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## Constitutional Intent: The Illinois Supreme Court's Use of the Record in Interpreting the 1970 Constitution, 8 J. Marshall J. Prac. & Proc. 189 (1974)

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# CONSTITUTIONAL INTENT: THE ILLINOIS SUPREME COURT'S USE OF THE RECORD IN INTERPRETING THE 1970 CONSTITUTION

by ANN LOUSIN\*

In the three years since the 1970 Illinois Constitution became generally effective,<sup>1</sup> the Illinois Supreme Court has played a vital role in determining the living meaning of the constitutional text. The court has decided over forty cases involving the new document. Thirty-three of these cases required the justices to interpret one or more provisions<sup>2</sup> of the constitution.

One of the most striking characteristics of the court's approach to these crucial cases of first impression concerning the

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1. The 1970 Constitution became effective on July 1, 1971, except for a few provisions. ILL. CONSR. trans. sch., § 1 *et seq.* (1970). It was written by the Sixth Illinois Constitutional Convention and adopted by the Illinois electorate at a referendum held December 15, 1970.

2. The thirty-three cases, in the order in which opinions were filed, are as follows: *People ex rel. Ogilvie v. Lewis*, 49 Ill. 2d 476, 274 N.E.2d 87 (1971); *People ex rel. Scott v. Grivetti*, 50 Ill. 2d 156, 277 N.E.2d 881 (1971); *Bridgewater v. Hotz*, 51 Ill. 2d 103, 281 N.E.2d 317 (1972); *People ex rel. Klingler v. Howlett*, 50 Ill. 2d 242, 278 N.E.2d 84 (1972); *Grace v. Howlett*, 51 Ill. 2d 478, 283 N.E.2d 474 (1972); *Doran v. Cullerton*, 51 Ill. 2d 553, 283 N.E.2d 865 (1972); *S. Bloom, Inc. v. Korshak*, 52 Ill. 2d 56, 284 N.E.2d 257 (1972); *Stein v. Howlett*, 52 Ill. 2d 570, 289 N.E.2d 409 (1972); *People v. Kent*, 54 Ill. 2d 161, 295 N.E.2d 710 (1972); *City of Evanston v. County of Cook*, 53 Ill. 2d 312, 291 N.E.2d 823 (1972); *Kanellos v. County of Cook*, 53 Ill. 2d 161, 290 N.E.2d 240 (1972); *Johnson v. State Electoral Bd.*, 53 Ill. 2d 256, 290 N.E.2d 886 (1972); *People ex rel. City of Salem v. McMackin*, 53 Ill. 2d 347, 291 N.E.2d 807 (1972); *Bridgman v. Korzen*, 54 Ill. 2d 74, 295 N.E.2d 9 (1972); *Oak Park Fed. Sav. & Loan Ass'n v. Village of Oak Park*, 54 Ill. 2d 200, 296 N.E.2d 344 (1973); *Jacobs v. City of Chicago*, 53 Ill. 2d 421, 292 N.E.2d 401 (1973); *People ex rel. Hanrahan v. Beck*, 54 Ill. 2d 561, 301 N.E.2d 281 (1973); *Board of Educ. v. Bakalis*, 54 Ill. 2d 448, 299 N.E.2d 737 (1973); *Rozner v. Korshak*, 55 Ill. 2d 430, 303 N.E.2d 389 (1973); *Blase v. State*, 55 Ill. 2d 94, 302 N.E.2d 46 (1973); *Elk Grove Eng'r Co. v. Korzen*, 55 Ill. 2d 393, 304 N.E.2d 65 (1973); *People ex rel. Pierce v. Lavelle*, 56 Ill. 2d 278, 307 N.E.2d 115 (1974); *Gilligan v. Korzen*, 56 Ill. 2d 387, 308 N.E.2d 613 (1974); *Peters v. City of Springfield*, 57 Ill. 2d 142, 311 N.E.2d 107 (1974); *People v. Ellis*, 57 Ill. 2d 127, 311 N.E.2d 98 (1974); *Clarke v. Village of Arlington Heights*, 57 Ill. 2d 50, 309 N.E.2d 576 (1974); *City of Waukegan v. Pollution Control Bd.*, 57 Ill. 2d 170, 311 N.E.2d 146 (1974); *Fuehrmeyer v. City of Chicago*, 57 Ill. 2d 193, 311 N.E.2d 116 (1974); *Johnson v. State Bd. of Elections*, 57 Ill. 2d 205, 311 N.E.2d 123 (1974); *La Salle Nat'l Bank v. County of Cook*, 57 Ill. 2d 318, 312 N.E.2d 252 (1974); *Illinois State Employees Ass'n v. Walker*, 57 Ill. 2d 512, 315 N.E.2d 9 (1974); *Paper Supply Co. v. City of Chicago*, 57 Ill. 2d 553, 317 N.E.2d 3 (1974); *Hoskins v. Walker*, 57 Ill. 2d 503, 315 N.E.2d 25 (1974).

most important single document of Illinois government is the justices' great willingness to consult and to rely upon the proceedings of the constitutional convention to aid them in construing the new constitution. Of the thirty-three cases decided in the first three years, the court has alluded to the history of the constitution in twenty-seven cases—a startling 81.8%.<sup>3</sup>

It is the purpose of this study to explain the meaning of constitutional intent in respect to a new state constitution, to recount the making of the record of the 1970 Constitution, to analyze the Illinois Supreme Court's use of the record as the basis of constitutional intent, and to suggest the proper and probable roles of such records in future cases.

### THE MEANING OF "CONSTITUTIONAL INTENT"

Although many scholars have studied the role legislative history plays in a court's interpretation of a statute, few have addressed the effect of the written records of a constitutional convention upon a judge charged with interpreting a new constitution. Most of the few studies available are concerned with the drafting and ratification of the Constitution of the United States. The primary sources of the Framers' intent are Madison's notes of the Federal Constitutional Convention of 1787, the sparse records of the debates of the state legislatures during the ratification campaign, and the writings of chief proponents of the document, most notably *The Federalist*.<sup>4</sup> In recent years, it has become

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3. The six cases in which the record of the convention and the circumstances surrounding adoption of the constitution play no apparent role are: *People ex rel. Pierce v. Lavelle*, 56 Ill. 2d 278, 307 N.E.2d 115 (1974); *People ex rel. Hanrahan v. Beck*, 54 Ill. 2d 561, 301 N.E.2d 281 (1973); *Jacobs v. City of Chicago*, 53 Ill. 2d 241, 292 N.E.2d 401 (1973); *Johnson v. State Electoral Bd.*, 53 Ill. 2d 556, 290 N.E.2d 886 (1972); *Doran v. Cullerton*, 51 Ill. 2d 553, 283 N.E.2d 865 (1972); *People ex rel. Ogilvie v. Lewis*, 49 Ill. 2d 476, 274 N.E.2d 87 (1971).

This study omits discussion of the three cases on the new constitution in which the court relies upon and merely reiterates a previous interpretation: *People v. Seets*, 57 Ill. 2d 213, 311 N.E.2d 97 (1974), in which it relies upon its construction of ILL. CONST. art. I, § 18 (1970) in *People v. Ellis*, 57 Ill. 2d 127, 311 N.E.2d 98 (1974); *People ex rel. Klinger v. Howlett*, 56 Ill. 2d 1, 305 N.E.2d 129 (1973), in which it relies upon its construction of ILL. CONST. art. X, § 3 (1970), in *Board of Educ. v. Bakalis*, 54 Ill. 2d 448, 299 N.E.2d 737 (1973); *People ex rel. Carey v. Board of Educ.*, 55 Ill. 2d 533, 304 N.E.2d 273 (1973), in which it relies upon its construction of ILL. CONST. art. X, § 1 (1970) in *Blase v. State*, 55 Ill. 2d 94, 302 N.E.2d 46 (1973).

This study also omits discussion of those cases concerning, but not directly interpreting, the new provisions, e.g., *People ex rel. Skidmore v. Anderson*, 56 Ill. 2d 334, 307 N.E.2d 391 (1974); *North Shore Sanitary Dist. v. Pollution Control Bd.*, 55 Ill. 2d 101, 302 N.E.2d 50 (1973); and all cases turning on the due process and equal protection clauses, ILL. CONST. art. I, § 2 (1970), since those cases are as much federal questions as they are state constitutional issues.

4. A. HAMILTON, J. JAY & J. MADISON, *THE FEDERALIST* (Modern Library ed.).

common to follow William Winslow Crosskey's lead and debunk the value of the history of a constitutional provision as an aid to constitutional interpretation.<sup>5</sup>

Four years of observing the growth of the Illinois Constitution of 1970—from convention committee hearings through the three cases decided in June, 1974—have led me to agree in general with Professor Crosskey. Whatever history may be, the constitutional intent of the Illinois Constitution is indeed a fable agreed upon. To my knowledge, no member of the Sixth Illinois Constitutional Convention has ever stated that he thinks the formal records of the convention—the committee reports, transcripts of debates, Official Explanation of the proposed document, the Address to the People—accurately reflected his own intent in voting for any given section. Every time the Illinois Supreme Court issues an opinion interpreting a new provision, a few Con-Con delegates exclaim: “The court just doesn't understand what we meant. Why don't they look at the record? The *record* makes it perfectly clear that we intended. . . .”

The main reason for this anguished confusion is that the record is seldom perfectly clear about anything more important than the time at which the delegates recessed for lunch—and sometimes even *that* point is unclear. The record is in fact a confusing and often contradictory potpourri of member proposals which were usually not adopted, committee reports written largely by staff, calculated attempts by sponsors of proposals to explain their views to future courts, sly attempts to amend a section substantively by suggesting stylistic changes, and carefully orchestrated campaigns to secure adoption or defeat of a proposal. Sometimes delegates made statements for the record in order to establish a given interpretation as the intent of the whole convention.<sup>6</sup> Delegates sometimes purposely failed to discuss possible ramifications and problems of a section during debate in order to leave the text and constitutional intent of a section broad enough to give reviewing courts the widest possible latitude in interpretation.

#### THE MAKING OF THE RECORD

Before one can comprehend the significance of the constitu-

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5. Professor Crosskey's views are stated in his many works on the United States Constitution. For a good example, see Crosskey, *The Ex-Post-Facto and the Contracts Clauses in the Federal Convention: A Note on the Editorial Ingenuity of James Madison*, 35 U. CHI. L. REV. 248 (1968), and for a pithy summary, see Krash, *William Winslow Crosskey*, 35 U. CHI. L. REV. 232 (1968).

6. *E.g.*, Delegate George J. Lewis's statement at REC. OF PROCEEDINGS, SIXTH ILL. CONSTITUTIONAL CONVENTION *Verbatim Transcripts*, vol. IV at 2882 (1969-70) [hereinafter cited as *Verbatim Transcripts*].

tional record as a guide to understanding the text, it is necessary to know how that record was created.

The basic working units of the Sixth Illinois Constitutional Convention were the nine substantive committees.<sup>7</sup> Each committee was assigned a list of topics and sections of the 1870 Constitution and was charged with mastering each area and suggesting new constitutional provisions. Early in the convention, delegates were allowed to present member proposals—drafts of new provisions—to the appropriate committees. This device enabled each committee to discern the general mood of the other delegates on problems within the committee's purview. Each committee held hearings on these proposals and any other problems reasonably related to its area of interest. In the first four months of 1970 each committee had heard testimony from scores, even hundreds, of witnesses. The Committee on Education, for example, heard almost one hundred witnesses on the question of aid to parochial schools.<sup>8</sup>

Each committee had as its basic staff a secretary, an administrative assistant, and a committee counsel, who was either a lawyer or university professor with some background in that committee's area of interest. In addition, some committees hired special consultants. A pool of research assistants served all the committees.<sup>9</sup> Over one hundred outside experts, including lobbyists, volunteered their help to delegates and staff.

After each committee had completed its hearings, it met to consider and vote upon its proposals which would be presented to the whole convention. All committee hearings and meetings were taped, but not transcribed.<sup>10</sup> When a committee had decided upon its recommendations to the convention, the committee counsel drafted the text of the proposal and a committee report which explained the purpose of the text, the differences between the proposal and the 1870 Constitution, and other solutions which the committee had rejected. Counsel were obliged to work only for the majority on each proposal. Any dissenters prepared their own minority proposals and minority reports.

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7. The Committees on Revenue and Finance, Education, Local Government, Suffrage and Amending, the Legislature, the Judiciary, the Executive, and the Bill of Rights studied those respective topics. The Committee on General Government studied miscellaneous matters of statewide interest, such as branch banking, environmental quality, and ethical standards for government officials.

8. As reported in Committee on Education Proposal Number 1, *REC. OF PROCEEDINGS, SIXTH ILL. CONSTITUTIONAL CONVENTION Committee Proposals*, vol. VI at 250 (1969-70) [hereinafter cited as *Committee Proposals*].

9. The author was one of these research assistants.

10. The clerk's minutes and the tapes are stored in the convention archives in the Illinois State Historical Library.

Each committee formally adopted both the majority text and majority report of each proposal. In some cases the members merely approved without much debate the text and report prepared by the staff. In other instances, most notably in the two reports of the Committee on Revenue and Finance, some members actively assisted the staff in preparing the proposals. All majority and minority reports were filed with the Clerk of the Convention, printed, and distributed to all the delegates.

A committee proposal was then read to the full convention the first of three times. The convention resolved itself into a committee of the whole for the purpose of hearing, explaining, and debating the proposal one section at a time. As in all of the floor proceedings, this stage was taped, transcribed and later printed.

First Reading involved five steps. First, a member of the committee selected by the chairman to sponsor a section presented the proposed section to the convention. The sponsor made that section his specialty and explained to the convention the problem the committee was trying to solve and why the committee had chosen that particular solution. Second, after he had finished the explanation, delegates asked him and sometimes other committee members questions from the floor. Minority proposals to each section were usually presented in a similar manner.

The third step was the amending process, known as perfecting the section. Any delegate could propose any amendment, stylistic or substantive, to the section. The delegates debated each amendment *seriatim* and then voted to accept or reject it. It is noteworthy that the voting on these amendments was the first point in the constitutional history of a section that the entire convention could express its formal opinion on the text of the section.

The fourth step was a usually thorough and often lengthy debate on each perfected section. The final step was a vote by the committee of the whole to advance the proposed section (or article, as was usually the case) to the Committee on Style, Drafting and Submission. That committee re-drafted the advanced proposal, wrote a report explaining its changes, and filed both the text and the report for consideration by the full convention on Second Reading.

The Committee on Style, Drafting and Submission—commonly known as SDS—was probably the most important and certainly the most controversial committee in the convention. Each SDS member was also a member of a substantive committee, and each substantive committee had at least one representative on

SDS. The committee had authority to make only stylistic or non-substantive changes in the proposal. Therefore, it was theoretically impossible for the language suggested by SDS to reflect any substantive intent other than that of the convention after the vote on First Reading. In truth, as any draftsman knows, perfectly innocent-appearing word changes can effect significant changes in meaning.

For this reason, SDS's drafting sessions were seldom tranquil. Members of the substantive committee which had drafted the original proposal often charged SDS and its two counsel with working substantive changes in the guise of stylistic improvements. The man in the middle was the hapless soul who was both a member of the substantive committee whose work was in question and a member of SDS. His colleagues on the substantive committee expected him to defend their handiwork against assaults by SDS and envied him for being able to vote twice on a section, once in the substantive committee and once in SDS. The other members of SDS, for their part, usually expected him to discard his loyalty to the original language and to defend SDS's allegedly superior draft.<sup>11</sup>

The next step in the development of a section was Second Reading, consisting of the consideration of SDS's re-draft of the text and its report. The committee of the whole treated an SDS report just as it treated a substantive committee report. By and large, the convention made relatively few changes on Second Reading. Most of the amendments adopted were political compromises, such as the abolition of the personal property tax,<sup>12</sup> and attempts to reconcile conflicting provisions adopted on First Reading, such as the addition of section 10 to article IX.<sup>13</sup>

In mid-August the convention finished Second Reading of all committee proposals and adjourned for ten days. During the recess SDS prepared a second re-draft of the proposals, this time using the text as it had survived Second Reading. The re-draft was distributed when the delegates returned for Third Reading and the conclusion of the convention. Since the convention rules discouraged amendments on Third Reading, few changes were made. As each section was finally approved, it was filed with the clerk and printed in final form. This process was known as enrolling and engrossing, although one delegate persisted in referring to it as "embalming."

During the ten-day recess and Third Reading, a special com-

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11. I found this interplay one of the most fascinating aspects of SDS meetings.

12. *Verbatim Transcripts*, vol. V at 3887-90.

13. *Id.* at 3910-11.

mittee made yet another contribution to the formal history of the convention's intent. The enabling act for the convention had specified that the delegates prepare an explanation in layman's language of each proposed section and state how it differed from the 1870 document. This committee, named the Special Committee to Implement Section 13 of the Enabling Act after that statutory provision,<sup>14</sup> was composed of at least one member of each substantive committee. The chairman assigned staff the task of preparing a draft of the explanations for consideration by the committee.<sup>15</sup>

The Section 13 Committee reviewed the staff explanations and quickly discovered that they could rarely agree on their intent in voting for each section. One would not have believed how lively these committee meetings were. As SDS had discovered, it was impossible to re-write the substance of a text without subtly altering its meaning. Unfortunately, these committee meetings were not taped. The sole official record of the committee's deliberations is the secretary's minutes.<sup>16</sup>

During the last week of the convention another special committee made a signal contribution to the constitutional history of the convention's product. The Committee on the Address, created during the August recess, prepared an Address to the People which was an open letter from the convention to the people of Illinois. The address, which summarized the history of the convention, the basic principles espoused by the delegates, and the substance of each proposed article, was really a summary of the explanations written by the Section 13 Committee.

On September 2, 1970, the convention adopted the Address to the People<sup>17</sup> but was unable to achieve accord on the explanations of each section. Therefore it granted the Section 13 Committee the power to meet after adjournment to make stylistic changes in the explanations. With the consent of the convention officers, the Section 13 Committee could also make substantive changes in the explanations.<sup>18</sup> The committee and officers later made changes in the explanations, some of which were arguably very substantive indeed.<sup>19</sup> In October the Secretary of State

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14. P.A. 76-40, § 13, [1969] Ill. Laws vol. 1 at 65.

15. Over the summer, various staff assistants had drafted several explanations. By mid-August the staff had dwindled to about six, and I was the only attorney available to be draftsman. I consulted the committee counsel, who were by then scattered around the country, and drafted almost all the explanations.

16. The secretary's minutes are stored in the archives of the Illinois State Historical Library. As far as unofficial records are concerned, I still have several successive drafts of the committee's explanations.

17. *Verbatim Transcripts*, vol. V at 4660.

18. *Id.* at 4660-61.

19. By that time (mid-September, 1970), the delegates had dispersed and nobody challenged the method by which the changes occurred.



mailed both the address and the explanations to every Illinois voter.

It might be assumed that there could be no record of the convention after it adjourned. However, there has been a plethora of post-convention literature explaining the history and intent of the convention, part of which has achieved the status of being part of the record.

During the campaign for adoption of the constitution, the *Chicago Bar Record* devoted an entire issue to articles on the constitution, many written by delegates.<sup>20</sup> The Smith-Hurd annotated version of the constitution, written shortly after adoption, contains a Constitutional Commentary, which is really a history of each section. As the discussion of the Illinois Supreme Court's use of these articles indicates,<sup>21</sup> it is probable that most judges read at least the Smith-Hurd commentary and perhaps a few journal articles before construing a section.

#### THE NATURE AND USES OF THE EXTRINSIC RECORD

The history of each constitutional provision is found in two broad classes of documents: the extrinsic record and the intrinsic record.

The *extrinsic record* consists of comments on the constitution not written under the auspices of the convention. It includes articles written during the campaign to call the convention, books and papers written to assist the delegates in their study of the constitution, newspaper accounts published during the convention, and books and articles written by delegates, staff, and other commentators after the convention adjourned.

Even before the convention opened on December 8, 1969, the delegates received boxes of literature on the constitutional problems facing Illinois.<sup>22</sup> The most-consulted of these publications was *The Illinois Constitution: An Annotated and Comparative Analysis*<sup>23</sup> written by two constitutional lawyers, George D. Braden<sup>24</sup> and Rubin G. Cohn.<sup>25</sup> This volume, known colloquially at the convention as Braden and Cohn, contained a legislative and case-law history of each section of the 1870 Constitution, as

20. 52 CHI. B. REC. 57 (1970).

21. See text accompanying notes 27-42, *infra*.

22. For example, the Illinois League of Women Voters issued a series of information papers, and the Constitution Study Commission, a legislative creation, published an anthology of articles, *Con-Con: Issues for the Illinois Constitutional Convention* (Ranney ed. 1970).

23. G. BRADEN & R. COHN, *THE ILLINOIS CONSTITUTION: AN ANNOTATED AND COMPARATIVE ANALYSIS* (1969) [hereinafter sometimes referred to as BRADEN & COHN].

24. An attorney for General Electric Co., formerly a professor at Yale Law School.

25. Professor of Law, University of Illinois.

well as a comparison with other constitutions. Since the authors were both committee counsel at the convention,<sup>26</sup> their views were well-known to the delegates. It is probably accurate to say that their book had more actual influence on the delegates' attitudes toward the document they were revising than any other source.

The Illinois Supreme Court has cited the extrinsic record in ten cases.<sup>27</sup> Of the eight different writings mentioned in these cases, only Helman and Whalen's Constitutional Commentary to the Smith-Hurd annotated edition of the 1970 Constitution is cited as frequently as Braden and Cohn—both are referred to in three cases. In two instances the court refers to Braden and Cohn primarily to emphasize the nature of the problem which a constitutional provision was trying to solve.<sup>28</sup> The third case represents the most interesting use of Braden and Cohn.

In *Stein v. Howlett*<sup>29</sup> the court construed article V, section 15 (Attorney General—Duties) for the first time. After review-

26. Professor Braden was Special Counsel to the Committee on Style, Drafting and Submission, and Professor Cohn was counsel to the Committee on the Judiciary.

27. *Paper Supply Co. v. City of Chicago*, 57 Ill. 2d 553, 560-61, 563-65, 571, 317 N.E.2d 3, 6-7, 8-9 (1974); *Fuehrmeyer v. City of Chicago*, 57 Ill. 2d 193, 201, 311 N.E.2d 116, 121 (1974); *City of Waukegan v. Pollution Control Bd.*, 57 Ill. 2d 170, 181-82, 311 N.E.2d 146, 152 (1974); *Clarke v. Village of Arlington Heights*, 57 Ill. 2d 50, 54, 309 N.E.2d 576, 579 (1974); *Elk Grove Eng'r Co. v. Korzen*, 55 Ill. 2d 393, 404, 407, 408, 409, 304 N.E.2d 65, 71, 74 (1973); *People ex rel. City of Salem v. McMackin*, 53 Ill. 2d 347, 366, 291 N.E.2d 807, 818 (1972); *Kanellos v. County of Cook*, 53 Ill. 2d 161, 167, 290 N.E.2d 240, 244 (1972); *City of Evanston v. County of Cook*, 53 Ill. 2d 312, 318, 291 N.E.2d 823, 826 (1972); *Stein v. Howlett*, 52 Ill. 2d 570, 586, 289 N.E.2d 409, 418 (1972); *Grace v. Howlett*, 51 Ill. 2d 478, 487, 512, 283 N.E.2d 474, 479, 492 (1972).

28. The nature of the court's reliance on BRADEN & COHN in those cases is not completely clear. In *City of Waukegan v. Pollution Control Bd.*, 57 Ill. 2d 170, 311 N.E.2d 146 (1974), the court stated that "[o]pportunity for judicial review certainly has been influential in the decisions of this court when claims have been made that delegations to administrative agencies have violated the separation of powers." *Id.* at 181, 311 N.E.2d at 151-52. It then cites BRADEN & COHN's summary of Illinois case law on that point to substantiate its conclusion that since there were adequate opportunities for judicial review of the pollution control board's decisions, the Environmental Protection Act did not violate the separation of powers principle embodied in article III of the 1870 Constitution and article II, section 1, of the 1970 Constitution. *Id.* at 181-82, 311 N.E.2d at 152.

In *Grace v. Howlett*, 51 Ill. 2d 478, 283 N.E.2d 474 (1972), a majority of the court concluded that section 609 of the No Fault Insurance statute established trials de novo, which had been prohibited by article VI, section 9, of the 1870 Constitution since adoption of the 1962 Judicial Amendment, and by article VI, section 9, of the 1970 Constitution. *Id.* at 490, 283 N.E.2d at 480. Chief Justice Underwood dissented from that conclusion. Citing BRADEN & COHN's description of the deficiencies of the old police magistrate court system, which encompassed appeals allowing for jury trials de novo, the chief justice stated that "[i]t was those undesirable aspects of the retrial de novo" which prompted the 1962 amendment. He concluded: "In my judgment this type of trial de novo was not barred by either the 1962 Judicial Article or the 1970 constitution." *Id.* at 512, 283 N.E.2d at 490.

29. 52 Ill. 2d 570, 289 N.E.2d 409 (1972).

ing the case law on the powers of the Attorney General under article V, section 1 of the 1870 Constitution, particularly *Fergus v. Russell*,<sup>30</sup> the court stated:

The proceedings of the Constitutional Convention of 1970 seem to indicate a clear intent to preserve the policy of *Fergus v. Russell* in this respect. In Braden & Cohn, *The Illinois Constitution: An Annotated and Comparative Analysis* (1969), it was pointed out that the result in that case was based on an interpretation of section 1 of article V of the constitution of 1870, which provided that the Attorney General 'shall perform such duties as may be prescribed by law.' It was suggested that the way to change the rule of *Fergus v. Russell* was to rephrase the provision (Braden & Cohn, p. 260). No change was made by the Convention, however, and the present constitution contains the identical language that was before the court in *Fergus v. Russell*.<sup>31</sup>

The unstated assumption in the court's argument is that the Con-Con delegates (1) were fully aware of Braden and Cohn's comments and suggestions regarding the powers of the Attorney General and (2) made a conscious decision to retain the old constitutional text in order to retain the old interpretations as well. No one knows for certain whether the convention did, in fact, use Braden and Cohn in this fashion in considering the powers of the Attorney General. The author remembers that the delegates used Braden and Cohn frequently in the manner envisioned by the court, and it is entirely reasonable for the court to make such an underlying assumption in construing many parts of the new constitution.

Undoubtedly the delegates were influenced by comments on the developing constitution written by observers before and during the convention. None of these articles have ever been assembled in easy-reference form, although copies of most of the newspaper accounts are in the Illinois State Historical Library archives. Under these circumstances, it is not surprising that the court has never mentioned those contemporaneous observations as evidence of the convention's intent.

After the convention adjourned, and especially after the constitution was adopted, there appeared a rash of articles on the document. The most significant of these is the collection of essays on various aspects of the proposed constitution by delegates written for the *Chicago Bar Record* after adjournment of the convention and before the referendum.<sup>32</sup> Since all the authors were proponents of the document, their articles occasionally bear a touch of advocacy. On the whole, however, their attitudes are

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30. 270 Ill. 304, 110 N.E. 130 (1915).

31. 52 Ill. 2d at 586, 289 N.E.2d at 418.

32. 52 CHL. B. REC. 57 (1970).

reasonably objective. The Illinois Supreme Court has cited one essay, "Article VII—Local Government" by John C. Parkhurst, Chairman of the Committee on Local Government, in one case.<sup>33</sup> Presumably, therefore, the justices are acquainted with the other essays in that issue, as well as most of the law review articles on the constitution published since 1970.

The court has, in fact, cited six other articles in five opinions,<sup>34</sup> but there is no indication that any of these articles, even those written by former delegates and staff, were the deciding factor in reaching conclusions. In all probability, the justices read the available articles for background in the history of the text and in the nature of the problem to be solved, but they did not appear to give the articles as much weight as other parts of the record, even other parts of the extrinsic record.

Except for Braden and Cohn, the most frequently cited (and presumably most influential) extrinsic source is the Constitutional Commentary contained in Smith-Hurd's annotated version of the constitution.<sup>35</sup> The authors are Robert A. Helman and Wayne W. Whalen of the Chicago bar. Delegate Whalen's position as Chairman of the powerful Committee on Style, Drafting and Submission has given this commentary more credence than such annotations, however scholarly, usually receive. Beside the usual summary of references, decisions, commentaries, cross-references, and historical notes, the edition usually includes a comparison of each section with its constitutional antecedents. Sometimes Helman and Whalen even attempt to explain the sec-

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33. *City of Evanston v. County of Cook*, 53 Ill. 2d 312, 318, 291 N.E.2d 823, 826 (1972).

34. In *Paper Supply Co. v. City of Chicago*, 57 Ill. 2d 553, 317 N.E.2d 3 (1974), the court cited Baum, *A Tentative Survey of Illinois Home Rule (Part I): Powers and Limitations*, 1972 U. ILL. L.F. 137 (Professor Baum was counsel to the Committee on Local Government), *id.* at 567-68, 317 N.E.2d at 10, Schoepflein, *Home Rule and Local Government Finance: An Economist's Perspective*, 71 U. ILL. BULL. 73 (1973), *id.* at 568-69, 317 N.E.2d at 10-11, and Young, *Home Rule and Local Government Finance: A Lawyer's Perspective*, 71 U. ILL. BULL. 89 (1973), *id.* at 569-70, 317 N.E.2d at 11-12; in *Fuehrmeyer v. City of Chicago*, 57 Ill. 2d 193, 201, 311 N.E.2d 116, 121 (1974), the court cited Comment, *State Statutes: The One-Subject Rule Under the 1970 Constitution*, 6 J. MAR. J. 359 (1973); in *Clarke v. Village of Arlington Heights*, 57 Ill. 2d 50, 54, 309 N.E.2d 576, 579 (1974), it cited Parkhurst, *Two Years Later: The Status of Home Rule in Illinois*, 71 U. ILL. BULL. 26 (1973); in *Elk Grove Eng'g Co. v. Korzen*, 55 Ill. 2d 393, 404, 304 N.E.2d 65, 71 (1973), it cited Kamin, *Constitutional Abolition of Ad Valorem Personal Property Taxes: A Looking-Glass Book*, 60 ILL. B.J. 432 (1972) (Mr. Kamin was a delegate to the convention); in *People ex rel. City of Salem v. McMackin*, 53 Ill. 2d 347, 291 N.E.2d 807 (1972), the court cited Professor Baum for the first time, *id.* at 366, 291 N.E.2d at 818. The court does not discuss its reliance upon any of these secondary sources in detail, but it appears to have taken the Baum, Schoepflein and Young articles quite seriously in considering *Paper Supply Co.* This conjecture is based upon nothing more substantial than the tone of the opinion, however.

35. S.H.A. CONST. (Constitutional Commentary) [hereinafter sometimes referred to as Helman and Whalen].

tion, thereby encountering the same difficulty the Section 13 Committee had in trying to paraphrase the text. Unfortunately, they do not normally include a thorough history of the section from committee report through Third Reading, an oversight which seriously limits the edition's value as a quick but comprehensive guide to the constitutional history of each section.<sup>36</sup>

The Illinois Supreme Court has cited Helman and Whalen in three opinions. In *Kanellos v. County of Cook*,<sup>37</sup> the court merely directs the reader to "[s]ee Helman and Whalen," and in *Elk Grove Engineering Co. v. Korzen*,<sup>38</sup> it merely indicates that it has considered the constitutional commentary. However, in *Grace v. Howlett*,<sup>39</sup> the court directly cites Helman and Whalen's comment that, "'[i]n many cases, the protection provided by [Article IV,] Section 13 is also provided by the equal protection clause of Article I, Section 2' "<sup>40</sup> to support the court's conclusion that while the "two provisions of the 1970 constitution cover much of the same terrain, they are not duplicates . . ."<sup>41</sup>

In short, the chief characteristic of the supreme court's use of the extrinsic record of the constitution is its selectivity. The justices discerned quickly that the extrinsic record is basically a soft or rather unreliable source of constitutional intent. It is frequently unreliable simply because none of it was authorized by the convention which drafted the document, and therefore each essay is merely the private opinion of its author. It is a temptation for delegates, staff and observers writing months after the Closing Day Ceremonies to remember only that part of the convention history with which they were most intimately associated. No matter how strenuously one attempts to be objective, one's own experiences and views inevitably color an essay. The justices seem to have realized this and have not placed much reliance on the post-convention articles and none at all on the contemporaneous news accounts.

The court, on the other hand, has discerned the greater reliability of Braden and Cohn, and Helman and Whalen, as shown by its citing those sources more frequently than any others. In its use of Braden and Cohn in *Stein v. Howlett*,<sup>42</sup> the court has shown a real insight into one of the ways the convention arrived

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36. Since no other reference source, even the *Verbatim Transcripts*, contains such a history or even an adequate index, the practitioner or judge has considerable difficulty in tracing every step of a section's development.

37. 53 Ill. 2d 161, 167, 290 N.E.2d 240, 244 (1972).

38. 55 Ill. 2d 393, 404, 304 N.E.2d 65, 71 (1973).

39. 51 Ill. 2d 478, 487, 283 N.E.2d 474, 479 (1972).

40. S.H.A. Const. art. IV, § 13 (1970) (Constitutional Commentary).

41. *Grace v. Howlett*, 51 Ill. 2d 478, 487, 283 N.E.2d 474, 479 (1972).

42. 52 Ill. 2d 570, 586, 289 N.E.2d 409, 418 (1972), and see text accompanying notes 29-31, *supra*.

at the decision to retain or to rewrite constitutional language. On balance, the court by use of the extrinsic record has shown a talent for extracting the subjective or true intent of the framers from published documents.

The court's use of the intrinsic record is unfortunately a different matter.

#### THE NATURE AND USES OF THE INTRINSIC RECORD

The second record of the constitution is the *intrinsic record*. It is the record of the convention itself and is what most people mean by the constitutional record. It consists of the formal proceedings of the convention: the minutes and tapes of committee meetings; the majority and minority reports of committees; the transcript of the explanations of proposals, colloquies, debates, votes on amendments and votes on sections, known collectively as the debates; the reports of the Style, Drafting and Submission Committee and debates and votes on those reports; the Address to the People and the convention's debates in that regard; and the history and text of the Official Explanation sent to the electorate. All of these documents are assembled in the seven volumes of the official *Record of Proceedings, Sixth Illinois Constitutional Convention* published by the Secretary of State in 1972.

The intrinsic record is the hard or most reliable evidence of the convention's intent, because, except for the committee records, every single delegate had an opportunity to register his acquiescence in or disapproval of the adoption of each of these documents. Each committee member had a similar opportunity to express himself regarding the committee records as well.

#### *Deliberation and Conclusions of the Standing Committees*

The first major steps in the development of a constitutional provision were the deliberations—committee hearings and meetings<sup>43</sup> and conclusions of the standing committees. The tapes and minutes of these meetings, copies of testimony submitted at hearings, committee staff memoranda, and successive drafts of provisions are filed in the Illinois State Historical Library. Since the expense of transcribing the tapes is prohibitive and the quality of organization varies with committees, the records of committee deliberations are for all practical purposes unavailable to a supreme court with a heavy docket.<sup>44</sup> It is no surprise that

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43. See text accompanying notes 7-11, *supra*.

44. Some committee records are in excellent shape, notably those of the Committees on Revenue and Finance, and the Bill of Rights. Others, particularly those of the Committee on Local Government, are sadly incomplete. It simply is not worth a law clerk's time to rummage through most committee records.

the supreme court has never mentioned the committee records in its opinions.

The formal committee reports, on the other hand, are published in the official *Record of Proceedings* and are often very informative. The court has mentioned the reports of six substantive committees in nineteen separate opinions.<sup>45</sup> In seven of these opinions<sup>46</sup> the court refers merely to the constitutional language proposed by a substantive committee, not to any comments in the report itself. In the remaining twelve opinions the court relies at least to some extent upon the committee's explanations of its proposal and its comments on why it chose that particular solution to a given problem.

It is difficult to gauge the importance of committee reports in the court's deliberations. It is apparent from the tone of the opinions that the justices rely more heavily upon the report to the Local Government article than that of any other and that they rely more heavily upon a committee report when considering a case of first impression than when deciding an issue on a subject with which they have dealt previously. It does seem fairly certain that the court will attach great weight to a committee report which deals directly and specifically with the issue at hand.

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45. The report of the Committee on Local Government has been mentioned in nine cases, the reports of the Committee on the Legislature and the Committee on Revenue and Finance in three cases, the reports of the Committee on Education and the Committee on Bill of Rights in three cases, and the report of the Committee on General Government once. The cases in which these references appear are: *Hoskins v. Walker*, 57 Ill. 2d 503, 511-12, 315 N.E.2d 25, 29 (1974); *Paper Supply Co. v. City of Chicago*, 57 Ill. 2d 553, 559-60, 317 N.E.2d 3, 6 (1974); *Illinois State Employees Ass'n v. Walker*, 57 Ill. 2d 512, 522-23, 315 N.E.2d 9, 15 (1974); *La Salle Nat'l Bank v. County of Cook*, 57 Ill. 2d 318, 325-26, 312 N.E.2d 252, 256 (1974); *Fuehrmeyer v. City of Chicago*, 57 Ill. 2d 193, 199-200, 311 N.E.2d 116, 120 (1974); *City of Waukegan v. Pollution Control Bd.*, 57 Ill. 2d 170, 173, 311 N.E.2d 146, 147-48 (1974); *Peters v. City of Springfield*, 57 Ill. 2d 142, 146, 149, 311 N.E.2d 107, 109, 111 (1974); *Gilligan v. Korzen*, 56 Ill. 2d 387, 393, 308 N.E.2d 613, 616 (1974) (dissenting opinion); *Elk Grove Eng'r Co. v. Korzen*, 55 Ill. 2d 393, 399-401, 304 N.E.2d 65, 69 (1973); *Blase v. State*, 55 Ill. 2d 94, 98-99, 302 N.E.2d 46, 48 (1973); *Rozner v. Korshak*, 55 Ill. 2d 430, 433, 303 N.E.2d 389, 390 (1973); *Board of Educ. v. Bakalis*, 54 Ill. 2d 448, 462-64, 299 N.E.2d 737, 744-45 (1973); *Oak Park Fed. Sav. & Loan Ass'n v. Village of Oak Park*, 54 Ill. 2d 200, 206, 208, 296 N.E.2d 344, 348, 349 (1973) (dissenting opinion); *People ex rel. City of Salem v. McMackin*, 53 Ill. 2d 347, 372, 291 N.E.2d 807, 822 (1972); *City of Evanston v. County of Cook*, 53 Ill. 2d 312, 316-21, 291 N.E.2d 823, 825-28 (1972); *People v. Kent*, 54 Ill. 2d 161, 163, 295 N.E.2d 710, 711 (1972); *S. Bloom, Inc. v. Korshak*, 52 Ill. 2d 56, 59, 60, 284 N.E.2d 257, 260 (1972); *Bridgewater v. Hotz*, 51 Ill. 2d 103, 110, 281 N.E.2d 317, 321 (1972); *People ex rel. Scott v. Grivetti*, 50 Ill. 2d 156, 161, 277 N.E.2d 881, 885 (1971). For further details, see the Chart of Opinions.

46. *Illinois State Employees Ass'n v. Walker*, 57 Ill. 2d 512, 315 N.E.2d 9 (1974); *Gilligan v. Korzen*, 56 Ill. 2d 387, 308 N.E.2d 613 (1974); *People ex rel. City of Salem v. McMackin*, 53 Ill. 2d 347, 291 N.E.2d 807 (1972); *People v. Kent*, 54 Ill. 2d 161, 295 N.E.2d 710 (1972); *Bridgewater v. Hotz*, 51 Ill. 2d 103, 281 N.E.2d 317 (1972); *People ex rel. Scott v. Grivetti*, 50 Ill. 2d 156, 277 N.E.2d 881 (1971).

A good example of all three instances is *S. Bloom, Inc. v. Korshak*,<sup>47</sup> the first home rule case. Ryan, plaintiff in a companion case to *S. Bloom, Inc.*, had argued that Chicago's use tax on cigarettes was invalid, based upon the premise that article VII, section 6(e) is an exception to the broad taxing power granted home rule units in article VII, section 6(a). The court, giving this construction short shrift, stated:

The contention cannot be sustained. The powers of home rule units are to be liberally construed (section 6 (m) ), and it would be unreasonable to attempt to read limitations into section 6(e) beyond taxes which are 'upon or measured by income or earnings or upon occupations' and thus contradict the broad authority given home rule units to tax under 6(a). That no such unreasonable interpretation should be given 6(e) is evidenced by Local Government Committee Report, Illinois Constitutional Convention 1969-70, pp. 81-82. The report, in discussing the revenue provisions, cites sales and use taxes on cigarettes and hotel rooms as examples of local taxes empowered under the article.<sup>48</sup>

Apparently the court based its conclusion upon: (1) the effect of the liberal construction mandate in article VII, section 6(m); (2) reason; and (3) the specific answer to the question in the committee report. Clearly the committee report made a deep impression upon the justices in this instance.<sup>49</sup>

The reports prepared in conjunction with the proposals of the Committee on Style, Drafting and Submission present an entirely different challenge to the court. Unlike the substantive committees, SDS never created any language anew—it merely re-drafted the convention's product. In consequence, its reports do not explain the solution arrived at as much as they question the convention's intent regarding an ambiguous provision. In

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47. 52 Ill. 2d 56, 284 N.E.2d 257 (1972).

48. *Id.* at 59, 284 N.E.2d at 260.

49. In *City of Evanston v. County of Cook*, 53 Ill. 2d 312, 316, 291 N.E.2d 823, 825 (1972), the court noted that the Local Government Committee report, *Committee Proposals, Member Proposals*, vol. VII at 1591, 1656-57, had mentioned the property tax as one of a series of taxes available under home rule powers, to refute the claim that only non-property taxes fall within article VII, section 6(a). Other cases where the court appears to rely heavily upon the committee reports include: *Hoskins v. Walker*, 57 Ill. 2d 503, 511-12, 315 N.E.2d 25, 29 (1974), where the court cites the Education Committee report's statement that "existing judicial districts" could be used to determine the regions from which members of the State Board of Education could be selected, thus neatly disposing of plaintiff's contention that judicial districts were an invalid unit; *La Salle Nat'l Bank v. County of Cook*, 57 Ill. 2d 318, 325-26, 312 N.E.2d 252, 256 (1974), where the court cites the Revenue and Finance Committee's statement that any qualifying county may *continue* to classify real property without prior approval of the General Assembly, thus specifically grandfathering Cook County's practices and disposing exactly of the constitutional issue presented; and *City of Waukegan v. Pollution Control Bd.*, 57 Ill. 2d 170, 173, 311 N.E.2d 146, 147-48 (1974), where the court cites the General Government Committee's statement that its change in the language of the old separation of powers provision did not reflect an intent to change the case law.



the five opinions citing the SDS proposals and reports,<sup>50</sup> the court cited the committee's proposed language in four cases, primarily in the course of outlining the history of a provision.<sup>51</sup> In three cases,<sup>52</sup> however, the court discussed the SDS report as well.

The court appears to have placed the greatest reliance upon an SDS report in *Elk Grove Engineering Co. v. Korzen*,<sup>53</sup> in which a primary issue was whether the convention had intended to mandate the General Assembly to replace any abolished *ad valorem* personal property tax concurrently with the abolition. The majority of the court answered the question affirmatively and substantiated its answer by pointing out that SDS's report to that section had raised only two questions about the provision, neither of which touched on the issue at hand:

Demonstrating that in the minds of the delegates the matters appear to have been clearly settled is the fact that in the explanations contained in its final report to the convention the Committee on Style, Drafting and Submission raised only the following questions . . . .<sup>54</sup>

The opinion noted further that the debates on SDS's report did not indicate any questions or comments from the floor on this problem.<sup>55</sup>

*Elk Grove Engineering Co.* is an excellent example of how *not* to use a committee report. By definition, the SDS Committee and *only* the SDS Committee played a role in drafting the report. Obviously the intent of the remaining 101 delegates cannot be incorporated into a document written by, at most, fifteen delegates and two staff counsel. This is, incidentally, an equally good example of how not to rely upon the floor debates of a committee report. The opinion relies upon the delegates' failure to raise the concurrent replacement issue during the debates on the report. The fact is that the psychology of deliberative bodies is such that when a report is being considered, only the contents

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50. *La Salle Nat'l Bank v. County of Cook*, 57 Ill. 2d 318, 312 N.E.2d 252 (1974); *Johnson v. State Bd. of Elections*, 57 Ill. 2d 205, 311 N.E.2d 123 (1974); *Elk Grove Eng'r v. Korzen*, 55 Ill. 2d 393, 304 N.E.2d 65 (1973); *Oak Park Fed. Sav. & Loan Ass'n v. Village of Oak Park*, 54 Ill. 2d 200, 296 N.E.2d 344 (1973); *People v. Kent*, 54 Ill. 2d 161, 295 N.E.2d 710 (1972).

51. *La Salle Nat'l Bank v. County of Cook*, 57 Ill. 2d at 329, 312 N.E.2d at 258; *Elk Grove Eng'r Co. v. Korzen*, 55 Ill. 2d at 402, 407, 304 N.E.2d at 70, 73; *Oak Park Fed. Sav. & Loan Ass'n v. Village of Oak Park*, 54 Ill. 2d at 208, 296 N.E.2d at 349; *People v. Kent*, 54 Ill. 2d at 163, 295 N.E.2d at 711.

52. *Johnson v. State Bd. of Elections*, 57 Ill. 2d at 208, 311 N.E.2d at 124; *Elk Grove Eng'r Co. v. Korzen*, 55 Ill. 2d at 402-03, 304 N.E.2d at 70-71; *People v. Kent*, 54 Ill. 2d at 163, 295 N.E.2d at 711-12.

53. 55 Ill. 2d 393, 402-03, 304 N.E.2d 65, 70-71 (1973).

54. *Id.* at 402, 304 N.E.2d at 70.

55. *Id.* at 403, 304 N.E.2d at 71.

of the report are usually considered. A committee of the whole does not operate with the less-organized informality of a normal committee, and spontaneous or peripheral comments or questions simply are not made as frequently as one might expect. The attention of the body is necessarily riveted upon the report being debated, and imaginative questions are seldom raised on the floor *sua sponte*. If a member has a sudden inspiration which is not in the mainstream of the report, he usually mentions it privately to a few other members, and such discussions, while they would be an excellent source of the convention's true intent, are unfortunately not recorded.

The *Elk Grove Engineering Co.* case illustrates why the court should be very cautious in using committee reports to ascertain the purpose of the whole convention. First, the whole convention never adopted a substantive or SDS committee report; it voted on the text of the section and read the reports merely as useful background material. Second, the procedure for drafting and approving committee reports varied greatly among committees and even among different reports issued by the same committee. All committees had their staff counsel or special consultant write the first draft of each majority report. Sometimes the counsel bore full responsibility for the thoroughness and accuracy of statements of committee purpose in the report. In the case of the Committee on Revenue and Finance, on the other hand, the delegates played an active role in writing the reports. In fact, the chairman appointed a subcommittee to oversee the staff's drafting of the Finance article report.

A much more serious problem arises from an apparent failure of some committee members to read their own reports thoroughly. In their haste to meet the printer's deadline, they formally approved the reports after only a cursory reading. The Committee on Revenue and Finance, by contrast, voted on the report to each section of each majority report, and some members even noted dissents to parts of the Revenue article report.<sup>56</sup>

The minority reports were normally the sole handiwork of the dissenters although occasionally a staff member volunteered to assist them. Oddly enough, the minority reports therefore reflect the minority's own intent more frequently than majority reports reflect the majority's.

The third reason that the court should be reluctant to rely heavily upon any committee reports is that the delegates and staff who wrote them were well aware that they were writing not just for their colleagues, but for the public, for the press, and, above all, for the future reviewing courts. Consequently,

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56. *Committee Proposals, Member Proposals*, vol. VII at 2100, 2128.

the comments on controversial sections may sometimes be more artful than elucidating.

A good example is the Committee on Education's report on the parochiaid issue.<sup>57</sup> As the committee heard passionate witnesses on all sides of this question, it apparently became convinced that it would be fatal to the new constitution's chances for adoption if the document deviated by so much as a comma from the prohibition of using public funds for sectarian purposes provision of article VIII, section 3 of the 1870 Constitution.<sup>58</sup> The committee report, which masterfully summarized the case history of the prohibition clause and stated the arguments for retaining the status quo, is not a clear indication of what any delegate on that committee thought the prohibition meant. Obviously, this vagueness of both text and report was part of a deliberate attempt to achieve a political result (adoption of the new constitution) while sacrificing candor and clarity in the record. As Justice Ryan pointed out in his concurrence in *Board of Education v. Bakalis*: "[T]he convention attempted to sidestep the issue . . ."<sup>59</sup> Clearly, that report should only be read to indicate an absence of intent to change the law.

### *The Floor Proceedings*

The next major step in the development of a section was the consideration of the proposal on the floor of the convention. The procedures known as First, Second, and Third Reading comprised the debates. The verbatim transcript of the debates is the hardcore source of the convention's intent. If any part of the record truly shows the constitutional intent, it is the public statements of delegates on the floor.

It is no surprise, therefore, that the Illinois Supreme Court has cited the floor proceedings more frequently than any source except the committee proposals and reports. The eighteen opinions which have cited the debates may be divided into five groups based upon their use of the transcripts: those mentioning the debates but not discussing them in detail; those discussing the explanation of a proposal by its sponsor; those discussing the importance of answers to questions from the floor; those discussing colloquies and comments; and those discussing the importance of the adoption or defeat of an amendment.

Five opinions merely mention the debates in the course of detailing the history of a provision or in establishing the general

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57. *Committee Proposals*, vol. VI at 249-54.

58. *Id.* at 253.

59. 54 Ill. 2d 448, 476, 299 N.E.2d 737, 751 (1973) (concurring opinion).

purposes and attitudes of the delegates.<sup>60</sup> The remaining thirteen opinions use the debates in at least one of the four ways enumerated. One of the most reliable sources of the convention's intent in adopting a proposal is a sponsor's explanation of the text. Presumably the chief sponsor (or a main co-sponsor) of a new provision had the best-defined ideas on the meaning of that proposal.<sup>61</sup>

The best example of the court's reliance upon the sponsor's explanation of a section is found in *Blase v. State*.<sup>62</sup> Plaintiff contended that the last sentence of article X, section 1 imposed an enforceable duty on the state. The sentence reads: "The State has the primary responsibility for financing the system of public education." Justice Schaefer quoted Delegate Dawn Clark Netsch, the sponsor of the amendment which added that sentence, who explained:

I concede that the language I have put down is, in the Convention's usual fashion, hortatory. I do not believe that it states a legally enforceable duty on the part of the state through the General Assembly or otherwise. I do not intend that it state a legally enforceable duty.<sup>63</sup>

Given such a description by the author of the sentence, the court had little difficulty in holding the mandate unenforceable.

The third way in which the court uses the transcript of the floor proceedings is through observation of the questions and answers on the floor. Customarily the sponsor of a proposal yielded to questions from other delegates. The transcript is replete with these question hours, which often yielded surprising answers and revealed that even members of a sponsor's committee might disagree with him about the meaning of a committee proposal. Of the three opinions discussing the questions and answers,<sup>64</sup> the most famous fateful rejoinder is found in *People*

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60. *Fuehrmeyer v. City of Chicago*, 57 Ill. 2d 193, 200, 311 N.E.2d 116, 120 (1974); *Peters v. City of Springfield*, 57 Ill. 2d 142, 147, 150-51, 311 N.E.2d 107, 110, 112 (1974); *Board of Educ. v. Bakalis*, 54 Ill. 2d 448, 464, 476, 299 N.E.2d 737, 745, 751 (1973); *Stein v. Howlett*, 52 Ill. 2d 570, 586, 289 N.E.2d 409, 418 (1972); *Bridgewater v. Hotz*, 51 Ill. 2d 103, 108, 281 N.E.2d 317, 321 (1972).

61. The court has cited a sponsor's explanation of a text, as opposed to a sponsor's general statement of purpose, three times. *Johnson v. State Bd. of Elections*, 57 Ill. 2d 205, 208, 311 N.E.2d 123, 124 (1974); *Blase v. State*, 55 Ill. 2d 94, 99-100, 302 N.E.2d 46, 49 (1973); *People ex rel. Scott v. Grivetti*, 50 Ill. 2d 156, 161-62, 277 N.E.2d 881, 885 (1971).

62. 55 Ill. 2d 94, 99-100, 302 N.E.2d 46, 49 (1973).

63. *Verbatim Transcripts*, vol. V at 4145.

64. *Oak Park Fed. Sav. & Loan Ass'n v. Village of Oak Park*, 54 Ill. 2d 200, 209, 296 N.E.2d 344, 349-50 (1973) (dissenting opinion); *City of Evanston v. County of Cook*, 53 Ill. 2d 301, 321-22, 291 N.E.2d 823, 827-28 (1972) (dissenting opinion); *People ex rel. Klinger v. Howlett*, 50 Ill. 2d 242, 249, 278 N.E.2d 84, 88 (1972).

*ex rel. Klinger v. Howlett*.<sup>65</sup> An important issue was whether the Governor's new amendatory veto power allowed him to suggest substantive changes in bills or only technical, nonsubstantive changes. Justice Schaefer reported this exchange between Delegate Frank Orlando, the member of the Executive Committee charged with presenting the section, and Delegate Dawn Clark Netsch:

Our examination of the records of the Convention shows that the following terms were used to describe the kinds of 'specific recommendations for change' that were contemplated: 'corrections;' 'precise corrections;' 'technical flaws;' 'simple deletions;' 'to clean up the language.' In response to the following question put by Delegate Netsch, however, 'Then was it the Committee's thought that the conditional veto would be available only to correct technical errors?' a committee member answered, 'No, Ma'am.'<sup>66</sup>

Based upon this single conversation, the court held that the Governor had the power to make more than technical changes, although it went on to limit that power. What is noteworthy is that the opinion relies upon one sponsor's answer, to the virtual exclusion of the comments by other delegates, even those of another committee member.<sup>67</sup>

The fourth group of cases citing the debates are those which use the comments and arguments regarding a particular proposal—the true debates, in a narrow sense of the term. Arguably, over half of the opinions citing the transcript mention the true debates, but only four clearly rely upon these arguments.<sup>68</sup>

The most instructive example of the use of the debates is found in *People ex rel. Scott v. Grivetti*.<sup>69</sup> In this instance the court discovered that the delegates often made the most incisive comments on a section when they were considering amendments to it. One issue in *Grivetti* was whether the four leaders of the General Assembly could appoint their own aides as public members of the commission to redistrict the legislature. Originally the convention had not included public members on the commis-

65. 50 Ill. 2d 242, 249, 278 N.E.2d 84, 88 (1972).

66. *Id.*

67. Most of the terms used by Justice Schaefer to describe the amendatory veto were uttered by Delegate Ronald C. Smith, also a member of the Committee on the Executive, who was assisting Delegate Orlando in answering Delegate Netsch's questions. *Verbatim Transcripts*, vol. III at 1356.

68. *Elk Grove Eng'r Co. v. Korzen*, 55 Ill. 2d 393, 403, 304 N.E.2d 65, 71 (1973), in which the court discussed the importance of the absence of debate, the situation discussed in text accompanying notes 53-56, *supra*; *Oak Park Fed. Sav. & Loan Ass'n v. Village of Oak Park*, 54 Ill. 2d 200, 209, 296 N.E.2d 344, 349-50 (1973) (dissenting opinion); *People ex rel. City of Salem v. McMackin*, 53 Ill. 2d 347, 373-74, 291 N.E.2d 807, 822-23 (1972) (dissenting opinion); *People ex rel. Scott v. Grivetti*, 50 Ill. 2d 156, 162, 277 N.E.2d 881, 885 (1971).

69. 50 Ill. 2d 156, 161-62, 277 N.E.2d 881, 885 (1971).

sion, but it later amended the section to provide for the appointment of four non-legislators to sit on the commission along with four legislators. Clearly, the three legislative aides appointed by three of the four leaders were, in the strict sense, non-legislators and therefore public members. The court decided, however, that the convention had intended the non-legislators to be people unconnected with the legislature.

The debates<sup>70</sup> show that three delegates spoke on the amendment beside its sponsor, Delegate Louis J. Perona. The court cited the two delegates who spoke for the amendment (other than Delegate Perona) as evidence that the convention intended that the non-legislator members be people unrelated to the legislature:

Other delegates in the course of their arguments supporting the subsequently adopted amendment stated that the inclusion of the four public members would 'inject a little new blood, so to speak, into the process of reapportionment' (Delegate Evans at 341); 'I think it's rather ridiculous to have a reapportionment commission which acts after the legislature has failed to reapportion, which is wholly legislative in nature' and the amendment would 'put some life back in the process' (Delegate Sommerschild at 342).<sup>71</sup>

The most curious aspect of the court's use of the comments on this question is that it failed to cite the remaining debater and sole opposing speaker, Delegate Paul F. Elward. This is particularly odd, because his comments seem to be even *more* supportive of the court's conclusion as to constitutional intent than those of the two proponents. Delegate Elward opposed the amendment partly because he feared that it would result in the appointment of

some businessman from Freeport or Galena who may be a member of [a legislator's party] and who may have been appointed by the party leaders, but who is not involved in the legislature, doesn't know the problems of the different districts, doesn't know the wishes of the members [of the General Assembly] and their constituents with respect to the boundary problems and situations.<sup>72</sup>

It is impossible to discover how and why the court overlooked these discerning comments.

The *Grivetti* case is also a fine example of the last and perhaps most significant use of the debates—the importance of the acceptance or rejection of amendments. The amending process was the only time that the full convention drafted changes in

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70. *Verbatim Transcripts*, vol. V at 4072-73.

71. 50 Ill. 2d at 162, 277 N.E.2d at 885.

72. *Verbatim Transcripts*, vol. V at 4073, which also contains Delegates Evans' and Sommerschild's remarks.

the text itself; all other drafting was done by committees. Of the five Illinois Supreme Court cases specifically dealing with the effect of an amendment, only *Grivetti* deals with the effect of an adopted amendment. As the court perceived, the delegates, by the very act of adopting the Perona amendment, intended to change the composition of the commission.<sup>73</sup>

The remaining four cases deal with amendments that failed to be adopted.<sup>74</sup> The fact that an amendment was defeated is sometimes more indicative of constitutional intent than the fact that one was passed. That is because the circumstances of defeat of a narrowly-drawn amendment to a broadly-drawn section usually show that the framers did *not* want to hamstring future courts and legislatures. Moreover, a vague and somewhat ambiguous section is sometimes easier to sell to a deliberative body, such as Con-Con, and to the public. The history of the parochial aid issue (article X, section 3) is a good example of such political maneuverings.<sup>75</sup>

The failure of an amendment to the Revenue article, discussed in *La Salle National Bank v. County of Cook*,<sup>76</sup> is an excellent example of the effect of the failure of a specific amendment. One of the most controversial and political issues at the convention was the Cook County assessor's practice of classifying real estate for taxation purposes. The convention adopted the following general language as part of article IX, section 4(b):

Subject to such limitations as the General Assembly may hereafter prescribe by law, counties with a population of more than 200,000 may classify or to [sic] continue to classify real property for purposes of taxation.<sup>77</sup>

After the effective date of the constitution, *La Salle National Bank* filed suit contending that only the corporate authority of a county—in this case the Cook County Board of Commissioners—had the constitutional power to classify. The court noted that Delegate John M. Karns had proposed the amendment to the committee proposal, the amendment having established the pertinent features of the section eventually adopted.<sup>78</sup> The court cited a question and answer to establish that Delegate Karns thought his amendment allowed Cook County's assessor to con-

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73. *Id.* At least the fifty-four delegates who voted for it did.

74. *Paper Supply Co. v. City of Chicago*, 57 Ill. 2d 553, 563-64, 317 N.E.2d 3, 8-9 (1974); *Illinois State Employee's Ass'n v. Walker*, 57 Ill. 2d 512, 523, 315 N.E.2d 9, 15 (1974); *La Salle Nat'l Bank v. County of Cook*, 57 Ill. 2d 318, 326-28, 312 N.E.2d 252, 256-57 (1974); *People ex rel. City of Salem v. McMackin*, 53 Ill. 2d 347, 373-74, 291 N.E.2d 807, 822-23 (1972).

75. See text accompanying notes 57-59, *supra*.

76. 57 Ill. 2d 318, 326-28, 312 N.E.2d 252, 256-57 (1974).

77. ILL. CONST. art. IX, § 4(b) (1970).

78. 57 Ill. 2d at 326-27, 312 N.E.2d at 257.

tinùe his classification practices.<sup>79</sup> Delegate Dawn Clark Netsch then offered an amendment specifying that only a county board could classify, and the amendment was defeated.<sup>80</sup> The court construed the failure of the Netsch amendment as follows:

It appears from these proceedings that there was a diligent attempt to incorporate into section 4 (b) of article IX a specific requirement that classification of real property be made by the governing body of the county and not by an assessor. It is also clear that the convention was aware of the practices in Cook County, and without such a provision the language of the original proposal and of the Karns amendment would permit the continuation of these practices which permitted the Cook County assessor to classify real property for purposes of taxation. The attempt to incorporate these restrictions, though originally successful, ultimately failed. The section . . . must be construed as authorizing the continuance of classification by the assessor in Cook County.<sup>81</sup>

In short, the Illinois Supreme Court's use of the transcript of the convention proceedings indicates a great willingness to consult the debates but a great reluctance to rely openly on them. A court which cites the debates in about half its Illinois constitutional opinions obviously reads the debates before tackling any serious constitutional issue. On the other hand, a court which does not discuss the debates in more than thirteen of its first thirty-three cases is probably not relying upon them excessively. A serious question exists concerning the court's perception of the nature of the debates, however. As the discussions of *People ex rel. Scott v. Grivetti*<sup>82</sup> and *People ex rel. Klinger v. Howlett*<sup>83</sup> indicate, the court can sometimes be very selective in deciding upon which parts of the debates it will quote and upon which it will rely. Such selectivity is inevitable, but the court's choice of passages sometimes leaves something to be desired.

#### *The Address to the People and the Official Explanation*

Two other portions of the intrinsic record merit discussion: the Address to the People and the Official Explanation. Both documents are significant, because they were the only two parts of the record generally available to the public before the referendum held on December 15, 1970. Therefore, both can arguably be considered part of the public's constitutional intent in con-

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79. *Id.* at 327, 312 N.E.2d at 257.

80. *Id.*

81. *Id.* at 327-28, 312 N.E.2d at 257.

82. 50 Ill. 2d 156, 277 N.E.2d 881 (1971). See text accompany notes 69-73, *supra*.

83. 50 Ill. 2d 242, 278 N.E.2d 84 (1972). See text accompanying notes 65-67, *supra*.



sidering the question of adoption. It is often forgotten that the constitution is really the handiwork of two separate framers—the delegates, who prepared the constitution for the referendum, and the electorate, who adopted the convention's proposal.

No one denies that the delegates were always very sensitive to the political reality that even the finest proposed constitution was useless unless it was adopted and effective. The debates are replete with the delegates' ominous references to Fourth Reading, the convention's nickname for the inevitable referendum. Privately, they often commented that every proposal had to be sold to the delegates on the basis that one, it was a good provision, and two, it would help to pass the whole constitution.

Since the overwhelming majority of the delegates wanted to be part of a winning constitution, they wanted to do everything they could to insure a favorable vote at the referendum. This presented a dilemma when they considered the Address to the People and the Official Explanation. On the one hand, the convention was bound to describe truthfully the differences between the new document and the 1870 Constitution.<sup>84</sup> On the other hand, no one wanted to prejudice the electorate by revealing the delegates' disputes over the meaning of several sections.<sup>85</sup>

The chief difficulty with the new, as opposed to the revised, sections was that the words of the text often had no clearly established definitions. When the convention established a State Board of Elections, it stated that the board was to "have general supervision over the administration of the registration and election laws throughout the State."<sup>86</sup> This language was a compromise between proponents of a strong board and advocates of a weak board. When the Section 13 Committee discussed the meaning of "general supervision" the arguments were so intense that a stalemate resulted. The deadlock was broken by the suggestion to say merely: "This section is new and self-explanatory"—surely a wet-dishrag definition, if there ever was one. This compromise definition was duly sent to the voters.<sup>87</sup>

During the early meetings of the Section 13 Committee, no one mentioned the possibility that the courts might rely upon the explanations as a source of constitutional intent. Finally, one day when the indefatigable Delegate Netsch had joined the committee deliberations, someone commented that it was a good thing that no court would ever read the explanations. She

84. See discussion of the making of this part of the record accompanying notes 14-16, *supra*.

85. Here I am speaking primarily of the Section 13 Committee, which I staffed. I never attended meetings of the Committee on the Address, but apparently they experienced similar difficulties.

86. ILL. CONST. art. III, § 5 (1970).

87. *Committee Proposals, Member Proposals*, vol. VII at 2693.

wrinkled her brow and said: "Oh, I wouldn't be too sure about that; they might take them seriously."

She was right. The Illinois Supreme Court has referred to the Address to the People twice<sup>88</sup> and to the Official Explanation five times.<sup>89</sup>

The first time the explanations appear in an opinion is in *Kanellos v. County of Cook*.<sup>90</sup> Justice Kluczynski noted that the committee proposals and debates indicated that the convention initially intended the General Assembly to have the power to require a referendum on home rule counties' debt. Apparently the specific grant of this power was lost between First and Third Readings, because article VII, section 6 certainly is not clear on this point. The justice resolved the confusion by saying:

The official explanation sent to the voters prior to ratification of the 1970 constitution . . . stated in pertinent part: 'Home Rule counties may incur debt subject to limitation or referendum requirements imposed by the General Assembly.'<sup>91</sup>

The most thorough discussion of an official explanation occurs in *Board of Education v. Bakalis*.<sup>92</sup> Justice Ryan in his special concurrence described his dissatisfaction with the Committee on Education's waffling stand on parochialism.<sup>93</sup> He then stated:

This questionable scheme was furthered by the official explanation which the convention adopted for the information of the voters (see Proposed 1970 Constitution-Official Text with Explanation, 7 Record of Proceedings, Sixth Illinois Constitutional Convention 2742). If it was the intention of the delegates that this section have the same meaning as the first amendment, why did they not say this in the explanation of this section? Instead, the official explanation states: 'This is exactly the same as Article VIII, Section 3 of the 1870 Constitution.'<sup>94</sup>

Justice Ryan then made a statement which fairly summarizes the reason why courts look to the Official Explanation sent to the voters:

It was the vote of the People which was required to bring this constitution into existence. I am therefore concerned only with what the voters intended when they voted for the adoption of the constitution, and that intent must be gathered from the clear

88. *Illinois State Employees Ass'n v. Walker*, 57 Ill. 2d 512, 534, 315 N.E.2d 9, 21 (1974) (dissenting opinion); *Elk Grove Eng'r Co. v. Korzen*, 55 Ill. 2d 393, 408-09, 304 N.E.2d 65, 74 (1973) (dissenting opinion).

89. *Paper Supply Co. v. City of Chicago*, 57 Ill. 2d 553, 565-66, 317 N.E.2d 3, 9-10 (1974); *Illinois State Employees Ass'n v. Walker*, 57 Ill.2d 512, 534, 315 N.E.2d 9, 21 (1974) (dissenting opinion); *Elk Grove Eng'r Co. v. Korzen*, 55 Ill. 2d 393, 408-09 304 N.E.2d 65, 74 (1973); *Board of Educ. v. Bakalis*, 54 Ill. 2d 448, 476-77, 299 N.E.2d 737, 751-52 (1973) (concurring opinion); *Kanellos v. County of Cook*, 53 Ill. 2d 161, 165, 290 N.E.2d 240, 243 (1972).

90. 53 Ill. 2d 161, 165, 290 N.E.2d 240, 243 (1972).

91. *Id.*

92. 54 Ill. 2d 448, 476-77, 299 N.E.2d 737, 751 (1973).

93. See text accompanying notes 57-59, *supra*.

94. 54 Ill. 2d at 476, 299 N.E.2d at 751.

and specific language of the instrument. I am not concerned with the intent of the delegates to the convention, because I fear that their intention was to evade this controversial issue and to be less than candid with the electorate.<sup>95</sup>

These are hard words, but they explain why the courts may begin looking to the Official Explanation and possibly even to such extrinsic documents as newspaper articles and other contemporaneous utterances which might have swayed the electorate during the 1970 campaign for adoption.

#### WHERE AND WHY

By now it should be obvious that even the devil could probably quote the Con-Con record to his own use. Nonetheless the Illinois Supreme Court has embarked on the course of looking behind the text to the record in four of every five cases.<sup>96</sup> The record, ambiguous and unreliable as it can be, is clearly a source which the justices cannot resist consulting. The proceedings do, after all, show the process by which 116 reasonably intelligent and dedicated people approached the enormous problems of state and local government in the last third of the twentieth century. The court could—and may in time—use the record and the documents available to the delegates as a sort of “Brandeis brief,” a collection of data and opinions which form the intellectual background and historical and social context of the convention. The court ought to avoid using the record as a crutch or a substitute for close analysis of the constitutional text itself. The delegates, after all, submitted the text, not the record, to the electorate at the referendum, and the people voted upon the text, not the Address or the Official Explanation. There is an anguished comment attributed to Justice Felix Frankfurter to the effect that only when the legislative history is unclear does a court seem to look at the words of a statute.<sup>97</sup> May this remark serve as a warning.

Some readers—even Illinois practitioners—may wonder why it could be important to their practice to know how the Illinois Supreme Court uses constitutional history. Aside from the fact that the new constitution affects almost every Illinois lawyer’s practice, it also mandates the General Assembly to keep a transcript of its debates.<sup>98</sup> This provision allows voters to read legislative debates and judges to ascertain the legislative intent behind each statute in litigation. As the Illinois Supreme Court

95. *Id.* at 477, 299 N.E.2d at 751-52.

96. See Table of Cases Recorded by Chronological Order.

97. Frankfurter, *Some Reflections on the Reading of Statutes*, 47 COLUM. L. REV. 527 (1947).

98. ILL. CONST. art. IV, § 7(b) (1970).

continues to rely upon the constitutional record to construe sections of the 1970 Constitution, it is inevitable that the legislature will adopt the same strategic maneuvers, including deliberately making a record for court cases, that the convention used. The legislative transcript will then join the convention transcript in adding spice, if not always insight, to litigation in the years to come.

#### *Explanation of Chart of Cases*

The chart summarizes the development of the court's use of the convention record in the cases deciding questions of constitutional construction so far. The cases are listed in the chronological order in which opinions were filed. Page numbers refer to the Official Reports.

Column 1 states the short name of the case, the date on which the opinion was filed, the justice writing the majority opinion and, in parentheses, the main constitutional topics discussed.

Column 2 indicates whether there were concurring or dissenting opinions and, if so, by whom and where found.

Column 3 indicates casual references to the convention record in general, with no attempt made to be specific.

Column 4 denotes references to either a committee proposal or a report to such a proposal. The name of the committee is abbreviated, *e.g.*, "SDS" for the "Committee on Style, Drafting and Submission."

Column 5 indicates references to the "debates"—the proceedings of the full convention.

Column 6 denotes mention of the convention-approved Address to the People and Explanation of the Proposed Constitution distributed to the electorate during the ratification campaign.

Column 7 lists references to extrinsic sources. "Helman & Whalen" is short for the Constitutional Commentary prepared by Messrs. Helman and Whalen for the Smith-Hurd annotated edition of the constitution. "Braden & Cohn" is short for THE ILLINOIS CONSTITUTION: AN ANNOTATED AND COMPARATIVE ANALYSIS written by two law professors. Citations to other articles are self-explanatory.

Name, Date, Justice	Concurrence or Dissent	History Mentioned	Committee Proposals & Reports	Floor Debates	Address & Explanation	Other Writing
1. <i>P. ex rel. Ogilvie v. Lewis</i> op filed 10-4-71 Underwood (state debt & finance) 49 Ill. 2d 476	—	—	—	—	—	—
2. <i>P. ex rel. Scott v. Grivetti</i> op filed 10-17-71 per curiam (reapportionment of legislature) 50 Ill. 2d 156	dissent in part & concur in part: Underwood 168-72	161, 162	161 (Leg)	161, 162	—	—
3. <i>Bridgewater v. Hotz</i> op filed 1-13-72 Goldenherh (elections & special legislation) 51 Ill. 2d 103	—	108-10	110 (Leg)	108	—	—
4. <i>P. ex rel. Klinger v. Howlett</i> op filed 1-17-72 Schaefer (effective date & amendatory veto) 50 Ill. 2d 242	dissent in part & concur in part: Goldenherh & Kluczynski 249-50	249	—	249	—	—
5. <i>Grace v. Howlett</i> op filed 4-17-72 Schaefer (special legislation, trials de novo & judicial fee officers) 51 Ill. 2d 478	Underwood dissents 491-513 & Davis concurs in part & dissents in part 513	dissent: 512	—	—	—	487: Helman & Whalen 512: dissent Braden & Cohn
6. <i>Doran v. Cullerton</i> op filed 5-22-72 Kluczynski concur in part; (homestead exemption & transition) 51 Ill. 2d 553	dissent in part & concur in part: Ryan & Goldenherh 561-62	—	—	—	—	—

Name, Date, Justice	Concurrence or Dissent	History Mentioned	Committee Proposals & Reports	Floor Debates	Address & Explanation	Other Writing
7. <i>S. Bloom, Inc. v. Korshak</i> op filed 5-22-72 Ward (home rule & tax classification) 52 Ill. 2d 56	—	59, 60	59 (LocGovt) 60 (Rev&Fin)	—	—	—
8. <i>Stein v. Howlett</i> op filed 6-23-72 Davis (eco- nomic interest state- ment, privacy, ger- maneness, ex post facto & Att'y General) 52 Ill. 2d 570	—	586	—	582, 583	—	586: Braden & Cohn
9. <i>P. v. Kent</i> op filed 11-30-72 Schaefer (pre- liminary hearing/ indictment) 54 Ill. 2d 161	—	163, 164	163 (BillRts) 163 (SDS)	163	—	—
10. <i>City of Evanston v. County of Cook</i> op filed 11-30-72 Ryan (home rule) 53 Ill. 2d 312	dissent: Schaefer, Underwood & Davis 319-24	dissent: 320	316 (LocGovt) 317 (LocGovt) 318 (LocGovt) 319 (LocGovt) dissent: 320- 21 (LocGovt)	317 dissent: 321-22	—	318: Parkhurst, 52 Chgo Bar Rec 94 (1970)
11. <i>Kanellos v. County of Cook</i> op filed 11-30-72 Kluczynski (home rule & transition) 53 Ill. 2d 161	—	164, 165	—	—	Explanations 165	Explanations 167: Helman & Whalen
12. <i>Johnson v. State Electoral Bd.</i> op filed 11-30-72 Kluczynski (circuit court clerks election & transition) 53 Ill. 2d 256	—	—	—	—	—	—

Name, Date, Justice	Concurrence or Dissent	History Mentioned	Committee Proposals & Reports	Floor Debates	Address & Explanation	Other Writing
13. <i>P. ex rel. City of Salem v. McMackin</i> op filed 12-1-72 Davis (home rule special legislation & transition) 53 Ill. 2d 347	dissent: Schaefer 369-74	dissent: 372	dissent: 372 (LocGovt)	dissent: 373, 374	—	366: Baum, 1972 Ill. L.F. 137
14. <i>Bridgman v. Korzen</i> op filed 12-1-72 Goldenhersh (home rule) 54 Ill. 2d 74	—	78	—	—	—	—
15. <i>Oak Park Fed. S &amp; L Ass'n v. Village of Oak Park</i> op filed 1-26-73 Ryan (home rule) 54 Ill. 2d 200	dissent: Ward, Underwood & Goldenhersh 205-09	dissent: 208	dissent: 206 (LocGovt) 208 (LocGovt) 208 (SDS)	dissent: 209	—	—
16. <i>Jacobs v. City of Chicago</i> op filed 1-26-73 Ryan (home rule & tax classification) 53 Ill. 2d 421	—	—	—	—	—	—
17. <i>P. ex rel. Hanrahan v. Beck</i> op filed 6-4-73 Kluczynski (home rule, transition & county officers) 54 Ill. 2d 561	dissent: Ryan 567-69	—	—	—	—	—
18. <i>Board of Educ. v. Bakalis</i> op filed 6-25-73 Goldenhersh (parochial, Att'y General powers & public purpose) 54 Ill. 2d 448	concur: Ryan 472-78	—	462-64 (Educ) 465-66 (BillRts)	464 concur: 476	concur: Explanations 476-77	—

Name, Date, Justice	Concurrence or Dissent	History Mentioned	Committee Proposals & Reports	Floor Debates	Address & Explanation	Other Writing
19. <i>Rozner v. Korshak</i> op filed 9-25-73 Schaefer (home rule & tax classification) 55 Ill. 2d 430	—	—	433 (LocGovt)	—	—	—
20. <i>Blase v. State</i> op filed 9-25-73 Schaefer (school financing) 55 Ill. 2d 94	—	—	98 (Educ)	99-100	—	—
21. <i>Etk Grove Eng'r Co. v. Korzen</i> op filed 10-1-73 Goldenhersh (personal property tax) 55 Ill. 2d 393	dissent: Ryan 407-10	—	399-401 (Rev&Fin) 402 (SDS) dissent: 407-08 (SDS)	401-03 dissent: 407	dissent: Explanations 408-09 Address 408	404: Helman & Whalen; Kamin, 60 Ill. B.J. 432 (1972) dissent: 407, 409 Kamin
22. <i>P. ex rel. Pierce v. Lavelle</i> op filed 1-23-74 Ryan (legisla- tive reapportionment/ Senate elections) 56 Ill. 2d 278	—	—	—	—	—	—
23. <i>Gilligan v. Korzen</i> op filed 1-31-74 Golden- hersh (home rule & tax classification) 56 Ill. 2d 387	dissent: Schaefer 393	—	dissent: 393 (LocGovt)	—	—	—
24. <i>Peters v. City of Spring-</i> <i>field</i> op filed 3-20-74 Goldenhersh (home rule & pension rights) 57 Ill. 2d 142	dissent: Ryan 152	—	146 (LocGovt) 149 (LocGovt)	147, 150-51	—	—



Name, Date, Justice	Concurrence or Dissent	History Mentioned	Committee Proposals & Reports	Floor Debates	Address & Explanation	Other Writing
25. <i>P. v. Ellis</i> op filed 3-20-74 Goldenhersh (sex discrimination) 57 Ill. 2d 127	—	—	—	130-31	—	—
26. <i>Clarke v. Village of Arlington Heights</i> op filed 3-29-74 Kluczyn- ski (home rule & transition) 57 Ill. 2d 50	—	—	—	—	—	54: Parkhurst, 71 U. Ill. Bull. (1973)
27. <i>City of Waukegan v. Pollution Control Bd.</i> op filed 3-29-74 Ward (separation of powers) 57 Ill. 2d 170	—	—	173 (GenGovt)	—	—	181-82: Braden & Cohn
28. <i>Fuehrmeyer v. City of Chicago</i> op filed 3-29-74 Schaefer (pre- siding officers' certi- fication, germaneness & amendment by refer- ence) 57 Ill. 2d 193	—	—	199-200 (Leg)	200	—	201: 6 J. Mar. J. 359 (1973)
29. <i>Johnson v. State Bd. of Elections</i> op filed 3-29-74 Schaefer (judicial elections) 57 Ill. 2d 205	—	—	208 (Jud)	208	—	—

Name, Date, Justice	Concurrence or Dissent	History Mentioned	Committee Proposals & Reports	Floor Debates	Address & Explanation	Other Writing
30. <i>La Salle Nat'l Bank v. County of Cook</i> op filed 5-29-74 Ryan (real property classification & judicial review of taxes) 57 Ill. 2d 318	—	—	325-26 (Rev&Fin) 327 (SDS)	326-30	—	—
31. <i>I.S.E.A. v. Walker</i> op filed 7-1-74 Schaefer (executive orders, state-ment of econ. interest & privacy) 57 Ill. 2d 512	dissent: Ryan & Goldenherhsh 531-41	523	522 (BillRts) dissent: 531-32 (BillRts) 533-34 (SDS)	522-23 dissent: 533, 535-37	dissent: Explanations 534 Address 534	—
32. <i>Paper Supply Co. v. City of Chicago</i> op filed 7-1-74 Goldenherhsh (home rule & tax classification) 57 Ill. 2d 553	dissent: Ryan, Underwood & Davis 583-90	566 dissent: 583-84, 586	559 (LocGovt) dissent: 584-85 (LocGovt)	559-64, 565, 566 dissent: 587-90	Explanations 565-66 567-68, 573: Baum, 1972 Ill. L.F. 137; 568-69, 573: Schoeplein, 71 U. Ill. Bull. (1973); 569-70, 573: Young, 71 U. Ill. Bull. (1973)	—
33. <i>Hoskins v. Walker</i> op filed 7-1-74 Ryan (state board of education) 57 Ill. 2d 503	—	—	511-12 (Educ)	—	—	—

*Table of Cases Citing Record by Chronological Order*

Time-period (6-month units)	Cases Citing Record	Total Cases Decided	Percentage Citing Record by Year
July-Dec. 1971	1	2	First year: 6 of 8 cases cite record—75%
Jan.-June 1972	5	6	
July-Dec. 1972	5	6	Second year: 7 of 10 cases cite record—70%
Jan.-June 1973	2	4	
July-Dec. 1973	3	3	Third year: 14 of 15 cases cite record—93.3%
Jan.-June 1974*	11	12	
<b>Total</b>	<b>27</b>	<b>33</b>	<b>81.8%</b>

\*For purposes of this study the last three cases on the constitution, which were decided July 1, 1974, are treated as if they were decided in June, since they were in fact briefed, argued and decided during the first half of the year.

*Table of Number of Justices Joining Majority Decision\**

Number Agreeing	Number of Cases
7-0 decisions .....	20
6-1 decisions .....	6
5-2 decisions .....	4
4-3 decisions .....	3
	<u>33</u>

\*A partial dissent is counted as a dissent.

*Table of Articles and Topics Discussed in Opinions*

Article & Topics	No. Cases
Local Government (VII) .....	15
Home Rule (Sec. 6) .....	14
County Officers (Sec. 4) .....	1
Revenue (IX) .....	11
Tax Classifications (Sec. 2) .....	6
Real Property (Sec. 4) .....	2
Personal Property (Sec. 5) .....	1
Homestead Exemption (Sec. 6) .....	1
State Debt (Sec. 9) .....	1
Finance (VIII) .....	2
Transition Schedule .....	6
Legislative (IV) .....	11
Reapportionment (Sec. 3) .....	2
Single Subject (Sec. 8) .....	2
Certification (Sec. 8) .....	1
Amendments (Sec. 8) .....	1
Amendatory Veto (Sec. 9) .....	1
Effective Date (Sec. 10) .....	1
Special Legislation (Sec. 13) .....	3
Executive (V) .....	3
Executive Orders (Sec. 8) .....	1
Attorney General (Sec. 15) .....	2

State Powers (II) .....		1
Judiciary (VI) .....		4
Trials De Novo (Sec. 9)	1	
Fee Officers (Sec. 14)	1	
Elections (Secs. 12 & 18)	2	
General Provisions (XIII) .....		3
Statement Econ. Int. (Sec. 2)	2	
Pensions (Sec. 5)	1	
Bill of Rights (I) .....		5
Privacy (Sec. 6)	2	
Ex Post Facto (Sec. 16)	1	
Preliminary Hearing (Sec. 7)	1	
Sex Discrimination (Sec. 18)	1	
Elections (III) .....		1
Education (X) .....		3
School Financing (Sec. 1)	1	
State Board (Sec. 2)	1	
Parochial (Sec. 3)	1	

