New York's Judicial Upheaval

The Justice Department has thrown New York State's judicial system into turmoil by finding that three New York City boroughs choose their trial judges in a racially discriminatory way that violates the Voting Rights Act.

Though confusingly written, the department's objection is basically correct: New York's system, with its false promise of democratically elected judges, is especially harmful to minorities.

Unless a special three-judge Federal District Court that must now review the case in Washington disagrees, the department's objections will force the Governor and State Legislature to consider fundamental changes in the judicial structure, and not just in Manhattan, Brooklyn and the Bronx. Statewide change will be needed because the alleged voting rights infractions are embedded in the State Constitution, and other localities may face similar legal problems.

•

The Justice Department, reviewing recent judicial changes for possible harm to the elective power of minorities, found two flaws. In connection with 15 new elective judgeships it found, accurately, that the state's elective system for Supreme Court justices — its trial judges — is a closed system that denies minorities equal chances to get nominated or elected. Political party leaders dominate the process and manipulate nominating conventions, often to the detriment of minorities.

The politicians complain that these Federal objections come just when the Democratic leaders of all three boroughs are members of minority groups. But Justice was more concerned with 10 judgeships created in 1982 for a Brooklyn-Staten Island district and the fact that "not one is held by a minority judge." The department has never considered a party district leader's race a guarantee that minority voters can vote for judges of their choice.

In addition, the department found that when the state added judges, by transferring 27 judges appointed by the Governor to the State Court of Claims, the voting power of minorities was also diluted. Though murkily and not very persuasively discussed in its five-page notice to the state, the department's position seems to be that an elective system covered by the voting rights law cannot legally mix in unelected judges. The department did not rule out *total* conversion to an appointive system as a valid remedy.

Progressive bar groups have long lamented the nominating process for New York's elective system as a boss-ridden sham that mocks the rights of citizens of all races. The reformers' only success has been to convert the Court of Appeals to a gubernatorial appointment system that has brought new ethnic and racial diversity to the state's highest court.

If the Washington court agrees with the Justice Department, the state will have essentially two choices, both requiring state constitutional change.

New York could salvage the elective system by eliminating judicial nominating conventions and perhaps also by holding elections in smaller districts where minorities could elect more of their choices. Or it could convert to an appointive system with candidates proposed by merit-selection commissions broadly representative of the community and the bar.

Of those two choices, an appointive system, a concept the Justice Department has endorsed in other states, would be better. In place of clubhouse choices thrown at an electorate that cannot know the candidates, it offers a screening system of knowledgeable citizens and professionals to advise a governor. Instead of the phony promise of popular power, it provides the accountability of the state's chief executive, chosen by all the people.

Ex "79"

12/31/94 NYT

New York's Courts, Still in Disarray

Three weeks ago the Justice Department declared that three New York City boroughs were choosing their judges in a racially discriminatory way, in violation of the Voting Rights Act. Now a contrary — and overriding — finding has been issued by a three-judge Federal District Court in Washington. That gives the new Governor and Legislature time to formulate fundamental changes in the deeply flawed process by which judges are elected throughout the state.

The basic flaw in the elective system is that it falsely pretends to let the people choose their trial judges. The real choices are made by boss-driven nominating conventions, and voters must choose among candidates whose qualifications they cannot know. On top of that the Justice Department, empowered to pre-clear voting changes in Manhattan, the Bronx and Brooklyn, found that minorities were especially hurt because their access to the nominating process was even more restricted than that of whites.

But now the Washington court, reviewing the addition of 15 elective trial court judgeships since 1968, has ruled that the new judgeships did not violate the voting law. The longstanding basic elective system may yet be struck down in a separate suit brought by minority voters, but the Federal court cleared the new judgeships for lack of proof that they harmed or were intended to harm minority voters.

This temporary relief gives the state more time to consider replacing the sham-democratic scheme with an appointive system like the one that has provided diverse, competent judges for the highest court, the Court of Appeals.

Such a system would create representative selection panels to give the governor and local executives qualified choices for nomination and legislative confirmation. The Justice Department has endorsed such systems despite arguments that minorities, along with all voters, lose the power to elect their judges.

Progressive citizen and bar groups have long advocated merit selection. If judicial reformers cannot persuade political leaders to change the system by amending the State Constitution, then legal challenges, scheduled to resume at a trial next year, are the best hope for spurring action.

Ex "76"