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BROKEN BENCH

How a Reviled Court System Has Outlasted Critics

By [WILLIAM GLABERSON](#)

“A farce in these days,” Gov. Alfred E. Smith pronounced [New York State](#)’s town and village courts in 1926.

“An outworn system,” said his successor, [Franklin D. Roosevelt](#), not long after a state commission called it “a feeble office respected by no one.” A few years after that, another commission said the local court system had “lost all contact with reality.”

In all, at least nine commissions, conferences or other state bodies — including representatives of both major political parties and all three branches of government — have denounced the local courts over the last century, joined by at least two governors and several senior judges.

Their language has often been blistering, and their point has been the same: These courts, with their often primitive trappings and amateur judges, are an anachronism that desperately needs to be overhauled or discarded.

Although they are key institutions of justice in more than 1,000 small towns and suburbs across New York, trying misdemeanor cases and lawsuits, a vast majority of the justices who run them are not lawyers, and receive only a few days’ legal training. The justices are often elected in low-turnout races, keep few records and operate largely without supervision — leaving a long trail of injustices and mangled rulings.

Yet these justice courts, as they are known, remain essentially as they were when New Yorkers started complaining nearly a century ago. In recent weeks, state officials have decided to take some steps to increase training, supervision and record-keeping. But the cries for any sweeping change have all but died out over the last few decades, even as the abuses have continued.

One way to understand why a much-criticized institution has come to seem so entrenched is to revisit three big battles over the justice courts. In each, the people seeking to change the system tried in a different arena: the Legislature, the voting booths and the higher courts. And each time, their defeat was so stinging that it effectively killed any further discussion there:

¶In 1962, state leaders accomplished something they had been trying to do for more than a century, revamping a state court system that was badly out of date. But in several back-room political maneuvers, they left the justice courts untouched, passed the task of altering the system to local governments, and added a maze of procedural barriers that made any major change difficult.

¶In 1967, local activists took up the cause in Rockland County, one of the few counties where a push to replace the justice courts made some headway; a referendum was held on the issue. But a fiercely emotional campaign vanquished the proposal, and helped create a sense in other counties that fighting the system was futile.

¶And in 1983, a challenge to the system’s constitutionality reached the state’s highest court, the Court of Appeals. Attorneys for an upstate teenager facing a jail sentence argued that the right to a lawyer, guaranteed by the Constitution, was meaningless if the judge lacked the training to understand the lawyer’s arguments.

That appeal failed by a single vote. New Yorkers, the majority on the seven-member court decreed, do not have to be tried by a judge schooled in the law — a ruling that has stood ever since.

In interviews, people who were deeply involved in these episodes — including political deal-making that took place out of public view and was never reported — pointed to a battery of forces that have doomed change: The powerful idea that communities should choose their own destinies, including their own judges. The considerable costs of updating courtrooms and hiring lawyers to preside. The always-popular calls to keep lawyers out of people's lives. And, not least, the power of the justices, who are often important players in local politics, wired into the same party mechanisms that produce the state's lawmakers, judges and governors.

Dale C. Robbins, a former Republican supervisor of Busti, a small town in western New York, said he and others who tried to replace the justice courts in the 1990's ran into a buzz saw of resistance from local justices fighting for their jobs, and something of a populist uprising fueled by suspicion of the lawyers who would be judges in any new system.

He said the defeat was typical of the gridlock on many big issues in New York. "Nothing gets done," he said. "Who wants to face this battle when there are so many other battles you have to fight?"

A Moment in Albany

It was January 1959. The new governor and political star, Nelson A. Rockefeller, was making his first address to the Legislature in Albany. "The highest priority" of his administration, he promised, would be modernizing the state court system.

Court reform, he knew, was a popular issue he could ride, yellowing papers in the Rockefeller archive show. People across the state were sick of the slow, confusingly organized system and the patronage appointees — many of them unqualified, unresponsive or corrupt — who filled it from top to bottom. Complaints that had been pouring in for decades had reached critical mass in recent years, as the latest state panel to tackle court reform, known as the Tweed Commission, drew up detailed proposals for change.

Soon after his speech to lawmakers, Governor Rockefeller appointed his young counsel, Robert MacCrate, to draw up amendments to the State Constitution that would be needed to reorganize the courts, and then to marshal support in the Legislature.

But Mr. MacCrate quickly learned that the lowliest part of the court system posed one of the highest political hurdles.

Governor Rockefeller, with his elite background and downstate roots, had to be careful not to offend the rural upstate powers in his own party, whom he was trying to convince that he was a real Republican. And, Mr. MacCrate said in an interview for this article, any effort to change the justice courts, a prime source of the party's patronage, would be "really shaking the tree."

Upstate [Republicans](#) often spoke as if criticism of the system was an attack on a way of life. "You boys from New York City have never seen a justice court," State Senator Austin W. Erwin, a central player in the courts battle, said during a debate that year. "These justices are the backbone of honest-to-God human justice in our state."

Governor Rockefeller, for all his talk of change, was surrounded by staunch defenders of the justice courts. Many were former justices, including Senator Erwin and L. Judson Morhouse, then the state Republican chairman and one of the governor's earliest supporters.

The justices of the peace "were inside the system," Elizabeth T. Schack, who led the [League of Women Voters](#)' lobbying for court reform, said in an interview. Back in the legislators' districts, too, the justices were powers to be reckoned with. "They were often

people of importance and influence” who knew the lawmakers personally, Mrs. Schack said. “And you don’t like to go up against your friends.”

Most important, Mr. MacCrate said, upstate Republicans held such power in the Legislature that the administration knew that court reform could not pass without them. “We would find a way to bring them around,” he said.

They didn’t have to find a way; it came to them. Mr. MacCrate said that Fred Young, an influential state Court of Claims judge whom Governor Rockefeller would later choose as state Republican chairman, soon approached with an offer.

“Bob, if you take out that provision about abolishing the justices of the peace,” Mr. MacCrate recalled him saying, “I’ll have the votes for you” to approve statewide court reform that day or the next.

The deal was made.

That breakthrough would allow the entire court structure in New York to be streamlined and brought for the first time under centralized control. Yet while it included a requirement that local justices receive some basic training, it largely ensured there would be no other change in the biggest piece of the system: the hundreds of town and village courts.

“That was a turning point in terms of understanding how strong the opposition was,” recalled Fern Schair, the former chairwoman of the state’s leading court-reform group, the Committee for Modern Courts.

But the justices and their supporters did not stop there. To keep future legislatures from tampering with the system, they persuaded the administration to adopt language requiring a local referendum for any move to replace the town courts with more professional district courts. And for that referendum to pass, a simple majority of votes would not suffice; whether in a county or part of one, the proposal would have to win separate majorities in both urban and rural areas, so city dwellers could not impose modern courts on their country neighbors.

Even that, it turned out, was not enough. A year later, as Mr. MacCrate moved to secure approval from lawmakers, supporters of the justice courts demanded a provision requiring a majority vote in each town, Mr. MacCrate wrote in a memo. Towns where the referendum was defeated would be left out of any new system — a complication that would further discourage any reform effort.

They got their provision.

New Yorkers approved the court-reform amendment at the polls, and to this day, those protections for the justice courts are enshrined in the State Constitution. No place in New York has replaced its town and village courts since western Suffolk County began a district court system in 1962 — the year Governor Rockefeller signed his reforms into law.

A Showdown in Rockland

“If you oppose ‘school busing,’ Expanded Welfare, Down zoning, Charter Government, Mob rule legislation, Crime in the Street, Black Power,” vote no on Proposition No. 1, said the newspaper advertisement by the Conservative Party.

But Proposition No. 1 was not about any of those things. It was a ballot proposal to replace justice courts with a system of district courts in which the judges would be lawyers. After all the battles in Albany, it was the people’s turn to decide.

This was 1967 in Rockland County, a rural place fast becoming a suburb as new residents arrived by the carload from nearby New

York City. Some newcomers were alarmed by their encounters with eccentric justices who could wield sweeping powers over people's lives.

"The feeling was, they weren't professionals and they were too closely connected to people who brought their cases to court," Gloria English, a New City resident who worked for the proposal as a member of the League of Women Voters, said in a recent interview. "They often heard their friends' cases."

The league had several potent allies, including the county bar association and some leaders of both major political parties. The Democratic Party sponsored an ad saying it was high time the courts were modernized. The leading newspaper in the county ran editorials urging that the justice courts be brought into the 20th century.

On the other side were the justices and their supporters, including leaders of the county Conservative Party. They warned that the fancy new courts and their lawyer judges would cost more. The bar association estimated that expense at about \$200,000 a year countywide, about \$50,000 more than justice courts cost at the time. "I used that to bring to the attention of people: 'It's just another boondoggle,'" William E. Vines, then a justice in Clarkstown with a local insurance business, recalled in a recent interview.

There was also grass-roots backing for the justice courts, particularly among longtime residents. Arnold Becker, who was county public defender, said some people felt that familiar local justices would be more lenient than professional district judges.

But the campaign also played on emotions that had little to do with law or money.

The referendum's opponents were not shy about fanning resentment toward outsiders. The warnings about mob rule and black power spoke to fears about turmoil in the cities, and about the city people moving in. There were stirring appeals to patriotism.

"Justice courts are as much of your American heritage as those Stars and Stripes," one justice told a group of Jaycees two weeks before the election. "Don't let them take it away."

Adele Garber, then a young mother who had moved up from Queens and gone door to door on behalf of the ballot proposal, said that kind of passion easily overpowered her side's arguments about fairness and efficiency. Voters without a vested interest in the justice courts, she said, did not seem to care much.

"It's not a nice, sexy issue," she said.

The referendum lost by a 2-to-1 ratio.

Mrs. Garber said the experience left her cynical, and she was not the only one. The Rockland vote and similar defeats in other counties helped create the impression that such fights are impossible to win.

Because of a change in state policy since then, if a county adopted a district court system today, the state would pick up the cost. Statewide, that expense could be significant, perhaps tens of millions of dollars.

County governments, though, might save millions by consolidating their many justice courts into fewer, more centralized district courts. But change has been stymied.

Keith D. Ahlstrom, chairman of the Chautauqua County Legislature, said that while he and others have long seen a need to modernize the courts there, the referendum process was so cumbersome it would almost certainly fail. For now, he and other officials are backing a state bill that would permit a few justice courts to merge to cut costs.

“We need to have a small success,” he said.

A Near-Miss in Court

The case was unremarkable: a teenager was arrested in Conesus, near Rochester, in 1981 and charged with menacing and trespassing. He was identified only as Charles F. because he was a minor. He faced up to a year in jail.

But his lawyer, J. Michael Jones, saw that the case had the potential to bring down the justice-court system in New York, and possibly in other states. The United States Supreme Court had ruled 20 years earlier that any defendant facing a jail sentence was entitled to a lawyer. But what good was that right, he asked, if the judge — like the town justice Charles F. faced — could not follow the lawyer’s arguments?

In a recent interview, Mr. Jones recalled that he spent thousands of dollars out of his own pocket taking the case through the appeals courts. “I thought this was a perfect opportunity for us to upgrade the local court system,” he said.

The time seemed ripe. In recent years, there had been a nationwide movement to recognize defendants’ rights. Justice courts around the country had been revamped after a 1967 presidential crime commission noted their long record of “incompetence.”

Some of the biggest changes were prompted by the courts. In 1974, the California Supreme Court ruled that imprisonment by a judge who did not have legal training was a violation of due process, and essentially ordered an end to the state’s justice courts.

“It seemed there was an opportunity, a movement afoot that was going to provide a court remedy where there had never been a legislative solution,” said Rene H. Reixach Jr., a Rochester lawyer who wrote a friend-of-the-court brief in the Charles F. case for the [New York Civil Liberties Union](#).

A [United States Supreme Court](#) ruling in 1976 appeared to offer the means for challenging New York’s system. The court upheld the jailing of a Kentucky man by a justice who was a coal miner with no legal training, but only because state law guaranteed defendants tried by nonlawyer justices the automatic right to a new trial before a judge who was a lawyer.

In New York, however, there is no such right. A defendant can ask a county judge to take the case, but the judge can refuse — as happened in the Charles F. case.

When the case reached the state’s top court, the Court of Appeals, in 1983, Charles F.’s lawyers argued that in an era of increasingly complex legal protections for defendants, it was basic fairness that a person facing jail should have a judge trained to understand those protections. At the court’s chamber in Albany, Mr. Jones remembered, “we had lawyers from New York City who couldn’t believe we had this system.”

The court, which was developing a reputation for protecting defendants’ rights, seemed receptive. On it was the state’s chief judge at the time, Lawrence H. Cooke, and the two judges who would succeed him: Sol Wachtler and [Judith S. Kaye](#).

Mr. Wachtler, in a recent interview, said the three strongly agreed that the state’s use of justices without law schooling was a problem. “There was unquestionably a sentiment on our parts that this is just not right,” he said.

But when the vote came, they were on the losing side of a 4-to-3 decision. New Yorkers, the majority ruled, had no absolute right to be heard by a judge trained in the law.

Richard D. Simons, the only surviving judge in that majority, said in an interview that the case posed a narrow legal issue: whether New York provided sufficient opportunity for a higher-court trial. The larger matter of the justice courts' fairness, he said, was for the Legislature to decide.

Mr. Wachtler said he believed that the case would have gone the other way if it had come to the Court of Appeals just a year or two later, given changes in the court's makeup and stance on defendants' rights.

But the court has not grappled with the issue since. Mr. Reixach, the Rochester lawyer, said the ruling discouraged him and others from raising further challenges. "The Charles F. case, whether you agreed with it or not," he said, "sealed the fate of the justice-court system in the state for a very long time."

Judge Kaye, who wrote the dissenting opinion, has since become a champion of court reform as New York's chief judge, heading the Court of Appeals and the administration of all the courts. But the legislation she has proposed to modernize the system since taking office in 1993 has consistently omitted the justice courts.

Only this summer did Judge Kaye address problems in the local courts, after the state comptroller warned that they could be mishandling millions of dollars, and after a commission she created to study legal services for the poor reported that those courts were routinely trampling on people's rights.

Her office has said that while it has limited control over the justice courts, it would begin trying to remedy some of their flaws, with measures that do not require legislative approval.

Those steps are the most ambitious attempted in several decades, but their very nature underscores the courts' deficiencies: Justices, according to the state's plan, will get two weeks of initial training instead of six days. For the first time, all justices will be given computers, fax machines and tape recorders, and be required to tape proceedings. A supervising judge will be named in each judicial district to oversee them.

And the improvements do not touch what critics of the justice courts have repeatedly said are their gravest defects: the use of part-time justices who are not lawyers, the reliance on towns and villages to finance the courts, and the state's weak authority over the courts.

Tackling those issues would involve the Legislature — and invite another battle. Judge Kaye declined requests for an interview.

One of the justice courts' most powerful defenders has been the State Association of Towns. Its executive director, G. Jeffrey Haber, said the group would be ready for another fight.

"If it came up," he said, "we would take the same position that we did before."

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