

PUBLIC HEARING

before  
*New Jersey Legislature,*  
ASSEMBLY, JUDICIARY COMMITTEE,

on

ASSEMBLY CONCURRENT RESOLUTION NO. 2012  
(Merger of Superior and County Courts).

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185 W. State Street  
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Held:  
March 25, 1971  
and  
April 1, 1971  
Assembly Chamber  
State House  
Trenton, New Jersey

MEMBERS OF COMMITTEE PRESENT:

Assemblyman Peter W. Thomas (Chairman)  
Assemblyman James Cafiero  
Assemblyman John F. Fay, Jr. 9/14/90  
Assemblyman Paul Policastro C 866  
Assemblyman Austin N. Volk 1971 copy 1  
Assemblyman James M. Turner  
Assemblyman Albert S. Smith

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ASSEMBLYMAN PETER W. THOMAS: I would like to open this public hearing on ACR 2012, an excellent piece of legislation that was introduced by 42 very knowledgeable Assemblymen and, if passed and approved by the Electorate in November, will provide the most significant piece of court reform since 1947.

Mr. Edward McConnell, the Executive Director of the New Jersey Court System is here and I would like to call upon him to testify at this time.

For the record, please indicate that Assemblyman Policastro and Assemblyman Cafiero are here, along with Assemblyman Thomas and Assemblyman Fay.

Mr. McConnell, we are delighted to have you here today.

E D W A R D B. M c C O N N E L L: Good morning, Assemblyman Thomas and members of the Judiciary Committee.

I appreciate the opportunity to appear before you to comment on this proposed constitutional amendment which you have introduced.

As you know, the existing situation of having two courts, the Superior Court and the County Court, with basically overlapping jurisdiction, has been a matter of discussion since the Constitution of 1947 was enacted. The Supreme Court has long recommended the consolidation of the two courts and it was with pleasure that we noted the strong recommendation by the Governor in his last State of the State Address for such a consolidation.

I would like to just briefly review some of the advantages which it appears would result from a consolidation of the two courts.

First, it would appear to permit the best possible utilization of the skills and abilities of all of the judges of the Superior and County Courts. At the present time, we have 78 Superior Court Judges authorized, and 90 County Court judgeships, a total of 168. Yet, from a practical standpoint, when it comes to selecting judges for assignment

to the Appellate Division, Assignment Judges, General Equity, and other key assignments in the courts, the Chief Justice is limited to the pool of 78 Superior Court Judges. Having a larger pool would permit the maximum utilization of the talents of all of the members of the courts of general jurisdiction.

I think many of you know judges of the County Courts who have abilities which are unable to be recognized to the full because of the court in which they serve.

The second is, with one large pool of judges, without so many judges being geographically allocated, it would permit an easier assignment of judges, better distribution according to the workload rather than with the problem of geographical location of the judge in the county to which he has been appointed being a factor which must be taken into consideration, as it is at the present time.

In the long run, the better utilization of the talents of the judges and the better distribution of judges, according to workload, should have beneficial effect on the disposition of the work of the courts.

I want to emphasize here, however, that the consolidation of these two courts is not a solution to the calendar problem in any way. In an item I saw in yesterday morning's paper, a note commenting on this coming hearing, there were statistical data as to the status of the calendars in the two courts which seemed to indicate that this might be a solution to the calendar backlog. That, of course, would not be so. The advantages are not primarily the expedition of the work of the courts, although, as I indicated, in the long run I think it would have a beneficial effect by permitting the maximum utilization of the judge's talent.

Third, and quite important, it would eliminate the existing inequities between judges who now are on different courts but who, as you know, are assigned to the same work. All of the trial judges of the Superior Court are assigned by the Chief Justice to sit in the County Court, and all county

court judges are assigned by the Chief Justice to sit in the Superior Court. And, as a matter of fact, they try cases off the same calendars without regard to the court to which they were appointed or the court in which the suit was instituted. And yet, while these judges of the two different courts are performing identical work, they are not treated identically. Fortunately, in recent years, the Legislature equalized the salaries of the judges although, oddly enough, some of the County Court Judges now have a greater take-home pay than do the Superior Court Judges because one has a noncontributory pension and the Superior Court Judges do not. So that's the little reverse inequity that presently exists.

The pension systems are different for the judges of the two courts. They have different terms. They have different tenure provisions. And not an inconsequential factor, when you're considering that people are the most important aspect of any system, is the status problem. The County Court Judge is just considered to be a rung lower on the ladder than a Superior Court Judge, even though he is doing the same work. He does not have the same status.

There is another reverse in equity in the situation that's brought about by having County Court Judges who are appointed territorially and Superior Court Judges all appointed at-large, that in many instances a County Court Judge who accepts appointment to the Superior Court finds himself being assigned elsewhere - in other words, having to travel - whereas a newly appointed County Court Judge who takes his place remains at home. So that you often have a situation where the senior judge, in point of service, is traveling whereas the new and younger judge gets the privilege of staying at home.

These are situations which result, as a practical matter, from having some judges with a territorial base and other judges without one.

Fourth, while most of the technical jurisdictional problems, that have existed by reason of having two courts,

have been eliminated, partly by the cross-assignment of judges and partly by the fact that the court rules provide that whenever a court finds itself to be without jurisdiction the case is to be transferred to the court which does have jurisdiction, there are still some jurisdictional problems that have to be considered by lawyers and by judges because the jurisdiction of the two courts, while substantially similar, is not identical.

By way of illustration, Workmen's Compensation appeals, Municipal Court appeals, and most election contest matters, or many of them, by statute go to the County Court; whereas, condemnation proceedings, prerogative writs can only be brought in the Superior Court. These are things which every lawyer has to give attention to and which every judge must give attention to, and which, occasionally, result in unnecessary litigation where someone happens to be in the wrong court.

The next advantage would be a reduction in the complexity of rules, statutes and clerical procedures that now result from the fact that you have two courts of substantially similar jurisdiction. This means that, while it's not double the number of rules and provisions you have to have, there are different procedures, different statutes, that deal with these two courts which could be substantially simplified and make everyone's work a little bit easier. The same is true, of course, in the clerical procedures of the courts. As you know, the County Clerk who serves as the Deputy Clerk of the Superior Court in the county and is Clerk of the County Court, in effect, has to keep two sets of books covering the same sort of thing, one for the Superior Court cases, in which also records are kept in Trenton, and the other for the cases which are in the County Court.

The next advantage is that, quite oddly and I think contrary to the general impression, the present system places the small county at a disadvantage when it comes to appointments to the Superior Court. The reason for this is that where you have a County Court Judge resident in a small county who

might be considered for appointment to the Superior Court, he often has the choice of taking the appointment to the Superior Court and being assigned a substantial distance away from his home or to remain on the County Court and stay at home. This makes a difficult choice for him and I think, if you will look at where appointments have come over the years, you will see that there have been judges of the County Court who perhaps should have been considered for promotion and would have been had they been in a large county. So that I think this would permit an equal opportunity for all judges of equal ability to rise to the level to which their work entitles them.

The next advantage is one which I think would accrue to the Governor and his panel of talent scouts who are looking for lawyers of ability and which would have a beneficial effect on the courts themselves, and that is that it would permit recruiting the best available talent for the bench because you would not be restricted in all instances to the geographical boundaries of a county. I know there are occasions and times, and it differs from time to time and from county to county, where it has been difficult to find a lawyer with the ability you want in the county where you need him, to make the appointment, who is willing at the time to take the appointment. And this is so not only in small counties where there are very few lawyers but it is also true in some of the larger counties because many lawyers who practice in the county don't necessarily live there and, for appointment purposes, it's the residence that makes the determination and not the place where the lawyer has maintained his law office.

Finally, and this perhaps is somewhat of a duplication, the coordination of the two courts would make it easier to see that the appointment of judges came from the area where the workload was the greatest. This is not always possible now because, quite understandably, as populations shift and workloads shift, it is difficult to adjust the number of

judges authorized by statute for a particular county or counties. This would not be a problem if you had basically a large pool of judges at large because the Governor could then give consideration not only to the geographical factor but to where the workload at the time was, and you could have a constant adjustment through the appointing power of the judges to the workload.

Now there are a few problems that appear to me in connection with the consolidation of the courts under this ACR 2012. One is - and it's not really a difficulty with the Resolution itself, but it will be necessary, it seems to me to have supplementary legislation which would deal with the implementation of the constitutional amendment if and when it is adopted and becomes effective. In this regard, I would call your attention to S-273, introduced in 1970, as a companion to SCR-10.

ASSEMBLYMAN THOMAS: Give me that again?

MR. McCONNELL: S-273 which was a companion to SCR-10, both of which were introduced in 1970.

ASSEMBLYMAN THOMAS: What do they deal with?

MR. McCONNELL: They provide for some of the transition things that would not be appropriate to include in the Constitution. For example, there are many places in the statutes where County Judges make the appointment. Now, if you had merely a county constitutional provision saying that whenever it says County Judges it means Superior Court Judges, in many instances the appointing power would be so diffused that it would be very difficult to determine are all 166 judges, or whatever it is, going to make the appointment. And that bill would provide that where the appointment is in - an appointive power is in the County Court Judges that that appointive power would go to the Assignment Judges.

Another matter dealt with in that bill is the surrogate situation. Without anything else being done, the fees and so forth, which go to the surrogate in connection with matters that are probated in county court, would go to

the State.

And I might mention, in the fiscal note to this Resolution, the surrogate's fees are not included as ones going to the State. It probably should have been, in retrospect. They amount to about \$1,700,000 a year. I think we indicated that the additional cost to the State that would be saved to the county by way of salaries, on the shift-over, would be about \$1.8 million. That does not include the \$1.7 million in sheriff's fees and commissions. And this bill would provide that the costs in Title 22A, to which the surrogate is entitled, would remain with the county instead of going to the State.

ASSEMBLYMAN FAY: Mr. McConnell, could we go over that point just once more, please, about the cost there, the fiscal note with S-273 is \$1,460,580.

MR. McCONNELL: I don't have that, I'm sorry, the fiscal note, with S-273, with me. The fiscal note which we prepared for ACR-2012 only deals with the salaries of the County Judges, the 60 percent that is now paid and the shift of fees in the Law Division of the County Court which now goes to the county and which would go to the State with the turnover. It does not include the fees of the surrogate and commissions, and so forth, to which the surrogate is entitled who, as you know, is also Clerk of the Probate Division of the County Court.

I don't know what the breakdown is because we don't have that information between the surrogate's fees that are attributable to him as surrogate and those which are attributable to him as Clerk of the Probate Division of the County Court. In total they amount to approximately \$1.7 million a year. S-273 would make it plain that the fees that go to the surrogate, whether as surrogate or as Clerk of the Probate Division of the County Court, would remain with the county,

Now, if you didn't want it that way, then that would need some legislation clarifying it.

ASSEMBLYMAN TURNER: I can answer that question for you, sir, if you want an answer.

Are you suggesting that now, as a result of this resolution which we're discussing today, the surrogate's fees be reverted to the State?

MR. McCONNELL: Those fees which would go to him as Clerk of the Probate Division of the County Court would be because there would be no more county court in which to probate matters. So I am suggesting that, in order for those fees to remain with the county, you would need to have a bill which would so state.

ASSEMBLYMAN TURNER: Thank you.

MR. McCONNELL: I also want to make it plain, because I think there are some who are - I've heard comments on this Constitutional Amendment as to what it does not do - it does not abolish the county clerk. It provides that he would become the Deputy Clerk of the Superior Court. And it does not, aside from the shift in the 60 percent of the county court judge's salary, transfer the cost of the operation of the trial courts from the counties to the state. The basic cost of operating the courts will remain with the counties.

ASSEMBLYMAN THOMAS: I think the salary would be picked up in its entirety by the State, would it not?

MR. McCONNELL: That's right. Now the State reimburses the county for 40 percent of the county judge's salary, that cost would move - the 60 percent that the county pays would go to the State. But you would still have the staff, and so forth, of those judges which would be paid for by the counties because the Law Division of the Superior Court, in which all of these county court judges would primarily end up, are all borne by the county.

ASSEMBLYMAN FAY: Mr. McConnell, wouldn't it be logical to transfer all of the cost of the county courts to the State, though? Would this be one of the recommended reforms?

MR. McCONNELL: I have recommended before, and so has the Supreme Court, that the State assume the full financial

burden for the Superior Court, for the County Courts and, for that matter, for all other courts in the State.

I just wanted to clarify that this bill did not accomplish that.

The only other thing on which I would like to comment is the matter of the resident judge, which is provided for in the Resolution. It says: "The Superior Court shall at all times have at least one judge who is a resident of each of the 21 counties of this State." This may merely be a matter of interpretation but it may be possible to clarify that particular provision. For example, when is the time of residency to be determined? Is it at the time of his appointment? It would appear from this that the residency is a continuing requirement. If this is so, and this, of course, is different, for example, from the political requirement you have when you have the court be bipartisan, say the County Court. There it has always been considered to be at the time of his appointment but what a judge does after he's appointed is not a factor. We do have Superior Court Judges who, you know, move from one county to another after their appointment to the Superior Court. Who would be the resident Superior Court Judge in a county with more than one judge? And is the Superior Court Judge, who is the only resident judge in the county, barred by the constitutional provision from moving and, if he does, what happens? I think that this could be clarified. One way to clarify it would be to provide that the Governor at the time of making appointment designate the judge as the resident judge.

ASSEMBLYMAN THOMAS: Should that be included in this Resolution or can that be provided for in another way?

MR. McCONNELL: I do not think that you can provide by statute matter affecting a Superior Court Judge, in effect add limitations on him that are not provided for in the Constitution. And I think there is case law to that effect - when the qualifications and so forth are set forth in the

Constitution, you can't add or subtract from those by legislation.

ASSEMBLYMAN THOMAS: Well, how do we accomplish the suggestion you just made? Would that be by court rule or by statute or by changing this Resolution?

MR. McCONNELL: I would change that particular language, if you considered that this was a problem.

ASSEMBLYMAN THOMAS: Well, you have raised several questions. Frankly, we have these questions ourselves and we had a great deal of difficulty with this language. Would you suggest that the language of this Resolution be changed so as to indicate that the Governor, at the time of making the appointment, would designate who would be the resident judge?

MR. McCONNELL: I would so suggest.

ASSEMBLYMAN THOMAS: And that should be in this resolution?

MR. McCONNELL: I would think so, yes, sir.

ASSEMBLYMAN CAFIERO: Mr. McConnell, I was one of the ones probably the most responsible for this being in there and for this reason, and maybe if I tell you the reasons I had maybe you can come up with the language that will do what I'm really trying to do.

This Resolution, of course, would repeal Article VI, Section 4, which I interpret to mean, where it says "there shall be a county court in each county" - if that language were deleted - and I take it from that language that that would mean that every county was assured of having a court in operation within its territorial limits.

MR. McCONNELL: Right.

ASSEMBLYMAN CAFIERO: This Resolution, in its original form, deleted that and, if it were not amended, I would assume it would then be possible, if the Supreme Court saw fit, to say, in a county like Cape May, that there is no need or demand for any court to be sitting on a permanent basis as this Article would guarantee. And if they decided that the only court would be in Atlantic or Cumberland,

it would be possible, under this Resolution, without the amendment, that the Cape May County Court, for instance, could be closed.

MR. McCONNELL: I don't quarrel with the residency requirement that's included in the Resolution, which is a guarantee that there will be at least one judge in each county.

ASSEMBLYMAN CAFIERO: Well, what I was seeking to guarantee was that plus that there be a constitutional guarantee that every county would be assured that there would be a court functioning in that county.

ASSEMBLYMAN THOMAS: In other words, what he's saying is, should we amend this to say there shall be a part of the Superior Court sitting in every county in the State.

MR. McCONNELL: That would be no problem. It depends on what it is you want.

ASSEMBLYMAN THOMAS: Well, that's what he wants.

MR. McCONNELL: If you mean that there be a judge assigned there all the time, that would be no problem at all. You could require that the Superior Court sit in each county. I had assumed that this was to assure that at least each county would have a judge appointed from that county who would remain a resident of that county. And this was what my concern was.

ASSEMBLYMAN THOMAS: He wants both. He wants a resident judge with a court that is permanently in that county. In other words, you couldn't decide that the traffic in Cape May isn't sufficient to justify the continuance of a court there, we'll make a visenage, and Cape May and Cumberland and Gloucester will sit someplace else.

MR. McCONNELL: As I read this Resolution, in its present form, that residency requirement would not preclude, for example, saying that the Superior Court shall sit in Atlantic City and Judge Francis, who would be the resident judge of Cape May County, would sit only in Atlantic County.

My comments were addressed to what I thought was

the other intent of this, that suppose Judge Francis as a Superior Court Judge, and let's suppose that when he gets tenure, decided "well, I'm on for life, I'm going to move to Atlantic County because --

ASSEMBLYMAN THOMAS: He likes the boardwalk.

MR. McCONNELL: He likes the boardwalk. Who would be able to say no to him? And I don't think by any administrative rule you could say that a judge cannot move his residence. I think you could provide in the Constitution that at the time of his appointment he would be designated as the resident judge and, just as a County Court Judge today is not free to move his residence to another county, that judge designated as a resident judge would not then be able to move and retain his office. And I suggest that some sort of designation at the time of appointment would be the best way to handle it. Otherwise, you have two or three judges in a county and each of them is going to be arguing as to who can move and who can't.

ASSEMBLYMAN THOMAS: Well now, could we also put in here, there shall be a part of the Superior Court sitting in every county?

MR. McCONNELL: Yes, I think you could require that the Superior Court sit in each county. I think that would happen anyway but I think if you want to guarantee it --

ASSEMBLYMAN CAFIERO: I prefer not to leave it to chance. I mean, they are the two things - it may be selfish and provincial on my part - you know that I would like to see it part of the Constitution so that at all time we would be assured of that.

And while we're on this point, Mr. McConnell, you said that these other bills, S-273 and SCR 10, would help the transition --

MR. McCONNELL: Not SCR 10, just S-273.

ASSEMBLYMAN CAFIERO: Right. To clear up language where the appointing authority was in the County Court, you said it would be too confusing. I would think that those

statutes that provided where the appointing authority would be in the County Court Judge, it probably was on some basis where he would be the one maybe most familiar with the county, and would it not be a better suggestion that that appointing authority go to this resident Superior Court Judge rather than to the Assignment Judge because the Assignment Judge may have five or six or seven counties in his visenage and I would think that the one most familiar with those appointments being made by the County Court Judge would be the Superior Court Judge assigned to that county.

MR. McCONNELL: That would be an alternative. There are a number of appointments that are made by county court judges and perhaps you would want to take a look at what sorts of appointments there were and make different determinations in the statute, and this need not be in the Constitution but it ought to be something that would move with it so that you didn't have, after the constitutional amendment became effective, a hiatus where no one knew who was to make the appointments. It's not essential to the constitutional amendment but it should be something that should be considered and move along as a companion with it.

ASSEMBLYMAN THOMAS: Well, we recognize that if this amendment were to go through, there are a great deal of technical errors that are going to have to be changed. Well, the same with the Wetlands Bill. The amendment went through and then the legislation to implement it was immediately introduced and passed. So there are a number of areas that are going to have to be looked at. And, if this goes through, I think we are going to have to depend, to a large extent, on your office to suggest areas that we do look at so that recommendations or decisions can be made as to where these appointive powers should be sent, and so forth. For instance, a county court judge now, as Mr. Turner well knows, is the one who signs a gun permit. Who is supposed to do that? There is a lot of that stuff throughout the State.

MR. McCONNELL: That, we suggest be someone other

than the judge.

ASSEMBLYMAN TURNER: Are you suggesting me?

MR. McCONNELL: Not you.

ASSEMBLYMAN TURNER: Mr. Chairman, at this moment - possibly I should wait until he finishes his testimony. I want to put something on the record.

ASSEMBLYMAN THOMAS: I am sure we all have some questions.

Do you have anything more, in a formal way, that you want to bring to our attention, Mr. McConnell?

MR. McCONNELL: Yes, there just is one additional thing that I would like to mention and that is because there is another bill pending, A-2149, which provides for appointment of county court judges to the Superior Court and, to the extent that is done, a reduction in the number of county court judgeships authorized in a county and an increase in the number of superior court judges, and there was an editorial in the March 4th issue of the New Jersey Law Journal indicating that the constitutional amendment proposed by ACR 2012 was not necessary and suggesting the procedure that was provided for in A-36 and A-37 of the 1953 session which would legislatively accomplish this.

In my opinion, it is not either constitutional or feasible to accomplish consolidation of these two courts without a constitutional amendment. I think a fair reading of the Constitution makes it plain that there is intended to be a county court with substantially the same continuing jurisdiction that was in its predecessor courts and that the language that the jurisdiction of the county court can be altered by law does not contemplate that it can be totally, lock, stock and barrel, transferred to another court and a totally different jurisdiction substituted for it. And while the present bill, A-2149, might offer a temporary solution, depending upon how it was implemented, - and I am sure that, if it was contemplated that they be transferred en masse, there would be one county court judge in each

county who would figure that he was low man on the totem pole - but, at best, it seems to me it is merely a transitional procedure.

ASSEMBLYMAN THOMAS: I did not agree with the editorial that you referred to. I am familiar with 2149 and that that was meant only as a temporary measure in the event this resolution passed it would be a means of complying with the Constitution and yet, in the interim period transferring all but one judge in each county to the superior court. But I don't feel that legislatively the transition can be made totally. I think the Constitution is clear and that it requires a constitutional amendment.

By the way, I won't move that 2149 unless this Resolution gets through.

MR. McCONNELL: There is just one other comment which I would like to make and that deals again with this residency provision. It would provide for one judge in each county who would be resident of the county. I think there is a possibility in that that, if the judge resident in a county and it was a county with only one judge and there was a change in the complexion of the Governor or the Senate in this county, it might create a problem for him on reappointment.

One thing I think might be considered, in terms of maintaining the bipartisan character of the court, would be to provide that there be two resident judges in each county who would be of opposite political parties. I don't know that you can put the opposite political parties part in the Constitution and have it constitutional.

ASSEMBLYMAN THOMAS: Well, the statute that calls for bipartisan selection of judges now applies only to the county courts.

MR. McCONNELL: The county courts, right.

ASSEMBLYMAN THOMAS: Well, is there any reason why a similar statute could not be introduced that would apply to the Superior Court?

MR. McCONNELL: I think it could be introduced and would, I think, be indicative of public policy. I don't think it can be constitutionally effective. But from a practical standpoint you know there is neither constitutional nor statutory provision for a bipartisan superior court. It is still a matter of tradition and that tradition has been very strong in this State. My only question is that to build into the Constitution a one-judge situation, it might be better to build in a two-judge situation.

ASSEMBLYMAN TURNER: May I pursue that line of questioning?

ASSEMBLYMAN THOMAS: Yes.

ASSEMBLYMAN TURNER: Or, sir, it may be more important to continue having judges appointed on the basis of residency population.

MR. McCONNELL: There are a variety of ways of distributing the judicial manpower throughout the State. I can give you copy of a memorandum which I prepared for the Supreme Court in December of 1966 at which time they had under consideration, at the then Governor Hughes' request as to what their recommendations were in this regard. This memorandum deals with a number of the various alternatives that were available for apportioning judges.

ASSEMBLYMAN TURNER: Well, you will file a copy of that with Mr. Thomas, the Chairman?

MR. McCONNELL: I will leave a copy with you.

ASSEMBLYMAN THOMAS: Mr. McConnell, are you suggesting that there should then be perhaps two resident judges, at least two resident judges from each county? In other words, the Governor at the time of his appointment would designate, instead of one resident judge from each county, at least two resident judges from each county.

ASSEMBLYMAN TURNER: If there are two judges.

MR. McCONNELL: I think it has some merit to it, in terms of in a small county which would only have - the resident judge would be the only judge, there might be

a tendency to move him about, in or out, depending upon what the political complexion was. If that is realistic, and you people are better judges of that than I am, then I would suggest it would be advantageous to provide for two.

ASSEMBLYMAN TURNER: Or based on population? I don't think you really answered that question. You talked about your recommendations but, if I interpret 2012 properly the way we have it proposed now has no protection that members of the court will be appointed from a county based on population.

MR. McCONNELL: There is no such requirement in the proposed amendment. There is no such requirement for Superior Court Judges.

ASSEMBLYMAN TURNER: No, but there is in the county court.

MR. McCONNELL: That's right.

ASSEMBLYMAN TURNER: And would you recommend that that population consideration be kept?

MR. McCONNELL: I would not recommend that the Superior Court be allocated by population among the counties. First of all, it would mean that you would have to amend the Constitution, or redistribute your judges after each census, which creates a problem where you have people who are appointed for long terms and many of whom have tenure.

ASSEMBLYMAN TURNER: That happens in the Legislature, too, sir.

MR. McCONNELL: Well, you stand for election, you see, and the judges don't, so you have a different problem. You have judges who are in for life, on the Superior Court after second appointment. So that you would have an adjustment factor that would be more difficult. The other factor is that the workload does not necessarily follow population. This would be particularly true, for example, in the counties which you might call resort counties which would have, on the basis of population, very few judges but, on the basis of

workload, because for a substantial period of the year the people in the county is much greater, the workload is much higher. The same thing is true of your urban counties where the workload is greater than an apportionate population depending upon the nature of the county.

These are factors which, I think, the Governor can best judge and the Legislature, the Senate, through its confirming power, in terms of the distribution of the pool of the judges to the place where they are most needed.

ASSEMBLYMAN TURNER: Are you saying by that that you recommend the striking of the tenure?

MR. McCONNELL: No, sir, definitely not. I think that's the strongest provision, in fact I previously indicated it's my own view that I would prefer giving judges tenure on first appointment, as in the federal system.

ASSEMBLYMAN VOLK: Mr. McConnell, I think you put your finger right on it when you said that you felt that the distribution might be on the basis of workload. Isn't it conceivable that we may be hitting an artificial situation of arbitrarily appointing two judges to a relatively small county that does not require two judges and at the same time possibly not giving weight to the larger counties, such as Essex and, possibly, Bergen, that have larger caseloads? Hudson, for one.

MR. McCONNELL: Yes, it's possible. We only have, I think, five counties at the present time that don't have more than one judge. We have recommended, as far as the county court is concerned, that every county have at least two county court judges. And the Legislature, just recently, passed a bill which would provide for a second county court judge in Hunterdon, Warren and Sussex, which leaves only Cape May and Salem as the only two counties in the State, assuming the Governor signs this other bill, which would not be entitled to two judges. So the situation which I'm suggesting is no different than what we've recommended in terms of the county court and, aside from Salem and Cape May,

is no different than that which exists and the Legislature considers to be desirable, assuming the Governor signs the bill, the number of which I don't recall.

ASSEMBLYMAN THOMAS: And even though you might have this two resident judge situation it wouldn't prevent the Chief Justice from reassigning those judges to places of greater need, based upon caseload, would it?

MR. McCONNELL: Not at all. And it might be possible, for example, that your resident judge would not sit in the county. Let me use an illustration under your one resident judgeship that you have provided for in the Constitution now. Would this mean, for example, that Judge Francis would be excluded from appointment to the Appellate Division, because if he was on the Appellate Court then it would have to be a non-resident judge who would sit in Cape May County. I don't think you ought to exclude five counties from having an opportunity to sit on the Appellate Division because of the fact that they happen to be a resident judge. It would be unlikely that both of them would sit in the county but it would not necessarily be the resident judge who would sit in the county because he might be ill and there might be a vacancy.

ASSEMBLYMAN POLICASTRO: Mr. McConnell, is it your opinion now that if this goes through and the courts are integrated that the counties will save some money?

MR. McCONNELL: If the constitutional amendment were enacted, the counties would save approximately \$1,800,000, which would be assumed by the State, in judges salaries, assuming that surrogate's fees were left with the counties.

ASSEMBLYMAN POLICASTRO: That would have to be done by a separate bill.

MR. McCONNELL: That would have to be done by separate legislation.

ASSEMBLYMAN TURNER: Mr. McConnell, in reference to the civil list and the fact that many of the cases going to county court are minimal, in fact there's a limit on it, is there not?

MR. McCONNELL: There is no limit on the county court. It's a court of general jurisdiction. There's a limit on the jurisdiction of the county district court, which is not a constitutional court and would not be affected by this resolution.

ASSEMBLYMAN TURNER: All right, thank you.

ASSEMBLYMAN THOMAS: Would it be necessary to include in here a definition of what constituted a resident judge?

MR. McCONNELL: I think the word "resident" judge is sufficient. It's the designation of the resident judge, I think, that makes the problem.

ASSEMBLYMAN TURNER: Mr. Chairman, I suggest that we discuss that in Committee. That is one factor that is of concern. I feel clearly that these interpretations should not be made by the Governor or by the courts but by the general citizenry in amending the Constitution.

ASSEMBLYMAN THOMAS: I just have one other area I would like to touch on briefly. Is there a difference between the death benefits for a widow - between a county court judge and a superior court judge - at the present time? The death benefits for a widow of a superior court judge, I understand, are one-fourth of whatever his salary was at the time of his death.

MR. McCONNELL: One quarter. I think it's the same for a county court judge but I would have to check that for you.

ASSEMBLYMAN THOMAS: Now, with respect to the pension of a county court judge, forgetting Hudson and Essex Counties for a moment, there are two pension systems that they could go into. Is that not so?

MR. McCONNELL: The county court judge has his option of remaining in the Public Employees Retirement System --

ASSEMBLYMAN THOMAS: All right, now, let's stay with that one for a moment. Is that a non-contributing type pension?

MR. McCONNELL: No. That's a contributory pension just like any one else's, any other public employee.

ASSEMBLYMAN THOMAS: And what is the maximum pension benefit that he could receive under this system?

MR. McCONNELL: Years of service over 60. Judicial service counts just the same as any other service.

ASSEMBLYMAN THOMAS: You get 50% of your salary after 30 years of service, over 60 years of age?

ASSEMBLYMAN POLICASTRO: No, you would get more. At 30 years, I think, it's half and if you serve longer you get more.

MR. McCONNELL: It depends on whether you're a veteran. They vary, not only the retirement age but the retirement benefits and years, and it would depend on whether you were a veteran. A judge who was in the PERS after ten years would qualify for a 50% pension whereas a normal State employee would need to have 30 years of service. Judge Snyder, for example, who retired from the county court under the Public Employees Retirement System, is getting a pension of over 50% - I don't recall what it is - because he had a number of years of service in other public jobs prior to his appointment to the bench.

ASSEMBLYMAN THOMAS: What is the contribution that a judge makes yearly?

MR. McCONNELL: Under the Public Employees Retirement System it's an actuarially determined amount which I think depends on the age at the time he joined the system.

ASSEMBLYMAN THOMAS: I see. Now what is the other system?

MR. McCONNELL: The other system is a non-contributory pension for county judges which provides for a 50% pension after ten years of service. The election problem that some judges have, on the county court, is that where they have substantial public service before they go on the bench and are not assured that they will be reappointed and ever get ten years of service, they remain and are forced to remain

in a contributory system.

ASSEMBLYMAN THOMAS: I have no other questions?  
Are there any other questions?

MR. McCONNELL: I would like to just mention on that that the Superior Court judge's pension - the same is true of the Supreme Court - is not a non-contributory pension because they contribute 10% of everything - that is, the salary increase above the salary when it was at a \$22,000 level. So that a judge of the Superior Court assigned to the Law Division or Chancery Division is contributing 10% of \$15,000 or \$1,500 a year.

ASSEMBLYMAN FAY: Mr. McConnell, would this merger have a major impact on the court logjam?

MR. McCONNELL: In my opinion, it would not have a relatively significant effect on the calendar situation.

ASSEMBLYMAN FAY: Could we have the approximate cost if the State took over all of the cost of the courts, approximately?

MR. McCONNELL: Well, it is sort of a ballpark guess because it all depends on what costs you are going to include. The over-all costs are somewhere in the neighborhood of \$30 million, as I recall it, for the counties but it all depends on what you include as a cost of the court.

ASSEMBLYMAN FAY: This wouldn't include the cost of say taking the probation offices and making them --

MR. McCONNELL: It would include that. For example, there are many costs of the court that are not allocated in the budgets to any court related item, and the most obvious of those are your capital costs and your maintenance costs of the physical facilities, just as in the State budget you can look at the budget for the judiciary in the State and there is nothing in there that reflects the capital costs for the facilities provided for the courts by the State. The same would be true of certain overhead costs, in terms of payroll and personnel services, for example.

ASSEMBLYMAN FAY: Thank you very much.

ASSEMBLYMAN THOMAS: Does anybody else have any further questions?

Let the record show that Mr. Turner has joined us, and Mr. Volk.

Is there anybody else who wishes to offer any testimony at this time on ACR 2012? If not, I will call the hearing to an end, with thanks to you, Mr. McConnell.

MR. McCONNELL: Thank you.

(Hearing concluded)

(A second hearing on ACR 2012 was held on April 1, 1971.  
See page 24 which follows)

April 1, 1971

ASSEMBLYMAN PETER W. THOMAS (Chairman): This is a public hearing on Assembly Concurrent Resolution No. 2012. A public hearing was held a week ago on March 25th at which time the Administrative Director of the Courts, Mr. McConnell testified. As a result of his testimony, the Resolution was amended and, as a result of that amendment the Second Official Copy Reprint has been printed and placed on the desks of all Legislators. As a result of those amendments, a second public hearing was required. I declare that public hearing open and ask if there is anybody who wishes to make a statement or if any member of the Committee wishes to make a statement.

If not, I will declare the public hearing at an end and the Judiciary Committee will retire to its meeting room, Room 227 on the second floor.

(Hearing concluded)