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A SHORT HISTORY OF THE NEW YORK STATE COURT SYSTEM

By

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A Short History of
the New York State Court System

By

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Albany, New York

Since 1962, section 1 of Article VI of the New York State Constitution has proclaimed to all that "[t]here shall be a [U]nified [C]ourt System for the [S]tate." In spite of this confident and unequivocal command, legislators, lawyers, judges and others involved in the administration of justice are still wrestling with one another in an effort to give it meaning. The court merger debate, the pros and cons of which you will hear later this morning, is but the latest round in this wrestling match.

Rather than attempt to give you my own personal concept of a Unified Court System, I think it might be instructive were I to chronicle for you significant historical events that have combined to produce our court system -- whether it be unified or otherwise.

This historical odyssey should begin in 1846 -- with the Constitutional Convention held in that year. It was then that the antecedents of today's court system began to take form.

A primary item on the agenda of that convention was the restructuring of the courts. For the first 70 years of its life, from the time of the State's first Constitution in

1777, the New York Judiciary was a comparatively primitive institution, little changed -- in form and operation -- from the colonial court system erected in the 17th Century.

Judges were few in number. All were appointed by a central authority and, because they rode circuit, sometimes sitting in individual locales only once every few months, they had no real constituency and only limited geographical identification. The Chancellor and justices of the Supreme Court served for no fixed term of office, and were subject only to mandatory retirement at age 60. In effect, each judge was himself an institution with substantial, if not really unlimited, authority to determine the rules of legal practice before his court. Also, each judge generally had the final word in controversies before him as there was little in the way of an appellate court structure.

This condition of the courts was well suited to the predominantly agrarian and sparsely populated society that the State had been. It was not at all conducive to the larger and more commercially-dominated society that, in the middle of the 19th Century, the State was becoming. To accommodate the State's evolving character, therefore, the 1846 convention completely overhauled its judicial establishment.

First, the Supreme Court was substantially enlarged -- with the number of its justices being increased from 3 to a minimum of 32. These justices would be selected from and serve in judicial districts drawn to coincide with county lines. Supreme Court's mandate changed, too, as the classic division between equity and law courts was eliminated, and the Supreme Court became a statewide court of complete and original jurisdiction. At the same time, lesser trial courts, with limited subject matter and geographical jurisdiction, were given constitutional status.

Second, the Convention gave birth to the beginnings of a two-tiered appellate apparatus. A General Term of Supreme Court, the predecessor of today's Appellate Divisions, was established as an intermediate Appellate Court. Also established was the Court of Appeals to serve then, as it does now, as the State's highest court of appellate jurisdiction.

Finally, the Convention mandated that trial judges be popularly elected for fixed terms of office, and that the Legislature enjoy significant rule-making authority in the formulation of court procedures.

The court system that emerged from the Constitutional Convention of 1846, and that the People of the State then

ratified, has proven to be remarkably durable and permanent. The courts it established or continued have remained with us to this day, as has the organizational concept of the judicial district. In other respects, however, New York's court system has changed dramatically over the past 135 years. Most notable, as we shall see, have been the changes in the way it is financed and administered.

Even after adoption of the new Constitution of 1846, the courts retained much of the independence and insularity their predecessors had enjoyed. Trial courts were virtually autonomous bodies, both administratively and jurisdictionally. Little State funding was available to support their operation, and so each local court confined its appeals for budgetary assistance and needed facilities to the local governmental unit of which it was a part. With few exceptions, each court was self-administered or, where multi-judge courts sat, they were administered by a presiding judge or collegial body of the judges themselves.

In most respects, the trial courts remained very parochial institutions, providing justice in the same frontier-like style and manner as did their predecessors. And, in the latter half of the 19th Century, this was not unsuited to the pace of life in New York nor to the demands of our other institutions.

Thus, when yet another Constitutional Convention met, this time in 1894, there was little interest in disturbing fundamental court structures. A few changes of note were made, however, with the corps of Supreme Court justices being enlarged and the State's major court of intermediate appellate resort, the Appellate Division, taking form. In a related move, the State also was, for the first time, divided into four judicial departments -- marking the geographical authority of each branch of the new Appellate Division.

While the 1894 conventioners saw little need for an overhaul of the trial court system, circumstances were soon to change and force intensive reexamination of that system.

By the middle of the Twentieth Century, beginning in the years following World War II, New York experienced, as did the rest of the country, what has often been described as the "mid-century law explosion." The proliferation of motor vehicles and the growing hazards of their operation; a population explosion that enlarged our cities and brought with it new forms of poverty and a soaring crime rate; and a better-educated public, which, having been nurtured by television and educated by the GI bill, was far more aware of its rights and far more litigious -- this conspiracy of events suddenly imposed upon the legal system greater and

greater numbers of cases. And they were not just the fare traditionally handled by the courts: viz., the criminal prosecutions, personal injury cases and contract and property disputes. Heartened by the spectacular successes of the litigants in cases like Brown v. Board of Education -- the case in which "separate-but-equal" educational facilities were found unconstitutional -- and further stimulated by a growing public perception of weakness, inattentiveness or corruption in the Executive and Legislative branches of government, litigants began to flock to the courts inviting them to make policy through their judicial constructions of State and federal constitutions.

As the courts and the legal system tried to cope with this flood of cases, they found themselves stymied at every turn. At first, patches were tried. New procedural approaches were devised and applied in hopes of speeding the caseflow. Special referees were used in some cases. Others were given preferences, entitling them to jump to the head of the calendar. There was experimentation with new forms of pretrial discovery. While all of these expedients were useful to some degree, none could staunch the escalating caseflow. Almost overnight, court delay became endemic and it was not uncommon for litigants to sit for three or four years, waiting for a trial. While the fact was not necessarily greeted happily in all corners of the legal and

judicial community, it was apparent that more fundamental reform of the State's court system was in order.

Responding to public pressure, Governor Thomas E. Dewey, in 1953, called upon the State Legislature to create a Temporary Commission on the Courts. The aim of this Commission would be to make a comprehensive study of the State's judicial system, with a view toward the kind of comprehensive court reform that had last been seen during the 1846 Constitutional Convention. The Legislature proceeded to do its part and, for the next five years, a Temporary Commission, popularly known as the Tweed Commission after its chairman, lawyer Harrison Tweed, conducted extensive public and private hearings to enable judges, lawyers and interested citizens to air their views on reform of the court system.

In 1955, while the Tweed Commission was going about its work, the Legislature created the Judicial Conference, a body of trial and appellate judges representing all areas of the State. Also, it created the Office of State Administrator. While the Conference and the State Administrator were given only advisory functions, their creation symbolized a dramatic change in focus. Henceforth, at least some attention would be given to a statewide perspective upon court operations. Moreover, beyond its

symbolic significance, the Judicial Conference had practical value. It represented the first forum of its kind in the State: a forum in which judges from every corner of the court system could meet to discuss common problems and share information.

As the fledgling Conference settled into place, the Tweed Commission issued its final report to the Legislature and Governor. This was 1958. In the report, it was proposed that there be some structural consolidation of the courts. Specifically, Surrogate's Court and the Court of Claims should be folded into the Supreme Court and the County Court. Also, the lower trial courts in New York City, of which there were many, should be merged into a single citywide court.

Perhaps more significant than these proposals for structural change were the proposals addressed to the fashion in which courts should be administered. They exemplified the growing view that the State should depart from its longstanding devotion to parochialism in court administration. The Commission urged that full administrative supervision and control of all courts of the State be lodged in the Judicial Conference and the four Appellate Divisions. Were this proposal to become law, powers traditionally exercised by individual trial courts,

such as the fixing of court terms and the assignment of judges to those terms, would devolve upon more centralized authority. Also, the Commission proposed a new administrative stratagem: authority for the Appellate Divisions to transfer judges between courts so as to insure full use of available judicial manpower.

Largely for political reasons, the Tweed Commission's recommendations died on the vine. Its efforts were not entirely in vain, however. The same public pressure for court reform that had prompted the Commission's creation, continued unabated. Others, including the Judicial Conference at the request of Governor Harriman, undertook to make their own remedial proposals. In many respects, these proposals were the same or similar to those developed by the Tweed Commission.

With the unveiling of these many proposals, the political process went to work. It produced a compromise that could be supported by all corners of government, all regions of the State, good government lobbyists and the press. This compromise went to the voters for approval in November, 1961, in the form of a new Judiciary Article for the State Constitution.

This new Article, which was to be effective September 1, 1962, effectuated an extensive reorganization of the structure and administrative operation of the courts. Emphasizing the new trend away from parochialism, it included, for the first time, a mandate for a unified State court system. In fact, the courts were far from "unified"; but, at least, they could now fairly be described as part of a system.

The new Article memorialized all elements of this system, which, as I have noted, borrowed heavily on the recommendations of the Tweed Commission. Before summarizing those elements, though, we should take a moment to observe an important distinction between the federal court system and our State court system.

The federal Constitution contains the barest of mandates for a federal court system, and leaves most of the particulars of that system to be determined by subsequent legislative acts of the Congress. Consisting of three brief sections, the judicial article of the federal Constitution says of court organization only that

"The judicial power of the United States shall be vested in one Supreme Court, and in such inferior

courts as the Congress may from time to time ordain and establish."

Thirty words. One sentence. By contrast, the new Judiciary Article added to our State Constitution in 1962 devoted the better part of more than thirty sections to elaboration of our trial and appellate court structure, and, in particular, its administrative apparatus.

This contrast is of more than mere academic significance. By 1960, the crush of new cases being felt by New York's courts had clearly elevated the importance of effective court management. And because New York had chosen to detail all elements of its court system in the State Constitution, including its basic administrative structures, a path was charted whereby any future modification of those structures would require constitutional amendment -- much more difficult and time-consuming than the ordinary law-making process. Also, future disagreements concerning the extent of administrative authority over the courts were now bound to be decided in the courts as constitutional matters -- a far different and more sensitive proposition, I think, than statutory construction.

In 1962, then, the New York court system looked like this: there were 11 separate trial courts: (1) a statewide

Supreme Court that could hear all manner of civil and criminal cases (although, in practice, outside New York City it would act primarily as a civil court); (2) a statewide Court of Claims that could hear claims brought against the State; (3) a Surrogate's Court in each of the State's 62 counties that could supervise the administration of estates; (4) a Family Court in each of the State's 57 counties outside New York City and a Family Court for New York City; (5) a County Court in each of the 57 upstate counties that could hear criminal cases and modest civil cases (although, in practice, County Court would serve as the major upstate criminal court); (6) a New York City-wide civil court to hear modest civil cases, small claims and landlord and tenant matters in the City; (7) a New York City-wide criminal court to handle cases involving lesser crimes in the City; (8) a District Court that could be set up in any county or portion of a county and that within its geographical embrace could hear the same small cases heard in the New York City-wide courts; (9) City Courts in each of the State's 61 cities outside New York City that, within their individual geographical embraces, could act like a District Court; and, lastly, some 2,500 town and village courts that also could act like a District Court.

In the arena of court administration, there were both central and regional components. The five representatives

of the appellate courts on the Judicial Conference -- the Chief Judge of the Court of Appeals and the Presiding Justices of each of the four Appellate Divisions -- were cast as an Administrative Board to the Conference. This Board was given authority to establish standards and administrative policies for statewide application to court operations. At the same time, the four Appellate Divisions were themselves granted authority to conduct the actual day-to-day chore of supervising administration and operation of the trial courts within their respective judicial departments.

Just what these impressive but vague terms entailed, "standards and administrative policies" and "supervising the administration and operation of the trial courts", no one could be certain. There was no precedent. Thus, it was left to the State Legislature and the newly-established court administrative structures to flesh out these terms in statute and court rule.

The most significant of the implementing steps actually took place in 1961, prior to the voters' approval of the new Judiciary Article. That was the establishment of a Joint Legislative Committee on Court Reorganization, expressly for the purpose of revising the consolidated laws to give effect to the expected constitutional amendment.

The Committee would propose, and ultimately see enacted, a new Article 7-A of the State's Judiciary Law. Consistent with the new constitutional provision, Article 7-A granted extensive supervisory powers to each of the State's four Appellate Divisions. Of particular note, it provided that these appellate courts should be clothed with all administrative powers and duties that formerly were vested by law in any judge or nonjudicial court employee in their respective jurisdictions. The effect was to transfer to the Appellate Divisions all authority to fix trial court terms, to assign judges to those terms and to appoint many nonjudicial court employees to their posts.

The 1962 court reorganization conferred on the Appellate Divisions other substantial administrative powers. The new Judiciary Article included a special provision permitting the temporary transfer of trial judges from court to court; and designated the Appellate Divisions as the orchestrating agencies. Thereafter, a judge of the County Court, for example, might temporarily be assigned to the Supreme Court in the department of his residence, to County Court or Family Court in any county, to Surrogate's Court in any county outside New York City, or to the New York City Civil or Criminal Court. Judges of other courts were, with minor variations, subject to an equally extensive range of temporary assignments.

To be sure, temporary assignments of judges were not without precedent before 1962. Prior to that time, however, they could involve only New York City judges, who could be assigned to any of the lower courts in New York City, and Supreme Court justices. Even among this group, temporary assignments were infrequent occurrences. By contrast, the new constitutional transfer provisions represented radical stuff. They exposed all trial judges to a wide range of possible assignments, and, because of the urgency of the court system's plight, they were likely to be used frequently. And, in fact, in the years following 1962, they were used frequently, particularly in New York City. There, in order to cope with the calendar demands placed on the Supreme Court, judges of the New York City Civil and Criminal Courts were and, in fact, still are, routinely assigned to serve in Supreme Court parts, many for extended periods of time.

The temporary assignment authority also supplied a focal point for an interesting sidelight to the history of the Rockefeller Drug Law, which was enacted in 1973. Under that law, which, as you know, was an effort to provide stiffer penalties and greater certainty of punishment for drug offenders, the corps of Court of Claims' judges was substantially enlarged. The new judges would not preside in the Court of Claims, however, and hear the traditional fare

of that court: tort claims against the State. Rather, they would be "temporarily assigned" to criminal courts where they would preside over many of the greater number of trials authorities expected the more severe drug laws to occasion.

If you could read my notes here, you would see that I have put "temporarily assigned" in quotation marks. This is because, for all intents and purposes, what were called temporary assignments were to be of indefinite duration and, probably, permanent. For reasons both political and constitutional, new Supreme Court justices could not be created to fill the expected gap in judicial manpower. Court of Claims judges could, and through creative administrative use of the available temporary assignment machinery, they could function as Supreme Court justices.

Not unexpectedly, not all criminal defendants prosecuted under the Rockefeller Drug Law thought that this administrative ploy was so creative. Some challenged this use of the temporary assignment machinery, arguing that it infringed upon precious constitutional rights. These challenges were rejected by the Court of Appeals, however, which gave its constitutional blessing to the new concept, not found in the text of the Constitution, of the permanent temporary judicial assignment.

As evidenced by the near universal approbation with which the press, public and legal community greeted the 1962 court reorganization and its reforms, one can assume that they were seen as heralding substantial improvement. In point of fact, however, they did not provide New York's courts with true relief from its plague of calendar congestion. And, as the 1960's moved on, and economic inflation set in, it grew increasingly apparent that the courts' new system of regional administration, coupled with its traditional reliance upon local funding of its needs, could not hope to cope with the financial crises that surely lay ahead.

As the 1960's became the 1970's, there was resurgent interest in court reform. Legislative and executive panels and good government groups all looked at the issues anew and unveiled new proposals for change and improvement. While these proposals were far from similar, they all seemed to evince a philosophical commitment to complete centralization of court management in this State.

But court management was not the only topic of interest on the agenda. Other issues, too, involving selection and disciplining of judges as well as streamlining the trial court structure, were becoming frequent topics of discussion.

Not content to await the outcome of the lengthy process of government and public debate of the many court reform proposals, debate which would serve as a prelude to the necessary amendment to the Constitution, then Chief Judge Charles Breitel arranged, in 1974, for the four Appellate Divisions voluntarily to delegate a significant measure of their management authority to the State Administrator. As you will recall, the position of State Administrator was created in the mid-1950's and, until this time, had discharged only advisory functions. The 1974 delegation would change all this, however. It gave the State Administrator authority to fix terms of court, to assign judges to them and to make temporary assignments of judges. In a related move, a Deputy State Administrator was appointed to supervise all courts within New York City -- responsibility which previously had been shared between the Appellate Divisions in the First and Second Judicial Departments.

This informal administrative centralization of New York's court management authority was operational for three years. During this period, many changes were made, not the least significant of which was that more extensive inter-court assignments were ordered -- with the result being a de facto merger of the New York City-based courts. In addition, in late 1976, two momentous events took place.

At an Extraordinary Session called by the Governor, the Legislature approved a measure providing for full State financing of New York's court system, except for its town and village courts. This measure would be known as the Unified Court Budget Act.

The Legislature also gave first passage to a constitutional amendment which, in addition to providing for merit selection and gubernatorial appointment of judges of the Court of Appeals and streamlining the process for disciplining judges, ordained a fully centralized system of court management. This constitutional amendment was given second passage during the ensuing legislative session and adopted after approval by the voters at the November, 1977 general election, becoming effective April 1, 1978.

By enacting the Unified Court Budget Act, the Legislature demonstrated its recognition that, in a time of tight budgets and greater demands for court services, the costs of supporting the court system were becoming too great for many localities to bear, and that real economies could be achieved by focusing funding responsibility in the State. The Act also produced other dividends. It made court managers responsible for preparing a single budget for the entire court system. As a result, they saw their clout and, hence, their effectiveness greatly enhanced. Not to be

overlooked, too, was the considerable symbolic impact of the Act. One byproduct of the increasing focus of administrative control in a central authority, in offices miles distant from the courts they managed and in people who never stepped foot in the affected courts, was the dismay and occasional resistance of local government officials steeped in the traditions of a past that ran by different rules. With complete State funding in effect, however, no longer could local officials be heard to decry central administrative control of the courts on grounds that courts were locally-funded institutions and their judges local officials with a paramount duty to serve the constituencies paying them. More importantly, State funding of the courts severed the final major link to a tradition marked by local regulation of the courts. With the passing of the years and attrition in the ranks of old-time local officials, with their replacement by a younger generation that will know only State regulation of court operations, it is to be expected that centralized administrative control can become as much an institution as the system it replaced.

The centralized system ordained by the 1978 constitutional revision was, in many respects, a formal acknowledgment of the arrangement Chief Judge Breitel had forged in 1974. Principal management authority was vested in the State Administrator, now to be known as the Chief

Administrator of the Courts. The Chief Administrator would be appointed by the Chief Judge of the Court of Appeals, with the advice and consent of the Administrative Board, and would execute such powers and duties as the Chief Judge might delegate to him or to her and such powers and duties as might be provided by law. The Chief Administrator also would discharge the same authority to order the temporary assignment of trial court judges as the Appellate Divisions had theretofore exercised. All that the Chief Administrator could do was to be subject to statewide standards and policies promulgated by the Chief Judge after approval by the Court of Appeals.

As had been the case after the 1962 court reorganization, although the Judiciary Article continued to be a highly detailed and specific charter, its basic grant of authority was somewhat vague and openended. Thus, much was left to be done in the aftermath of this new constitutional amendment before it could become a working instrument. First, the Chief Judge made an extensive delegation of administrative powers and duties to the Chief Administrator, effective on April 1, 1978. Among the many functions thereby delegated to the Chief Administrator were responsibility for establishing the regular hours, terms and parts of court and for assigning judges and justices to them.

Second, the Legislature also moved to provide more precise definition of the varying responsibilities of the principals in the new administrative hierarchy. It enacted new provisions for the Judiciary Law, to replace those which had been added in 1962. These new provisions specified, in great detail, the administrative functions of the Chief Judge and the Chief Administrator, as well as the Administrative Board and the Judicial Conference, both of which had been retained as largely advisory bodies. In most respects, these provisions echoed the Chief Judge's delegation to the Chief Administrator.

The chronicle I have given you brings us approximately to today. You now know of our constitutional mandate for a unified court system. You also now know something of the system we have and how we came by it. Your judgment is as good as mine as to whether we can call it "unified."

Of course, for reasons of time, I have excluded many noteworthy events from this chronicle. Particularly in the years since 1962, the courts have endeavored to find more and more creative ways of using their limited numbers of personnel, of working around jurisdictional and procedural limitations, and of using the services of the organized bar -- all in an effort to combat growing caseloads. Thus, I have not detailed the events leading to the State's greater

reliance upon programs of judicial arbitration of small civil cases. Nor have I mentioned Standards and Goals, an administrative program established in the mid-1970's to set guidelines for the timely disposition of various categories of cases. Nor, some of you may notice, have I noted the Chief Judge's transfer plan -- a major administrative initiative in the early 1980's by which many upstate judges were transferred to service in New York City in an effort to provide massive, and lasting, calendar relief there. Lastly, I have said nothing of the court system's most recent undertaking: adoption of an individual assignment system statewide, whereby each individual trial judge is to be given full control of a case from start to finish.

Be aware, though, that each of these initiatives, and others unmentioned, has had a significant impact upon the courts and has, incrementally, contributed to the administration of justice during what have been some fairly traumatic times for the courts.

I want to close with a line from Charles Dickens' book, Bleak House. Although, from the standpoint of transition, it does not fit neatly anywhere in a talk that focuses on court history, it really lies at the root of all that I have said. It goes like this:

"Jarndyce and Jarndyce drones on. This scarecrow of a suit has, in course of time, become so complicated that no man alive knows what it means ... Innumerable children have been born into the case; innumerable young people have married into it; innumerable old people have died out of it ... whole families have inherited legendary hatreds with the suit ... There are not three Jarndyces left upon the earth perhaps since old Tom Jarndyce in despair blew his brains out at a coffeehouse in Chancery Lane; but Jarndyce and Jarndyce still drags its dreary length before the court..."

I think we would all agree that, ultimately the effectiveness of our courts should not be measured by whether they are "unified" in accordance with some conventional understanding of the word; rather, the crucial concern should be whether they provide Jarndyce, or me, or you, with timely and inexpensive justice. Had I recited from Bleak House in the middle part of this century, there would have been many grim nods in this audience -- certainly among those who had the misfortune to be involved in litigation. Today, happily, because of the innovativeness of government and the success of the many recent reform initiatives I have mentioned, Dickens' message no longer hits so close to home. While court calendars are not as current as we would like them to be in some areas of the

State, and while the cost of litigation is still substantial to taxpayer and litigant alike, we have surmounted a major obstacle. A simple thing, really. We are not so frightened by the term "reform." In the future, reform may take the shape of court merger or greater use of arbitration or some new procedural device yet unthought of. But, whatever it is, the trend established in recent years -- that of responding to weakness in court operations with some form of action -- will surely serve us well.

Update

In 1986, after this paper was delivered, the State Legislature gave first passage to several amendments to the Judiciary Article of the State Constitution for the two-fold purpose of (1) enabling revision of the State's judicial department structure and (2) merging its trial courts into a single, statewide Supreme Court. Appellate reform and trial court unification have been goals long sought in this State by prominent government officials, broad segments of the public, and many in the legal community; and this legislative approval marks a significant event in the history of our court system. These goals are not without their opponents, however, some critical of their underlying

concept and others of the particular form the Legislature has chosen by which to give them life. Their resistance is forceful and significant as recent events bear witness. Under the Constitution, the once-passed amendments must be passed yet another time by the Legislature at its next regular session before the voters are given an opportunity to express their will with respect to them. At the present time, the chances of that happening appear slim, as the Legislature recently concluded its 1987 Session with the appellate reform/court merger proposal unpassed and caught in a fierce political debate.