e s e c o n d p l a c e , t h e e x p e n s e o f c a m p a i g n i n g f o r o f f i c e i n a c o n t e s t e d e l e c t i o n f u r t h e r l i m i t s t h e g r o u p o f c a n d i d a t e s f o r j u d g e s h i p s t o l a w y e r s w h o h a v e a c c u m u l a t e d m o n e y o f t h e i r o w n o r w h o a r e a b l e t o s e c u r e s o m e s o r t o f f i n a n c i a l b a c k i n g . F i n a l l y , j u d i c i a l e l e c t i o n s a r e f r e q u e n t l y a f f e c t e d b y t h e i s s u e s o f n a t i o n a l p a r t y p o l i t i c s w h i c h h a v e n o t h i n g t o d o w i t h t h e m e r i t s o f t h e j u d i c i a l c a n d i d a t e s . T h i s m e a n s n o t o n l y t h a t t h e b e t t e r q u a l i f i e d j u d i c i a l c a n d i d a t e m a y l o s e s i m p l y b e c a u s e h e i s m e m b e r o f t h e l e s s p o p u l a r p o l i t i c a l p a r t y , b u t a l s o t h a t a d e s e r v i n g j u d g e s e e k i n g r e - e l e c t i o n m a y h a v e h i s j u d i c i a l c a r e e r c u t s h o r t b y p u r e h a p p e n s a n c e .

T h e s y s t e m o f p o p u l a r e l e c t i o n o f j u d g e s , e v e n t h o u g h s u b j e c t t o t h e s e l i m i t a t i o n s , m i g h t s t i l l b e j u s t i f i e d i f i t a l l o w e d a t r u l y p o p u l a r c h o i c e f r o m a g r o u p o f q u a l i f i e d c a n d i d a t e s . H o w e v e r , t h e e l e c t i v e
system has today come to the point where it is clear that the people have little, if any, choice in selecting judges. To all intents and purposes the leaders of the political party organizations appoint most of our judges. Mention has already been made of the ways in which this has come about. The voters in the metropolitan areas today usually do not know the candidates and vote for the political party of their preference. In the 1800's, most of the people were directly involved with the courts, in watching trials and talking about them, and in appraising the judges and lawyers. Today, there are far fewer people who know enough about any one judge or lawyer in their area to make an informed judgment as to his qualifications to be a judge. The qualities of a good judge are integrity, judicial temperament, legal ability and diligence in the dispatch of business. Since few people know enough about the candidates to form an opinion on these matters, the task of selecting judges in the cities has more and more been left to the political parties. The party officials, for reasons made necessary by their particular purposes and functions, consider primarily the candidate's past service in the political organization, his ability to contribute an assessment to the party campaign funds, and the likelihood of his continuing party loyalty. While there is nothing inherently wrong with politics as such, political methods of selecting judges are wrong because the decision is based on too many considerations other than their qualifications to be judges. Since all the evidence points toward continued growth of the cities, there is every reason to believe that these conditions will not diminish but will continue to deteriorate unless changed.

The system for popular election of judges has fallen down not only in cities but, on many occasions, throughout the state. Wherever one of the political parties has a substantial margin of power over the other, whether due to a traditional predominance in the area or to national or local politics, that political party is in a position to, and does, appoint the judges.

So long as the present methods of selecting judges prevail, the Illinois courts, however organized, will not be able fully to perform their function. That most of the judges are able and honest is not questioned, but this is more in spite of than because of the present methods of selecting them. The present system involves the candidates and judges in politics whether they like it or not. There is usually no other way to become or remain a judge.
The involvement of judges in politics tends to destroy the confidence of the people in the courts. For when people hear that a candidate for a judgeship must contribute an assessment to a political party’s campaign funds, when they hear of the maneuvering which inevitably goes on in making up a party slate, and when “control” of a court is made a bone of contention between the parties, then the people believe that the political considerations which entered into the choosing of the judge will enter into the judge’s decisions once he is on the bench. That such is not the case does not alter the fact that large numbers of people believe it to be so. This widespread lack of confidence in the courts is a cancer on the body politic. It leads people to think that judges can be “bought.” It makes it possible for some few corrupt lawyers and court attaches to ask litigants for pay or for legal business on the supposed ground that they can “fix” the judge. At the very least, it makes it hard for even the most courageous judge to decide cases honestly and without thought of political consequences. All this seriously reduces the effectiveness of the courts as instruments of justice. To the extent that it reduces the faith of the people in their ability to have fair and honest judges, it is a threat to democracy itself. It is ironic that a system designed to produce popularly elected judges has so often operated to produce a lack of confidence in the courts.

The system of popular selection of judges is not working, and there is no present prospect of any sensible revision of that system which would enable it to work in practice as it is supposed to in theory. There is great need for consideration of an entirely different method of selecting judges.

THE PROPOSED AMENDMENT TO THE JUDICIAL ARTICLE

There has been discussion of the need for a new Judicial Article since 1905. There have been several efforts to amend the article. In 1922 the constitutional convention included a completely new judicial article in its draft of a proposed new constitution. That constitution failed of adoption by the people not because of any wide disagreement over the need for a new judicial article, but because the only choice was to accept or reject the proposed constitution in its entirety.

Following World War II, there was a growing demand for modernization of the 1870 Constitution, including the Judicial Article. This demand resulted in the adoption of the Gateway Amendment in November, 1950, designed to liberalize the amending procedures of the
constitution and to "open the gate" for future amendments. Since then, amendments have been proposed to all the principal articles of the constitution, including the revenue and legislative articles.

The current effort to amend the Judicial Article started in 1951. Lawyers who had worked for the Gateway Amendment produced the first drafts of a new Judicial Article in February, 1951. The Illinois State Bar Association and the Chicago Bar Association next appointed a Joint Committee on the Judicial Article. The 1951 General Assembly created an interim Legislative Commission to report to the 1953 session. The Joint Committee and the Legislative Commission, working together, were ready in 1953 with a new Judicial Article.

THE 1953 PROPOSAL

The 1953 Judicial Article Amendment proposed the reorganization of the entire judicial system of the state and a new method for selection of judges. There were to be improvements in the jurisdiction of the supreme and appellate courts. The complex system of trial courts was to be replaced with one unified trial court in each circuit. Justices of the peace and police magistrates were to be abolished and a new full-time judicial position, the magistrate, created to take their place. Masters in chancery, and all other judicial officers paid from fees assessed against the litigants, were to be abolished. All judges were to be lawyers and to be required to devote full time to their judicial duties.

The proposal gave the supreme court administrative authority over all the courts. It created an administrative office to aid the court in its work.

The greatest change, and the most controversial, was a new method for the selection of judges. All judges in the state were to be chosen by a method involving three steps—nomination by commission, appointment by the governor, and election by the people. Nomination was to be by commissions made up half of laymen appointed by the governor and half of lawyers elected by all the lawyers. The commission would furnish a panel of nominees to the governor. The governor would appoint one of the nominees to be judge. After serving a short trial period, the judge would go before the people on a special judicial ballot without opposition, and on the sole question, "Shall Judge X be retained in office?" After serving his term, the judge would again go before the people, unopposed, and on the sole question whether he should be retained as judge.
The task was to secure legislative approval of this proposal. Even under a liberalized amending procedure, a constitutional amendment in Illinois must first be approved by the legislature and then by the people. Legislative approval requires a two-thirds vote in each house. To accomplish this, a statewide Citizens Committee for the Judicial Amendment was organized. This Committee distributed almost one hundred thousand copies of the amendment and explanatory material. Popular response to the campaign was strong and favorable.

The proposal was acted upon first in the Senate. There was substantial agreement on all the provisions except those on selection and tenure. It was suggested that it should be possible to make changes in the new methods for selection without again having to amend the constitution. To meet this suggestion, the proposal was modified to provide that the sections on selection and tenure might be changed from time to time by legislative act, provided that no such law should take effect until approved by a majority of the voters at a popular referendum. On June 3, 1953, the Senate voted 35 to 13 to approve the proposal.

On June 11, 1953, the amendment reached the floor of the house. It needed 102 votes for passage. For reasons principally related to the provisions on selection and tenure, it was never able to secure more than 77 votes. On June 24, 1953, the house voted to table the matter and the 1953 campaign was at an end. Although the campaign ended short of complete success, it was clear that the progress made was remarkable for so sweeping and controversial a measure.

The proposal found an immediate and willing response among the people in Illinois, who on every hand acclaimed the plan for modern and businesslike administration of the courts and who welcomed the possibility of "taking the judges out of politics." The proposal was recognized throughout the United States as offering an opportunity for one of the greatest advances in judicial organization and administration in modern times.

THE 1955 PROPOSAL

Encouraged by the progress made in the first attempt to secure legislative passage of a new judicial article, the two bar associations re-appointed the Joint Committee which had drafted the first proposal. The Joint Committee reviewed the 1953 proposal in the light of the campaign; and after several sessions, submitted a new draft of the proposal on February 12, 1955. It is this proposal which was in-
roduced in the legislature on March 8, 1955, and which is presently being considered by the legislature.

The 1955 proposal provides for a single trial court in each circuit to be known as the circuit court, with power to try every type of case. There will be at least one branch of the circuit court sitting in each county with a full-time judge resident in the county. It will be possible for the circuit court to create additional branches, with general or special functions, such as a family court, as needed.

Each circuit court will have three classifications of judicial officers—circuit judges, associate judges, and magistrates. All judges of the various trial courts in office when the proposal becomes effective will be absorbed into the circuit courts. Throughout the state, police magistrates and justices of the peace will become magistrates of the circuit courts. Provision is made for special magistrates in such rural communities as need part-time magistrates only, to perform such emergency functions as the supreme court may prescribe.

All judges and magistrates will be paid by the state, except that counties desiring special magistrates will be responsible for their compensation. Counties and municipalities will be relieved of their present responsibilities for salaries of judges of certain courts, except that the legislature may require Cook County to continue to supplement the compensation of its judicial personnel. The fee system by which justices of the peace, referees and masters in chancery are presently compensated, and their offices, will be abolished.

The power to review decisions of the circuit courts will be vested in an appellate court and a supreme court. Most appeals will be taken to the appellate court, but in any case involving a constitutional question and in any capital case resulting in a sentence, appeal can be taken from the circuit court directly to the supreme court. The supreme court will have exclusive authority to permit direct appeals in other types of cases.

In general, litigants will be entitled to only one appeal. The supreme court will be required to review decisions of the appellate court when a constitutional question arises and when the appellate court certifies that its decision involves a question of such importance that it ought to be decided by the supreme court. In all other cases decided by the appellate court, it will be up to the supreme court to decide whether a second appeal should be allowed.

By virtue of these provisions, the supreme court will be able to
THE NEED FOR JUDICIAL REFORM IN ILLINOIS

act, not only as the court of ultimate appeal in the state, but as the central authority supervising the administrative affairs of the judicial department of the state.

With centralized administrative authority in the supreme court, it will be possible for the courts to deal directly with backlogs and delays. Judges may be given temporary assignments to courts where they are most needed. As in the federal court system, an administrative director and staff will compile the needed information. With such up-to-date administrative machinery, it should be possible in Illinois, as it has been in New Jersey, to reduce the backlogs of cases to the point where no litigant in Illinois need wait longer than 6 to 9 months for the trial of his case.

Only citizens licensed to practice law in Illinois will be eligible for the office of judge or magistrate. All judges and magistrates will be required to devote full time to their judicial duties, and while so serving will be prohibited from holding any other public office, practicing law or engaging in political activity. Since these provisions are for the most part new, they will not take full effect until the expiration of the terms of office of incumbents. They will not apply to special magistrates, whose functions will be limited and will not involve full-time service.

A commission consisting of judges chosen from the various courts will have power, in proper proceedings, to retire any judge for physical or mental disability or to suspend or remove him from office for cause. No such procedure is possible under the present constitution. The proposal will not affect the remedy of impeachment available to the legislature, but it will replace a virtually unused procedure under which the legislature may at the present time, without impeachment, remove judges for cause.

The legislature will have power to provide for voluntary or involuntary retirement of judges at such age as may be fixed by law. Retired judges will, however, be allowed to perform judicial service assigned to them by the Supreme Court. At the present time no judge may be retired without his consent until the expiration of his term of office, and then only if he is not re-elected.

The provisions of the 1955 proposal with regard to selection and tenure are designed to meet the objections raised by opponents during the 1953 campaign. The principal aim is to take the judges out of politics. The method presently proposed to achieve this end is to
provide that, first, every judge, however selected, shall have the right at the end of his term to run without opposition on the sole question whether he should be selected for another term and, second, although the 1955 proposal does not itself establish a new system for selection of judges, to require the submission to the voters in 1958 of such a new system.

Every judge is given the right to seek retention in office without opposition, because it is believed that the people can then vote on the only important question in such an election, namely, his qualifications to remain a judge. Moreover, the federal and other systems demonstrate that security of tenure generally results in judges who are not involved in and who are independent of politics. It is in the public interest that it be made possible for sitting judges to be independent and free of politics no matter how the judge may have been initially chosen.

The provision for a new method of selection of judges was postponed to 1958 in order to separate the most controversial issue from the rest of the reforms and thereby permit all interested in court reform to unite on the basic proposal. The new proposal guarantees continuance of the principle of popular election until a substitute method is approved by referendum. In this way, the people alone will determine the controversial issue of how they wish their judges initially chosen.

The plan of selection which will be submitted in 1958 substitutes for the present methods of choosing judges a new system of nomination by special commissions, followed by a vote of the people at a general election to determine whether the nominee should be approved and elected. The nominating commissions will consist half of lawyers appointed by the supreme court and the other half of laymen appointed by the Governor, both groups to be selected on a bipartisan basis for staggered terms. This plan removes the major criticisms urged against the method of selection proposed in 1953. First, the function of the Governor is limited to appointing the lay members of the commissions; he will have no power over the appointment of judges. Second, the appointment of the lawyer members by the supreme court overcomes the criticism that the election of these members by the lawyers would be controlled by the bar associations. Third, the provision for bipartisan selection of commission members is as much of a safeguard as can be devised to insure
non-partisan consideration of the candidate. Finally, no candidate
designated by a commission can become a judge unless the voters say
he shall become one.

This plan for selection of judges is not new but is a variation of
plans in effect in Missouri and California. Missouri in 1940 aban-
doned the system of popular election of judges for most of its courts
and adopted a plan involving nomination by a commission, appoint-
ment by the Governor, and running for retention in office without
opposition solely on the question, "Shall Judge X be retained?" Under
this system qualified Democratic judges were retained in office in
1942 and 1946 despite general Republican victories; and in 1944 and
1948, when the state went Democratic, all Republican judges were
retained. Moreover, it has been possible to reject unfit judges. One
Democratic judge was rejected in a predominantly Democratic area
in a Democratic year. Voters in Missouri have been satisfied with
this system for taking judges out of politics and have twice voted
down attempts to repeal it; in 1942 by a vote of 180,000 and in 1945
by an even greater vote. California in 1934 abandoned the elective
system for some of its courts, in favor of a system of appointment by
the governor, subject to confirmation by a commission, and with the
judge running for retention in office as in the Missouri system. The
present Illinois plan is a variation of these plans, fitted to the needs
of this state. In passing, it should be pointed out that the elective sys-
tem is not the rule in all the states. Twelve states have appointive
systems. In six states judges are chosen by the legislature. In twenty-
one states all judges are selected by general election, and, in fourteen
more, all except some lower court judges are so selected. In many of
these last states there has been growing dissatisfaction with recurrent
breakdowns in the elective systems, and proposals for change are
today being considered in at least one-third of these states.

The 1955 plan for selection and tenure of judges is designed to be
flexible and to be subject to the will of the people. Whether or not
the people vote in 1958 to adopt the new system for initial selection
of judges, the legislature may at any time provide for changes in the
selection and tenure of judges, but no such law will take effect unless
approved by the voters. Thereby no system of selection and tenure
is frozen into the constitution but is subject to change at the will of
the people as future needs may dictate.
CONCLUSION

There are periods of ebb and flow in any movement for change. The tide is still running strong for change in the judicial system in Illinois. The desire for change is found not only among those who are helpless victims of four-year delays in Cook County, but just as strongly among those downstate who must wait for the circuit judge to reappear at their county seat. The desire is found among the lawyers and the judges themselves who must today endure the frustrations, the delays, and the archaic ways of a system designed for a day long since past. The desire is found in all those who realize that thriving businesses, new schools, strong police departments, and a solvent state government are worth little unless the rights of each individual citizen can be safeguarded, not only in his relations with his fellow men, but in his relations to the state itself. The desire is found in all those who realize that without justice, a society, however strong in material things, is weak and vulnerable.

The challenge is clear. The response to the challenge must be strong. The legal profession in Illinois will be judged by the leadership it affords. More than that, the people of the state will themselves be judged by the measure of their response. For the courts do not exist for the lawyers or the judges or the politicians, but for the people; and as the courts exist for the people, so the people are duty bound therein to establish justice. Nowhere can a plainer statement of this be found than in that provision of the Bill of Rights of the Illinois Constitution which proclaims:

Every person ought to find a certain remedy in the laws for all injuries and wrongs which he may receive in his person, property or reputation; he ought to obtain, by law, right and justice freely and without being obliged to purchase it, completely and without denial, promptly and without delay.