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A Brief History of Justice: The Evolution of New York State's Family Court System



Produced by the Diane Abbey Law Center for Children and Families at New York Law School. Carlin Meyer, Director of the Abbey Law Center; Genevieve Wachtell, Associate Director of the Abbey Law Center; and Kathryn Gottschalk, C. E. Baker Fellow.

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Anthony W. Crowell, Dean and President, New York Law School; Merril Sobie, Pace University School of Law; Richard Spolzino, Counsel to the Honorable Edwina G. Richardson-Mendelson, Administrative Judge, New York City Family Court; the NYLS Marketing and Communications team; Meredith Kelly, NYLS Class of 2012; Taneem Kabir, NYLS Class of 2012; and Reem Abdou. We dedicate this history to the many unsung judges, court attorneys, court officers, and personnel who have labored hard to create and improve the family courts over these past 50 years. Though we cannot mention all of them by name, we owe all of them a debt of gratitude. Without their hard work, none of this history would have taken place.



The House of Refuge is established in New York.

The New York House of Refuge was the first juvenile reformatory in the nation. In 1824, the legislature passed a statute authorizing courts to commit juveniles and vagrants to the New York House of Refuge. Although it was privately managed, the State was involved in organizing, funding, establishing commitment procedures, and developing treatment programs. The reformatory opened on January 1, 1825, with six boys and three girls, and within 10 years saw more than 1,600 juvenile offenders admitted rather than sent to jail.

1824



1850s

30,000 homeless children in New York City spark the Orphan Train Movement, the first practice of modern-day foster care.

An estimated 200,000 orphaned, abandoned, and homeless children from ages 6 to 18 were put on trains bound for the western states. Two charity institutions, The Children's Aid Society and The New York Foundling Hospital, believed that there might be a way to change the future of the most destitute children of New York City. The children were placed in homes for free but expected to serve as an extra pair of hands on the farm. This period of mass relocation of children in the United States is widely recognized as the beginning of documented foster care in America. Cultural shifts in the United States contribute to the creation of the juvenile justice system.

Late 1800s

Prior to the Industrial Revolution, children were seen as young adults. However, as the nation's economy shifted from agriculture to industry, the traditional pattern of achieving independence via employment and marriage in the teen years was no longer the norm. As European and American economies started to demand more educated workers, education became important to long-term financial success. Teenagers were expected to prolong their childhood by remaining economically dependent on their parents and attending school. Additionally, child labor laws started to protect the idea of childhood as a unique stage of life and human development. Youth-centered policies, advocated for by the Progressive Movement of the late 1800s and early 1900s, followed these changes, including child labor laws, compulsory school attendance, and the establishment of the juvenile courts.

Illinois creates the first Juvenile Court.

Illinois established the first Juvenile Court, which had jurisdiction over neglected, dependent, and delinquent children under the age of 16.

1901

"The child who must be brought into court should, of course, be made to know that he is face to face with the power of the State, but he should at the same time, and more emphatically, be made to feel that he is the object of its care and solicitude. The ordinary trappings of the courtroom are out of place in such hearings..."

> —Judge Julian Mack, Founder, First Juvenile Court

1902

The Children's Part is established within the New York Court of Special Sessions.

New York City was the first to establish the Children's Part within its Court of Special Sessions, known today as the Criminal Court. The idea of a dedicated court for children eventually spread to Buffalo and other urban areas around the state. Although the Children's Part only heard cases concerning minors, the Court was required to treat children in the same manner as adults. The Manhattan Children's Part was the first court in the country to have a dedicated children's building (originally located in the former Department of Public Charities Building on Third Avenue and 11th Street). Children's Courts are established across New York State.

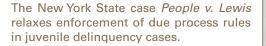
The new Children's Courts were analogous to Manhattan's Children's Part, but the Courts as a whole had no consistent statewide law establishing jurisdiction, procedure, or venue. Children's Courts were established in each county of the state, except Richmond, Chautauqua, Monroe, and Ontario.

1922

"The fundamental idea of the Juvenile Court Law is that the State must step in and exercise guardianship over a child found under such adverse social or individual conditions as develop crime . . . It proposes a plan whereby he may be treated, not as a criminal . . . but as a ward of the State, to receive practically the care, custody, and discipline that are accorded the neglected and dependent child, and which, as the Act states, 'shall approximate as nearly as may be that which should be given by its parents.'"

—The stated goal of the new interest in juvenile justice, New York State Council on the Arts





1932

The New York Court of Appeals acknowledged for the first time that there was a difference between adult and juvenile delinquency cases, which cited "the social purpose for which the Children's Court was created" and endorsed a less strict adherence to the rules of criminal procedure for juvenile cases.



Justine Wise Polier is appointed to Domestic Relations Court as the first woman justice in New York State.

1935

Justice Polier was deeply involved in combating de facto segregation in the New York school system, worked to broaden services to troubled children, and spent her retirement monitoring national juvenile detention policies for the Children's Defense Fund. A leader and recognized authority in the field of juvenile justice and children's rights, she fought strenuously for an improved Family Court. Asked how she possibly could have endured years of witnessing the tragedies of children who came before her in her courtroom, she answered, "I tell myself each time that I am trying to do the best that can be done for this one child in front of me now. And then, starting after court, I try to do what I can for the others like him."



NewYork Mayor Fiorello La Guardia appoints 31-year-old Jane Bolin as a judge of the New York Domestic Relations Court.

1939

Judge Bolin was the first African American woman to serve as a judge in the United States, as well as the first African American woman to graduate from Yale Law School, to join the New York City Bar Association, and to work for the New York City Law Department. An activist for children's rights and education, she also served on the boards of the NAACP, the Child Welfare League, and the National Urban League. Numerous actors recommend the establishment of a family court to handle cases involving juvenile/youth and family issues.

The Mayor's Committee on the Courts was appointed in 1956, and a Family Court was established in 1962 as part of a broader revision of the court system. The reform effort included the Association of the Bar of New York City, the Mayor's Committee on the Courts, and private citizens like Laurence Rockefeller, who funded a two-year study of the existing system and alternatives.

1950s-1962



The New York State Legislature enacts the Family Court Act.

This Act was the first major restructuring of the New York State Court System in almost a century resulting in a new, cohesive Family Court system, with a Family Court in each county in New York State. The Act gave authority to the Family Court in cases of neglect, support, paternity, adoption, juvenile and family offenses, conciliation proceedings, and disabled children's cases, as well as jurisdiction over child custody cases.

1962

Judge Florence Kelley becomes the first Administrative Judge for the NewYork City Family Court.

Judge Kelley advocated for the legal rights of the poor, working tirelessly to establish a minimum wage and eighthour workday. As a children's rights supporter, she also fought to make it illegal for youth under the age of 14 to work and to limit the work hours of children under 16. She sought to give children the right to education, arguing that children must be nurtured to be intelligent people. Judge Kelley presided over the notoriously overworked court during an era of major reforms.



1966

In *Kent v. United States,* the U.S. Supreme Court holds that juveniles can be waived into Criminal Court and receive the death penalty.

The Court held that, prior to being moved into Criminal Court, a juvenile defendant was entitled to a hearing, representation by counsel, and a justification for the decision to grant a waiver. The Court also laid out a number of factors the juvenile court judge had to consider when making the decision to grant a waiver, including the seriousness of offense, the manner in which the offense was committed, the sophistication and maturity of the juvenile, and the juvenile's record.

In *In re Gault*, the U.S. Supreme Court establishes minimum due process requirements for juvenile proceedings, taking a step toward stronger criminal procedure protections for juvenile offenders.

1967

Fifteen-year-old Gault was on probation in Arizona for a minor offense when he made an obscene telephone call to a neighbor and was arrested. The Arizona Supreme Court held that Gault was a juvenile delinquent and ordered him held in juvenile detention until he was 21. The U.S. Supreme Court concluded that Arizona had violated Gault's due process rights by denying him his right to liberty without a fair trial. The case held that the fundamental right to due process guaranteed that a juvenile be given adequate notice of the charges against him, the right to counsel and to confront and cross-examine witnesses, and the privilege against self-incrimination, noting that "under our Constitution the condition of being a boy does not justify a kangaroo court."

1970

lesser standard.



In *In re Winship*, the U.S. Supreme Court

holds that in criminal cases, a strict

"reasonable-doubt" standard must be

"preponderance of the evidence," despite acknowledging

that the evidence did not make him guilty beyond a

reasonable doubt. The Supreme Court held that Winship's

right to due process had been violated by the use of the

applied to both adults and juveniles. Twelve-year-old Winship was charged as a juvenile delinquent after stealing \$112 (an act that would have been charged as larceny had he been an adult). The Family Court judge held that Winship was a delinquent by a In *McKeiver v. Pennsylvania*, the U.S. Supreme Court holds that juveniles are not entitled to a jury trial in a juvenile court proceeding.



1971

"The applicable due process standard in juvenile proceedings is fundamental fairness, as developed by In re Gault and In re Winship, which emphasized fact-finding procedures, but in our legal system the jury is not a necessary component of accurate factfinding. . . . Compelling a jury trial might remake the proceeding into a fully adversary process and effectively end the idealistic prospect of an intimate informal protective proceeding."

—Justice Harry Blackmun, writing for the Court

Congress passes the Juvenile Justice and Delinquency Prevention Act.

The Act requires states to remove from correctional facilities and adult jails juveniles who have committed non-criminal offenses. The Act was intended to encourage the development of community-based alternatives to these types of facilities.

1974

Joseph B. Williams is named Administrative Judge for the New York City Family Court.

Judge Williams had previously served as the Administrative Judge for the Criminal Courts and on the New York State Supreme Court's Appellate Team. While at the Family Courts, Judge Williams presided in a court in each borough every month and took judges on weekend "consciousnessraising" tours of the city's poor areas and struggling service agencies.

The New York State Legislature enacts the Juvenile Justice Reform Act.

The Act was principally concerned with creating a new method for handling seriously violent juvenile offenders. It created a new class of juvenile crime defined as acts committed by 14 or 15-year-olds which, if done by an adult, would be first degree murder, kidnapping, arson, assault, manslaughter, rape, or sodomy. The Act increased the dispositional powers of the judge in these cases, extending the maximum sentence from 18 months to a possible five-year sentence, and explicitly required the court to consider the need for protecting the community as well as the best interests of the juvenile.

1976

The New York State Legislature enacts the Unified Court Budget Act.

The Act provided for full state financing of the New York Court System, except for town and village courts, making New York's courts supported by state dollars. By enacting the Unified Court Budget Act, the Legislature demonstrated its recognition that real economies could be achieved by placing funding responsibility on the state. With complete state funding, local officials could no longer argue that they should have administrative control of the courts on the basis that they were locally-funded institutions, and their judges had a paramount duty to serve the constituencies paying them. The New York State Legislature passes the Juvenile Offender Act of 1978 in response to the crimes of 15-year-old Willie Bosket.

Bosket was tried and convicted for two murders in New York City's Family Court, where he was sentenced to a maximum of five years (until he reached the age of 21) in a state youth facility. Bosket's short sentence caused public outrage and led the New York State Legislature, in a special legislative session, to pass the 1978 Act. Under this Act, significantly harsher penalties became available to judges—children as young as 13 could now be sentenced as adults and face lifetime imprisonment.

1978

Congress enacts the Indian Child Welfare Act.

The Indian Child Welfare Act (ICWA) gave tribal governments a strong voice in child custody proceedings involving American Indian children by allocating to tribes exclusive jurisdiction over cases in which the child resided or was domiciled on the reservation, or the child was a member or ward of the tribe. ICWA also gave concurrent, but presumptive, jurisdiction over non-reservation Native American children in foster care placement proceedings. As a result, New York's Family Courts, which must determine jurisdiction whenever tribal connection is a possibility, remain heavily impacted by this legislation. Judge Edith Miller is appointed Administrative Judge for the New York City Family Court.

1982

Judge Miller helped to change New York State law so that a juvenile offender of 14 or 15 who is criminally responsible for any of 14 different crimes or a 13-year-old who is criminally responsible for acts constituting second degree murder could be tried as adults. Judge Miller later became the first woman to be appointed to the Appellate Term of the New York State Supreme Court.

1984

Family Court.

In *Schall v. Martin*, the U.S. Supreme Court holds that the preventative detention of juveniles is legal under the U.S. Constitution.

Judge Richard D. Huttner is appointed

Administrative Judge for the New York City

Judge Huttner believed that presiding over Family Court

cases was valuable training for all judges, stating that "all

judges should serve in the Family Court for at least one

year" because they would learn to be "guick" and to cope

with a court that was "very busy and emotional."

The Court's ruling freed judges who believed a youth to be at risk of committing a serious crime to hold the child without bail until trial; a stark contrast with the requirement that bail be set for nearly all adult criminal defendants. *Wilder v. Bernstein,* brought by the American Civil Liberties Union together with its New York Chapter, results in the issuance of the "Wilder Decree," mandating a widespread reform of New York City's foster care system.

The Wilder Decree established procedures aimed at eliminating discrimination within the foster care system, required professional evaluations of children upon entry into the foster care system, and required the rational placement of children on a first-come, first-served basis. It also created a system for ranking the quality of NYC foster care agencies.

1986

Judge Kathryn MacDonald is appointed Administrative Judge for the New York City Family Court.

Judge MacDonald, a champion of both children's and women's rights, served, among other roles, as head of the New York Judicial Committee on Women in Courts. In that position, she instituted sensitivity training for judges and several other programs aimed at reducing gender bias throughout the entire court system. During her tenure, Judge MacDonald tried to improve the court system despite an increasing number of cases and budget cuts. She held the title of Administrative Judge until she retired in 1995. The Office of Court Administration promulgates new standards, and the Court Rules are amended to increase access to Family Court proceedings.

In response to public concerns about the secrecy of Family Court proceedings, and pursuant to the new amendments, the New York City Family Courts establish new rules on public access. These rules require that members of the public have access to courtrooms, lobbies, public waiting areas, and other common areas of the court, with the exception that "a judge may exclude the public on a case-by-case basis only, based upon supporting evidence, considering factors such as privacy interests and protecting litigants from harm."

1986



In response to the Federal Child Support Enforcement Amendments of 1984, the New York State Legislature enacts the Child Support Standards Act, creating uniform guidelines for child support.

1989

The new Act requires that basic child support owed by a non-custodial parent be determined by applying percentages to the combined income of the parents and then distributing the child support obligation between the parents in proportion to each parent's share of the combined income. Additional amounts for special educational, childcare, medical, and other expenses are also presumptively shared. Before 1989, awards of child support were entirely at the court's discretion.



Judith Kaye is appointed Chief Judge of the New York Court of Appeals.

1993

The first woman to occupy the state judiciary's highest office, Judith Kaye helped establish the Center for Court Innovation, a nonprofit think tank that, although independent of the court system, serves as the judiciary's research and development arm. Under Judge Kaye's leadership, New York became a national leader in court reform efforts. Judge Kaye also helped to establish specialized courts focusing on drug addiction, domestic violence, and mental health issues, and created the Adoption Now program, which has produced more effective procedures for children in foster care and their families.

Michael Gage is named Administrative Judge for the New York City Family Court.

1995

During her tenure, the Family Court underwent momentous change. Judge Gage played a vital role in steering the court smoothly through this period and developing the court system's Family Justice initiatives.

Chief Judge Judith Kaye and Chief Administrative Judge Jonathan Lippman reinforce the Family Court's open-door policy.

In response to continuing criticism about a lack of transparency in the courts, rules were issued to reinforce those issued in 1986 to better ensure public and media access to Family Court proceedings.

"It is vital that the public have a good understanding of the Court and confidence in the court process."

—Judge Judith Kaye

1997

Federal District Court approves the settlement of the class-action lawsuit in *Marisol A. v. Giuliani.*

Following a New York Supreme Court ruling that a child's constitutional right to protection from harm includes harm that can result from unnecessary separation from parents and extended stays in foster care, the Federal Court endorsed a sweeping settlement that superseded the Wilder Decree and provided for new oversight and reform of the foster care system. *Marisol* was brought in 1995 by the Children's Center on behalf of 11 children, all of whom suffered severe abuse and neglect while in the foster care system.



The Unified Court System develops the Family Justice Program to offer "a comprehensive, forward-looking strategy to address the family justice issues."

1998

As one of its first initiatives, the Family Justice Program recommended the creation of four specialized divisions of the Family Court. Praised by Chief Administrative Judge Lippman as the "most sweeping structural change in the court since its creation," the new divisions included the Child Protective and Permanency Planning Division (including Family Drug Treatment Court), Juvenile Delinquency and Persons in Need of Supervision (PINS) Division, Domestic Violence and Custody Division, and the Mediation Services Project Support and Paternity Division. Judge Joseph Lauria is named Administrative Judge for the New York City Family Court.

Prior to his appointment, Judge Lauria served as Supervising Judge of Kings and Richmond Counties, practiced family and criminal law, and served as Chief of Training for the Queens District Attorney's Office.

1999



In Nicholson v. Scoppetta, Judge Judith Kaye authors an opinion by the New York Court of Appeals agreeing with a U.S. District Court's 2002 holding that the government "may not penalize a mother, not otherwise unfit, who is battered by her partner, by separating her from her children; nor may children be separated from the mother, in effect visiting upon them the sins of their mother's batterer."

2003

The Court of Appeals emphasized that to find neglect, courts must find that a parent failed to provide the "*minimum* degree of care'—not maximum, not best, not ideal." They also concluded that the "failure must be actual, not threatened," and rejected the view that a child should be presumed harmed from witnessing domestic abuse. This ruling applies across the board, not simply in cases of domestic violence, and affects every area of the Family Court System that deals with issues of abuse and neglect. In *Roper v. Simmons,* the U.S. Supreme Court holds that the execution of minors is "cruel and unusual punishment."

2005

Seventeen-year-old Christopher Simmons was sentenced to death in 1992. A series of appeals lasted until 2002, but each was rejected. In holding the death penalty for juveniles to violate the Eighth Amendment to the Constitution, Justice Anthony Kennedy, writing for the majority, said:

"Retribution is not proportional if the law's most severe penalty is imposed on one whose culpability or blameworthiness is diminished, to a substantial degree, by reason of youth and immaturity."

Four justices dissented. Because New York State's death penalty statute was declared unconstitutional in 2004 by the New York Court of Appeals, and the New York Legislature declined to enact a new statute, the *Roper* decision had (and has) no direct impact on the Family Courts.



The New York City Family Court establishes a Volunteer Attorney Program.

Implemented in Kings County (and later expanded to New York, Bronx, and Queens Counties), the program provides the unrepresented an opportunity to consult with a volunteer pro bono attorney. Volunteer attorneys help litigants understand issues related to child support, paternity, custody, visitation, guardianship, and orders of protection, so that the unrepresented may more effectively represent themselves.

2006

Congress enacts the Child and Family Services Improvement Act of 2006.

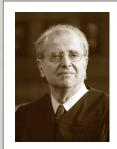
Due to growing national concern about the number of children who remain in foster care for too long, Congress amended the Adoption and Safe Families Act of 1997 to promote speedy action in establishing permanent homes for children in foster care. The Act encourages child welfare agencies to pay increased attention to children's health and safety and need for permanent families, and requires courts to hold permanency hearings and make permanent placements within specified time periods. Much of this burden falls upon the Family Courts.



Judge Edwina Richardson-Mendelson is appointed Administrative Judge for the New York Family Court.

2009

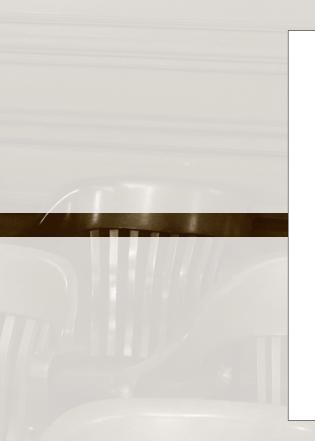
Judge Richardson-Mendelson's background at Sanctuary for Families, as an 18B attorney and as a court referee, judge, and administrative judge, admirably suited her to lead the largest Family Court. Judge Richardson-Mendelson has advocated for increased resources, pioneered an important initiative to examine and redress the disproportionate representation of minorities in Family Court, and promoted training initiatives for judges, court attorneys, and others.



Jonathan Lippman is appointed Chief Judge of the New York Court of Appeals.

2009

Judge Lippman, active in the New York judiciary since 1989, made many contributions to the system, which led to his selection as Chief Judge of the Court of Appeals. In 2012, Judge Lippman established a requirement that the approximately 10,000 lawyers who apply to the New York State Bar each year must perform 50 hours of pro bono work before admission, thereby providing about a half-million hours of legal services to those in need. In the three years since his appointment, Judge Lippman has made New York a national model and been praised by the legal community for addressing the justice gap, allocating millions of dollars from the courts' administrative budget for free legal services, and making it easier for retired lawyers to take pro bono cases.



2012 marks the 50th anniversary of the New York State Family Court. In 1962, with the passage of the Family Court Act, the New York State Legislature brought together under one unified roof the Children's Courts and enacted most of the due process protections that would later be required by the United States Supreme Court. Since the Act's passage, the Family Court system has helped thousands of NewYork citizens in matters related to neglect, child support, paternity, adoption, juvenile and family offenses, and disabled children's cases.

New Yorkers are justly proud of the path-breaking achievements of our Family Courts. In many areas, our courts have led the nation. Nonetheless, faced with the task of handling nearly five million civil cases each year, there remains much to be done, and New York's Family Courts continue to be a work in progress. We salute the commitment of its leaders to another 50 years of innovation and reform!



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