

CHIEF JUSTICE HUGHES AND THE UNIFICATION OF THE COURTS

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Richard J. Hughes testified in person on March 25, 1977, as Chief Justice of the New Jersey Supreme Court and former Governor of New Jersey from 1961–1970, before the Assembly Judiciary, Law, Public Safety and Defense Committee, calling upon the Legislature to adopt Assembly Concurrent Resolution (ACR) 41 or 66 (1977). These Resolutions provided, as the Chief Justice then stated, for the “merger of the County Courts into the Superior Court system.”¹

In this address, he placed the prestige of his office in the balance. He spoke, as no other Chief Justice has spoken to a legislative body: “I intend to fight . . . whether it involves confrontation with a political effort”² No other man in New Jersey has been both Governor and Chief Justice.

Among other things, the Chief Justice said:

Before the people of New Jersey [was laid in 1947] a choice between the antiquated and overborne court system we had under the 1844 Constitution, and that modernized and efficient judicial system created by the 1947 Constitution.

After many years of effort which began even in the last century, the constitutional voice of the people of New Jersey, at long last, by adopting that 1947 Constitution, created a modern and flexible court system. To this day, that system stands unrivaled among the nation’s jurisdictions. Administrators and judges come to New Jersey from as far away as Japan to find out how our court

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¹ *Public Hearing Before the Assembly Judiciary, Law, Public Safety and Defense Comm. on Assembly Concurrent Resolutions 41 & 66 (Proposed Constitutional Amendments to Merge the Superior Court and the County Courts)*, Mar. 25, 1977, held at the Bergen County Court House, Hackensack, New Jersey [hereinafter cited as *Public Hearing on Assembly Concurrent Resolutions 41 & 66*].

The Chief Justice stated:

The general purposes of unification are to eliminate overlapping and fragmented jurisdictions, to increase judicial efficiency and economy, and to afford equality for all full-time state court trial judges

Id. at 4.

² *Id.* at 5.

system works. It is totally non-political and independent, and that is the way, of course, it should always stay.³

The Chief Justice in his address to the Assembly Committee, referred to the "separate operation and financing of the County Courts, . . . [and their] splintered financing and somewhat fragmented administration" in the counties and through the Administrative Office at Trenton.⁴

He observed incidentally that dollar-wise the people of New Jersey stood to benefit by the proposed merger, notwithstanding that the state's budget was thereby increased; for the counties saved much more, namely, \$5,300,000.⁵

The Chief Justice, sensitive to the political practicalities of the situation, agreed that the Concurrent Resolution should provide that at least two superior court judges be assigned to sit in each county who were resident therein at the time of appointment and reappointment. This sounded like a political concession, but it was not a major concession, for there were at that time two county judges in every county but Salem County.

ACR 66 (1977) was amended and passed the Assembly. However, it died in the Senate. But the Chief Justice did not give up. ACR 38 was introduced in 1978, copied from the amended ACR 66 (1977), and the Chief Justice strongly urged its adoption at the hearing of the Assembly Judiciary Committee on March 29, 1978. Moreover, he solicited the League of Women Voters and many others to enlist in the campaign for the adoption of the constitutional amendment. He personally spoke on its behalf before the General Council of the New Jersey State Bar Association, several County Bar Associations, the New Jersey Press Association, the New Jersey Taxpayers Association and other groups.

³ *Id.* at 2. The Chief Justice further noted that the public unambiguously made their intention clear by adopting the 1947 Constitution "by a vote of three and one-half to one, 653,096 votes to 184,632, which was then an almost unprecedented majority for the approval of any public question or the election of any statewide candidate for office." *Id.* at 3. About the problems with the 1844 court system, which was abandoned as a result of the vote, the Chief Justice commented that it "had become a hydra-headed monster of confusion for litigants and lawyers," that the court distinctions were "ambiguous," and that as a consequence, "[i]t was not uncommon to have to wait two to four years for a decision" *Id.*

⁴ *Id.* at 4. As an example, it was explained that the state provided "supporting staff and accommodations for the Supreme Court and the Appellate and Chancery Divisions of the Superior Court" while the counties provided the same services to the superior court law division, the county courts, county district courts, and the juvenile and domestic relations courts. *Id.*

⁵ *Id.* at 5.

His indefatigable efforts were rewarded. The constitutional amendment was adopted by the legislature and the electorate. It became a part of articles VI and XI of the New Jersey Constitution, effective December 12, 1978.⁶

Historically the movement for the unification of our courts stems from the efforts of Lord Selbourne, who sought the unification of the miscellaneous courts comprising the English Judicial System. These efforts led to the Judicature Act of 1873, in which the Supreme Court of Judicature supplanted pre-existing courts. It was divided into two branches, the High Court and the Court of Appeals. That system is in a way to be compared to the trial divisions and the appellate division of the Superior Court of New Jersey.

Roscoe Pound, then Dean of Harvard Law School, wrote a book, *Organization of Courts*, in which he strongly advocated the unification of the courts in the various states.⁷ In the interests of court unification, he was invited to present his views at the meeting of the New Jersey State Bar Association in Atlantic City in 1941. The feelings of the time were such, however, that the Senior Section of the Bar Association refused to put him on its program, and so he spoke before the Junior Section, with nearly all members of the Senior Section deserting its meeting to hear him. In his address, Dean Pound approved the amendments of the New Jersey Judicial Article.⁸ His plan for the unification of the courts was advanced by the Commission on Constitutional Revision, appointed by Governor Edison in 1941 and also by the constitution adopted by the legislature and defeated at the polls in 1944.

Then came the Constitutional Convention in 1947. Again Dean Pound was called upon. He spoke before the Committee on the Judiciary at the New Jersey Constitutional Convention in New Brunswick on July 1, 1947, on the unification of the courts.⁹

In his above mentioned address before the Assembly Judiciary Committee on March 25, 1977, Chief Justice Hughes quoted from Dean Pound's remarks at the Constitutional Convention in 1947: "There are so many demands pressing upon our state government for expenditures of public money that so costly a mechanism as the

⁶ The procedures for proposing and approving amendments to the New Jersey State Constitution are contained in article IX of the New Jersey Constitution.

⁷ R. POUND, *ORGANIZATION OF COURTS* (1940).

⁸ The text of Dean Pound's address "Organization of Courts" appears in 64 N.J.L.J. 239 (1941). The amendments to which Dean Pound refers appear in 64 N.J.L.J. 564 (1941).

⁹ IV STATE OF NEW JERSEY CONSTITUTIONAL CONVENTION (COMMITTEE ON THE JUDICIARY) at 100-20.

system of courts cannot justify needless and expensive duplication and archaic business methods."¹⁰

At the Constitutional Convention, Hudson County delegates rejected the Governor Driscoll-Vanderbilt proposal for court unification and enlisted the small county delegates in a plan to carve out of the proposed unified superior court a separate county court system. Marred by this defect, the New Jersey Judiciary Article remained unchanged from 1948 to 1978. Dean Pound, with a smile, pointed out that Lord Selbourne's efforts had met the same fate: the County Courts in England (also the House of Lords) were never made a part of the English unified court system.¹¹ Indeed, today there are more than 500 county courts in England and Wales, with a very narrow jurisdiction.

But the Chief Justice did not sit back after the adoption of the constitutional amendment by the electorate on November 7, 1978, integrating the county courts into the superior court. He immediately sought to establish a family part of the superior court. Such a part would handle not only the matrimonial business of the superior court, but the business of the juvenile and domestic relations courts established in the twenty-one counties.¹² They would be integrated into the family part of superior court.

The Chief Justice has stated that "many cogent reasons have been advanced for a unified state-wide court with jurisdiction over all facets of family life—a family court."¹³ A Committee of the Supreme Court consisting of Justice Morris Pashman, Chairman, and Justices Worrall F. Mountain and Sidney M. Schreiber has been appointed to consider court unification through a family court and also other problems relating to the matrimonial business of the courts.

Since the juvenile and domestic relations courts, unlike the county courts, are not constitutional courts, no constitutional amendment is needed here as was required for the merger of the county courts into the superior court. However, statutes are required. Such a merger will enable the administrative functions of these courts to be handled more efficiently—some aspects thereof in Trenton. More than that, the abolition of the juvenile and domestic relations courts would eliminate the overlapping jurisdiction of those courts with the

¹⁰ *Public Hearing on Assembly Concurrent Resolutions 41 & 66*, *supra* note 1, at 5.

¹¹ IV STATE OF NEW JERSEY CONSTITUTIONAL CONVENTION (COMMITTEE ON THE JUDICIARY) at 104-05.

¹² N.J. STAT. ANN. § 2A:4-3 (West 1952) authorizes the creation of the juvenile and domestic relations court in each county.

¹³ Newark Star Ledger, Dec. 19, 1978, at 15, col. 3.

superior court. The elimination of such an overlapping jurisdiction is one of the features of the unified court system adopted at the 1947 Constitutional Convention. The juvenile and domestic relations courts have jurisdiction concurrently with other courts over the support of wives and children, over matters involving domestic relations and welfare of children, the support and temporary custody of children and the domestic relation where the husband deserts his wife or child or forces either of them to leave their home because of his cruel and inhuman conduct.¹⁴

When Chief Justice Hughes was judge of the Mercer County Court from 1948 to 1952, he developed a deep interest in juvenile problems. In 1952 he became a superior court judge and Chairman of the Supreme Court's Committee on Juvenile and Domestic Relations Courts. That Committee through a two-year study produced recommendations that have become established procedure for the state's treatment of juvenile offenders.

Chief Justice Hughes has for many years been interested in establishing a family court, but for practical reasons he deferred the campaign for this project until the merger of the county and superior courts was accomplished. However, on November 22, 1978, he announced through the Acting Administrator Director, Judge Arthur J. Simpson, that "plans and court studies for the implementation of a Family Court are in process."¹⁵

There has already been established a tax court effective July 1, 1978, which will be a part of the court system taking the place of the Division of Tax Appeals, an administrative body which had only a part time judiciary.¹⁶ The judges of the new tax court will be full time judges, each serving a term of 7 years subject to assignment by the Chief Justice and subject to the rules adopted by the Supreme Court of New Jersey.¹⁷

Dean Pound felt very strongly that the unified court should also have a division comprising the courts, such as the county district courts, which have jurisdiction over causes of a lesser magnitude. As he said, the judges of those courts are closest to the people. Chief Justice Hughes holds the same view hoping to merge the county dis-

¹⁴ N.J. STAT. ANN. § 2A:4-18 (West 1952).

¹⁵ 102 N.J.L.J. 489 (1978).

¹⁶ An Act to establish a tax court and to provide for its powers, functions, judges and personnel and for certain transfers of jurisdiction and officers of the Division of Tax Appeals in the Treasury Department and Repealing R.S. 54:2-45, [1978] N.J. LAWS ch. 33, at 81 (to be codified at N.J. STAT. ANN. § 2A:3A-1 to -29 (West Cum. Supp. 1979-1980).

¹⁷ *Id.* at 82.

strict courts into the superior court as a division thereof. If that is accomplished, every judge in the state below the supreme court justices, will be a judge of the superior court, except the municipal court judges.

In addition to the above proposals for a reconstruction of our courts, Chief Justice Hughes has called upon the legislature "to abolish the present municipal court system." He has prepared a detailed 200-page brief for the Governor and the Attorney General explaining the reasons for making a change in the municipal court system. He stated that he feels that "the only answer is a system of regional courts with full-time judges, appointed at the state level, absolved from politics and away from the political stream."¹⁸

The *Journal of the American Judicature Society* once said in an editorial as to the New Jersey Court System prior to the 1947 Constitutional Convention, that it was "America's worst court system."¹⁹ But with the changes Chief Justice Hughes has brought about and proposes to make, New Jersey will have America's best court system.

¹⁸ Newark Star Ledger, Jan. 14, 1979, at 12, col. 8.

¹⁹ 31 J. AM. JUD. SOC'Y 131 (1948).