Reforming the Judiciary

By Richard Rifkin

This summary of the third Anderson program, held on April 30, 2019, was written by Richard Rifkin.

On April 30, the Anderson Breakfast program, presented by the Government Law Center, continued its 2019 series by offering a discussion of issues related to the possibility of reforming and restructuring the state court system. While this has been a topic of discussion and legislative advocacy for more than thirty years, the Chief Judge recently revived interest in the effort by raising the topic in her 2019 State of the Judiciary address. The Anderson program was in response to the renewed interest in attempting to achieve this goal.

The panelists for the program all had a long history of involvement in the cause for reform. Hon. Fern Fisher had been the Deputy Chief Administrative Judge for the New York City Courts, presiding over the workings of those courts. She brought with her an extensive knowledge of day to day court operations. Stephen Younger, an Albany Law School graduate, is a partner in the New York City law firm of Patterson Belknap Webb & Tyler. During the discussion, he mentioned his early involvement in the reform efforts, going back to the 1970s. Alan Rothstein was former General Counsel of the New York City Bar Association, and, he too, has had a long history in reform efforts.

The discussion opened by considering a reform proposal issued in 2007 by a “Special Commission on the Future of the New York State Courts” headed by Carey Dunne. This was the latest proposal over the many years of consideration of the topic. The Commission recommended a two-tier court system, with a Supreme Court consisting of the current Supreme Court, the Court of Claims, the Family Court, the Surrogate’s Court and the County Court. A lower-tiered District Court would consist of the New York City Criminal and Civil Courts, the Nassau and Suffolk County District Courts and the City Courts outside the City of New York.

All of the panelists supported this proposal, as it has brought together most of those who are supporting court reform. Basically, there was a sense that it would bring a semblance of organization to what is now the most convoluted court structure in the country. However, no one said that this was a perfect proposal. For example, Judge Fisher wondered why only the counties of Nassau and Suffolk have district courts, both of
which would be continued by becoming part of the new lower-tiered court.

One question considered by the panel was whether there was a real difference between separate courts and one court with separate divisions as proposed by the Dunne Commission. That Commission had proposed that the Supreme Court have Family, Commercial, State Claims, Criminal, Probate and General Divisions. Mr. Younger noted that under the current structure, some cases had to be heard in multiple courts. For example, he pointed out that a case involving family violence might require a divorce proceeding in Supreme Court, an order of protection in the Family Court and a criminal proceeding in the Criminal Court. With the proposed merger, all of those matters could be heard in the same court.

The panel then discussed concerns about whether merger would find judges in courts where they did not have expertise. Judge Fisher said that she did not think that judges had to hear cases only in areas where they had prior experience. She believed judges are capable of learning about new areas of law. Mr. Rothstein noted that federal court judges hear cases as they are assigned without any division of expertise among the judges.

The cost of restructuring was then considered. While it was noted that some judges would be paid higher salaries by moving up to the level of Supreme Court judges, all of the panelists believed that there would be savings in the long run. However, no specific analysis had been done.

It was then noted that the Dunne Commission had proposed “merger in place,” meaning the judges of the merged court would be selected in the manner in which they had previously been selected. The question was whether it was awkward to have some judges of the same court elected and others appointed, and, in case of appointment, by two different officials – the Governor and the Mayor of New York City. Judge Fisher agreed that it was awkward, but it was a practical necessity if restructuring were to pass. Mr. Rothstein noted that once merger had been accomplished, there might be an effort down the road to make the selection process uniform. He also noted that a litigant does not care how a judge hearing the case obtained his or her seat.

A related topic was the current constitutional limitation on the number of Supreme Court judges based on population. There was general agreement that this number should be based on the caseload handled by each of the courts rather than population.

The discussion next focused on the Appellate Division, where the Second Department today has a larger caseload than all of the other Departments combined. There was a sense that a fifth department was needed, but the drawing of the lines is a problem. In the end, the practical solution was to create a fifth department by constitutional amendment, leaving the drawing of the lines for each department to the legislative process.

Budgeting was the next issue discussed by the panel. The question was whether the judiciary, an independent branch of government, should be subject to the appropriation process by which the executive and legislative branches set the amounts available to the courts. Mr.
Younger said that he had looked into budgeting systems across the nation and, despite this legitimate concern, he could not find an alternative. Judge Fisher noted that the courts continue to suffer from a major budget cut imposed at the time of the 2008 financial crisis, now more than a decade old.

The panel concluded by examining the prospects of success in reforming the court system after the many failures to achieve this long sought objective. It was noted that the Chief Judge had revived significant interest in the initiative in her State of the Judiciary address and that a coalition was organizing to pursue a significant advocacy effort. Hearings on the topic are anticipated in the fall. However, Mr. Younger noted that the Supreme Court Judges Association remains a significant force in opposition to the Dunne Commission proposal.

It was clear by the conclusion of the program that the audience had been presented with a history of this important topic and the complexities of a subject that is likely to again receive considerable consideration in Albany and around the state.