12-1-1965

Judicial Administration in New York: Developments in the Last Twenty-Five Years

Delmar Karlen
Institute of Judicial Administration

Allen Harris
Institute of Judicial Administration

Follow this and additional works at: https://digitalcommons.law.buffalo.edu/buffalolawreview
Part of the Administrative Law Commons, and the Courts Commons

Recommended Citation
Delmar Karlen & Allen Harris, Judicial Administration in New York: Developments in the Last Twenty-Five Years, 15 Buff. L. Rev. 319 (1965).
Available at: https://digitalcommons.law.buffalo.edu/buffalolawreview/vol15/iss2/10

This Article is brought to you for free and open access by the Law Journals at Digital Commons @ University at Buffalo School of Law. It has been accepted for inclusion in Buffalo Law Review by an authorized editor of Digital Commons @ University at Buffalo School of Law. For more information, please contact lawscholar@buffalo.edu.
JUDICIAL ADMINISTRATION IN NEW YORK: DEVELOPMENTS IN THE LAST TWENTY-FIVE YEARS

DELMAR KARLEN*
ALLEN HARRIS**

"Future social and legal historians will surely report that in the past twenty-five years there have been more advances in court procedures and management than in the previous century."

—Chief Judge Desmond¹

THE twenty-five years that the Honorable Charles S. Desmond has been on the bench in New York have been momentous ones in the history of judicial administration. Many ideas which earlier had been only gleams in the eyes of a few men like Arthur T. Vanderbilt became realities as they were adopted in New York and elsewhere. Sometimes New York led the way, blazing a trail for other states; sometimes it lagged behind.

The purpose of this article is to trace developments in judicial administration that have occurred in New York over the last twenty-five years, and wherever possible to indicate Judge Desmond's role in them. More often than not, he occupied a strategic position. For the sake of clarity the developments are classified under the following headings: (1) the personnel of the courts; (2) the institutional framework within which they operate; and (3) the procedures they follow.

I. COURT PERSONNEL

A. Judges

It is a truism that the character of the courts is determined mainly by the character of the judiciary. Its character in turn is determined largely by the way in which judges are selected, compensated, retired and treated generally.

Selection

New York judges are selected today in substantially the same manner they were selected a quarter of a century ago. Popular election, usually after partisan party nomination,² is the method for most of the courts;³ appointment by the

* Director, Institute of Judicial Administration and Professor of Law, New York University.
** Associate Director, Institute of Judicial Administration.
¹ Desmond, Current Problems of State Court Administration, 65 Colum. L. Rev. 561 (1965).
² N.Y. State Temporary Commission on the Courts, A Study of Methods and Proposals as to the Selection of Judges 3-13 (1956).
³ N.Y. Const. art. 6, § 2 (Court of Appeals); § 6 (supreme court); § 10 (county court outside the City of New York); § 12 (surrogate's court); § 13 (family court outside the City of New York); § 15 (city-wide Civil Court of the City of New York); § 16 (district courts outside of the City of New York); § 17 (town, village and city courts outside of the City of New York). The election provisions as to town courts appear in § 17; as to village courts in the N.Y. Town Law §§ 20(1), 341 (5-a(1)(2) ); and as to the city courts outside the City of New York, in the various city court acts.
chief executive officer—governor or mayor—is the method for the relatively few remaining courts.4

This stability is not due to lack of interest in trying to change existing methods. During the past twenty-five years, legal5 and lay6 groups have expressed dissatisfaction with the elective method of selection, claiming that it breeds an intimate and unhealthy relationship between political parties and the courts, and that it discourages highly qualified lawyers from seeking judicial office.7 Public opinion polls have demonstrated that judicial candidates are generally unknown to the voters, so that they either vote indiscriminately or not at all for judicial offices.8

In 1947 a group of lawyers, former judges and laymen organized the "Citizens' Committee on the Courts" for the purpose of urging adoption of the so-called "Missouri Plan" in New York.9 Under this plan a judge is appointed to office from a list presented to the governor or other appointing official by a non-partisan nominating commission; then after a probationary period of service, he stands for re-election on his record, not running against any other candidate.10 In 1949 the New York legislature considered and rejected proposals for constitutional amendments which would have revised the state's method for selecting supreme court justices; one was basically the Missouri Plan, while the others would have allowed each judicial district local option to determine the method of selection it desired to follow.11

An important reason for rejecting these and similar proposals was that some eminent and informed men, including Judge Desmond, defended the elective system.12 Their point of view was supported by the Temporary Commission on the Courts in its 1956 Report to the Governor and the Legislature of this State in the following language:

4. N.Y. Const. art. 6, § 9 (court of claims); § 13 (family court in the City of New York); § 15 (city-wide Criminal Court of the City of New York).
8. A.B.A. Section of Judicial Administration, The Improvement of the Administration of Justice 30 (4th ed. 1961); Klots, Defects in the Machinery of Justice, an address by the President of N.Y.C.B.A. to annual meeting of Colorado Bar Ass'n in Boulder, Colorado, April 28, 1956, at 5-6.
12. Peck, The Bar, Politics and Judicial Selection, 24 N.Y.S.B. Bull. 32 (1952); Desmond, Court Revision, Selection of Judges and What's Right With the Court System, an address by the Chief Judge to N.Y.C.B.A., in New York City, March 11, 1957, at 3-5.
JUDICIAL ADMINISTRATION

For some years ... there have been various proposals to modify the elective system and substitute for it an appointive or quasi-ap- pointive system. ... Certainly there has been no convincing demon- stration that the present elective method should be abandoned in favor of any of the modified or different proposals which have been advanced. The Commission recommends against the abandonment of the elective system and against the substitution of some new or different system for it. ... 13

While this debate has been going on in New York, it has also been going on in other jurisdictions, but in them the Missouri Plan has been making faster progress. At the present time, eleven states or communities within them have adopted the plan for at least some of their courts and sixteen other states have made their judicial elections non-partisan by prohibiting candidates from running on party tickets. 14

To the limited extent that judges are appointed rather than elected in New York (wholly for certain courts, like the Criminal Court of the City of New York, and to fill interim vacancies in all other courts), some progress has been made. In 1962, the Mayor of New York City, as a result of a campaign promise, created a nominating commission composed of twenty-five lawyers and laymen to advise him in the exercise of his appointing power. 15 For each vacancy that occurred, the commission would consider the qualifications of persons suggested from any source—including the Mayor—and then submit the names of five possible appointees, whereupon the Mayor would make his choice from among them. He followed this procedure in all but one instance, where a candidate disapproved by the commission was nevertheless appointed to office. 16 The plan was instituted as a matter of grace and politics rather than as a matter of law. It was not binding upon Mayor Wagner, and is certainly not binding upon his successor. Nevertheless, both major candidates in the 1965 election pledged that they would continue the essence of the plan if elected. 17

The Association of the Bar of the City of New York was instrumental in placing before the regular session of the 1965 legislature a proposal that a nominating commission procedure be enacted into law. The plan was that a majority of the members would be appointed by the Presiding Justices of the Appellate Divisions of the First and Second Departments and the remaining members chosen by the Mayor. The Mayor resisted this diminution of his powers. In order to overcome his opposition, the plan was amended to allow the Mayor to appoint a majority of the commission and the Presiding Justices to appoint

17. Ibid.
the remaining members; but despite this compromise, the proposal was not enacted.18

During the 1962 legislative session Governor Rockefeller had proposed a plan somewhat similar to the Mayor's. He promised that a committee of prominent citizens would be appointed to screen and recommend lawyers for appointment by him to any newly created supreme court judgeships in New York City. However, since the additional judgeships were not created, the Governor's plan was never implemented.19

In other states and cities, similar plans have been put into effect. The Governors of Colorado, Iowa, Massachusetts and Pennsylvania, and the Mayor of Denver, Colorado have voluntarily established non-partisan judicial nominating commissions, thus relinquishing some of their own powers and approaching, though not fully embracing, the Missouri Plan.20

Tenure and Removal

The most significant development affecting judicial tenure in New York during the past twenty-five years is the creation of the Court on the Judiciary. Until 1948 the only methods of removing unfit judges from office were cumbersome, slow and ineffective.21 One was impeachment by the legislature. Only one judge of a major New York court was ever removed by this method; and that was in 1872. Another method—which applied only to judges of the Court of Appeals and justices of the supreme court—was removal by concurrent resolution of two-thirds of the members of both houses of the legislature. It was never used. A third method—applying only to judges of the minor courts—was recommendation of the governor supported by the vote of two-thirds of all members elected to the Senate. This was used only in one case, also in 1872.22

In 1948 a constitutional amendment was passed to supplement, although not supplant, these methods by the creation of a Court on the Judiciary,23 composed of the Chief Judge and Senior Associate Judge of the Court of Appeals, and a justice from each of the four appellate divisions.24 It was given jurisdiction over cases involving judges of the Court of Appeals, supreme court, court of claims, county court, surrogates' court and family court, with the power to remove them for "cause" or to retire them for mental or physical disability.25 Thus far it has removed one supreme court justice26 and one court of claims

22. Ibid.
23. N.Y. Const. art. 6, § 22.
24. N.Y. Const. art. 6, § 22(b).
25. N.Y. Const. art. 6, § 22(a).
JUDICIAL ADMINISTRATION

and it has, in addition, considered but dismissed charges against a number of other judges. As for the judges of minor courts below those mentioned, the Appellate Division in each Department has power to remove them for cause or to retire them for disability.

The only other state which has seen a roughly similar development in methods for removing judges is California. There a Commission on Judicial Qualifications may recommend the removal of a judge for willful misconduct in office, persistent failure to perform his duties or habitual intemperance, or recommend his retirement for serious disability. Final judgment on such recommendations is up to the supreme court of the state.

Compensation

New York has long been a leader in paying high judicial salaries. In the 1940's its judges were the highest paid in the nation, as they are today. The Presiding Justices of the First and Second Departments of the Appellate Division receive salaries of 41,500 dollars, while the Chief Judge of the Court of Appeals gets a salary of 42,000 dollars, and, in addition, an expense allowance of 6,000 dollars. In 1964 a 2,500 dollar increase was given to 110 supreme court justices and the six surrogates in New York City, bringing their salaries up to 37,000 dollars.

Similar, though less spectacular, increases have been taking place in other states. Over the last decade, judicial salaries in the United States have risen an average of more than 40 per cent, while the cost of living has risen only about 20 per cent. New York salaries, however, remain substantially higher than those in the federal courts and well above the average for the state courts.

Education

One of the significant developments in judicial administration during the past quarter century has been the development of training programs for judges. New York can be proud of its leadership in this field.

The pioneer program, inaugurated in 1956 and continued every year since, was the Appellate Judges Seminar held under the auspices of the Institute of Judicial Administration at New York University. Chief Judge Desmond is one

27. Id. at 9-11.
28. Id. at 3-6.
29. N.Y. Const. art. 6, § 22(i).
34. N.Y. Sess. Laws 1965, ch. 1, § 4; ch. 75, § 3, 4; ch. 442, § 6, 7.
of the regular faculty members of the seminar, and some of his colleagues have also participated, sometimes in the capacity of faculty members, sometimes in the capacity of students. For two weeks each summer, twenty to twenty-five appellate judges drawn from the highest state courts and the United States Courts of Appeals study and discuss subjects of mutual interest, such as opinion writing, the scope of appellate review in criminal cases, and current trends in judicial administration.37

This program is important not only in its own right, but also because it has provided the inspiration for a much wider program of judicial education, reaching judges at all levels and throughout the nation. New York has been conspicuous in providing a wide variety of programs for its judges. The best known is the seminar held annually at Crotonville for supreme court justices. The typical program lasts three days, during which topics of special current interest, such as New York’s new Civil Practice Law and Rules and the Uniform Commercial Code, are discussed.38 Another type of program is the Sentencing Institute, where judges who exercise criminal jurisdiction trade ideas as to appropriate sentences in particular cases, and as to the criteria for using various types of sentences.39 Still other programs are provided for county judges, city court judges and family court judges. The most interesting and unique program, however, is one for justices of the peace. By virtue of a constitutional amendment which became effective on September 1, 1962, the legislature made mandatory a course of formal training for all justices of the peace selected after the date of the constitutional amendment who were not admitted to practice law.40 Until they take the prescribed course, they are not allowed to serve as justices. The course, given at five different law schools on weekends, has attracted not only those who are required to go, but also many lawyer-justices and many lay justices who are exempt from its requirements. This program, like the other official programs of judicial education in the state, is administered by the Judicial Conference, headed by Judge Desmond.41

The Number of Judges

In New York as elsewhere litigation has been increasing as the population has been exploding and as crime and delinquency have been growing. It is not surprising that the courts are hard-pressed to keep up with their work, or that delay continues a chronic problem.42

One way in which New York has attempted to cope with the problem is by increasing the size of its judicial establishment. The number of supreme

40. N.Y. Const. art. 6, § 20(c).
41. Institute of Judicial Administration, Judicial Education in the United States, 140-59 (1965).
42. Institute of Judicial Administration, Calendar Status Study, 8 (1965).
court judges rose from 112 in 1940-1941\textsuperscript{43} to 172 in 1963-1964\textsuperscript{44}—an increase of about 50 per cent; and at lower levels, the number of judges also rose sharply. Furthermore, as a result of a constitutional amendment effective on September 1, 1962, retired judges were permitted to continue beyond the age of 70 upon certification of their fitness by the appellate divisions in which they served.\textsuperscript{45} Despite these increases in judicial manpower, far fewer judgeships have been created than have been asked by the Judicial Conference, headed by Chief Judge Desmond.\textsuperscript{46}

Another approach to the problem of delay and congestion is to increase judicial efficiency; and the tendency in recent years has been to stress this approach while expressing skepticism as to the need for more judges.\textsuperscript{47} This can be a dangerous attitude, for if additional judges are really needed, refusing to provide them may bring on more drastic alternatives which would virtually revolutionize the legal system. Currently under discussion is a proposal to eliminate trial by jury in civil cases.\textsuperscript{48} Another proposal, long advocated and now gaining support, is to create an administrative agency to handle auto accident cases, based upon the pattern of Workmen’s Compensation.\textsuperscript{49} Such proposals may or may not be wise, but they ought to be considered on their merits, not solely in the narrow perspective of calendar congestion. Furthermore, if additional judges are genuinely needed but not provided, existing judges may be forced into hurried, undignified, and unjust patterns of operation, causing them to apply undue pressure for settlements in civil cases and pleas of guilty in criminal cases.\textsuperscript{50}

Also relevant to the question of judicial manpower is a new provision in the constitution, effective September 1, 1962, which prohibits judges not only from holding other public or political office, but also from practicing law or engaging in the conduct of any other profession or business which would interfere with the performance of their judicial duties. The prohibition against the practice of law is especially significant in rural counties, where county judges had hitherto been allowed to practice law. The prohibition against engaging in other professions or businesses is one that may be important throughout the

\textsuperscript{43} 8 Jud. Council of N.Y. Ann. Rep. 80-83, 103 (1942). This figure of 112 judges contains 20 judges of the four county courts and the court of general sessions in New York City, which were treated as separate courts until September 1, 1962, when they were absorbed by the supreme court.
\textsuperscript{44} 10 Jud. Conf. of N.Y. Ann. Rep. 175 (1965).
\textsuperscript{45} N.Y. Const. art. 6, § 25(b).
\textsuperscript{47} See Address by Chief Justice Warren to the American Law Institute, in Washington D.C., May 18, 1965, at 6.
\textsuperscript{48} See Desmond, Juries in Civil Cases—Yes or No, 36 N.Y.S.B.J. 104 (1964); Karlen, Can a State Abolish the Civil Jury?, 1965 Wis. L. Rev. 103.
\textsuperscript{49} Berger, Compensation Plans for Personal Injuries, 217, 231 (1962); Columbia University Council for Research in Social Sciences, Committee to Study Compensation for Automobile Accidents 300 (1932).
state, increasing the amount of time that full time judges devote to their judicial responsibilities. Part time judges like justices of the peace are not affected.\footnote{51}

B. The Jury

While the jury still flourishes, it is under heavier attack than ever before. This is primarily due to Chief Judge Desmond, who in 1963,\footnote{52} precipitated a state and national debate by suggesting that the civil jury (he did not speak about the criminal jury) might have to be abolished in this country, as has been done in England. His suggestion was not predicated upon the merits of the jury as a fact-finding body, but upon factors of time and money. There is little doubt that jury trials take longer than court trials; although there is some dispute as to how great the disparity is, many experienced judges believe that trial by jury takes three times as long as trial by a judge alone. Apart from the time of judges, the time of many citizens is consumed on a large scale as they await their turn at jury service while cases are being settled and judges and lawyers are getting ready. All in all, it seems evident that much time and money is spent on jury trials that could be saved if trial by jury were eliminated. Furthermore, in England, where the civil jury has virtually disappeared,\footnote{53} court calendars are up to date, and they are also up to date in Louisiana, where the civil jury is virtually unknown.\footnote{54}

The debate over the fate of the civil jury is still raging and promises to continue. Meanwhile the process of improving jury operations continues, whatever may be the jury’s ultimate fate. One development is the abolition of the blue ribbon jury because of improvements in the method of selecting regular juries.\footnote{55} Another is the fact that various measures have been adopted to make jury service less onerous, such as allowing jurors to be summoned by telephone while awaiting trial,\footnote{56} raising their fees from 8 dollars to 12 dollars a day and their mileage allowances from 8 cents to 10 cents per day,\footnote{57} and providing a central panel for jurors in the trial courts of New York County,\footnote{58} so that less time will be wasted while awaiting trial. Also the traditional jury wheel has been replaced in New York City by automatic equipment which will scramble cards, select jurors at random, prepare summonses and the like; all with the idea of increasing the number of persons who are processed for jury duty, spreading jury duty more equitably and closing loopholes for those who seek to avoid it.\footnote{59}

A development which will doubtless affect the functioning of juries is the recent publication of a book called “New York Pattern Jury Instructions,” containing carefully drafted standardized instructions to fit most of the common

issues which arise in civil cases, particularly negligence actions. These instructions are accompanied by commentaries, giving explanations and citations. They were prepared by the Committee on Pattern Jury Instructions of the Association of Supreme Court Justices, whose Chairman was Supreme Court Justice Bernard S. Meyer and the other members of which were Supreme Court Justices Frederic P. Henry, William B. Lawless, M. Henry Martuscello, and G. Robert Witmer. What impact these instructions will have on the nature of trial by jury is difficult to forecast, for the matter is a subject of considerable controversy. In any event, New York is joining what seems to be a national trend toward standardized instructions.60

C. The Bar

Essential to the efficient operation of the machinery of justice are lawyers who are honorable, capable and professionally well trained.

During the past twenty-five years, New York lawyers, like their counterparts all over the country, have become not only more numerous but also better educated. In 1949 there were 28,618 New York lawyers listed in Martindale-Hubbell;61 in 1963 this figure had risen to 49,406, which was the highest for any state in the country.62 In 1949 approximately 40.2 per cent of New York lawyers held college degrees and 63.3 per cent held law degrees;63 in 1963, 65.4 per cent held college degrees and 88.2 per cent held law degrees.64 New York has also kept pace with the nationwide development of post-graduate programs of legal education, as is evidenced by the fact that in 1959 the State Bar Association created a Committee on Continuing Legal Education with a paid staff.65 A recent innovation is a short course at the Law School of the State University of New York at Buffalo designed to help beginning lawyers bridge the gap between academic study and the practice of law. The first session was held in September 1965.

The bar of New York, in contrast to that found in a majority of the other states,66 continues to be loosely organized. Some lawyers belong to no bar association whatever, and manifest little or no sense of corporate professional responsibility. Others belong to purely voluntary associations which, however high minded in purpose and distinguished in operation, cannot speak for the profession as a whole. There is no integrated bar. Judge Desmond has strongly and frequently urged the creation of such an organization, but thus far his advice has gone unheeded.67 In 1963, it seemed as if a beginning were being made toward such an organization with the legislative requirement that all lawyers

register with the Court of Appeals and pay a 15 dollar registration fee.\textsuperscript{68} This turned out, however, to be a thinly disguised revenue measure which had little if anything to do with the organization of the bar. It provided a rough head count of the lawyers in the state, but nothing more.

A critical problem in New York as elsewhere is the lack of an adequate criminal bar. With a few notable and illustrious exceptions, the tendency has been for only the dregs of the profession to gravitate towards the defense of criminal cases. One of the reasons is that financial incentives have been lacking, for the rewards of the profession tend to be concentrated in corporate, tax and office practice. Perhaps equally important is the fact that the profession as a whole has assumed a snobbish attitude toward criminal practice, treating it with disdain. Chief Judge Desmond has stated:

Criminal law practice has been down-graded in this country, down-graded not only in the movies and in fiction, but down-graded, I venture to suggest, in the law schools themselves—and that is a very unfortunate thing because, to repeat, the defense of these sacred rights is a mere theory unless there are competent lawyers, trained lawyers and willing lawyers, to undertake these assignments.\textsuperscript{69}

This attitude is fast changing chiefly because of the Supreme Court's decision in \textit{Gideon v. Wainwright},\textsuperscript{70} holding that an indigent defendant in a criminal case has a constitutional right to be represented by counsel. New York has long been in the forefront of supplying representation to indigents. Free legal aid began in New York City in 1876, when the German Society of New York inaugurated a program to render such service to German immigrants who could not afford to pay for it. From this beginning, The Legal Aid Society was formed and, by 1890, was rendering free legal service to applicants regardless of their nationality and soliciting contributions from the general public for the support of the Society. Legal aid was confined to civil cases until 1921 when the Legal Aid Society absorbed the "Volunteer Defenders Committee," which had been representing indigents in the criminal courts, and continued its work.\textsuperscript{71}

For some time New York provided by statute that: "If the defendant appear for arraignment without counsel, he must be asked if he desires the aid of counsel, and if the does the court must assign counsel. ..."\textsuperscript{72} But it allowed compensation to be paid to assigned counsel only in capital cases.\textsuperscript{73} Under this law, judges in courts where there was no representative of legal aid would make \textit{ad hoc} assignments of lawyers to indigent persons accused of crime. Sometimes the clients were well represented, but sometimes they received service worth exactly what they paid for it.

\textsuperscript{68} N.Y. Sess. Laws 1963, ch. 204 § 74.
\textsuperscript{69} Desmond, \textit{What the Courts Expect of Bar Examiners}, 33 Bar Exam. 38, 42 (1964).
\textsuperscript{70} 372 U.S. 335 (1963).
\textsuperscript{71} Tweed, \textit{The Legal Aid Society, New York City 1876-1951} 6, 7, 82 (1954).
\textsuperscript{73} N.Y. Code Crim. Proc. § 308.
In response to the *Gideon* case the legislature provided that by December 1, 1965, each county of the state and the City of New York should provide a program for the defense of indigent defendants charged with any crime other than a traffic infraction. Local communities were given a choice between: a public defender system, a legal aid system, a private assigned counsel system, or a combination of these. The legislation also established a schedule of fees for the compensation of assigned counsel.\(^7\) This legislation substantially parallels the Criminal Justice Act passed by Congress to provide for the defense of indigents in federal courts.\(^5\) Also, in order to insure that sufficient hands were available to represent indigents, New York exempted senior law students from prohibitions against the unlicensed practice of law when working in a program supervised by a legal aid organization and approved by the Appellate Division.\(^\text{76}\)

II. COURT STRUCTURE

The most important developments in judicial administration in New York during the past quarter century concern court reorganization and management.

A. Court Reorganization

Twenty-five years ago the court structure of New York was in sad condition. It had been deteriorating for almost a century from the brave start made in 1848 when separate courts of law and equity were merged into a single court.\(^7\) A great multiplicity of courts with rigid, sometimes narrow, sometimes overlapping, jurisdiction had been created in response to local pressures and without reference to any master plan. Chief Justice Vanderbilt of New Jersey in 1957 characterized the New York system in this manner:

> New York State is a classic example of an outmoded court system arising from the constitutional and statutory rigidity of a terribly complex court structure. It consists of at least 18 kinds of courts, ranging from the Court of Appeals to the Police Courts and Justices of the Peace Courts in smaller towns and villages. Each of these courts has its own fixed jurisdiction and its own complement of judges . . . .\(^\text{78}\)

The result was that litigants were shunted from court to court unnecessarily, and many cases were decided upon jurisdictional technicalities rather than upon the merits.

From 1848 to 1953, no less than twenty-five commissions and committees had been created to consider and recommend solutions for New York’s complex court structure. The reports of these committees run to over 30,000 pages, and

78. Vanderbilt, Improving the Administration of Justice Two Decades of Development 18 (1957).
represent years of work by eminent judges and lawyers. Nevertheless, nothing came of their labors. 79

In 1953, pursuant to legislative enactment, the Temporary Commission on the Courts came into existence. One of its main purposes was to make a comprehensive study of the structure of the courts. 80 In 1956 it recommended a plan that would have radically simplified the court system. 81 In essence, it provided that the Court of Appeals and the Appellate Divisions should remain intact; that the supreme court and the county courts should continue, but with increased jurisdiction for the latter; and that all specialized courts of limited jurisdiction should disappear in favor of one general court in the City of New York and one magistrate's court in counties where needed. Thus in New York City, there would have been only two trial courts in place of ten; and elsewhere not more than three in place of the large motley conglomeration of city, town, local and county courts. All were to be parts of a single, integrated statewide system, centrally administered. 82

This plan, which would have meant a modern court system for New York, was greeted with little enthusiasm by the legislature, largely because of the opposition to it from justices of the peace, surrogates and others who would have been directly affected by the changes. 83 In any event it was not adopted; and in 1958 the Temporary Commission on the Courts was allowed to go out of existence. The idea of court reform, however, did not die. It was kept alive principally by lay groups such as the League of Women Voters and the Citizens' Committee for Modern Courts until the Judicial Conference of New York, headed by Chief Judge Desmond, could prepare a substitute plan. It took the form of an amendment to the state constitution, which became effective on September 1, 1962. 84 Though it was less far-reaching than the plan of the Temporary Commission, it produced worthwhile changes in the court structure. It simplified the courts in New York City, so that instead of ten courts of original jurisdiction there are now six; it created a statewide family court which replaced the Domestic Relations Court of the City of New York and the children's court outside the City; it provided a vehicle by which the city, town or village courts outside of New York City could be consolidated into district courts; and, for the first time, it treated all the courts of the state as parts of a single unified system and subjected them to some centralized administrative control. 85

82. Id. at 83.
84. N.Y. Const. art. 6.
85. N.Y. Const. art. 6, § 28.
B. Court Management

In 1934, as part of a nationwide movement, the legislature created the New York Judicial Council, whose duties were:

- to collect, analyze and publish statistics of the work of the courts;
- to receive and investigate criticisms of them;
- to follow decisions relating to court procedure;
- to make recommendations regarding the work of the courts;
- to recommend changes;
- and to promulgate rules for keeping court records.

In 1949 Judge Desmond had this to say about court management in New York State and the Judicial Council's role in it:

[W]e add up a state-wide total of 3473 judicial officers: 2906 Justices of the Peace and Police Judges in the Towns, Villages and Indian reservations of the State, 289 other local Judges, 107 County Judges and 171 "State court" Judges. Of this impressively-sized judicial establishment there is no administrative or other chief. . . . The Judicial Council has done much excellent work within the limits prescribed for it by statute, but it is a statistical and procedure-studying body; it cannot, and does not, supervise the work of any of the courts, high or low, and it does not unify or coordinate them. . . .

His criticism was reinforced by that of a special committee of the Association of the Bar of the City of New York which said in 1954:

Its statistics frequently were of little use since by the time they became publicly available they were largely out-of-date. The Council, moreover, was a creature of the legislature and it reported to the legislature annually. Most important, it was never considered to be an Administrative arm of the court system.

As a result of such criticisms as well as recommendations of the Temporary Commission on the Courts, the legislature in 1955 took the first step toward statewide central administrative control of the courts by replacing the Judicial Council with the Judicial Conference. This was hardly more than a change in name, however, for the primary function assigned to the Judicial Conference was to conduct a continuing survey and study of the administration of justice in the state, exercising the powers and duties of the former Judicial Council with respect to such matters as rendering statistical reports.

---

Still unsolved was the problem of genuine administrative control of the court system. That crucial matter was finally dealt with in the new judiciary article of the state constitution effective September 1, 1962, as follows:

"... The authority and responsibility for the administrative supervision of the unified court system for the state shall be vested in the administrative board of the judicial conference. The administrative board shall consist of the chief judge of the court of appeals, as chairman, and the presiding justices of the appellate divisions of the four judicial departments. The administrative board, in consultation with the judicial conference, shall establish standards and administrative policies for general application throughout the state ..."  

In order to implement this grant of administrative power to the administrative board, the legislature has enacted a number of statutes, pursuant to which the administrative board reviews all budgets; sets hours for holding court; establishes overall administrative standards and policies; and arranges for educational programs for judges. Beyond such specifics, however, it provides for the first time in the state's history administrative control for the entire court system.

III. Procedure

In 1848 New York promulgated a new Code of Civil Procedure, drafted by David Dudley Field. This major reform, which swept away the ancient forms of action and provided a uniform procedure for all types of civil actions, was soon copied throughout most of the rest of the nation, and even in England, where its basic ideas came to fruition about twenty-five years later.

During the succeeding century, however, the code became the subject of almost incessant tinkering by the legislature and the courts, so that by the 1950's New York was struggling with a set of rules so voluminous that they had to be printed in small type in order to fit into a volume about three inches thick. Meanwhile the practice governing the federal courts and those of a good many states had been reformed and simplified, being reduced to a few short, simple rules which could be printed in a slim little pamphlet. In 1955 the Temporary Commission on the Courts appointed an advisory committee to draft a new set of rules of civil procedure for the state. As a result of its work the legislature enacted in 1962 what is now called the Civil Practice Law and Rules (CPLR), which took effect September 1, 1963. It accomplished at least two things of a mechanical nature. First, the bulk of the statutory law of civil procedure was

---

93. N.Y. Const. art. 6, § 28.  
95. N.Y. Laws 1848, ch. 379, effective July 1, 1848.  
JUDICIAL ADMINISTRATION

reduced to about one-half of its former size. Second, relative order was produced out of relative chaos. Instead of two sets of rules covering the same subject matter, there is a single set of provisions numbered coherently. Some are called "sections" because they emanate directly from the legislature, and others "rules" because they emanate from the Judicial Conference under its limited rulemaking authority; but at least they are together, so that rule 306 can be found next to section 307, not a hundred or so pages away in another part of the book.

In addition to such mechanical improvement, more substantial changes were made in the way of incorporating into New York practice what had been tested and found useful in other places—such as a "long arm" jurisdictional provision.

Despite the improvements brought about in the CPLR over what was in existence before, many believe that the reform did not go as far as it should have gone. Disappointing to some lawyers and judges was the retention by the legislature largely in its own hands of the procedural rule making power. It refused to delegate any more power to the courts than they had previously possessed—which was considerably less than that possessed by the courts of many states and the federal government.101 Also disappointing was the refusal to provide discovery techniques on the same scale known in the federal courts and those of many other states.102

In 1961 the legislature created a Temporary Commission on Revision of the Penal Law and Criminal Code,103 which in 1964 submitted to the legislature—for study purposes only—a proposed revision of the penal law. At the 1965 session, the legislature enacted a new Penal Law, to be effective September 1, 1967, in which offenses are regrouped to eliminate the proliferation of sections dealing with essentially the same conduct, and classified into categories according to the sentences which may be imposed.104 In addition offenses arising out of specific regulatory laws have been taken out of the Penal Law and relocated in sections to which they are related. The Commission will soon submit a proposed revision of the Code of Criminal Procedure for legislative action.105

Other significant developments in procedure include: the provision, effective September 1, 1962, for the appointment of law guardians to protect the legal rights of minors appearing in the new family court;106 the extensive revision, effective September 1, 1965, of the Mental Hygiene Law to provide a system of admitting involuntary patients initially on the basis of medical determination,

101. Wright, supra note 99.
followed by an opportunity for court review so that the civil rights of patients may be safeguarded.\textsuperscript{107}

\textbf{Conclusion}

The fact that no mention has been made in this article of developments in New York in certain areas of judicial administration does not indicate that New York is backward in such areas. It may be far ahead of other states in them even though there are no recent developments to report. All that this article purports to do is to recount developments in the last twenty-five years.

\textsuperscript{107} N.Y. Sess. Laws 1964, ch. 738.