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METRO MATTERS

Joyce Purnick

Politics and Judgeships: Learning the Realities

THEY called the event "How to Become a Judge" and that is precisely what they delivered. No one who attended Saturday's teach-in at the New York City Bar Association would ever accuse the bar of false advertising.

Lawyers, judges and politicians spent the day in the bar association's elegant building on West 44th Street advising about 200 New Yorkers — many of them young, female, black or Hispanic — how to pursue a career on the bench. Some of the advice was edifying. Some was, well, realistic.

"I was surprised at how blunt the discussion was," said Herberto Barbot after hearing three pros talk about the Civil Court and State Supreme Court benches in the Bronx. The 34-year-old Mr. Barbot, a lawyer with a city agency, observed, "No one is telling you to go out and write law review articles."

Hardly. In fact, the Bronx panel of two judges and the county's Democratic leader never mentioned writing law review articles. But they surely mentioned politics. So did the panels describing the paths to judgeships in Queens, Brooklyn, Manhattan and Staten Island.

"If you want to become a judge, you have to become a politician," advised State Assemblyman Roberto Ramirez, who is the Bronx Democratic leader. "You better come to the realization you're involved in the most political process there is."

MR. RAMIREZ ought to know. In New York, State Supreme Court and Civil Court judges are elected, which leaves the impression that the people decide. Except the people don't really because Democratic (and sometimes Republican) leaders tightly control the nominating process. The system sometimes produces good judges, sometimes not.

For the November election, for instance, the City Bar Association had found 11 of the party choices for Civil and Supreme Court unqualified. They got the bar's "disapproved" rating, yet 4 of the 11 were elected.

Burton B. Roberts, administrative judge of the State Supreme Court in the Bronx, pointed out that the party's hold over judicial appointments extends well beyond elections. It uses its muscle to have State Supreme Court vacancies filled by judges from the Civil Court rather than the Criminal Court, even though Criminal Court judges often have more relevant experience. The party favors Civil Court judges because the organizes controls selection of their replacements while the mayor appoints Criminal Court judges.

"They get two positions to fill, a double-header," the ever-outspoken Mr. Roberts explained. "I'm giving it to you straight here." The party's gain is quality's loss, the judge said, because sometimes highly qualified judges languish in Criminal Court while less-deserving Civil Court judges with the right political connections are moved up.

"How do you become a judge?" Mr. Roberts said. "My message is to be a good lawyer, be as straight as you can be, enter into community activities — and join a political club. If you find one political club is not to your liking, quit that club and join another political club."

That advice did not stun many of the hopefuls, but it did, some said, lead them to rethink their extracurricular activities.

"I know I would be a good judge," said Cynthia L. Boyce, a 41-year-old lawyer from Brooklyn interested in Civil and Housing Courts. "It's a matter of how I can do that without sacrificing my personal integrity." Will she join a political club? "I don't know," she said. "But I will visit political clubs and do community service — I can't change the system."

SOME people are trying to change it. The City Bar Association wants the State Legislature to have all judges appointed by the executive branch from the recommendations of independent screening panels. That is how the mayor now appoints Criminal and Family Court judges and how the governor appoints judges to the Court of Appeals and the Court of Claims.

Discussions on Saturday about those higher state courts, and the Federal bench, were much less focused on politics. "Who you know plays a role," advised Judge Stella Schindler of Family Court. "But there are no political clubs, no county leaders with appointive judgeships. It is a very, very different process." Several appointed judges, including Judith S. Kaye, the Chief Judge of the State Court of Appeals, testified that they had never joined a political club.

> The people vote on judges, but the party controls the nominating.

When people argue that appointing rather than electing judges is less political, "my eyes glaze over," Mr. Ramirez said. "Politics is not a dirty word." He considers the appointive approach elitist and less democratic than elections.

Mr. Ramirez is right about one thing: the current system does work for some people. For instance, this summer Mr. Ramirez sponsored the Assembly bill that created a new State Supreme Court judgeship in the Bronx. The party-controlled judicial convention chose Assemblyman George Friedman, then the Bronx Democratic chairman, for one of three State Supreme Court openings. And then Mr. Ramirez replaced Mr. Friedman as county leader.

Now Mr. Ramirez says he will create a screening panel to recommend nominees for the State Supreme and Civil Court benches. Who will name the panel members? "I will," he said with a laugh. "I didn't become county chairman for nothing."

New York City Faces Change Over Justices

Court Battle Expected Over Selection Method

By KEVIN SACK
Special to The New York Times

ALBANY, Dec. 6 — A strongly worded opinion from the Justice Department has posed a fundamental legal challenge to the ways that State Supreme Court justices are selected in Brooklyn, the Bronx and Manhattan. The opinion raises the possibility that New York's judicial system may have to be revamped to comply with the Voting Rights Act.

The opinion, handed down late Monday, pushes the future of the state's courts into the hands of the Federal courts in what could become a lengthy battle. The outcome of that fight will determine whether state lawmakers and the incoming Pataki administration have to decide how the state should pick its trial judges, a question that has remained mired for years in a quagmire of racial, geographic and clubhouse politics.

Until the issue is resolved, Justice Department officials said today that they had no intention of tossing judges off the bench. And they added that their opinion in no way undermines the authority of sitting judges.

But the opinion places in doubt the election of some of the 12 candidates who were elected to the Supreme Court in Brooklyn and the Bronx on Nov. 8.

Justice Department officials said today that, unless a court intervenes, at least one of the newly elected judges in each of the two boroughs could not be seated when their terms begin on Jan. 1. And they suggested using one of the oldest forms of judicial resolution to determine which judges would be barred from the bench — selection by lot.

The Justice Department opinion focuses on two ways in which justices to the Supreme Court, the state's primary trial court, are selected: by election and by appointment through another state court, the Court of Claims.

On the elected judges, the opinion made one thing clear: a Democratic Justice Department in Washington believes that a judicial selection process largely controlled by Democratic Party leaders in New York City is a blatant violation of the Voting Rights Act. That case has been argued before, both by a gubernatorial commission that wrote a scathing report in 1992 and by the plaintiffs in a class-action lawsuit that is pending in Federal Court in Manhattan. But never has the Federal government weighed in so forcefully.

The state can appeal the Justice Department opinion to a Federal District Court in Washington, and that process has already begun. But if the state loses its case, the Governor and Legislature might have to redesign the court system, possibly by moving to a merit-based appointive process or by shrinking the size of the state's judicial districts.

The Justice Department opinion, which is explained in a five-page letter to Attorney General G. Oliver Koppell, is particu-

Continued on Page B8

NYT 12/7/94

A Question of Balance: Judges, Law and the Voting Rights Act

By JANNY SCOTT

At the heart of the criminal-justice system in New York City sits a group of judges who got their jobs through a kind of political sleight of hand — a mechanism intended to create enough judges to handle the expanding caseload without having to amend the State Constitution.

That group now includes people who many lawyers and judges say are among the busiest and best-known criminal-court judges in the city, men and women who preside at high-profile trials and help keep the system from gumming up.

But the Justice Department is now raising questions about whether the process by which those judges were assigned to their current jobs may have violated the Federal Voting Rights Act.

Yesterday, many of the judges defended the system, saying it had produced some of the top administrative judges in the criminal-court system, judges with decades of experience on the bench and people who spent years as defense lawyers and law professors before becoming judges.

"The bulk of the beef work is done by them," said Herbert J. Adlerberg, who is serving as an acting justice in State Supreme Court in Manhattan. "They're doing 80 percent of the work. They have a lot of experience. They're specialists."

They include Harold J. Rothwax, who is widely regarded as one of the best trial judges in the state; George F. Roberts, known for his skill in keeping court calendars unclogged; Lewis L. Douglass, the chairman of the committee on minorities for the New York State courts; Joan B. Carey, administrative judge for the criminal part of State Supreme Court, and Robert G. M. Keating, the longtime administrative judge for the criminal courts in Manhattan.

Several have handled some of the city's most celebrated criminal cases. Justice Rothwax presided over the Joel B. Steinberg and Rashid Baz murder cases, and Thomas B. Galligan handled the Central Park jogger case.

William C. Donnino, before he was a judge, wrote "Commentaries on Criminal Law," instructing lawyers and judges in how to interpret the criminal code.

And James A. Yates, formerly a lawyer working with the New York State Legislature, took part in the drafting of nearly every criminal law passed in the state in the last 13 years.

"They're just very good judges," said Alvin K. Hellerstein, chairman of the judiciary committee of the City Bar Association of New York, which evaluates people who are nominated for appointment as judges. "As we reviewed them, they get the best kinds of ratings."

In an opinion issued late Monday, the Justice Department objected to the system under which judges received gubernatorial appointments to the New York State Court of Claims but were then assigned to serve as acting State Supreme Court justices to help handle the proliferating load of criminal cases. The system enabled the state to avoid a potentially bitter political battle in the Legislature over a constitutional amendment that otherwise would have been required to increase the number of State Supreme Court justices.

And since the New York State Constitution calls for the election — not the appointment — of State Supreme Court justices, the Justice Department said the appointment system was unfair to minority voters.

> A political sleight of hand in the choosing of judges.

There was some confusion yesterday among the acting justices about who exactly the Justice Department was referring to in its criticism of the appointment system. Although the department's letter to State Attorney General G. Oliver Koppell seemed to specify only those judges appointed to the State Court of Claims in 1990, many of the appointed justices said they believed that the department was attacking the system as a whole.

"What the Justice Department seems to be saying is that when you move from a system of election to a system by appointment, that you're violating the Voting Rights Act," said Franklin R. Weissberg, president of the Association of Court of Claims Judges of New York State. "That doesn't make a lot of sense to me."

Many of the judges also argued yesterday that the appointive system was based more on merit than the traditional elective system. They pointed out that the process — screening by an independent panel, appointment by the Governor and confirmation by the State Senate — was the same one used for the State Court of Appeals and for Federal judges and United States Supreme Court justices.

Perhaps the best known of the judges is Judge Rothwax, a Columbia Law School graduate, former public defender and longtime lecturer at Columbia who was appointed as a judge on the New York City Criminal Court in 1971. A year later, he was promoted to acting State Supreme Court justice. In 1987, he became a Court of Claims judge assigned to handle State Supreme Court criminal cases.

A former Guggenheim Fellow at Yale University, Judge Rothwax has a reputation as a no-nonsense jurist who runs a tight courtroom. Last week, he refused to postpone a murder trial so the defense lawyer could appear in court in Los Angeles representing O. J. Simpson.

In interviews yesterday, many of the judges and their colleagues defended the results of the appointments, saying they produced a significant number of talented acting State Supreme Court justices from minority groups.

Judge Adlerberg, a Criminal Court judge serving as an acting State Supreme Court justice, said the appointed judges do the bulk of the work because they tend to have come to the job with the most experience. "They hit the ground running when they hit the bench," he said. "People elected to the Supreme Court can get there in any number of ways."

But Judge Elliott Wilk offered a different view. Judge Wilk was elected to the New York City Civil Court in 1977, with the help of the local Democratic clubs on the Upper West Side of Manhattan, where he lives. He was later assigned as an acting State Supreme Court justice hearing criminal cases. But he continued to run for the job and, after losing repeatedly, was elected last month.

Judge Wilk praised the elective system, at least in Manhattan, as both meritocratic and democratic. In his experience, he said, political parties only back people already screened by an independent panel. "I think it's a wonderful system in Manhattan," he said. "I even thought that all the times that I lost."

Under Justice Department Pressure, New York Faces Changes in Selection of Judges

Continued From Page B1

critical of the control exerted by local party leaders over the judicial selection process. In New York City, each party holds judicial nominating conventions where delegates affirm candidates for State Supreme Court judgeships who have been recommended by party leaders. Those nominees then run in the general election on an at-large basis in their judicial districts.

In Manhattan, Brooklyn and the Bronx, the three New York counties subject to special Federal Voting Rights oversight because of their histories of discrimination, the nominees selected by Democratic leaders are almost always elected to office. That process, according to the Justice Department letter, "prevents minority voters from having an equal opportunity to elect candidates of their choice."

The same system of choosing judges is used in Queens County and Staten Island, but they are not subject to Federal oversight and thus will not be affected by the Justice Department letter.

The letter, written by Loretta King, the acting assistant attorney general in the civil rights division, says: "The decision on who will be selected judge is made in a closed process, substantially outside the reach of voters, and dominated by factors, such as long party service, which are seldom significant considerations for the voters themselves in determining which persons they believe should serve as judges."

"This selection process acts to bar minority voters from real participation in the election process. The closed system particularly burdens the choices of minority voters, who have less access to the process than do white voters."

State and Democratic Party officials mocked the ruling today, primarily because the party chairmanships in each of the three affected counties are now held by minorities — Herman D. Farrell Jr. in Manhattan, Clarence Norman Jr. in Brooklyn, and Roberto Ramirez in the Bronx.

Mr. Ramirez, an Hispanic assemblyman who succeeded George Friedman, a white man, as Bronx Democratic leader this year, accused the Federal government of changing the rules of the political game now that minorities were gaining power in the city.

"The political process has always been closed to a large percentage of the people who live in New York City because of their inability to elect people to positions of influence," Mr. Ramirez said. "At a time when people of color are in a position to in fact influence the selection of judges, as every other community has done for a number of years, now it is being suggested that we should not do that."

The issue in the case is complex, primarily because the process of selecting Supreme Court justices in New York City is so tangled.

There are 114 elected Supreme Court judgeships in the three affected boroughs. Of those, 15 have been created by the Legislature since 1968, when the Federal Government determined that Manhattan, Brooklyn and the Bronx were subject to special oversight under the Voting Rights Act.

Those counties, like dozens of others around the country, require Justice Department approval, or preclearance, before they can impose changes in their election laws. But New York never sought pre-clearance for the 15 new judgeships, a decision that the Justice Department considers a violation of the Voting Rights Act.

A 1991 United States Supreme Court ruling said the Voting Rights Act applied to the judicial, and not just the executive and legislative branches of government. The Justice Department first learned of the new judgeships in 1993, according to Ms. King, and began its investigation.

At the same time, the Justice Department decided to examine an increase in the number of state Court of Claims judges. Unlike Supreme Court justices, who are elected, these judges are appointed by the Governor with the approval of the State Senate.

Historically, Court of Claims judges heard cases involving civil claims against the state. But more than two decades ago, after Gov. Nelson A. Rockefeller and the Legislature increased penalties for drug possession, the state needed a quick way to put more judges on the bench to handle a burgeoning caseload.

The future of the state's courts is up to the Federal courts.

It could not simply increase the number of Supreme Court judgeships, because that number is set by a formula based on population. To increase the number of judges by more than the formula allowed would have required amending the state Constitution, a lengthy process. Instead, the state increased the number of Court of Claims judges and then deputized those judges as acting Supreme Court justices.

Twenty-seven Court of Claims judgeships have been created in the three counties since 1968. They, too, should have been pre-cleared, according to Ms. King's letter. "The state thus effectively has changed the method of selecting a class of Supreme Court judges from election to appointment," she wrote.

On Oct. 13, with the Justice Department still considering the case, Attorney General Koppell asked a panel of three Federal District Court judges in Washington to resolve the dispute in time for Election Day. The judges declined to do so. They ruled instead that the election could proceed, but retained the right to refuse to certify the results if they agree with the Justice Department that the state has violated the Voting Rights Act.

The judges have the power to overrule the Justice Department, and the state will now ask them to do so, Mr. Koppell said. That case could potentially linger for years.

Even as the case proceeds, Ms. King said that two judges — those elected to fill Supreme Court judgeships created just this year, one each in Brooklyn and the Bronx — could not be seated unless the Federal court allows it.

The problem is determining who those judges are. Anticipating this situation, Bronx and Brooklyn officials party leaders this year designated specific candidates for the two new seats. Paradoxically, both victors are black men — Alexander W. Hunter Jr. in the Bronx and Plummer Lott in Brooklyn.

But the Justice Department believes that the designation was improper, meaning that state and Federal officials may have to negotiate a way to block one of the four justices elected in the Bronx on Nov. 8 and one of the eight justices elected in Brooklyn.

Ms. King said today that the easiest method would be a drawing by lot. Party leaders and the newly elected judges today called that suggestion ludicrous.

"For the Justice Department to suggest that we should be selecting judges by pulling straws out says to me that the system has gone haywire," said Mr. Ramirez.

Mr. Hunter, who has served on a lower court for nearly a decade before winning his election, said he found the whole prospect disheartening. "There's absolutely no humor at all in this," he said.

NYT 12/8/94

METRO MATTERS

Joyce Purnick

Judges, Patronage and Status Quo

NEW YORK is in legal trouble again, and basically for the same reason it has been before — because politicians in a position to change things for the better didn't.

The state's elected officials could have long ago changed New York's politics-ridden method of selecting most judges. Instead, they lived with the system, found a few clever ways around it where they could, and now the Justice Department and the courts may be stepping in to tell New York how to run itself.

In a letter this week to the State Attorney General, the Department broadly attacked the way Brooklyn, Manhattan and the Bronx pick judges. Since there is no practical way to separate three boroughs from the rest of the state, constitutional lawyers expect a period of confusion and uncertainty at the least, and wouldn't be surprised if this all ended in a statewide overhaul of the judicial selection process.

"It's an open invitation to other people to attack the system as a whole," said Richard Briffault, a professor at the Columbia University Law School. "It only affects some judges, but it doesn't sound as though the nominating system here is any different from the nominating system for other judgeships."

What happens next is a guess because both the Justice Department and the Federal courts, where two lawsuits are pending, are involved. Maybe the department's position is flawed. But did any of this have to happen in the first place? At least some of it could have been avoided, if politicians in New York didn't have a stake in the status quo.

The Justice Department harshly criticized the method of nominating Supreme Court judges as a closed system, "substantially outside the reach of voters," especially minority voters. Those are not new criticisms. Good government groups, the City Bar Association and various task forces have said the same. Most support the selection of judges, based on recommendations from independent screening panels. Some, including the Center for Constitutional Rights, favor creating smaller judicial districts on the theory that smaller districts would give minority groups a greater chance to elect candidates they favor.

BUT to change the process substantially in any way would mean amending the State Constitution, which requires the cooperation of the very politicians who benefit from the system as it is — state legislators.

Party leaders, some of whom serve in the Legislature, control who gets nominated for Supreme Court judgeships, and those nominations are almost always tantamount to election. "To change the Constitution involves the most delicate aspect of the political process — how to apportion political districts, who's to get how much patronage," said Alvin K. Hellerstein, chairman of the City Bar Association's judiciary committee. "The system was stuck. Nobody could budge it."

The Justice Department also deplores the system of having Court of Claims judges serve as Acting Supreme Court justices. Court of Claims judges are appointed by the Governor, based on recommendations from an independent screening panel, and the Supreme Court is an elected bench. There is a reason for this unusual setup, and once again, it goes back to politics.

In 1973, tough drug laws pushed through the Legislature by Governor Nelson A. Rockefeller led to an explosion of arrests. The courts were overwhelmed and needed more judges. The Constitution fixes the number based on the population of judicial districts. To add more judges than the population formula allowed would require a constitutional amendment, a politically dicey process that takes years. The powers in Albany came up with an alternative: having the Governor name more Court of Claims judges and then assigning them to the Supreme Court. That's what happened, and now the system is an institution in Albany.

The method gives the Governor a chance to appoint some of the best qualified judges on the Supreme Court bench, men and women who wouldn't stand a chance of being nominated at political conventions because they are not party stalwarts. And since the appointments need State Senate approval, the Governor has to accommodate the Republican leader of the State Senate and appoint some Republicans. It's called patronage, even if it is based on merit and need, and everyone in power likes it.

Mayoral appointees to the Criminal Court, who are not mentioned in the Justice Department letter, also serve frequently as Acting Supreme Court judges, for the same basic reasons: the courts need them, and those who could amend the Constitution to expand the Supreme Court or improve the system any other way aren't interested.

"EFFORTS to reform the method of selection, which is outdated on its face, have been deliberately ignored by legislative leaders," said Victor Kovner, the former New York City Corporation Counsel. "The mess we have now is a result of their failure to come to grips with the fact that the system is outdated, inconsistent with most of the nation, and now appears to be violative of Federal law."

Judge Is Charged With Taking Bribes

Investigators Say He Solicited Money to Fix Cases in Housing Court

By GEORGE JAMES

A Manhattan Housing Court judge was charged yesterday with accepting bribes of $1,000 to $1,500 to rule in favor of landlords and tenants who paid them.

The Manhattan District Attorney, Robert M. Morgenthau, said the judge, Arthur R. Scott Jr., a housing judge for 13 years, had accepted at least four bribes, three of them part of a sting operation mounted by Mr. Morgenthau's office.

The judge, Mr. Morgenthau said, was "an equal opportunity receiver," taking money from landlords, tenants and lawyers. In some cases, he said, the judge used a middleman to solicit the bribes. But prosecutors said that in at least two instances, Judge Scott personally accepted the money in meetings outside the courthouse.

Wearing a brown sport jacket and dark slacks, a Burberry raincoat draped over his arms, Judge Scott, 47, who was arrested Monday night, stood impassively at his arraignment yesterday in Criminal Court. His lawyer, Frank J. Loverro, denied all the charges.

Criminal Court Judge Sheryl Parker set bail for the judge at $10,000 and ordered him to surrender his passport while waiting for a Feb. 9 hearing.

Two other people were charged with collecting money on the judge's behalf, and a lawyer was charged with paying a bribe.

Mr. Morgenthau said that more arrests were expected, but that there was no evidence to indicate that any of the court's other judges took bribes.

It was unclear yesterday whether decisions by Judge Scott would be reversed after the investigation, but Daniel Castleman, chief of the District Attorney's investigative division, said that "at a minimum, hundreds of cases" could be affected.

Mr. Morgenthau said that its investigation began a year ago after the State Office of Court Administration passed along a complaint about the judge.

In that case, the complaint said, the judge told a tenant last March that he would receive his apartment back after he spoke with Euclid Watson, a building manager from Queens who was among those arrested. The tenant said Mr. Watson showed him an unsigned decision in which the judge ruled in the tenant's favor. The tenant said Mr. Watson told him that the judge would sign the decision if the tenant paid $1,000.

The tenant said he told Mr. Watson that he did not want to pay until after the judge had ruled in his favor. About a month later, when the tenant returned to court, he said he found that his file was missing. Judge Scott then told him that he had ruled against him, the court papers said.

The tenant was evicted as a result of the judge's decision, and complained to Jacqueline W. Silbermann, administrative judge of the Civil Court. She referred the case to the District Attorney. Officials said they had already begun the investigation by that time.

Pool Photo by Susan May Tell

Arthur R. Scott Jr., a Housing Court judge, left, with his lawyer, Frank J. Loverro, at Mr. Scott's arraignment in Criminal Court yesterday. The judge was charged with taking bribes for favorable rulings.

Judge Scott was charged with attempted grand larceny by extortion in that case and with accepting bribes in the three others. He was also charged with scheming to defraud in soliciting and accepting $5,000 in contributions for a campaign for justice of the State Supreme Court in Brooklyn in the last election. According to court papers, he never entered the race but kept the money.

Investigators said they paid out more than $10,000 in bribes in the cases, but it is not clear how much the judge received and how much went to a middleman, said a law enforcement official who spoke on the condition of anonymity.

Housing Court is the part of the City's Civil Court that handles disputes between landlords and tenants. Its 35 judges handle some 340,000 cases each year. The judges, who are appointed by a panel of administrative judges, make an annual salary of $95,376.

Records of cases Judge Scott handled since coming to the Manhattan Housing Court from Brooklyn Housing Court last February were confiscated on Monday. Over the next few months, investigators will review them for any hints of payoffs.

A report that Judge Scott was under criminal investigation appeared in an article in The New York Law Journal in September. At that time Judge Scott, who is black, said he was being unfairly singled out because he was a minority judge.

The more serious charges against Judge Scott, attempted grand larceny and receiving a bribe, carry a maximum sentence of seven years in prison.

Mr. Watson, 56, was arrested on Sunday and charged with soliciting and accepting bribes for the judge. Sharon Julius, 38, a friend of the judge's from Queens, was arrested on Monday on a charge of scheming to defraud for allegedly accepting the campaign contribution. Both were released on their own recognizance.

Barry Goldrod, 47, a lawyer from New Jersey, was arrested late yesterday on a charge of bribery for allegedly paying the judge to fix a case.

Judge Scott, who lives in Kew Gardens, Queens, had acquired a reputation among colleagues in Brooklyn Housing Court as being tardy and often absent from the bench, but he was reappointed in January 1993. He was, however, transferred a month later to the housing part of Civil Court at 111 Centre Street in Manhattan, where he would come under closer scrutiny.

The judge has been the target of other complaints. William Gribben, a Manhattan lawyer, said yesterday that he and his associates had complained to the administrative judges of the Civil Court about a case in which Judge Scott never gave notice to Mr. Gribben's clients or his law firm about his decision and the clients were nearly evicted.

The case was given to another Brooklyn Housing Court judge whose ruling was more favorable to the tenants.

Federal Court Overturns Ruling on Judicial Selection

Leaves Room for Justice Dept. to Pursue Suit

By JAMES DAO
Special to The New York Times

ALBANY, Dec. 22 — A Federal district court today overturned a two-week-old Justice Department opinion that the process of selecting State Supreme Court justices in Brooklyn, the Bronx and Manhattan violated the Voting Rights Act.

The ruling by the United States District Court for the District of Columbia cleared the way for 12 Supreme Court candidates in Kings, Bronx and New York counties to be seated next month. Their election last month had been placed in doubt by the Justice Department's Dec. 5 opinion.

The decision also drew a deep sigh of relief from state officials who said that the Justice Department's opinion, if allowed to stand, could have forced the state to revamp its entire judicial-selection system next year.

But the three-judge Federal panel kept its ruling narrow in scope, and seemed to leave room for the Justice Department to resume its challenge to the selection process in other ways. The court also did not address the broader question of whether the underlying system of choosing Supreme Court justices throughout the state is constitutional.

The ruling did not address the fate of 27 Court of Claims judgeships in the three counties that had been called unconstitutional by the Justice Department.

The department contends that the process of selecting Supreme Court justices in the three counties violates the Voting Rights Act because it is dominated by a Democratic Party machinery that has traditionally not been accessible to minority voters. Those three counties are subject to special Federal oversight under the Voting Rights Act because of their histories of discrimination.

"We take the position that the underlying system is constitutional," said Kenneth Munnelly, the first deputy attorney general. "But this case in no way resolved that."

The state's judicial-selection system was criticized as discriminatory by a commission appointed by Gov. Mario M. Cuomo in 1992. It is also being challenged in a class-action suit brought by black and Hispanic plaintiffs in Federal court in Manhattan.

That case, which is scheduled to go to trial in March, could take several years to complete. The Justice Department is now considering joining it, said a department spokesman, Myron Marlin.

State officials hailed today's decision as a major victory that not only will prevent disruptions to the over-taxed court system, but also will remove immediate pressures on the Legislature to revamp the judicial selection system in the coming year.

"This removes a hammer over the Legislature to act," Mr. Munnelly said.

At issue is a judicial selection system that is largely controlled by Democratic Party leaders in New York City. Under that system, Supreme Court justice candidates are selected at nominating conventions by party officials, not by voters in a primary. Historically, those candidates have usually won in the general election because of the Democratic Party's strength in New York City.

In a Dec. 5 letter to state officials, a Justice Department official said that the system violates the Voting Rights Act because minority voters do not have as much access to the party's internal machinery as do white voters.

Under the Voting Rights Act, the Justice Department has special oversight powers over judgeships created after 1968 — a total of 15 in the three counties. Not all of those seats were up for election this year.

A decision clears the way for 12 Supreme Court justices to be seated next month.

In its ruling today, the District Court said that the creation of the new judgeships had not clearly resulted in increased discrimination against minorities. The court also ruled that there was no evidence that the state Legislature had been motivated by discriminatory purposes in creating the new judgeships.

Rather, the court said, the Legislature seemed motivated by the desire to reduce the workload on sitting Supreme Court justices.

The ruling did not touch the issue of whether 27 Court of Claims judgeships are constitutional. Those judges are appointed by the governor but serve as acting Supreme Court justices. The Justice Department said that the appointive system was also unfair to minority voters.

Mr. Munnelly said he hopes that the Justice Department will not continue its challenge against the Court of Claims judges in the wake of today's decision. Mr. Marlin said no decision has been made on that issue.