TOWARDS A UNIFIED COURT SYSTEM: A COMPARISON BETWEEN NEW YORK STATE COURTS AND CHINESE COURTS

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Table of Contents

I. INTRODUCTION ........................................................................................................2

II. NEW YORK’S UNIFIED COURT SYSTEM ......................................................2
   A. A Brief History – New York’s Transition to a Unified Court System ...................3
   B. New York State Court Structure .................................................................6
   C. New York Court Staffing and Staff Organization......................................9
   D. New York State Court Funding .................................................................12
   E. System-wide Court Reform in New York Is Made Possible by a Unified Court System..............................................................12

III. CHINA’S SYSTEM OF COURTS ...................................................................16
   A. Basic Hierarchy of the Chinese Courts and the Judiciary ..............................16
   B. Influence of Local Government on Chinese Courts and Planned Reforms ..........18

IV. DRAWING ON THE NEW YORK EXPERIENCE .........................................19
   A. Moving Towards Province-wide Administrative Control and Away from Local Influences.................................................................19
   B. Improving the Rule of Law by Strengthening the Judiciary .........................21

V. CONCLUDING THOUGHTS ............................................................................22

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Abstract

In recent times, China’s leadership announced a series of legal reforms to modernize the judicial system and to increase public confidence in the rule of law. The action occurred in response to increasing frustration over the lack of judicial independence, the lack of confidence in judicial leadership, and the unsystematic organization of the courts. In looking back on New York’s history of court reform and my own experience as a court administrator for many decades, I argue that New York’s experience with reorganizing and strengthening the judiciary and the justice system can provide some illumination and lessons learned to Chinese court reformers. In embracing a unified court system separate from local governmental and outside influences and strengthening and supporting the judiciary, New York entered the modern era, and the New York experience can impart some useful instruction to China as it undergoes a similar transformation.

I. INTRODUCTION

In April 2014, I was fortunate to meet with the President of the Supreme People’s Court of China, President ZHOU Qiang. We discussed many issues and concerns that we had in common including judicial independence, transparency in the courts, and the rule of law. Though there are vast differences between our two court systems, we both recognized that our goals were aligned in ultimately seeking fair judicial proceedings and courts for our citizens. My goal in authoring this article is to provide the example of New York’s experience in transitioning to a Unified Court System and our endeavors at court reform in hopes that it will be helpful to President ZHOU and court reformers in China as China’s courts undergo its five-year reform plan. While Chinese law has thousands of years of history, the current iteration of the Chinese judicial system is relatively new and in its formative stages. From New York’s vantage point, there is great untapped potential in the Chinese judicial system, and I look forward to seeing the reforms to come.

II. NEW YORK’S UNIFIED COURT SYSTEM

New York’s courts of the 21st century fall under what we call a “Unified Court System.” However, this was not always the case. In the last 120 years, New York’s highly structured court network has
evolved in order to sustain an effective and economical judiciary while assuring the fair and equal administration of justice throughout the state of New York.

A. A Brief History – New York’s Transition to a Unified Court System

New York’s courts began with the adoption of the state’s first constitution in 1777, with a small number of judges appointed by a central authority. Judges set the rules of legal practice before the courts, and there was no formal appellate court system. As the state grew in the 19th century, there was a need for a larger judiciary. At the 1846 Constitutional Convention, New York increased the number of judges and set up a system of judicial districts based on geographical location within the state. The Convention also produced a two-tiered appellate court system consisting of intermediate appellate courts and the Court of Appeals, the state’s highest court of appellate jurisdiction. The Constitution determined that judges would be popularly elected for fixed terms of office.

By 1894, there was overwhelming public demand for reform as the public saw the courts as inefficient, wasteful, and insufficient to meet the demands of litigants. Another Constitutional Convention was formed, and a judiciary committee was appointed to recommend changes to Article VI of the New York State Constitution. The judiciary committee was concerned with the efficient use of judicial resources as well as the need for greater public confidence in the judiciary system itself. Under the old system, the caseload for the appellate courts continued to increase because parties did not respect the decisions of the lower courts. The Court of Appeals’ docket was hopelessly clogged with cases of little consequence because the Legislature had created so many different grounds for appeal to the state’s highest court. The existing appellate courts in smaller districts had some of the same judges who sat in the trial courts, which led to some situations where a judge acted as an appellate judge in an appeal of his own decision as a trial judge. As a result of the judiciary committee’s recommendations, the Appellate Division of the Supreme

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2 Judges were appointed by the governor or by the Council of Appointment which consisted of the governor and senators from around the state.


4 Id.

5 Id. at 3.

6 Id.

7 Id.

8 Id.
Court was created as an effective intermediate appellate court with broader jurisdiction and powers. The Appellate Division was divided into four judicial departments covering different geographical areas of the state for the sake of efficiency, but its jurisdiction was understood to be statewide.

The structure of our courts then entered a period of relative stability for about 50 years. After World War II, however, there was a sudden and major escalation in the size and complexity of the court system’s caseloads. The courts could not respond adequately – there were not enough judges, and the courts’ legal procedures were not compatible with large case volumes. Endemic court delays plagued the New York state court system. Personal injury cases were delayed between three or four years before trial in cases tried before juries, and reports showed that there was undue delay in 19 of the 62 counties in New York State.

In 1953, the state Legislature created a Temporary Commission on the Courts to study the judiciary and recommend comprehensive reform to the courts. A few years later, the Legislature created the Judicial Conference, a body of judges representing all areas of the state. It also created the Office of State Administrator to serve advisory functions. The Temporary Commission on the Courts proposed to the Governor and the Legislature to transform the largely autonomous collection of courts in existence into a unified state court system. The Commission recommended that there be unification and simplification of the court structure with a centralized court administration. People around the state recognized that New York’s court system was “outmoded,” and despite resistance to the initial plan for change, some revisions to the courts ultimately became a reality through a 1962 amendment to the New York Constitution.

The 1962 amendment was a revision that featured a wide-ranging restructuring of the administrative operation and construction of the courts. The Chief Judge of the Court of Appeals and the Presiding Justices of each of the four Appellate Divisions would constitute an Administrative Board of the Judicial Conference and were given authority to set standards and administrative guidelines for statewide

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9 Id.
10 Id. For a more in-depth understanding of the court’s history in the 19th century, see 3 CHARLES Z. LINCOLN, THE CONSTITUTIONAL HISTORY OF NEW YORK FROM THE BEGINNING OF THE COLONIAL PERIOD TO THE YEAR 1905: SHOWING THE ORIGIN, DEVELOPMENT, AND JUDICIAL CONSTRUCTION OF THE CONSTITUTION 335-375 (1906).
14 Id. at 276.
application to court operations and procedures. The Appellate Divisions were now given the authority to supervise the operations of the trial courts within each of their judicial departments, though the presiding judges delegated day-to-day administrative responsibilities to administrative judges.

While the 1962 changes were helpful, they did not cure the courts’ chronic case overload and congestion as authority was not adequately centralized under the revised system and responsibility for the courts was split in uneven and inconsistent ways. Court administration was still split on a regional basis, and local governments were still paying for the courts’ operational costs. Though the 1962 amendment declared that the state’s judiciary was a “unified court system,” that was still not the reality even a decade later.

By the mid-1970s, court reform became a high priority for politicians as well as the judiciary, led by Chief Judge Charles Breitel. A steady consensus developed that full centralization of court management was needed. A Joint Legislative Committee on Court Reorganization recommended state financing of the courts, a restructuring of the methods for judicial discipline, centralization of court management by a chief administrator of the courts, and appointment of judges by the governor, subject to senate approval. While waiting for the Legislature to act, Chief Judge Breitel and the Appellate Divisions arranged for delegation of significant aspects of trial court oversight to the statewide administrator. Before that point, the statewide administrator only had ministerial and advisory functions. In 1976, the Legislature approved the Unified Court Budget Act, providing for full state financing of New York’s court system, except for Town and Village Courts. As a result of the legislative

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15 Id. at 277.
16 See id.
17 Id. For a timeline of the New York State courts during this time period, see Court System History, N.Y. STATE COURTS, http://www.nycourts.gov/courts/6jd/history.shtml (last updated Nov. 20, 2012).
18 GALLIE, supra note 13, at 336.
19 Id. at 337.
20 Id.
21 Id. Each of the 50 states in the United States have a state court administrator, and their responsibilities vary from state to state. Generally, they are called to oversee the administration and operation of the court system. The state court administrator, along with the chief justice or chief judge, provides leadership for the entire judicial branch and works to implement initiatives to improve the courts and the administration of justice.
22 See Court System History, supra note 17. New York has close to 1300 Town and Village Courts (together called the Justice Courts) that handle both civil and criminal matters. Town and Village Courts have small claims parts and may also handle landlord/tenant matters. The courts may handle matters involving misdemeanor prosecutions, traffic law violations, and other violations that occur within the town or village’s geographic boundaries. Under New York State law, these courts are not administered by the New York Office of Court Administration and are funded and administered by the sponsoring localities. Their justices also do not need to be lawyers. See Action Plan for the Justice Courts, http://nycourts.gov/publications/pdfs/ActionPlan-JusticeCourts.pdf.
changes, every judge and court employee became an employee of the
state.

In the following year, the Legislature passed and the voters
approved a constitutional amendment for a fully centralized system of
court management under the direction of the Chief Judge. It provided
for merit selection and gubernatorial appointment of judges of the
Court of Appeals. The Chief Administrative Judge, to be appointed by
the Chief Judge with the advice and consent of the Administrative
Board, was given principal control over the day-to-day court
operations of the court system, using the constitutional powers
delegated to him or her by the Chief Judge. 23 The constitutional
amendment was a formal acknowledgement of Chief Judge Breitel’s
earlier administrative changes 24 and officially created a top-down type of structure that placed responsibility for the functioning of the
court system as a whole in the hands of the Chief Administrator, under
the direction and authority of the Chief Judge. 25 The New York Court
of Appeals has stated that when “the Chief Judge and Chief
Administrative Judge consult with the Administrative Board and
receive approval from the Court of Appeals before implementing
broad-based administrative policies,” “the court administration
possess[es] broad express and implied powers to take whatever
actions are necessary for the proper discharge of their
responsibilities.” 26

Though the revisions and reforms to the court system took decades
to achieve, they came about because both government leaders and the
public recognized that the status quo was no longer sustainable. The
reforms were necessary to maintain a just and effective judicial system
and for the continued growth and prosperity of our state.

Currently, New York’s courts receive over four million case filings
per year. To handle this enormous caseload, the court system is
constantly reforming and evolving. The current system and some of
its more recent reforms are outlined in more depth in the following
sections.

B. New York State Court Structure

The complexity of New York’s court structure is most obvious at
the trial court level. To start, there are eleven different types of trial
courts, some of general jurisdiction, and some with jurisdiction over
specialized fields of the law. Some trial courts also hear appeals from
lower courts, and to some extent, the jurisdictions of different types of

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23 N.Y. CONST. art. VI, § 28 (b); see WILLIAM H. MANZ, GIBSON’S NEW YORK LEGAL RESEARCH
GUIDE 113-123 (3d ed. 2004).
24 Court System History, supra note 17.
25 See N.Y. CONST. art. VI, § 28 (b); GALIE, supra note 13, at 340.
trial courts can overlap. Trial courts of superior jurisdiction hear what are considered more serious matters. These courts are the Supreme Court, County Court, Family Court, Surrogate’s Court, and Court of Claims. Courts of inferior jurisdiction hear what are considered less serious matters. These courts are the New York City Civil Court, New York City Criminal Court, other city courts, district courts, town courts, and village courts.

At the trial level, the Supreme Court has unlimited original jurisdiction, but hears mostly more serious civil and criminal matters. The Supreme Court has a branch in each county within the state. There is also a surrogate’s court and family court in each county, with the surrogate’s court handling estate matters and the family court handling matters mostly involving child custody, adoption, and marital issues. Each county, outside of New York City, has a county court with full criminal jurisdiction and jurisdiction over civil claims generally up to $25,000. The Court of Claims, sitting in Albany, hears claims against the state government.

A significant structural feature of New York’s trial courts is the creation of specialized courts which are parts or divisions of existing courts. Among these specialized courts are: the Commercial Division of the Supreme Court; New York City Housing Court; domestic violence courts, community courts, juvenile courts, drug treatment courts, and small claims courts. The purpose of these courts is to provide expedient and expert determinations by concentrating the court’s focus on a more narrow range of cases. New York’s Unified Court System makes these specialized courts possible, as initiatives and improvements can be implemented on a statewide basis under the auspices of the Chief Administrative Judge.

New York’s appellate courts consist of the intermediate appellate courts and the New York Court of Appeals. The Appellate Division is the state’s primary intermediate appellate court and is divided into four different departments, corresponding to four different geographical regions of the state. Other courts also have appellate jurisdiction,
including the Appellate Terms of the Supreme Court\textsuperscript{36} and County Courts, depending on the case.\textsuperscript{37} The New York Court of Appeals is the highest appellate court in the state.\textsuperscript{38}

The elaborate structure of the New York court system is a result of “[a]ntiquated provisions in our state Constitution” and is undoubtedly inefficient and needlessly confusing as trial courts have overlapping and inconsistent jurisdictions.\textsuperscript{39} In 1997, 2002, and 2007, Chief Judge Judith Kaye proposed consolidation of the state’s trial courts and the creation of a Fifth Judicial Department to relieve the caseload burden on the appellate courts,\textsuperscript{40} but none of these proposals were approved by the Legislature.\textsuperscript{41} While New York has made great strides in centralizing the management of our courts, operating under a unitary budget, and converting to state financing, we are still greatly in need of restructuring the heavily fragmented system.

\begin{footnotesize}
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\textsuperscript{36} See N.Y. CONST. art. VI, § 8(d), (e). Appellate Terms are only found within the First and Second Departments.
\textsuperscript{37} See N.Y. CONST. art. VI, § 11(c). In civil cases, the Appellate Terms and County Courts are intermediate appellate courts for the district courts, New York City civil courts, city courts, and town and village courts. The Supreme Court and the Court of Claims and other courts appeal directly to the Appellate Division in civil cases. In criminal cases, the Appellate Terms can act in parallel to the Appellate Division on certain cases. See https://www.nycourts.gov/structure.shtml for an illustration.
\textsuperscript{38} See N.Y. CONST. art. VI, § 3. Generally, only final judgments and orders are appealable. Most appeals heard by the Court of Appeals are from Appellate Division judgments and orders. Appeals heard by Appellate Division courts are typically those from judgments or orders of the Supreme Court. Appellate terms and county courts hear most appeals from courts of inferior jurisdiction. Appeals as of right to the Court of Appeals are limited to cases where two Appellate Division justices dissent on a question of law in favor of the appellant and in certain cases turning on a question of constitutional law. See N.Y. CONST. art. VI, § 3; N.Y. C.P.L.R. § 5601 (McKinney 1986); N.Y. CRIM. PROC. §§ 450.70, 450.80.
\textsuperscript{39} Most appeals require permission of the Court of Appeals or an Appellate Division court. See N.Y. CONST. art. VI, § 3(b)(4)-(7); N.Y. C.P.L.R. § 5602 (McKinney 1986); N.Y. CRIM. PROC. § 460.20. Only a small percentage of motions for leave to appeal to the Court of Appeals are granted. See 2013 Annual Report of the Clerk of the Court, COURT OF APPEALS OF THE STATE OF NEW YORK 7 (2013), available at https://www.nycourts.gov/ctapps/news/annrpt/AnnRpt2013.pdf (stating that 350 notices of appeal and orders granting leave to appeal were filed in 2013).
\textsuperscript{40} Other cases that come before the Court of Appeals are heard because a question of New York law is certified to the Court by the United States Supreme Court, a United States Court of Appeals, or the highest court of another state. See N.Y. CONST. art. VI, § 3(b)(9).
\textsuperscript{42} Special Commission on the Future of the New York State Courts, supra note 39, at 55-57; Peter J. Galie & Christopher Bopst, The New York State Constitution 162 (2d ed. 2012).
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C. New York Court Staffing and Staff Organization

Presently, New York’s court system has 3,600 state-paid and locally paid judges and 15,000 non-judicial employees in over 300 locations around the state. In addition to their adjudicative work, some judges have extensive administrative duties, both in assuring swift movement of cases through the system and overseeing other operations essential to a functioning court system.

The selection of judges and the duration of their terms of office is prescribed by the New York Constitution. Most trial judges are popularly elected by voters in the local area in which their court is seated. However, judges of the New York City Criminal Court and Family Court are appointed by the mayor of New York City and judges of the Court of Claims are appointed by the governor with the advice of the state senate. The other cities outside of New York City also have their own City Courts with both criminal and civil jurisdiction, and judges of the City Courts are typically designated by the city’s mayor. The Chief Administrative Judge appoints New York City Housing Court judges from a list of candidates submitted by an advisory council. Judges of the Court of Appeals are appointed by the governor with the advice and consent of the state senate, from among candidates proposed by a State Commission on Judicial Nomination. The governor selects Appellate Division justices from among Supreme Court justices, and Appellate Term justices are selected by the Chief Court Administrator with the approval of the presiding justice of the appropriate Appellate Division.

In New York, experience, knowledge of the law, commitment to public service, integrity, intellectual ability, and a judicial temperament are all qualities that are sought when nominating and appointing committees seek to elect or appoint judges. Judging is a

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42 The N.Y. Constitution, article VI provides for judicial selection and term duration for judges in different courts, as follows: Supreme Court, elected for 14-year terms, see N.Y. CONST. art. VI, § 6(c); court of claims, appointed for 9-year terms, see N.Y. CONST. art. VI, § 9; county courts, elected for 10-year terms, see N.Y. CONST. art. VI, § 10; surrogate's courts, in New York City elected for 14-year terms, elsewhere elected for 10-year terms, see N.Y. CONST. art. VI, § 12(b), (c); family courts, in New York City appointed for 10-year terms, elsewhere elected for 10-year terms, see N.Y. CONST. art. VI, § 13(a); Civil Court of New York City, elected for 10-year terms, see N.Y. CONST. art. VI, § 15(a); Criminal Court of New York City, appointed for 10-year terms, see id.; district courts, elected for 6-year terms, see N.Y. CONST. art. VI, § 16(b); judges of town courts, elected for 4-year terms, see N.Y. CONST. art. VI, § 17(d).

43 See N.Y. CONST. art. VI, §§ 13(a), 15(a).

44 See N.Y. CONST. art. VI, § 9.

45 See N.Y. CITY CIV. CT. ACT § 110(f).

46 The 12-member Commission consists of four members appointed by the governor, four by the Chief Judge of the Court of Appeals, and one each by the speaker of the State Assembly, temporary president of the State Senate, minority leader of the State Assembly, and minority leader of the State Senate. See N.Y. CONST. art. VI, § 2(d).

47 See N.Y. CONST. art. VI, § 4(c).

48 See N.Y. CONST. art. VI, § 8(a).
late peak occupation in the United States, and lawyers generally do not become judges until they are older and well-on in their careers. 49 It is optimal that judges have had significant and years’ long legal experience before they ascend to the bench, and judging is a craft that benefits immensely from past experience, meaning that the longer a judge serves, the more effective he or she can generally be.

Judicial terms are set by the state constitution and vary, with most judicial terms being ten or fourteen years. 50 Judges may serve for longer by being elected or appointed for another term. They also may be removed for misconduct or disability preventing them from fulfilling their duties. 51 Judges of the Court of Appeals, including the Chief Judge, are appointed for fourteen-year terms. 52 Judicial salaries are set by statute. 53 Salaries are set for most non-judicial court employees by Rules of the Chief Court Administrator and vary with level and years of service. 54

When I was first sworn in as Chief Judge, the New York judiciary had gone a decade without receiving a judicial salary release. 55 As a result, many talented judges were leaving the judiciary because they could earn many times the salary of a judge as a law firm partner. 56 At the time, even some of the court employees and clerks could earn more than the judges they worked for. 57 Pay for New York State’s Supreme Court Justices ranked twenty-first in the nation and dead last when adjusted for cost of living. Judicial salaries woefully failed to reflect the unique and fundamentally important role judges play in upholding the rule of law and providing equal justice to all New Yorkers.

After some difficult battles with the Legislature and the executive branch of government, a law was passed establishing a special commission on compensation to provide for periodic salary increases to state officers. 58 The Quadrennial Commission was established with seven appointed members – three designated by the Governor, two by the Chief Judge, one by the President Pro Tempore of the New York State Senate, and one by the Speaker of the New York Assembly – and tasked with examining, evaluating, and making recommendations with respect to adequate levels of compensation for state-paid judges.

50 See supra note 42.
51 See N.Y. Const. art. VI, §§ 22-24.
52 See N.Y. Const. art. VI, § 2(a).
53 See N.Y. Jud. L. § 220.
56 See id.
57 See id.
58 2010 N.Y. SESS. LAWS Ch. 567 (McKinney).
and justices of the courts. The state commission was a unique structure that involved all three branches of government (and will recur every four years) and recommended a 27% increase in pay for New York State judges over three years. It was a considerable achievement to remove the negotiations over judicial salaries from the political process, and the pay raises, while not as generous as hoped, were necessary to building and maintaining a strong judiciary.

Judges in New York courts inhabit a complex administrative organizational structure, headed by the Chief Judge. The Chief Judge oversees court operations and pushes for needed reforms in the court system. New York has a strong Chief Judge-led judiciary, whereas in other U.S. states, the entire high court or individual local judges are primarily responsible for court administration. In addition to the Chief Judge’s administrative duties in overseeing the entire state court system, the Chief Judge also presides over the highest appellate court in the state, the Court of Appeals, and hears appeals addressing constitutional, statutory and common law issues.

The Chief Judge’s immediate secondary is the Chief Administrative Judge, a full-time administrator with statewide authority. The Chief Administrative Judge is appointed by the Chief Judge, with the advice and consent of the Administrative Board of the Courts. The Chief Judge delegates his constitutional authority to oversee the courts to the Chief Administrative Judge and the Deputy Chief Administrative Judges. However, Presiding Judges of the Appellate Division and Appellate Terms are principally accountable for their own courts’ administration. At the trial court level, the New York City Criminal Court, New York City Civil Court, Family Court, and each of the twelve judicial districts have an administrative judge, who report to the Chief Administrative Judge and his or her deputies.

While there are varying levels of administrative oversight in the New York Court system, one key feature is that the Chief Administrator of

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61 For more information about the administrative functions of the Chief Judge, see N.Y. Judiciary Law section 211.
62 For more information on the responsibilities of the Chief Administrative Judge, see N.Y. Judiciary Law sections 212 and 216.
63 See N.Y. CONST. art. VI, § 28(a).
64 See N.Y. CONST. art. VI, § 28(b).
65 See N.Y. RULES OF THE CHIEF JUDGE R. 1, 80 & 81.
66 See N.Y. RULES OF THE CHIEF JUDGE R. 80.3. The appellate division judges also have responsibility for supervising the administration and operation of a number of programs, including admission to the bar, lawyer discipline, and regulation of the practice of law. See id. at R. 80.3(c).
67 See N.Y. RULES OF THE CHIEF JUDGE R. 80.2(a)(1).
the courts has authority to implement system-wide reforms, maintains
daily contact with the judges and court staff, intimately knows the
intricacies of the courts and how other institutions affect the courts,
and “commands respect both within the Judiciary and outside of it.”

D. New York State Court Funding

The state government of New York provides almost complete
financial support of New York State’s courts. Most of the important
decisions as to State funding of the courts are made annually in the
course of preparing and adopting the State budget. Each year, the court
system submits a detailed proposed budget covering the estimated
financial needs of the state courts for the coming year to the governor.
Pursuant to the New York Constitution, this budget is approved by the
Court of Appeals and certified by the Chief Judge. The proposed
budget is prepared under the direction of the court system’s budget
director, who assembles needed budget data from the various units and
districts within the system. As made clear in the Constitution, the
Judiciary’s budget must be transmitted by the governor “without
revision” when he or she submits it to the Legislature. The governor
may make recommendations to the Legislature, but the Court of
Appeals-approved budget proposal must remain intact. The governor
then submits to the Legislature a proposed budget for all state
government expenses, including those of the court system.

E. System-wide Court Reform in New York Is Made Possible by
    a Unified Court System

Once the New York courts became centrally administered, a
number of effective statewide reforms have been implemented as a
result of our unified court system and unitary budget under the
leadership of four different chief judges, each unique in his or her own
way. First, it was under the leadership of Chief Judge Breitel (Chief
Judge from 1974-1978) and his vigorous support of the constitutional
amendments that made New York’s central administration a
reality.

Chief Judge Lawrence Cooke (Chief Judge from 1979-1984) used
his position and the central administration of the courts to good effect.
He reduced court backlogs by temporarily reassigning judges in more

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68 Kaye, supra note 12, at 835.
69 The exception to the state funding of the courts are the facilities. The courthouses and other court
buildings are owned by the localities.
70 See N.Y. CONST. art. VII, § 1.
71 See id.
72 See supra pp. 5-7.
73 JAMES W.B. BENKARD, Charles David Breitel, in THE JUDGES OF THE NEW YORK COURT OF
rural and less-populated areas of the state to the congested courtrooms in New York City. Chief Judge Cooke also implemented a standard workday for all judges and imposed a uniform four weeks of vacation after he saw some judges working short days and taking long vacations. Under Chief Judge Cooke’s leadership, the Office of Court Administration also streamlined classifications for court employees, filled positions of employees on the basis of merit, promoted the use of mediation and arbitration, and created state-supervised community dispute resolution centers. Chief Judge Cooke also created the New York State Task Force on Women in the Courts, which became a catalyst for reform and led to an expansion of the role for women in legal practice and in the court system.

Chief Judge Sol Wachtler (Chief Judge from 1985-1992) built and added upon the reforms initiated by Judge Cooke. Chief Judge Wachtler made several improvements that increased the efficiency of the courts, including shifting from a central calendar system where different judges handled different pieces of a case, to an Individual Assignment System, where cases remained with one judge through the life of a case to a much greater degree. This switch streamlined the system and improved calendar flow significantly. He oversaw improvements to courthouses around the state that were badly in need of repair, successfully advocating for the passage of a much-needed statewide court facilities act that transformed the physical face of our court system by enabling localities to build and restore dozens of courthouses around the state.

Furthermore, the status of women, children, and minorities in the courts were hallmark issues for Chief Judge Wachtler. He made it a priority to improve the experience of women and minorities, both for those who worked in the courts and those who entered the courts as litigants or lawyers. He changed the work flow of the Court of Appeals by securing a Constitutional Amendment to make the Court of Appeals a certiorari court, giving the court some authority to select cases to accept on appeal rather than allowing appeal as of right. This change permitted the court to focus its resources on cases with a greater impact on the justice system rather than diverting its focus to less important cases. Chief Judge Wachtler is also known for fighting

75 See id.
76 See id. at 775.
77 See id. at 776.
79 See id. at 738.
80 See id. at 737.
81 See id. at 738.
for sufficient resources for the courts, even to the point of a lawsuit against Governor Mario Cuomo in response to deep budget cuts. \(^{82}\) The case was settled and funding restored.

Chief Judge Judith S. Kaye (Chief Judge from 1993-2008) the first woman to serve on the New York Court of Appeals and the longest-tenured Chief Judge in the history of New York, has earned national praise for both her jurisprudence and major court reforms. One of her early accomplishments include repealing automatic exemptions from jury service, which expanded the pool of potential jurors by more than a million people, increasing juror compensation, and eliminating mandatory sequestration in criminal trials. \(^{83}\) The changes to the jury system increased public confidence in the courts and improved the experience of jurors. Chief Judge Kaye also introduced problem-solving courts in New York, which represented a shift in thinking about the role of courts in addressing social dysfunction and in engagement with service providers, prosecutors, and defense attorneys. \(^{84}\) Another innovative reform initiated by Chief Judge Kaye was the launch of the Commercial Division of the Supreme Court. \(^{85}\) The Commercial Division was dedicated to hearing larger, more complex business cases with expert judges, and the courts were marked with efficient case processing and enhanced quality and consistency of judicial decision-making.

Finally, Chief Judge Kaye placed special emphasis on the protection of children and families. She created the Permanent Judicial Commission on Justice for Children, oversaw efforts to promote adoption and secure permanency for children in foster care, and promoted the spread of Children’s Centers in New York’s courthouses where children can wait safely while their parents or caregivers are in court. \(^{86}\)

In my tenure as Chief Judge (2009-2015), the authority vested in me and the structure and funding of our courts as laid out by the state Constitution have allowed me to pursue an ambitious agenda in improving the delivery of justice for all in New York. Access to justice for all New Yorkers has been my greatest priority during my time as chief judge. Recognizing the vast justice gap between the need for civil legal services and the resources available to meet that need, I initiated efforts to increase legal assistance to the poor such as convening the Task Force to Expand Access to Civil Legal Services in New York. I established the Task Force in 2010 to evaluate the

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\(^{82}\) See id.; see also Wachtler v. Cuomo, 1991 WL 249892 (N.D.N.Y. 1991).


\(^{84}\) See id. at 815.

\(^{85}\) See id. at 816.

\(^{86}\) See id. at 818-19.
unmet legal need for civil legal assistance and to make recommendations to improve access to justice for low-income New Yorkers in civil legal matters. While Americans have a right to counsel in criminal cases, no such right exists in civil cases were litigants are fighting for the most basic necessities of life, including housing, access to food stamps, disability benefits, and in many other areas. The Task Force’s reports and research have led to identifying permanent funding streams for civil legal services, and the Task Force’s important mandate has now been transferred to the Permanent Commission on Access to Justice.

Our system of central administration has also allowed me to act swiftly and boldly in spurring members of the legal profession to do pro bono work for the poor. One of these initiatives was the institution of the requirement that all applicants to the New York bar perform 50 hours of pro bono work before they can be admitted to practice in the state. Relatedly, in 2014 I created the Pro Bono Scholars Program to allow law students to take the bar exam during their third year of law school in exchange for devoting their last semester in law school to pro bono work. I have also reformed attorney practice rules to allow in-house lawyers who are admitted out of state to do pro bono work within New York State, explored the role that non-lawyers can play in assisting unrepresented litigants, and implemented technology tools to make available legal information to pro se litigants. All of these efforts have been to close the justice gap and to improve access to justice in our state.

On criminal justice issues, it has been one of my priorities to address the causes of wrongful convictions and to usher in reforms such as double-blind photo arrays and videotaped interrogations. In addition, I oversee efforts to improve the extent and quality of legal representation to criminal defendants, a right guaranteed by the U.S. Constitution, and to that end, supported the creation of the Office of Indigent Legal Services, an agency devoted to the improvement of legal representation for indigent criminal defendants in New York. Moreover, I have pushed for legislative reform to raise the age of criminal responsibility in New York from 16 to 18, to increase fairness while protecting public safety by reforming New York’s pre-trial

89 The New York Court of Appeals amended 22 NYCRR § 522.8 to authorize registered out-of-state, in-house counsel to provide pro bono legal services in New York State. See https://www.nycourts.gov/ATTORNEYS/in-house-counsel/probono-by-IHC.shtml.
release (bail) statutes,\textsuperscript{90} and to improve transparency and fairness in our grand jury system.

Other important milestones include introducing new filing requirements for banks in response to the foreclosure crisis in New York and measures to ensure homeowners were represented in mandatory settlement conferences and the creation of the first statewide network of Human Trafficking Intervention Courts in the United States. The Human Trafficking Courts provide a lifeline to victims (who enter the courts as defendants charged with prostitution-related crimes) by offering them an array of needed services, reduced penalties, and the opportunity to escape further exploitation and arrest.

The volume and breadth of the reforms that have been instituted in the New York State court system over the past few decades would not have been possible or effective without a unified court system, a well-equipped Chief Administrator, a unitary budget, and the support of many judges and court staff. The reforms of my predecessors and past Legislatures permit the Chief Judge to take decisive action on many important issues and to implement change on a statewide basis instead of in a piece-meal fashion. As a result, New York has managed to avoid some of the struggles that other states have had that lack a unified court system.\textsuperscript{91}

III. CHINA’S SYSTEM OF COURTS

Using the New York courts as context, I now turn to the court system in China to identify certain elements comparable to the historical New York courts, in hopes that New York’s experiences may be helpful to Chinese reform efforts.

A. Basic Hierarchy of the Chinese Courts and the Judiciary

Courts in China are characterized by a hierarchical structure, with the Supreme People’s Court at the apex as the court of last resort. At the provincial level, a total of 31 courts exist and are called “High
People’s Courts.” 92 Below the provincial courts, several hundred Intermediate People’s Courts exist in cities and prefectures within provinces. 93 The lowest level of court within the hierarchy are the Basic People’s Courts. There are over 3000 basic-level people’s courts at the county level and about 10,345 sub-divisions known as people’s tribunals (renmin fating) in towns and villages throughout China. 94

The Judiciary in China is markedly different from the American judicial system in that the Chinese Communist Party (CCP) exerts substantial influence over the judiciary. Article 182 of the Chinese Constitution states that “Courts are to exercise judicial power independently and free from interference from the executive branch of the government, social organizations and individuals.” 95 However, Article 182 lists the organizations and institutions that may not interfere with the judiciary but notably does not list the CCP. The Constitution was also amended in 1982 to delete a provision that stated “courts only answer to law.” 96 As a result, the CCP has supreme authority over the courts, and courts are not permitted to scrutinize the activities of the CCP. 97 The courts only have authority over the institutions and individuals that have lower or no rank but not those of equal or higher ranks, unless the CCP authorizes it. 98

The Judiciary in China cannot give its own interpretation of the Chinese Constitution, and the courts are prohibited from deciding constitutional issues. These issues are the “exclusive province” of the National People’s Congress Standing Committee, which has generally avoided them. 99 Judges are often party members and subject to the discipline of party organizers within the court structure and in the judiciary hierarchy. 100

While U.S. judges are more protected from outside political pressures from the other branches of government and political parties, judges in China do not have such protections and may be subject to the CCP’s disciplinary oversight. 101 Party leaders can influence the tenure and salary of judges, which affects judges’ responses to outside political pressures.

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93 Id.
94 Id.
96 Id.
97 See id. at 11.
98 Id.
100 Id.
101 Zhu Suli, The Party and the Courts, in JUDICIAL INDEPENDENCE IN CHINA: LESSONS FOR GLOBAL RULE OF LAW PROMOTION 52, 60 (Randall Peerenboom ed., 2009); id.
B. Influence of Local Government on Chinese Courts and Planned Reforms

While the Communist Party may influence judicial decisions in different capacities, “[l]ocal governments are the most significant source of external interference in judicial decision making.”[^102] Local governments may interfere to protect local interests such as industries or litigants and “to shield themselves from liability.”[^103] Local governments wield influence over the courts because they control local judicial salaries, finance the local courts, and control local judicial appointments.[^104] In the past, judicial authorities have found that administrative interference from local government and local protectionism to be one of the chief problems facing the courts.[^105]

In 2014, leadership in the CCP has announced reform measures to curb the ability of local government to conceal illegal activities through their control over local courts.[^106] In June 2014, the Party’s Central Leading Small Group for Comprehensively Deepening Reform announced that six areas and municipalities – Shanghai, Guangdong, Jilin, Hubei, Hainan, and Qinghai – would act as pilot sites for judicial reforms, including transferring power over finances and personnel from local governments to the provincial level.[^107] The pilot projects will focus on improving the systems for management of judicial personnel, advancing systems of judicial accountability, maintaining the quality of judges and prosecutors, and promoting the unified management of judges and prosecutors and finances at the provincial level.[^108] Nationwide reform of the courts will depend on the “successful completion and review of the pilots.”[^109] In the pilot programs, “[s]enior judges would no longer decide the salaries and promotion of lower-level judges,” and judges would no longer be evaluated based on the number of cases they remanded or reversed, as was the policy in the past.[^110] The current practice in many jurisdictions is for a judicial panel or judge to conduct a trial and then seek approval from a higher level or senior judge (who did not hear

[^103]: Id.
[^104]: Id.
[^105]: Id.
[^109]: Lubman, supra note 106.
[^110]: Id.
the evidence) before issuing a decision.\textsuperscript{111} It is commonplace for decisions in sensitive or complex cases to be made by administrative superiors within the court rather than the panel of judges who actually heard the case.\textsuperscript{112} The reforms seek to alter this practice so that independent decisions reached by trial judges are fully respected and honored.\textsuperscript{113} Removing local governments from the judicial selection process will also limit local officials’ abuses of power if they are challenged in courts over illegal land seizures, or violations of environmental or product safety laws.\textsuperscript{114}

In October 2014, the Communist Party Central Committee held its first-ever plenary session regarding legal issues and released documents indicating the government’s commitment to the rule of law.\textsuperscript{115} The released documents after the meeting called for the establishment of circuit courts operating across jurisdictions to further limit the influence of local officials over judicial decisions.\textsuperscript{116} Further, the CCP’s policy document called for the creation of a system for tracking, reporting, and punishing officials who inappropriately handle court cases.\textsuperscript{117} The documents also express support for increased judicial transparency and for imposing serious consequences on judges who have mishandled important cases.\textsuperscript{118}

IV. \textsc{Drawing on the New York Experience}

\textit{A. Moving Towards Province-wide Administrative Control and Away from Local Influences}

China’s judicial reforms are important steps in the right direction. Before New York created its Unified Court System by constitutional amendment, the legal system was plagued with too many cases, insufficient judges, endemic court delay, and a balkanized system with no method of instituting systemic reforms. Under the old system there was no mechanism to coordinate the various parts of the judicial system toward the effective administration of justice. Creating the Unified Court System represented a sea change for the New York Courts, and greatly increased the efficiency and efficacy of judicial personnel and the courts. The New York courts greatly benefited from

\begin{itemize}
\item \textsuperscript{111} See id.
\item \textsuperscript{112} Jerome A. Cohen, China’s Legal Reform at the Crossroads, \textsc{Council on Foreign Relations}, March 2006.
\item \textsuperscript{113} Lubman, supra note 106.
\item \textsuperscript{114} See id.
\item \textsuperscript{116} Id.
\item \textsuperscript{117} See id.
\item \textsuperscript{118} See id.
\end{itemize}
having a centralized administration of justice, making every judge and non-judicial court employee (except for those in the Town and Village courts) a state government employee, and putting control over day-to-day operations in the hands of the Chief Administrative Judge of the state of New York.

Since funding of China’s courts in the six pilot sites is still at the local government level, local governments will still have tacit power in many of the matters that come before the local judges and courts. The leadership for the Chinese justice system should push forward in funding courts at the provincial level to standardize and improve the administration of justice. In New York’s experience, changing the source of funding for the courts to the statewide level was necessary because local governments did not have sufficient tax revenue to pay for adequate courts and judicial employees. Under the Chinese model, a judiciary funded at the provincial level is necessary to insulate the courts from the widespread influence of local government officials. Like New York, it appears that Chinese judges are also straining to keep up with the heavy caseloads in their jurisdictions. Recent reports indicate that the number of Chinese judges has barely increased since 2007, yet the number of cases handled by the courts has grown by nearly 50%.\(^\text{119}\) As a result, even veteran judges are overburdened, and many Chinese judges are resigning due to the extreme workload, low pay, and government interference.\(^\text{120}\)

I foresee that the types of reforms advocated by the CCP Central Committee, if brought out to fruition, will have a substantial and lasting impact on strengthening the judiciary in China. Before New York converted to a Unified Court System, the courts were underfunded and also difficult to organize and reform. Once the judicial system had been standardized, it was much easier to carry out swift and effective changes to improve the workings of the courts. The structural and administrative changes to our courts also improved efficiency, reduced delays, and made our system of justice more reliable. Currently, there is widespread public skepticism about the courts in China, and courts are seen as the weakest branch of government.\(^\text{121}\) By adequately funding the courts and providing support for the judiciary, the Chinese government will instill more public confidence in the Chinese justice system and strengthen the rule of law.


\(^{120}\) Id.

\(^{121}\) See id.
B. Improving the Rule of Law by Strengthening the Judiciary

Another key component to strengthening the rule of law is to improve the quality of the judiciary and to make the selection process for the judiciary more rigorous. Many Chinese judges are inexperienced in the law and in terms of real-life experience when they come to the bench. Chinese judges often come to the bench not long after completing law school and clerking for a few years. While it is an improvement from the 1970s when most judges were recruited from the army or police, Chinese courts still suffer from the lack of judges with legal and practical knowledge. Scholars argue that Chinese courts would be better served by individuals with more practical experience than the young law graduates who live a sheltered existence and only have a superficial knowledge of the law.

Maintaining a sterling judiciary is also something the New York Courts have endeavored to do. The vast majority of judges are required to have been admitted to practice in New York State for at least ten years and undergo a rigorous screening or election process. One of my priorities as Chief Judge was to increase judicial salaries to ensure that we would continue to attract top talent to the bench in New York. Since judicial pay raises were politically unattainable for a long time, before 2011, New York judges were some of the lowest paid judges in the country. A pay raise was finally decided on in August 2011 after New York judges endured 12 years without a salary increase. While the final negotiated pay raise was more modest than what we had hoped for, the increase came at a time of economic crisis. New York’s judicial salaries now rank seventh in the nation for appellate and general jurisdiction judges.

The 45 Reform Measures issued in July 2014 by the CCP already touches on improving the system of appointment of judges as one of its areas of reform. A strong, vibrant, and ethical judiciary is paramount to a well-functioning justice system. It is important to identify upright judges who will not be swayed by the influence of local officials. “[W]idespread public skepticism” of the courts will continue if judges are seen accepting bribes or caving to the pressures of local politicians and businesses.

122 Id.
123 Cohen, supra note 99.
124 Some City Court judges, Housing Court judges in New York City, and Family Court Magistrates require that candidates be admitted to practice for at least five years.
125 See Glaberson, supra note 60.
126 Id.
128 Gershman, supra note 119.
Judges must also be given real authority if they are to be respected by the public. Trials should be decided by the judicial panels that hear the evidence, even in sensitive cases, rather than senior officials who have only heard a summary of the facts and evidence. Chinese judges should transition from their current function as mere “civil servants” to acting more like independent professionals. According to Zhu Suli, Chinese judges “are more likely to defer to existing political and administrative hierarchies in which they are embedded. They leave the articulation of dissenting opinions to legal scholars.”

In order to foster judicial independence and to improve the quality and morale of the judiciary, the status of China’s judges should be elevated, and judges should be given authority to decide the outcome of cases. The leadership of the CCP have already called for greater judicial transparency and for systems to be implemented that would impose lifelong responsibility on judges found to have improperly managed major cases. The goal is to advance the judiciary so that substantive and procedural justice will be achieved in the courts, facts will be ascertained, and deficient judges will be held accountable. The CCP has also called for the establishment of “circuit courts,” which will operate across jurisdictions and improve judicial independence as it would limit the influence of local officials on members of the judiciary. Government leaders should continue to enhance the autonomy of China’s judges and courts, and more and more cases should be decided by trial judges without the interference of court presidents or adjudicative committees.

V. CONCLUDING THOUGHTS

China is already a thriving world power, and its economic and political strength are worthy of great respect. However, in order to continue its ascendency, China must make adjustments to its court organization, court financing, and its treatment of the judiciary. New judicial reforms are needed to establish a modern legal system, and elevation of the status of the judiciary is necessary to achieve the goals of creating public respect for the justice system and the rule of law.

129 See Cohen, supra note 99.
130 See Zhu, supra note 101, at 60.
131 Id.
132 Lubman, supra note 115.
134 Lubman, supra note 115.
135 CONGRESSIONAL EXECUTIVE COMMISSION ON CHINA, supra note 102.
The judicial system should no longer be considered simply an apparatus of the CCP and other branches of state power; it must be strong and vibrant and ready to tackle the issues and controversies of the day. Foreign investment and China’s global stature will always hinge on the establishment of the rule of law in China. It is important for the public to know that laws are applied uniformly and fairly and that judges have independence from political pressures and influences.

Reforms in China will most likely come incrementally; they certainly did not happen all at once in New York. It is already very encouraging to see the various reform measures that have been made public recently and the dialogue that continues regarding reducing the influence of local governments, centralizing control over court finances and judicial salaries, and improving the merit selection of judges.\textsuperscript{136} By no means do I or others in the U.S. expect China to exactly replicate the Western model of judicial independence. The current leadership of the CCP appears to be wary of “Western constitutional democracy,”\textsuperscript{137} and the CCP’s role in Chinese history may mean that it will be extremely difficult to remove the party’s influence from the courts.\textsuperscript{138} However, a strong and vibrant judiciary requires independence not only from local government, but also from the CCP and other outside influences, which allows judges to focus strictly on fact finding and the legal merits of the cases before them without interference. It is my belief that New York’s journey to embracing a unified court system will provide illumination of this premise and be of assistance as China navigates so many critical reforms. I also hope that full implementation of China’s proposed law reforms will greatly improve the administration of justice and confer considerable advantages to the operation of government, the citizenry, and the world at large.

\textsuperscript{136} See id.

\textsuperscript{137} Stanley Lubman, In Sharp Words from Xi, Ominous Implications for China’s Legal Reforms, WALL ST. J. – CHINA REAL TIME BLOG (Feb. 10, 2015), http://blogs.wsj.com/chinarealtim...words-from-xi-have-ominous-implications-for-chinas-legal-reforms/.

\textsuperscript{138} See Zhu, supra note 101, at 64-66.