

**The 1970 Illinois Constitution:
An Assessment by the Delegates**

September 17-19, 1987
Springfield, Illinois

DRAFT SUMMARY

Sponsored by
The Committee of 50 to Re-examine the Illinois Constitution

Lt. Governor George Ryan, Chair
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ACKNOWLEDGMENTS

The Committee of 50 to Re-examine the Illinois Constitution and the Illinois Commission on Intergovernmental Cooperation wish to extend their appreciation to the following people and organizations for their support and assistance:

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Appreciation is also extended to the following for their financial support:

ILLINOIS STATE BAR ASSOCIATION, Donald C. Schiller, President
SANGAMON STATE UNIVERSITY, Dr. Durward Long, President

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EXECUTIVE SUMMARY

On Saturday, September 19, 1987, a plenary session was held where spokespersons reviewed the issues discussed in the previous day's four discussion groups. When the group summaries were completed, the floor was opened for the introduction of any resolutions the delegates wanted to propose. The following resolutions were adopted:

- o WHEREAS, the Illinois Constitution, Article XIV, Section 2(b) requires periodic twenty-year submissions to the electorate of the question of whether or not to convene a constitutional convention.

WHEREAS, as some of the surviving members of the Sixth Illinois Constitutional Convention which submitted for adoption the Constitution of 1970, we have met on the invitation of the Committee of 50 and at the suggestion of the Illinois General Assembly, to study and report on the governmental and individual effects of the 1970 Constitution to date.

WHEREAS, we recognize that we cannot speak for delegates who are not here nor officially speak as a convention or otherwise, since we adjourned sine die on September 3, 1970.

WHEREAS, having informally reassembled, studied, reviewed and discussed the respects in which parts of the Constitution of 1970 have in our opinions served since July 1, 1971, as well as in which other respects our expectations have not been fulfilled.

NOW, THEREFORE, BE IT RESOLVED, that we express our appreciation to the Illinois General Assembly and the Committee of 50 for providing this opportunity for such study, review and discussion, and our expression of opinion concerning the performance to date of the 1970 Constitution.

RESOLVED FURTHER, that we recommend to the Committee of 50 in connection with its program of public education, discussion and evaluation of the Constitution, prior to the submission of the referendum on whether or not to call a convention, that any substantive resolutions concerning the 1970 Constitution adopted by us at this meeting may be given public dissemination, thereby pointing out those respects wherein the Constitution and its implementation have accorded with our prior expectations, as well as pointing out those respects in which such has not been the case, such expressions being by our separate resolutions as may be adopted at the general session of September 19, 1987, following adoption of this general resolution.

- o We are generally well pleased with the product of our labors of 1969-1970 and believe that such changes as may be desirable can be handled by legislation, interpretation, or the amendment process.

- o Be it resolved, that it is the consensus of the delegates to the 1970 Illinois Constitutional Convention who are assembled in Springfield on September 19, 1987, that the intent of the 1970 Constitutional Convention was that the Auditor General would have the responsibility and authority to audit the expenditures of all funds administered directly or indirectly by each of the three branches of state government or by any agencies created by them, whether or not such funds are appropriated by the General Assembly and whether the funds are derived from taxation, fees or other sources. Specifically, the consensus of the assembled delegates is that the license fees imposed on attorneys for the privilege of practicing law in the State of Illinois are public funds and subject to audit by the Auditor General, just as are the license fees of other professions licensed and regulated by the state.
- o We express our appreciation for Sam Witwer and his dedication to the principles of constitutional reform and to his wife Ethyl who provided support and assistance.

One other resolution was proposed, but did not win the support of a majority of the delegates attending. That resolution, which was defeated by a show-of-hands vote, is as follows:

- o Be it resolved, that it is the consensus of the delegates to the 1970 Illinois Constitutional Convention who are assembled in Springfield on September 19, 1987, that the judicial and legislative actions in respect to the anti-discrimination provisions (Article I, Sections 17, 18 and 19) have not fulfilled the hopes and expectations of the delegates, specifically that the court decisions have unduly narrowed the rights of individuals in their access to the courts.

The resolutions voted on during the plenary session grew out of the intense discussions the delegates engaged in the previous day. The delegates reviewed the 1970 Constitution by focusing on issues related to the executive, legislative and judicial branches, state-local relations, finance, individual rights, and improvement of government. Specific points of discussion for each of the four discussion groups are presented in Section VI, Roundtable Discussions, but a brief review of some of the key issues is presented here.

- o The legislature should fulfill the Constitution's provision that the "state has primary responsibility for financing the system of public education."
- o The language of Article VIII should not be construed to mean anything other than that all funds received, managed and utilized are public funds and need to be audited. An amendment with corrective language is needed to implement this.
- o The delegates are disappointed in the implementation of Sections 17, 18 and 19 of Article I, and recognize the need for a study of alternatives for people seeking remedies for discrimination.
- o The legislative initiative has been a good provision in that it has worked, whether one agrees with the outcome or not. It should be understood to apply only to basic changes the legislature wouldn't make on its own.

- o There was general agreement that the amendatory veto has been used in ways unintended by the framers and contrary to the concept of balance of power. Some believed, however, that the results were often salutary in the form of improved legislation.
- o Home rule has been generally successful, apart from taxing powers which were the product of a compromise.
- o The delegates were generally satisfied with the income tax, i.e., the 8:5 ratio and the absence of a graduated tax.
- o There was no consensus as to whether appointment of judges should be preferred over election of judges.
- o The Judicial Inquiry Board has failed to live up to the delegates' expectations regarding its ability to conduct investigations, set its own standards and maintain its autonomy.

The 1970 Illinois Constitution:
An Assessment by the Delegates

INTRODUCTION

Anticipating the twenty-year Constitutional review provision of the 1970 Constitution, the Eighty-fourth Illinois General Assembly passed Senate Joint Resolution 101 which established a Committee of 50 to Re-examine the Illinois Constitution. This Committee was defined by the resolution as "a voluntary organization composed of the Governor, the president of the 1970 Constitutional Convention, scholars, educators, government officials from the various levels of government, legal experts and public opinion leaders" for the purpose of advising the General Assembly, educators, school children and the public on constitutional issues. The overall goal of the resolution was to inform the public and facilitate responsible debate on the question of constitutional change.

The resolution named the Illinois Commission on Intergovernmental Cooperation to direct the project and provide staff support with additional assistance from the Regency Universities (Northern Illinois University, Southern Illinois University and Sangamon State University).

In order to achieve this goal, SJR 101 suggested several activities for the Committee of 50: prepare reports and sponsor symposia, forums, and open meetings on constitutional issues; reconvene the delegates to the Sixth Constitutional Convention in order to obtain their assessment of the document; and make a final report of its findings to the General Assembly, the Governor, and the Supreme Court no later than January 1990.

The reconvening of the delegates to the Sixth Constitutional Convention, officially entitled "The 1970 Illinois Constitution: An Assessment by the Delegates," took place in Springfield from September 17 to 19, 1987. Staff from the Commission and faculty from Sangamon State University, University of Illinois, and Southern Illinois University conducted the two-day event which featured roundtable discussions on key constitutional issues, taped interviews with individual delegates, and a final plenary session during which resolutions on various constitutional issues were proposed. This report summarizes these events and the resulting assessment made by the delegates.

FORMAT

Over sixty delegates accepted the invitation to participate in the two-day event and approximately twenty members of the Committee of 50 attended as observers (Appendix A). Ten papers on various constitutional articles were drafted and distributed to Committee members and delegates prior to the reconvening, and an agenda was developed that provided time for roundtable discussion groups on the issues identified in the papers. Each group consisted of approximately 15 delegates, who were assigned in a manner which provided balanced representation from each of the 1970 substantive convention committees (Appendix B). In addition, each group was assigned faculty facilitators and recorders and, during the first session, each elected a delegate spokesperson to present a summary of the group's deliberations at the concluding plenary meeting (Appendix C).

OPENING CEREMONY

The opening ceremony for delegates, Committee members and guests was held at the Old State Capitol on Thursday evening, September 17. The program was moderated by Lt. Gov. George Ryan, Chairman of the Committee of 50, and featured remarks by Senate President Philip J. Rock, Speaker Michael J. Madigan, and Samuel Witwer, President of the Sixth Constitutional Convention. Lt. Governor Ryan expressed appreciation to the delegates for taking the time to participate in the constitution review process. He then recognized special guests and dignitaries in attendance (Sister Candida Lund, Committee Vice Chair; Tom Lyons and John Alexander, Vice Presidents of the Sixth Constitutional Convention; Secretary of State Jim Edgar, member of the Committee of 50; Senator Vince Demuzio, Majority Leader of the Illinois State Senate and member of the Committee of 50; and President Donald C. Schiller, President of the Illinois State Bar Association. In addition, he recognized various groups in attendance: members of the Committee of 50, faculty and staff of Sangamon State University, spouses and guests of the delegates, and the staff of the Commission on Intergovernmental Cooperation.

Lt. Governor Ryan then described how the Committee of 50 was created by Senate Joint Resolution 101 in response to Article XIV of the Illinois Constitution which calls for a 20-year review of the Constitution. He outlined the committee's mandate as described in SJR 101, which includes reconvening the delegates, conducting forums and hearings, drafting reports on constitutional issues, and finally, reporting its findings to the General Assembly, the Governor and the Supreme Court. He noted that since the Committee's first meeting in April of 1987, a series of ten background papers had been published and plans were underway to conduct statewide public hearings on the constitution.

Lt. Governor Ryan then introduced Senate President Philip J. Rock, sponsor of SJR 101, to address the group. Senator Rock opened his remarks by noting that the ceremony marking the beginning of the reconvening coincides with a national day of celebration honoring the bicentennial of the U.S. Constitution. He noted that ". . .not a day goes by in the life of the Illinois General Assembly without a question as to the meaning, the intent or the worthiness of some article or section of the Constitution." He suggested that "the document has been flexible enough to meet the challenges of a changing community, while at the same time remaining a strong and steady blueprint upon which Illinois government and its students attempt to serve the people." He expressed his pride in being a part of the legislation that created the Committee of 50 and commended the delegates for attending the reconvening, referring to them as the historians and the committee members as their students. On behalf of the members of the Illinois General Assembly, Senator Rock thanked the committee for their work in reviewing the constitution, noting that members were selected to reflect a broad cross-section of Illinois society. He thanked the delegates and committee members for their "commitment to make the State of Illinois a better place in which to live and work" and concluded his remarks by saying, "Tomorrows in Illinois will be better because of your efforts today."

Lt. Governor Ryan then introduced Speaker Michael J. Madigan noting that Speaker Madigan was only two years away from his first term in the Illinois General Assembly when he was elected as a delegate to the Sixth Constitutional Convention from the 27th District. Speaker Madigan opened his remarks by referring to his experience in the convention as a good introduction to government service and noting that the knowledge gained during that time has assisted him in performance of his duties as Speaker of the Illinois House. He said: "My hopes of 1969 and 1970 have been fulfilled every day that I have served in the General Assembly because . . . every day, every issue, every bill, every amendment in one way or another relates to the constitution and relates to the deliberations that were conducted" at that time. He expressed his appreciation that Samuel Witwer, President of the Sixth Constitutional Convention, would be serving as chairman of the reconvening. Speaker Madigan then turned the meeting over to Mr. Witwer for his presentation.

Mr. Witwer expressed his gratitude to the legislature for calling upon the delegates to assist them in their efforts to review the constitution. He commemorated those convention delegates who have died by saying that their memory lives on and their contributions and service to the state will always be appreciated. He reminisced about some of the humorous incidents that occurred during the 1970 convention, recalling the day when persons unknown placed a picture of his face over that of George Washington on the portrait that hangs behind the podium in the House Chamber of the Old State Capitol. On a more serious note, he reminded the delegates that when the Sixth Constitutional Convention adjourned, it adjourned *sine die*; therefore, the role of the delegates during the course of the next two days' activities would be to provide their individual opinions and reflections on the strengths and weaknesses of the constitution. "We wanted the people of Illinois to have an opportunity at twenty-year intervals to make sure that this constitution did not grow into a legal straight jacket the way the Constitution of 1870 ran into such a straight jacket." He went on to say that "Our ambition was to write a constitution that would serve the present, be an effective instrument of government, and also . . . that would serve the future. Whether or not we succeeded to a sufficient degree may well be the ultimate question that will decide whether there will or will not be a call for a constitutional convention by the voters who will pass on that issue at the November 1988 general election." He indicated his hope that the efforts of the delegates and the Committee of 50 will help to inform the public prior to this important vote. He expressed his affection for the delegates and turned the meeting back over to Lt. Gov. Ryan.

At this time, Secretary Edgar was recognized and made the announcement that Attorney General Hartigan had issued an official opinion that the question of whether or not another convention should be called would appear on the November 1988 general election ballot.

Lt. Gov. Ryan thanked the staff of the Intergovernmental Cooperation Commission again for their efforts on behalf of this project and the delegates and committee members in attendance for participating in the reconvening. The opening ceremonies were then adjourned.

ROUNDTABLE DISCUSSIONS

On Friday, delegates were divided into four groups representing the various substantive committees that operated during the 1970 convention. These groups met concurrently throughout the day. Group discussions were facilitated and recorded by volunteer faculty members from Sangamon State University and Southern Illinois University. Group members elected a delegate spokesperson to report their findings during the final plenary session on Saturday morning. Committee of 50 members attended as observers and were not expected to participate in discussions.

Each group followed an agenda that included the following topics:

- State-Local Relations and Finance
- The Judiciary
- Individual Rights
- Legislative-Executive Relations
- Improvement of Government

Following the last session on Friday afternoon, facilitators, recorders and spokespersons met to write summaries that would be presented during the concluding session on Saturday. The text of these group reports follow.

GROUP A

Group A discussed issues in all of the five subject areas and in general agreed that the 1970 Constitution has served the citizens of Illinois well during the past 17 years. And in the few cases where delegates thought that their intentions have not been met, they stated that the issues be given careful review.

For example, the delegates adopted the following points:

1. The income tax provisions in the 1970 Constitution should not be changed.
2. Revenue and tax limitations should not be placed in the Constitution.
3. The legislature should fulfill the Constitution's provision that the "state has primary responsibility for financing the system of public education."
4. The language of Article VIII should not be construed to mean anything other than that all funds received, managed and utilized are public funds and need to be audited. An amendment with corrective language is needed to implement this.
5. The Judicial Inquiry Board has failed to live up to the delegates' expectations regarding its ability to conduct investigations, set its own standards and maintain its autonomy.
6. There is a need to review the entire Judicial Article.
7. The delegates were disappointed in the implementation of Sections 17, 18 and 19 of Article I, and recognize the need for a study of alternatives for people seeking remedies for discrimination.
8. The delegates were concerned about the Compensation Review Board and believe it is dangerous to allow such mechanisms to enact laws.
9. The amendatory veto provision should be carefully reviewed.
10. If a new constitutional convention is called, then language could be added asserting that higher education is a fundamental function of state government. However, it should be noted that some delegates believe that the current wording in the constitution implies support for all levels of education.
11. Support was also expressed for the twenty-year review of the constitution.

The delegates also discussed issues such as the costs of state mandates, home rule, selection of judges, the right to bear arms, reapportionment, and the election of the Board of Education and Board of Elections, but no general consensus was developed.

GROUP B

The group unanimously adopted the following resolution: We are generally well pleased with the product of our labors of 1969-1970 and believe that such changes as may be desirable can be handled by legislation or the amendment process.

1. The Judiciary

- a. Has selection of judges worked as the convention expected? (What about appointing judges?) The present system has worked differently in different parts of the state: not so well in upstate/urban areas as downstate/rural areas. If IIB is amended, it might need to be on a district-by-district basis. For example, there could be merit selection for supreme and appellate judges, but circuit districts could choose to elect or select their circuit judges.

Another possibility would be to have one-half of the circuit court judges appointed and the other half elected.

The question was raised on whether non-partisan election of judges would help. The cost of judicial campaigns has grown and may win some supporters to merit selection, as the public may perceive a problem of judicial partiality toward contributors.

Minority communities may oppose merit selection for fear of exclusion. It's not just a question of representation but of who picks the representatives.

There was no sense that a convention would be needed to address these issues. The amendment route to revision was preferred.

- b. What about the retention of judges? Life tenure, even with merit selection, won't sell here because of the belief that judges should face the people. The 60 percent rather than the two-thirds approval by the electorate has eased retention somewhat. Still, some judges have been defeated, and others have chosen not to run for retention for fear of losing.
- c. What about associate judges? Under the current merit selection proposal, they would come under merit provisions if their circuit approved this in the referendum.

Circuit and associate judges are sometimes seen as virtually synonymous in duties, although some circuit court judges resist this notion as diluting their authority.

- d. How have the Illinois Judicial Inquiry Board and Illinois Courts Commission functioned in disciplining judges? There has been disappointment among delegates regarding the Supreme Court's response, which has been to review the complainants' dispositions. Also, the corruption in Cook County traffic court has not been successfully dealt with via these means, but this may reflect long-standing localized systemic problems rather than a structural deficiency capable of constitutional correction.

The convention thought it had created strong disciplinary measures for the profession, but this is not how the public perceives the results, and the Inquiry Board -- appointed by the Governor -- hasn't been subject to much accountability.

It might be good to publicize that the present system, while intended to be fair and vigorous, was not designed to do undercover investigations.

- e. Should all court funds be audited? Yes, the lawyers' license fees should be audited by the state, and the Supreme Court's argument about separation of powers hasn't convinced many critics of its self-serving position. But the amount of money is small and the matter isn't worth an amendment.
- f. Should settlement of disputes by alternate means like arbitration be encouraged? The courts are clogged, and a pilot project to encourage arbitration in certain cases begins October 1. There were mixed views about the desirability of this route, some seeing it as expensive, time consuming, and uncertain in outcome. But it seemed worth a jury, as did the federal mini-court model.

2. Individual Rights

- a. How has the "right to privacy" turned out? The delegates didn't conceive a boundary to the right to privacy other than that defined by the federal Supreme Court, but felt that it was important to articulate this right in the state constitution since it is not mentioned in the federal Constitution. Even if the federal Supreme Court backtracks on its interpretation of the right, the state charter establishes a right which is likely to be upheld there.

The abortion issue is still divisive and a new convention shouldn't be called to address it. A right to privacy doesn't necessarily presume a right to abortion; the relationship between the two should continue to be sorted out by the legislature and the courts.

- b. How has the grand jury/preliminary hearing innovation worked? There was no disposition to act on this or even to mention it in our report.
- c. What have civil rights provisions accomplished? Are the definitions of "handicapped" and "hiring and promotion" developed in court what was intended? Should a plaintiff exhaust his remedies before going to the Illinois Human Rights Commission? This section is one that perhaps shouldn't have been put into the constitution, and it may be best left with the legislature and the courts at this point. There was a sense that new interest in gay rights and in AIDS would make this a volatile topic in future discussion.

The delays in human relations complaints are lengthy, partly because the HRC isn't adequately funded to deal with the load. Complainants are upset about this, as are some respondents who feel that the process is often ambiguous and inconclusive.

- d. How has the right to bear arms turned out? There was consensus that this provision has worked out predictably and that it shouldn't be reopened. It basically forbids state confiscation of all firearms; but "subject to police power" provides adequate parameters for implementation.

e. How has the right to a healthful environment worked out? Here the delegates were ahead of their time and they went as far as could have been expected politically and practically. The environmental quality of life in the state has improved materially in the intervening years, partly as a result of this provision.

f. Are court decision on public employees' pension rights and revocation of convicted felons' pensions consistent with the convention's intent? There has been little change for better or worse as a result of this provision. The public employees lobbied for protection of their pensions through adequate funding, and this article tried to address that concern at a time when there was some confusion about whether a pension was a gratuity or a contractual right. It was intended to encourage adequate funding of their pensions but not to lock in every provision of existing pension plans.

3. Legislative - Executive Relations

a. How has the initiative worked? It has been a good provision in that it has worked, whether one agrees with the outcome or not. It should be understood to apply only to basic changes the legislature wouldn't make on its own.

b. How has reapportionment worked? The tiebreaker was seen as a disincentive, in that the legislature would have to act in order to avoid its imposition. But after it was used, there was considerable sentiment in favor of its removal and replacement by an alternative. In short, this particular device didn't work as the convention expected.

c. How have provisions for streamlining/modernizing legislative procedure worked? There was divided sentiment on this issue; most wanted to leave it as is but some felt it needed further exploration. Historically, legislative bodies -- not courts -- judge their members' credentials, but this can result in a vote along party lines rather than on merit. The question of continuous vs. annual sessions was also debated. Some felt that the legislature ought to control its own agenda and that continuous sessions strengthen the legislative branch, while others felt these encouraged proliferation of bills.

d. Have amendatory and reduction vetos been used as intended? The amendatory veto has been abused by the governors since its implementation in that bills have been substantially re-written rather than merely technically edited, as some had anticipated. The legislature can override, but risks losing the entire bill in the process. Judicial correction is also possible. Furthermore, the Senate and House could agree to accept only technical, not substantive, vetos.

While a new convention was not recommended to deal with this shift of power from the legislative to the executive branch, there was general agreement that the amendatory veto has been used in ways unintended by the framers and contrary to the concept of balance of power. Some felt, however, that the results were often salutary in the form of improved legislation.

- e. How has the special legislation provision worked? The court has interpreted the language as best it could. This need is now largely addressed by population categories.
- f. How have governor's powers regarding executive orders worked? The Legislature has developed procedures for avoiding problems by cleaning up and certifying relevant legislation. This was intended to permit executive initiatives and has so been used.
- g. How has the fiscal/appropriations process worked? The reduction veto restored by a simple majority has limited the governor's budgetary power: he proposes, and the legislature disposes.

The Comptroller and Treasurer's positions are functioning as expected, and the Auditor General has become an important force. The Lt. Governor and the Secretary of State's positions, like the above, serve as a proving ground for future gubernatorial and senatorial candidates.

There remains a question about whether the state can hire lawyers other than the attorney general or his staff for advice.

4. State-Local Relations and Finance

- a. How has home rule worked? It hasn't succeeded in reducing the number of taxing bodies through consolidation as intended, but it has slowed their proliferation. It has also provided flexibility for popular choice, and has facilitated intergovernmental cooperation. On the whole, its use has been restrained.
- b. Why have townships and special districts not perished? They now have increased service roles and voters are reluctant to remove people's livelihoods. It's also difficult for some units to merge from a practical standpoint. The convention wanted to enable reduction, not to affect it.
- c. How has the property tax (and classification of real property) worked? It has worked as expected and favorably.
- d. Are exemptions from the property tax what was expected? There's more pressure for these from churches and charities and no accurate data on the amount of exempt property in the state.

Overlapping taxing districts are operating as envisioned, and problems are correctible legislatively.

Tax sales are being handled better now under a revised timeframe. (This was a detail that shouldn't have been dealt with constitutionally in the first place and shouldn't be so handled now.)

- e. Has intergovernmental cooperation been encouraged? Yes, with strong positive results.
- f. Should the income tax be graduated? Yes, but it won't happen so leave it alone.

- g. Should debt provisions be reviewed? The legislature should competitively bid debts secured by taxes, and there shouldn't be a double standard in this respect for the state vs. other units of government.
- h. Should local governments be allowed to tax incomes? The constitution authorizes this now with legislative approval, and the delegates reaffirmed their desire that the courts interpret home rule grant of revenue authority liberally.
- i. Is the 8:5 corporate-individual income tax ratio appropriate? It has worked as expected, and the business support it garnered helped ratify the document.
- j. Do we need to define "public funds"? No. It should, however, include the lawyers' licensing fees.

5. Improvement of Government

- a. How has the State Board of Elections functioned? It has resolved some administrative issues promptly but played a more passive and reactive role than expected or desired (Instead of, for example, clarifying the election code and encouraging voter turnout).
- b. How has school finance worked? This provision was a compromise after full and majority funding were defeated, and it has not overcome reliance on property taxes, disparity in school districts, or decline in the appropriation of state funding. But it has kept pressure on the legislature as intended.
- c. How has the State Board of Education worked? There is no constitutional change needed, as the legislature can better address the problems posed by superintendents and board of varying effectiveness.
- d. Should Illinois education be overseen by a single board? Maybe. However, this is possible under the present constitution.
- e. Should higher education be mentioned? It can be included in the current document if desired.
- f. How has the "honesty in government" provision worked? As expected, although the consequences may prove draconian when a case reaches that point.
- g. Is the 20-year interval for considering a convention appropriate? Yes, although perhaps it could be lengthened considering the current ease of amendment. Still, it's useful to be periodically reminded of our state constitution.

GROUP C

Group C debated the following points:

1. Initiative Provision

- a. The general consensus was that the constitution has performed as intended.
- b. The cutback amendment has resulted in a more efficient House, albeit with some loss of independence.
- c. Group members were satisfied the provision had been restricted to the legislative article.
- d. Use of the initiative provision in the future is doubtful.

2. Reapportionment Process

- a. Group members believed that the process was the "least bad" of the alternatives; although it isn't perfect, it is workable.

3. Legislative Procedures

- a. The group consensus was that annual sessions are now a necessity, and to return to the former system would be "unworkable".

4. Vetos

- a. The veto reduction offers a balance of power that tends to hold the level of expenditures down.
- b. Implementation of the amendatory veto has changed the nature of the legislative/executive balance.
- c. Members reached a consensus on a Madigan proposal to reverse the majorities needed to sustain or override a veto.

5. Special Legislation

- a. The constitution does not really prohibit special legislation, nor could it or should it.

6. Audit of Supreme Court Funds (NOTE: Sharp Disagreement)

- a. Some held the position that all public funds should be audited.
- b. Conversely, others argued that the funds controlled by the Supreme Court are private funds and fall under the rule of separation of powers.
- c. Others believed that a compromise position could be reached.

7. Appropriations Process

- a. The process seems to be working as intended.

8. Other Executive Officers

- a. The structure seems to be functioning fairly well.
- b. There seemed to be some sentiment for the Lt. Governor to be given specific duties.

9. Home Rule

- a. Home Rule seems to be working quite well; no serious abuses have been cited.
- b. The deficiencies which exist are not inherent in Article 7. The major deficiency has been with the lack of use.
- c. Contrary to expectations, there has been no decline in the number of special districts or townships.

10. Classification of real property

- a. The wording of the constitution really does not restrict the General Assembly in this respect.

11. Revenue Article

- a. There was some question about the wisdom of easing debt restrictions in the 1970 Constitution.
- b. The consensus was that the revenue article seems to be working, and that the ratio of individual to corporate income tax rates was fair.

12. Judicial Article

- a. There was some discussion of a compromise between election and merit selection.
- b. Retention elections may actually be working better than expected.
- c. No strong consensus emerged on whether to change the current system of selecting judges.

13. Individual Rights

- a. In general, there was a consensus that if there is a problem with individual "jobs", it lies in the area of implementation, not with problems in the constitution.

14. State Board of Elections

- a. Although there were some problems initially, it now appears to be working well.

15. Education

- a. There appeared to be a consensus that "primary state responsibility" does not mean 50 percent or some exact figure.

16. Honesty in Government

- a. There was some debate over whether the honesty in government features were "useless" or not; some argued for the positive effects of disclosure.

17. Amendment Process

- a. The process has worked and has consequently made a new convention and/or wholesale revision less necessary.

Group D

INDIVIDUAL RIGHTS

Article I, Sections 17, 18 and 19 - No Discrimination

1. Delegates agreed that areas of consensus were recorded carefully at the constitutional convention regarding the provisions of the Bill of Rights, and yet the courts have ignored their recorded intentions.
2. The framers anticipated that reasonable exemptions to the no discrimination sections would be created by the legislature. In fact, the courts have incorporated prior exemptions into the 1970 Constitution.
3. The framers anticipated that individuals could seek their own remedies in court, whereas subsequent legislation has required the use of cumbersome administrative remedies in many cases. These often offer inadequate protection to the individual in the face of administrative action.
4. The definition of the handicapped rendered by the courts has been inappropriately narrow, given the intention of the framers.
5. No thought was given to the rights of homosexuals at the constitutional convention.

Article I, Section 6 - On Privacy

1. In general, the courts have allowed federal interpretations of the U.S. Bill of Rights to dominate interpretation of the Illinois Bill of Rights.
2. This practice has restricted Illinois court interpretation of the right to privacy, thus limiting the substance of the right which was intended by the framers.
3. The delegates were in agreement with a reported national movement among judges to see the U.S. Bill of Rights as a floor above which state bills of rights may extend.

Article I, Section 22 - On the Right to Bear Arms

1. There was general agreement that provision of the right to bear arms was vital to the convention. It was essential for southern support for the proposed constitution.
2. Delegates also agreed that courts have used the phrase "subject to police power" too broadly in limiting the right to bear arms.

Article I, Section 23 - On Fundamental Principles

1. It was agreed that reference to the obligations of citizens taken from the 1870 Constitution was intended only as an invocation to citizens to realize their responsibilities.

Article 11 - Environment

1. Delegates agreed that reference to the provision on a healthful environment properly found expression in legislative environmental action, including the creation of the Environmental Protection Agency.

LEGISLATIVE/EXECUTIVE RELATIONS

Article 4 - The Legislature

1. Some delegates expressed disappointment in the demise of the cumulative voting system; however, the delegates detected no sentiment to eliminate single-member house districts or to return to biennial sessions.
2. Most delegates saw no virtue in reviving the question of a parliamentary form of government.

Article 4, Section 9 - Veto Procedure

1. Delegates discussed whether use of the amendatory veto has gone beyond the intent of the convention. Most agreed that they had intended to empower a strong chief executive with the tools to be an effective leader, and that use of the amendatory veto has matched their expectations.
2. Delegates agreed that the convention supported a balanced package which included the amendatory veto, along with a greater ability for the legislature to override a veto with a three-fifths affirmative vote.

Article 4, Section 3 - Legislative Redistricting

1. Delegates expressed satisfaction with the manner in which the redistricting section has been implemented, including the provision for a coin toss.
2. The framers attempted to incorporate federal judiciary discussions in reapportionment.

Article 4, Section 8 - Passage of Bills

1. The delegates were satisfied with the requirement that passage of bills is contingent upon an affirmative vote from a majority of those elected.

Article 5, Section 11 - Governor Agency Reorganization

1. Delegates agreed that framers intended to give the governor broad leeway in reorganizing power.
2. They recognized disorganization among multiple agencies and the need to consolidate diverse units working on aspects of newly recognized problems.

Article 8, Section 2 - State Finance

1. A number of delegates expressed concern about the continual activity surrounding the preparation of annual budgets. They argued that biennial budgets would greatly reduce staff time devoted to budget preparation and the frequency with which late information on the passage of a budget impairs orderly operations.
2. Other delegates wondered how far ahead one can adequately project a budget.
3. The framers did not anticipate the conflict among different elected officials regarding revenue projections.

Article 8, Section 3 - State Audit and Auditor General

1. The delegates agreed that all funds collected by state agencies should be audited.
2. The state should fund all lower courts and receive fines imposed by these courts.
3. The Office of the Auditor General has worked very well as conceived and implemented.

Article 5, Section 14 - Lieutenant Governor

1. The convention did not intend to create a strong office which might reduce the authority of the governor.
2. The governor and the lieutenant governor should run as a team in the primaries.

STATE-LOCAL RELATIONS

Article 7, Section 5 - Powers of Home Rule Units

1. Home rule has been generally successful, apart from taxing powers which were the product of a compromise.
2. Courts have interpreted home rule powers liberally.

Article 10, Section 1 - Free Schools

1. The convention intended the state to assume over 50 percent of the funding for primary and secondary education.
2. The framers were interested in reducing the reliance on property taxes with greater use of state income tax.

Article 7 - Local Government

1. The convention was reluctant to force the reduction of local general and special district governments since this would have impaled the constitution.

Article 9 - Revenue

1. The delegates were generally satisfied with the income tax: the 8:5 ratio and the absence of a graduated tax.

Article 6 - The Judiciary

1. There was no consensus as to whether appointment of judges should be preferred over election of judges.
2. Creation of the Judicial Inquiry Board and the Illinois Courts Commission was a step in the right direction, although it is not clear as to how effectively they have operated. The delegates differed on the latter point.

IMPROVEMENT OF GOVERNMENT

Article 3, Section 5 - Board of Elections

1. The Board of Elections has created a uniform set of election laws and a center of direction and oversight in the system.
2. It has worked out better than envisioned.

Article 10, Section 2 - State Board of Education

1. The constitutional language establishing the State Board of Education was adequate but its operations have been inadequate.
2. It seems mired in ineffective bureaucracy, with little ability to affect local school districts or to improve education.
3. This is a matter for legislative action.

Higher Education

1. It should have been included in the Constitution but there was little enthusiasm for it at the time.

Article 13, Section 2 - Statement of Economic Interests

1. Technical aspects in the implementation of this section have overburdened the electoral process and produced a bottleneck for candidates seeking office.

Article 8, Section 4 - Systems of Accounting Auditing and Reporting

1. Most delegates felt that this has never been implemented, although it was noted that local governments argue that they have consistent systems of accounting and auditing in place.

ORAL HISTORY TAPED INTERVIEWS

Throughout the two-day period, taped interviews were conducted with approximately 50 of the delegates by persons associated with Sangamon State University's Oral History Program, under the direction of Professor G. Cullom Davis. The topics discussed focused primarily upon the delegate's personal reflections on the events of the Sixth Constitutional Convention as well as upon their perceptions of how the constitution has served the citizens of the State of Illinois throughout the past 17 years. The tapes will be made part of the official record of the Committee of 50 and Sangamon State University will maintain copies in their oral history office for possible publication at some future date.

FINAL PLENARY SESSION

Samuel Witwer presided over the session and began by reviewing the section of SJR 101 which provided that the Committee of 50 to Re-examine the Illinois Constitution reconvene all members of the 1970 constitutional convention for the purpose of assessing the success of the constitution in securing the rights of the citizens of Illinois. Mr. Witwer reminded the delegates that they were no longer an official body and that they were assembled to review the constitution in order to convey their opinions to the Committee of 50. Mr. Witwer then called upon the spokespersons from the four discussion groups to summarize the issues reviewed during the previous day's sessions.

Spokespersons Senator Dawn Clark Netsch, Mary Lee Leahy, David Kenney and Leonard Foster in turn reviewed the major issues discussed in their respective groups (see each group's summary). This review provided an opportunity for everyone to identify the common and also the unique subjects discussed among all four groups.

When the discussion group summaries were completed, Mr. Witwer opened the floor for the introduction of any resolutions the delegates wanted to propose.

Resolution 1 (Adopted)

Anne Evans moved that the adoption of the first resolution which expressed appreciation to the Illinois General Assembly and the Committee of 50 and resolved that the Committee of 50 publicly disseminate any substantive resolutions adopted at the reconvening in its program of public education, discussion and evaluation of the constitution. Language in the fourth paragraph was amended to accurately reflect the starting date of the constitution and to avoid sounding too negative. It was also suggested that is should be made clear in any public dissemination of the resolution (or resolutions) adopted, that the ideas were informal statements by those delegates attending the final plenary session. The resolution was adopted as amended by voice vote.

WHEREAS, the Illinois Constitution, Article XIV, Section 2(b) requires periodic twenty-year submissions to the electorate of the question of whether or not to convene a constitutional convention; and

WHEREAS, as some of the surviving members of the Sixth Illinois Constitutional Convention which submitted for adoption the Constitution of 1970, we have met on the invitation of the Committee of 50 and at the suggestion of the Illinois General Assembly, to study and report on the governmental and individual effects of the 1970 Constitution to date; and

WHEREAS, we recognize that we cannot speak for delegates who are not here nor officially speak as a convention or otherwise, since we adjourned sine die on September 3, 1970; and

WHEREAS, having informally reassembled, studied, reviewed and discussed the respects in which parts of the Constitution of 1970 have in our opinions served since July 1, 1971, as well as in which other respects our expectations have not been fulfilled.

NOW, THEREFORE, BE IT RESOLVED, that we express our appreciation to the Illinois General Assembly and the Committee of 50 for providing this opportunity for such study, review and discussion, and our expression of opinion concerning the performance to date of the 1970 Constitution.

RESOLVED FURTHER, that we recommend to the Committee of 50 in connection with its program of public education, discussion and evaluation of the Constitution, prior to the submission of the referendum on whether or not to call a convention, that any substantive resolutions concerning the 1970 Constitution adopted by us at this meeting may be given public dissemination, thereby pointing out those respects wherein the Constitution and its implementation have accorded with our prior expectations, as well as pointing out those respects in which such has not been the case, such expressions being by our separate resolutions as may be adopted at the general session of September 19, 1987, following adoption of this general resolution.

Resolution 2 (Adopted)

Mr. Wenum discussed the adoption of a resolution reflecting the general view that the Constitution is a very effective, flexible, adaptable and workable document and that with a few, minor nitpicking exceptions, the problems are purely ones of interpretation and legislative implementation. Mr. Witwer asked Mr. Wenum if he would propose specific language for such a resolution, and Mr. Woods suggested the language already adopted by Group B during Friday's discussion session. Senator Netsch, spokesperson for Group B, read the resolution to the group, and Mr. Durr suggested the addition of the word "interpretation" to the list of ways that changes to the Constitution could be handled. Mr. Kenney spoke against the resolution because he believed the record of amending the Constitution in recent years was not very good. By voice vote the resolution as amended was adopted.

We are generally well-pleased with the product of our labors of 1969-1970 and believe that such changes as may be desirable can be handled by legislation, interpretation, or the amendment process.

Resolution 3 (Defeated)

Mary Lee Leahy moved the adoption of a resolution that the delegates were displeased with judicial and legislative actions concerning the anti-discrimination provisions in the Bill of Rights (Article I, Sections 17, 18, and 19). The discussion noted that the original provisions passed overwhelmingly, that all four discussion groups had highlighted the issue during Friday's sessions, and that the record of the Supreme Court, the Department of Human Rights and the Human Rights Commission in resolving cases was poor. Mr. Durr and others questioned the purpose of such a resolution since the problem was not one of the wording of the Constitution, but rather one of interpretation.

Mr. Madigan questioned Mr. Witwer concerning the number of other resolutions that might be proposed and discussed during the remaining time, and Mr. Witwer answered he had heard of only one more, although it was impossible to know how many delegates might propose resolutions from the floor. The group was asked how many resolutions were still to be introduced and only one was mentioned.

A motion to table the third resolution was made and the motion carried by a 29-19 show of hands, thus defeating the resolution.

Be it resolved, that it is the consensus of the delegates to the 1970 Illinois Constitutional Convention who are assembled in Springfield on September 19, 1987, that the judicial and legislative actions in respect to the anti-discrimination provisions (Article I, Sections 17, 18 and 19) have not fulfilled the hopes and expectations of the delegates, specifically that the court decisions have unduly narrowed the rights of individuals in their access to the courts.

Resolution 4 (Adopted)

Senator Netsch moved the adoption of a resolution that the intent of the 1970 Constitutional Convention was that the Auditor General would have the authority to audit the funds of all three branches of government or any agencies created by them since these funds are public funds. Mr. Lennon and Mr. Durr questioned the intent of the resolution which presumed to tell the Supreme Court how to run its affairs, but Mr. Foster argued that the court is subject to the laws made by the legislature.

Mr. Gierach moved to table the resolution, but the motion failed on a 9-26 show of hands. Mr. Witwer then called for a vote on the resolution and it passed on a 32-7 vote.

Be it resolved, that it is the consensus of the delegates to the 1970 Illinois Constitutional Convention who are assembled in Springfield on September 19, 1987, that the intent of the 1970 Constitutional Convention was that the Auditor General would have the responsibility and authority to audit the expenditures of all funds administered directly or indirectly by each of the three branches of state government or by any agencies created by them, whether or not such funds are appropriated by the General Assembly and whether the funds are derived from taxation, fees or other sources. Specifically, the consensus of the assembled delegates is that the license fees imposed on attorneys for the privilege of practicing law in the State of Illinois are public funds and subject to audit by the Auditor General, just as are the license fees of other professions licensed and regulated by the state.

Resolution 5 (Adopted Unanimously)

John Woods summarized some of the key features of the U.S. Constitution and the Illinois Constitution and remarked how pleasurable it was to be reviewing the state constitution at the same time the country was celebrating the bicentennial of the U.S. Constitution. Mr. Woods then asked for unanimous consent for a resolution of appreciation for Sam Witwer.

We express our appreciation for Sam Witwer and his dedication to the principles of constitutional reform and to his wife Ethyl who provided support and assistance.

Conclusion

Anne Evans offered a general thank you to Sangamon State University and the conference staff, and Judge Gerald Sbarboro, representing the Committee of 50, congratulated the group for their work and reminded them that their insights and opinions would be transmitted back to the Committee. Mr. Durr then made a motion to express the delegates' appreciation to the Committee of 50 for inviting the group's input, and the motion was approved by unanimous voice vote.

There being no more business, Mr. Witwer adjourned the plenary session.

Appendix A
List of Participants

The 1970 Illinois Constitution:
An Assessment by the Delegates
September 17-19, 1987

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APPENDIX B

Participating Delegates by Former
Convention Committee Assignments

Participating Delegates by Former Convention Committee Assignments

(1) - Bill of Rights Committee

Dvorak	John E.
Fennoy	William F.
Foster	Leonard
Gertz	Elmer
Hutmacher	Matthew
Kelleghan	Thomas C.
Macdonald	Virginia B.
Pechous	Roy
Raby	Albert A.

(2) - Education Committee

Alexander	John
Dove	Franklin E.
Evans	Anne H.
Fogal	William
Kamin	Malcolm S.
Patch	Samuel

(3) - Executive Article

Friedrich	Dwight
Gierach	James E.
Leon	John
Rigney	Harlan
Smith	Ronald
Tecson	Joseph A.

(4) - General Government Committee

Armstrong	William
Canfield	Robert R.
Leahy	Mary Lee
Madigan	Michael J.
Rosewell	Edward
Thompson	James
Wymore	Maxine

(5) - Judiciary Committee

Alexander	John
Fay	William L.
Kinney	Helen C.
Rachunas	Joseph
Whalen	Wayne W.
Willer	Anne

(6) - Legislative Committee

Lewis	George
Lyons	Thomas
Pappas	Mary Avgerin
Peccarelli	Anthony
Perona	Louis J.

(7) - Local Government Committee

Anderson	Joan G.
Borek	Ted A.
Dunn	Ralph
Johnsen	Ray V.
Stahl	David E.
Wenum	John
Woods	John G.
Zeglis	Donald

(8) - Revenue and Finance Committee

Brannen	James
Durr	Wendell
Elward	Paul F.
Garrison	Ray
Karns	John M.
Kenney	David
Lyons	Thomas
Mullen	Jeannette
Netsch	Dawn Clark
Ozinga	Martin
Scott	Maurice

(9) - Suffrage and Constitution Amending

Alexander	John
Green	Henry I.
Hendren	H.C.
Klaus	Stanley
Lennon	William F.
Shuman	Charles

(UNASSIGNED)

Witwer	Samuel
Lousin	Ann

APPENDIX C

Roundtable Discussion Group Assignments

Roundtable Discussion Group Assignments for Delegates

Group A - Freeport Meeting Room A

<u>Last</u>	<u>First</u>	<u>Committee</u>
Alexander	John	2,9,5
Anderson	Joan G.	7
Armstrong	William	4
Brannen	James	8
Friedrich	Dwight*	3
Kenney	David	8
Lewis	George	6
Patch	Samuel	2
Raby	Albert A.	1
Scott	Maurice	8
Shuman	Charles	9
Willer	Anne	5
Wymore	Maxine	4
Zeglis	Donald	7

Spokesperson: David Kenney
 Facilitator: J. Michael Lennon
 Recorder: David Griffith

Group B - Freeport Meeting Room B

Borek	Ted A.	7
Canfield	Robert R.	4
Fay	William L.	5
Fennoy	William F.	1
Gierach	James E.	3
Hutmacher	Matthew	1
Kamin	Malcolm S.	2
Netsch	Dawn Clark*	8
Ozinga	Martin	8
Pechous	Roy	1
Perona	Louis J.	6
Rigney	Harlan*	3
Rosewell	Edward	4
Whalen	Wayne W.	5
Woods	John G.	7

Spokesperson: Dawn Clark Netsch
 Facilitator: Nancy Ford
 Recorder: Judith Everson

*also a member of the Committee of 50

Group C - Freeport Meeting Room C

<u>Last</u>	<u>First</u>	<u>Committee</u>
Dunn	Ralph*	7
Durr	Wendell	8
Evans	Anne H.	2
Foster	Leonard	1
Garrison	Ray	8
Green	Henry I.	9
Kinney	Helen C.	5
Lennon	William F.	9
Leon	John	3
Macdonald	Virginia B.*	1
Madigan	Michael J.	4
Pappas	Mary Avgerin	6
Thompson	James	4
Wenum	John	7

Spokesperson: Leonard Foster
 Facilitator: Jack Van Der Slik
 Recorder: David Everson

Group D - Ottawa Meeting Room

Dove	Franklin E.	2
Fogal	William	2
Gertz	Elmer	1
Hendren	H.C.	9
Johnsen	Ray V.	7
Karns	John M.	8
Kelleghan	Thomas C.	1
Klaus	Stanley	9
Leahy	Mary Lee	4
Lyons	Thomas G.*	6,8
Mullen	Jeannette	8
Peccarelli	Anthony	6
Rachunas	Joseph	5
Smith	Ronald	3
Stahl	David E.	7
Tecson	Joseph A.	3

Spokesperson: Mary Lee Leahy
 Facilitator: John Jackson
 Recorder: Wayne Penn

APPENDIX D

Program

THE 1970 ILLINOIS CONSTITUTION: An Assessment by the Delegates

September 17 - 19, 1987
Springfield, Illinois

PROGRAM

Thursday, September 17

1:00 p.m. - 6:00 p.m.
Ramada Renaissance
Prefunctionary Area

Registration

3:00 p.m. - 5:00 p.m.
Ramada Renaissance

Individual Taped Interviews with the Delegates
(See registration staff for room locations)

6:00 p.m. - 6:30 p.m.
Old State Capitol
2nd floor

Sangamon State University Reception
Host: Dr. **DURWARD LONG**, President

6:30 p.m. - 7:30 p.m.
Old State Capitol
Hall of Representatives

Opening Ceremony
Presiding: Honorable **GEORGE H. RYAN**, Lieutenant Governor;
Chair, Committee of 50 to Re-examine the Illinois Constitution
Welcoming Remarks
Recognition of Special Guests
Introductory Remarks
Honorable **PHILIP J. ROCK**, Senate President
Honorable **MICHAEL J. MADIGAN**, Speaker of the House
Charge to the Delegates:
SAMUEL WITWER, President, 1970 Constitutional Convention

7:30 p.m. - 9:30 p.m.
Old State Capitol, Foyer

Buffet Dinner
Music by the **SANGAMON WOODWIND CONSORT**

Friday, September 18

Ramada Renaissance

8:00 a.m. - 9:00 a.m.
Ballroom C/D

Continental Breakfast

9:00 a.m. - 5:00 p.m.

Individual Taped Interviews with the Delegates
(See registration staff for locations of interviews)

9:00 a.m. - 9:10 a.m.
Ballroom C/D

Program Announcements

9:15 - 11:45 a.m.

Session I - Roundtable Discussions
Group A - Freeport Meeting Room A
Group B - Freeport Meeting Room B
Group C - Freeport Meeting Room C
Group D - Ottawa Meeting Room

12:00 noon - 1:00 p.m.
Ballroom C/D

Luncheon

1:15 p.m. - 4:45 p.m.

Session II - Roundtable Discussions
(Same groups and room locations as Session I)

NOTE: Coffee and tea will be provided throughout the roundtable discussions.

6:00 p.m. - 7:00 p.m.
Illinois Bar Center*
424 South Second St.

Illinois State Bar Association Reception
Host: DONALD C. SCHILLER, President

7:30 p.m. - 9:30 p.m.
Ramada Renaissance
Ballroom C/D

Dinner and Introduction of Special Guests

Saturday, September 19
Ramada Renaissance

8:00 a.m. - 9:00 a.m.
Ballroom C/D

Continental Breakfast

9:00 a.m. - 10:00 a.m.
Ballroom C/D

Plenary Session
Presiding: SAMUEL WITWER, President, 1970 Constitutional Convention
Reports on Roundtable Discussions by Delegate Spokespersons

10:00 a.m. - 11:30 a.m.
Ballroom C/D

General Discussion

11:30 a.m. - 1:00 p.m.
Ballroom A/B

Buffet Luncheon

(Reminder: Hotel check-out time is 12:00 p.m.)

**Sponsored by
Committee of 50 to Re-examine the Illinois Constitution**

MEMBERS

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Sister CANDIDA LUND, Vice Chair

JAMES R. THOMPSON, Governor
State of Illinois

SAMUEL WITWER, President
1970 Constitutional Convention

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Jonathan Baum
Glen Bower
Judith Ann Calder
Chief Justice Wm. G. Clark
John W. Cockrell
James Compton
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Jerry Costello
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Dwight P. Friedrich
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Sen. Harlan Rigney
Judge Gerald Sbarboro
John R. Schmidt
Perry Snyderman
Douglas Whitley
Timothy Wright
David Zeglis

*A shuttle bus will travel between the Ramada Renaissance and the Illinois Bar Center beginning at 5:30 p.m., with boarding on the Adams Street side of the hotel. The bus will make its last return trip from the Illinois Bar Center at 7:15 p.m.

ACKNOWLEDGMENTS

The members and staff of the Committee of 50 wish to express appreciation to the following individuals and organization for their generous donation of time and effort in the organization and planning of the reconvening of the delegates to the 19th Constitutional Convention.

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Special thanks to the ILLINOIS STATE BAR ASSOCIATION and SANGAMON STATE UNIVERSITY
for their financial support.

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Special thanks to the staff of the Legislative Printing Unit
for their ongoing cooperation and assistance in providing outstanding printing services.

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