The Judiciary Article of the Louisiana Constitution of 1974

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THE JUDICIARY ARTICLE OF THE LOUISIANA CONSTITUTION OF 1974

Lee Hargrave*

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INTRODUCTION

Article V on the judiciary makes few basic changes in the existing court system. In some respects, this is unfortunate, for many reforms were

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desirable, including a truly integrated court system. However, radical change was not politically possible. The article that emerged from the constitutional convention is nonetheless an improvement over the former constitution, primarily because it omits much of the detailed material of the former document and gives the legislature flexibility to change the system in a number of desirable ways.

This commentary is a selective catalogue of the important features of the judiciary article, accompanied by a discussion of some problems that may arise under the new provisions.

**COURT STRUCTURE AND ORGANIZATION**

The constitution itself establishes the structure and organization of the court system and does not follow the federal pattern or the Model State Constitution ideal which allow the legislative authority great flexibility in organizing and changing the system. The approach taken by the Committee on the Judiciary and accepted by the convention is similar to that of the 1921 Louisiana Constitution and results in the legislature being prevented from making significant change in the main elements of the system.

At the outset, the committee had a choice between two documents that would serve as its basic working draft. "Draft A" contained 47 sections that were basically a condensation of existing constitutional provisions while "Draft B" contained 18 sections based on model constitutional provisions that provided for less rigidity in court structure. With little hesitation, the committee chose to work from "Draft A," exhibiting a preference for the traditional approach of the prior constitution and the protection from legislative change it afforded. Of course, as the work of the committee and the convention evolved, many changes were made and flexibility was added, particularly with respect to the lower courts. But in its main elements, the structure of the court system is constitutionally established and not subject to legislative change.

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1. Judiciary Committee Staff Memo. No. 15.
2. Id. No. 13.
3. Preliminary votes in committee began with the meeting of April 14, 1973, and continued in successive meetings using "Draft A" as the working document. See JUDICIARY COMMITTEE MINUTES, Mar. 3, Apr. 14 and Apr. 21, 1973 [hereinafter cited as MINUTES]. Earlier, both Drafts A and B had been mailed to committee members. The strong reaction of a number of judges, particularly some in Orleans Parish, against Draft B necessitated an explanatory letter dated April 13, 1973, to a number of those judges explaining that "this draft represented the policy choices and recommendations of no one. It was a preliminary exercise to demonstrate one approach to a short, concise constitution along the lines of the national model judicial articles."
Article V, Section 1 is the basic limiting provision: "The judicial power is vested in a supreme court, courts of appeal, district courts, and other courts authorized by this Article." The section itself vests judicial power in the three named courts, thus preventing the legislature from divesting those courts of that power. The section also limits the legislature's authority in that judicial power can be vested in no other courts than those "authorized by this Article." Since the only type of new court "authorized" is the parish court, the legislative power to establish new types of courts is severely curtailed.

The policy of curbing the legislative power over court structure and organization was reinforced in the Local Government Article through the adoption of a provision to ensure that local governments would have no power to establish or change courts. Article VI, Section 25 provides, "Notwithstanding any provision of this Article, courts and their officers may be established or affected only as provided in Article V of this constitution."

The Supreme Court

The constitution continues the existence of the one supreme court of the state composed of seven judges, "a chief justice and six associate

4. The limiting effect of Section 1 can be seen in STATE OF LOUISIANA CONSTITUTIONAL CONVENTION OF 1973 VERBATIM TRANSCRIPTS Aug. 15, 1973 at 10 [hereinafter cited as PROCEEDINGS]. The minutes of the Judiciary Committee of April 20, 1973, at page three, disclose that the chairman put to the committee the question of whether the legislature should be able to establish additional courts. The committee voted to name the top three levels of courts in the constitution and then to refer to "such other courts as the constitution may authorize," instead of using an "as provided by law" formula that would have allowed the legislature to establish other courts. This result represents no essential change from the first paragraph of La. Const. art. VII, § 1 (1921). See comments to Committee Proposal 6, § 1, in OFFICIAL JOURNAL OF THE PROCEEDINGS OF THE CONSTITUTIONAL CONVENTION OF 1973 OF THE STATE OF LOUISIANA, July 6, 1973 at 15 [hereinafter cited as JOURNAL]; Comments to Draft A, § 1. See also LA. ST. L. INST., 2 PROJET OF A CONSTITUTION FOR THE STATE OF LOUISIANA 553 (1954) [hereinafter cited as PROJET]. Section 1 was passed as drafted by the committee with no amendments submitted. JOURNAL, Aug. 15, 1973 at 23. On final styling, the "shall be vested" phrase was changed to "is vested" to conform with Rule 11 of the Manual of Style and Drafting which required use of the present tense. The phrase "authorized by this constitution" was also changed to "authorized by this Article" "because nowhere else in this constitution are courts authorized to be created except by this Article." PROCEEDINGS, Jan. 9, 1974 at 68.

5. LA. CONST. art. V, § 15.

6. The section was not part of the Local and Parochial Government Committee Proposal but was added by floor amendment proposed by three members of the Judiciary Committee. JOURNAL, Sept. 26, 1973 at 3. The amendment was adopted by an overwhelming 96-16 vote.
Though the constitution does not require full court participation to decide a case, that is the likely effect since it does require that four judges "must concur to render judgment." The corresponding requirement of the prior constitution was that four judges must "concur to render judgment when the court is sitting en banc," and it was further provided that the court could sit in divisions composed of three judges. The new document imposes the four-judge-for-judgment requirement in all instances and suppresses the prior authorization to sit in divisions. While this change does not prohibit the court from sitting in divisions since what is not prohibited is allowed, the four-judge requirement makes a procedure of sitting in divisions impractical.

Though an early committee working draft would have permitted the court to sit in divisions, that authorization was not carried forward in the committee's proposals to the convention. This action was not desirable, for "the authority to sit in divisions should be retained to assure a means of extending the court's manpower to dispose of routine appeals of right in the event of continuing increase. This procedure was only utilized once, during 1921-23, but the reserved power should be retained in the event of future need." Ending the authority to sit in panels was not the subject of much debate in the committee, and was approved with only two dissenting votes. This result probably is explained by the general acceptance of the current practice of the court sitting only as a full body; a desire to present a drastically shortened article on the judiciary; and because more important, hard-fought policy matters were then occupying the committee. No attempt was made on the convention floor to add an authorization to sit in divisions.

Section 4 requires that the state be "divided into at least six supreme court districts, and at least one judge shall be elected from each." This provision allows the legislature to provide for single member supreme court districts. However, until such action, the existing six districts are maintained, five districts electing one judge each, and the First District, ...
composed of Orleans, Plaquemines, St. Bernard and Jefferson Parishes, electing two members to the court. The constitution itself does not enumerate the geographic area of each district as did the prior constitution, but any change in the composition of the existing districts requires a law enacted by 2/3 vote of the elected membership of each house of the legislature. The convention did not reapportion the districts according to population, nor did it require the legislature to do so.

An attempt was made on the convention floor, particularly by delegates from Jefferson Parish, to require seven single-member districts. Though much of the early debate on the proposition focused on the one-man, one-vote ideal and on single-member district principles, the proposition quickly became a political one since the seat of one first district justice who was a resident of Orleans Parish was soon to be up for reelection. The prospect of gerrymandering one justice out of office by carving up his district was raised. The convention, wary of becoming involved in the intricacies of Orleans and Jefferson Parish politics and aware of the 4-3 division of the court on many important issues, defeated the amendment by a 27-85 vote. Subsequent attempts to require a redivision of the districts after that upcoming election were also defeated. The result is that the reapportionment of the districts and the possibility of dividing the first district is left to the legislature subject to the 2/3 vote requirement of Section 4 and the provisions of Section 21 that forbid shortening the term of a sitting judge.

Under the Judiciary Committee proposal, a provision like that of the prior constitution establishing staggered terms for supreme court judges

15. La. Const. art. XIV, § 16(5) continued as a statute Art. VII, Sec. 9 of the 1921 Constitution which enumerated the districts. This provision has been placed in the Statutes as LA. R.S. 13:101 by La. Acts 1975, No. 51.
19. PROCEEDINGS, Aug. 15, 1973 at 31-50. See especially id. at 40, where one Orleans Parish delegate stated, "Gerrymandering will occur and a justice who is serving at this time, regardless of who he may be if this is passed, he (sic) will be gerrymandered out of office in some way, manner, shape or form."
20. Id. at 42.
21. Id. at 47, 49, 50.
22. La. Const. art. VII, § 7 (1921) was continued as a statute by art. XIV, § 16(5), but was subsequently repealed by La. Acts 1975, No. 171.
was unnecessary since staggering would occur automatically as existing terms expired. Under that proposal, with its 14-year terms for supreme court judges, one seat on the court would continue to be up for election every two years. However, since the convention reduced the judges' terms to ten years and made no other provision relative to staggering, the practice of having one judge elected every second year will no longer exist. In 1986 and again in 1988, two seats on the court will be up for election. In each subsequent ten-year cycle, the third and fourth district elections will coincide, and two years later, the fifth district and one of the first district elections will coincide. In the other three elections in the cycle, the other first district seat, the sixth district seat and the second district seat will be the only ones to be filled. The reduction in terms thus results in the undesirable possibility of having a changeover of a majority of the court within a period of little more than two years, a prospect which does not enhance the stability of the top court of the state.

The provisions of the 1921 Constitution allowing temporary assignment of lower court judges to the supreme court in case of illness or vacancy were unnecessarily detailed and were omitted in the new document; however, the substance of the prior law is retained and expanded since Section 5(A) allows the supreme court to "assign a sitting or retired judge to any court." Additionally, in case of a vacancy, Section 22 allows the supreme court to appoint "a person meeting the qualifications for the office, other than domicile, to fill the vacancy" pending the calling of a special election. Under this provision, the court can appoint any attorney with five years experience, and not necessarily a judge.

**Courts of Appeal**

The Judiciary Article establishes the structure of the courts of appeal, making little change in them and continuing them as courts devoted primarily to civil matters. It does, however, provide more flexibility to alter minor aspects of their organization.

26. See the text accompanying note 221, infra.
27. Though Article V, Section 10 vests no criminal appellate jurisdiction in the courts of appeal, Section 5(E) allows the legislature to grant them jurisdiction in those misdemeanor cases in which appeal does not lie to the supreme court. See the text accompanying note 171, infra.
Section 1 vests judicial power in "courts of appeal." Had the constitution stopped at that point, the legislature would have been free to organize the intermediate appellate courts as it chose, providing for example, for separate civil and criminal appeals courts. However, it went further and specified their basic structure in Sections 8-13. These provisions limit the legislature, because any court of appeal which is established must comply with Sections 8-13. Since Section 8 permits only one court of appeal in each circuit and Section 10 provides that "a court of appeal has appellate jurisdiction of all (1) civil cases decided within its circuit and (2) matters appealed from family and juvenile courts . . . ," it would not be permissible for the legislature to establish intermediate appellate courts limited to criminal cases. While it is true that Section 1 also vests judicial power in "other courts authorized by this Article," no courts of appeal other than those specified in Sections 8-13 are authorized.

The Judiciary Committee considered the possibility of providing some intermediate appellate review of criminal matters instead of continuing the prior system of having most criminal appeals heard by the supreme court. But it was not able to agree on a formula to change the existing system, and the matter did not reach the convention floor.

Section 8 requires that the state "be divided into at least four circuits, with one court of appeal in each," thereby preventing the establishment of one state-wide court of appeal or otherwise reducing the number of appellate courts from the existing four, but allowing the legislature to establish additional circuits and courts of appeal as the caseload requires. The prior constitutional enumeration of the geographic jurisdiction of each

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28. Draft B would have taken this approach, but the committee worked from Draft A which contained Sections 11-18 devoted to organization of the courts of appeal.

29. See Baton Rouge State Times, Mar. 9, 1973 at 1-B, col. 1. Court of Appeal Judge Minos D. Miller testified before the committee advising it to keep the current structure and urging that if criminal appeals became too burdensome for the supreme court, change could be handled through constitutional amendment. He said that if the constitution were to change the system, he would recommend special panels composed of five court of appeal judges serving on a rotating basis to hear criminal appeals, rather than adopting a separate criminal appellate court or enlarging the jurisdiction of existing appellate courts to encompass criminal matters.

See also Draft A, Section 6(E) which would have allowed the legislature to transfer criminal appellate jurisdiction from the supreme court to courts of appeal. This provision was not adopted by the committee.
court of appeal is omitted, but the existing division of the state into four "circuit[s]" is continued by Section 9. That section allows the legislature to change the extent of the circuits, but such changes must be "by law enacted by two-thirds of the elected members of each house of the legislature."

The quoted word formula indicates the necessity of approval of two-thirds of the entire membership of each house, rather than simply two-thirds of the members voting. This two-thirds requirement, and the many other supermajority requirements in the constitution, may seem inadvisable and puzzling. In many respects they are, and a fully articulated rationale to support them is not readily discernible from convention records. They are explainable partly as compromises by opposing forces in instances in which one group favored keeping a constitutional requirement intact and another group favored complete legislative freedom in the area. Another reason for these limitations can be attributed to a general distrust of the legislature and, with respect to the judiciary, fear of legislative action that would harm the judicial system. The oftmentioned gerrymandering of Judge Pavy by Huey Long was a continual point of argument to support the need to curb the legislature. While such requirements for supermajority votes may prevent some ill-advised legislation, they will also be an impediment to legislative improvement of the judicial system. In any event, one can at least be content with the fact that fewer matters will require constitutional amendment for change and, overall, more flexibility is granted to the legislature than the prior constitution provided.

Sections 8 and 9 require that at least three judges be attached to each court of appeal; however, the practical minimum is five judges, since Section 8(B) requires reargument of some cases "before a panel of at least five judges." While it would be permissible to attach only three judges to each court with judges from other courts being assigned temporarily for

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31. Though the origin of the term "circuit courts" can be traced to circuit riding by judges to hold sessions of court in various locations, the term "circuit" as used in Section 8 refers to a geographic area, "the areas bounded" by limits, WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 408 (1969).
33. LA. CONST. art. V, § 8 also requires panels "of at least three judges." Section 9 requires each circuit to be divided into "at least three districts, and at least one judge shall be elected from each."
rearguments, such a procedure would be cumbersome absent a drastic change in the number and organization of the courts of appeal.

An improvement over the prior constitution does result from the omission of provisions which fixed in the constitution the specific number of judges serving on each court of appeal; Section 9 does not itself fix that number, but rather continues the existing number, subject to change by law enacted by two-thirds vote of the elected membership of each house.

The appellate courts must sit in "panels composed of at least three judges selected according to rules adopted by the court." This requirement of Section 8 allows panels of more than three, as may be provided by law or by rule, thus authorizing en banc hearings in some instances or even allowing the appellate courts to hear all cases before the entire membership of the court. It is not required that the panels be "rotating" as the prior document required, but it is of course allowed. In these matters, the constitution reduces the binding constitutional detail and provides more flexibility for the courts of appeal to divide their caseload in the most efficient manner. Beyond the basic requirement that cases before those courts be heard by at least three judges there is great flexibility. Of course, court of appeal rules in these matters are subject to the general supervisory power of the supreme court over all other courts and to the supreme court’s power to make procedural and administrative rules for the entire court system. This power is necessary to ensure that degree of uniformity of court of appeal operation that is considered desirable by the supreme court.

Under prior law, court of appeal circuits were divided into electoral districts, and judges were elected from those districts. But, upon establishment of new judgeships which did not mesh into the existing district

34. Id. art. V, § 5A provides that the supreme court "may assign a sitting or retired judge to any court."
36. En banc proceedings were clearly contemplated, as shown in PROCEEDINGS, Aug. 13, 1973 at 57. See also LA. CONST. art. V, § 8(B) (reference to hearings before at least five judges).
38. LA. CONST. art. V, § 5(A). See the text accompanying note 93, infra.
structure, at-large judgeships with the whole circuit as their constituency came into existence. 39 Section 9 allows continuation of these at-large judgeships, for it simply requires each circuit to be “divided into at least three districts, and at least one judge shall be elected from each.” Once that minimum requirement is met, additional judgeships need not be elected from a district. The Judiciary Committee proposed Section 9 virtually as it was finally adopted. 40 When the convention considered the section, however, a number of delegates objected to the burdens of judges running at-large in the circuits, and an amendment by Delegate Ruth L. Miller was adopted to prevent a judge from being elected at-large from a circuit. 41 Later in the convention, however, a conflicting delegate proposal by Delegate R. Harmon Drew was adopted. 42 In the face of these conflicting provisions the convention, toward the end of its proceedings, adopted the Drew formulation and the final document does not contain the prohibition against at-large judgeships. 43

The constitution does provide flexibility in establishing new judgeships: the legislature can provide for redivision of the circuit and establish new districts; it can provide for more judges to be elected within existing districts; or it can establish more at-large judgeships. But, here again, the districts and “the judges as elected” from districts or at-large on the effective date of the constitution are continued, subject to legislative change enacted by two-thirds vote of each house. 44

The new document deletes much of the detail of the prior constitution; it does not state the domicile of the appellate courts, does not require them to sit at a designated domicile, and does not provide the length of the

41. PROCEEDINGS, Aug. 16, 1973 at 77.
43. PROCEEDINGS, Jan. 9, 1974 at 85-89. Delegate Miller stated: “I would like for it to be remembered that Mrs. Miller withdrew her objection on the sincere, bottom of the heart, deep-hearted promise of Representative Drew that this matter would be taken up in the Judiciary Committee of the Legislature and something be done about it.” Id. at 85.
sessions of those courts. Such matters are left to legislation and rules of court.

District Courts

The existing system of district courts is changed little; each district continues to have one primary court of original jurisdiction to handle all civil and criminal matters. Section 1 vests judicial power in the "district courts" and Sections 14-18 establish their structure and jurisdiction, with the result that, as with the supreme court and the courts of appeal, they are not subject to major alteration by the legislature.

The whole geographic area of the state must "be divided into judicial districts, each composed of at least one parish and served by at least one district judge." Though the convention was able to effect some brevity by omitting the detailed statement of the geographic area of each district, it continued the existing geographic division of the state into judicial districts. Though the constitution allows changes in the districts to be made by the legislature, it retrogressed by making those changes more difficult. Under the 1921 Constitution, changes could be made by majority vote of the legislature; under Section 15(B), the legislature may not "establish, divide, or merge judicial districts" without approval also "in a referendum in each district and parish affected."

Though this requirement inhibits statewide administration to meet changes in caseloads in the districts and subordinates general state interest to local interests, it reflects the convention's strong tendency to limit legislative control over "local" affairs, a tendency which permeated the local government provisions of the constitution and which also found expression in this part of the judiciary article. Though the requirements for

49. La. Const. art. VII, § 34 (1921).
50. Section 2 of La. Acts 1975, No. 13 proposed dividing the 25th Judicial District composed of Plaquemines and St. Bernard Parishes and called for an election in the district and parishes concerned.
change are stringent, they are clear. If a district is to be divided, approval by a majority of the voters in the district, as well as by a majority of the voters in each parish, must be obtained in addition to legislative approval. If a district is to be abolished and the parishes in it allocated to other districts, approval must be obtained in the district in question and in the districts that would gain territory, in addition to approval of the voters in each parish in each of those districts, all after having obtained legislative approval. This heavy burden will no doubt impede substantial consolidation of judicial districts. Section 14's requirement that a judicial district be composed of at least one parish is an attempt to require some diversity within a district court and to minimize a judge's political dependence on a very small group of voters.

By its silence on the subject, the constitution allows the legislature discretion to regulate the system of electing district judges. It is free to continue the present system of having those judges compete in divisions with the winner in each division being elected, or to change the process so that all candidates would run against each other with the top ranking candidates being elected. A change in judicial districts, by the provisions of Section 21, cannot operate to decrease a judge's term; however, his territorial jurisdiction is not so protected.

The number of judges attached to each district court is not specified in the constitution, though here again, the document continues the existing number of judges in each district, subject to change by law enacted by two-thirds vote of the elected membership of each house of the

51. Committee Proposal 21, § 15(B), would have required approval in a referendum in "each district or parish affected." By floor amendment sponsored by Delegate Chalin Perez, chairman of the Committee on Local Government, this was changed to "each district and parish affected" to make the meaning of the requirement unmistakable. Proceedings, Aug. 17, 1973 at 52-54.


53. No amendments were introduced to require election of judges from single-member districts within judicial districts, although one delegate did express the view that such would be desirable: "I feel that this would help the people to be better represented by their judges. It would make it a lot less expensive for a person to run for office." Also, "As an example in the Parish of Orleans a person running for the criminal district court judgeship must spend almost sixty thousand dollars in order to be elected." Proceedings, Aug. 16, 1973 at 107.

The committee had proposed allowing such changes by majority vote but the convention adopted with little debate a floor amendment that restored the two-thirds requirement of the prior constitution. The committee had proposed allowing such changes by majority vote but the convention adopted with little debate a floor amendment that restored the two-thirds requirement of the prior constitution. The committee had proposed allowing such changes by majority vote but the convention adopted with little debate a floor amendment that restored the two-thirds requirement of the prior constitution.

As the foregoing has disclosed, the constitution continues the district court structure and does not adopt an integrated court system. Much discussion about an integrated court system was afield in the state as the Judiciary Committee began its deliberations. Institute of Judicial Administration studies had recommended bringing the courts of limited jurisdiction into the district court structure, thus establishing one level of trial courts. Representatives of the Institute of Court Management and the American Judicature Society, as well as prominent Louisiana attorneys, argued for the proposal in committee. But the committee was not disposed to change the judicial organization so drastically.

Particularly since a unified court system would have required drastic changes in the courts of Orleans Parish and since the interests of the Orleans incumbents were well represented, the committee was unable to amass the vote needed to propose a truly integrated court system. But, as is discussed in detail later, the document does allow the legislature to move in that direction by facilitating abolition of courts of limited jurisdiction. Also, the constitutional provisions regulating the district courts are such that nothing prevents the legislature, the supreme court, or the district court from abolishing the courts of limited jurisdiction.

57. The Institute of Judicial Administration, A Study of the Louisiana Court System 239 (March, 1972).
58. Witnesses before the Judiciary Committee included Cecil Morgan, former dean of the Tulane Law School, and George W. Pugh, professor at the LSU Law School (Minutes, Mar. 2, 1973 at 2, 3); Harvey Soloman, director of studies for the Institute of Court Management, Ben R. Miller, Baton Rouge attorney, and Allan Ashman, director of research, American Judicature Society (id., Mar. 30, 1973 at 2); and Glenn R. Winters, executive director of the American Judicature Society (id., Apr. 13, 1973 at 2). See Baton Rouge State Times, March 31, 1973, at 11-A, col. 4; March 30, 1973, at 1-B, col. 6; March 23, 1973, at 1-B, col. 2. The committee also heard from the mayor of Port Barre, Louisiana, who had no opposition to abolishing mayor's courts if the town would still be able to keep the money collected as fines for violating city ordinances. Id., May 14, 1973, at 5-A, col. 1.
59. Judiciary Committee chairman James Dennis told the convention, "The basic idea here is to retain the present structure of the trial courts of original jurisdiction in the State of Louisiana, and to provide for a mechanism for the legislature to be able to change and reorganize the courts below the district level as time demands." He added that the legislature could move to a three or four-tiered court system "that would be uniform and consistent throughout the state and would not be fragmented and specialized as it is today." Proceedings, Aug. 17, 1973 at 2.
courts themselves from establishing specialized divisions within the district courts. Such divisions, with different procedures for juvenile matters, small claims, traffic cases, etc., are permissible. These would not be permanent separate courts with separate staffs, but parts of the one court with centralized staff and administrative control and one corps of judges who could move from division to division as needs arose and changed. In addition, the constitution nowhere requires a district court to sit in only one place, and branches of the district court throughout a district are permitted. Though the ideal of having one district court for the whole state with divisions sitting throughout the state is not possible, judges can be assigned throughout the state by the supreme court.60

The lack of regulation by the constitution in these regards allows something akin to an integrated system on the district court level to be effectuated as needs for greater efficiency, for specialization, or for making the courts more accessible are recognized. The increased rulemaking power of the supreme court allows many of these innovations to be brought about without the necessity for legislative action. Allowing such flexibility may well be one of the most important contributions the constitution makes toward improvement of the judicial system. It remains for the legislature and the supreme court to act to take advantage of this flexibility.

**Orleans District Courts**

The preferred pattern of organization for district courts, as Section 16 indicates and as most experts who appeared before the committee urged, is to establish one court in a district with original jurisdiction over all civil and criminal matters. However, the convention did not impose that pattern in Orleans Parish and did not require immediate merger of its separate civil and criminal district courts.61 A floor amendment to require merger failed by a vote of 46-68,62 and Section 32 does continue in existence the separate Orleans civil and criminal district courts.

Organization of the Orleans courts was the single issue that occupied the most time in the Judiciary Committee and that provoked the most controversy. At the instance of the Orleans interests, the committee did not urge merger, and in fact proposed making merger quite difficult by requiring approval of the legislature and by a referendum in Orleans Parish

The convention would not give such strong protection to the status quo, non-uniform organization. It rejected the committee proposal, first in favor of requiring a two-thirds vote to change the existing Orleans courts, then finally in favor of permitting change simply by law, meaning the normal legislative majority vote.\textsuperscript{64}

The convention's action reflected dissatisfaction with the non-uniform structure of Orleans courts.\textsuperscript{65} That dissatisfaction was also reflected in the reduction of Orleans district judges' terms from twelve to six years, thus giving them the same terms as the district judges serving the rest of the state.\textsuperscript{66} Though the dissatisfaction was not strong enough to merge the courts immediately, it did result in a reasonably easy mechanism for the legislature to do so, and in a rejection of the committee's proposed continuation in the constitution of a special Orleans judicial expense fund managed by the civil district judges.\textsuperscript{67}

Other than Section 32, the constitution does not contain provisions unique to the Orleans district courts. This approach is quite different from the 1921 constitution which contained several sections devoted to establishing detailed rules for the Orleans courts, rules that were often different from those applicable to the remainder of the state.\textsuperscript{68} Since the new constitution does not contain these separate provisions for the Orleans district courts, it follows that they are subject to the general provisions of Sections 14-17 governing all district courts, except as Section 32 might


\textsuperscript{64} The vote on the question occurred toward the end of the consideration of the judiciary article. By then the convention had reduced the terms of the Orleans district judges to six years and had refused to except Orleans from provisions dealing with abolishing or merging courts of limited jurisdiction. It was obvious that the convention would not accept the proposal which froze the variances in Orleans court structure so solidly. Some Orleans delegates conceded the inevitable and themselves introduced the amendment deleting the referendum requirement and substituting a two-thirds vote of the legislature. That amendment was approved. \textit{PROCEEDINGS}, Aug. 23, 1973 at 80-94. Immediately after that vote, the amendment allowing change simply by law was adopted by an even larger margin. \textit{Id.} at 94-97.

\textsuperscript{65} The sponsor of the amendment to merge the courts said his proposal was one "that will correct a rotten situation in the city of New Orleans." Also, "I have been pressured beyond belief by the judges of Orleans Parish, the civil district judges, to keep the present diversity of courts in the city." \textit{Id.}, Aug. 17, 1973 at 29.

In a poll of attorneys, it was the Orleans Parish bar that was most strongly in favor of merit selection of judges. See note 208, infra.

\textsuperscript{66} See the text accompanying note 248, infra.


\textsuperscript{68} \textit{La. Const.} art. VII, §§ 75-78 (1921).
require otherwise. The question then becomes the scope of Section 32 and the extent to which it does require otherwise.

Section 32 provides that “the civil and criminal district courts . . . are continued, subject to change by law.” It is the courts as courts, the existence of separate courts that is continued; the section does not continue all the details of the organization of those courts. Correspondingly, the grant of power to the legislature “to change by law” relates to change in the continuation of the existence of the separate courts, and not a general legislative power to change all aspects of the Orleans district courts.

For example, since Section 32 does not address itself to judicial districts, and since Section 14 requires division of the entire state into judicial districts, it follows that in this division, Orleans is considered a judicial district. In the prior constitution, Orleans was not so considered in the enumeration of judicial districts, and was covered in a separate section, but the new constitution contains no such separate section. That Orleans is considered a judicial district is further confirmed by the requirement of Section 26 that there be a district attorney for “each judicial district.” Were Orleans not included in this provision, no provision would exist for a district attorney covering Orleans Parish. The consequence of

69. While Article XIV, Section 16(5) does continue as statutory material much of the old constitutional material relative to the Orleans courts (art. VII, §§ 80-83, 85, 89-92, and 94-97), that continuation is “except as any of them conflicts with this constitution.” Thus, any provision of the old document continued as statute that is inconsistent with the provisions of Article V will be given no effect. While the technique of Section 16 may be criticized for being something less than precise, and while it would have been better to examine the continued provisions of the old document in detail to eliminate any conflicts, the technique was forced by time pressures at the conclusion of the convention and an overcautious approach to prevent any unforeseen gaps that might result from the elimination of material from the old constitution.

70. Article V, Section 15(A) uses similar language to similar effect. It “retained” the “district, family, juvenile, parish, city, and magistrate courts existing on the effective date of this constitution.” That provision could not refer to judicial districts, for Section 15(B) was adopted to handle that matter. It could not refer to jurisdiction, for Section 16 handles that subject matter and in fact changed the jurisdiction from what it was under the prior law.

71. La. Const. art. VII, § 31 (1921) provided for “thirty-two judicial districts in the state, the parish of Orleans excepted . . . .”

72. La. Const. art. VII, §§ 80 and 82 (1921) established separate criminal and civil district courts and provided their territorial jurisdiction.

73. Article V, Section 32 makes no reference to the Orleans Parish District Attorney. The comments to Committee Proposal 6, § 37, the corresponding provision from the committee proposal explained, “The Orleans Parish district attorney is excluded from treatment under this section, and thus would be subject to the
considering Orleans a judicial district within the ambit of Sections 14 and 15 is that changes in that district must comply with Section 15(B) requirements of legislative approval and approval by referendum in the district and parishes affected. The "subject to change by law" language of Section 32 would not govern such a change in the geographic area of the district, for this is not a matter that is "continued" by Section 32 and does not come within the coverage of that section.

Another example results from the fact that Section 32 does not address the jurisdiction of the Orleans district courts. Section 16 must then apply to establish their original jurisdiction over "all civil and criminal matters." But, since Section 32 must govern to the extent contrary, and since Section 32 does require a separate civil and criminal court, it follows that the civil jurisdiction established in Section 16 is to be apportioned to the civil court and the criminal jurisdiction to the criminal court. And, in terms of legislative power to change by law, Section 32 allows change in the existence vel non of the courts; but it does not address itself to their jurisdiction generally and does not empower the legislature to change the jurisdiction other than to reunite the civil and criminal jurisdiction in one court.

In this way, Section 32, can be seen as a specific exception to a uniform district court structure to preserve separate criminal and civil district courts in Orleans as separate courts; in other matters, the Orleans district courts are to be organized and treated uniformly with the other district courts of the state. To conclude otherwise would be inconsistent with the general purpose of the convention of establishing as much uniformity as possible within the court structure throughout the state; the policy of preventing substantial legislative change of the constitutional structure; and the policy of requiring supermajority votes to effectuate most of those changes in district court structure that are allowed.

Courts of Limited and Specialized Jurisdiction

As discussed, the constitution itself establishes and regulates in detail the district courts, courts of appeal and the supreme court. The convention provisions of Section 30 [of CP 6, which corresponds to art. V, § 26]." Section 30 included the reference to "in each judicial district a district attorney shall be elected . . ." just as the final language of Section 26 does. 74. Compare LA. CONST. art. V, § 14 with La. Const. art. VII, §§ 81, 91 (1921), for the minor change this brings about. Under the old constitution, the civil district court was deprived of jurisdiction in cases involving less than $100 in dispute, those cases being allotted to the city courts.
might well have stopped there, and provided for no other courts. Such action was urged by a number of experts who appeared before the Judiciary Committee, and would have provided a uniform three-tiered judicial system under which each district court would hear all cases arising within its territorial jurisdiction. However, since such a model would have required dismantling the existing specialized courts and courts of limited jurisdiction, neither the committee nor the convention was willing to impose it. With a committee and a convention composed of many local government officials intent on preserving their "local" courts, the prospect of dismantling the city court and juvenile court structure was a dim one. Indeed, the committee itself could not agree whether a three-tiered or four-tiered system was most desirable.

What emerged from this process was a compromise provision which continues the existing courts of specialized and limited jurisdiction, but which restricts the establishment of similar ones in the future. The basic provision in this regard is Section 1, which authorizes judicial power to be vested only in such "other courts authorized by this Article." The inquiry then becomes determining the other courts so authorized.

Section 15 authorizes the continuation of "family, juvenile, parish, city, and magistrate courts existing on the effective date of this constitution." In Orleans Parish, by virtue of Section 32, "the city, municipal, traffic, and juvenile courts . . . are continued." Section 20 continues "[m]ayors' courts and justice of the peace courts existing on the effective date of this constitution." All of these existing courts are thus "authorized" within the meaning of Section 1 and continue to exist. However, they are given much less constitutional protection than the district courts. The legislature, without the supermajority vote required for most changes in the other courts, can abolish them outright or merge them into the district courts.

The constitution does not establish their jurisdiction or

75. The reference to the magistrate's court was added by amendment to continue such a court in Kenner. Louisiana. PROCEEDINGS, Aug. 17, 1973 at 11-12. The reference to parish courts is to the existing parish courts in Jefferson Parish, not to the new type of parish court that is to be established in the future under the authority granted in Section 15(A).

76. The convention rejected an amendment that would have increased the power of local government agencies in regulating justices of the peace. A supporter of the amendment objected to the committee proposal language which would "require that whenever any particular local government wanted to either decrease or increase the number of justices of the peace, they would have to go to the legislature and get an act." Id. at 99. Action of the convention deleting the amendment confirms the legislature's power in this regard. Id. at 101. Of course,
otherwise regulate their structure and organization, allowing the legislature to do so.

One of the crucial votes occurred on the question of whether to allow the legislature to abolish or merge these courts of limited and specialized jurisdiction.\(^77\) As proposed by the Judiciary Committee, this legislative power was recognized with respect to all but the Orleans Parish lower level of courts.\(^78\) To abolish or merge the Orleans courts, approval by the legislature and by a referendum in the parish was required. This disparity in treatment of the Orleans lower courts was in obvious jeopardy since the convention by that time had already reduced the twelve-year terms of Orleans district judges and had provided for uniform six-year terms for all district judges. The first amendment seeking to end the disparity would have imposed the referendum requirement in all parishes of the state.\(^79\) If that amendment had passed, the existing system would have been frozen in so strongly that the legislature would have had little opportunity to effectuate reform. As Delegate Albert Tate, Jr. effectively told the convention:

> [T]his is the most important issue before us for judicial reform. I'm telling you that if you pass this amendment, you might as well go home as far as any possibility of this judicial article being any improvement on the present. What we are trying to do, is not freeze in courts that can be taken out, freeze in uniform statewide possibility of reform.\(^80\)

under the prior constitution, the legislature was free to change the mayor's courts and justices of the peace by legislative act. La. Const. art. VII, §§ 46-48, 50 (1921).

The committee and convention were aware that mayor's courts were in jeopardy under United States Constitutional standards. See Ward v. Village of Monroeville, 409 U.S. 57 (1972).

77. Committee Proposal 21, § 15, in JOURNAL, Aug. 17, 1973 at 1, as presented to the convention allowed abolition or merger of "trial courts of limited jurisdiction." A floor amendment was adopted to include courts of "specialized" jurisdiction to make clear that the legislature's power to merge or abolish courts would extend to all courts below the district level and would include juvenile and family courts. PROCEEDINGS, Aug. 17, 1973 at 5-10.

78. Committee Proposal 21, § 15(A), in JOURNAL, Aug. 17, 1973 at 1, granted the power to abolish or merge courts "except as provided in Section 35." Section 35 continued the courts of limited jurisdiction in Orleans Parish (city, municipal, traffic and juvenile courts) subject to change only by action of the legislature and approval by a referendum in Orleans Parish.


80. Id. at 18.
Other committee members rallied strongly against the amendment, Delegate Lawrence B. Sandoz telling the group, "As Judge Tate says, if we have one provision in this entire article, that gives us room for judicial reform in the future, it is this section." The amendment was rejected by a vote 35-81. The convention then acted to end the disparity by amending the section to subject the Orleans lower courts to the same change by law provision applicable to the remainder of the state.

Though the constitution does allow much legislative flexibility in abolishing or merging these lower courts, and though it allows their continuation until such legislative action, no such new courts can be established by the legislature. The courts "authorized" in terms of Section I are those "existing on the effective date of this constitution midnight December 31, 1974." That limited authorization does not authorize establishment of any more courts of that type.

The policy the convention accepted, and that the committee recommended, was to allow the legislature to move either to a uniform threeteried or four-tiered court system. In either system, uniformity is to be encouraged; a helter-skelter fourth tier of courts of limited jurisdiction with varied organization, powers and jurisdiction is to be avoided. To this end, the only new courts of limited jurisdiction that can be established by the legislature are those which the constitution authorizes in Section 15(A): "The legislature by law may establish trial courts of limited jurisdiction with parish-wide territorial jurisdiction and subject matter jurisdiction which shall be uniform throughout the state." As Committee Chairman James L. Dennis made clear to the convention, the legislature must establish any new courts below the district court level on a parish-wide basis with uniform jurisdiction over subject matter throughout the state. It is our hope and aim in authorizing the legislature in this manner, that they will move toward either . . . a three-leveled or a four-leveled court system that will be uniform and consistent throughout the state.

Though unstated in the constitution, the fact that the existing fourth tier courts are often staffed by part-time judges who also practice law, and that mayors and justices of the peace are invariably not legally trained sup-

81. Id. at 23.
82. Id. at 27.
83. Id. at 44.
84. LA. CONST. art. V, §§ 15(A), 20.
85. PROCEEDINGS, Aug. 15, 1973 at 5.
ported this policy choice. Though the convention did not end this situation, it did act to lessen its impact in the future by requiring that the new parish court judges be trained in the law and not practice law.\(^{86}\)

It is also clear that no new courts of specialized jurisdiction, including family and juvenile courts, may be established by the legislature. Though Section 15 continues in existence the family and juvenile courts "existing on the effective date of this constitution," it does not "authorize" additional courts of that type, or in fact, any other type of specialized courts. Section 18 is not to the contrary. In providing that "juvenile and family courts shall have jurisdiction as provided by law," it refers to jurisdiction and does not address itself to establishment of additional courts, and applies to the jurisdiction of the family and juvenile courts that are continued in existence by Section 15. This conclusion is buttressed by Section 19, which in requiring special procedures for juveniles accused of crime, speaks in terms of procedures and not in terms of special courts to administer those procedures. The special procedures required by Section 19 may be provided by existing family and juvenile courts, by district courts, by parish courts, or by city courts that are continued.

Sections 18 and 19 resulted after bitter floor fights. Floor amendments were introduced to attempt to preserve the concept of juvenile courts as institutions, but they were defeated and a requirement of special procedures for juveniles was adopted.\(^{87}\) This is an important distinction for the future of the administration of the court system. Whereas the prior constitution combined concepts of special procedures with the existence of special juvenile courts apart from the district courts,\(^{88}\) the new document does not. It simply requires special procedures. This approach gives protection to juveniles while not fragmenting the court system. Separate

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86. LA. CONST. art. V, § 24.
87. PROCEEDINGS, Aug. 28, 1973 at 3-38. Later, Delegate Proposal 43 by J. Jackson sought to establish in the constitution the juvenile courts and their jurisdiction. It was amended and then defeated. Id., Jan. 8, 1974 at 64-106; Id., Nov. 16, 1973 at 13-22. The compromise provision calling for special juvenile procedures was adopted. Id., Jan. 15, 1974 at 72-75, the sponsor of the proposal, Delegate Derbes, saying: "I felt that was an adequate middle ground to satisfy both people. It didn't prevent a unified court system . . . Well, it is a completely different approach to the problem. It has only to do with procedure, and it has nothing to do with jurisdiction. It's, I think, a different approach, and one that is not nearly so obstructive to the same problem." Id. at 62.
courts would lessen the flexibility of assignment of judges and arrangement of workload that is possible when only one district court hears all types of cases.

The concept the constitution adopts, though it prevents new specialized courts, does not prevent district courts or parish courts from being organized into specialized divisions. If the desirability of specialization by judges is recognized, this can be accommodated by having such judges assigned primarily to such specialized divisions. But, such judges would still be available for assignment and rotation to other divisions of the court depending on the workload in the different divisions. Specialized divisions within the one court could handle family matters, small claims, or traffic cases, all within the context of having one large court with flexible resources and assignment powers depending on workload.89

ADMINISTRATION OF THE JUDICIAL SYSTEM

Though the demands of localism were accommodated in the Judiciary Article by provisions making it difficult for the legislature to change the structure of the district courts, the necessity of statewide, centralized control over the operations of the lower courts was also recognized, and the constitution enhances the power of the supreme court to exercise administrative control over the entire judicial system of the state. Two groups of provisions in the constitution establish this power.

In Article II, Sections 1 and 2, the constitution continues the division of governmental power into separate legislative, executive and judicial branches and provides that no one branch shall exercise powers belonging to the others.90 Continuation of these provisions furnishes the basis for the existence of some inherent powers in the courts which the legislature and the executive cannot abridge. As the supreme court is the head of the

89. Chief Justice Joe Sanders appeared before the committee and explained some of the possibilities in this regard: "With this approach, the Constitution would create only one court at the trial level, the district court of general jurisdiction. Into it would be merged the present judges of city and local courts, separate juvenile courts, and family courts. These courts of special and limited jurisdiction would cease to exist.

"The district court would have divisions established by court rule, thus providing maximum flexibility. For example, the court might well provide for the following divisions: criminal, civil, family, traffic, and small claims.

"[Traffic and small claims] would, of course, be authorized to hold hearings at various places in the parishes as needed, utilizing when possible the courtroom facilities of the present city courts." MINUTES, July 23, 1973 at 4 (appendix).

judicial system, it is the final arbiter of the exercise of those inherent judicial powers. While the extent of these inherent powers is not defined, they include powers of administration, the power of judicial review, power over officers of the court, and the contempt power.\textsuperscript{91}

Article V grants additional power to the supreme court. Section 5(A) grants it "general supervisory jurisdiction over all other courts," providing the basis for the court's discretionary jurisdiction to review decisions of lower courts as well as its administrative control over those courts. The section also provides that the supreme court "may establish procedural and administrative rules not in conflict with law and may assign a sitting or retired judge to any court."\textsuperscript{92}

The result, then, is that the supreme court possesses, free of executive and legislative control, power within the inherent powers concept, general supervisory power over all other courts, and the power to assign judges. Moreover, it also is given an additional grant of administrative and

\textsuperscript{91} Had the contempt power not been considered an unlimited inherent power of the courts, no need would have existed for providing in Article V, Section 2, "The power to punish for contempt of court shall be limited by law." See PROCEEDINGS, Aug. 15, 1973 at 11, where Chairman Dennis stated: "We have proceeded upon the traditional theory that the power to punish is, for contempt of court, is inherent in the court but that the reasonable limitations may be placed upon it by legislative act."

Establishing an inherent power over admission to the bar and over defining the practice of law are Ex Parte Stecker, 179 La. 410, 154 So. 41 (1934), and Meunier v. Bernich, 170 So. 567 (La. App. Orl. Cir. 1936). Especially interesting is an early case questioning the power of the district court to order the sheriff to barricade a street near the courthouse to prevent passage of noisy traffic. In City of New Orleans v. Bell Sheriff, 14 La. Ann. 214 (1859), the court quoted with approval from the district court: "Considering that the Judges in the City of New Orleans are vested with full power to regulate the police of their courts and to prevent such noise within the precincts of their courts, as might disturb the administration of justice; and considering further, that the continual passage of horses and vehicles at the corner of St. Anne and Conde streets, creates such a noise as to disturb the business of the First District Court of New Orleans," and affirmed the order.

\textsuperscript{92} La. Const. art. VII, § 10 (1921) gave the supreme court "control of, and general supervision over all inferior courts." The formula of Section V of the new document is "general supervisory jurisdiction over all other courts" and adds the new language that it may establish procedural and administrative rules not in conflict with law. The deletion of the words "control of" was largely stylistic; the addition of the new rule-making powers indicates an expansion rather than a limitation of the court's powers over other elements of the judicial system. This intent is fortified by the convention votes on proposals to limit the court's powers. See notes 96-102, infra.
procedural rule-making power that is subject to legislative overview in that such rules cannot conflict with law.93

The enhanced rule-making power, by its terms, encompasses both administrative and procedural rules. This power extends to adopting rules or codes of procedure similar to that of the United States Supreme Court.94 The scope of the administrative and procedural rules is not limited, except that they cannot conflict with law.

That these powers were meant to be assigned to the supreme court and intended to be broad is made clear by convention rejection of amendments to delete from the committee proposal the power to establish procedural and administrative rules. The amendment to accomplish that, as well as to limit the power to assign judges, was soundly defeated by a 21-93 vote, following a debate which clearly posed the issue.95 Explaining his amendment to limit the court, Delegate Joseph A. Conino stated:

We do not feel that the Supreme Court should administer to the local courts and should tell the court how to operate the administrative part of its court. The committee proposal gives absolute and total power to the Supreme Court. The judicial administrator of the Supreme Court could become a Tsar and go down and snoop in the records of the local courts and thereby create problems on a local level. . . . That's right. It [the amendment] would reduce the Supreme Court's power as far as the administration of the local courts.96

Speaking against the amendment, Delegate James G. Derbes stated:

The real question at hand is whether or not we are to have some centralized authority to supervise our judicial system or will our judicial system be fragmented into a series of minor fiefdoms where one judge perhaps is not one to accede to certain demands or necessities in another section of court.97

Judiciary Committee Chairman James Dennis spoke in favor of "the Supreme Court's right to make reasonable rules as to the administration of justice in the state—as how long you can take to decide a case and

93. The language choice indicated that the court need not wait for legislative authorization to act. If the laws of the state are silent on a particular point, a supreme court rule covering that point would not conflict with law and would thus be permissible.
95. PROCEEDINGS, Aug. 15, 1973 at 61.
96. Id. at 53, 55.
97. Id. at 58.
reporting to the Supreme Court about case loads and things of this nature which are essential to efficient management of the entire court system.\footnote{98} When asked whether the court would have the power to make a judge decide a case, Dennis answered "Yes."\footnote{99}

This broad power in the supreme court provides a basis for substantial improvement in court efficiency by allowing it to establish rules governing the operations of all courts in the state. As new technology becomes available, the supreme court can order its implementation and facilitate its use. If lower court operations are deficient, the supreme court has the power to establish rules to correct those deficiencies. The court can move toward a truly integrated court system by exercising its power to order lower courts to establish divisions, assign judges, etc. This administrative power, as society becomes more concerned about the effectiveness of the courts, may be the constitution's most important innovation in the judiciary article. The new document, at the least, reflects a desire for more centralized control over the lower courts, not only in matters of substantive law, but also in the manner the lower courts conduct their affairs procedurally and administratively.

The power of the supreme court to "assign a sitting or retired judge to any court"\footnote{100} is broadened somewhat; the new provision has no limitations as to which judges can be assigned to which courts as the predecessor provision did.\footnote{101} An attempt was made to amend the committee proposal to provide that a judge could be assigned only with his consent and the consent of a majority of the court to which he would be assigned. The amendment was defeated 26-83.\footnote{102}

Section 6 mandates the chief justice to implement the supreme court's administrative powers: "He is the chief administrative officer of the judicial system of the state . . . ." However, he must exercise his powers "subject to rules adopted by the court."\footnote{103} Opposition developed to the proposal to name the chief justice the administrator of the judicial system of the state, and an amendment was introduced to specify that he would be

\footnotesize{
98. \textit{Id.} at 59.
99. \textit{Id.} at 60. \textit{See also} Baton Rouge State Times, March 23, 1973, at I-B, col. 2, reporting on a meeting at which an Institute of Judicial Administration study was discussed by district judges. A committee studying the report recommended that the supreme court be given procedural rule making authority with the rules subject to change by the legislature.
}
the administrative officer of the supreme court, rather than of the entire judicial system. Delegate Ambroise H. Landry, explained his amendment:

[B]ut my district judges oppose this Paragraph B with the fear that many years to come that by saying that the chief administrative officer of the judicial system is not limited to the Supreme Court, but could be so far-reaching to where the chief justice would come into a local parish and tell the district judges how they will manage their affairs.\textsuperscript{104}

The issue of the extent of centralized control was clearly posed again in this debate. Delegate I. Jackson Burson, Jr., in opposition to the amendment, said:

It is well known that we have had occasions in this state where district judges simply were not doing their work. And you need someone in the judicial system with the authority to bring them to toe and require them to do their work.\textsuperscript{105}

The amendment was defeated and the committee language remained intact,\textsuperscript{106} providing additional evidence of the convention's aim of establishing strong central authority to administer the entire court system.

The committee struggled with the method of selecting the chief justice.\textsuperscript{107} The fact that the seniority system had recently resulted in three chief justices in a ten month period, and the fear of the destabilizing effect such turnover could have on judicial administration concerned many members. An Institute of Judicial Administration study questioned selection by seniority and had suggested election by the justices as an alternative.\textsuperscript{108} Early in its deliberations, the committee did opt for election of the

\textsuperscript{104} Proceedings, Aug. 16, 1973 at 22.
\textsuperscript{105} Id. at 25.
\textsuperscript{106} Id. at 28.
\textsuperscript{107} The working papers of the committee, in Draft A, Section 8, comments stated: "the committee might suggest some alternative. For instance, to avoid the superannuated chief justice who continues to serve only in order to attain the title, perhaps the senior justice below sixty-five (sixty?) years of age, should succeed. Again, since the chief justice has administrative functions and perhaps should be chosen for administrative ability rather than age, perhaps whenever a vacancy occurs the court should be authorized to elect a chief justice from its membership for a term long enough to provide leadership and direction (e.g., seven years?), eligible to succeed himself. We have been fortunate in that our longterm chief justices have possessed administrative ability (Chief Justice Sanders is an outstanding example), and perhaps should not tamper with fate; on the other hand, by the chance of a few days or months of seniority, the court system could be saddled with a longterm chief justice with no interest in administration."
chief justice by the members of the supreme court, but soon after, Justice Frank W. Summers appeared before the committee and strongly urged retention of the seniority system to avoid possible infighting on the court and to minimize political influences possibly affecting selection of a chief justice. The committee then reversed its position and adopted a modified seniority system under which the judge senior in service would become chief justice if he was below the age of 65 at the time a vacancy was to be filled. Ultimately, however, the convention adopted an amendment deleting the 65-year limitation and continuing the existing straight seniority system. A later attempt to provide for the court’s electing its chief justice was defeated by 44-71.

Of course, if the senior judge in service does not want the administrative duties, he could delegate or share them with another judge of the court more interested in administration. There is no prohibition against a judge declining the office of chief justice but remaining on the court, with the next judge in seniority becoming chief justice.

Though Section 7 does not require a judicial administrator, as did the prior provisions, it provides that the supreme court “may select a judicial administrator” to assist the court in carrying out its administrative duties. The section also allows the court to select its clerk and other personnel and to “prescribe their duties.” The committee proposal would also have allowed the court to prescribe the compensation of its employees, but that power was deleted by amendment to make clear that the

110. MINUTES, June 16, 1973 at 2, 3; Baton Rouge Sunday Advocate, June 17, 1973 at 3-B, col. 3. Committee Proposal 21, § 6, in JOURNAL, Aug. 16, 1973 at 2; Committee Proposal 6, § 6, in JOURNAL, July 6, 1973 at 15. Supporting the committee proposal, Chairman Dennis explained: “The defects in having him be selected solely by seniority are first of all, you encourage people who might have retired at 65, to stay on the court just for the hope of getting that honorable title. Second, you run the danger of the situation that we had recently of a rapid turnover of three chief justices in a ten-month period. Third, you might have someone who is physically and mentally able to be a justice, but not physically up to the task of being chief administrative officer in addition to being a voting and writing justice of the Supreme Court.” PROCEEDINGS, Aug. 16, 1973 at 4.
111. PROCEEDINGS, Aug. 16, 1973 at 7-14. Delegate B.B. Rayburn spoke effectively of not depriving an elderly man of having the honor of being chief justice for some time at least.
112. Id. at 15-21.
power to set salaries and to appropriate state funds is a legislative function.\textsuperscript{114}

The concern with efficient court administration did not end with the supreme court. Section 12 provides that the senior judge of each court of appeal shall be chief judge of that court and "shall administer the court subject to rules adopted by it." The prior law did not contain that statement of administrative duties,\textsuperscript{115} and the convention defeated an amendment that sought to delete the reference to the administrative role of the chief judge by a vote of 12-99.\textsuperscript{116}

Concern for administration on the district court level is shown in the new requirement of Section 17 that each district court "shall elect from its members a chief judge who shall exercise, for a term designated by the court, the administrative functions prescribed by rule of court." Initially, the committee proposed that the district courts "may" elect a chief judge, but later versions of its draft changed the language to the mandatory "shall."\textsuperscript{117} The position of chief judge of a district court being a new one in the constitution and thus not involving existing expectations of reaching that office as was the case with the chief justice and chief judge of a

\textsuperscript{114} Committee Proposal 21, § 7, in JOURNAL, Aug. 16, 1973 at 3. PROCEEDINGS, Aug. 16, 1973 at 30-36. The debate pointed out the committee view that though the court would set the salary level, legislative control remained because the legislature could withhold appropriation of those funds and no state funds can be spent without appropriation. Delegate Camille Gravel, however, wanted to avoid the possibility that "the judicial administrator would have a valid, legal claim under the constitution to recover that money from the state" even if no appropriation were made. Id. at 31. LA. R.S. 13:(10) (Supp. 1975) allows the supreme court to set the salary of the judicial administrator.

\textsuperscript{115} La. Const. art. VII, § 23 (1921) (as amended by La. Acts 1958, No. 561) provided for a presiding judge but did not assign him administrative duties.

\textsuperscript{116} PROCEEDINGS, Aug. 16, 1973 at 93-94. That debate also makes clear that the chief judge can assign the administrative duties to another judge or to a judicial administrator.

The committee recommended, as with the chief justice, selection of the chief judge on a modified seniority basis—the judge oldest in point of service below the age of 65 would succeed to a vacancy in the office. As the selection method of the chief justice had been changed earlier, selection of the chief judges was changed to a straight seniority selection.

Section 13 continues provisions allowing the courts of appeal to select their clerks and other personnel and to prescribe their duties. Deleted is the provision of the prior law requiring the governing authority of the parish in which a court of appeal is located to provide facilities for the court; this will be handled by legislation rather than being constitutional detail.

\textsuperscript{117} Committee Proposal 21, § 17, in JOURNAL, Aug. 17, 1973 at 7; Committee Proposal 6, § 17, in JOURNAL, July 6, 1973 at 16. MINUTES, Aug. 8, at 2; id., May 11, 1973 at 3-4.
court of appeal, the convention accepted the committee’s recommendation that he be elected.\textsuperscript{118}

\section*{JURISDICTION OF COURTS}

\textit{General Powers of Courts and Judges}

As stated earlier, the separation of powers doctrine reflected in Article II recognizes the existence of some inherent powers in the judicial branch of government. These inherent powers associated with the essence of the judicial function vest not in the supreme court alone, but in all courts. Such would be the case without the constitution saying more. Section 2 of Article V, however, goes further and restates the principle in specific language; it recognizes the power of a judge to issue “writs of habeas corpus and all other needful writs, orders and process in aid of the jurisdiction of his court.” In the supreme court and court of appeal, such orders by one judge are subject to review by the whole court. Review by the whole court is not provided for in the case of district judge orders, thus keeping the concept of district courts acting normally through one judge, and not through multi-member panels.

Section 2 condenses the language of Article VII, Section 2 of the 1921 constitution without making essential changes; the detailed enumeration of writs of the predecessor provision was unnecessary in light of the reference to “all other needful writs, orders and process.”\textsuperscript{119} The reference here to writs of habeas corpus is not the constitution’s primary recognition of a citizen’s right to the writ; Article I, Section 21 provides unequivocally, “The writ of habeas corpus shall not be suspended.”\textsuperscript{120}

Section 2 also continues the provision of Article XIX, Section 17 of the 1921 constitution requiring that the power to punish for contempt be limited by law. This provision, too, reflects the view that the contempt power is inherent in the courts and could not be limited but for this authorization and mandate to do so. In light of this relation to the inherent powers concept, there is a basis for the chairman of the judiciary committee having indicated to the convention that any legislative limitation of the contempt power be “reasonable.”\textsuperscript{121} If the power to limit were construed

\textsuperscript{118} \textit{Proceedings}, Aug. 17, 1972 at 80-86.


\textsuperscript{121} \textit{Proceedings}, Aug. 15, 1973 at 11.
to be unlimited, it could conceivably allow the legislature to so drastically limit the contempt power as to interfere with the separation of powers doctrine and the inherent needs of the judicial system, a result that would be incompatible with Article II, Sections 1 and 2.

Reflecting common terminology, the chairman of the Judiciary Committee indicated to the convention that a mayor serving on a mayor's court or a justice of the peace is not included in Section 2's reference to "a judge" and that those officials do not partake of the grant of power of the section. The corresponding provision of the 1921 constitution did not include them either; it referred to the supreme court, courts of appeal and district judges. The reference to a "judge" however, would include judges of city courts, and the chairman so indicated in answer to a question posed on the convention floor. This is consistent with the terminology used in the Judiciary Article, for Section 15(C) refers to a "city court judge." Including city court judges within the provision expands it slightly.

As the prior constitution did, the new document establishes the jurisdiction of the appellate and district courts in detail. Jurisdiction of the courts of specialized and limited jurisdiction, however, is not constitutionally fixed and is subject to substantial legislative control.

Jurisdiction of the Supreme Court

Article V, Section 5 specifies the supreme court's original, supervisory and appellate jurisdiction. The distinction between supervisory and appellate jurisdiction is a continuation of existing terminology, "supervisory" referring to the court's discretionary jurisdiction under which it has the power to select the cases it will hear, and "appellate"

122. Id. Chairman Dennis said, "but I believe the answer is that the J.P.'s and Mayors are not classified as judges anywhere in this article so this would refer only to judges of city courts, special courts, district and on up."

However, see Sledge v. McClathery, 324 So. 2d 354 (La. 1975), which holds that the mayor has authority to appoint counsel for indigents appearing before the mayor's court when counsel is required under Article 1, Section 13. In the opinion, the court indicates, without discussion of the convention proceedings, that mayor's courts are included within 'the powers mentioned in Article V, Section 2. The case may well be bottomed more on Article 1, Section 13, or on some concept of inherent power, or on the powers of the supreme court to make rules for the entire judicial system, than on Article V, Section 2.

124. See note 4, supra.
contemplating cases in which a party as a matter of right can demand that
the court hear a case.126

Clearly, since the constitution itself grants specific jurisdiction to the
supreme court, the legislature is prohibited from depriving the court of
that jurisdiction. It is less clear, however, whether the legislature by law
can add to the supreme court's jurisdiction. The problem is primarily
whether the legislature can grant appeals of right when the constitution
does not do so. The problem was raised in State v. James127 by the
supreme court ex proprio motu and although the opinion is not exhaustive,
the court indicated by a 4-3 vote that the legislature could not do so.
The case holds unconstitutional a statute granting the state a right of
appeal from a judgment sustaining a motion to quash an indictment,128 a
type of appeal that is not contemplated in the constitutional grant of
jurisdiction to the supreme court. The committee and convention debates
do little to clarify the issue; in fact, the exact problem does not seem to
have been the subject of much consideration during the convention
process.

Supporting the view that the legislature does have authority to add to
the court's constitutional jurisdiction is the principle that "[t]he provisions
of a state constitution are limitations on the power of the people
exercised through the legislature; what is not prohibited by the constitution
is permitted."129 Since no prohibition against additional jurisdiction
by law is contained in the constitution, it is arguable that the legislature
can so act. On the other hand is a construction of the constitutional grant
as an implied prohibition against additional jurisdiction that would parallel
the Marshall analysis in Marbury v. Madison: "Affirmative words are
often, in their operation, negative of other objects than those affirmed
. . .",130 so that:

When an instrument organizing fundamentally a judicial
system, divides it into one supreme, and so many inferior courts

126. PROCEEDINGS, Aug. 15, 1973 at 51, where Chairman Dennnis explained to the
convention: "Subparagraph (D) provides for cases which are appealable of right to
the Supreme Court. The Supreme Court by virtue of its supervisory jurisdiction can
hear any case that it chooses that arises in the Louisiana court system, however,
Subparagraph (D) says that it must hear these kind of cases. It must grant the appeal
and hear the case described in Subparagraph (D) . . . ."

127. 329 So. 2d 713 (La. 1976).
128. LA. CODE CRIM. P. art. 912(B).
129. General Guidelines No. 1, Manual on Style and Drafting, 1 JOURNAL 769.
See State v. James, 329 So. 2d 713, 717 (La. 1976) (Tate, J., concurring); Hainkel v.
Henry, 313 So. 2d 577 (La. 1975).
130. 5 U.S. (1 Cranch) 137 (1803).
then enumerates its powers, and proceeds so far as to distribute them, as to define the jurisdiction of the supreme court by declaring the cases in which it shall take [supervisory] jurisdiction, and that in others it shall take appellate jurisdiction; the plain import of the words seems to be that in one class of cases its jurisdiction is [supervisory] and not appellate; in the other it is appellate, and not [supervisory].

Consistent with this view is some indication of a constitutional purpose of decreasing the appeals of right to the supreme court. The prior document granted appellate jurisdiction in five classes of cases whereas the new constitution grants it in three, thus reducing the time and effort the court would have to spend on appeals of right which may not involve substantial legal questions, and allowing it to concentrate more on its role of guiding the development of the law by deciding the important cases it, in its discretion, selects. This purpose was reflected in Draft A, the committee's working draft, where it was indicated:

the direct civil appeals to the supreme court have been restricted to instances where legislative action has been declared unconstitutional, in view of Chief Justice Sanders' recommendation. Also, in accordance with same; the monetary threshold in criminal appeals has been raised from three hundred to five hundred dollars.

Yet while this is good policy in terms of the function of the supreme court, and while allowing the legislature to require the court to hear a large class of additional appeals would tend to defeat its role as a "writ court," one can question whether such was a strong convention policy. The convention voted not to relieve the court of hearing appeals in cases where ordinances had been declared unconstitutional when that issue was put to it, and refused to relieve the court of appeals of right in most criminal cases.

Perhaps the strongest support for legislative power to add to the court's appeals jurisdiction is a change in language from the predecessor provision of Section 5(D). Article VII, Section 10 of the former constitu-

131. Id. at 175.
132. Compare La. Const. art. VII, § 10 (1921) with La. Const. arts. IV, § 21(E) and V, § 5(D).
133. Draft A, Section 6 (comments).
134. See note 148, infra.
135. See note 150, infra.
tion provided, "[t]he following cases only shall be appealable to the Supreme Court. . . .," making it clear that the legislature could not enlarge the listing. However, the new provision omits the reference to "only" and simply provides "a case shall be appealable to the supreme court if. . . ." Deletion of "only" is certainly a change, a change which, arguably, removes the prior prohibition against legislative additions of jurisdiction. The available convention documents do not refer to this change. The change first appears in the initial committee working draft, Draft A, and follows through to the final language adopted by the convention, but the comments and debate do not emphasize the effect of the change. Normally, such an intentional, drastic change would have been brought to the attention of the convention through memoranda or in the debate.

The majority in State v. James relied primarily on State v. Murphy for the proposition that the legislature could not enlarge the court's appellate jurisdiction; however since Murphy was decided under the old constitution which included the reference to "only," the case should not be dispositive.

If one looks more closely at the language of Section 5(D), other changes appear that seem to support the James result. The section provides, "In addition to other appeals provided by this constitution, a case shall be appealable to the supreme court if. . . ." Reference to "by this constitution" indicates that additional appeals are allowed only if so provided in the constitution and cannot be provided by law. And, when the constitution meant to recognize legislative power, it clearly did so, as in the next subparagraph, Section 5(E), which in referring to other criminal matters recognized a "right of appeal or review, as provided by law."

Also, the statement of jurisdiction of the supreme court when analyzed in conjunction with the statement of the jurisdiction of the courts of appeal provides support for the view that the legislature cannot enlarge the supreme court's jurisdiction. Section 5 refers to the cases "appealable to the supreme court," then Section 10 grants the courts of appeal appellate jurisdiction "except in cases appealable to the supreme

136. See Draft A, Section 6(d) reproduced in DOCUMENTS OF THE LOUISIANA CONSTITUTIONAL CONVENTION OF 1973 RELATIVE TO THE ADMINISTRATION OF CRIMINAL JUSTICE 1042, 1043 [hereinafter cited as DOCUMENTS]; Committee Proposal 21, § 5(D); Committee Proposal 6, § 5(D).
138. It appears that footnote 1 in the opinion is in error in quoting Article VII, Section 10, for that quotation omits "only."
"court. . . ." This repetition of the exact language is consistent with the view that the constitution itself has apportioned the appellate jurisdiction among courts and the legislature is not free to change it. But again, the constitution has not granted appeals of right by the state in any criminal matter, and this position would have to accept the view that the constitution meant this to be, without power in the legislature to grant such an appeal to any court.

Further consideration of the jurisdictional provisions with respect to the courts of appeal and the district court raise other difficulties. In civil cases, appellate jurisdiction in matters not included in Section 5 as appealable to the supreme court is constitutionally vested in the courts of appeal. The legislature probably cannot divest the courts of appeal of that jurisdiction. If it were then to grant appellate jurisdiction to the supreme court in those cases, the jurisdiction would have to be concurrent with the courts of appeal. Such would not promote judicial efficiency. It is also possible, in such a situation, for a litigant to have two appeals of right, a result inconsistent with the general purpose of requiring the supreme court to hear only the most important cases, and then on appeal from the district court without having the case heard by a court of appeal.

Additionally, if one accepts legislative power to enlarge the appellate jurisdiction of the supreme court, that same reasoning would allow it to enlarge that of the courts of appeal. It would follow that the legislature can grant the courts of appeal appellate jurisdiction in all criminal matters, resulting in the same problem of concurrent appellate jurisdiction just discussed, besides being at odds with a clear convention decision not to grant criminal jurisdiction to the intermediate appellate courts.139

Legislative power, under this argument, would also exist to enlarge the original jurisdiction of the supreme court. But since Section 16 vests original jurisdiction in all civil and criminal cases in the district courts, jurisdiction which probably cannot be taken away, the result would again probably be concurrent jurisdiction in both the district and supreme courts, a result again at odds with judicial efficiency and the concept of the supreme court as primarily an appellate writ court.

Fortunately, the constitution is clearer in delineating the jurisdiction that it does grant the supreme court. Section 5(A) grants it "general supervisory jurisdiction over all other courts," continuing its extensive discretionary power to review any and all cases from lower courts.140

139. See note 165, infra.
Section 2 allows the court to issue all writs and orders to implement this grant of jurisdiction.

Section 5(B) continues the court's "exclusive original jurisdiction of disciplinary proceedings against a member of the bar." It was not necessary to specify, as did the prior provisions, the power to suspend or disbar, for the power to impose sanctions as part of the disciplinary proceedings is both implicit and inherent. Discontinued is the provision in the prior law granting original jurisdiction of suits to remove judges.\textsuperscript{141} The removal by suit procedure does not apply to judges,\textsuperscript{142} and Section 25's removal procedure upon recommendation of the judiciary commission itself establishes the powers of the supreme court in that regard. It was also not necessary to state that the court would have original jurisdiction for the determination of questions of fact affecting its appellate jurisdiction in a pending case;\textsuperscript{143} that power is implied and inherent and, even if it were not, Section 2 recognizes it.

The convention accepted the committee's policy of decreasing the mandatory appellate jurisdiction of the court. Deleted from the new statement of the court's appellate jurisdiction are election suits covering more than one court of appeal circuit, and cases in which the constitutionality or legality of any tax is contested.\textsuperscript{144} These matters now fall in the court of appeal appellate jurisdiction,\textsuperscript{145} and are also within the supreme court's discretionary supervisory jurisdiction. Though Section 5 deletes mandatory appellate jurisdiction over cases in which Public Service Commission orders are in contest, Article IV, Section 21(E) does provide for direct appeal from the district court of such actions.

Section 5(D) continues mandatory appellate jurisdiction over cases in which "a law or ordinance has been declared unconstitutional." A committee working draft had proposed that the appellate jurisdiction be limited to cases in which a state law had been declared unconstitutional,\textsuperscript{146}

\begin{footnotesize}
\begin{enumerate}
\item[141.] \textit{La. Const.} art. VII, § 10 (1921): "It has exclusive original jurisdiction of . . . suits for the removal from office of judges of courts of record as elsewhere provided in this constitution . . . ."
\item[142.] \textit{LA. Const.} art. X, § 25.
\item[143.] \textit{La. Const.} art. VII, § 10 (1921).
\item[144.] \textit{La. Const.} art. VII, §§ 10(1), 10(4) (1921). \textit{Committee Proposal 6}, § 5, in \textit{JOURNAL.}, Aug. 15, 1973 at 6, 9, 10. Of course, if a statute enacting a tax were declared unconstitutional, an appeal would lie. Removed is the right of appeal when the contested tax is upheld. See \textit{Southland Corp. v. Collector}, 318 So. 2d 23 (La. 1975).
\item[145.] \textit{La. Const.} art. V, § 10.
\item[146.] The prior law referred to "an ordinance of a parish, municipal corporation, board or subdivision of the state." \textit{La. Const.} art. VII, § 10 (1921). Draft A, Section
\end{enumerate}
\end{footnotesize}
but a later draft restored the reference to ordinances, and the convention itself defeated a floor amendment that would have deleted that reference.

Section 5(D) also vests in the supreme court mandatory appellate jurisdiction of criminal cases in which "the defendant has been convicted of a felony or a fine exceeding five hundred dollars or imprisonment exceeding six months actually has been imposed." Corresponding to this is Section 10 which establishes the constitutional jurisdiction of the courts of appeal only in civil and juvenile cases. Thus, the constitution does not provide intermediate appellate review of criminal matters and assigns the supreme court sole jurisdiction over the bulk of the criminal appeals. This was not a wise decision. The growing criminal appellate workload is overburdening the court, forcing it to hear appeals that do not involve substantial legal questions, and resulting in the court spending inadequate time on its function of guiding the development of the law by concentrating on major legal questions.

The failure to reapportion the criminal appellate jurisdiction resulted partly from lack of agreement on how to restructure those appeals and partly from the opposition of court of appeal judges who resisted being granted criminal jurisdiction. A committee working draft had suggested continuing supreme court appellate jurisdiction in criminal cases, but allowing the legislature to transfer that jurisdiction to the courts of appeal or to such other intermediate appellate court the legislature might create. This suggestion was not accepted and not made part of the committee's proposals.

Section 5(D) continues the prior law in that a defendant has a right of appeal to the supreme court in all felony convictions regardless of the

6 omitted the reference to ordinances, the comment explaining that "direct civil appeals to the supreme court have been restricted to instances where legislative action has been declared unconstitutional in view of Chief Justice Sanders' recommendation." Committee Proposal 6, § 5, in Journal, July 6, 1973 at 15. See also Minutes, Apr. 20, 1973 at 6.


148. The floor amendment sponsored by Justice Albert Tate was defeated by a vote of 27-82. Proceedings, Aug. 15, 1973, at 84.

149. E.g., Baton Rouge State Times, March 9, 1973, at 1-B, col. 1, reporting that Judge Minos D. Miller of the Third Circuit Court of Appeal appeared before the judiciary committee urging that the courts of appeal not be granted criminal jurisdiction. He suggested that if criminal appeals become too burdensome for the supreme court, the problem could be cured with a constitutional amendment.

penalty imposed, and in misdemeanor cases in which imprisonment exceeding six months actually has been imposed. In other misde-
meanors, the right exists if a fine exceeding $500 is imposed; this raises the prior provision's $300 threshold. These provisions were adopted without substantial changes in the committee proposal. No provision is made for appeals by the state in criminal matters.

Providing some type of review of misdemeanor convictions in which no right of appeal to the supreme court was granted did cause difficulty. Involved here are misdemeanor convictions in district courts and courts of limited jurisdiction in which the punishment actually imposed is six months imprisonment or less or a fine of $500 or less. The committee's first draft proposal made no provision for review of such cases. That failure to at least mandate some type of review caused concern about inadequate protection of individual rights. Complicating the problem was a desire not to constitutionalize trial de novo of matters heard in courts of limited jurisdiction as the prior constitution did. The result was a provision in a later committee draft which added, "In other criminal cases, an accused shall have a right of appeal or review as provided by law or by rule of the supreme court not inconsistent therewith." This was changed by floor amendment to delete the power of the supreme court to provide for such review by rule, thus requiring that the appeal or review mechanism be provided by law, and to put the remaining language in a separate subsection because, "I was afraid by leaving it in Subsection

151. Of no effect on the court's jurisdiction was an amendment which changed the committee proposal's reference from cases "in which the death penalty or imprisonment at hard labor may be imposed" to the simpler reference to one "convicted of a felony." The purpose of the change was to remove the reference to the death penalty and thus remove the possible inference that the constitution authorized the death penalty. In fact, the constitution does not address itself specifically to whether the death penalty is allowed, although it does prevent "cruel, excessive or unusual punishment." L.A. Const. art. 1, § 20. See Hargrave, supra note 120, at 1, 62. Of course, as "felony" is not defined in the constitution, legislative changes in the definition of the term could change the court's jurisdiction. See State v. Moore, 311 So. 2d 875 (La. 1975); State v. Robertson, 310 So. 2d 619 (La. 1975).

152. L.A. Const. art. VII, § 10 (1921).

153. See State v. James, 329 So. 2d 713 (La. 1976). See also the text accompanying note 127, supra.

154. See Committee Proposal 6, § 5 in DOCUMENTS at 59.


The result of this process was to provide in a separate paragraph what has become Section 5(E): “In all criminal cases not provided in Paragraph (D)(2) of this Section, (cases appealable to the supreme court), a defendant has a right of appeal or review, as provided by law.” The unqualified “as provided by law” language is an unlimited grant to the legislature and gives it a number of options. Convictions in courts of limited jurisdiction could be appealed to, or reviewed by, the district court, either by reviewing the record or by trial de novo. In these cases, as well as in cases from district courts not appealable to the supreme court, the appeal or review could be with the court of appeal. Even though Section 10 establishes only civil jurisdiction in those courts, the grant of jurisdiction in that section is made “except as otherwise provided by this constitution.” That “except” clause relates back to the grant of legislative power in Section 5(E) to provide for appeal or review as the legislature might decide. That this is so is also made clear by the structural change discussed earlier whereby Section 5(E) was made a separate section to make sure that the appeal or review need not necessarily be in the supreme court. It is also possible, of course, for the legislature to provide that such cases be heard by the supreme court.

Regardless of which court is assigned these cases, it is not the normal appeals procedure that is necessarily required; it is appeal or review that is required. Review could be by some type of appellate examination of a record that is less than the full blown appeal with full briefs and oral argument.

The limited nature of the right of appeal or review in these minor criminal cases prompted further action when the convention was considering the bill of rights. Additional protection for the individual in such cases is provided in Article I, Section 19: “No person shall be subjected to imprisonment or forfeiture of rights or property without the right of judicial review based upon a complete record of all evidence upon which the judgment is based.”

A number of provisions outside the judiciary article also provide for supreme court jurisdiction. Under Article III, Section 6, if the legislature

157. PROCEEDINGS, Aug. 15, 1973 at 88. See also id. at 89-92.
158. LA. CONST. art. V, § 16(B) provides: “A district court shall have appellate jurisdiction as provided by law.”
159. See note 157, supra, and accompanying text.
160. See Hargrave, supra note 120 at 1, 60.
fails to reapportion itself after each decennial federal census, "the supreme court, upon petition of any elector, shall reapportion the representation in each house . . . ." The provision allows a type of original proceeding in the court, but under Section 6(C), "the procedure for review and for petition shall be provided by law."\(^{161}\)

Article IV, Section 17 governing declarations of inability to serve by state officials provides the supreme court shall determine the issue of inability to serve "by preference and with priority over all other matters."

Section 11 allows a court of appeal to certify any question of law before it to the supreme court. This is a continuation of the prior law with no essential change,\(^ {162}\) as is the provision that the court upon certification can give its binding instruction or decide the case itself. The section passed as proposed by the committee without amendment after a debate which indicated that the provision was not addressing the question of whether federal courts could certify questions to the state supreme court.\(^ {163}\)

And finally, Section 5(F) continues the prior law that the supreme court has appellate jurisdiction over all issues involved in a civil action properly before it.\(^ {164}\)

**Jurisdiction of the Courts of Appeal**

The constitutionally vested jurisdiction of the courts of appeal, as discussed earlier, is non-criminal. The basic grant to each court of appeal, under Section 10, is appellate jurisdiction of all "civil matters decided within its circuit."\(^ {165}\) To avoid the problem of whether appeals in

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\(^{161}\) La. Const. art. III, § 6(A) requires the representation in each house to be "as equally as practicable on the basis of population shown by the census." Additionally, Article I, Section 3 adopts an equal protection guarantee that furnishes a basis for judicial review of the apportionment in the legislature.

\(^{162}\) La. Const. art. VII, § 25 (1921). \(\text{PROCEEDINGS, Aug. 16, 1973 at 88.}\)

\(^{163}\) \(\text{PROCEEDINGS, Aug. 16, 1973 at 89 where Chairman Dennis stated: "We intended only to speak of state courts in this article." In that same debate, Justice Albert Tate said, "Judge Dennis, with regard to Mr. Pugh's question, did you know that when the statute was adopted the Louisiana Bar Association had made a full study and came to the conclusion that in every state where such a provision was adopted it was within the constitutional powers of the legislature to provide for that procedure?" Id.}\)

\(^{164}\) La. Const. art. VII, § 10 (1921).

\(^{165}\) The reference to "matters" rather than "cases" is intentional, and was adopted by the convention on the recommendation of the Committee on Style and Drafting, \textit{JOURNAL, Jan. 9, 1974 at 8.} Use of "matters" rather than "cases" removes the implication of the stringent case or controversy requirements often
juvenile matters are civil or criminal, the section specifies, as the prior
constitution did, that the courts of appeal have appellate jurisdiction of all
"matters appealed from family and juvenile courts, except criminal
prosecutions of persons other than juveniles." The grant of jurisdiction
is subject to Section 10's proviso; "Except in cases appealable to the
supreme court . . .," making it clear that those cases within the supreme
court appellate jurisdiction are not within the court of appeal jurisdiction.
However, the constitution does effect an enlargement of court of appeal
jurisdiction, for the appellate jurisdiction of the supreme court has been
narrowed by Section 5.167

The grant of jurisdiction over "all civil matters" exists regardless of
the amount in controversy and regardless which lower court heard the
suit.168 This represents an enlargement of the court of appeal jurisdiction,
associated with the term "cases." But notice that "cases" is used with reference to
supreme court appellate jurisdiction.

Appellate jurisdiction of matters from separate juvenile and family courts is clearly
covered by the language of Section 10. Also covered are matters within juvenile
court jurisdiction heard by a district court or city court, for under the long-existing
statutory scheme, the judges of district and city courts (where no separate juvenile
or family court exists) are ex officio judges of the "juvenile court." LA. R.S.
13:1561.1; 1562.1 (Supp. 1975). While not separate juvenile courts, the district
courts and city courts sitting as juvenile courts are within the appeals mentioned
under the prior law, and the new section was adopted in light of the existing
background and terminology.

Were the legislature to abolish the fiction of considering a district court or city
court a "juvenile court" and more realistically assign the juvenile jurisdiction to the
district court under special procedures, appeals of such juvenile matters ought not
to work a change in substance in these matters; and such cases are not within
Section 5's listing of supreme court appellate jurisdiction for they do not involve
felonies, imprisonment or fines within the juvenile legislation which provides in-
stead for adjudications of delinquency, neglect or need of supervision. LA. R.S.

167. No longer within the supreme court's appellate jurisdiction are "cases in
which the constitutionality or legality of any tax, local improvement assessment,
toll or impost . . . is contested," and "appealable cases involving election contest,
but only if the election district . . . does not lie wholly within a court of appeal
Circuit." La. Const. art. VII, § 10 (1921). See the text accompanying note 144,
supra.

168. Jurisdiction would lie from district court judgments on review of administra-
tive agency determinations. Touchette v. City of Rayne Mun. Fire & Police Civil
decision (that the appellate court cannot hear appeals from the district court when
the district court sits as an appellate court) is no longer the law.

"Under the 1974 Constitution, even if the district court review is an appeal,
this court has jurisdiction to review that decision. Appellate jurisdiction is no longer
for the prior provision did make such exceptions.169

Section 10 also qualifies the grant with the additional provision, 
"except as otherwise provided by this constitution. . . ." It is otherwise 
provided in Section 16(B) that district courts "shall have appellate jurisdic-
tion as provided by law." Since it is clear that district courts can be 
granted some appellate jurisdiction by law, and since it would have been 
unnecessary to include the exception clause in Section 10 if that appellate 
jurisdiction were to be concurrent, it would appear implicit that the 
legislature can divest the courts of appeal of the appellate jurisdiction 
that it vests in district courts. This would promote efficiency, and would 
be consistent with the background upon which these sections were 
drafted.170 Of course, the legislature is free to grant no appellate jurisdic-
tion to the district courts and to provide that all appeals from courts of 
limited jurisdiction are to be heard by the courts of appeal. None of the 
other appellate jurisdiction of the courts of appeal can be divested by the 
legislature since the constitution does not provide for it; dollar amount 
limitations on appeals from the district courts, for example, are pro-
scribed.

But, within this "except as otherwise provided by this constitution" 
proviso of Section 10 is the authority of the legislature to grant additional 
jurisdiction to the courts of appeal. Authority in this regard is provided by 
Section 5(E) which provides that in criminal cases not appealable to the 
supreme court "a defendant has a right of appeal or review, as provided 
by law." This unqualified grant of legislative power allows the legislature 
to vest appellate jurisdiction in these minor criminal matters in any 
court it chooses, including the courts of appeal.171 Also, Article X, 
Section 12 provides for review of civil service commission action in 
disciplinary cases by courts of appeal, without prior hearing in a district 
court.

referred to jurisdiction over "all civil and probate matters of which the district 
courts throughout the state have exclusive original jurisdiction; all civil matters 
involving more than one hundred dollars, exclusive of interest, of which the district 
courts throughout the state have concurrent jurisdiction."

170. La. Const. art. VII, §§ 29, 36 (1921). The First Circuit Court of Appeal has 
so held in Cox v. Kiefer, 311 So. 2d 596 (La. App. 1st Cir. 1975). Where the district 
court had appellate jurisdiction by trial de novo from a city court judgment, "It is 
evident from the above that this court is without jurisdiction in this matter." Id. at 
597.

171. See the text accompanying note 27, supra.
In addition to the appellate jurisdiction just discussed, the courts of appeal also have discretionary jurisdiction in that Section 10(B) grants them "supervisory jurisdiction over cases in which an appeal would lie to it." This language was not meant to limit the provisions of the prior law in regard to this extraordinary writ jurisdiction;\textsuperscript{172} as the chairman of the judiciary committee explained to the convention, "a particular ruling would not have to be appealable but it would have to occur in a case that would be ultimately appealable to the court of appeal. This represents no change."\textsuperscript{173}

**Appellate Review of Facts; Reversal of Lower Courts**

The Judiciary Committee did not seriously consider abolishing appellate review of facts in civil cases,\textsuperscript{174} and the convention overwhelmingly agreed to provide for such review in the constitution. An attempt to abolish review of facts was defeated by a vote of 18-96;\textsuperscript{175} and such review is continued both for the supreme court and the courts of appeal.\textsuperscript{176} This review has traditionally encompassed facts determined by a judge or by a jury, and the tradition is continued.\textsuperscript{177} In fact, the constitution recognizes no right to a jury trial in civil cases,\textsuperscript{178} except for the limited provision of Article I, Section 4 that in expropriation cases, either party has a right to demand a jury trial to determine the amount of compensation due.\textsuperscript{179} Since Article I, Section 4 makes no contrary provi-

\textsuperscript{172} La. Const. art. VII, § 29 (1921).
\textsuperscript{173} PROCEEDINGS, Aug. 16, 1973 at 78.
\textsuperscript{174} The Judiciary Committee voted without objection to continue appellate review of facts. MINUTES Apr. 14, 1973 at 4.
\textsuperscript{175} PROCEEDINGS, Aug. 15, 1973 at 61-70. The committee on Bill of Rights and Elections proposed abolishing review of facts, but its efforts in this regard were defeated. See Committee Proposal 25, § 8, in JOURNAL, July 6, 1973 at 3; JOURNAL, Sept. 5, 1973 at 4-6; PROCEEDINGS, Sept. 14, 1973 at 32, 44.
\textsuperscript{176} LA. CONST. art. V, §§ 5(c) and 10(B). See La. Const. art. VII, §§ 10, 29 (1921).
\textsuperscript{178} See Carter v. City of New Orleans, 327 So. 2d 488 (La. App. 4th Cir. 1976), upholding against constitutional attack LA. R.S. 13:5105 (Supp. 1975) which provides that suits against state agencies and political subdivisions are not to be tried by jury. The majority is correct in determining that the constitution grants no right to a jury trial. There is some merit, however, to the dissent that a statutory scheme which allows jury trials against private defendants but not against state agencies violates equal protection under Article I, Section 3.
sion with regard to appellate review, it follows that the general provisions in Article V establishing appellate review of fact apply and allow review of jury awards of compensation.180

Section 5(C) specifies that "the jurisdiction of the supreme court in civil cases extends to both law and facts," but the section also provides that this jurisdiction is granted "except as otherwise provided by this constitution." But the constitution as adopted does not provide otherwise; the exception provision is largely a remnant that was initially inserted by the committee in case other articles of the document might have made exceptions. As it stands, however, it is an indication that exceptions to the court's appellate review must be provided in the constitution and cannot be established by law.

However, Section 10(B), in establishing the power to review facts by the courts of appeal, qualifies the grant by the language, "[e]xcept as limited to questions of law by this constitution, or as provided by law in the review of administrative agency determinations." This of course allows the legislature to limit court of appeal review of facts found by administrative agencies. It is somewhat anomalous that the legislature is granted the power to thus limit review by the courts of appeal, but not the power to limit review by the supreme court of the same class of cases. An attempt to eliminate the anomaly by deleting the legislative authority with respect to the courts of appeal was defeated.181 Also defeated was an

180. The author of the expropriation provisions has suggested that jury awards of compensation are not subject to appellate review. Jenkins, supra note 179, at 23. He says, "Moreover, the committee did not intend the finding of facts in such jury trials to be reviewed by the courts, because the right to trial by jury in this instance is established by the constitution, instead of by the statutes, as is the case in other civil jury trials. In fact, the purpose of permitting jury trials was to encourage more substantial awards by placing the authority to decide compensation in the hands of a jury of 'neutral' average citizens instead of in the hands of a judge, who is an instrumentality of government paid by the state and the local police jury, either of which may be a party to the suit."

Granted, as Jenkins suggests, the intent of the committee was not to have appellate review of facts. In fact, the committee on Bill of Rights and Elections intended to have no appellate review of facts at all, and it proposed a section to so provide. See note 1, supra. But the committee's proposal and its intent were not accepted by the convention, which refused to abolish appellate review of facts and instead constitutionalized the institution so as not even to allow the legislature to determine the matter. The convention so decided on two occasions, once in considering the judiciary article and once again when considering the bill of rights. The intent of the committee on Bill of Rights and Elections must give way to the intent of the convention. And that intent is clear in Article VII, Sections 5 and 10 which provide for appellate review of facts without making exceptions for jury trials in expropriation cases.

181. PROCEEDINGS, Aug. 16, 1973 at 56-68.
amendment to provide that decisions of administrative agencies are not subject to revision if supported by competent evidence. Since this grant of appellate review of fact is made subject only to the exceptions provided in the constitution or by law with respect to administrative agency determinations, it follows that the legislature cannot establish other exceptions to the grant of such review.

The constitution establishes no procedural limitations on the manner the supreme court exercises its power to review facts in civil cases. However, when the convention later considered the courts of appeal, further attempts were made on the convention floor to abolish review of facts by those courts. Those amendments were defeated, but a compromise amendment was adopted to limit the manner in which the courts of appeal exercise this power. The language of that amendment, however, goes further than governing review of facts and requires, in Section 8(B), a special reargument "when a judgment of a district court is to be modified or reversed and one judge dissents." This reargument is required whether the district court judgment is to be modified or reversed on a question of law or a question of fact. In such reversals or modifications when one judge dissents, "the case shall be reargued before a panel of at least five judges prior to rendition of judgment, and a majority must concur to render judgment."

The required reargument is not the normal rehearing; an attempt to change the provision by substituting a rehearing en banc if requested was rejected. What is required is an automatic reargument "prior to rendition of judgment." By its terms, reargument is not required if a district court judgment is sustained, even if one judge dissents. The provision also by its terms does not apply to cases coming from other than a district court. It does not apply if a judgment of a district court is not modified or reversed, as in instances in which the court dismisses an appeal for failure to conform to the requirements of appellate procedure. The provision

182. Id. at 83-87.
183. See id. at 56-68.
184. Id. at 68.
185. Id. at 57: Delegate Roy, explaining his proposal, said: "[T]hen if there is one dissent of the three who says it should not be done, that you should not reverse this district judge, at that time instead of rendering the opinion, the parties are entitled to a reargument before at least five judges of that appellate court."
186. In Brown v. Employers Comm. Union Ins. Co., 316 So. 2d 194 (La. App. 4th Cir. 1975), the court reasoned that no reargument was necessary when the court of appeal affirmed with one dissent the lower court finding of liability and lowered the damage award without dissent.
does not require reargument before the entire court of appeal; what is required is a panel of at least five judges.

Though the reargument procedure could be applied by courts of appeal with a normal complement of three or four judges through special assignment by the supreme court of judges from other courts, the practical effect is to require at least five judges on a court of appeal.

Another anomaly results if a court of appeal should not sit in panels, but as a whole court, as is allowed by the constitution. If all the five or more judges on a court initially heard a case, and one judge dissents from a modification or reversal of a district court, Section 8(B) by its terms would require reargument before those same judges. But after reargument, a majority vote is sufficient for judgment, and the whole procedure would seem to be a hollow exercise. When this possibility was posed to the author of the reargument proposal, he suggested creation of a fiction to avoid the reargument: "because not everything can be worked out perfectly, you would have the reargument which does not mean that you are entitled to reargue the case. The court simply considers it reargued and then renders its decision."[8]

The convention rejected an amendment to require the reargument before five elected judges, apparently to exclude judges sitting by assignment.[9] The 7-105 vote defeating the amendment is an indication of acceptance of the underlying principle that all judges assigned to a court by the supreme court under its Section 5 authority possess all powers of judges normally sitting on that court.

**Jurisdiction of District Courts and Courts of Limited Jurisdiction**

The district courts continue to be the basic courts of original jurisdiction.[10] Section 16 provides, "Except as otherwise authorized by this constitution, a district court shall have original jurisdiction of all civil and criminal matters." In view of the language used, "all civil and criminal matters," the jurisdiction is not confined to cases involving state laws or to disputes involving a certain monetary threshold. It is a broad grant of jurisdiction over all matters, consistent with the committee purpose of allowing the legislature to convert the judicial system to a three-tiered one in which no courts of original jurisdiction other than the district courts

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187. Article V, Section 8(A) allows this since it requires "panels of at least three judges."
189. Id. at 61-62.
would exist. The reference to matters, rather than cases, accommodates ex parte, non-contradictory proceedings in the district courts which may not technically be adversary cases.

Section 16 provides the jurisdiction of all the district courts, making no exception for Orleans Parish, where separate criminal and civil district courts have existed. The Judiciary Committee had proposed in Section 32 to include the language: "The civil district court shall have civil jurisdiction as provided in Section 16 of this Article and the criminal district court shall have criminal jurisdiction as provided in Section 16 of this Article." The quoted language, however, was deleted by floor amendment, and Section 32 as adopted makes no reference to the jurisdiction of the Orleans courts. But Section 32 does continue the existence of the separate criminal and civil district courts until merged by law. These provisions can be reconciled by considering the Orleans district as being served by one district court that is by constitutional provision continued as separate civil and criminal divisions until merged by an act of the legislature, those divisions dividing the criminal and civil jurisdiction conferred by Section 16.

The constitution itself lists the types of cases in which the district courts have exclusive original jurisdiction; Section 16 enumerates "felony cases and cases involving title to immovable property; the right to office or other public position; civil or political rights; probate and succession matters; the state, a political corporation, or political subdivisions, or a succession, as a defendant; and the appointment of receivers or liquidators for corporations or partnerships." This approach makes it clear that such cases cannot be included by law in the jurisdiction of courts of limited or specialized original jurisdiction. It also follows that matters not within this listing are not exclusive to the district courts and that the legislature can grant courts of limited or specialized jurisdiction concurrent jurisdiction over those matters. Such being the approach under

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191. Compare the reference to "cases" in Article V, Section 5(D) which establishes the jurisdiction of the supreme court. See La. Const. art. VII, § 35 (1921) (which distinguished between "criminal cases" and "probate and succession matters"). See note 165, supra.
192. See LA. CODE CIV. P. arts. 2881-93.
193. See the text accompanying note 74, supra.
194. Committee Proposal 21, § 35, par. 2, in JOURNAL, Aug. 24, 1973 at 7. Section 35 was renumbered as Section 32 of Article V upon final styling.
195. PROCEEDINGS, Aug. 24, 1973 at 80, 94.
196. The listing is similar to La. Const. art. VII, § 35 (1921).
the prior constitution, this prospect raised little controversy in the com-
mittee or on the convention floor.

However, it is less than clear whether the legislature can divest the
district court of jurisdiction over some classes of cases and vest that
jurisdiction exclusively in courts of limited or specialized jurisdiction.197

The starting point for determining this question is Section 16, which
makes the grant of jurisdiction to the district courts, "[e]xcept as other-
wise authorized by this constitution . . ." The committee's working
draft, following the lead of the Law Institute Project, would have vested
the jurisdiction "unless otherwise provided in this constitution or by
law."198 That approach allowed the legislature to divest the district court
of any jurisdiction the constitution did not state was exclusive in the
district court. The committee, however, did not recommend such broad
authority in the legislature, and its initial proposal would have qualified
the grant of jurisdiction with language, "[u]nless otherwise provided or
authorized in this constitution . . ."199 The later committee proposal
condensed the provision to, "[u]nless otherwise authorized by this con-
stitution . . ."200 The final styling process resulted in the language as
adopted, "[e]xcept as otherwise authorized by this constitution . . ."

It is clear then, that the legislature can divest the district courts of
jurisdiction only if the constitution contains an authorization for it to do
so.

Section 18 gives the legislature authority to grant jurisdiction to
family and juvenile courts. But does it also grant authority to divest
district courts of that jurisdiction? The language of Section 18 is: "Not
withstanding any contrary provision of Section 16 of this Article, juvenile
and family courts shall have jurisdiction as provided by law." If concur-
rent jurisdiction were contemplated, the "notwithstanding" clause would
have been unnecessary, for family and juvenile matters are not among
those which Section 16 lists as being exclusive to the district courts, and
the legislature would be empowered to provide for concurrent jurisdiction
over such matters. One must then conclude that if the specific reference to
Section 16 within the "notwithstanding" clause is to have effect, it must

197. Any legislative act regulating jurisdiction would have to meet the require-
ments of Article III, Section 12 prohibiting local or special laws "(3) . . . regulating
the practice or jurisdiction of any court . . ." and the requirement of Article V,
Section 15(A) that parish courts have "parishwide territorial jurisdiction and sub-
ject matter jurisdiction which shall be uniform throughout the state."
198. Draft A, Section 21; PROJECT, Article VI, Section 26.
199. Committee Proposal 6, §16, in DOCUMENTS at 61.
200. Id. 21, §16, in DOCUMENTS at 73.
be to "authorize" the legislature to divest the district courts of that jurisdiction and vest exclusively in a specialized family or juvenile court.\textsuperscript{201} This conclusion is consistent with the then-existing background of the prior constitutional and statutory provisions which did provide for such exclusive jurisdiction in the separate juvenile and family courts,\textsuperscript{202} and the documents of the constitution do not establish a record indicating a purpose of changing the situation. It is also consistent with the unique strong language of the "notwithstanding" clause of Section 18; the normal exception clauses are more general.

More troublesome is the relationship of city court, mayor's court and justice of the peace jurisdiction in relation to that of the district court. While Sections 15 and 32 continue the city courts, those sections refer to continuation of the existence of those courts and do not address themselves to their jurisdiction. Of course, under the general principle that the legislature can enact any legislation not constitutionally prohibited, it can grant those courts jurisdiction over any matters not enumerated within Section 16 as being exclusive to the district courts.

But, can the legislature divest the district courts of that jurisdiction it grants those courts of limited jurisdiction? Again, the basic reference is Section 16 and the question is whether the legislature is "authorized by this constitution" to divest the district courts of that jurisdiction. It seems that the constitution contains no such authorization. Even the power to grant those courts jurisdiction is not "authorized by this constitution," but is authorized by virtue of the general principle that it can be done since it is not prohibited. It is an even further step to find "authorization" to divest the district court of jurisdiction. Also, neither Sections 15, 20 or 32 contains strong language paralleling Section 18's reference to juvenile and family court jurisdiction with the "notwithstanding Section 16" formula. Attempting to fashion an implied authorization to withdraw jurisdiction from the district court in these matters which the limited jurisdiction courts are granted is difficult, especially since the background\textsuperscript{203} on which the committee and convention worked was one in

\textsuperscript{201} It is, of course, true that no new family or juvenile courts can be established, but Section 18 does apply to those specialized courts in existence on the effective date of the constitution. See the text following note 86, \textit{supra}.

\textsuperscript{202} For example, La. Const. art. VII, § 53 (1921) granted the Family Court of East Baton Rouge "exclusive original jurisdiction in the following proceedings 

which concurrent jurisdiction with the district court was the rule, rather than exclusive jurisdiction in those courts.

A similar problem exists with respect to the new parish courts which the legislature may establish by virtue of Section 15, courts "of limited jurisdiction which shall be uniform throughout the state." Committee and convention policy in this regard was to allow the legislature to move toward a uniform four-tiered judicial system throughout the state with the parish court being the court of limited jurisdiction. Section 15 "authorizes" the legislature to establish the jurisdiction of those courts by its mention of "subject matter jurisdiction which shall be uniform throughout the state." But again, in terms of divesting the district court of the jurisdiction granted the parish courts, is this within the provision of Section 16, "[e]xcept as otherwise authorized by this constitution . . ."? Section 14 is an authorization; but is it an authorization to divest? The language here is not as strong as the "notwithstanding" clause of Section 18 for juvenile and family courts. But it is certainly more of an "authorization" than the language used with respect to city courts.

At this point, one could drop back to the notions that the convention was operating on a background of existing law and reflecting those assumptions when not being otherwise explicit. But while the existing background of city courts was one of concurrent jurisdiction, the parish courts are a new institution without that supporting background. On the other hand, judicial efficiency might militate against concurrent jurisdiction. It is also possible that the fact that the convention purpose of allowing a new, uniform, four-tiered judicial system with a revitalized parish court staffed by full-time judges who cannot practice law is consistent with giving them exclusive jurisdiction in some matters.

In any event, with regard to the parish courts, the convention record does not impel a decision either way. It again may be a case where the ultimate decision will be based largely on considerations of judicial efficiency and notions of whether litigants should be given a choice of forum.

Finally, Section 16(B) makes clear that a district court "shall have appellate jurisdiction as provided by law," with the legislature deciding whether this is to be by trial de novo or by reviewing the record from the court below.204

Selection

Section 22 requires that all judges be elected, making exception only for the temporary filling of vacancies by appointment. These elections continue to be held at the time of the regular congressional elections, separating the judicial contests from the races for the bulk of local and state offices.205

The Judiciary Committee did hear a great deal of testimony from proponents of merit selection of judges, including that of the executive director of the American Judicature Society and several prominent attorneys.206 The committee had before it the Law Institute Project recommending merit selection rather than election.207 It was also aware of the close vote favoring merit selection in a poll of members of the Louisiana Bar Association, a poll which disclosed strong sentiment for merit selection in Orleans Parish. However, of the 34 judicial districts from which responses were received, only 4 districts favored merit selection.208 On the other hand, Chief Justice Joe W. Sanders and former Chief Justice John B. Fournet, among others, advocated election of judges,209 Chief Justice Sanders telling the committee the Missouri plan "in my opinion, does not eliminate politics in judicial selection but narrows it to a small group."210

Though the committee spent much time hearing testimony on the issue, the result in favor of election was a foregone conclusion. The basic populist orientation of the convention tended toward a greater voice for the people and a resistance to gubernatorial or small group power. A convention that resisted reducing the number of state-wide elected officials211 and that was intent on shortening the terms of appellate judges was not likely to abolish election of judges. In any event, the political forces were such that the merit selection concept had no chance. The committee recommended election by unanimous vote.212 It did not accept

207. PROJET, Article VI, Section 43 (1954).
211. See generally LA. CONST. art. IV, § 20 (Executive Branch); PROCEEDINGS, Aug. 23, 1973 at 3-53.
the provisions of its working draft requiring non-partisan elections without party primaries and without placing party designations on the ballot, as had been suggested by Chief Justice Sanders.

The convention was of a similar mind. A floor amendment that did not require, but simply authorized, the legislature to adopt a merit selection plan was overwhelmingly defeated by a vote of 26-87. In fact, though election of judges was implicit in the committee proposal, the convention adopted without objection a floor amendment making the requirement explicit by stating “all judges shall be elected.” The delegates also defeated, but by a close 57-58 vote, a floor amendment requiring that judicial elections be conducted on a non-partisan basis.

The language of Section 22 simply requires election, without stating specific rules as to type, thus allowing the action of the 1975 legislature in providing for election of state officials, including judges, without party primary nominations. Though party designations will appear on the ballot under this law, the result is quite close to the non-partisan election proposal rejected by the convention.

Vacancies; New Judgeships

The convention strengthened the institution of an elected judiciary in its provisions for filling vacancies and newly created judgeships. Though Louisiana has traditionally provided for election of judges, a substantial number of judges first reached the bench by gubernatorial appointment filling a vacancy or a new judgeship. With an incumbent’s advantage, the appointee was likely to be elected in the ensuing election, if opposed at all. Often the selection system operated as a bastardized Missouri plan—appointment by a political officer with subsequent confirmation elections. One delegate, in fact, estimated that sixty percent of the sitting

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213. Draft A, Section 30 provided in part: “The election of judges shall be by ballot separate from the party contests for other offices. The candidates for election as judge shall be nominated by nominating papers signed by at least one hundred qualified electors of the election district and filed with the secretary of state. . . . The candidates for each judicial office shall be placed in alphabetical order without reference to party affiliation or any individual designation.”


216. Id. at 23-24.

217. Id. at 4-15. See also id. at 24-29.


judges were initially appointed by the governor. The new constitution terminates the prior practice.

Under Section 22, a newly-created judgeship or a vacancy is filled by appointment by the supreme court until a special election is held. The appointee, who need not be a judge, must meet the qualifications of the office other than domicile, and serves at the court's pleasure. Not only is the governor's power of appointment ended, but to abolish the advantage the appointee might have in an election to fill the vacancy, it is provided that the appointee is ineligible as a candidate at the election to fill the vacancy or the newly created judgeship.

Little opposition developed to the committee’s proposal to remove the power of the governor to make these appointments and the delegates who were allies of Governor Edwin Edwards made no strong effort to oppose the change. The attempt to continue the old system was sponsored by black convention delegates and was cast in terms of being a mechanism to obtain more black judges. Supporters stated that minority group members would be unlikely to be elected as judges, but that some blacks could and would be appointed by governors to vacant or new judgeships. The amendment to continue the old practice was rejected.

In any event, the appointment is temporary, for the vacancy or the new judgeship must be filled by an election held within six months of the day the vacancy occurs or the judgeship is established. In case of vacancy, the person elected fills that vacancy, i.e.,

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221. See id. at 33. The appointee need not be a judge, for Article V, Section 22(B) refers to “a person meeting the qualifications. . . .” (Emphasis added).
222. To the argument sometimes made that this disability runs counter to some type of right to run for office under federal due process or equal protection provisions, the answer is simply (1) a person voluntarily assumes the disability by accepting the appointment and (2) the disqualification is supported by the rational basis that it promotes a judicial selection process free of the influences of incumbent judges and politicians.
225. Id. at 50. See also id. at 29-32.
226. An amendment to provide for the election at the next regularly scheduled congressional or statewide election was defeated. Supporters of the amendment suggested that their alternative would save election costs by providing for fewer special elections. The opposition argued about the need to fill the vacancy as quickly as possible. The amendment failed by a vote of 47-70. Id. at 33-36. See also Minutes, June 1, 1973 at 5.
completes the existing term of office, rather than commencing a full term of his own. Section 22 provides that "a vacancy in the office of a judge shall be filled . . . " using "filling a vacancy" in the technical sense of completing the existing term. Similar language is used in the Executive Article with the same meaning, and was used in the predecessor provisions with that same meaning. It would be inconsistent with the requirement that election of judges be at the congressional election to allow the judge elected to fill a vacancy to serve a full term; a full term could end so as to require election of the successor in a non-congressional-election year. If the section, which applies to all judges, allowed full terms, it would destroy the plan of staggered elections for the supreme court and courts of appeal.

In the case of a new judgeship, the initial term can be established by law, and can be less than the normal full term. The provision for the new judgeships was drafted in a background of the prior law where such was not only possible but required. And, as discussed in filling vacancies, granting a full term for all new judgeships could conflict with the requirement of having judicial elections at the congressional election in the same year the term ends. Full terms could also defeat the system of staggering of terms of supreme court and court of appeal judgeships and the scheme of having district judges of a court all elected at the same election.

227. Article IV, Section 14 regulating the order of succession to the governorship clearly states: "The successor shall serve the remainder of the term for which the governor was elected." But Sections 15 and 16, governing other vacancies, are not so specific even though those other vacancies are not filled for new terms, but rather to complete existing terms. Section 16 speaks of a "vacancy being filled." Article III, Section 4(D) illustrates the use of this formula with respect to completing an existing term; there the language is more explicit: "A vacancy in the legislature shall be filled for the remainder of the term . . . ."

228. La. Const. art. VII, § 7 (1921): A supreme court "vacancy shall be filled" by special election. No precise statement was made regarding length of term, but the practice was to fill the remainder of the term to continue the system of staggered terms. Section 23 provided that court of appeal vacancies were filled by election "for the remainder of the term." Section 69(C), with respect to district judges, referred to elections "to fill the vacancy" and the tradition was to complete the existing term rather than to start a new term.

229. New court of appeal judgeships established by La. R.S. 13:312.2 (Supp. 1975) were not full terms. See the text at note 23, supra.

230. La. Const. art. VII, § 21(F) (1921): Court of appeal judges' terms were fixed to produce staggered terms. Section 33: New district court judges had initial terms "which shall not extend beyond that of the other District Judges' term in office."
Qualifications

Section 24 establishes uniform qualifications for judges of the main components of the judicial system (supreme court, court of appeal, district court, parish court, family and juvenile court) and prevents those judges from practicing law. The section does not apply to city court judges, who were deliberately omitted from the listing. Though a number of committee members thought it desirable that city court judges be full-time and not engage in law practice, such a provision might have had a drastic effect on the smaller city courts. It is also the expectation that city courts will be phased out and either incorporated into district courts or changed into parish courts; this movement would result in courts whose judges must not practice law. It is left to the legislature to establish qualifications for city court judges, and since nothing prevents it from doing so, the legislature can provide that such judges shall not practice law.

The qualifications of Section 24 are exclusive and the legislature cannot add to them. The minimum age requirements of the prior law are deleted; the experience requirement is reduced to five years, applies to all judges, and is stated in terms of having been "admitted to the practice of law in this state" rather than the prior reference to "shall have practiced law in the State." The final qualification is that of having been domiciled "in the respective district, circuit, or parish for the two years preceding election."

The word choice in Section 24, "five years prior to his election" and "two years preceding election" makes clear that the time periods are counted from the date a person is or would be elected to the office, the date of the final election in the electoral process. The language is distinguishable from that used in Article II, Section 4(A) which establishes qualifications for legislators in terms of "at the time of qualification" for the office and Article IV, Section 5 which establishes qualifications for statewide elected officers in terms of "the date of his qualification as a candidate."

231. PROCEEDINGS, Aug. 22, 1973 at 40-42.
232. Cf. LA. CONST. art. V, § 33. When stated qualifications for jurors were not meant to be exclusive, the power of the legislature to add them was specifically mentioned. ("The legislature may provide additional qualifications.") Such language was not incorporated in Section 24, indicating that the section is exclusive.
233. La. Const. art. VII, § 6 (1921). See also id. art. VII, §§ 22, 33, 51(A) and 75.
The practical reason for this difference in the date qualifications is that the initial proposals for these sections came from different committees which did not make their provisions uniform. That the word choice was intentional is clear, however. This is most apparent in Article IV, Section 5, which in addition to the language quoted above, continues with an additional qualification for the attorney general, a judicial officer, that he be admitted to the practice of law in the state "for at least five years preceding his election."234

A floor amendment to delete the two-year domicile requirement failed to pass, though it did present the problem of applying the requirement when circuits or districts are changed.235 That problem was not resolved in convention consideration of Section 24. However, it ought to be resolved by construing the section in light of Article III, Section 4, which addresses that problem with respect to legislative districts.236 There, at the election following redistricting, an elector may qualify as a candidate from any district created in whole or in part from his prior district. If his domicile is not then in the new district from which elected, he must change his domicile to that district by the time he is sworn into office. This provision is the convention's best statement on the matter, and produces a result which promotes the policy of having as many qualified people as possible run for office.

Term

The Judiciary Committee proposed retaining 14-year terms for judges of the supreme court and 12-year terms for judges of the courts of appeal.237 Though it had rejected proposals to shorten supreme court
terms to 8, 10 and then 12 years, the fact that a committee generally favorable to the judiciary rejected the 12-year term proposal only by a 6-8 vote presaged the convention action in reducing those terms.238

A number of convention delegates introduced amendments to reduce the supreme court terms to 8, 9, 10 and 12 years.239 After a "Henry Huddle,"240 those delegates chose to proceed with the ten-year-term amendment, and it was adopted by a 59-52 vote.241 Advocates of the longer term spoke of the importance of independence of judges and the need to keep them from too much intrusion into politics. Proponents of the shorter term reflected basic populist sentiment that judges should be more responsive to "their people." One delegate said:

I take exception with Judge Dennis when he says that judges should not be political. I feel that it is not a method of politics but it is being in touch with the people. . . . I think that he should be in touch with the people and in line with their beliefs.242

Another typical sentiment had been expressed earlier in committee: "What we want is a more independent judiciary, but not a more arrogant one. My experience is that the more independent they are, the more arrogant they are."243 These sentiments carried the day and supreme court terms were reduced from 14 to 10 years.

This done, it was inevitable that court of appeal terms would be shortened; the only question was how much. The convention quickly adopted an amendment reducing the 12-year terms to 10 years244 by a large 78-39 majority. Just as quickly, it defeated a later amendment to reduce the term to 8 years.245

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constitutional provisions for supreme court terms are in Article V, Section 3. Those for court of appeal judges are in Section 8.

240. When a large number of similar amendments were proposed, Convention Chairman E.L. Henry often called for an informal meeting of the sponsors so they could perhaps compromise their proposals or agree on an order for presenting the amendments. These huddles often resulted in reducing the number of amendments and saving time.
242. Id. at 25.
244. PROCEEDINGS, Aug. 16, 1973 at 53.
245. Id. at 55.
Section 22(C) provides that a judge serving on the effective date of the constitution whose term does not end in the year of a regular congressional election shall continue to serve through December 31 of the following year. The purpose of the provision is to remove an anomaly under the prior law\(^\text{246}\) under which the term of a court of appeal judge would end in an odd-numbered year, but the election for the subsequent term would be held at the congressional election of the preceding year. This could lead to a defeated judge continuing to serve for more than a year past his defeat, and the newly elected judge not taking office for more than a year after his election.\(^\text{247}\) Section 22(C) changes this and has the term of a court of appeal judge end on December 31 of the year in which the congressional election occurs; in doing so, it extends the term of court of appeal judges serving on the effective date of the constitution by one year.

A major political battle developed in the Judiciary Committee over retaining the prior constitutional provisions which established 12-year terms for Orleans district judges while district judges in the remainder of the state had 6-year terms.\(^\text{248}\) Early in its deliberations, the committee proposed continuing 12-year terms for Orleans district judges by adopting a general provision that district judges in districts with more than 300,000 population would serve 12-year terms.\(^\text{249}\) That provision would have included judges in Jefferson Parish and would soon thereafter have encompassed East Baton Rouge. The provision was later rejected by the committee,\(^\text{250}\) as was an attempt to provide 12-year terms for all district judges in the state.\(^\text{251}\) Eventually, the committee compromised on a provision that maintained the status quo, but allowed reduction of the Orleans terms to six years if approved by the legislature and by the voters of Orleans Parish.\(^\text{252}\) During this process, several Orleans judges appeared

\(^{246}\) La. Const. art. IV, §§ 19, 21 (1921).
\(^{247}\) See Draft A, Section 30(D) and comments; Kopfler v. Edwards, 318 So. 2d 653, 659 (La. App. 1st Cir. 1975).
\(^{248}\) La. Const. art. VII, §§ 33, 80, 82 (1921).
before the committee, arguing that shorter terms would increase political pressure on the judges and pointing out that the cost of campaigning for an Orleans judgeship is so high that requiring one to run every six years was akin to "sentencing a man to bankruptcy."253 It was argued that Jefferson Parish judges, facing similar conditions as those in Orleans, should also have 12-year terms.254 Supporters of the longer terms for Orleans judges were not able to muster stronger arguments for the differential in terms and by the time the convention considered district judge terms, the prospect of Orleans district judges keeping terms longer than those of appellate judges was negligible. In fact, the amendment to provide uniform six-year terms for all district judges had more co-sponsors than the number for votes required for passage. After a pro forma debate, the amendment passed by an overwhelming 96-20 vote.255 Thereafter, amendments were adopted to provide six-year terms for parish court judges256 and city court judges.257

Section 15(C) as finally adopted reads: "The term of a district, a parish, or city court judge shall be six years." The constitution does not establish the term for judges of juvenile and family courts, thus leaving the legislature free to do so.258 Legislation has continued the existing terms for those judges,259 leaving the judges of the Orleans juvenile court with terms of 8 years, making them the longest-tenured of the judges of courts of original jurisdiction. This disparity was not the result of any articulated committee policy. Rather, the committee had proposed fixing in the constitution only the terms of district court judges, and leaving the legislature free to establish the terms for the judges of other courts of limited and specialized jurisdiction. It was then by floor amendment that

255. PROCEEDINGS, Aug. 17, 1973 at 57-60. See LA. CONST. art. V, § 15(C). The proposal had 74 co-authors. The lead author was Delegate J. Burton Willis who was a member of the Judiciary Committee.
257. Id., Aug. 28, 1973 at 38-40. Under the prior provisions, city court judges of the First City Court of Orleans had eight-year terms (La. Const. art. VII, § 90 (1921)); judges of the Second City Court of Orleans had four-year terms (id. art. VII, § 92 (1921)); judges of the Baton Rouge City Court had four-year terms; and other judges had six-year terms (id. art. VII, § 51 (1921)). The new provision established uniform six-year terms.
258. A similar situation exists with respect to the judges of the municipal and traffic court judges in Orleans.
259. The prior constitutional provisions relative to the terms of these judges were continued as statutes by LA. CONST. art. XIV, § 16.
six-year terms were established for parish and city court judges, and in
the quickness of the moment, no floor amendments were introduced with
respect to the judges of other limited jurisdiction courts.

The reductions in term are inapplicable to terms of judges who were
elected prior to the effective date of the new constitution. In Article
XIV, Section 35 established the effective date of the constitution as
“twelve o’clock midnight on December 31, 1974,” and Section 26
states, “this constitution shall not be retroactive and shall not create any
right or liability which did not exist under the Constitution of 1921 based
upon actions or matters occurring prior to the effective date of this
constitution.” By virtue of these provisions, a judge who was elected
prior to January 1, 1975 was elected to the longer term and not to the
reduced term. This is also made clear in the Judiciary Article, where
Article V, Section 21 provides: “The term of office . . . of a judge shall
not be decreased during the term for which he is elected.” The emphasis
here is on the term for which elected, that term being the term under the
old constitution, and for which he ran and was elected to while the old
constitution was still in effect.

Protection of Judges

Section 21 provides, “The term of office, retirement benefits, and
compensation of a judge shall not be decreased during the term for which
he is elected.”

Deleted is the provision of the prior law that a judge’s jurisdiction as

261. In all respects, the legislature which convoked the convention and the
convention itself were quite solicitous of preserving the rights of existing office
also the predecessor provision, which uses similar language with emphasis on
The apparently odd word choice in La. Const. art. V, § 21, “term for which he
is elected,” seems to put an emphasis on election, as the predecessor language did.
V, § 31, which refers to the “term of office” in establishing the protection of other
officials whose length of term was not changed. In Section 31, where there was no
problem with the constitution reducing terms, there is no addressing of the problem
and no use of the reference to election. In Section 21, where the problem did exist,
the reference emphasizes election, fortifying the implication that the protection of
length of term vested upon election, rather than at the time of taking office.
262. Committee Proposal 21, § 21, in Journal, Aug. 17, 1973 at 10, and Com-
mittee Proposal 6, § 23, in Journal, July 6, 1973 at 16 did not include the reference
to retirement benefits.
to amount could not be affected;\textsuperscript{263} continuing the prior provision would have hampered the policy of Section 15(A) allowing changes in and abolition of courts of limited and specialized jurisdiction. Article III, Section 12, however, does prohibit local and special laws "regulating the practice or jurisdiction of any court"; this requirement of uniformity prohibits changes in jurisdictional amount as a means of penalizing or pressuring a single judge. Section 15(B) also requires that the jurisdiction of parish courts be uniform throughout the state.

While the prior law stated that these matters could not be "affected in his term," Section 21 refers to term or compensation not being "decreased during the term" to reflect current jurisprudence allowing salary increases for judges.\textsuperscript{264}

The committee proposal did not establish the terms of parish and city court judges, allowing the legislature to do so. At that stage, the prohibition against decreases in term "during the term for which he is elected" served to restrain the legislature in regard to them. However, by floor amendments, the convention constitutionally established six-year terms for parish and city court judges which the legislature cannot change.\textsuperscript{265} The prohibition against change of term is not completely superfluous, however. It protects family and juvenile court judges, and traffic and municipal court judges. It also evidences the intent of the convention, which itself reduced the terms of some judges, not to apply that reduction to judges who were elected while the prior constitution was in effect.

Constitutional establishment of a retirement system for judges became the most visible and voluble political issue in the floor debate on the judiciary article. The prior constitution did provide such a system,\textsuperscript{266} a system that required no contribution by judges, but which normally provided no benefits unless a judge had served 20 years and which was deficient in other respects in light of modern pension systems. The committee proposed a new system that required contribution and estab-

\textsuperscript{263} La. Const. art. VII, § 40 (1921). \textit{See} Draft A, Section 29, Comments: "The source article also prevented change in the territorial jurisdiction, reacting in 1940 against the gerrymandering of Judge Pavy out of office in 1935. Continuation of this limitation is not recommended, since the isolated instance does not justify the rigidity for the future, it would hamper the consolidation of the statutory courts and, for instance, the creation of parish courts which include the city courts within the parish as divisions."

\textsuperscript{264} Drew v. Parker, 249 So. 2d 356 (La., App. 1st Cir. 1971).

\textsuperscript{265} PROCEEDINGS, Aug. 28, 1973 at 38-40; \textit{id.}, Aug. 17, 1973 at 61-62.

\textsuperscript{266} La. Const. art. VII, § 8 (1921).
lished more liberal benefits. Strong opposition to the proposal developed, led by the chairman of the convention and the governor. The position of the opponents was not based so much on dislike of the increased benefits for judges, but on the view that retirement plans have no place being solidified in a constitution and on the prospect that other groups of state employees would demand similar provisions if judicial retirement were provided for in detail in the document, leading to a plethora of detail and possibly unsound retirement plans.

The crucial vote was on an amendment by Delegate Camille Gravel, Chairman E.L. Henry and others to delete the committee proposal and substitute a mandate to the legislature to provide for retirement of judges. The amendment passed by a 58-57 vote. Subsequent minor modifications resulted in Section 23. The section mandates the legislature to enact a new retirement system for judges, a system that must grant credit for prior service without contribution.

Once that new system is adopted, a judge taking office after the effective date of the law enacting that system will have no choice but to become a member of that new system. However, judges serving at that time are given the option to join the new system or to remain covered by the prior system. It is likely then that it will be some time before the old system is completely phased out. And, as to those judges serving or retired on the effective date of the constitution, their retirement benefits "shall not be diminished, nor shall the benefits to which a surviving spouse is entitled be reduced." As to those judges, the benefits accruing to them under the old retirement plan cannot be reduced at all.

Section 21 contains an additional special provision that a judge's retirement benefits (not restricted to judges serving on the effective date of the constitution) "shall not be decreased during the term for which he is elected." As proposed by the committee, the section did not include this protection of retirement benefits; those matters were not subject to any legislative control under the proposed constitutional retirement plan. Once the convention rejected the committee's plan, the protection against diminution of retirement benefits was added during the debate on the proposal that became Section 31, and was later transferred to Section 21 on recommendation of the Committee on Style and Drafting.


269. Id. at 107.


The extent of protection under Section 21 is unclear. Unlike Section 23's protection of retirement benefits of judges serving on the effective date of the constitution from being diminished at all, Section 21 prohibits a decrease "during the term for which he is elected." During that term, a judge has no retirement benefits in the sense of a sum of money then payable. After the end of the term, he may be eligible for an annuity, and a construction of the section could be made by which this annuity could be decreased, for the protection against decrease is only "during the term for which he is elected." Such a construction would be totally at odds with the policy of preventing political control of judges and would allow the most potent political control. It would be at odds with Article X, Section 29, which provides that membership in any retirement system of the state "shall be a contractual relationship" and the "state shall guarantee benefits payable to a member of a state retirement system. . . ." Under that provision, once some retirement rights vest, they are obligations of contract that cannot be divested.

The reference to "retirement benefits" in Section 21 must then contemplate that what is protected is the rate of accrual of retirement credits. Once a judge commences a term under a retirement plan that provides some percentage accrual to be used as the basis for determining a retirement payment, he has the right to continue to accrue credits at that rate for the term, and the accrual rate cannot be decreased until his term is completed. And, once these accrual credits are earned, Article X, Section 29 prevents their being divested.

Section 23 also establishes mandatory retirement for judges at age 70, a reduction from the former mandatory retirement age of 75. The provision was part of the committee proposal, and while it requires retirement at age 70, it was pointed out to the convention that under the supreme court authority in Section 5 to assign a sitting or retired judge to any court, the retired judges "would still be able to be used to help out in other courts. . . ."

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274. PROCEEDINGS, Aug. 18, 1973 at 76.
As discussed earlier, the committee proposal also provided in the same section a constitutional retirement system for judges; when the convention rejected that proposal and adopted instead the amendments mandating a legislatively enacted retirement system, the provision for mandatory retirement was omitted, though the record of debates does not show this omission was intentional.\textsuperscript{275} But later, a floor amendment authored by Delegate Max Tobias was adopted to reinstate the mandatory retirement provision proposed by the committee.\textsuperscript{276}

The mandatory retirement age of 70, however, applies only to judges who were not in office on the effective date of the constitution. As to those judges, Section 23(A) provides that their “judicial service rights” “shall not be diminished, . . .” Though the term “judicial service rights” is not a term of art, Delegate Tobias indicated to the convention:

Now this particular phrase would not affect any presently sitting judge. The reason is that under the Kean amendment, the phrase ‘judicial service rights’ would continue any judge in office until the age seventy-five, at least.\textsuperscript{277}

Since the reference to age 75 is to the prior constitution’s mandatory retirement age, it appears clear that the purpose was to keep that retirement age with respect to judges who served under the prior constitution.\textsuperscript{278}

Tobias also explained that some judges could continue in office “under some circumstances to age eighty.”\textsuperscript{279} The reference here is also to the prior constitution which provided:

However, any judge now serving [December, 1960], who, attaining the age of seventy-five years, has served less than twenty years, may remain in service until he has served for twenty years or until he has attained the age of eighty years whichever shall occur first and shall then retire.\textsuperscript{280}

\textsuperscript{275} JOURNAL, Aug. 18, 1973 at 8; id., Aug. 22, 1973 at 2.
\textsuperscript{276} Id., Aug. 22, 1973 at 3.
\textsuperscript{277} PROCEEDINGS, Aug. 22, 1973 at 20.
\textsuperscript{278} MINUTES, Aug. 8 (9 a.m.), 1973 at 3.
\textsuperscript{279} Id. at 21.
\textsuperscript{280} La. Const. art. VII, § 8 (1921). The reference to November 8, 1960 is to the effective date of the constitutional amendment which first introduced the phrase “now serving” into the section. The reference would be to the time of adoption of the amendment. See La. Acts 1960, No. 592 proposing the constitutional amendment adopted November 8, 1960. Under the 1921 Constitution, Article XXI, Section 1, the amendment was effective twenty days after the governor’s proclamation of the election results.
The effect of these provisions then is: (1) judges first taking office after the effective date of the constitution must retire at age 70; (2) those in office on the effective date must retire at 75, except for (3) those in office in December 1960, who can continue to serve as necessary to accumulate 20 years of service, up to age 80.

**Discipline and Removal**

A judge, as a "state or district official" is subject to impeachment proceedings under Article X, Section 24, based on "commission or conviction, during his term of office, of a felony or for malfeasance or gross misconduct while in such office." The sanction is immediate removal from office, though by the terms of Section 24, other discipline authorized by law is not precluded.

The "judges of the courts of record" are excepted from removal by suit under Article X, Section 25, or by recall elections under Article X, Section 26. The alternate means for disciplining judges is provided in Article V, Section 25, which continues a system of discipline by the supreme court acting on recommendation of a judiciary commission.282

By the language of Article V, Section 25, the supreme court cannot act on its own initiative to discipline a judge, but must respond to recommendations of the commission. The court, of course, is not bound to accept the commission's recommendations; the reference is that the court may impose discipline. Since the reference is to disciplining "a judge," without that term being qualified, the disciplinary procedure extends to all judges. This would include judges of the supreme court, since the ter-

281. Although Article X, Section 24 does not continue language of the prior constitution that disqualified a judge, district attorney or attorney general convicted upon impeachment from practicing law, the debate evidenced no intent to exclude those officials from the impeachment provisions. PROCEEDINGS, July 28, 1973 at 41, 45-46. In fact, the immediately following provisions, Sections 25 and 26, dealing with removal by suit and with recall elections, make specific exceptions for judges whereas Section 24 does not. Furthermore, the reference in Section 24 to any state or district official being subject to impeachment certainly includes judges of the district courts, courts of appeal and of the supreme court, as well as a district attorney or the attorney general. Id. at 74-82.

During the debate on the impeachment article, the spokesman for the committee said explicitly that the proposal as written applied to judges. Id. at 45-46. Later in the convention when the judiciary article was under consideration, the chairman of that committee stated that judges were subject to impeachment. Id., Apr. 15, 1973 at 52.

minology of the judiciary article is to use the term "judge" all-inclusively and not to make a technical distinction between judges and justices.\textsuperscript{283}

Continued as grounds for discipline are "willful misconduct relating to his official duty" and "persistent failure to perform his duty." The prior ground, "conviction, while in office, of a felony" is expanded to encompass "conduct while in office which would constitute a felony" even if a judge is not actually tried and convicted, as well as "conviction of a felony" regardless of the time the conviction or the conduct occurred. The more stringent standards of conduct the convention adopted are also reflected in the new ground for discipline based on less serious infractions: "persistent and public conduct prejudicial to the administration of justice that brings the judicial office into disrepute." "Habitual intemperance" as a ground for discipline was deleted, but it was agreed in committee that such intemperance would be included in the new provision if the intemperance is persistent and public, prejudicial to the administration of justice, and brings the judicial office into disrepute.\textsuperscript{284}

Section 25 is more flexible than the predecessor provision in that it expands the range of disciplinary sanctions. It continues the prior sanctions of removal from office and involuntary retirement, but also adds provisions for censure and suspension from performance of duties with or without salary. Another innovation allows, "On recommendation of the judiciary commission, the supreme court may disqualify a judge from exercising any judicial function, without loss of salary, during the pendency of proceedings in the supreme court."

Also new in the section is provision for situations in which a judge, though committing no acts of misconduct, suffers from some "disability that seriously interferes with the performance of his duties and that is or is likely to become permanent." In such a case, the judge may be retired involuntarily by the court, again on recommendation of the commission.\textsuperscript{285}

These changes give the commission and the court broader powers and more flexibility. The broader range of sanctions, particularly in allowing less drastic ones, will allow action in less serious cases of misconduct than before. Combined with the rule-making power and administrative control

\textsuperscript{283} Though Article V, Section 3 uses "justice" to continue prior formalities in this regard, that same section in the next sentence refers to a "supreme court judge" and the following sections use the term "judge" in speaking of members of the supreme court. See \textit{La. Const.} art. V, §§ 6, 21-24.

\textsuperscript{284} Baton Rouge State Times, May 26, 1973, at I-B, col. 5.

\textsuperscript{285} See \textit{In re} Judge Alexander, 323 So. 2d 448 (La. 1975).
of the supreme court, this development will be an aid in more efficient administration of the lower courts.

The convention accepted the committee proposal to enlarge the commission from seven to nine members and to restructure it to provide more citizen and lawyer representation. Judges constituted four of the seven members of the commission under the old composition, along with two lawyers and one layman. In the new commission, judges account for three of the nine members, along with three attorneys and three laymen. While members of the legal profession still account for six of nine members, the new membership does open the commission to more public participation and ends the judges’ majority on the panel.

An attempt was made, based largely on the ground that Section 25 was too long and detailed to be appropriate for a constitution, to provide simply that a commission would be established with the legislature providing its structure. That attempt failed by a rather close 51-64 vote. The section, however, is much shorter than the prior provision. The reduction was accomplished primarily by omitting procedural detail and providing instead that the supreme court shall make such rules for the commission. The rules must provide for confidentiality of commission proceedings, but the confidentiality cannot extend to proceedings in the supreme court once the commission has completed its investigation and made its recommendations. And finally, Subsection D continues the prior law in providing that action under Section 25 does not preclude other disciplinary action.

286. See LA. CONST. art. XIV, § 28.
287. One judge must be appointed from the court of appeal and two from the district bench; selection is by the supreme court. The lay representatives are selected by the Louisiana District Judges’ Association, and the attorneys by the Conference of Court of Appeal Judges. By floor amendment it was provided that two of the lawyers must have practiced at least ten years, instead of applying that requirement to all three attorneys. The third attorney, by virtue of the amendment sponsored by some of the younger convention delegates, must be a lawyer with 3-10 years’ experience at the bar. PROCEEDINGS, Aug. 22, 1973 at 54-55. See also id. at 48-51.

The convention defeated a floor amendment that would have provided for the governor participating in the selection process, id. at 61-64, and a proposal for appointment by the supreme court of members representing each congressional district. Id. at 64-67.

288. Id. at 60.
289. An amendment to clarify that confidentiality could not extend to the court proceedings was adopted. Id. at 54. The recent statute providing for confidentiality of commission proceedings is unconstitutional since Article V, Section 25(C) grants the power to the supreme court instead of to the legislature.
concerning a judge's license to practice under the general bar association disciplinary procedures.

OTHER COURT-RELATED OFFICIALS

Attorney General and District Attorney

Article IV, Section 8, establishes the Department of Justice and continues provisions for an attorney general elected statewide for a four-year term. Little dispute arose over the provision making him "the chief legal officer of the state" and continuing his powers in civil matters, but much controversy was generated by proposals establishing his powers in criminal matters, particularly his relationship with district attorneys.

Both the Committee on the Executive Branch and the Judiciary Committee proposed sections to govern the attorney general, the Executive proposal granting him broader authority. That proposal reached the convention floor first, but the section governing the attorney general was amended to delete all reference to his powers, leaving the matter open until the Judiciary Committee proposal came before the convention. It was the Judiciary Committee's formula establishing the powers of the office that became the basis for debate and that was ultimately adopted by the convention. Later, after referral to the Committee on Style and Drafting, those provisions were transferred from the Judiciary Article to Article IV on the Executive Branch.

Underlying the struggle between the attorney general and the district attorneys over the former's authority in criminal matters was the uncertainty of the jurisprudence construing those powers under the prior con-

291. The Executive proposal was Committee Proposal 4, § 8, in JOURNAL, July 6, 1973 at 12. The Judiciary proposals were Committee Proposal 6, §§ 28, 29, in JOURNAL, July 6, 1973 at 17 and Committee Proposal 21, §§ 26, 27, in JOURNAL, Aug. 22, 1973 at 9, and Aug. 23, 1973 at 6. MINUTES, Apr. 13, 1973 at 3: "Mr. Edwin O. Ware, District Attorney, wrote Judge Dennis a letter stating that at the annual convention of the Louisiana District Attorneys' Association held in New Orleans in March, the district attorneys and assistants voted unanimously in favor of the Judiciary Committee writing the articles dealing with district attorneys."
292. PROCEEDINGS, Aug. 8, 1973 at 46-50. Delegate Camille Gravel explaining his amendment: "[A]ll that this does is to create the department and to constitutionally declare that the attorney general shall be head of that department and the state's chief legal officer. All of the matters relating to the functions, powers and duties of the department and of the office of attorney general will be relegated to future consideration when we consider the judiciary article." Id. at 47.
293. Id., Jan. 15, 1974 at 86-89.
stition, particularly the power "to institute and prosecute or to intervene in any and all suits or other proceedings, civil or criminal. . . ." and to exercise "supervision over the several district attorneys throughout the State. . . ." Kemp v. Stanley did prevent an attorney general from "superseding" or ousting the district attorney in a criminal case, but did so in a mass of complex original and rehearing opinions with several concurrences and dissents that established no clear construction of the constitutional provision and provided no clear guide as to the relationship between the attorney general and the district attorney. That case, and the varying constructions of it, became the background of discussion of the attorney general's power to supervise the district attorneys, to supersede them in pending cases, and to institute criminal proceedings on his own authority.

The Executive proposal allowed the attorney general to institute or intervene in criminal proceedings on his own initiative, to supervise the district attorneys and to supersede a district attorney for cause. The Judiciary proposal was unclear as to the power to institute prosecutions, omitted the power to supervise the district attorneys and allowed the attorney general to supersede a district attorney only for cause when authorized by a court. Convention debate on these proposals was preceded by the unusual procedure of allowing the attorney general and the president of the district attorneys association to address the group. Their presentations were devoted in large part to the impact of Kemp v. Stanley.

295. 204 La. 110, 15 So. 2d 1 (1943).
296. Committee Proposal 4, § 8, in Journal, July 6, 1973 at 12. The relevant language was: "As may be necessary for the assertion or protection of the rights and interests of the state, the attorney general shall have authority to: (1) institute, and prosecute or intervene in any legal actions or other proceedings, civil or criminal; (2) exercise supervision over the several district attorneys throughout the state; and (3) for cause, supersede any attorney representing the state in any civil or criminal proceeding."
297. Committee Proposal 21, § 27, in Journal, Aug. 23, 1973 at 6; Committee Proposal 6, § 29, in Journal, July 6, 1973 at 17. The latter provided in part: "As may be necessary for the assertion or protection of the rights and interests of the state, the attorney general shall have authority to: (1) institute and prosecute or intervene in any civil actions or proceedings; (2) advise and assist, upon request of a district attorney, in the prosecution of a criminal case; and (3) for cause when authorized by the court of original jurisdiction in which any proceeding is pending, subject to judicial review, supersede any attorney representing the state in any civil or criminal action."
As the convention began to debate the proposals, it first defeated an amendment that had the effect of making no constitutional grant of power to the attorney general and allowing the legislature to regulate his powers. 299 Also defeated was an amendment proposed by delegates who served on the Committee on the Executive Branch that would have substituted their committee’s proposal on the attorney general for that of the Judiciary Committee. 300 It was defeated by a vote of 24-97, the delegates apparently agreeing with Delegate I. Jackson Burson, who in opposition to the amendment stated:

Now most of the remarks that I have heard in advancing the power of the attorney general to supersede local district attorneys seem to assume that a statewide elected official will be inherently more virtuous than a locally elected official. I challenge that assumption. 301

Debate continued on the details of the judiciary proposal. An attempt was made to restrict the attorney general even more by deleting his power to supersede a district attorney, even for cause. The amendment was defeated, the convention opting for some control over local district attorneys, albeit subject to court review and not at the attorney general’s discretion. 302 As Delegate Walter G. Arnette stated:

I think if a district attorney is not doing his job, someone ought to step in, someone ought to take care of the people of that district. If there is organized crime in the area, if there is crime that is not being prosecuted, someone ought to step in and have the power to prosecute it. 303

Also defeated was another attempt to grant the attorney general power to supervise the district attorneys. 304 However, the constitution did adopt an amendment sponsored by the chairman of the Judiciary Committee that clarified the language of the proposal to make clear that the attorney general could, for cause, institute a prosecution and not be limited to simply intervening in prosecutions already commenced. 305

Thus, in a battle between state power and local power, the convention

299. Id. at 91, 92.
300. Id. at 93-100.
301. Id. at 96.
303. Id. at 66.
304. Id. at 69-74.
305. Id. at 93, 94. See also PROCEEDINGS, Jan. 15, 1974 at 82-84.
adopted a compromise. Some checks and balances remain between the attorney general and the district attorneys, with the courts being required to intervene when the two authorities come into conflict. And, in view of some readings of *Kemp v. Stanley* as not allowing the attorney general to supersede a district attorney without cause, some delegates thought they were continuing the existing state of the law. In any event, Article IV, Section 9 makes the attorney general "the chief legal officer of the state" and then more particularly enumerates that "[a]s necessary for the assertion or protection of any right or interest of the state, the attorney general shall have authority

1. to institute, prosecute, or intervene in any civil action or proceeding;
2. upon the written request of a district attorney, to advise and assist in the prosecution of any criminal case; and
3. for cause, when authorized by the court which would have original jurisdiction and subject to judicial review, (a) to institute, prosecute, or intervene in any criminal action or proceeding, or (b) to supersede any attorney representing the state in any civil or criminal action.

It also provides that the attorney general "shall exercise other powers and perform other duties authorized by this constitution or by law."

The provision that the attorney general shall be the chief legal officer of the state is new. It comes from the Executive proposal, but neither the committee comments nor the convention debate provide a history of the implications of that language. Referring to him as the "chief" legal officer certainly implies control over other legal officers and would seem to give him that control. But to the extent that this general power conflicts with the more specific enumeration of powers in the next paragraph, the general would have to give way to the specific. In areas where no conflict exists, however, the language seems to mean that he does have control over other legal officers of the state.

306. The provision comes from *Committee Proposal 4*, § 8, in *Journal*, July 6, 1973 at 12, by the Executive Department committee. The committee comments simply said, "The attorney general is made the state’s ‘chief legal officer’ without further explanation." *Id.* The initial Judiciary Committee Proposal did not use the chief legal officer description, but rather paraphrased language from the 1921 Constitution. *Committee Proposal 6*, §§ 28, 29, in *Journal*, July 6, 1973 at 17. The Judiciary’s later proposal, a substitute for the first, *Committee Proposal 21*, § 27, in *Journal*, Aug. 23, 1973 at 6, used the chief legal officer formula of the Executive proposal without explanation.
Subsection (1) in referring to his power to institute, prosecute or intervene in any civil action or proceeding is a continuation of prior provisions and is unlimited. Subsection (2), which raised little controversy, refers to his authority to "advise and assist in the prosecution of any criminal case" when requested by a district attorney. By its terms, the provision requires that the request be in writing.

It is Subsection (3) that establishes the attorney general's power to act on his own authority in criminal matters. If the requirements of "cause" are met, he can "institute, prosecute, or intervene in any criminal action or proceeding." The power to institute refers not only to filing bills of information, but also to presenting evidence to a grand jury in cases where a grand jury indictment is desirable or necessary. This is so because the reference is not only to instituting an "action" in the sense of a court proceeding, but also to instituting a "proceeding" before a grand jury. Under this grant, he can prosecute a case himself, without reference to a district attorney, or he can intervene and not act as sole prosecutor. If the cause requirement is met, he can also supersede a district attorney in any criminal action which has already been commenced. This subsection also recognizes his power to supersede any attorney representing the state in any civil action, again if the cause requirement is met.

The central problem then becomes defining the "cause" which a court must find before it authorizes the attorney general to take the measures described above. The authorization must come from the court "which would have original jurisdiction" over the underlying criminal conduct or action about which or in which the attorney general wishes to exercise his authority, and is subject to review by the appellate courts.

The cause requirement is related to the introductory phrase of the paragraph, "as necessary for the assertion or protection of any right or interest of the state," indicating that the "cause" must be associated with the fact that a right or interest of the state is not being satisfactorily represented or asserted by a district attorney. The record of the debate is replete with statements that the power of the attorney general is the power to act when a local district attorney is not fulfilling his duties satisfactorily.


308. In recognizing the power to supersede, the new constitution incorporates language which the prior constitution did not contain. But Kemp v. Stanley, 204 La. 110, 15 So. 2d 1 (1943), indicates that the power to supersede for cause did exist under the prior provision.
as when he is not prosecuting cases that ought to be prosecuted.\textsuperscript{309} Reference was made to citizens filing complaints with a district attorney and failing to obtain action; in such a case, the implication was that the attorney general could act. It was pointed out that use of the malfeasance laws was not a practical means of proceeding against a district attorney if it were that district attorney alone who could bring such a prosecution; the attorney general would be the only check on him in such a case.

The cause requirement can also be traced to \textit{Kemp v. Stanley}, in which statements were made in the original opinion and in concurring opinions on rehearing that while the attorney general could not have total discretion in superseding a district attorney, he could supersede if his actions were not capricious and arbitrary, but had some basis supporting his action. There, the court pointed out the district attorney had not been neglectful of his duty in any way, so there was no cause for the attorney general to intervene. The implication is that had there been neglect, the attorney general action would have been permissible.\textsuperscript{310} In some matters involving statewide organized criminal activity, cause may exist because the resources and powers of district attorneys, who are limited largely to acting with respect to offenses occurring in their judicial districts, may be unsatisfactory to investigate and prosecute the large scale criminal activity.\textsuperscript{311}

That the cause requirement is not an insurmountable one is shown by convention rejection of an amendment to require a stronger standard, "proven cause," before the attorney general could act. The sponsor indicated he did not want "alleged cause" to be sufficient, but the convention rejected the amendment by a vote of 55-60 and chose the lesser standard.\textsuperscript{312} It also rejected an amendment to require that in multi-member

\textsuperscript{309} \textit{PROCEEDINGS}, Aug. 23, 1973 at 58, 66, 77. Chairman Dennis stated: "I think the committee intended all along to make certain that where there was an abuse and the district attorney was not doing his job, that the attorney general could go into court and ask for a court order and initiate a prosecution." \textit{Id.} at 77. Delegate Chris Roy indicated that "if a person committed a crime, no question about it and a D.A. for one reason or another did not see fit to bring a bill of information against him or present it to the grand jury" that was grounds for the attorney general acting. \textit{Id.}

\textsuperscript{310} \textit{See id.} at 58. Delegate Burns stated, "Mr. Kilbourne, didn't the Supreme Court hold in the \textit{Kemp} case that the attorney general could not go into a district without it (sic) showing legal cause?" \textit{See also id.} at 66.

\textsuperscript{311} Delegate Arnette spoke of keeping a mechanism for state action and not relegating state law enforcement to federal agencies: "Are you going to have the federal government coming in and prosecuting those people under some federal law, and I don't think that is the way, it ought to be." (sic) \textit{Id.} at 66.

\textsuperscript{312} \textit{Id.} at 88-93.
district courts, a majority of the judges must concur to authorize attorney
general intervention; the district court acting normally through a single
judge can authorize the action.\textsuperscript{313}

Though the section does not address itself directly to the investigatory
powers of the attorney general, it implies the existence of those powers.
The attorney general must be able to amass the factual showing necessary
for establishing cause to act and must be able to investigate criminal
matters to establish those facts. The section also fails to specify the
procedure to be followed when requests for authorization are made; it
would then be left to the legislature to establish that procedure and
provide, for example, when such authorization can be \textit{ex parte} and when
contradictory hearings with a district attorney are required. In terms of
procedure, one could easily raise many problems associated with having a
"mini-trial" between the attorney general and a district attorney revolving
around the conduct of a future defendant before the same judge who might
have to sit at the ultimate trial of the defendant. In fact, one could raise
many other problems with the whole concept. But, this accommodation
between the state interests and the local interest was a hard-fought political
compromise reflecting political realities, and it is in effect.

Though Section 8 in the last paragraph allows the legislature to grant
the attorney general additional powers and duties beyond those enumer-
ated, such legislation cannot alter the constitution's basic ordering of the
relationship between the district attorneys and the attorney general. This is
because of the provisions of Article V, Section 26: "Except as otherwise
provided by this constitution, a district attorney shall have charge of every
criminal prosecution by the state in his district, be the representative of the
state before the grand jury in his district, and be the legal advisor to the
grand jury." The exception clause refers to the constitution's recognition
of the powers of the attorney general provided in Article IV, Section 8,
and does not include provisions otherwise that are \textit{established by law}.
Thus, while the legislature can provide for additional powers and duties of
the attorney general, such legislation cannot alter the district attorney's
powers as stated in Section 26. Of course, additional powers with respect
to district attorneys can be granted to the attorney general, so long as the
former's constitutional enumeration of powers is not abridged.

The district attorney remains a constitutional officer, with one elected
in each judicial district for a term of six years.\textsuperscript{314} The qualifications for the

\textsuperscript{313} \textit{Id.}

office parallel those of judges—admitted to the practice of law for five years preceding election and residence in the district for two years. The experience requirement is changed to five years from the prior constitution's three-year requirement; however, the new document deletes altogether the prior requirement that assistants to the district attorney have three years experience in the practice of law.

Section 26(C) does provide that no district attorney or assistant "shall appear, plead, or in any way defend or assist in defending any criminal prosecution or charge. A violation of this Paragraph shall be cause for removal." However, the constitution does not prevent a district attorney from practicing law and handling civil matters. An amendment to prohibit all law practice by district attorneys failed, though the debate makes it clear that the legislature can in the future impose that restriction.

As proposed by the committee, the section did not specify the powers and duties of the district attorney, just as the prior constitution had not. Though the convention did not act to add a statement of powers and duties when it considered the section on the district attorney, it did adopt one by a rider to the section regulating grand juries. That statement of powers was later added to Section 26 on recommendation of the Committee on Style and Drafting.

The statement of powers and duties in Section 26(B) tracks the language of the Code of Criminal Procedure; his power to "have charge of every criminal prosecution by the state in his district" comes from article 61, and the statement that he "be the representative of the state before the grand jury in his district and be the legal advisor to the grand jury" comes from article 64. The exception clause was included "to make it possible for the attorney general, when he supersedes a district attorney, to have charge of criminal prosecutions."

As originally adopted, the provision gave the district attorney charge of "every criminal prosecution in his district." An amendment was adopted to have the phrase read instead "prosecution by the state in his district.

316. See La. Const. art. VII, § 61 (1921). An amendment that sought to require three years of experience for assistants was defeated. PROCEEDINGS, Aug. 23, 1973 at 104-07.
320. Id. at 126.
district" to make clear he would not have charge of prosecutions by municipalities and other subdivisions of the state. The author stated: "... we are referring in the district attorneys' powers only to state prosecutions and not to municipal or city prosecutions for violation of city ordinances." Thus, the district attorney must have control of all prosecutions for violation of state law within his district, but he does not have that control with respect to prosecutions for violations of city ordinances. Of course, the provision does not require that the district attorney prosecute all cases involving state law. Other persons, including city prosecutors, can be allowed to do so, so long as the district attorney retains control of the course of the prosecution.

Sheriffs

As officials elected to serve in a parish, sheriffs might well have been within the province of the Committee on Local and Parochial Government. Such an arrangement would have been appropriate since only a small part of a sheriff's duties are court-related. However, since the 1921 Constitution included sheriffs in Article VII on the judiciary, and the Judiciary Committee was allotted jurisdiction of all of Article VII by the convention rules, provisions relating to sheriffs were drafted by that committee. Consideration by the Judiciary Committee was not opposed partly because the politically powerful sheriffs had two of their number represented on that committee, and because the Committee on Local Government apparently made no objection.

Section 27, which provides for one sheriff in each parish and states his duties, does not by its terms apply to Orleans Parish. There, the existing civil and criminal sheriffs (without law enforcement and tax collecting duties) are continued by Section 32. The Judiciary Committee proposal, though it did not include a clause excepting Orleans from Section 27, did allow different treatment of Orleans sheriffs by a separate section on Orleans officials. However, by the time the convention considered the provisions on the sheriffs, there was some doubt as to whether the later section preserving some Orleans differences would be

321. Id. at 136.
322. Id.
323. Sheriff Gordon J. Martin and Sheriff Jessel M. Ourso. Minutes, Mar. 30, 1973 at 3, state that the committee voted without objection to consider all officers in the judiciary article "including sheriffs" as provided by the convention rules of procedure.
adopted. This uncertainty prompted several Orleans delegates to sponsor an amendment to the proposal on sheriffs to add the last sentence which provides that Section 27 shall not apply to Orleans Parish, and the amendment was adopted. Later, Section 32, which continues the separate criminal and civil sheriffs in Orleans, was also adopted, the section specifying that the offices may be changed by law. The result is that sheriffs in all parishes but Orleans are given strong constitutional protection and constitutional duties, but the Orleans sheriffs are subject to regulation and change by the legislature.

The provisions of Sections 27 and 32 apply even if a home rule charter or plan of government should provide otherwise. Though Article VI, Section 4 continues existing charters and plans of government, that provision specifically indicates that this is so "except as inconsistent with this constitution." It would be inconsistent with the constitution for such local charters to provide other than as Sections 27 and 32 provide. This conclusion is consistent with the fact that sheriffs are covered in the Judiciary Article rather than in the Local Government Articles, and is further buttressed by the convention's defeat of an amendment to Section 27 which would have provided that the section does not apply "to any parish in which there may be a provision in a parish home rule charter or plan of government to the contrary."**

Section 27 specifies three duties for the sheriff: (1) he executes court orders and process; (2) he is the collector of state and parish ad valorem taxes and such other taxes and licenses as provided by law; and (3) he is the chief law enforcement officer in the parish, except as otherwise provided by the constitution.

The new language making the sheriff responsible for enforcement of court orders and process was proposed by the committee and raised little controversy. As adopted, the unqualified provision makes the sheriff's obligation extend to executing the orders and process of any court. This

325. PROCEEDINGS, Aug. 24, 1973 at 19, 20. The Orleans delegates were joined in sponsoring the resolution by Sheriffs Edwards, Martin and Ourso, and the amendment was adopted by a vote of 104-15. Id. at 30.

326. The committee proposal made change more difficult, but it was amended to allow change by law. Id. at 80-97.

327. Id. at 31-28. See also id. at 23, 25.

328. The 1921 Constitution did not so provide; however, Article VII, Section 28 of the 1921 Constitution did contain a provision that in the First and Second Circuit Courts of Appeal, the sheriff of the parish in which a session of those courts was held was required to attend sessions and execute orders of the court. See LA. R.S. 13:353(B) (Supp. 1975).
relationship to the district courts and the appellate courts is clear. However, the sheriff's role in executing orders of courts below the district court level is less clear. Article V, Section 15 provides, "The office of city marshal is continued until the city court he serves is abolished." Continuing the marshal, who serves to enforce orders and process of city courts, contemplates no doubt his having duties somewhat similar to those under existing law, including serving process and executing orders. When a city court is abolished, presumably in accord with the creation of a parish court as per Section 15, the implication is that the office of marshal would be abolished and then Section 27 can be given full effect so that the sheriff will be the executing agent of the newly created parish court.

The 1921 Constitution provided the sheriff with power to collect "[s]tate, parish and all other taxes, except municipal taxes, which, however, under legislative authority, he may also collect." That provision was construed narrowly by the court in *Interstate Tax Bureau v. Conway*, and in accord with that jurisprudence, the committee and the convention voted to refer to "state and parish ad valorem taxes and such other taxes and license fees as provided by law." Thus, though the legislature may provide for sheriffs collecting other taxes, the right of the sheriff is with respect to collecting state and parish ad valorem taxes, that is, taxes on property based on the value of the property. The fees a sheriff receives for such collection services are not constitutionalized and will continue to be provided for by the statute.

The provision that the sheriff "shall be the chief law enforcement officer in the parish, except as otherwise provided by this constitution" is new. The contours of this power are vague, but neither in the committee debates nor in the convention transcript does one find expressed the view that the sheriff will be the exclusive law enforcement agent. During its

329. Considering the background of statutory law existing at the time of the convention which provides for the sheriff as the executive officer of the district courts and the appellate courts, it seems clear that his association with those courts was clearly contemplated. See La. Code Civ. P. art. 321; La. R.S. 33:1435 (1950).

330. An attempt to delete the reference to city marshals in the constitution by floor amendment was defeated. PROCEEDINGS, Aug. 17, 1973 at 29.


332. 180 La. 453, 458, 156 So. 463, 464 (1934). The court said, "The plain intent of those constitutional provisions is to charge the officials therein referred to with the duty of collecting state, parish, levee, drainage and other taxes assessed on property situated within their respective territorial jurisdictions." (Emphasis added).

333. The section was adopted without opposition from the sheriffs; it was approved by a vote of 120-1. PROCEEDINGS, Aug. 24, 1973 at 4. See also id. at 18.
deliberations, the committee had before it the existing statutory provisions dealing with activities of the state police in municipalities, and there was no apparent sentiment to further restrict the state police, or to abolish municipal law enforcement agencies. In presenting the section to the convention, the chairman of the committee spoke rather in terms of having the sheriff as the coordinating agency in case of operations involving several law enforcement agencies. He spoke in terms of the sheriff being the one to "coordinate efforts of law enforcement agencies in the event of a major catastrophe or a major event requiring all the law enforcement agencies to come in." Also, in answer to a question about the sheriff superseding city police, he said:

This does not attempt to spell it out in detail but simply establishes a policy that the sheriff will be the chief law enforcement officer and leaves up to the legislature, if it should have to do so, and we haven't had to do it in fifty years, if it should have to do so, to spell out in detail the procedures for law enforcement agencies in a parish.

Later, committee member James T. Burns and Chairman Dennis engaged in this colloquy:

Mr. Burns: "Judge, just to bring it out a little more clearly. Did we not discuss at length with reference to the sheriff being the chief law enforcement officer, that we definitely did not intend to keep out the state police or interfere with the city police chiefs or city police, but merely to, as you stated just now, that this would be a coordinating agency and not by any means diminish or interfere with the authority of the state police or the city police?"

Mr. Dennis: "That's correct, Mr. Burns. Thank you very much."

Though the exception clause in Section 27 is not clear, it can refer to several provisions dealing with various aspects of law enforcement. Section 26 empowers the district attorney with charge of every criminal prosecution in his district; Article V, Section 8 recognizes implied criminal investigatory powers in the attorney general; Article I, Section 15 and Article V, Section 34, appear to recognize the existence of investigatory powers in the grand jury; Article X, Section 16 establishing civil service

336. Id. at 17.
337. Id. at 19.
systems for municipal police departments implies the continued existence of those departments; Article X, Section 10 allowing the legislature to supplement the pay of state policemen and wildlife agents seems to recognize the continued existence of those law enforcement agencies; and Article VI, Section 9(B) provides that the police power of the state shall never be abridged.

In light of these provisions, and of the explanation of the chairman of the judiciary committee, it would seem that the new provision should be considered a generalized recognition of a sheriff’s ultimate coordination powers rather than a recognition of exclusive powers in him, and a recognition of substantial legislative power to order the types of coordination that would be involved.

Clerks of Court

The clerk of the district court is continued as a constitutional officer; Section 28 requires that a clerk be elected in each parish and that he function as recorder of conveyances, mortgages and other acts. However, Article 32 makes clear that the current situation in New Orleans, with separate clerks for the civil and criminal courts and a separate register of conveyances and recorder of mortgages, will continue to exist until changed by law.

A small change is made in that while the prior constitution required approval of the district judges before a clerk could appoint all his deputies, the new provision requires that approval only with respect to minute clerks, those deputies who serve the court itself rather than those handling the other functions of the clerk’s office. 338

The committee proposed the new provision that mandates the legislature to establish uniform statewide office hours for clerks of the district court in response to lawyer complaints about lack of uniformity and uncertainty as to when offices are open to receive documents which must be filed within specified delays. The Clerk of Court Association endorsed this provision, and the convention rejected an amendment to delete the requirement. 339

The constitutional duties of the clerk repeat the prior law, and it is clear that the legislature may provide other duties. 340

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Coroner

The coroner remains a constitutional officer to be elected in each parish for a four-year term. However, the constitution no longer states duties for the office; the duties of the coroner are simply those “provided by law.” Deleted from the new constitution are the provisions of the 1921 Constitution which provided the coroner “shall be ex-officio parish physician” and “shall act for and in place of the sheriff, whenever the sheriff shall be a party interested, and whenever there shall be a vacancy in the office of sheriff....” These provisions were deleted as part of the committee proposal, the committee recommending that the chief criminal deputy assume the powers of the sheriff in case of a vacancy. To allow the legislature more flexibility in providing for expert determination of forensic medicine problems that could arise in relation to court operations, the committee also proposed to delete the requirement that the coroner be a licensed physician:

The reason we have made these changes is, in some of our parishes we have been unable to get physicians to perform the functions of coroners and have had to rely upon other persons. For example, in my parish our coroner is a psychologist. We could not get an M.D. to take the job.

The convention, however, at the urging of physician-delegate Dr. Gerald Weiss, reinstated the provision of the 1921 document that the coroner must be a licensed physician, continuing also the exception that the requirement is inapplicable “in any parish in which no licensed physicians will accept the office.” By the terms of the section, also, the legislature can enact additional qualifications in addition to the licensed physician requirement.

Vacancies; Protection

The governor’s power to fill vacancies in the office of sheriff, district attorney, clerk and coroner is ended. Section 20 provides that until the

341. Id. art. VII, §§ 70, 71 (1921).
343. PROCEEDINGS, Aug. 24, 1973 at 49.
344. Id. at 58-63.
345. La. Const. art. VII, §§ 69, 72, 93 (1921). Under Sections 69 and 71, in the case of a vacancy in the office of sheriff, the coroner assumed the duties until the office was filled by gubernatorial appointment or election, depending on the remaining time in the term.
vacancies are filled by election as provided by law, the duties of those offices shall be assumed by the chief assistant concerned.\textsuperscript{346} If there is no chief assistant, or if he does not accept the office, the governing authority or authorities of the parish or parishes concerned shall fill the vacancy by appointment.

The clerk, coroner and sheriff being elected for a parish, the reference to local governing “authorities” is inapplicable as to them; the one governing authority would then act. Since most district attorneys serve multi-parish districts, however, if a vacancy occurs and there is no chief assistant to assume the office, the governing authorities of the parishes involved would fill the vacancy. The procedure for the governing authorities acting in such a case would be provided by law.

The language of Section 30 makes it clear that in case of vacancy, the office is not “filled” or the term completed by the first assistant. “The duties of the office” are fulfilled by the assistant until the remainder of the term “is filled by election as provided by law...” There is no right in the assistant to complete the term. In fact, by the language used, the assistant doesn’t even take over the office that is vacant; he merely assumes “the duties when the vacancy occurs.”

This parallels Section 22’s regulation of vacancies in judgeships; it is only after election that “a vacancy in the office of a judge shall be filled.” Until then, the court appoints a person to serve. The major difference between the two schemes for filling vacancies is that with respect to judges, the governor must call a special election within six months, whereas with respect to the other officials, the election to fill the vacancy is subject to regulation by law.

As Section 21 does for judges, Section 31 protects “the attorney general, district attorney, sheriff, coroner or clerk” from having his salary and retirement benefits diminished during his term of office.\textsuperscript{347}

\textbf{JURORS AND JURIES}

The constitution deletes the previous requirement that “no woman shall be drawn for jury service unless she shall have previously filed with the clerk of the District Court a written declaration of her desire to be subject to such service.”\textsuperscript{348} The committee had proposed this deletion,

\textsuperscript{346} The convention defeated an amendment that would have provided, in all vacancies in the office of sheriff, clerk or coroner, for the local governing authority selecting a person to fill the vacancy. \textit{PROCEEDINGS}, Aug. 24, 1973 at 66-73.

\textsuperscript{347} See the discussion at note 271, \textit{supra}.

\textsuperscript{348} La. Const. art. VII, § 41 (1921).
and the convention defeated, by a vote of 10-102, an attempt to continue the requirement. 349

Section 33 establishes the minimum qualifications for jury service—state citizenship, age of majority, domicile in the parish in which one is to serve as a juror—350—but by its terms also allows the legislature to enact additional qualifications. Though the legislature has already acted to remove the statutory registration requirements for women, 351 it is arguable that the legislature could re-impose that requirement. However, the tenor of the debate clearly indicates that women were to be called for jury duty just as men, 352 furnishing strong authority for concluding that such a discrimination would be unreasonable under the constitution's new equal protection clause of Article I, Section 3. Of course, the United States Supreme Court has also ruled that such a registration requirement for women is unconstitutional. 353

The Judiciary Committee had proposed that the supreme court would provide for "qualifications and exemption of jurors." 354 The convention did not accept the grant of power to the court to establish qualifications; instead it established the minimum requirements in the constitution and provided that the legislature could enact additional qualifications. 355 However, the convention did concur in removing from the legislature and placing in the supreme court the power to provide for exemptions from jury service. Delegate Ambroise H. Landry, a member of the committee and a clerk of court experienced with jury selection, was effective in pointing out to the convention that the existing legislative exemptions 356 excluded from jury service large numbers of the best qualified people. As he said, "When we omit all of these people, ladies and gentlemen, what (sic) do we have left to serve on the jury?" 357 It was thought that the supreme court would be less sensitive to interest group pressure for exemptions, and that it would pare the existing encrustation of exemptions and provide for fewer of them. The court has done so. 358

350. By referring to the age of majority rather than a specified age in years, the constitution allows this requirement to change if the legislature changes the age of majority.
356. LA. CODE CRIM. P. art. 403.
357. PROCEEDINGS, Aug. 24, 1973 at 102.
358. LA. SUP. Ct. R. 25. By its terms, the rule has the effect of "superseding LSA-R.S. 13:3042, as amended, R.S. 13:3056, as amended, and Articles 402 and 403
The provisions governing qualifications and exemptions in Section 33 apply to grand juries as well as petit juries. Although the Judiciary Article does not contain provisions establishing the types of cases in which petit jury trials are required and does not specify the number of jurors needed to concur to reach a verdict, those matters are covered in the Declaration of Rights, Article I, Section 17.

Section 34 on the grand jury does not continue the detail of the predecessor provision regulating the number of jurors required, the number required to indict, the term of the grand jury, and the times for empanelment. These matters are to be regulated by law. The section also allows more than one grand jury to be impaneled and in operation at the same time in a parish. While the constitution does not require more than one grand jury, it does allow the legislature to so provide. By its terms, also, the provision does not prohibit state-wide grand juries.

Though Section 34 does not specify the cases in which indictment is required, Article I, Section 15 requires that "no person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury." The exemptions are personal and must be claimed by the individual; when the jury commissioners removed persons who had not claimed their exemption, the jury was not properly selected and a conviction by such a jury was overturned. State v. Procell, 332 So. 2d 814 (La. 1976).

This was clear in the committee proposal. Committee Proposal 21, § 36, in JOURNAL, Aug. 23, 1973 at 9, provided the supreme court by rule would provide for qualification and exemption of jurors and Section 37, the section which covered the grand jury, provided that grand jurors would have the qualifications of Section 36. When the convention began to consider Section 37 (renumbered in the constitution as Section 34), it had already removed the supreme court's power to establish qualifications by rule in the preceding section. To do the same in Section 37, Delegate Robert G. Pugh introduced an amendment to delete the reference to the preceding section and insert instead that the grand jury's "qualification, duties and responsibilities should be provided by law." In explaining his amendment, Delegate Pugh stated that the minimum qualifications of the prior section would apply and that his proposal would not alter the supreme court's power over exemptions from service on the grand jury. PROCEEDINGS, Aug. 24, 1973 at 115. See Hargrave, supra note 120, at 55.

Explaning the provisions to the convention, Delegate John L. Avant said, "We are not setting up the machinery in this provision, we are simply providing a mechanism whereby the legislature in those unusual cases, can provide for special grand juries to consider special matters that, because of the public importance involved should be considered, must be considered without disrupting the ordinary functions of the grand jury." PROCEEDINGS, Aug. 24, 1973 at 112. The prior constitution provided for only one grand jury at one time. La. Const. art. VII, § 42 (1921). See La. Acts. 1975, No. 569, adding LA. CODE CRIM. P. art. 415.1-2.

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answer for a capital crime or a crime punishable by life imprisonment except on indictment by a grand jury.'"

In committee, Delegate John L. Avant sponsored provisions to strengthen the requirements of grand jury secrecy. He was especially concerned about news reports that grand juries were investigating named individuals and that certain persons had been called to testify and feared a tendency to presume guilt, or at least some connection with crime, from such disclosures. An initial proposal he submitted would have prevented newsmen from reporting the names of witnesses called before the grand jury, but the committee did not accept the recommendation because of infringement of freedom of the press.363 What did emerge from the committee was a mandate to the legislature to provide for secrecy of grand jury proceedings, including the identity of the witnesses appearing.364 An attempt to delete the mandate was defeated by the convention,365 and Section 34 does provide, "The secrecy of the proceedings, including the identity of witnesses, shall be provided by law." The Code of Criminal Procedure has such provisions,366 but it is also clear that an attempt to penalize the news media for publication of the names of witnesses called would be a violation of provisions in both the federal and state constitutions.367 The legislature can, of course, regulate the conduct of public officials and grand jury members, so as to prevent their disclosure of the names of witnesses.

A far-reaching amendment to the section proposed by Delegate Elmer R. Tapper was adopted by a vote of 89-10, an amendment providing that "[a] person testifying at any stage in grand jury proceedings shall have the right to the advice of counsel while testifying."368 The amendment was adopted on August 24, 1973, after a debate that occupies less than one page of the convention transcript of proceedings. However, opposition to the provision developed, particularly from district attorneys.369 As the

366. LA. CODE CRIM. P. art. 434.
367. See U.S. CONST. amend. 1; LA. CONST. art. 1, § 7.
368. PROCEEDINGS, Aug. 24, 1973 at 134.
369. Delegate I. Jackson Burson told the convention, "So, I requested counsel from every district attorney in this state, and thirty-two of the thirty-four said that in their opinion this measure would do more harm than good." Also "that we will be to all practical effect, eliminating its use for that good purpose, for that purpose which helps the defendant and will be limiting its use only to those that we have absolutely mandated in this constitution." Id., Jan. 11, 1974 at 68.
convention was coming to an end, on January 11, 1974, the self-enforcing provision was deleted and replaced with the mild provisions of Section 34(B): "The legislature may establish by law terms and conditions under which a witness may have the right to the advice of counsel while testifying before a grand jury."370

Speaking against the amendment, Delegate Ford Stinson said, "Any time one group, especially the district attorneys, that they think (sic) are so smart and so strong that they can come in here and say: If you don't change one thing, then we're going to beat the constitution. Well I say they should have written the constitution to start with instead of us laboring for one year." Id. at 71.

370. The lead author of the amendment was convention chairman E.L. Henry. In response to the view that the language was unnecessary since the legislature could so act without the authorization, Delegate Burson indicated that the language should be retained to avoid the possibility that the secrecy requirements would prevent counsel from being present during grand jury proceedings. Id. at 75.