

**The Fund for Modern Courts
The Committee for Modern Courts**

50

years

**Raising a voice for improvement
in the administration of justice in
the State of New York**

“The lawyers and the judges carry a heavy responsibility in the cause of court reorganization and reform but the primary impetus must flow from the citizenry as a whole.”

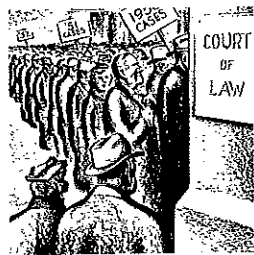
“Because the people before us did their job, and because we have done our job, we’ve kept the ideal of judicial excellence alive...”

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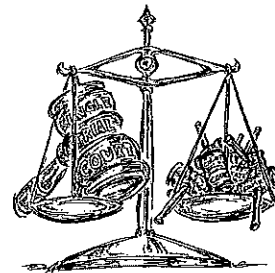
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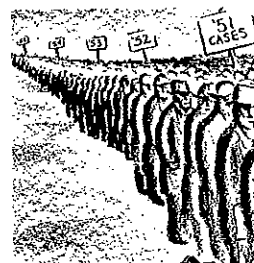
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First Person *Fern Schair*



The Senior Vice President of the American Arbitration Association, she is also Vice Chair, Committee on Women and the Courts; President of the Children's Law Center; member of the board, American Judicature Society and Legal Services for New York. She has served as Executive Secretary and Chief Administrative Officer of the Association of the Bar of the City of New York, and as Program Development Officer for the Soros Foundation-Open Society Institute. She was the first Director of Modern Courts' court monitoring program, Executive Director from 1976 to 1981, and ***Chair of the Fund & the Committee for Modern Courts since 2002.***

MILESTONES

1955

Leaders of New York's bar, including Edward Greenbaum, Whitney North Seymour, and Bethuel Webster, enlist Edwin F. Chinlund of Macy's, playwright and producer Howard Lindsay, Lawrence Wilkinson of Continental Can and others to form the Committee for Modern Courts to mobilize public support for reforms recommended by the Tweed Commission on court reorganization.

In October, Modern Courts organizes a dozen young associates from downtown firms and six N.Y.U. law students to observe and report on the courts in Foley Square "in actual practice."

1956

Modern Courts sponsors a touring company of "The Maze," a play about the court system produced by the American Theatre Wing and financed by Laurence Rockefeller through the Association of the Bar of the City of New York Fund.

Modern Courts urges passage of the Youth Court Bill.

1958

Modern Courts endorses State Judicial Conference proposals: "the most hopeful development in the movement for court modernization that we have yet seen." ▶

MY FIRST JOB WAS WITH LEGAL AID in a storefront office in Yonkers. I had a first-hand look at how lower courts worked – or did not work – on behalf of those without resources. ... When I saw an ad for an opening at a court reform organization, it was like a light bulb switching on: There was an organization that seemed to care about how well the courts operated ...

I was fortunate to be given the opportunity to start what was the first statewide court monitoring program in the country. A federal agency had given the Fund a grant to begin a project to bring non-lawyers into their local courts to observe how they actually functioned – particularly the lower courts that few people see and that rarely see lawyers representing the parties. It was exactly what I believed was needed ...

It's always been interesting to me that lawyers, even well-meaning lawyers, simply don't see how inadequate a courthouse is: They know their way around. They know the people to go to. It is so important to bring in people who do not know their way around the courthouse to gauge how daunting or how confusing it can be ...

The court monitoring project took on added significance over the years – for instance, as a source of information for the Capital Facilities Review Board formed [in 1989] to bring courthouses up to standard.

That the project has endured all these years is very much the achievement of Sam Duboff, who was chair of the executive committee. He understood that the government grants would one day come to an end. A non-lawyer himself, he enlisted New York's legal and corporate communities to support this effort. Sam was also the guiding light in maintaining the coalition for court reform that was first called together by John McCloy in the seventies.

I had a second great opportunity to serve, this time as executive director (succeeding Modern Courts' first full-time executive director, David Ellis) during the campaign to win approval of the

court reform amendments that passed in 1976. I was up in Albany, helping muster votes to get the amendments on the ballot. I traveled the state, going on the stump for amendments that were not expected to pass. Certainly you had Republicans and Democrats and the third parties against them, particularly the amendment for merit selection of Court of Appeals judges: it took away the power of the political leaders which, of course, was the point ...

We remain the only statewide organization that pays special attention to court reform issues. We have a number of organizations – such as the Women's City Club and the Citizens Union – that rely on us for expertise on the courts, and that we count on for their substantial clout when we need to push for a particular measure. So much of what we do is a "below-the-radar" effort: we go from community group to community group, city by city, adding people to our constituency for change.

Has Modern Courts become more politically pragmatic over the years? I don't think we're so pragmatic – or we wouldn't be pushing the goals we are pushing. ... Merit selection and court merger are both ideals towards which we can take small steps, rather than easily achievable goals. I do think Modern Courts strikes a good balance between the pragmatic and idealistic. ...

I recently read a letter from an outgoing board member to someone he was recruiting to take his place on the board. He wrote that it's one of the very few organizations with which he'd ever been involved where the board members and other volunteers are without their own private agendas ...

This struck a chord with me: Modern Courts is very much an organization of people who, whatever else they do in their lives, are here because they believe in the cause. There's very little gain that comes out of this for individuals – but the good news is that's not why individuals are here. They are all here because they believe deeply in improving the system of justice. •

Remembering

Edwin F. Chinlund



Vice President and Treasurer of R. H. Macy & Co. He had been a partner with accountants Arthur Andersen, then President of Postal Telegraph, a company he led into a merger with Western Union. He was also a trustee of the Citizens Budget Commission, a member of the executive committee of the Citizens Union, Chairman of the finance committee of the board of the National Urban League, and **Chair of the Fund & the Committee for Modern Courts 1955 to 1960.**

MILESTONES

1959

The Erwin-Lounsberry resolution to consolidate and streamline the court system receives first passage in the legislature: "The first salient in the battle for court reform" reports the *New York Times*.

1960

Modern Courts begins its annual practice of polling state legislators on their positions on court reform (this year, on the Erwin-Lounsberry resolution).

1961

John J. McCloy, chairman of the board of Chase Manhattan Bank, becomes chair of Modern Courts.

Erwin-Lounsberry gets second passage; in November, voters approve "Amendment One" creating two citywide courts in New York City, criminal and civil, as well as the Family and the District Courts.

1964

Modern Courts' Citizens' Conference (Justice William J. Brennan Jr. and John J. McCloy are principal speakers) calls for appointment of all judges, the exploration of ways to end court congestion, and continued court consolidation.

1967

Modern Courts opposes the constitutional convention's proposed draft because it fails to address court reform.

CHINLUND LED THE CORE GROUP OF LAYMEN that helped found the Committee for Modern Courts in 1955 "to inform and arouse the people about the shocking conditions of delay, expense and complexity which have developed in our judicial system."

The founding vice chairs were Edward R. Eastman, editor of *American Agriculturalist* and president of the New York State Council on Rural Education; playwright and producer Howard Lindsay; Charles S. Wilcox, former president of the Rochester Bar Association; and Lawrence Wilkinson vice president of Continental Can.

That same year, the Association of the Bar of the City of New York had delivered a "blistering indictment" of the courts in "Bad Housekeeping – the Administration of the New York Courts." The Temporary State Commission on the Courts – the Harrison Tweed Commission – offered a solution in a bill before the legislature to create a Judicial Conference to bring modern business management to the judicial system, part of a larger plan to restructure the court system. What was needed was public pressure to act.

Chinlund pledged Modern Courts' backing for a constitutional amendment embodying the Tweed Commission reforms. Previous attempts to modernize the courts had failed, he said, because of "public apathy and lack of information." His group would remedy that. "This court reform, long, long overdue, should be carried out now, even though it may not be perfect. If all groups will now support it, great progress will be made and the groundwork laid for additional action later."

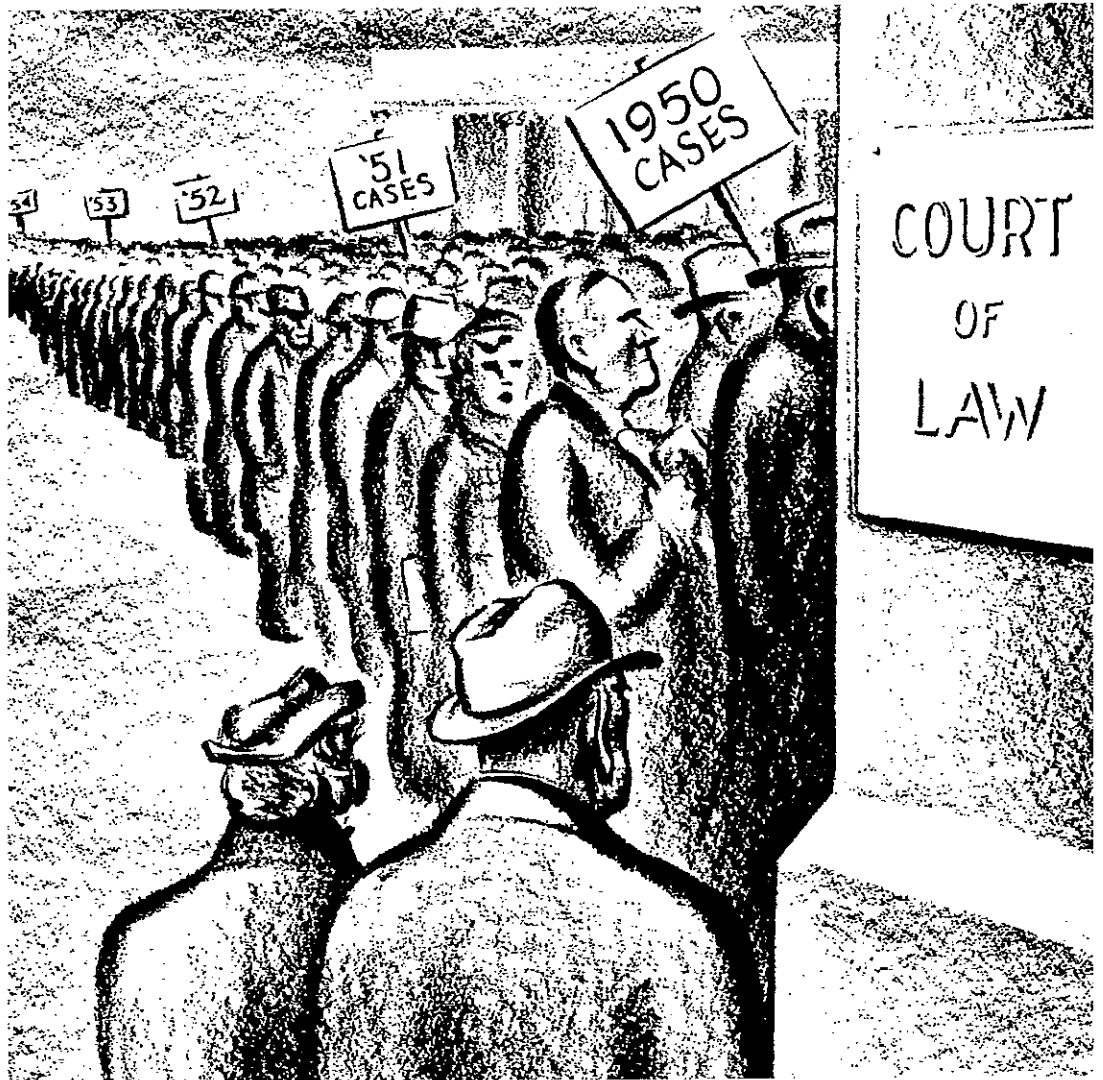
Chinlund lived to see the Tweed court reorganization amendment get first passage. When he passed away in 1960, 35 leading members of the state bar paid formal tribute to him with a call to New York's legal profession to support the effort to submit the amendment to the voters. ●

Samuel J. Duboff Memorial Award

A partner in the accounting firm of Ernst & Whinney, Samuel J. Duboff chaired Modern Courts' executive committee from 1966 to 1985 and served as an able emissary to New York's business community whose financial support and active involvement are indispensable to Modern Courts' mission. Modern Courts honors his memory by recognizing non-lawyers who make outstanding contributions toward improving the quality of justice in New York State.

- 1986 Dutchess and Westchester County Court Monitors
- 1987 Lillemor T. Robb, former Chair, State Commission on Judicial Conduct
- 1988 Community Dispute Resolution Centers Program
- 1989 League of Women Voters of NYS & its Judicial Directors
- 1990 New York State Court Appointed Special Advocates (CASA)
- 1992 John P. MacKenzie, *The New York Times*
Leonard O. Halpert, *The Buffalo News*
- 1993 Pauline Feingold
- 1994 Monroe County Court Monitors
Rochester Churchwomen United's Task Force on Courts.
- 1995 City-Wide Task Force on Housing Court
- 1996 Dolores Del Bello, lay member, State Commission on Judicial Conduct
- 1997 Volunteers of the Jewish Board of Family & Children's Services Court Liaison Program
Volunteers of the YWCA Visitation Center of White Plains and Central Westchester
- 1998 Volunteers of NYS Courts' Children's Centers
- 1999 Volunteers of My Sisters' Place, White Plains
- 2001 Capital District Court Monitors
- 2002 Eisner LLP
Mellon Trust of New York, LLC
- 2003 Law Order and Justice Society of Schenectady County
Family Abuse Court Services Program of Westchester
- 2004 inMotion Legal Services for Women
Prison Families of New York

Since 1955 ***Mobilizing the people of New York
in the cause of judicial reform***



Tom Little illustrated "A Plea for Court Reform Now," by Edward S. Greenbaum (described as an attorney who has practiced law in New York — with time out for service in both World Wars — since 1913), in *The New York Times Sunday Magazine* February 27, 1955.

It was, said *The New York Times*, an “unlikely coalition of bankers, feminists, bar association leaders, labor officials, law school deans, publishers, former convicts and people in the arts” that had come together in 1976 to urge the New York State legislature to act on court reform.

But for its organizers at Modern Courts, the coalition represented the only force powerful enough to reshape the political landscape — a well-informed, aroused electorate. The coalition succeeded in bringing to referendum constitutional measures for merit selection of Court of Appeals judges, centralized administration, and simplified procedures for disciplining errant judges ... and surprised the pundits with an upset victory at the polls in 1977.

Modern Courts was founded in 1955 — by another unlikely coalition of laymen and lawyers — to enlist the people of New York in the work of overhauling a court system grown woefully inadequate since it was set up in 1846.

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Since then, Modern Courts has educated and engaged New Yorkers on judicial issues that others assumed were too esoteric for "average citizens" to understand — or too remote from their daily lives to care about. Modern Courts has sent actors to barnstorm the state and co-produced CATV series, written op-ed pieces and conducted scholarly studies, sponsored advertising and mounted letter-writing campaigns on behalf of court reform.

"There are so many special interests, encrusted customs and attitudes in the hierarchy of the law ...

And Modern Courts has succeeded ... in getting reform legislation enacted in Albany ... in getting out the vote for change in the courts across the state ... and in recruiting and training the thousands of citizen volunteers who have served as court monitors and, as the American Judicature Society has said, "the model for jurisdictions elsewhere striving to make the justice system more responsive to citizen needs."

"... we shall not accomplish substantial improvement in the administration of justice unless the citizenry vigorously supports and demands it."

— John McCloy, international banker, lawyer, diplomat, advisor to nine Presidents, and, from 1961 through 1978, Chair of the Fund & the Committee for Modern Courts.

MILESTONES

1969

At Modern Courts' urging, Gov. Nelson Rockefeller backs a League of Women Voters' proposal to convene what will become the Dominick Commission on the Courts.

1971

Five Modern Courts panels provide documented testimony to the Dominick Commission on court organization and administration; judicial selection, tenure and removal; Family Court; criminal justice; and civil administration.

Marjorie Gordon becomes Modern Courts' first executive director (on a voluntary basis).

1972

Modern Courts organizes a coalition of 40 reform-minded groups to press for Dominick Commission recommendations.

1973

The Modern Courts-led coalition sponsors a Citizens' Conference on the Dominick Commission Report.

Modern Court members testify at hearings held by Sen. Bernard G. Gordon, chair of the Joint Committee on Court Reorganization.

David J. Ellis becomes Modern Courts' first paid executive director, thanks to a grant from the Herman Goldman Foundation. ▶



For Immediate Release: November 1, 1961. Governor Nelson A. Rockefeller; Mrs. John Fitch, President of the New York State League of Women Voters; and Duncan Elder, Executive Director of the Committee for Modern Courts, urge citizens to vote for Amendment One to reorganize the state's court system as the Governor proclaims November 2 Court Reform Day.

Citizen Court Monitoring

Citizen Court Monitoring is the centerpiece of Modern Courts' efforts to engage the public in improving the administration of justice. From around the state, groups of non-lawyer volunteers observe court proceedings on a regular basis, and recommend improvements to make the courts more efficient and user-friendly for the average person. The monitors' findings and recommendations are then published by Modern Courts and released to court administrators, judges, court personnel, lawmakers, bar associations, civic groups, and the media.

Launched in 1975, the Modern Courts program has been cited by the American Bar Association as one of the country's most effective projects "in bringing problems to light and proposing changes to correct shortcomings." The American Judicature Society, in presenting Modern Courts with its 1984 Justice Award, described it as "the catalyst for virtually every worthwhile judicial improvement in New York State."

At left is a press release and the cover of the press kit distributed by Modern Courts as part of its 1961 multimedia reform campaign, which also included a speakers bureau, flyers, posters, booklets, a 16mm film, and six 30-second live-action spots of Judge Desmond, Judge Botein and the presidents of the State and City Bar Associations for local TV stations.

Remembering

John J. McCloy



International banker, lawyer and diplomat who was an advisor to U.S. Presidents from Franklin D. Roosevelt to Ronald Reagan. He was Roosevelt's Assistant Secretary of War during World War II and High Commissioner for West Germany under Truman. He advised Eisenhower on arms control, served as disarmament negotiator for Kennedy, and acted as consultant on NATO issues to Johnson. Prior to WWII, he was a member of the firm of Cravath, DeGersdorff, Swaine & Wood. After the war, he was a year at Milbank, Tweed, Hope, Hadley & McCloy before being appointed President of the World Bank. He also served as Chairman of the Boards of the Ford Foundation, the Council on Foreign Relations, and International House ... and had just retired as Chairman of the Board of Chase Manhattan Bank when he became **Chair of the Fund & the Committee for Modern Courts 1961 to 1978.**

MILESTONES

1974

The name of the tax-exempt Committee for Modern Courts Fund is changed to the Fund for Modern Courts.

The deans of 10 prominent New York law schools join the Modern Courts board.

Modern Courts establishes regional chapters throughout the state.

1975

Modern Courts launches the nation's first Citizen Court Monitoring project under the direction of Fern Schair.

Modern Courts' upstate chapters turn out voters to approve a Commission on Judicial Misconduct.

1976

The Court Reform Luncheon Series is launched – with Richard F. Coyne, Economic Development Council, on "A Management View of the Family Court."

The Ford Foundation underwrites a series of conferences to raise consciousness of court reform issues in New York's diverse communities.

The legislature gives first passage to three court reform amendments.

Fern Schair becomes executive director of Modern Courts.

MCCLOY TOOK UP THE LEADERSHIP of Modern Courts after the untimely death of founding chair Edwin F. Chinlund ... just as the New York State legislature gave second passage to the Erwin-Lounsberry resolution and placed before the voters a constitutional amendment to implement the first major reorganization of the court system in 113 years.

This was the goal Modern Courts had been created to achieve. McCloy told the *New York Times* the action was the culmination of "eight years of dedicated work" and pledged a citizen campaign to approve Amendment One.

"The 1961 vote for court reorganization was, in fact, the largest for any constitutional amendment in recent state history. The affirmative majority in New York City was eight to one," McCloy wrote over a decade later.

He cited the 1961 precedent in urging old and new allies to press for the recommendations of the Dominick Commission on modernizing the courts and improving the methods for judicial selection, tenure and removal.

Modern Courts had, under his leadership, proposed the formation of a Temporary State Commission on judicial selection to Governor Rockefeller in 1963. Now, in 1972, with the Commission's recommendations pending, McCloy put together a coalition of 40 organizations for court reform under the umbrella of Modern Courts. As biographer Thomas Evans remarked, McCloy's strength was organizing for victory. He called it "yellow padding" – jotting notes on conflicting views, breaking down the arguments and fitting them back together into a plan that would win consensus.

McCloy himself wrote: "There will be differences of opinion and varying points of view as to the character of the steps but it is most important, now that momentum is gathering for the reform of our judicial system, that we not get mired down in

bickering over really minor differences in face of the glaring needs. We should be prepared to accept any constructive measures even though they may fall short of our full approval. We cannot hope to achieve all the reforms needed in one year."

Another five years of effort, and the coalition achieved an upset victory at the polls for Amendments 1-2-3, providing for merit selection of judges of the Court of Appeals, centralized court administration, and improved judicial disciplinary process – and demonstrating again that, as McCloy had written of the first reform victory, "The lawyers and the judges carry a heavy responsibility in the cause of court reorganization and reform but the primary impetus must flow from the citizenry as a whole." •

John J. McCloy Memorial Award

The John J. McCloy Memorial Award honors the memory of the man who served as chair of the Fund and Committee for Modern Courts from 1961 to 1978 by recognizing lawyers who have made outstanding contributions to improving the administration of justice in New York State.

1993	Robert MacCrate
1994	Cyrus R. Vance
1995	Hon. Hugh L. Carey
1996	Hon. Edward I. Koch
1997	Robert M. Kaufman
1998	Hon. Hugh R. Jones
1999	Fern Schair
2000	Dean John D. Feerick
2001	Victor A. Kovner
2002	Hon. Joseph W. Bellacosa
2003	Sheila Birnbaum
2004	Roy L. Heardon
2005	Robert D. Joffe

First Person *Robert MacCrate*



Senior Counsel, Sullivan & Cromwell, he was Counsel to Governor Nelson Rockefeller, a member of the New York State Crime Control Planning Board, and Special Counsel to the U.S. Department of the Army for Investigation of the My Lai Incident. His public service career also includes terms as President of the American Bar Association, the American Bar Foundation, the American Judicature Society, the New York State Bar Association and the New York Bar Foundation, and **Chair of the Fund & the Committee for Modern Courts 1978 to 1986.**

MILESTONES

1977

The legislature's second passage puts three reform amendments on the ballot; Modern Courts turns out voters to approve gubernatorial appointment of Appeals Court judges, a chief administrator of the courts, and judicial discipline to be handled solely by the Commission on Judicial Conduct.

Edward I. Koch's executive order creates merit selection for judges appointed by New York City's mayor.

1978

Robert MacCrate, former Counsel to Gov. Nelson Rockefeller and incoming president of the American Judicature Society, becomes chair of Modern Courts.

1979

Modern Courts helps draft a model amendment to institute merit selection of trial court judges and merge trial courts.

Modern Courts and the American Judicature Society co-sponsor the Merit Selection Conference at NYU School of Law.

The legislature approves first steps toward state funding of the court system. ▶

LET ME BEGIN BY SAYING that my signal achievement on behalf of Modern Courts was recruiting Fern Schair. Caroline Simon and I were the "search committee" for the director of the court monitoring program, the first program of its kind.

It's hard now to separate my earliest work with Modern Courts from all that was going on in the reform movement at that time ...

Everything in New York begins with the [Harrison] Tweed Commission.

I had been recruited in December 1958 by Roswell Perkins to serve as counsel to Governor Nelson Rockefeller. I had to extricate myself from my law practice and so could not assume the position through the first legislative session in 1959, but as associate counsel during that time I had the assignment of implementing the Tweed Commission recommendations.

A joint resolution for court reorganization had been introduced by a senator and an assemblyman – the Erwin-Lounsbury resolution – and it was not at all what the Tweed Commission had recommended. I worked to put something together that would implement the Tweed recommendations to the maximum extent then possible. We negotiated a whole new Judiciary article to the State Constitution piece by piece, winning agreement on what to do with the town justices, with the New York City courts, with the county courts, and so on. It was very clear to us that unless we could get the upstate counties behind the venture, it just couldn't get off the ground.

I recall one legislator from a county upstate telling me: "Bob, if you take out this one provision, I'll have the votes for you in the morning." So we did and, sure enough, we had those votes in the morning. Aside from the names and the enactment language, what got first passage [in 1959] was totally different from what had first been put on the table.

In 1961, John McCloy, who had been enlisted in the Erwin-Lounsbury campaign by Tweed

(his partner at Milbank), became the chair of Modern Courts and led the citizen campaign to get voter approval of court reorganization.

One thing we knew we couldn't get at the time was merit selection. I was already involved in merit selection as a member of the American Judicature Society. Our model was the Missouri plan, which established merit selection in that state in 1940. We were finally successful in 1977 in bringing merit selection to the Court of Appeals ... and we began almost immediately to push for merit selection of trial judges,

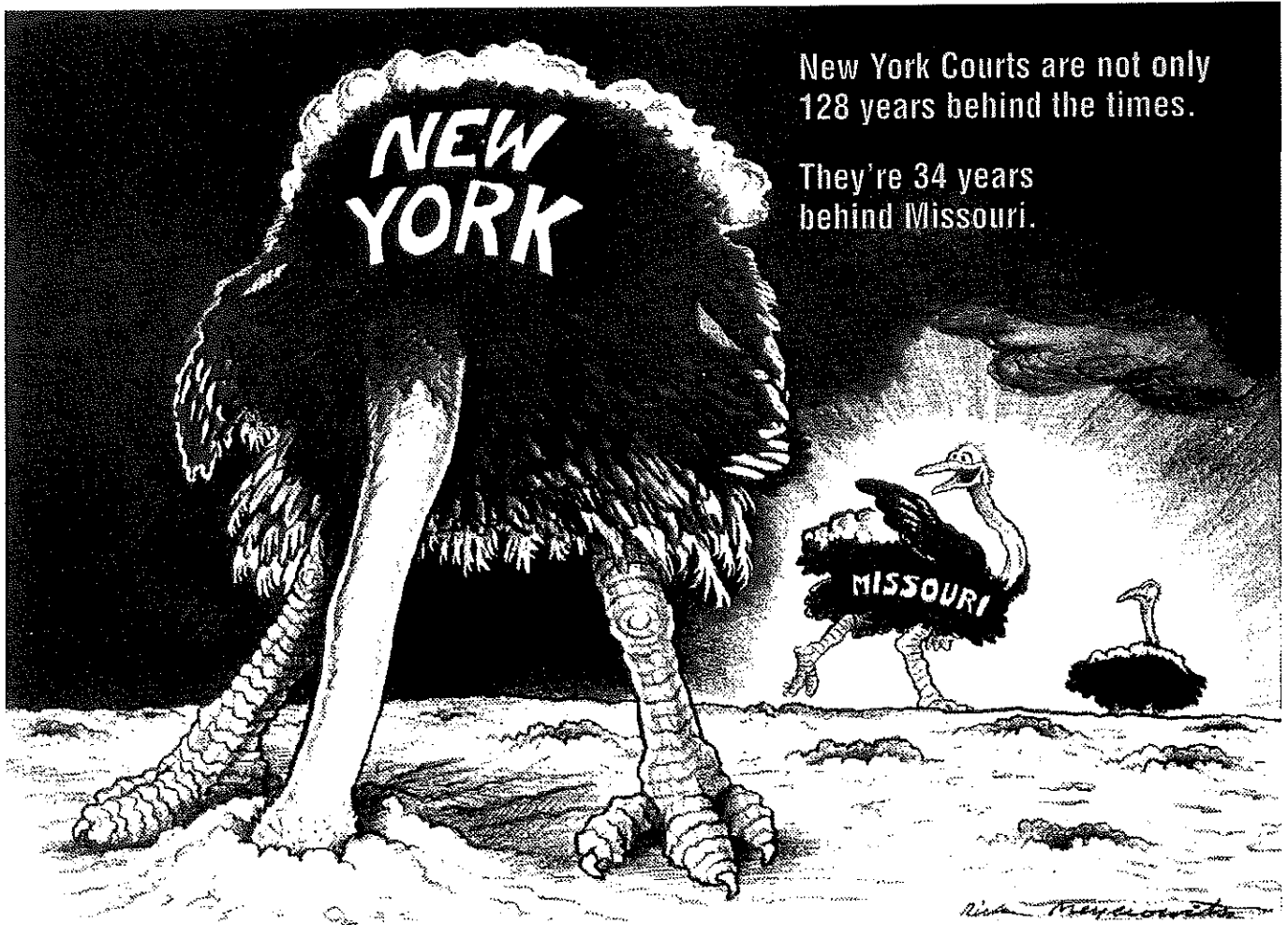
My father was first elected to the New York State Supreme Court in 1920, the year before I was born. He was re-elected twice (in 1934 and 1948) with bipartisan endorsement. I never lost sight of the fact that he had gotten to the court initially by the party-nomination and electoral process when I argued the merits of the appointive process.

Now Modern Courts is taking an interest in judicial elections. It's not only the pragmatic thing to do, it's the only thing we can do. We have the report of John Feerick's group ... the blueprint for restoring dignity and confidence in the process ... that Chief Judge Kaye asked for.

This is one of the virtues of Modern Courts, why it continues as a viable organization: there is a learning from experience, a continuity, a respect for what has gone before and an attempt to relate to what has changed.

Another is the ability to reach out to groups like the League of Women Voters and the Citizens Union, and the people – Libby Hubbard is a wonderful example, and Samuel Duboff – who take an interest in public affairs and show them how they serve that interest by being involved in court reform. •

Since 1955 ***Building a court system that assures justice for the people of New York***



New York Courts are not only 128 years behind the times.

They're 34 years behind Missouri.

... and this was in 1974. Rick Meyerowitz contributed this cartoon to an advertisement created by Daniel & Charles for Modern Courts to promote merit selection of judges, pioneered by Missouri in 1940 ... still pending in New York.

In 1954, New York City's courts led the nation in congestion and jury-trial delays. It took 56 months to bring a case to trial in Kings County Supreme Court. Litigants needed stamina, money (a winning plaintiff's total expenses could easily outstrip any award) and strong stomachs: Courts so "squalid, dreary, dirty, noisy, crowded" inevitably made for "shabby justice" warned a report by New York's bar associations.

The courts were "a forbidding and often an impossible refuge for many people who are entitled to their protection," said Governor Dewey, appointing a commission, chaired by attorney Harrison Tweed, to study the first reorganization of the state system since 1846. The Tweed Commission provided a blueprint, but it was clear to reformer Edward S. Greenbaum no one "could do anything to improve the courts without the help of laymen."

In 1955, Modern Courts was founded to bring the political muscle to rebuilding New York's overwhelmed judicial system: a collection of 21 miscellaneous courts, each operating independently ... and each a source of political patronage. New Yorkers from business, finance, labor, and the arts allied to marshal public opinion and, ultimately, the votes to chip away at the entrenched system and erect something better in its place. *continued on page 8*

MILESTONES

1979

Modern Courts first permanent upstate chapter is established, with Joan T. Pholiadis, past president of the Erie County League of Women Voters, as director of the Western New York Chapter.

1981

Dr. M. L. Henry, Jr., becomes executive director of Modern Courts.

The Capital District Chapter is organized under Ann M. Brandon, past president of the Albany County League of Women Voters.

1982

Modern Courts issues the first in a series of five seminal studies on judicial elections – their financing, voter participation, and their impact on judicial diversity.

Modern Courts and Manhattan Cable TV launch Court Review, a weekly program on judicial administration issues.

1984

The American Judicature Society presents its Justice Award to Modern Courts for “outstanding contributions to the Nation in promoting the effective administration of justice.”

Director Whitney North Seymour, Jr., recommends that Modern Courts take up the cause of citizens who serve as jurors. ▶



The 1964 Citizens' Conference on the Courts organized by Modern Courts under general chairman Duncan Elder (also chair of the Modern Courts executive committee) was "step number two in giving the people of New York the modern court system they voted for" (step number one having been the 1961 passage of Amendment One). As conference director Roger Hunting pointed out in a newsletter published for the occasion: "No major change was made or suggested with respect to the selection of the members of the judiciary in connection with the 1961 reorganization" ... leaving the average New Yorker with a vote, but little real choice in the judicial selection process – as this cartoon by Robert Weber illustrates.

"It is not that we have an antiquated judicial system in New York State ... really we have no judicial system at all ..."

Since then, Modern Courts has been instrumental in achieving virtually every substantial improvement in the administration of justice in New York: Starting with the voters' approval of the 1961 constitutional amendment reorganizing New York City's courts ... the 1977 ballot-box victory for three court reform amendments (including the introduction of merit selection of judges) ... the 1987 State Court Facilities Act aimed at upgrading court-houses ... the 1995 policy changes that made jury service less onerous and more equitable.

"The greatest need is for a unified court structure ... but this cannot be done at once."

— Edward S. Greenbaum, founding partner in the law firm Greenbaum, Wolff & Ernst and a leader in court reform who was instrumental in the creation of the Tweed Commission, the New York State's Judicial Conference and the Committee for Modern Courts.

As Modern Courts' founders suspected, reforming the courts would be the work of many years. More work remains: to get the politics out of judicial selection, to bring more diversity to the bench, to ensure judicial resources are commensurate with caseloads. And Modern Courts remains the rallying point for New Yorkers resolved to have a court system they can count on to dispense justice.

Citizens Jury Project

Created in 1995, following a recommendation made by a blue-ribbon panel formed by Chief Judge Judith Kaye, the Citizens Jury Project (CJP) was implemented by the Vera Institute of Justice with grants from the Commonwealth Fund and the New York Community Trust. Modern Courts took over the project in April 2000.

As advocate for individual jurors on a variety of issues, from summoning to dismissal, the CJP operates six ombudservice booths, staffed by trained interns, in New York City courts. The CJP also surveys jurors in courts throughout New York and participates in collaborative research projects with the Office of Court Administration.

Remembering *Cyrus R. Vance*



The Secretary of State from 1977 to 1980, when he “took the rare step of resigning from the nation’s highest cabinet post on a matter of principle,” as the *New York Times* remembered. A member of Simpson Thacher & Bartlett, his decades-long government service career began in 1957, when he was asked to serve as counsel to a Senate armed services subcommittee on preparedness. He was Deputy Secretary of Defense under Robert McNamara, and an international negotiator deployed by President Lyndon B. Johnson to Panama, Cyprus, and South Korea. He was Chairman of the Board of the Rockefeller Foundation, Vice Chairman of the Council on Foreign Relations, and a member of the United Nations Association and the Trilateral Commission. He was also **Chair of the Fund & the Committee for Modern Courts 1986 to 1989.**

MILESTONES

1985

30th anniversary initiatives include plans for improving jury service and for reversing deterioration of the state’s 299 courthouses.

1986

The legislature authorizes an 18-month trial of TV, radio and photographic coverage in the courtroom.

Cyrus R. Vance, former U.S. Secretary of State (and head of Gov. Hugh Carey’s task force on judicial reorganization 1976-77) becomes Modern Courts chair.

The first Samuel J. Duboff Award, memorializing the chair of Modern Courts’ executive committee from 1966-85, goes to the court monitors of Dutchess and Westchester Counties.

1987

The Court Facilities Act requires the state’s 119 localities to assess the adequacy of courthouses and bring them up to statewide standards.

The legislature also approves full funding of the court system by the state.

1989

Modern Courts inspects Family Courts in all five boroughs of the City of New York, documenting slum-like conditions: Modern Courts will be at every meeting of the Capital Review Board dealing with the city’s plan to bring court facilities up to standard.

AT HIS DEATH IN 2002, a *New York Times* editorial, acknowledging that Vance was best known for his service in Washington, drew special attention to his tireless work on behalf of New Yorkers, who would remember him as “a leader of the local bar and crusader for good government who did much to advance the causes of state court reform, legal services to the poor and higher standards of government ethics.”

The *Times* referred to his service on the 1987 state commission on government ethics (chaired by Dean John D. Feerick, who would serve as Modern Courts chair from 1995 to 1999); his advocacy of expanded legal services for the poor, and his efforts to reform New York’s campaign financing laws.

“During a busy term as president of the city bar association from 1974 to 1976, Mr. Vance presided over a special gubernatorial task force on New York’s court system that resulted in a number of its core recommendations becoming law. These included an amendment to the State Constitution ending the discredited system of electing judges to the state’s highest court, the Court of Appeals, and replacing it with an appointive system.”

The *Times* added that Vance had also tried to persuade the legislature to replace the highly politicized system of electing lower court judges with a more rational system of merit selection. Michael Cardozo (then a director, and from 1999 to 2000, chair of Modern Courts) recalls that, “After he resigned as Secretary of State, when he returned to New York, one of the first things he did was to travel up to Albany with us – I recall Fern [Schair] was there, too – on behalf of court reform. I remember he was treated like a returning hero.”

In 1988, as chair of Modern Courts, Vance continued to speak for merit selection [here in *The New York Times Week in Review*]: “The major problem with electing judges is that New York doesn’t really have ‘elections.’ Justices of the State Supreme Court, our principal trial court, are not selected by voters in primary elections, but are handpicked by unelected party bosses ...

“Since 1940 there has been a strong movement throughout the United States to replace judicial elections with a process that combines the best elements of the elective and appointive systems, a process that embodies the American ideal of respecting ability and effort above political connections. That process is called merit selection of judges.” •

Cyrus R. Vance Tribute

Cyrus R. Vance Tribute honors the vision, accomplishment, and integrity in government of the man who served as chair of the Fund and the Committee for Modern Courts from 1986 to 1989 by recognizing a notable public figure who exemplifies Vance’s legacy, and who has made the New York State Court system more efficient, fair and accessible to all.

2003 Hon. Elliot J. Spitzer,
New York State Attorney General

2004 Hon. Michael R. Bloomberg,
Mayor of New York City

First Person *Robert M. Kaufman*



Partner at Proskauer Rose, he is also Board Chair of Old Westbury Fund, Vice Chair of the New York Community Trust, a trustee of Brooklyn Law School, and a director of The September 11th Fund. His career of public service also includes terms as Chair of the Times Square Business Improvement District, President of the Association of the Bar of the City of New York, President of the American Judicature Society and ***Chair of the Fund & the Committee for Modern Courts 1989 to 1995.***

MILESTONES

1989

Robert M. Kaufman, past president of the Association of the Bar of the City of New York and of the American Judicature Society, becomes chair of Modern Courts.

1991

Modern Courts presents its first annual "consumers' report on the courts," based on the observations of volunteer court monitors, to Chief Judge Sol Wachtler.

1992

"Characteristics of Elected versus Merit-Selected New York City Judges, 1977-1992," by Dr. M.L. Henry, Jr., weighs alternatives to achieving judicial diversity.

Modern Courts surveys neighboring states that have eliminated automatic occupational exemptions from jury service to achieve more representative pools.

The first annual John J. McCloy Award is presented to Robert MacCrate.

Elizabeth B. Hubbard becomes executive director.

1993

Modern Courts lends support to the Permanent Judicial Commission on Justice for Children.

Chief Judge Judith Kaye and Chief Administrative Judge E. Leo Milonas appoint the Jury Project panel. ▶

I BECAME INVOLVED WITH MODERN COURTS while I was President of the Association of the Bar of the City of New York (which was from 1986 through 1988).

I have a clear recollection of the first Modern Courts meeting I went to: There was a question of whether we should push ahead on merit selection. I got rather heated and said, "What's the purpose of this organization if it isn't to do all those kinds of things. Why are we compromising at this point, at the beginning? Let's fight for what we believe in and leave compromise to the end." And there was dead silence I think people were wondering who this new person was shooting off his mouth – but I guess they thought, as president of the Bar Association he has something to say on the subject.

I became chair of the executive committee, succeeding George Ashley, and then chair ... there were other changes during my tenure: Hank Henry had to step down because he was ill; Elizabeth Hubbard became executive director. And Fern Schair became chair of the executive committee – at the same time she was executive secretary of the City Bar Association (and I confess I was part of hiring her away for the Bar Association). The person providing continuity to the organization during that time was always Fern.

As chair, I focused on administration and securing financing to ensure the organization's long-term viability. With the help of challenge grants from the Community Trust, we substantially increased the contributions of Modern Courts' directors. We also worked to get support from the business community. We were successful at the time, but I think some companies have since dropped away.

The challenge is to get corporations to see Modern Courts not as a charitable cause, but as an effort that will have a positive impact on the business environment in New York – and a material impact on their businesses ... Modern Courts was able to make that case in the beginning under Edwin Chinlund. My predecessor as chair of the executive committee, George Ashley, who was AT&T General Counsel, was a major factor in

involving the business community in the coalition. It's an effort that has to be renewed periodically ...

It was also during my tenure that we started to discuss decoupling merit selection from trial court merger, on the principle that we were likelier to get one or the other, but by linking the issues we risked getting neither. Later, under Mike [Cardozo] we decided we needed to do something about judicial elections.

As much as anything, I think we were trying to follow the lead of the Chief Judge.

She has made court reorganization and improvement of the electoral process priorities – and so we have changed our emphasis ... Indeed, the last two Chief Judges, Judge Wachtler, who appointed the Marrero Commission on legal services for the poor, and Judge Kaye, who most recently appointed the Feerick Commission on judicial elections, have been very supportive of reform, and Modern Courts has supported their initiatives. ...

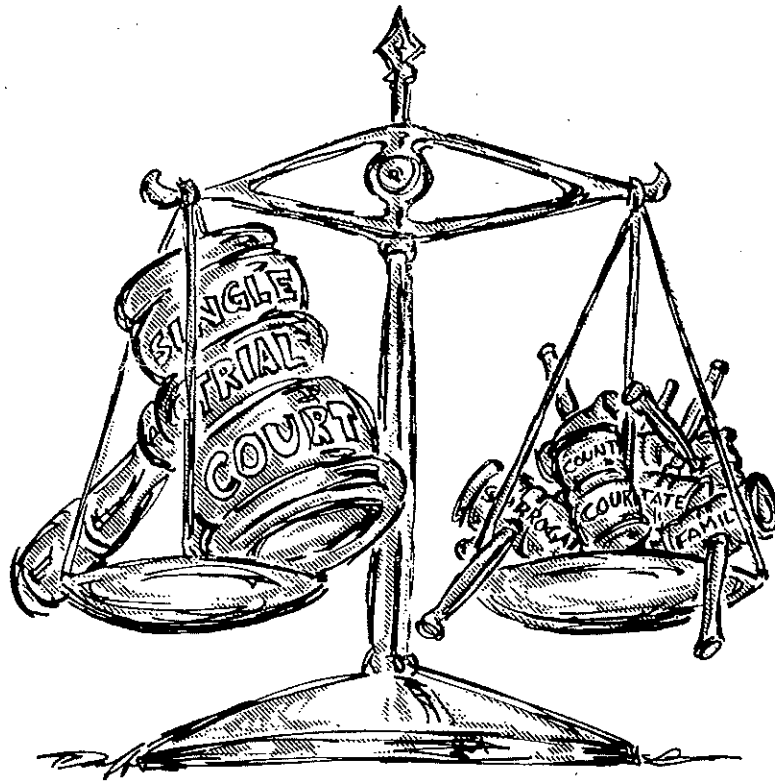
Does this mean we've abandoned merit selection? Not at all.

I recall Richard Rosenbaum, who was chairman of the Republican state committee under Rockefeller, asking me, "Why do you reformers want to take away the people's right to elect judges?"

"Dick," I said, "that's the wrong question. It's not election versus appointment, it's appointment versus appointment. The issue is: should judges be appointed by the governor or by the local political leader in a one-party county? At least the governor is responsible to the voters; the local political boss isn't."

I expect the progress going forward will be incremental, in contrast, say, to the '77 constitutional amendments. Nowadays, we have to take a step at a time. But I have confidence in Fern, Victor [Kovner], and the future leadership of Modern Courts. Organizations like Modern Courts have to exist – if it didn't, you'd have to create it – because we need somebody out there making waves and pushing, always pushing, to reach the ideal, even if it takes 20, 30, or 40 years. ●

Since 1955 *Changing the courts to better serve the people of New York*



The Middletown Sunday Record ran this R. J. Duffley cartoon with Fern Schair's June 14, 1981, op-ed on court reform. Court of Appeals Chief Judge Lawrence Cooke is quoted: "In a state which prides itself on being up-to-date and progressive, it's most surprising that we allow for 11 trial courts."

An alcoholic beats his wife, and a family begins an odyssey through nine contacts with the law and three different courts only to end up broken and impoverished, their son embarked on a criminal career — an Actors' Equity company took this melodrama on the road through upstate New York in the mid-1950s as part of Modern Court's first campaign to enlist public support for court reform.

At the time, five different courts had jurisdiction over matters involving children and families. In New York City, three courts handled automobile-accident cases. Three courts had

jurisdiction over criminal cases. Many courtrooms were so congested cases literally could not be heard, while others stood idle (and fully-staffed). There was no central administration to spread the load as thousands of cases stalled for years. Justice was effectively and routinely denied.

Modern Courts was founded in 1955 in defiance of conventional wisdom that judicial reform issues were beyond the grasp of non-lawyers. The nonpartisan group, predominantly laymen, immediately launched a multimedia blitz (public forums, newsprint and radio — CATV and Web sites would come later) to take the case for restructuring the courts to the public. They dramatized the human toll ... and toted up the costs to taxpayers ... exacted by New York's patchwork court system.

continued on page 12

Hugh R. Jones Memorial Lecture

The Hugh Jones Memorial Lecture honors Judge Hugh R. Jones, a former Associate Judge of the Court of Appeals, author of *Cogitations on Appellate Decision-Making*, and a stalwart leader in efforts to improve the courts. He served as Chair of the Commission on Judicial Nomination; Chair of the Temporary State Commission on Executive, Legislative and Judicial Compensation; Chair of the Select Committee on Correctional Institutions and Programs; President of the New York State Bar Association; and a director of the Committee for Modern Courts. The memorial lecture honors Judge Jones by promoting research and writing on issues affecting the judiciary.

- 2002 Richard C. Wesley, Associate Judge of the New York Court of Appeals
- 2003 Howard A. Levine, Associate Judge (ret.) of the New York Court of Appeals
- 2004 Stewart F. Hancock, Jr., Associate Judge (ret.) of the New York Court of Appeals
- 2005 Richard D. Simons, Associate Judge (ret.) of the New York Court of Appeals

As board member Howard Lindsay explained, "We often hear the phrase 'aroused citizenry' ... Modern Courts has tried to act as an arouser." And the citizenry, aroused, voted for reforms in 1961 that included the creation of a consolidated court specializing in family matters. In New York City, multiple courts were merged into two citywide courts, one for criminal and one for civil cases.

"Why should I, who have spent my entire life in the theatre, be interested in how the Courts of the State of New York are organized?"

Today, Modern Courts continues ... to do the research that points the way to true reforms ... to monitor what goes on in the courts ... and to put before the journalists, the legislators and, most important, the people of New York the compelling case for more efficient and more equitable administration of justice.

"For the same basic reason that you should – because we both believe in the inherent right of every man to justice without delay."

— Howard Lindsay, producer, author (with Russel Crouse, of the book for "The Sound of Music") and a founding director of Modern Courts.

MILESTONES

1993

Healy v. Cuomo alleges that the system used to elect NYC Civil Court judges violates the federal Voting Rights Act ... and cites statistics from Modern Courts' 1986 study, "The Illusion of Democracy."

1994

Modern Courts sponsors a forum on the Jury Project recommendations.

Modern Courts' forum, "Women and the Courts: Changes and Trends," explores issues affecting women – and offers Chief Judge Judith Kaye's view of the state of the judiciary.

1995

Jury Project proposes 80 reforms; Gov. George Pataki signs a law eliminating occupational exemptions; Chief Judge Kaye implements streamlined selection.

Fordham Law School Dean John D. Feerick becomes Modern Courts chair.

1996

Modern Courts sponsors public forums on Family Court throughout the state.

Gary S. Brown becomes executive director.



The Committee for Modern Courts published a leaflet reproducing clippings from the New York press in February 1955 (with this New York Daily News editorial cartoon by C. D. Batchelor on the front panel) "as its first step in an effort to speed up and improve the administration of justice in New York State." The clippings included reports on the City Bar Association's study "Bad Housekeeping – the Administration of the New York Courts," and editorials endorsing the creation of a Judicial Conference to supply the management the "\$40,000,000 business" of the courts was lacking.

Landmark Research

In addition to Citizen Court Monitoring reports (see page 4), Modern Courts sponsors studies, conferences and convenes expert panels to explore issues central to the administration of justice. The American Judicature Society recognized Dr. Milton L. Henry, Jr., Modern Courts executive director from 1981 to 1992, for the innovative research he carried out with the Elmo B. Hunter Award for Significant Achievement in Improving Judicial Selection. Henry's seminal research studies include:

- 1982 Judicial Elections in New York: Voter Participation and Campaign Financing of State Supreme Court Elections of 1978, 1979 and 1980
- 1984 Judicial Elections in New York: Voter Participation and Campaign Financing of State Supreme Court Elections of 1981, 1982 and 1983
- 1985 The Success of Women and Minorities in Achieving Judicial Office: The Selection Process
- 1986 The Illusion of Democracy: New York City Civil Court Elections
- 1986 Surrogate's Court Elections in New York State
- 1992 Characteristics of Elected versus Merit-Selected New York City Judges, 1977-1992

First Person *Dean John D. Feerick*



Currently holds the Sidney C. Norris Chair of Law in Public Service at Fordham University School of Law, where he was Dean from 1982 to 2002. Prior to that, he was a Partner at Skadden, Arps, Slate, Meagher & Flom. His public service includes terms as President of the Association of the Bar of the City of New York, President of the Citizens Union Foundation, Chair of the New York State Commission to Promote Public Confidence in the Judiciary, and **Chair of the Fund & the Committee for Modern Courts 1995 to 1999.**

MILESTONES

1997

Modern Courts lends volunteers to the State Bar Association's Ad Hoc Committee on the Jury System.

Modern Courts advocates a Fifth Department of the Appellate Division.

Modern Courts sponsors public forums on domestic violence.

1999

Modern Courts forms a task force to look into the role that receiverships play in the larger issue of judicial campaign financing.

Michael A. Cardozo, past president of the Association of the Bar of the City of New York, becomes chair of Modern Courts. Barbara Reed serves as executive director.

2000

Modern Courts takes over the Citizens Jury Project, a jurors' advocacy and ombuds program recommended by the 1995 Jury Project panel.

The court-monitoring project recruits volunteers from John Jay College of Criminal Justice.

Steven Zeidman becomes executive director. ▶

MY EARLIEST RECOLLECTIONS of the Fund are of Hank Henry's studies on the courts. This research was noteworthy because it was innovative, and because it was courageous in clearly expressing reform views on very difficult subjects, where many others were much more timid ...

I became dean of Fordham Law School in 1982 and so was invited to serve on the board of directors of the Fund. Then, from 1987 to 1990, I chaired the New York State Commission on Government Integrity. I remember our report drew heavily on the work of Modern Courts. Hank testified at hearings the Commission held.

The Fund was always a tremendous resource for the reform movement – for knowledge about the judiciary in New York State, for research studies on the courts, for informed testimony at hearings, and for a willingness to participate in the common effort. Everybody turned to the Fund for an understanding of the judicial system.

Then, in 1994, at the end of my term as president of the City Bar Association, I was asked by Fern Schair and Bob Kaufman to serve as chair and be part of new leadership that would also include Michael Cardozo as chairman of the executive committee and Gary Brown as executive director. Much of our conversation focused on the financial challenges the Fund faced at the time ... and that, in the end, decided me: The Fund was and is such an important institution, I felt that any of us who were asked to serve had an obligation to do so.

Beyond ensuring enough resources to do the great work that was being done, we concentrated on examining the scope and direction of our activities. There was a series of planning retreats that began with Michael and continued as Margaret Shaw took the chair of the executive committee. At about that time, Barbara Reed stepped in to serve as executive director.

We were looking to broaden our agenda beyond judicial selection, the issue with which the Fund had become most closely identified. Our expanded agenda included the compensation of judges, conditions in the courts, ways to make courts more accessible ... and we took an interest in the way

judicial elections are run, creating a task force to look at campaign financing.

We were also intent on increasing our presence throughout the state and on enlarging our base of involved citizens. This has always distinguished the Fund from other court reform groups; we were not just a lawyers' group.

As my tenure as chair came to an end, we began to consider taking on the jury project ... a decision that was made after Michael became the chair.

If we could have looked down from the heavens to take in the long-term evolution of the organization, I think we would have seen that we were moving the Fund's agenda well beyond the traditional focus and into new areas – not that we were abandoning merit selection, but there were many other things to be done in the service of our central mission, which is improving the courts.

Progress toward reform continues, thanks to Chief Judge Kaye. Good things are happening now that may not be as highly publicized as the constitutional amendments of '77, but are exceedingly important to strengthening the foundation of justice in New York. The pending recommendations on rules of judicial conduct and voter education on judicial candidates can enhance confidence in the entire system.

As to more contentious issues – independent screening panels, retention elections, campaign financing – that's difficult to forecast because, at the end of the day, it's going to take leadership from the other branches of government to make reform a reality. But, whether these reforms happen now or much later, it remains as important as ever that the Fund stay in the game.

Cy Vance remarked that groups like Modern Courts have an obligation to keep the important ideas alive. This is a philosophy that sustains me: Because the people before us did their job, and because we have done our job, we've kept the ideal of judicial excellence alive ... I believe we have made it possible for the people who come after us to take it all the way. •

First Person *Michael A. Cardozo*



New York City's Corporation Counsel was, prior to his appointment, a Senior Partner at Proskauer Rose. He is a Fellow of the American College of Trial Lawyers and a member of the American Law Institute, the Board of Trustees of the Lawyers Committee for Civil Rights Under Law, the Board of Visitors of Columbia Law School, and the Anti-Defamation League. He has been President of the New York City Bar Association, the Chair of two court system task forces appointed by Governor Mario Cuomo and Chief Judge Sol Wachtler, and **Chair of the Fund & the Committee for Modern Courts 1999 to 2002.**

MILESTONES

2002

Modern Courts and Albany Law School host the first annual Judge Hugh R. Jones Memorial Lecture; Richard C. Wesley, Associate Judge of the State Court of Appeals, is lecturer.

Fern Schair, past executive secretary of the Association of the Bar of the City of New York, becomes chair of Modern Courts. Ken Jockers is executive director.

2003

Modern Courts presents its first annual Cyrus R. Vance Tribute to New York State Attorney General Eliot J. Spitzer.

Modern Courts becomes a partner in Justice at Stake, a national effort to address the impact of politics on courts.

Modern Courts outlines interim plan for reforming judicial elections.

New York State increases fee rates for assigned counsel for the first time in 18 years.

2004

Chief Judge Kaye releases the report of the panel on public confidence in judicial elections chaired by Dean Feerick.

Legislature passes the Judicial Qualification Act and the Judicial Campaign Finance Reform Act.

ONE OF THE FIRST THINGS Hugh Carey did after he was elected governor was to ask Cy Vance to chair a task force on court reform. Vance, in turn, asked me to serve as his counsel on the task force. (This was early in my career, but I had been active on court reform at the City Bar Association.)

It was in the course of my work for the Vance task force that I first came to know Modern Courts. (I also met both Victor Kovner and Fern Schair, with whom I've worked on Modern Courts for many years.) We wanted to enlist Modern Courts' support and we wanted their thoughts on court reform as we wrote our report ... which ultimately led to the three judicial reform amendments to the state constitution adopted in 1977.

That was the zenith of the court reform effort in modern times. Why was reform successful then? And why can't we recreate that success?

Leadership was critical: Hugh Carey was committed to court reform – some credit for that must go to his counsel, Judah Gribetz, and, of course, to his relationship with Cy Vance. Charles Breitel, Chief Justice of the Court of Appeals, was deeply committed. Bernie Gordon was chair of the Senate Judiciary Committee. Si Rifkind, senior partner at Paul Weiss and a force himself, led the fundraising effort that supported the voter campaign. David Rockefeller and the group we know today as the New York City Partnership brought the business community in ... So it was a time when New York's stars aligned.

I will always remember the special session of the legislature called by Governor Carey in July '76 to obtain second passage of the amendments, placing them on the ballot. It was a moment of high drama ... you could say I was hooked from then on ...

I was invited to join the Modern Courts board in 1977. We tried to build on the momentum of the '77 victory, turning our attention to the merger of the trial courts as the next key reform – as well as extending merit selection beyond the Court of Appeals. I recall spending days in Albany drafting amendments to implement court merger. Much of the leadership was still in place – although we lost Cy Vance to Washington – but we couldn't repeat

our success in the legislature. Perhaps there is only so much reform you can achieve in any one time ...

We shifted our focus to how much we could achieve administratively, rather than by changing the constitution. We focused on continuing the public education effort. We sponsored Hank Henry's research into the effects of judicial elections on the courts. We kept laboring in the vineyard ...

I think, from the perspective of 30 years' experience, that Modern Courts was becoming more politically pragmatic ... not wanting to abandon merit selection, but also not wanting to overlook the many practical ways we could make incremental improvements ...

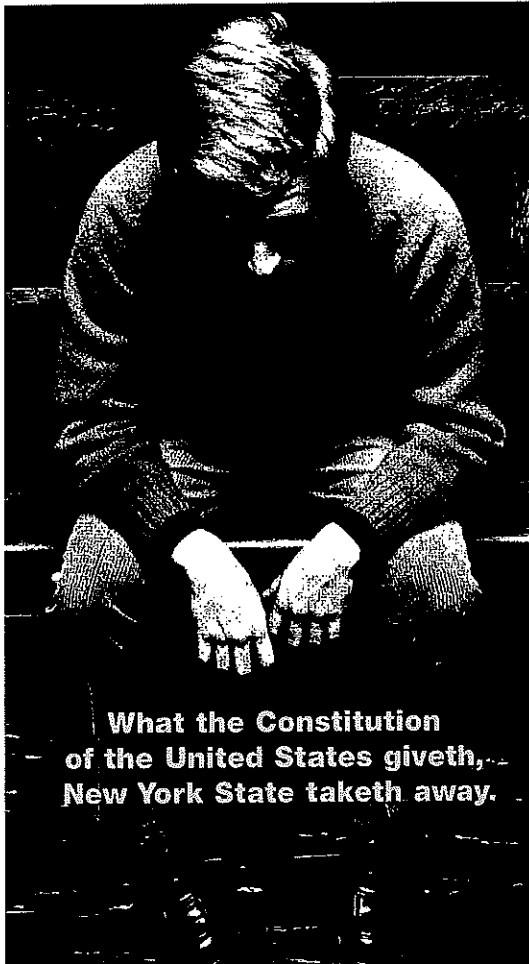
During my tenure as chair, Modern Courts decided to take on the administration of the Citizens Jury Project from the Vera Institute – the project that resulted from Chief Judge Kaye's jury reform work.

The project represents a reliable source of funding – important because we're always short of money. More important, it enables us to operate statewide, to do work that has an impact upstate as well as in New York City. The jury project also expanded Modern Court's role beyond advocacy and education to providing a public service – helping us to build new constituencies we can turn to for support when the stars align once again for legislative reform ...

If you could trace the careers of all the people – lawyers and non-lawyers – who have served on the group's boards and committees and panels, you would find Modern Courts' influence on reform has been pervasive.

One of the last things we did while I was chair was poll the candidates in the 2001 mayoral campaign on their positions on judicial merit selection ... and one of the first tasks that fell to me as corporation counsel was to draft Mayor Bloomberg's executive order on judicial selection. I think history will show Mayor Bloomberg's merit selection process and commitment to be among his greatest accomplishments as mayor. Certainly, they reflect the merit selection ideal that Modern Courts stands for. •

Since 1955 *Defining the agenda for court reform in New York*



**What the Constitution
of the United States giveth,
New York State taketh away.**

Modern Courts appealed to New Yorkers to secure the right to a speedy trial in their state by supporting judicial reform in this 1973 Daniel & Charles ad, part of a campaign that culminated in the 1977 constitutional amendments providing for the appointment of Appeals Court judges, a chief administrator of the courts, and the Commission on Judicial Conduct to handle judicial discipline.

In his 1968 Benjamin N. Cardozo Lecture before the Association of the Bar of the City of New York, Whitney North Seymour, Sr., called on the legal community to acknowledge that popular election of judges too often rewarded political fealty over professional competence ... and to rally the public in demanding a merit-based system that would more reliably put judges of Cardozo's caliber on the bench.

Seymour added that it was difficult to ask judges to criticize publicly the process by which they had been selected — yet their candid, disinterested judgment was essential to improve the courts and enhance the respect accorded their office.

“The administration of justice is far too important a task to be left to mediocrity. ...”

A director of Modern Courts, Seymour helped shape its strategy to “eliminate or minimize” politics in choosing judges. Modern Courts has sustained a decades-long effort, pragmatically welcoming the incremental reforms that mitigate political influence, keeping an eye on the ultimate goal of a patently impartial, highly-qualified judiciary. Thus Modern Courts continues to call for merit selection of judges statewide — while spelling out the changes that must be made in nominating and running candidates if public confidence in judicial elections is to be restored.

“Of course, able judges are often produced by the present system — but frankness would require recognition that this happens in spite of the system and not because of it.”

— Whitney North Seymour, Sr., senior partner, Simpson Thacher & Bartlett, served as president of the American Bar Association, Legal Aid Society, American Arbitration Association (among others) ... and a director of Modern Courts.

Modern Courts has documented the system's defects, producing seminal studies on judicial elections, including the landmark “Characteristics of Elected versus Merit-Selected New York City Judges” report by Dr. M.L. Henry, Jr., and is recognized today as the nonpartisan “watchdog” of New York's courts.

Finally, Modern Courts has enabled concerned members of the bar to take the case for court reform to their fellow citizens ... marshaling voters to approve amendments in 1961 and in 1977 ... mobilizing constituents to press for such legislation as the Court Facilities Act of 1987 and the Judicial Qualification Act of 2004 ... and forging the coalitions of lawyers and laymen that have proven most effective in achieving substantive judicial reform.

Victor A. Kovner

AGENDA 2005

Modern Courts advocates judicial selection on the basis of merit statewide as the best way to safeguard the selection process from the influence of money and politics.

Pending amendment of New York's constitution to institute judicial merit selection, Modern Courts will press for immediate reform of judicial elections — including making an independent panel's evaluation of qualifications a prerequisite for nomination; making a public finance system available to candidates; mandating full disclosure of campaign financing; publishing voters' guides to the candidates; and devising a system to promote ethical campaign conduct and monitor campaign practices.

Modern Courts supports the New York State Unified Court System proposal that the nine trial courts be consolidated into two, a Supreme Court and the Surrogate's Court. The Court of Claims, the County Court, the Family Court, and New York City's Civil and Criminal Courts would be merged into the Supreme Court. A Fifth Judicial Department would be created.

Modern Courts endorses legislative initiatives that would establish an independent New York State Public Defense Commission to manage distribution of state funding for and oversee provision of public defense services. A state financial assistance program would enable localities to provide public defense services.

Modern Courts supports restoring judicial discretion in sentencing drug defendants.



Partner at Davis, Wright, Tremaine, he was Corporation Counsel for the City of New York 1990-1991. His public service career also includes several terms as member of the New York City Mayor's Committee on the Judiciary, and as a member and later Chair of the New York State Commission on Judicial Conduct. He also served as a member of the New York State Commission on Public Access 2003-2004. He has been active with the Fund & the Committee for Modern Courts for more than three decades and has been Chair of Modern Courts executive committee since 2002. He is expected to become **Chair of the Fund & the Committee for Modern Courts** later this year.

IT WAS IN THE LATE SIXTIES that I first came to know the Fund and its positions ...

As a Democratic district leader in Manhattan then, I became familiar at very close range with the process of selection of the judiciary — and I was greatly troubled by what I saw. I became an advocate for change ... In 1970, my proposal to adopt a relatively rigorous process for screening judicial candidates was first approved by the Democratic Party in New York County. The following year, I left party office when I was first appointed by Mayor Lindsay to serve on the Mayor's Committee on the Judiciary ...

In 1974, Hugh L. Carey was elected governor ... I recall talking to Governor Carey about court reform — as others had — and he pursued it, to his great and lasting credit: Upon his election he formed a court reform task force. It was chaired by Cyrus Vance; and its counsel was Michael Cardozo. I was on the task force; as was Mario Cuomo, then a lawyer in Queens County; and Ruth Ginsberg, then a professor at Columbia Law School.

The Vance task force developed a series of proposals that were in large part embodied in the three court reform amendments to the New York State Constitution that were adopted in 1977. It was in connection with that effort that a number of us became actively involved in the Fund, which took the campaign for the three court amendments as a major project of its own. The passage of those amendments was a milestone in court reform history.

But we hadn't achieved merit selection across the board. We had a lot of work yet ahead. And, merit selection was by no means our only issue ...

For instance, we at the Fund studied court facilities throughout the state, supporting the work of the Court Facilities Review Board. This was always done on a statewide, 62-county basis — as indeed are all our court monitoring activities.

We've given a great deal of attention to the Family Courts. A number of the groups with which we work closely are concerned about conditions in the Family Courts. And, particularly in working for the court merger, we have found very broad support for merging the Family Court into the

Supreme Court.

My view is that we should also merge the civil, criminal, county, and surrogates' courts — but these are politically sensitive issues. Getting any change in the judicial system through the legislature is a challenge. Medicaid reform, issues affecting the gay community — these are almost easy compared to trying to improve the judiciary, because that's where the political parties are most involved, where they live. The parties are very dependent on their ability to determine who becomes a judge.

We were successful in the late seventies because of our leadership and because a series of scandals provided momentum for change. But only the seven seats on the Court of Appeals became subject to merit selection — and, while that was a victory we are proud of, we did not infringe too deeply upon the turf of the political parties.

We could be on the cusp of significant change again. Again, it comes in the wake of scandal. And, too, we have courageous leadership, this time from our Chief Judge, who appointed the Feerick Commission and has proposed rules that would provide for outside scrutiny of every candidate for judicial election. She has extended herself to produce change. The state and the judiciary are very fortunate to have her — that she is there is thanks to the merit selection system.

Modern Courts has always been part of a broad good government coalition. We have given our support to reforms sought by allied groups that affect the manner in which the courts serve the public such as reform of the Rockefeller Drug Laws, equal access to justice, legal aid for indigents, domestic violence issues. And these groups work with us. When we go to the legislature, we go with the support of the good-government coalition.

I believe it is vital to enlarge the coalition, to reach out to an even broader array of groups and explain how improving the administration of justice advances their goals. This will make us more effective in the legislature. There is an opportunity for reform now — unfortunately in part because of scandals. But painful as scandals are to the system, they make people pay attention and press for change. •

2005 The Fund for Modern Courts & The Committee for Modern Courts

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*Modern Courts 50th anniversary commemorative
book underwritten by a generous grant from the
Robert M. Kaufman Fund at the New York Community Trust*

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