

## A LEGACY FOR NEW JERSEY

Mark A. Sullivan\*

The retirement of Associate Justice Worrall F. Mountain in June 1979, and that of Chief Justice Richard J. Hughes two months later in August 1979, will have a dramatic impact on the New Jersey Supreme Court and its reputation as one of the premier state courts of last resort in the country. It goes without saying that the direction in which the Court will move after these retirements will depend, to a large extent, on the judicial philosophy of their successors.

Chief Justice Hughes, appointed to that office in December 1973, has been a worthy successor to Arthur T. Vanderbilt and Joseph Weintraub.<sup>1</sup> In addition to being a former Governor of this State, he served for nearly ten years as a Superior Court Judge with extensive trial experience, Assignment Judge responsibility and Appellate Division exposure. Thus, he brought with him to the office of Chief Justice not only broad judicial background, but also proven executive and administrative abilities.

During his term as Chief Justice he has strengthened the avenues of communication with the Executive and Legislative branches of government without sacrificing, in any degree, the independence and integrity of the Judiciary. He is the only Chief Justice, in modern times at least, who was invited to and did deliver a State of the Judiciary Address to a joint session of the Senate and Assembly attended by the Governor and other high ranking State officials.<sup>2</sup>

On that historic occasion, Chief Justice Hughes spoke of a concept of which he has been keenly aware throughout his public life: the fundamental interdependence of each branch of our government. Though "each branch . . . is separate, and the powers of government are constitutionally divided among them," he advocated "cooperative communication" in order to meet the modern demands upon government.<sup>3</sup> Chief Justice Hughes' address on that twenty-first day of

---

\* Associate Justice, New Jersey Supreme Court.

<sup>1</sup> The tragic death of Chief Justice Pierre P. Garvin in October, 1973, after only six weeks in office, cut short a promising judicial career.

<sup>2</sup> 100 N.J.L.J. 1139 (1977). Appearing at the legislature's invitation, the Chief Justice noted that the purpose of the address was to offer "an account of [the Court's] stewardship of [the judicial] system," relate the "condition of its courts," highlight programs "for improvement in the administration of justice, and . . . outline . . . the resources necessary" for the implementation of these plans. *Id.*

<sup>3</sup> *Id.* Chief Justice Hughes indicated that each of the three departments of government are supportive of and complementary to one another. *Id.* Although recognizing the demonstration of

November in 1977 is certainly a bench mark in establishing that vital link between the Judicial branch and the Executive and Legislative branches of our state government.<sup>4</sup>

Another fundamental precept of the Chief Justice's view of the role of the Court was evident from his presentation that day. He clearly expressed the need to maintain "a court system effective to meet changing demands on the administration of justice."<sup>5</sup> And there is no doubt that he was sensitive to these changing demands. As he stated:

[T]he courts are confronted today with large new areas of judicial responsibility—environmental law, civil rights law, consumer law, product liability and malpractice law, prison rights cases—an almost endless list of new burdens thrust upon the courts, not so much by their own choice as by the converging pressures of this half of the 20th Century, in the context of the Constitutions under which we live.<sup>6</sup>

Chief Justice Hughes recognized that public confidence in the court system is an absolute necessity.<sup>7</sup> Under his auspices, therefore, the Supreme Court established an Advisory Committee on Judicial Conduct in 1974,<sup>8</sup> with retired Justice John J. Francis as the Chairman. The Committee's purpose is to review complaints of improper conduct made against judges and report its findings and recommendations to the Supreme Court. This Committee, made up in

---

respect accorded each branch by the others, the Chief Justice reminded the audience that the branches were not "watertight compartments." *Id.* Accordingly, "there should be no artificial barrier preventing communication among them in the public interest." *Id.*

<sup>4</sup> A pivotal factor in opening the lines of communication between the departments as noted by Chief Justice Hughes is a recognition and consideration of the "joint obligations to the people" required of each branch. *Id.* The Chief Justice asserted the importance of demonstrating a mutual commitment to "the administration of justice." *Id.* He continued: "This bridge of precise communication with the people will result in honest accountability, an indispensable key to good government and the administration of justice alike." *Id.*

<sup>5</sup> *Id.* Accordingly, Chief Justice Hughes urged "close communication and cooperation among all branches of government" in coping with the extensive demands on the court system. *Id.*

<sup>6</sup> *Id.* The genesis of this increased responsibility is the United States Supreme Court, New Jersey legislative and State Supreme Court initiatives. *Id.* As the Chief Justice indicated, the United States Supreme Court's "definition and enforcement of constitutional right," the legislature's delineation of new judicial duties, and the evaluation of New Jersey Supreme Court policy all contributed to the creation of a novel area of law. *Id.* Also burdensome, according to the Chief Justice, "is the modern phenomenon of criminal violence, pervasive, frightening, [and] unprecedented," which has resulted in a heightened demand for the quick "disposition of cases involving those who threaten the community." *Id.*

<sup>7</sup> *Id.* at 1140.

<sup>8</sup> N.J.R. 2:15.

part of lay members, provides a forum where these complaints can be heard and has helped to improve public trust in our court system.<sup>9</sup> In addition, during Chief Justice Hughes' tenure the Supreme Court has completely revised the handling of ethics complaints against attorneys.<sup>10</sup> Regional Ethics Committees have been established and procedures adopted to insure due process to both the complaining client and the attorney.<sup>11</sup> Lay persons have been added to the membership of each committee to strengthen public confidence in ethics committee work.

Perhaps the greatest accomplishment by Chief Justice Hughes was his sponsorship of the merger of the County Courts into the Superior Court. Arthur T. Vanderbilt had tried to accomplish this at the Constitutional Convention of 1947 as part of his concept of an integrated court system.<sup>12</sup> He failed, however, because parochial interests insisted on a constitutional "local" court even though it did not fit into the plan for unification. It took thirty years and a constitutional amendment to correct this anomaly. To accomplish it, the Governor, the Legislature and the Judiciary cooperated to the fullest extent. But it was Chief Justice Hughes' outspoken support of the measure before taxpayer groups and other interested bodies which really made this reform possible.

In fact, on March 25, 1977, he appeared before the Assembly Judiciary Committee to testify on behalf of the resolutions which eventually brought the needed constitutional amendment to a public vote.<sup>13</sup> He made it clear that a unified court system had been considered one of the essential ingredients for establishing a superior system of justice during the Constitutional Convention, the others being "flexibility, conservation of judicial power and responsibility."<sup>14</sup>

---

<sup>9</sup> 100 N.J.L.J. at 1140. As Chief Justice Hughes remarked: "It's work has been magnificent and has, we think, restored much public confidence in the ability of the courts to police and regularize their conduct and so deserve the confidence of the public." *Id.*

<sup>10</sup> See *id.* at 1141.

<sup>11</sup> Under the present system, a purported ethics violation is initially examined by a county ethics committee assisted by a Central Ethics Unit. *Id.* After a hearing, this local committee either presents the Supreme Court with its findings or dismisses the complaint. *Id.* If the committee recommends disciplinary action, the attorney charged with a violation is afforded an opportunity to present his argument at a hearing before the Supreme Court. *Id.* At the hearing's conclusion, "the Court may disbar, suspend or reprimand the attorney or dismiss the matter." *Id.*

<sup>12</sup> *Id.* at 1140; see IV STATE OF NEW JERSEY, CONSTITUTIONAL CONVENTION OF 1947, at 13 (remarks of Chief Justice-designate Arthur T. Vanderbilt).

<sup>13</sup> 100 N.J.L.J. 281 (1977).

<sup>14</sup> *Id.* at 291. This position was first articulated by Dean Roscoe Pound at the 1947 New Jersey Constitutional Convention. *Id.*

Chief Justice Hughes expressed his intention "to fight, as did [his] predecessors, for the integrity of that court system."<sup>15</sup> Now, due largely to his efforts, that battle to unify the courts has been won.

Despite the press of his administrative duties, Chief Justice Hughes found time to carry his share of opinion work. His writings reflect the firmness of his intellect and his strong commitment to judicial power as set forth in the New Jersey Constitution. He sought to avoid confrontation with the other co-equal branches of government, but did not hesitate to stand firm where he thought it necessary. For example, in the case of *Robinson v. Cahill*,<sup>16</sup> the Court was faced with a constitutional crisis.<sup>17</sup> In an earlier opinion, the Court had held the system of school financing in the State to be violative of the education clause of the New Jersey Constitution.<sup>18</sup> Subsequently, the Legislature was given a reasonable period in which to remedy this situation.<sup>19</sup> Action was not forthcoming from that branch of government, however, and the Court was petitioned for relief.<sup>20</sup> The Chief Justice stated the matter succinctly:

The Court has now come face to face with a constitutional exigency involving, on a level of plain, stark and unmistakable reality, the constitutional obligation of the Court to act. Having previously identified a profound violation of constitutional right, based upon default in a legislative obligation imposed by the organic law in the plainest of terms, we have more than once stayed our hand, with appropriate respect for the province of other Branches of government. In final alternative, we must now proceed to enforce the constitutional right involved.<sup>21</sup>

The sentiment of that passage is amplified later in the opinion, where the Chief Justice wrote:

This Court, as the designated last-resort guarantor of the Constitution's command, possesses and must use power equal to its responsibility. Sometimes, unavoidably incident thereto and in response to a constitutional mandate, the Court must act, even in a

---

<sup>15</sup> *Id.*

<sup>16</sup> 69 N.J. 133, 351 A.2d 713 (1975).

<sup>17</sup> *Id.* at 139, 351 A.2d at 716.

<sup>18</sup> *Robinson v. Cahill*, 62 N.J. 473, 303 A.2d 273 (1973).

<sup>19</sup> *Robinson v. Cahill*, 63 N.J. 196, 306 A.2d 65 (1973). Unwilling to "disturb the statutory scheme," the Supreme Court afforded the New Jersey legislature an opportunity to revamp the school financing system in accordance with the Court's decision. *Id.* at 198, 306 A.2d at 66. The Supreme Court, however, retained jurisdiction. *Id.*

<sup>20</sup> 69 N.J. at 143, 351 A.2d at 718.

<sup>21</sup> *Id.* at 139-40, 351 A.2d at 716 (footnote omitted).

sense seem to encroach, in areas otherwise reserved to other Branches of government. . . . And while the court does so, when it must, with restraint and even reluctance, there comes a time when no alternative remains. That time has now arrived.<sup>22</sup>

The Court then ordered that certain funds only be disbursed in accordance with specific statutes which the Court found would effect relief from the unconstitutional system.<sup>23</sup>

Another of Chief Justice Hughes' opinions, *In re Quinlan*,<sup>24</sup> attracted world-wide attention. That case, more than any other writing of the Chief Justice, shows his compassion and his understanding of the tragic problem faced by the Quinlan family. Confronted by conflicting moral, religious and ethical concepts, the *Quinlan* opinion sought to establish a rule of law which would protect individual rights and still permit family members, doctors and the hospital to cope with a tragic situation. Twenty-one year old Karen Quinlan, for reasons never fully determined, had stopped "breathing for at least two fifteen minute periods" and as a result had lapsed into a "chronic persistent vegetative state."<sup>25</sup> Her father sought to be appointed guardian of Karen's person with the authority to discontinue the extraordinary means of support which sustained his daughter's vital functions.<sup>26</sup> The Chief Justice framed the legal question as follows:

The litigation has to do, in final analysis, with her life,—its continuance or cessation,—and the responsibilities, rights and duties, with regard to any fateful decision concerning it, of her

---

<sup>22</sup> *Id.* at 154-55, 351 A.2d at 724.

<sup>23</sup> *Id.* at 155, 351 A.2d at 724. Specifically, the Court directed that those New Jersey officers involved with the collection and allocation of funds "appropriated by the legislature for local educational purposes for the" 1976-1977 school year be "enjoined from disbursing designated minimum support and save harmless funds . . . in accordance with existing laws." *Id.* Rather, the Chief Justice commanded these state officers "to distribute and disburse said funds in accordance with the incentive equalization aid formula of N.J.S.A. 18A:58-5, subd. b, 6.3." *Id.* The Supreme Court noted, however, that in the event the legislature acted in a "timely and constitutionally appropriate manner" to remedy the situation, the above directions would not apply. *Id.*

<sup>24</sup> 70 N.J. 10, 355 A.2d 647 (1976).

<sup>25</sup> 70 N.J. at 23-24, 355 A.2d at 653-54. This condition was defined by expert witness Dr. Fred Plum "as a 'subject who remains with the capacity to maintain the vegetative parts of neurological function but who . . . no longer has any cognitive function.'" *Id.* at 24, 355 A.2d at 654.

<sup>26</sup> *Id.* at 18, 355 A.2d at 651. Although the trial court had appointed Mr. Quinlan guardian of his daughter's property, it declined to name him guardian over Karen's person. *Id.* at 34, 355 A.2d at 670. The lower tribunal, instead, appointed a "stranger" to handle Karen's personal affairs. *Id.* at 18, 34, 355 A.2d at 651, 660.

family, her guardian, her doctors, the hospital, the State through its law enforcement authorities, and finally the courts of justice.<sup>27</sup>

Noting the importance of the issue before the Court, the Chief Justice continued to state:

The matter is of transcendent importance, involving questions related to the definition and existence of death; the prolongation of life through artificial means developed by medical technology undreamed of in past generations of the practice of the healing arts; the impact of such durationally indeterminate and artificial life prolongation on the rights of the incompetent, her family and society in general; the bearing of constitutional right and the scope of judicial responsibility, as to the appropriate response of an equity court of justice to the extraordinary prayer for relief of the plaintiff.<sup>28</sup>

These issues were indeed momentous. *In re Quinlan*, however, is a great opinion for a different reason. It came to grips with reality and offered a realistic solution.<sup>29</sup>

In addition to his executive and judicial talents Chief Justice Hughes is noted for his sense of humor. One of his favorite anecdotes concerns his illness and brief hospitalization when he was Governor. At the time, he had been feuding with the New Jersey Senate over its use of senatorial courtesy to block a number of important nominations he had made. As Chief Justice Hughes tells the story, when news of his illness reached the Senate, a "Get Well and Speedy Recovery" resolution was introduced and passed in that House by a vote of seven for, five against and nine abstentions.

A final word on Chief Justice Hughes. In presenting his State of the Judiciary address, he made the following statement:

---

<sup>27</sup> *Id.* at 18, 355 A.2d at 651.

<sup>28</sup> *Id.* at 19-20, 355 A.2d at 652 (footnote omitted).

<sup>29</sup> Chief Justice Hughes fashioned relief "appropriate to this case." *Id.* at 54, 355 A.2d at 671. The Court articulated the following formulation:

Upon the concurrence of the guardian and family of Karen, should the responsible attending physicians conclude that there is no reasonable possibility of Karen's ever emerging from her present comatose condition to a cognitive, sapient state and that the life-support apparatus now being administered to Karen should be discontinued, they shall consult with the hospital 'Ethics Committee' or like body of the institution in which Karen is then hospitalized. If that consultative body agrees that there is no reasonable possibility of Karen's ever emerging from her present comatose condition to a cognitive, sapient state, the present life-support system may be withdrawn and said action shall be without any civil or criminal liability therefore on the part of any participant, whether guardian, physician, hospital or others.

*Id.* (footnote omitted).

I deem it my duty as Chief Justice, and I hope that my successor Chief Justices will continue this policy, to maintain close communication with the people, who are the final judges of the extent to which the courts are to be supported. In the hands of the people, at the end, rests the power to secure the availability of justice by supporting and maintaining the court system on which it depends.<sup>30</sup>

This legacy of Chief Justice Richard J. Hughes is one of which the people of this State have every right to be proud.

Justice Mountain, like the Chief Justice, brought considerable experience with him to the Supreme Court. He was appointed to the Superior Court in 1966 by then Governor Hughes. Prior to that time he had practiced law in the Morris County area and established for himself an enviable record of competence and achievement. As a Superior Court Judge, he sat in the Chancery Division presiding in the Passaic County vincinage. In 1970 he was assigned to the Appellate Division and one year later was selected by Governor Cahill to fill the vacancy on the Supreme Court caused by the retirement of Vincent Haneman, now deceased.

One of Justice Mountain's great interests has been that of legal ethics. He has read widely on the subject and has compiled a considerable research library in this field. It was only natural that when the Supreme Court of New Jersey decided to revise its entire system of ethics proceedings, the matter was entrusted to Justice Mountain. Our new system, which represents a dramatic change and improvement in the disposition of ethics matters, is largely the result of his creativity.

Like Chief Justice Hughes, Justice Mountain is a strong exponent of the judicial power as vested in the Court under the Constitution. His opinion in *Passaic County Probation Officers Association v. County of Passaic*,<sup>31</sup> emphasizes the scope of this power and its primacy where involved. That case involved the question of whether court rules governing employees who were an integral part of the court system took precedence over legislative enactments governing the same employees.<sup>32</sup> Justice Mountain found the Supreme Court's

---

<sup>30</sup> 100 N.J.L.J. at 1140.

<sup>31</sup> 73 N.J. 247, 374 A.2d 449 (1977).

<sup>32</sup> *Id.* at 249-51, 374 A.2d at 450-51. As a result of the passage of a County Court Judges of Passaic County resolution, the County Chief Probation Officer issued a directive to the county probation officers, extending the work day by one-half hour. *Id.* at 249, 374 A.2d at 450. This change was necessitated by the Supreme Court imposed extension of the work day for trial judges. *Id.* Since this modification was adopted without previous consultation with the Passaic

constitutional authority "to make rules governing the administration of [all] courts" in the State to be "so clear. . . as to leave not the slightest doubt that this Court possesses plenary authority with respect to all matters touching the administration of the court system in New Jersey."<sup>33</sup> Thus, he stated:

The conclusion is quite inescapable that the constitutional mandate given this Court. . . transcends the power of the Legislature to enact statutes governing those public employees properly considered an integral part of the court system.<sup>34</sup>

Justice Mountain is also a constitutionalist of the first order, believing that the New Jersey Constitution as the supreme law of this State, means exactly what it says. Accordingly, the Justice feels that this instrument can be modified or changed only by amendment duly adopted by the people. His opinion in the 1977 case of *Vreeland v. Byrne*,<sup>35</sup> is a straightforward declaration of that philosophy. In that case, Justice Mountain discussed the interpretation of article IV, section V, paragraph 1, of the New Jersey Constitution.<sup>36</sup> That provision prohibits legislators from being "nominated, elected or appointed to any State civil office or position, of profit," during their elected term, if that position was created or the emoluments thereof have been increased during that term.<sup>37</sup> Justice Mountain's perspective on the proper approach to interpretation of the constitutional provision was clear:

It is a familiar rule of construction that where phraseology is precise and unambiguous there is no room for judicial interpretation or for resort to extrinsic materials. The language speaks for itself, and where found in our State Constitution the language is the voice of the people.<sup>38</sup>

In a similar vein he finds in the constitution a clear prohibition against one branch of government attempting to exercise powers

---

County Probation Officers' Association as the public employees' valid representative, this organization sought to enjoin the directive's enforcement. *Id.* at 250, 374 A.2d at 450. In support of its action, the Association asserted that the New Jersey Employer-Employee Relations Act, particularly N.J. STAT. ANN. § 34:13A-5.3, precluded enforcement of the directive absent good faith negotiations on the suggested alteration. *Id.*

<sup>33</sup> *Id.* at 252, 374 A.2d at 452.

<sup>34</sup> *Id.* at 255, 374 A.2d at 453.

<sup>35</sup> 72 N.J. 292, 370 A.2d 825 (1977).

<sup>36</sup> *See id.* at 302, 304, 370 A.2d at 830, 831.

<sup>37</sup> N.J. CONST. art. IV, § 5, para. 1.

<sup>38</sup> *Id.* at 302, 370 A.2d at 830.



vested in another branch. His dissenting opinion in *Robinson v. Cahill*,<sup>39</sup> is an eloquent statement of his credo that courts should leave legislative matters to the Legislature. The questions he raised in that opinion, co-authored with Justice Clifford, go to the heart of the matter:

If the Court undertakes to reallocate funds the ultimate disposition of which has been fixed by the Legislature pursuant to the exercise of its acknowledged power of appropriation, how is this new-found power of the Court to be controlled? How can it be checked? We discern no way that this can be done. The power to appropriate is singularly and peculiarly the province of the Legislature. It is commonly thought of as an adjunct to the taxing power. If the courts are at liberty, for whatever reason, to reallocate appropriated funds in some particular case, why may not the courts do so in other cases as well? Who is to stay the judicial hand and what law is to guide its exercise? There are no discernible boundaries or limits beyond which the power might not be exerted provided only that the Court were made to feel that the exigency of the moment was sufficiently serious to justify the action. It seems to us that the exercise of such a power by the courts is indeed unchecked, and that it cannot be said to fall within any relaxation of the doctrine of the separation of powers that has thus far been countenanced.<sup>40</sup>

Justice Mountain reaffirmed his view of the separation of powers doctrine in the exclusionary zoning case of *Oakwood at Madison, Inc. v. Township of Madison*.<sup>41</sup> There he stated: "No one questions that zoning is a legislative function. When the judiciary—for whatever reason—undertakes to move in this field, it immediately places in issue its power of legitimacy."<sup>42</sup>

What will perhaps be Justice Mountain's most widely read opinion is that in the recent case *In re Farber*.<sup>43</sup> In that case, while recognizing a newsman's statutory privilege against disclosure of news sources and gathered material, the Justice held that this privilege, in a proper case and upon a proper showing, must yield to a criminal defendant's constitutional right to a fair trial and to have compulsory

---

<sup>39</sup> 69 N.J. at 174, 351 A.2d at 735.

<sup>40</sup> *Id.* at 180, 351 A.2d at 737-38.

<sup>41</sup> 72 N.J. 481, 371 A.2d 1192 (1977).

<sup>42</sup> *Id.* at 628, 371 A.2d at 1266.

<sup>43</sup> 78 N.J. 259, 394 A.2d 330 (1978), *cert. denied sub nom.* New York Times v. New Jersey, 99 S. Ct. 598 (1978).

process for obtaining evidence in his favor.<sup>44</sup> Resolution of that issue required Justice Mountain, once again, to examine the New Jersey Constitution:

Article 1, ¶ 10 of the Constitution of the State of New Jersey contains, as we have seen, exactly the same language with respect to compulsory process as that found in the Sixth Amendment. There exists no authoritative explication of this constitutional provision. Indeed it has rarely been mentioned in our reported decisions. We interpret it as affording a defendant in a criminal prosecution the right to compel the attendance of witnesses and the production of documents and other material for which he may have, or may believe he has, a legitimate need in preparing or undertaking his defense. It also means that witnesses properly summoned will be required to testify and that material demanded by a properly phrased *subpoena duces tecum* will be forthcoming and available for appropriate examination and use.<sup>45</sup>

An important point not to be overlooked, however, is that Justice Mountain further held that the testimonial privilege will only yield when proper procedural safeguards, including "a full hearing on the issues of relevance, materiality and overbreadth of the subpoena," have been followed.<sup>46</sup> Thus, while reaffirming the primacy of constitutional rights, Justice Mountain stated most firmly "that this opinion is not to be taken as a license for a fishing expedition in every criminal case where there has been investigative reporting, nor as permission for an indiscriminate rummaging through newspaper files."<sup>47</sup>

Both Chief Justice Hughes and Justice Mountain, during their respective terms, have played a large part in giving purpose and direction to the Court. Even after their retirements their influence will continue to be felt as the improvements in court administration and court procedures sponsored by them bear fruit. Their opinions will serve to guide the Court for many years to come. New Jersey is fortunate to have had these jurists serve during a critical period in the Court's history.

---

<sup>44</sup> 78 N.J. at 273-74, 394 A.2d at 337.

<sup>45</sup> *Id.*

<sup>46</sup> *Id.* at 274-75, 394 A.2d at 337-38.

<sup>47</sup> *Id.* at 277, 394 A.2d at 338-39.