ORIGINS AND FOUNDATIONS OF AMERICAN COURTS

It can be said that America, as a nation, began in 1781 with the surrender of Lord Cornwallis to George Washington at Yorktown. The social, legal and cultural habits of the new nation, however, were primarily descendants of those in Great Britain, brought to America with each succeeding boatload of colonists.

Since colonial days, the courts of the United States have taken their own path, developing and changing to suit the needs and social conscience of the new nation. The following history of the American jury system, the concepts of due process, common law, and the adversary process should further broaden the understanding of the American judicial system.

JURIES

The Sixth Amendment in the Bill of Rights guarantees, among other ideas, speedy and public trials, that defendants shall be informed of all charges against them, and a trial by jury. The idea of juries is so closely interwoven with that of the courts, that for most members of the American public, the image of a courtroom means a judge in a black robe, the persuasive legal advocate and the rows of twelve men and women looking on and listening closely to the testimony as it unfolds. Although the United States accounts for 90% of the jury trials held throughout the world today, most of the work conducted in a typical American court takes place without a jury.

Juries determine the facts in a trial, the truth or falsehood of testimony, the guilt or innocence of criminal defendants, and the liabilities in a civil trial. In America, juries are still seen as the best tool for ensuring that the rigidity of the rule of law can be shaped to justice in any specific case.

Calling citizens to hear disputes has been known throughout history. Modern day juries are the hybrids of Egyptian, Greek, Roman, and European jury customs. English juries have also been a leading influence in shaping the American jury system. The following history of the evolution of the English and American jury system will provide insight and a deeper sense of understanding of this aspect of the criminal justice system.

England, under King Alfred (871-901 A.D.) had a rough system of juries. Representatives of tithings were brought together to decide the questions put before them. This system disintegrated on the death of Alfred, although testimony of witnesses did begin to appear. The Normans left partially intact much of the Saxon court system, which included appeals to the King, legal

witnesses and ordeals. They did separate temporal and spiritual courts and appointed "circuit" judges to represent the King across the country. They introduced trial by combat as well.

Norman England established the foundations of the modern jury system. It slowly developed for those cases in which trial by combat was inapplicable, usually in less important cases. Local citizens were brought to court to rule on matters they had witnessed. During the reign of Henry II, in the 12th Century, the use of juries increased and defendants were commonly offered the choice of trial by jury or combat. About the year 1350, when Edward III was King, the definition of jurors began to shift. And, by the end of the 15th century, a jury was not a body of witnesses but a body that heard the testimony of witnesses and unanimity became necessary to convict a criminal in a criminal trial.

Between the 15th and 18th Centuries juries evolved more. Trial by "peers" became more real as Knighthood was no longer a requirement for a juror. Expert witnesses began to be used. Exemptions from jury duty were developing, as for Quakers, who could not swear to oaths. Grounds for challenging a juror for cause at common law included the juror having served on the indicting jury, the juror was a serf or servant, the juror has been convicted of certain crimes, the juror was related to one of the parties or the sheriff, or the juror had stated his opinion of the case in public. Eventually defendants were allowed to call witnesses and defense counsel was allowed to cross-examine witnesses.

During American colonial times, the jury became one of the symbols of rebellion against the English King. A primary complaint of the colonists was that they were being denied the rights granted to all other Englishmen, one of which, was the right to a jury trial as guaranteed by the Magna Carta of 1215. The Magna Carta held several references to trials and juries. That the Common Pleas assemblies shall not follow the court (royal court), but be held "in some certain place", and that juries shall consist of "honest men of the neighborhood" were sample references in the Magna Carta.

Trial by jury was not completely denied to the colonists, however. Early charters, such as the Virginia Company, which established Jamestown in 1607, included the mention of such rights. In New York, the jury found John Peter Zenger not guilty of libel in 1735 on the grounds that what he had written about the royal governor was true. Virginia jurors had great latitude in deciding verdicts. They could even bring in verdicts for offenses other than the ones for which a defendant was charged. It was the British Vice-Admiralty courts, sitting without juries, which ignited the ire of the colonists.

In response to these contentions of unfairness and the abrogation of rights, the colonists included in their earliest documents guarantees of the right to trial by jury. The First Congress of American Colonies, in 1765, recommended trials with juries. The First Continental Congress in 1774, declared "that the respective

colonies were entitled to the common law of England and more especially to the great and inestimable privilege of being tried by peers of the vicinage, according to the course of that law." In the Declaration of Independence, Thomas Jefferson listed among the various complaints against King George, that he had "obstructed the administration of justice by refusing his Assent to Laws for establishing Judiciary Powers", "made judges dependent on his will for appointment for salary", "depriving us in many cases if the benefits of Trial by Jury", and "transporting (defendants) beyond seas for trial". All these, along with other complaints, led to the United States Constitution in 1787, and in 1897 the first ten amendments.

There are two types of jurors- petit and grand. Petit jurors are sworn to hear evidence in civil and criminal trials and render a verdict. "Petit" jurors are designated as such because fewer people sit on a petit jury than on a grand jury. In McLean County, petit jurors are summoned for one week. Grand jurors, on the other hand, have the duty to receive complaints and accusations in criminal cases, hear the evidence presented by the State and find bills of indictment in cases where they are satisfied there is probable cause to believe a crime has been committed. A grand jury is composed of 16 citizens, and at least 12 members must be present at each session before the grand jury may transact business. Grand jurors in McLean County serve one day a week, for a period of 2 months.

Jury duty is a right and a responsibility of American citizenship. Juries serve several important purposes: (1) they serve as an arbiter regarding the conflict of facts and evidence as presented at criminal and civil trials; (2) they provide a means by which community values and sentiments are injected into the judicial process; and (3) they help to increase the public's acceptance of legal decisions. Jury duty, along with voting, is one of the primary means by which the average citizen participates in our government. Developing a historical appreciation for the role of juries contributes to willingness and ability of citizens to serve as impartial jurors when called to judge their peers. Use of juries is just one thread running through the historical development of the American judicial system.

DUE PROCESS

Along with trial by jury, the guarantees of due process of law are among the firmest bulwarks of our liberty. The value of these guarantees are shown by how our national and state governments have retained them, in strength through each change of status, from colonies to nation, from territory to state.

Daniel Webster defined due process as "a law which hears before it condemns, which proceeds on inquiry, and renders judgment only after a trial". It is a course of legal proceedings according to the rules and principles established by custom and constitution for the enforcement and protection of the rights of

private citizens. To give this established course of legal proceedings a valid and competent tribunal is the duty of the courts.

There are two essential elements of due process:

1. Notice shall be given to a person that matters concerning him are before the court;
2. That person shall be given an opportunity to be heard and defend himself in an orderly proceeding adapted to the nature of the case.

These mean that no person shall be deprived of life, liberty, property or any right granted him by statute unless the matter involved shall first be adjudicated in a trial or hearing conducted according to the rules for judicial proceedings, and no matter shall be adjudicated without the opportunity for a hearing.

Due process has been a concern of men determined to establish justice in governments for at least seven and one-half centuries. The Magna Carta, signed by King John of England in 1215, is one of the first historical documents of men demanding rights of their government.

The elements of due process are contained in the Constitution of the United States (Amendment V and Amendment XIV, Section 1), as well as in the State of Illinois Constitution (most recently, 1970 Constitution, Article I).

Due process is one of our basic American Constitutional rights. For our democratic government to survive and prosper and for their own protection, citizens must understand and value these rights. Aside from all else "due process" means fundamental fairness, and this is important for a judicial system that purports to function with integrity and honor.

COMMON LAW

Common law is court-made law, and differs from statutory law which is made by legislative bodies. Court-made law develops and is passed on to future courts through the decisions and opinions of judges hearing cases. Common law derives its authority from the uses and customs of time, or from the judgment or decrees of courts recognizing and enforcing such uses and customs.

Common Law is especially recognized as the ancient unwritten law of England. In the 11th and 12th Centuries' the English King resolved disputes with the aid of advisors at his court. Formal judicial courts began to develop during the 16th and 17th Centuries, and the judges of these courts studied earlier decisions for guidance. Established decisions came to be called the common law. This form of judicial lawmaking is still used in the England, and the United States, who adopted this policy from the English.

ADVERSARIAL SYSTEM

The development and maturation of the adversary system as it exists in American courts today can be traced to the rising importance of the jury during medieval England. As the jury replaced trial by combat, it also changed from a body of witnesses to an impartial body of fact-finders. As the jury became neutral, the parties to a case adopted the role of adversaries.

The term "adversary" implies two conflicting parties. In American courts those two parties are the plaintiff and defendant. These parties present to the Court all the evidence and testimony they can find, in the most persuasive manner allowable, in order to achieve a decision favorable to their interests. The attorneys serve as advocates, and the judge sits as a neutral "referee."

In all Courts, each side is bound by many rules as to how the case may be conducted. These rules are meant to ensure fair and consistent treatment for all parties, in all cases, across all situations. This adherence to rules and procedures is a hallmark of the adversary system, unlike the inquisitorial system, for example, in which few technical rules of evidence exist. The inquisitorial approach is less sensitive to claims concerning individual rights. An inquisitorial style is less likely to serve as a check on government powers, the role American Courts play in our system of checks and balances.

The function of the American Courts are to inquire into the truth of the matter and establish guilt or innocence. And that all defendants in United States Courts are considered innocent until proven guilty, is one of the most important fundamentals of the American judicial system. The adversary system, allowing each side equal access to a neutral body is the method by which our courts uphold this ideal.

History of the Illinois Courts

ILLINOIS, PRE-U.S. HISTORY

The Indian tribes dwelling in what was to become Illinois had communal codes of conduct and simply structured judicial systems. Occurrences of misconduct were ruled upon by representatives of the extended family, the clan, tribe or nation, depending upon the nature and extent of the violation. All decisions were made by these leaders, and all decisions had to be unanimous. There was no court of appeal.

European settlers began to penetrate into the area, drawn initially by the fur trade. Spain first claimed the territory, but the French were the first settlers. In 1699 the French established the Commandery of Illinois, and placed the area under the control of the Governor of Louisiana. The Commandant of Illinois appointed town commandants, or judges, for each settlement. These officials tried minor cases; the Commandant of Illinois had jurisdiction over major civil and criminal cases. In 1722 a Provincial Council was established to exercise original jurisdiction in both civil and criminal cases. This is the first record of any court in Illinois.

In the Treaty of Paris in 1763, France ceded all land east of the Mississippi River and south of the Great Lakes to Great Britain. Unsuccessful attempts to impose English common law on the French inhabitants led to the resumption of the "Custom of Paris. Each town had a board of arbitrators to hear civil cases and a judge, who heard all other cases. Friction between the French settlers and the English officials interfered with the administration of justice for some time after 1763.

Col. George Rogers Clark claimed the Illinois Territory as part of the Republic of Virginia in 1778. Seven men were elected as judges in each settlement. A majority of four was needed for a decision. Col. Clark served as the Court of Appeal. In 1779, John Todd was appointed County Lieutenant for Illinois. He reorganized the courts into three districts with the seats of government in Kaskaskia (Randolph County), Cahokia (near St. Louis) and Vincennes (now in Indiana). Each district had six elected judges, who met monthly, or as needed. English common law was growing in influence. For example, jury trials and imprisonment for debt became common. The courts of Illinois County functioned with the same jurisdiction as the courts of any Virginia county.

ILLINOIS, EARLY U.S. HISTORY

Between 1784 and 1786 Virginia and other states claiming territory in the Midwest relinquished their claims in favor of the new United States of America. The area was governed under the Northwest Ordinance of 1787. The next several years were chaotic as French, English and American inhabitants contended over the form the regional government would take. Each settlement was virtually independent.

The Northwest Territory was under the jurisdiction of a General Court of three judges. The judiciary, along with the governor appointed by the U.S. Congress, served as the territorial legislature. The judges sat in cases of both original jurisdiction in major criminal cases and as the Court of Appeals. The three judges could act individually and rode circuit in the districts.

In 1800 the Indiana Territory was established from the Northwest Territory and basically continued the same judicial system.

Strong anti-slavery feeling in the western section of the Indiana Territory led to the creation of the Illinois Territory in 1809. This territory contained the present states of Illinois and Wisconsin. The new Governor, Ninian Edwards, divided the new territory into three judicial districts and continued the same practices as under the Ordinance of 1787 and the Indiana Territory. The governor and three judges continued to act as a legislature until 1812, when a General Assembly was established.

The Supreme Court of Illinois was established in 1814. At this time, the General Court and the Court of Common Pleas were abolished in favor of County Courts. General civil and criminal jurisdiction was given to individual Supreme Court judges, who were required to ride the circuits.

THE ILLINOIS CONSTITUTION OF 1818

Illinois became a state in April 1818. Article IV of the new Constitution described the judicial system. A Supreme Court of four judges was established, and three of the four Supreme Court judges constituted a quorum. The first Supreme Court judges were to ride circuit until their term expired in 1824 and, with the exception of these first judges, all judicial tenure was based on good behavior. The court had appellate jurisdiction except in cases of revenue, mandamus, habeas corpus and impeachment. The judges of the Supreme Court were appointed by the General Assembly and a judge could be removed by a two-thirds vote of the General Assembly. A circuit court judge had original jurisdiction in his respective circuit over all civil matters and in chancery where the debt or demand was more than $20, and all cases of treason, other felonies

and misdemeanors. The legislature appointed new judges with no fixed term and they also had the power to remove any judges from the bench.

In 1824 the General Assembly appointed the new Supreme Court judges. Five Circuit Courts were created and five judges were appointed to hold court in the circuits. However, in 1827 they were legislated out of existence and the four Supreme Court judges were again required to hold Circuit Court in four circuits. In 1829 a fifth circuit was created north of the Illinois River and a Circuit Court judge was appointed by the General Assembly to hold court in that circuit. In 1835 the General Assembly appointed Circuit Court judges for all five circuits and the Supreme Court was again freed from circuit responsibility. Also a sixth circuit and judgeship was established.

By 1838 there were nine Circuit Courts and nine Circuit Court judges in Illinois. This system continued until the judiciary of the state was, again, reorganized in 1841. At that time, all circuits and Circuit judges were, once more, legislated out of existence. Five new Supreme Court judges were appointed to supplement the existing four judges. This enlarged Supreme Court was reassigned to Circuit Court duties and this system remained unchanged until 1848 when the second Illinois Constitution was adopted.

Justices of the Peace Courts were established on a county basis by the General Assembly in 1819 and were reorganized in 1827. They had jurisdiction in their counties over all civil suits for debt and demand not in excess of $100, and forcible entry and detainer cases. In criminal cases, their primary jurisdiction was over all assaults, battery, affrays, and over larceny committed by Negroes (slave or free). At this time, the northeast corner of Illinois was in Peoria County. One of the earliest Justices of the Peace, 1827, was Billy Caldwell, or Sauganash, a Potawatomi Chief with an Irish father. In general, local relations between the Indians and white settlers were peaceful.

The Constitution of 1818 gave the General Assembly power to create courts of inferior jurisdiction known as Circuit Courts. The presence of these courts were totally dependent upon the legislature and were legislated into and out of existence three times in twenty years. Since the General Assembly had the power to appoint and remove all judges, including Supreme Court judges, an established judicial system was unable to take root in Illinois. This judicial inadequacy was a major cause for the drafting of the 1848 Constitution.

THE ILLINOIS CONSTITUTION OF 1848

Article V of the Illinois Constitution of 1848 established a Supreme Court of three judges with two of the three constituting a quorum. Election was by popular vote with one judge of three elected from each of the divisions of the state (Northern, Central and Southern) for a nine-year term. The Supreme Court had

original jurisdiction in cases of revenue, mandamus, habeas corpus, and impeachment, and appellate jurisdiction in all other cases and was to convene once annually in each division.

The Constitution of 1848 established nine circuits and each circuit was to elect one judge for a six-year term. The Circuit Court was required to hold two or more sessions annually in each county. It had jurisdiction in all cases at law and in equity and all cases on appeal from inferior courts.

The constitution and subsequent legislation established a County Court in each county with one County Court judge who had a four-year term. The court had jurisdiction in all probate cases, civil cases involving not more than $100, forcible entry and detainer, and criminal cases of assaults, battery, affrays, larceny in the cases of Negroes (free or slave), and jurisdiction concurrent with the Circuit Court for sale of real estate of deceased persons.

The two decades following the enactment of the Constitution saw a great population increase in Illinois, especially in the previously sparsely settled areas of the north. Article V, Section 1 provided "that inferior local courts of civil and criminal jurisdiction may be established by the General Assembly in the cities of this state, but such courts shall have uniform organization and jurisdiction in such cities." Consequently, in 1854 the General Assembly established the elected position of Police Magistrate for a term of four years in each town and city as follows: one position for 6,000 or less inhabitants; two positions for 6,000 to 12,000 inhabitants; and three positions for more than 12,000 inhabitants. Although Justices of the Peace Courts and Police Magistrate Courts had the same jurisdiction, they were not courts of record. Therefore, any appeals were heard as new trials in Records Courts, which were located in Chicago, Aurora, Elgin and other growing cities. These courts were known as Courts of Common Pleas and had jurisdiction concurrent to the Circuit Court.

The Constitution of 1848 had established a rural judicial system, which, due to growth, quickly became inadequate. In 1868 a convention wrote an entirely new constitution for a part urban, part rural state. This new Constitution of 1870 remained the law of the State of Illinois until the adoption of the 1970 Constitution.

THE ILLINOIS CONSTITUTION OF 1870

The Constitution of 1870 spelled out the new judicial system in Article VI. The Supreme Court was comprised of seven judges whose terms of office were nine years. Four judges constituted a quorum and the concurrence of four was necessary for decision. It had the same jurisdiction as it had under previous constitutions and was to hold annual terms as established by the 1848 Constitution. The state was divided into seven districts for election of the

Supreme Court judges. These districts could be changed by law to maintain equality in population, but must be composed of contiguous counties.

In 1879, legislation was enacted requiring that terms of the Supreme Court were to be held only in Springfield. The Court was given authority to make rules regulating practice for the judiciary in Illinois. It also provided that the Supreme Court submit reports to the Governor on the deficiencies and problems of the laws in Illinois and suggest bills to the General Assembly designed to solve these problems. Combined with Article VI, Section 11, which provided for the establishment of an Appellate Court, we can discern the development of the Supreme Court as a body established for initiating, improving and interpreting the laws of Illinois. No longer was the Supreme Court to be a traveling Appellate Court.

The Constitution provided for the establishment of an Appellate Court by the General Assembly after 1874. Four such courts were established in 1877. The first was in Cook County, the second was in the rest of the Northern Division, the third was in the Central Division and the fourth was in the Southern Division. Each court consisted of three judges appointed by the Supreme Court from the Circuit Court, or in the case of Cook County, from the Superior Court. They were appointed for three years and held two court terms annually. Two judges were a quorum, and the concurrence of two was necessary for a decision. The jurisdiction of the court was appellate only.

By Act of Legislature of March 28, 1873, judicial districts were organized in accordance with the 1870 Constitution. Twenty-six circuits were formed, exclusive of Cook County, which formed its own circuit. The circuits were to be as equal as possible in population, economy and territory, and consist of contiguous counties.

The constitution, again, provided for County Courts in each county. One judge was to be elected to that position for a four year term; however, where it was expedient to do so the General Assembly could create a district of two or more counties under the jurisdiction of one judge. This court was to be the county court of record.

The constitution of 1870 and subsequent legislation in 1877 and 1881 established Probate Courts in counties where the population was over 70,000. Judges of these courts had four-year terms. In 1903 an act of the General Assembly provided that the probate judges and county judges may hold court for each other and perform each other's duties.

The constitution also provided for the continuation of Police Magistrates and Justices of the Peace.

In 1901 an act was approved concerning courts of records in cities. It was amended in 1901, 1911 and 1913. It permitted from one to five judges in each City Court. However, the number of judgeships could not exceed one for every 50,000 inhabitants. The court could be established only in cities of at least 3,000 inhabitants. The judges were given four-year terms. These courts had jurisdiction concurrent with the Circuit Court, except in cases of treason and murder.

In 1903 an administrative agency called a Court of Claims was established in Illinois to hear all cases of claims of any nature against the state. Three judges were appointed to the court by the governor.

Dissatisfaction with the Justices of Peace and Police Magistrate system became so serious that a 1904 amendment to the constitution abolished Justices of Peace, Police Magistrates and Constables in the City of Chicago and limited the jurisdiction of all other Justices of the Peace, Magistrates and Constables in Cook County to the area outside the City of Chicago. It also permitted the establishment of a Municipal Court in Chicago.

Legislation in 1905, 1906 and 1907 established the Municipal Court of Chicago with jurisdiction in civil claims for money or property and in non-felony criminal cases. The court was created to meet the special needs of a rapidly growing urban area. Legislation approved in 1899 and amended in 1907 established a Juvenile Court (later called the Family Court) in Cook County. One judge of the Circuit Court was to hear all cases involving persons under the age of 21 termed by the act as dependent, neglected or delinquent. This act was the first of its kind in any state.

These specialized courts demonstrated the needs of a growing population and the developing independence, importance and responsibility of the courts in Illinois. They were very functional, but the problems caused by the creation of new courts for new needs soon outweighed the advantages.

Many of these specialized courts had overlapping jurisdiction causing organizational and administrative problems. There was no real administrative authority to unify, coordinate and supervise the various courts and judges. A unified court system was needed.

THE JUDICIAL ARTICLE OF 1964

Under the Judicial Article of 1964 the judicial power of Illinois was vested in a Supreme Court, and Appellate Court and Circuit Courts. On the trial court level all courts other than the Circuit Courts were abolished and all their jurisdiction, judicial functions, powers and duties were transferred to the respective Circuit Courts.

The Supreme Court was composed of seven judges, elected from five judicial districts. Cook County was the First Judicial District. The remainder of the state was divided into four Supreme and Appellate Districts. Three Supreme Court judges were elected in the First Judicial District. One was elected from each of the other judicial districts. Four judges constituted a quorum and concurrence of four was necessary for a decision. Judges of the Supreme Court were elected for ten-year terms. The Supreme Court exercised original jurisdiction in cases relating to revenue, mandamus, prohibition and habeas corpus. It had appellate jurisdiction in all other matters. Appeals would go from the Circuit Court directly to the Supreme Court in cases involving revenue, a question arising under the federal or state constitutions, habeas corpus or appeal by the defendant from sentence in capital cases.

The Supreme Court was given the authority to establish rules for trial procedure. In fact, general administrative authority over all courts was vested in the Supreme Court to be exercised by the Chief Justice who was selected for a three-year term by the members of that court. To assist the Chief Justice in this task, the Article provided for an administrative director and a staff. In this Article the increased attention of the Supreme Court to the development, interpretation and administration of law in Illinois can be discerned.

The Appellate Court was organized in the same five judicial districts as the Supreme Court. It consisted of twenty-four judges, twelve in the First District (Cook County), and three in each of the other four districts. Appellate Court judges were elected for ten-year terms. Concurrence of two judges was necessary for a decision.

All final judgments of the Circuit Court except those directly appealable to the Supreme Court and acquittals on the merits in criminal cases were, as a matter of right, appealable to the Appellate Court in the district in which the Circuit Court was located. To assure a complete determination of any case being reviewed, the Appellate Court was empowered to exercise any necessary original jurisdiction. Appeals from the Appellate Court were to the Supreme Court in cases where a question arose concerning the state or federal constitution for the first time, as a result of the action of the Appellate Court, or when a division of the Appellate Court certified that the case was of such importance that it should be decided by the Supreme Court. In all other cases the Appellate Court was the last court of appeal unless the Supreme Court granted leave to appeal.

The Article provided that the state should be divided into judicial circuits of one or more contiguous counties. There were 21 such multi-county circuits. Cook and DuPage counties were single county circuits until 1985 when Will County also became a single county circuit.

Section 8 of the Article provided that judicial circuits should be established from time to time by law. The Article specified no maximum number of circuits;

and therefore, it was flexible for meeting further needs. There was only one Circuit Court in each circuit. This court had "unlimited original jurisdiction of all justifiable matters". By giving jurisdiction to the Circuit Courts and establishing only one Circuit Court, the Article avoided and eliminated the problems of complex and often overlapping jurisdiction and all the legal problems that stemmed from the numerous courts of special jurisdiction which had grown up during the previous years.

The Circuit Courts had three categories of judges: Circuit Judges, Associate Judges and Magistrates. The Circuit Judges had the full jurisdiction of the Circuit Court, and the power to make the rules of the court. They were elected on a circuit-wide basis. One Circuit Judge was elected by the Circuit and Associate Judges as Chief Judge of the Circuit. He was the manager of the Circuit with general administrative authority in his Circuit subject only to the authority of the Supreme Court. He assigned cases, assigned duties to court personnel, and determined time and place of court sessions.

Associate Judges had the full jurisdiction of the Circuit Court. They voted for the Chief Judge but they did not have rule making authority and could not be selected as Chief. There had to be at least one Associate Circuit Judge elected in each county of the state. Both Circuit Judges and Associate Judges had six-year terms.

Magistrates were appointed by the Circuit Judges and served at their pleasure, without terms. While they had the full jurisdiction of the Circuit Court, only certain cases were assignable to them. This assignability was determined by law. The law enabled the Supreme Court to expand the matters assignable to lawyer magistrates. The Chief Judge could further limit and determine which matters were assigned to Magistrates in his circuit. Magistrates generally were assigned civil cases when the amount of damages or the value of personal property claimed did not exceed $15,000; and quasi-criminal and criminal cases, generally, where the maximum punishment did not exceed a fine of $1,000 or imprisonment for one year or both. Magistrates also were assigned internal administrative duties within the court. The authorized number of magistrates to be appointed was proportionate to the population. In addition to the number of magistrates authorized by statute, the General Assembly empowered the Supreme Court to allocate the appointment of 40 Magistrates to the circuits upon a showing of need.

The Judicial Article of 1964 introduced important innovations in the Illinois Judicial System. Under Section 11 of the Article, judges, once elected, were permitted to run for reelection not as members of a political party or against a candidate, but on their own record. The electorate voted yes or no on retention of the individual judge, and the judge had to receive a majority to be retained. Section 10, however, provided for the initial selection of judges by party ballot. Any candidate who ran for an elective judicial office for the first time was required

to be "nominated by party convention or primary and elected at general elections..."

Section 16 provided that judges could not "engage in the practice of law or hold any office or position of profit under the United States or this state or any other municipal corporation or political party". Section 15 also stated that no person could be eligible for the office of judge unless he was a citizen and licensed attorney at law of this state and a resident of judicial district, circuit, county, or unit from which elected. This was a clear attempt to establish a judiciary as a full time profession in Illinois, and to raise its efficiency, objectivity, and effectiveness.

Section 18 established a commission of judges composed of one Supreme Court, two Appellate Court judges selected by the Appellate Court, and two Circuit Judges selected by the Supreme Court with the power to retire for disability or to suspend or remove any judge from office for cause. Thus, the judiciary rendered judgment on its own members rather than having the General Assembly exercise that authority.

The Supreme Court was further required to report annually to the General Assembly. Here again provisions were made to develop the judiciary as an autonomous professional and independent arm of government cooperating with, but not dominated by, the General Assembly.

THE JUDICIAL ARTICLE OF 1970

Illinois has the distinct advantage of not only having one of the first truly unified court systems in the nation, but also having had the opportunity in the 1970 Constitution of refining and improving that system after a trial period. The 1964 Judicial Article established a model court system of simplicity, efficiency, and flexibility. After seven years of scrutiny and analysis this successful system was modified to eliminate some of the minor flaws. Illinois now has a judicial system to meet the needs of its citizens, a system built on tradition but designed with flexibility to accommodate future needs as well.

The Judicial Article of the Illinois Constitution of 1970 (Article VI) provides for a unified, three-tiered judiciary, comprising of the Circuit Courts, the Appellate Courts, and the highest Court in the State, the Illinois Supreme Court. Cases are normally channeled to the Supreme Court from the Appellate Court, but in cases where a Circuit Court has imposed a sentence of death, the law provides for an appeal directly to the Supreme Court, bypassing the Appellate Court.

ILLINOIS COURT ORGANIZATION

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THE ILLINOIS SUPREME COURT

Under Illinois law the Supreme Court has original and exclusive jurisdiction in matters involving legislative redistricting and in determining the ability if the Governor to serve in the office. The Supreme Court also has discretionary original jurisdiction in cases relating to State revenue and writs of mandamus, prohibition, or habeas corpus.

The Illinois State Supreme Court is comprised of seven Justices, representing various districts in the State. A majority vote of four is required to decide a case.

THE APPELLATE COURT

The Illinois Constitution provides for an Illinois Appellate Court, which is divided into five Judicial Districts. The Appellate Courts hear matters appealed to it from the trial courts. Any person has a right to file an appeal from the trial court. In the Appellate Court there are no trials, no witnesses and no testimony. Cases on appeal are decided on the basis of whether an error was made in the application of law during the trial in the Circuit Court. Attorneys argue before the Appellate Court concerning this possibility of error, they do not retry the case. Three Appellate Justices sit on each case and a majority vote of two is needed.

The Appellate Court affirms the trial court decision if it finds there has been no error committed in the application of law, or if the error was so minimal that it made little difference in the outcome of the trial. The Appellate Court reverses or remands the trial court decision if there has been a substantive error in the

application of the law. In this instance the case is normally sent back to the trial court for further action.

THE CIRCUIT COURT

The Circuit Courts in Illinois are courts of general jurisdiction, which means they have original jurisdiction in all matters excepting those limited situations where the Supreme Court has original jurisdiction. These trial courts hear civil cases from small claims to cases seeking over $30,000, and criminal cases from traffic to murder. Domestic relations, juvenile, probate and tax cases, among others, are also part of the Circuit Court caseload.

The State of Illinois is divided into 22 Judicial Circuits. Each Judicial Circuit is comprised of one or more counties. Circuit Courts, also referred to as trial courts, are established within each judicial circuit.

JUDGES AND JUSTICES

The judges of the Supreme and Appellate Courts are usually referred to as justices. The Circuit and Associate Judges of the trial courts are called judges. Supreme and Appellate Justices and Circuit Judges are elected by the voters in partisan elections after being nominated at primary elections or by petition. Under the 1970 Constitution, an elected judge must receive 60% of the votes cast in order to retain the office, rather than a simple majority.

There are two types of judges in the Circuit Courts: Circuit Judges are initially elected for a six year term, either on a circuit-wide basis or from their county of residence. Thereafter, every six years they must run circuit-wide for retention. Annually, the Circuit Judges elect a Chief Judge. The Chief Judge provides administrative guidance to the entire circuit.

Associate Judges are appointed by the Circuit Judges on a merit basis for a four year term. Thereafter, they are considered for retention by the Circuit Judges every four years. Associate Judges may hear a variety of cases, except felony cases, unless so authorized by the Supreme Court.

COURTS AND TRIALS

The main purpose of courts in the United States is to guard the individual freedoms that all citizens have. In the courts, all persons are treated equally. Sometimes people disagree with one another, despite our system of laws. Trials can be the solution of conflicts, but the courts should be used as a last resort.

This section will describe the various types of trials, and the people in the court who work toward the goal of resolving disputes.

CIVIL AND CRIMINAL CASES

Courts have two jobs: (1) to decide what the facts are when there is a dispute between two people and (2) to decide what law apply to the facts. Each person who goes to court has a right to an impartial hearing. That means that the court, through the judge and sometimes a jury that will hear the case, will listen carefully to what is said and make a decision based on the facts that are presented and not based on opinions or prejudices.

There are two types of cases: civil and criminal. A civil case is one involving a disagreement between two people, between people and companies or between people and government agencies. Examples of civil lawsuits include damages arising from an automobile accident, divorce, or breach of either a written or oral contract. Individuals who lose their civil cases or are found guilty of a crime, or in a juvenile case are found to be delinquent, can expect to face consequences for their actions. These can be in the form of damages to be paid, a fine, or in the case of a juvenile, detention, probation, or a jail sentence. The judge decides what the penalty will be.

Criminal cases are actions brought by the State or Federal government against an individual charged with committing a crime. A criminal case involves people who are charged by the government, with the violation of a law. Examples of criminal cases include arson, assault, burglary, fraud, murder and selling or using illegal drugs. Individuals who are found guilty in a criminal case may be required to pay a fine, spend time in jail or prison, or repay those who have been harmed.

TRIAL COURT PERSONNEL

There are many people involved in the operations of a court. The following people are those who you may see if you visit a courtroom:

JUDGE - As a judge presiding in a court of law, it is the judge's responsibility to insure that justice is administered in a fair and

impartial manner. The judge makes rulings on all questions relative to law and legal procedure within the courtroom. In a jury trial, the judge is responsible for making rulings and instructing the jury on the law as it applies to each particular case. When the judge is not presiding over a trial, he/she is working in their office (called chambers) conducting pre-trial conferences, doing legal research, or attending to other judicial matters.

COURTROOM CLERK - This individual is charged with the responsibility of keeping the records and accounts of the court Specifically, the Clerk assists the judge with court files, calling cases for a court call, and keeping track of all of the papers filed in court. Additionally, the Clerk swears in witnesses.

COURT REPORTER - The primary responsibility of the Court Reporter is to record all audible utterances in a court proceeding, and, upon request, produce a written transcript of that proceeding. Each and every word spoken by any person must appear in the record. These records are important in case the ruling by the trial court is appealed. Since there are no witnesses nor testimony heard at the Appellate Court level, the Court relies upon the transcript which is generated to review the trial. court's actions.

ATTORNEYS - An attorney is an officer of the court, who is an advocate and represents people and their interests to the best of their ability. Attorneys generally fall into three categories: (1) a State's Attorney, who is responsible for prosecuting individuals charged with a criminal offense; (2) a Public Defender, who provides legal assistance to people who are unable to afford an attorney to defend criminal charges against an individual; and (3) a private attorney, who represents clients in all types of matters - criminal and civil.