PUBLIC HEARING

before

ASSEMBLY JUDICIARY, LAW, PUBLIC SAFETY AND DEFENSE COMMITTEE

on

ASSEMBLY CONCURRENT RESOLUTIONS 41 and 66

(Proposed Constitutional Amendments to merge the Superior Court and the County Courts.)

Held:
March 25, 1977
Bergen County Court House
Hackensack, New Jersey

MEMBERS OF COMMITTEE PRESENT:

Assemblyman William O. Perkins, Jr. (Chairman)
Assemblyman William J. Bate
Assemblyman John A. Spizziri

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I N D E X

1-9:III
10-22:I
23-28:II

ASSEMBLY CONCURRENT RESOLUTION No. 41

STATE OF NEW JERSEY

PRE-FILED FOR INTRODUCTION IN THE 1976 SESSION

By Assemblymen SPIZZIRI and SNEDEKER

A CONCURRENT RESOLUTION proposing to amend Article VI, Sections I, III, V, VI, and VII, and Article XI, and to repeal Article VI, Section IV, of the Constitution of the State of New Jersey.

BE IT RESOLVED *by the General Assembly of the State of New Jersey (the Senate concurring):*

1. The following proposed amendment to the Constitution of the State of New Jersey is hereby agreed to:

PROPOSED AMENDMENT

a. Article VI, Section I, paragraph 1, be amended to read as follows:

1. The judicial power shall be vested in a Supreme Court, a Superior Court, **[**County Courts**]** and inferior courts of limited jurisdiction. The inferior courts and their jurisdiction may from time to time be established, altered or abolished by law.

b. Article VI, Section III, paragraphs 1, 2 and 3, be amended to read as follows:

1. The Superior Court shall consist of such number of judges as may be authorized by law, **[**but not less than 24,**]** each of whom shall exercise the powers of the court subject to rules of the Supreme Court. *The Superior Court shall at all times have at least two judges who are residents of each of the 21 counties of this State.*

2. The Superior Court shall have original general jurisdiction throughout the State in all causes, *all the jurisdiction heretofore exercised by the County Courts and such other jurisdiction consistent with this Constitution as may be conferred by law.*

c. Article VI, Section III, paragraph 3 be amended to read as follows:

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

3. The Superior Court shall be divided into an Appellate Division, a Law Division, and a Chancery Division. Each division shall have such parts, consist of such number of judges, and hear such causes, as may be provided by rules of the Supreme Court. *At least one of the judges of the superior court shall at all times be assigned to sit in each of the 21 counties.*

d. Article VI, Section IV, be repealed.

e. Article VI, Section V, paragraphs 1 and 2 be amended to read as follows:

1. Appeals may be taken to the Supreme Court:

(a) In causes determined by the appellate division of the Superior Court involving a question arising under the Constitution of the United States or this State;

(b) In causes where there is a dissent in the appellate division of the Superior Court;

(c) In capital causes;

(d) On certification by the Supreme Court to the Superior Court and, where provided by rules of the Supreme Court, to the [County Courts and the] inferior courts; and

(e) In such causes as may be provided by law.

2. Appeals may be taken to the appellate division of the Superior Court from the law and chancery divisions of the Superior Court[, the County Courts] and in such other causes as may be provided by law.

e. Article VI, Section VI, paragraphs 1, 2, 4, 5 and 7 be amended to read as follows:

1. The Governor shall nominate and appoint, with the advice and consent of the Senate, the Chief Justice and associate justices of the supreme court, the judges of the superior court, [the judges of the county courts] and the judges of the inferior courts with jurisdiction extending to more than one municipality. No nomination to such an office shall be sent to the Senate for confirmation until after 7 days' public notice by the Governor.

2. The justices of the supreme court[,] *and* the judges of the superior court [and the judges of the county courts] shall each prior to his appointment have been admitted to the practice of law in this State for at least 10 years.

4. The justices of the supreme court[,] *and* the judges of the superior court [and the judges of the county courts] shall be subject to impeachment, and any judicial officer impeached shall not exercise his office until acquitted. The judges of the superior court [and the judges of the county courts] shall also be subject to

removal from office by the Supreme Court for such causes and in such manner as shall be provided by law.

5. Whenever the Supreme Court shall certify to the Governor that it appears that any justice of the supreme court [,] *or* judge of the superior court [or judge of the county court] is so incapacitated as substantially to prevent him from performing his judicial duties, the Governor shall appoint a commission of three persons to inquire into the circumstances; and, on their recommendation, the Governor may retire the justice or judge from office, on pension as may be provided by law.

7. The justices of the supreme court[,] *and* the judges of the superior court [and the judges of the county courts] shall hold no other office or position, of profit, under this State or the United States. Any such justice or judge who shall become a candidate for an elective public office shall thereby forfeit his judicial office.

f. Article XI be amended by adding thereto Section VI as follows:

SECTION VI

When the amendment to the Judicial Article of this Constitution providing for the abolition of the County Courts takes effect:

(a) The jurisdiction of the County Courts, as well as all matters pending therein, shall be transferred to the Superior Court;

(b) The judges of the county courts shall become judges of the superior court. All such judges who had acquired tenure on the County Court shall have tenure on the Superior Court without the necessity of further appointment. All other such judges shall have an initial term of 7 years commencing upon the effective date of this amendment and upon subsequent appointment to the Superior Court shall acquire tenure.

2. When this proposed amendment to the Constitution is finally agreed to, pursuant to Article IX, paragraph 1 of the Constitution, it shall be submitted to the people at the next general election occurring more than 3 months after such final agreement and be published at least once in at least one newspaper of each county designated by the President of the Senate and the Speaker of the General Assembly and the Secretary of State, not less than 3 months prior to said general election.

3. This proposed amendment to the Constitution shall be submitted to the people at said election in the following manner and form:

There shall be printed on each official ballot to be used at such general election, the following:

a. In every municipality in which voting machines are not used, the following legend shall immediately precede the question:

If you favor the proposition printed below make a cross (×), plus (+) or check (√) in the square opposite the word "Yes." If you are opposed thereto make a cross (×), plus (+) or check (√) in the square opposite the word "No."

b. In every municipality the following question:

	Yes.	INCORPORATION OF THE COUNTY COURTS INTO THE SUPREME COURT Shall the amendment to Article VI and Article XI of the Constitution to incorporate the existing County Courts into the Superior Court, transfer their jurisdiction and pending causes to the Superior Court, and appoint their judges to the superior court, be approved?
	No.	

STATEMENT

The purpose of this resolution is to amend the New Jersey Constitution so as to incorporate the County Courts into the Superior Court.

ASSEMBLY CONCURRENT RESOLUTION No. 66

STATE OF NEW JERSEY

PRE-FILED FOR INTRODUCTION IN THE 1976 SESSION

By Assemblyman BATE

A CONCURRENT RESOLUTION proposing to amend Article VI, Sections I, III, V, VI, and VII, and Article XI, and to repeal Article VI, Section IV, of the Constitution of the State of New Jersey.

BE IT RESOLVED *by the General Assembly of the State of New Jersey (the Senate concurring):*

1. The following proposed amendment to the Constitution of the State of New Jersey is hereby agreed to:

PROPOSED AMENDMENT

a. Article VI, Section I, paragraph 1, be amended to read as follows:

1. The judicial power shall be vested in a Supreme Court, a Superior Court, [County Courts] and inferior courts of limited jurisdiction. The inferior courts and their jurisdiction may from time to time be established, altered or abolished by law.

b. Article VI, Section III, paragraphs 1, 2 and 3, be amended to read as follows:

1. The Superior Court shall consist of such number of judges as may be authorized by law, [but not less than 24,] each of whom shall exercise the powers of the court subject to rules of the Supreme Court. *There shall at all times be superior Court judges resident of each county equal in number to at least that number of judges of the county court authorized to be appointed for each county court as of July 1, 1976 with the county of residence of a judge being determined as of the time of his appointment.*

2. The Superior Court shall have original general jurisdiction throughout the State in all causes, *all the jurisdiction heretofore exercised by the County Courts and such other jurisdiction consistent with this Constitution as may be conferred by law.*

c. Article VI, Section III, paragraph 3 be amended to read as follows:

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

3. The Superior Court shall be divided into an Appellate Division, a Law Division, and a Chancery Division. Each division shall have such parts, consist of such number of judges, and hear such causes, as may be provided by rules of the Supreme Court. *There shall be at all times at least one part of the Superior Court in each county with at least one judge who at the time of his assignment to sit therein is a resident of the county.*

d. Article VI, Section IV, be repealed.

e. Article VI, Section V, paragraphs 1 and 2 be amended to read as follows:

1. Appeals may be taken to the Supreme Court:

(a) In causes determined by the appellate division of the Superior Court involving a question arising under the Constitution of the United States or this State;

(b) In causes where there is a dissent in the Appellate Division of the Superior Court;

(c) In capital causes;

(d) On certification by the Supreme Court to the Superior Court and, where provided by rules of the Supreme Court, to the [County Courts and the] inferior courts; and

(e) In such causes as may be provided by law.

2. Appeals may be taken to the appellate division of the Superior Court from the law and chancery divisions of the Superior Court[, the County Courts] and in such other causes as may be provided by law.

e. Article VI, Section VI, paragraphs 1, 2, 4, 5 and 7 be amended to read as follows:

1. The Governor shall nominate and appoint, with the advice and consent of the Senate, the Chief Justice and associate justices of the supreme court, the judges of the superior court, [the judges of the county courts] and the judges of the inferior courts with jurisdiction extending to more than one municipality. No nomination to such an office shall be sent to the Senate for confirmation until after 7 days' public notice by the Governor.

2. The justices of the supreme court[,] *and* the judges of the superior court [and the judges of the county courts] shall each prior to his appointment have been admitted to the practice of law in this State for at least 10 years.

4. The justices of the supreme court[,] *and* the judges of the superior court [and the judges of the county courts] shall be subject to impeachment, and any judicial officer impeached shall not exercise his office until acquitted. The judges of the superior court [and the judges of the county courts] shall also be subject to

removal from office by the Supreme Court for such causes and in such manner as shall be provided by law.

5. Whenever the Supreme Court shall certify to the Governor that it appears that any justice of the supreme court[,] *or* judge of the superior court [or judge of the county court] is so incapacitated as substantially to prevent him from performing his judicial duties, the Governor shall appoint a commission of three persons to inquire into the circumstances; and, on their recommendation, the Governor may retire the justice or judge from office, on pension as may be provided by law.

7. The justices of the supreme court[,] *and* the judges of the superior court [and the judges of the county courts] shall hold no other office or position, of profit, under this State or the United States. Any such justice or judge who shall become a candidate for an elective public office shall thereby forfeit his judicial office.

f. Article XI be amended by adding thereto Section VI as follows:

SECTION VI

When the amendment to the Judicial Article of this Constitution providing for the abolition of the County Courts takes effect:

(a) The jurisdiction of the County Courts, as well as all matters pending therein, shall be transferred to the Superior Court;

(b) The judges of the county courts shall become judges of the superior court. All such judges who had acquired tenure on the County Court shall have tenure on the Superior Court without the necessity of further appointment. All other such judges shall hold office as judges of the superior court, each for the period of his term as judge of the county court which remains unexpired as of the effective date of tihs amendment and upon subsequent appointment to the Superior Court shall acquire tenure.

(c) Until otherwise provided by law, all county clerks shall become clerks of the Law Division of the Superior Court and all surrogates shall become clerks of the Chancery Division (Probate Part) of the Superior Court for their respective counties and shall perform such duties and maintain such files and records on behalf of the Clerk of the Superior Court as may be required by law and rule of court; and all fees payable to the county clerks and surrogates prior to the effective date of this amendment shall continue to be so payable and be received for the use of their respective counties until otherwise provided by law.

2. When this proposed amendment to the Constitution is finally agreed to, pursuant to Article IX, paragraph 1 of the Constitution, it shall be submitted to the people at the next general election

occurring more than 3 months after such final agreement and be published at least once in at least one newspaper of each county designated by the President of the Senate and the Speaker of the General Assembly and the Secretary of State, not less than 3 months prior to said general election.

3. This proposed amendment to the Constitution shall be submitted to the people at said election in the following manner and form:

There shall be printed on each official ballot to be used at such general election, the following:

a. In every municipality in which voting machines are not used, the following legend shall immediately precede the question:

If you favor the proposition printed below make a cross (×), plus (+) or check (√) in the square opposite the word "Yes." If you are opposed thereto make a cross (×), plus (+) or check (√) in the square opposite the word "No."

b. In every municipality the following question:

	Yes.	INCORPORATION OF THE COUNTY COURTS INTO THE SUPERIOR COURT Shall the amendment to Article VI and Article XI of the Constitution to incorporate the existing County Courts into the Superior Court, transfer their jurisdiction and pending causes to the Superior Court, and appoint their judges to the superior court, be approved?
	No.	

STATEMENT

The purpose of this resolution is to amend the New Jersey Constitution to provide for the incorporation of the County Courts into the Superior Court.

ASSEMBLYMAN WILLIAM O. PERKINS, JR. (Chairman): We will call the hearing to order. I will start by introducing my colleagues. Assemblyman John Spizziri is on my right and Assemblyman William J. Bate is in the middle.

I will start with an opening statement. This public hearing on Assembly Concurrent Resolution 41 and Assembly Concurrent Resolution 66 is being held by the Assembly Judiciary, Law, Public Safety and Defense Committee in order to obtain the views of public officials, interested groups, organizations, and private citizens on the vital issue of court reorganization.

The purpose of both ACR 41 and ACR 66 is to incorporate the County Courts into the Superior Court. As such an incorporation could only be accomplished through an amendment to New Jersey's Constitution, this hearing is being held by the direction of the General Assembly in accordance with the procedure for consideration of proposed constitutional amendments set forth by the Constitution and rules of the General Assembly.

As a practicing attorney, I am well aware of the tremendous impact that our present court structure has on the quality of justice dispensed in both civil and criminal cases in New Jersey and, therefore, I consider the proposals contained in the legislation which is the subject of this hearing to be among the most important that this Committee will consider during the present session.

As the prime sponsors of these proposals are also members of this Committee, I would like at this time to ask, first, Assemblyman William Bate of Passaic County and then Assemblyman John Spizziri of Bergen County for their opening remarks. Mr. Bate.

A S S E M B L Y M A N W I L L I A M J. B A T E: Thank you. As Assemblyman Perkins indicated, the purpose of both ACR 41 and ACR 66 is the incorporation of the County Courts into the Superior Court. In achieving this purpose, however, the two Resolutions before us differ in four areas: The residential requirement for members of the Superior Court after incorporation; the geographical assignments of Superior Court judges after incorporation; the terms of non-tenured County Court judges upon elevation to the Superior Court; and the classification of Surrogates and County Court Clerks upon incorporation.

ACR 66 would require that after incorporation the Superior Court shall have at all times at least the same number of Superior Court judges who are residents of a particular county as there were authorized to be appointed for that county as of July 1, 1976.

Further, ACR 66 provides that after incorporation, at least one part of the Superior Court shall be in each county with at least one judge, who is a resident of that county, sitting.

ACR 66 provides that non-tenured county court judges, upon elevation to the Superior Court, shall serve the remainder of their County Court terms with tenure upon reappointment.

And, finally, ACR 66 provides that all county clerks shall become clerks of the Law Division, Superior Court and that surrogates shall become clerks of the Chancery Division - Probate Part - Superior Court. It further provides all fees payable to county court clerks and surrogates shall still remain in effect and that the monies derived therefrom shall be for the use of the counties. Thank you.

ASSEMBLYMAN PERKINS: Assemblyman Spizziri.

A S S E M B L Y M A N J O H N S P I Z Z I R I: Thank you, Mr. Perkins. The principal differences, as Mr. Bate has indicated, are in certain areas. ACR 41 would require that the Superior Court, after incorporation, shall at all times

have at least two judges who are residents of each of the counties. One of the reasons for that particular method is because the small counties, particularly in south Jersey, had a fear that they would be left without any Superior Court judges and it was hoped that this would address itself to the solution of that particular problem.

ACR 41 also provides that after incorporation, at all times at least one Superior Court judge shall be assigned to sit in each of those counties.

As far as non-tenured county judges, ACR 41 provides that those people shall, upon elevation to the Superior Court, serve a seven year term with tenure after reappointment.

It is my hope today that those persons who testify, particularly the Chief Justice and Judge Simpson, would indicate, from the judicial point of view, which of the two Resolutions would be more preferable. It is Mr. Bate's hope and my own hope that after hearing the content of the testimony today, we could achieve an integration of these two Resolutions and come up with the best suited Resolution for placement on the ballot next November. Thank you, Mr. Chairman.

ASSEMBLYMAN PERKINS: I have to introduce the individual who is probably most responsible for the work product of this Committee. If anyone wants to supplement any of the testimony here today, they should address their remarks in writing to Mr. John Tumulty who is the committee aide to the Judiciary Committee.

I will now call as our first witness, the Honorable Richard J. Hughes, Chief Justice of the New Jersey Supreme Court.

R I C H A R D J. H U G H E S: Mr. Chairman, members of the Committee, first of all I want to express my sincere thanks for this opportunity to state my support of the general concept of Assembly Concurrent Resolutions 41 and 66. Although I would like to do right now what Assemblyman Spizziri suggested, that is to get into the differences between the two Resolutions, I would prefer - if I could - to wait until the end of the hearing and then supplement that by letter to Mr. Tumulty, if you don't mind.

I had intended to say that I would not attempt to deal with the differences in the two Resolutions, for either of them would propose a constitutional amendment which, if approved by the people, would accomplish a step toward a truly unified court system, the merger of the County Courts into the Superior Court system. This result would be a final step sought unsuccessfully by those dedicated workers for court reform who acted in 1947. They laid before the people of New Jersey 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. Some of those advocates of the public interest are here today, and I think will be able to recreate for you, much better than I could, the history of the political miracle which occurred in 1947, particularly the reasons why the Constitutional delegates would not then agree, under some political pressure, to the merger of the County Courts that these Resolutions would seek.

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

There was no ambiguity or doubt about the people's intention in 1947. The central core of the Constitution was the judicial provision, Article VI. That

Constitution was adopted 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.

So it was that the people of New Jersey abandoned the 1844 court system, which had been created when this state was a largely agricultural community with a population of less than 400,000. That antiquated system had become a hydra-headed monster of confusion for litigants and lawyers alike. The distinctions between the courts were ambiguous and their jurisdications were overlapping. Each judge was king, holding court at his pleasure with no supervision or effective administrative control of any kind. Calendars were clogged and litigants faced interminable delays just to get into court, or into the correct jurisdictional court. It was not uncommon to have to wait two to four years for a decision, with some decisions delayed more than ten years, and there was not a thing in the world that a litigant, lawyer or anyone else could do about it. The judicial machinery in New Jersey had broken down, giving rise to the sarcastic epithet "Jersey justice," a symbol of scorn. When the new Constitution was adopted, an editorial in the Journal of the American Judicature Society stated: "The people of New Jersey are exchanging America's worst court system for America's best."

Now, if I can be personal, I would like to mention my own credentials as a witness. I have been a lawyer for 45 years. I practiced under that old system. I knew it very well. By coincidence, I was the last judge appointed under the old system. I was sworn in as a Common Pleas Judge in Mercer County on September 13, 1948, only two days before the effective date of the new court system. I then worked for ten years, first as County Court Judge and then as Superior Court Judge, under Chief Justice Arthur T. Vanderbilt.

Now let me tell you about him. He fought for at least 17 years consecutively for the new court system. When a constitutional proposal failed miserably in 1944 - I think it was about one million to two hundred thousand votes against - most people thought that court reform was dead, but not Vanderbilt. He continued the fight and when the people finally spoke in 1947, a dedicated Governor, Alfred E. Driscoll, secured his stature in the history of New Jersey - I think - by selecting Arthur Vanderbilt to be the architect and guide of this great judicial structure in its beginning years. Chief Justice Vanderbilt worked, and administered, and judged, and fought for the decent administration of justice in the interest of the people until he died, literally in action like a soldier, in 1957. His last thought, aside from family, was for his work, and thus for all the people. I once read that in the ambulance he tried to get up and wanted to get to his office. Not long after that, he died. A clergyman, in eulogy, prayed over him as follows: "...that we may continue the things he did so well, that we may keep the ground he has gained." That is the purpose, Mr. Chairman, which brings me here today.

The indelible stampe of excellence which Arthur Vanderbilt implanted upon the new court system was continued and burnished by his successor, Chief Justice Joseph Weintraub, who so recently has left us. His scholarship and integrity were nationally acknowledged. And I have not the slightest doubt that Chief Justice Pierre P. Garven, but for his untimely death, would have carried forward the same thrust -- the same idealism for the courts.

So, from this you can see that I have some illustrious forebearers. They were not silent men who stood aside when small-minded people attacked this great system of honest and uncorrupted and independent administration of justice. They were fighters for justice - and thus for the people. And, I intend to do the same within the limits

of my own ability.

The Resolutions before you mean a step toward unification of the courts in the interest of the people. When political pressures at the 1947 Convention spoiled the unification plan by withholding merger of the County Courts into the system, Dean Roscoe Pound of Harvard Law School sympathized with Vanderbilt, more or less on the theme of being reconciled to the gap, particularly in view of the great advances otherwise made. Now, 30 years later, we have another chance to seek the public voice in support of a step toward a fully unified court system by inclusion of the County Courts. The political pressures of yesteryear have lost their former relevance - they don't seem nearly as important now - and I, myself, would not have the slightest doubt that the people, not having changed so much since 1947 in their interest in the decent administration of justice, will again support the obvious economies, good sense, and integrity embraced by the inclusion of the County Courts recommended by these Concurrent Resolutions. Under the 1947 Constitution, as you know, the Supreme Court is vested with large responsibility, to "make rules governing the administration of all courts in the State and, subject to law, the practice and procedure in all such courts." By the same token,the Chief Justice is designated as "the administrative head of all the courts in the State." You can therefore see that the new Constitution unmistakably created in the Supreme Court and the Chief Justice that indispensable key to good government in any branch, "accountability", and it is our purpose to fulfill that constitutional obligation in full measure.

Unfortunately, because of the separate operation and financing of the County Courts, our judicial system is still subject to splintered financing and somewhat fragmented administration. For example, while the State provides supporting staff and accommodations for the Supreme Court and the Appellate and Chancery Divisions of the Superior Court, the counties provide facilities and support services for the Law Division of the Superior Court, the County Courts, the County District Courts, and Juvenile and Domestic Relations Courts.

With caseloads increasing in both size and complexity - as Judge Simpson, our great court administrator can tell you later - the need for achieving the ultimate goal of a fully unified and state-funded judicial system has taken on a new sense of urgency. The standards of the American Bar Association and the National Advisory Commission on Criminal Justice Standards and Goals both conclude that a fully unified and state-funded court system is necessary in order to provide quality justice in all the courts of any state.

A number of other states have moved or are now moving toward the goal of court unification. Colorado attained a unified structure in 1965. By 1970, that system was fully state-funded. A national survey completed in January 1976 for the Law Enforcement Assistance Administration's National Institute of Law Enforcement and Criminal Justice, reported that 15 other states had either undertaken or planned unification programs since 1973. New York, Connecticut and North Dakota have enacted legislation providing for court unification.

The New Jersey Supreme Court has established as one of its high priorities the seeking of a fully unified and state-funded system for all trial and appellate courts. 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 who, under a general assignment order promulgated each year,by me, are assigned to hear and dispose of all types of cases in the various courts. Additionally, the Governor of New Jersey has asked the Judicial Branch to develop a detailed blueprint and plan of action to accomplish full unification and state

funding, and that project is presently going on. Judge Simpson will be able to tell the Committee - if it wishes - just what its status is at the present time. But, the key to its success - the thing that should be accomplished now - will be the merger of the County Courts into the Superior Court system.

The unification project represents a major step toward fulfillment of the ideals of court management and court reform which inspired such men as Dean Roscoe Pound, Chief Justice Vanderbilt, retired Justice Nathan Jacobs, former Judge Alfred Clapp, and so many others. As Dean Pound advised the 1947 New Jersey Constitutional Convention:

"In this process of making over and simplifying the organization of courts, the controlling ideas should be unification, flexibility, conservation of judicial power and responsibility.

"Unification is called for in order to concentrate the machinery of justice upon its tasks. Flexibility is called for to enable it to meet speedily and efficiently the continually varying demands made upon it. Responsibility is called for in order that some one may always be held and clearly stand out as the official to be held responsible if the judicial organization is not functioning the most efficiently that the law and the nature of its tasks permit. Conservation of judicial power is a sine qua non of efficiency under the circumstances of the time. There are so many demands pressing upon our state governments for expenditures of public money that so costly a mechanism as the system of courts cannot justify needless and expensive duplications and archaic business methods."

I think the words of Dean Pount, Mr. Chairman, are just as relevant today as they were when originally spoken and I think they would be conclusive to any fair mind as to the wisdom of taking this first step toward unification, namely the inclusion of the County Courts. I know that all people are nervous about money these days, but I think the assumption by the State of the counties present share of the cost of maintaining the County Courts would not cause a governmental earthquake. In the first place, they would merely transfer those costs to the State from the county taxpayer, and probably reduce them in the long run by increased efficiencies and economy. In any event, the present Judiciary budget request, which Judge Simpson is fighting for with the Appropriations Committee, is in the range of $20 million, representing about one-half of one percent of the whole State budget. Now, this is for a co-equal branch of government. We have one-half of one percent of the State's whole budget. The current Highway budget, for instance, would be in the range of $140 million this year. The assumption of the county costs by the State for operation of the County Courts would be the rough equivalent of the construction of a few miles of highway, and would seem to me to be entirely justifiable. In 1976, five miles of a four-lane highway cost the State approximately $16 million. So, you can see that the figures would indicate that this investment in court unification would be justified.

Finally, let me be candid, Mr. Chairman, and members of the Committee, with regard to my own conception as to my constitutional duty in the face of similar questions which might be arising in the future and which would affect the preservation, or, on the other hand, threaten the erosion or collapse, of our present court system. I intend to fight, as did my predecessors, for the integrity of that court system, whether it involves confrontation with a political effort to tie its hands and interfere with its carrying out the constitutional duties imposed on it by the people, or to encroach in any way upon its constitutional obligations, or to damage it by repulsing decent and provably justifiable judicial compensation adjustments, or otherwise.

With all humility, I would like to paraphrase the words of the great Winston Churchill: "I did not become Chief Justice of New Jersey to preside over, nor to silently permit, the silent destruction of its court system or its falling into second place or, much less, a mediocre position."

If this is to be avoided, communication is vitally necessary. I intend at every stage to lay the full facts before the Governor, the Legislature and the people so that if, in the end, the people wish to permit their courts and the administration of their justice to fail or diminish, at least they will know what they are doing.

I have gained, in a rather long and busy life, an abiding confidence in the wisdom of the people. I am convinced that they have pride, in family, in community, in right, and in compassion and tolerance. I am sure they have no less pride in the administration of justice and in their court system and I am confident that they will sustain and support them. Therefore, I recommend the concept of ACR 41 and 66, as combined and worked out - as Assemblyman Spizziri has suggested - with the hope and belief that when this question, in whichever form, is presented to the people, they will respond as they did in 1947 by saying "we want the best court system and administration of justice in the land."

In conclusion, Mr. Chairman and members of the Committee, I adopt as my own commitment the pledge of Chief Justice Vanderbilt on the very day in 1948 that the new court system became effective. He said, "We of the Supreme Court are determined to a man to give this State the finest judicial organization and administration within our power. It is our ambition to be known as an industrious court, an efficient court, a just court, and, I hope, a friendly court.

Thank you very much for giving me so much time.

ASSEMBLYMAN PERKINS: Thank you very much, Chief Justice.

Are there any questions?

ASSEMBLYMAN BATE: I was wondering if Judge Simpson is going to make a statement, perhaps he could give the statement before we ask any questions so that the Chief Justice and the Judge might be able to answer the questions at the same time.

ASSEMBLYMAN PERKINS: I would like to introduce the member of the court system who is burdened with the boiler room concepts of administration, the Honorable Arthur J. Simpson, former Justice of the Appellate Division and presently the Administrative Director of the Courts.

A R T H U R J. S I M P S O N: Thank you very much, Mr. Chairman. I too, as the Chief Justice does, appreciate being invited here today to make a brief statement. I will be brief. It seems somewhat presumptuous being sandwiched in between the Chief Justice and retired Justice Nathan Jacobs, who will follow me. I particularly appreciate this invitation due to the fact that I testified last year too before this same Committee, when Assemblyman Hawkins was the Chairman, I believe, and Assemblymen Bates and Spizziri were also present. It failed, of course. The Resolution never did go through and it didn't go on the ballot. So, this year we brought the heavy artillery - the Chief Justice and retired Justice Jacobs.

ASSEMBLYMAN PERKINS: Let me state you have heavier artillery up here.

JUDGE SIMPSON: Yes. (laughter)

We have, gentlemen, a good system in New Jersey. These - either one of them, or a modification of either - Assembly Concurrent Resolutions, we believe, will result in a great system in New Jersey. We have in effect a partially unified system. That is to say, we have centralized administration and rule-making power vested in the Chief Justice and the Supreme Court. We have partial state funding of the system and either one or a modification - as I will probably suggest and I hope you will consider -

of these Resolutions would be a giant step forward in reaching a fully-defined and fully state-funded system. This would accord with the American Bar Association's standards for judicial administration. Some states are already moving towards that ideal. The Chief has mentioned Colorado. New York, just last year, did this. It is high time we moved on and attain the ultimate goal which, as the Chief also said, was devised originally by Dean Pound in 1906. Ultimately, Chief Justice Vanderbilt and Federal Judge Parker, in 1937, compromised a bit and our 1947 Convention changed the court system.

In any event, at that time we had the number one system in the country. I must, in all candor, state that we do not have this anymore because other states have moved on ahead of us, just as they have in terms of salaries and compensation for judges. We have dropped from third place to ninth place and I hope that the Legislature and the Governor will do something about that too.

I said I would be brief. I would just like to address several issues - the advantages, as I see them, of both of these Assembly Concurrent Resolutions; the disadvantages, of which I can be even briefer since there are absolutely none; a couple of minor suggestions in the event the substance and the major scheme of either or both of these ACR's is adopted by the Assembly without any major change; one or two minor problems; an offer of assistance, of course, by our office to help if we can, with any modifications; and one or two brief comments comparing the two Assembly Concurrent Resolutions 41 and 66.

The advantages of both - first of all, they follow the national trend towards court unification. Secondly, they follow the ABA standards and the NAC standards, of which our own Governor Byrne was recently Chairman of the National Advisory Committee. Third, either one of them - or both - will be a step toward full unification and state funding for efficiency and economy. There will be a single recordkeeping system instead of two separate systems for County Courts and Superior Courts, even though we run combined civil and criminal calendars. It will also be a step towards the distribution of judgeships on the basis of weighted case loads rather than population.

We have the ability, with 120 Superior Court Judges, to a limited extent, to assign them where needed most in the 21 counties. We have a very limited ability to do that. Technically we can with the County Court Judges but as a practical matter we can't do it to a great extent because of deficient statutory schemes for reimbursement of sending county by receiving county. Furthermore, we are limited by the geographical facts of life. Even though we are the most densely populated state in the Nation and a small state, it is difficult to assign a judge who lives in Mahwah to sit in a courtroom in Salem County or Cape May County. Expenses go up; the hardship on his family is extreme and with this movement towards a fully unified system, we would certainly be able to more or less have permanent assignments which will more closely accord with the weighted case load distribution of judges - the ideal distribution - as opposed to the present scheme for the County, Juvenile, and District Courts of judgeships being created on the basis of population.

For example, the population of Essex and Bergen Counties is very similar and, thus, there are a similar number of County Court Juges - or a close number - and Juvenile District Court Judges; nevertheless we have twice as many cases in Essex as we do in Bergen. So, you can see the imbalance we start off with right away. There is an imbalance in the allocation of Superior Court Judges because they are not based upon weighted case loads either. Actually, they are based upon a statutory scheme of statewide assignability. Nevertheless, because of where they might live, as opposed to where they might be needed or where they might be appointed from, based upon whatever

agreement is reached between the Governor and the Senators as a whole and also the Senator of the county, we do end up with an imbalance of Superior Court Judges in the various counties in the state.

I think either one of these Assembly Concurrent Resolutions would also be a large step forward towards eliminating the inequities of the county case load burden which results from venue of various cases. In other words, there is a certain amount of choice of venue and therefore a lawyer might place his case in one county or another with the accidental expense going to that county. This is particularly important in a large case that takes a long time and may require extensive security, and so forth, and the county bears the load of that expense insofar as the county judge assignment is involved and also the other expenses which would only be alleviated by a full unified, full state funded system.

As I say, this is a step forward towards eliminating that inequity. It will also, as I have said before, permit us to create one single recordkeeping system. We have two complete systems - the Superior Court and the County Court systems. The County Court system is not uniform and we are going to try to move forward toward that goal even without a fully unified state funding system but it is more difficult. It will be much simplier if we only have to have one system for the Superior Court. We know we can improve that, and we will. For example, if the County and Superior Courts are merged and we adopt the present Superior Court recordkeeping system, we do have a problem of duplicate filing in Trenton and the various counties. With facsimile transfer machines and use of computers and micrographics, we probably can and will improve that system. We will do it anyway if we don't get the merger, but if we do get the merger, there will be even that much more efficiency and economy and overall savings to the public, the Bar and, of course, the counties.

The combining of calendars in civil and criminal cases presently exists. We all know that and this will really make that a fact of life de jure, as well as the fact that we do not run separate criminal and separate civil calendars of the court where County Court Judges are involved or Superior Court Judges are involved, who already have combined calendars in each of the counties. So, this will accord with what we are actually doing.

Moving to the judges themselves, it will be a great morale factor if the County Court Judges become Superior Court Judges. They receive the same salary, the same pension, and they do the same work. The salary and pension differences of the past were a problem in the way of a merger. That is no longer a problem. This will partly eliminate what I think - I hope - someone else will mention too and that is what actually occurs in the real world - the musical chairs of judges jumping around from District Court of Juvenile, County, and Superior Court. How they get from one to the other is a disgrace sometimes. There should not be any distinction in any of them. I would suggest that perhaps you consider including the District Court and the Juvenile and Domestic Relations Court in this Assembly Concurrent Resolution also.

After all, there are a total, now, of 120 Superior Court Judges. Either one of these ACR's would affect the merger of the present 103 County Court Judges. Add the 7 Superior Court Justices and that is 230 out of our 296 authorized judgeships, statewide. You are only talking about 66 more judges and I would love to see you consider bringing in the District Court and the J and D. R. Court also. This will speed up what I know is dear to Assemblyman Bate's heart and all of our hearts - the full implementation of the family court concept and it won't cost that much more. The judgeships themselves would be just about equivalent to the cost of merging the County Courts with the Superior Court. The salary pickup by the State in connection with

either one of these ACR's for the County Court Judges is $2.4 million. To pick up the 66 J and D. R. District Court Judges would be another $2.4 million. This is just an insignificant amount of money when we consider what is involved in a $4 billion statewide budget. Furthermore, there is no cost at all to the public. It just changes the bookkeeping, that's all it does. But, it presently will assist the counties and I believe the money will be available this year to do this at the state level.

All judges are cross-assigned anyhow, as the Chief said. Another advantage will be this: Appellate Division Judges are appointed by the Chief Justice. He has always -- not just Chief Justice Hughes but all of his predecessors since 1947 have always, and properly so, appointed those Appellate Division Judges from the Superior Court Judges. Thus, many good County Court Judges who for one reason or another - usually a political accident - are in the County Court rather than the Superior Court and we can't really select from them to put them on the Appellate Division. I don't think that the scheme of the '47 Constitution would encourage that. That is what the Superior Court is for. Originally it was 24 Superior Court Judges. There were two parts, three judges each with a total of six in 1947, in the Appellate Division and, of course, they gain the Superior Court.

The Constitution provides that there will be a Superior Court composed of an Appellate Division, a Chancery Division and a Law Division, implying, certainly, that the Appellate Division judges should be of the Superior Court. So, it really wouldn't look good, I don't think, if the Chief selected a County Court judge and put him on the Appellate Division - it has never been done. Yet, there are many great County Court Judges who could well be chosen for that service.

The Chief mentioned, and I ought to bring you up to date on the SLEPA funded project - it is $94 thousand. We have one accountant, one lawyer and one personnel expert. We have former Chief Examiner, Bill Druz. We hope to have -- We will have former Budget Director Walt Wexler. We are trying to devise a uniform budget and accounting system and uniform personnel policy. We have a young architect who is taking an inventory and survey of all of the courthouses and court rooms. We want to build courthouses and courtrooms in the future with all the modern technology. This is an ongoing project: to produce a plan and blueprint for consideration, first, by the Chief Justice and the Supreme Court, and ultimately a recommendation to the Governor and to the Legislature in the hope of attaining finally the fully-unified and fully state-funded system, with alternative strategies,with costs, a statewide probation service, and everything that goes with it.

The project was called for by the Governor. I mentioned it last year, I think, when I testified. There was great interest by Assemblyman Hawkins and a number of others in both the Assembly and the Senate.

I don't think these ACR's are particularly controversial; they may be in minor respects, particularly 66. I recall there was some concern by the Surrogates and County Clerks in previous years. We have tried to alleviate that. The Judiciary is not particularly concerned whether these three persons remain elected officials or not; that is to say, the Sheriff, the County Clerk, and the Surrogate. None of their assistants is elected anyway. So I certainly hope that either resolution would not collapse because of any concern by a Surrogate or a County Clerk or a Sheriff. Although they are not included this year, I think they were last year.

These constitute, gentlemen, the major advantages of either one of these Assembly Concurrent Resolutions. I have mentioned that there are no disadvantages.

I have a couple of suggestions: One is this unfortunate language of the

present Constitution describing courts of limited jurisdiction as inferior courts. The wording was probably utilized in contradistinction to Superior Court. But it has an unfortunate context. In either one of the ACR's, I think you could just eliminate the word "inferior."

For example, Section 1 of either one of them would read: "The judicial power shall be vested in a Supreme Court, a Superior Court, and courts of limited jurisdiction." It need not say "inferior courts of limited jurisdiction."

I suggest that you consider too the inclusion of J. and D.R., District Courts, as well as County Courts for this merger. You could go either way on leaving the door open for the Assembly and the Senate to create in the future courts of limited jurisdiction. In other words, either eliminate all the language about courts of limited jurisdiction, thus giving us a single Superior Court; or, if you want to retain the power by way of the Constitution, but at this time have the fully unified system of one Superior Court, just leave the language in the Constitution that says, one Superior Court and such courts of limited jurisdication as the Legislature may provide from time to time. But we really don't need any of them, as I have already suggested.

Don't forget that every year somebody puts a bill in any time an issue comes up in any particular field. Bills are thrown in the hopper, really not seriously, I don't think, but they are in there, for an Environmental Protection Court, a Labor Court, a Landlord and Tenant Court. Every time a particular new area opens up, someone wants to create a separate court, absolutely contrary to the unified principle. The court is in a better position to divide up the work and create parts of the divisions or of the single Superior Court. For example, at the present time, we merge them all together. We would have the Superior Court - Civil Division, Criminal Division, Appellate Division, Chancery Division and Family Division. If necessary in the future, we might create more. We have to be funded anyway. The question always comes up: Suppose you do something and we don't like it. Money is the name of the game. I appeared yesterday before the Joint Appropriations Committee. If we were to say, we are going to create a probate part, for example, and the Senate and the Assembly were rising up in objection thereto, they just simply wouldn't fund it - that's all. They would just delete it from the budget and we wouldn't be able to do it. So I wouldn't be concerned about that theoretical possibility.

I would suggest you consider seriously perhaps - at least, look into it - changing the tenure clauses as set forth in these two ACR's. I think they are well intended, but there is a long-standing inequity that pertains to a number of judges in this State. It seems to me that the concept, at least if you have a merger of the County Courts and the Superior Court, is that after seven years and a reappointment, a judge should have tenure. Now you have many judges who have served seven, ten, twelve and fifteen years. If they go from one court to another, they never get tenure. Justice Jack Francis never had tenure in his entire judicial career. I don't think tenure is a very important thing; but it is inequitable. If a man or a woman starts on the Superior Court, after seven years and a reappointment, he or she has tenure; whereas, if they go, as I think is desirable in many cases, from the District Court to the County Court to the Superior Court, and a few like Justice Handler, to the Supreme Court, they shouldn't be precluded from having tenure. So I think you might consider on this merger of either the County Courts or all the courts that any judge who has already served seven years should have tenure, provided he is reappointed the first time his appointment comes up. He has already got, for example, eight years on the bench. He should be permitted to serve out his term and then

get tenure or, right now, when he goes into this new Superior Court, he ought to be passed upon and get his tenure. It is not crucial, but it is something you might consider.

You should consider the bipartisan appointment scheme in connection with this ACR. By statute, our lower courts - our County, Juvenile and District Courts - are 50-50 between the two leading parties in the preceding general election. In our State, it is always Republican and Democrat. If it were across the border, you might have Conservative or Liberal Parties, etc. I don't know how debatable this is at the present time. But, as we know, the history is this: Those three so-called lower courts are 50-50. By tradition, the Governor's nomination and the Senate's confirmation have always been 50-50 on the Supreme Court and the Superior Court. If you want to assure with respect to these 103 judges that would come in by the County Court merger or all of them, if you added Juvenile and District, the continuation of that policy, perhaps you ought to consider putting it in the Constitution, so it will be a similar scheme.

There may be an objection. There is always the cry: What about the so-call independent? In the real world, all lawyers register one way or the other if they have any thoughts of ever wanting to go on the bench. But if it is serious, an alternative is to provide that no more than one-half of the judges shall be from the Governor's party. Since, after all, he makes the nominations, that would then leave the door open for him to make nominations with the check and balance of the Senate confirmation of the remainder of the vacancies he gets - after all, he wouldn't appoint them all anyhow - from either the opposite party or so-called independents. At least, you might want to consider it. If someone raises the issue, at least I think you should be apprised of it.

I offer, of course, any assistance our Administrative Office, particularly our unified, State-funded and SLEPA-funded project, can offer - after all, that project is there for the benefit of everybody, not just the Judiciary - with respect to any possible modifications of these ACR's.

As to the ACR's before us, 41 and 66, I think that 41 is a little bit more workable. It will raise less questions. The provision of at least two from each county gives us no problem, other than Salem County where there is only one judge now. But, after all, if you have the scheme of one Republican and one Democrat, maybe it is only fair that they ought to have one of each, whether he is assigned out of there or not.

The scheme of ACR 66, which requires the County Court Judges to either remain assigned or to be resident in the counties in numbers as they were July 1, 1976, will somewhat limit the attainability of distribution on the basis of weighted caseloads, but it won't be any great problem. I suggest it will be a little bit more workable for the Judiciary if the concept of 41 is invoked. But if as a political matter 66 is more desirable, in order to adopt any resolution, it certainly will be workable for us.

I would suggest, if you want to help us move toward the fully-unified system, again on Assembly Resolution 41 - and it is similar on 66 - that the Constitution be amended to provide in Section 3, top of page 2, "The Superior Court shall be divided into an Appellate Division, a Law Division, and a Chancery." Then add in wording like this, Mr. Tumulty, "and such other divisions and parts as determined by the Supreme Court, all of which shall hear such causes, as may be provided by rules of the Supreme Court," etc.

I would eliminate, if you will consider it, the reference in the middle of that page - Article VI, Section VI, paragraph 1 - to inferior courts of limited jurisdiction. I would just knock out the word "inferior."

I have made suggestions with respect to Section 6, as to tenure, in Assembly Concurrent Resolution No. 41, and they are similar for Assembly Concurrent Resolution No. 66.

It is not entirely clear in Assembly Resolution No. 66 whether the intention is to have the State pick up the expenses of the County Clerk, himself, and the Surrogate, himself or herself, or all of their employees who are devoted to judicial duties. The costs, of course, are quite different. The cost for picking up the salaries of the 103 County Court Judges by virtue of a merger is about $2.5 million, $2,472,000, transferred from the counties to the State. The reason it is that low is that there is already State aid of 40 percent of the County Court Judges' salaries anyway. So we are talking about 60 percent of the 103 judges at the present salary scale of $40,000 or $2,472,000. It would be similar - $2.5 million roughly - if we picked up the full salaries of the District and Juvenile Judges, in case you decide to amend the ACR's to include them too.

If the intent of Section 6 of ACR 66 is just to pick up the salaries of the County Clerk, himself or herself, and the Surrogate, then you are talking about a million or so, whatever the salaries are in the 21 counties for each of the two officials. If the intention is to pick up all of their supporting staff devoted to judiciary duties, then the cost will be considerably in excess thereof. We estimate about $7 million for County Clerk personnel and $3 million for Surrogates and staff, and, of course, we have not included the Sheriffs' costs, which would be in the area of $12 million, if there was an amendment to include them. They are not in this year. Either way - and that is the ultimate goal - finally, there is absolutely no additional cost to the public. It does shift it from the county to the State. There is no question but that there will be a long-range saving in efficiency and economy. I have described some briefly, but I can answer any questions and go into further detail if you wish me to.

Thank you very much.

ASSEMBLYMAN PERKINS: Thank you.

ASSEMBLYMAN BATE: I want to review the cost with either the Chief Justice of the Administrative Director. The Chief Justice pointed out that the Judiciary budget is in the neighborhood of $20 million.

JUDGE SIMPSON: We have requested $20 million this year. The Governor cut $1.5 million to $18.5 million.

ASSEMBLYMAN BATE: Let's work with the $18.5 then. The increase, as I understand it from what you have just said, would be $2.472 million for the 103 County Court Judges.

JUDGE SIMPSON: That is 60 percent of their salaries, since the State already pays 40 percent by State aid.

ASSEMBLYMAN BATE: And an additional $2 million for the District Court and the Juvenile and Domestic Relations Court.

JUDGE SIMPSON: There are 34 and 32, a total of 66. And I am just roughing it at $40,000 each. Right now, the District Court Judges only get $37,000 and the Juvenile Judges get $40,000. It is an atrocity and I am hoping the Assembly and the Senate will equalize all those Judges.

ASSEMBLYMAN BATE: For years and years and years, we have read a lot

and heard a lot about elevating the whole Municipal Court system to some sort of a District Court and having regional judges, so to speak. Do you envision as a future possibility that we have some sort of a unification reached within the next year or so in the State of New Jersey?

JUDGE SIMPSON: It is a possibility, but I think and hope it should be considered separately from the issue of full unification of the full-time courts. We all know there are political problems because we have 382 Municipal Court Judges appointed by 382 Mayors - or more than that - over 400 - since some of the judges are in more than one municipality. With all those governing bodies, where sometimes 3-3 votes are broken by the Mayor, I would rather not see the entire unification concept for the full-time judges sink because of a big political battle over the Municipal Courts. Certainly it is arguable on both sides whether you should retain them as we have and regionalize them, make them full time and have judges on circuit. There all sorts of possibilities which I think can be logically distinguished from what you are addressing at this time.

ASSEMBLYMAN BATE: I am speaking about a full-time Judiciary and not necessarily promoting the incumbents or any portion thereof, although it is likely that would be a good training ground. But do you favor that elevation to full time?

JUDGE SIMPSON: I certainly do. Personally, I agree with Chief Justice Weintraub who called for it for 15 or 20 years. He wanted full-time Municipal Court Judges, if necessary on circuit, provided with a decent court, not part of the Police Headquarters or the Volunteer Firemen's Room with the pool table covered temporarily to make a bench. If the municipalities would provide a proper courtroom, proper facilities, we could have a full-time judge ride circuit. Otherwise the municipality could have the option of having the cases heard at the courthouse in the county. Being a small State, nobody is that far away from Hackensack in Bergen County. It is a little more convenient to have a Municipal Court in Mahwah, for example; and, if it is a proper one, the judges could go on circuit.

Certainly I favor it. Full-time judges are the best. The Municipal Court Judges are probably our biggest problem. It is not their fault, but it is the system of having them part time practicing law and part time sitting on the bench. There is constant pressure on them from the mayor and council and police chief and everybody else. Some of them unfortunately do go down, even though it is a small number. By and large, the vast majority of them do a great job. The time is past for that old horse and buggy concept. But it is a political problem. So I would rather treat it separately.

ASSEMBLYMAN BATE: I just want to say one other thing and then I will go on to another question. I once mentioned it informally to a full-time judge of the State system and he indicated that it was a good idea, provided the judges weren't just going to hear Title 39. If you had a full-time Superior Court Judge, I assume the Assignment Judge would assign him in the same fashion as judges are assigned to the civil or the criminal calendar.

JUDGE SIMPSON: Certainly. And there would be a lot more use of the Municipal Court Judges by way of attorneys, I would suggest. In other words, many times the defendant can under statute waive jurisdiction and let the Municipal Court Judge hear the case. Very often they won't do it because he is a part-time judge and maybe relatively inexperienced. Motions to supress and preliminary hearings, despite the fact they do a good job by and large --- We do have attorneys in virtually

all of them. We "grandfathered" a few in 1952 who were nonlawyers. But despite that, I don't really think there can be a serious question but that a full-time judge doing nothing else, devoting himself to continuing his judicial education, without the pressures of having to earn a livelihood in practice, normally would do a better job than a part-time person.

ASSEMBLYMAN PERKINS: I believe you are talking about a very hairy jurisdictional, political question. If we are going to proceed with the task at hand, we would not like to muddy the water with the obvious questions that will arise with reference to incorporation of the Municipal Court system into this system. The realities of life are such that the municipalities would be very reluctant to give up the jurisdiction that they have now. It is a question of money. It is a question of experience of those judges whereby the experience critique is different. You would have many other questions. You have the home rule concept, which is the catchall for that type of question. And I think maybe we had better concentrate on the task at hand rather than attempting to expand the jurisdiction of the Superior Court under our Constitution to encompass the Municipal Courts.

CHIEF JUSTICE HUGHES: Mr. Chairman, a good example of that, if I can interrupt: I reviewed the votes and the 1944 Constitution went down by a staggering vote, something like 1,100,000 to 200,000 or 280,000 - a terrible defeat in 1944. And the whole court reform was smashed and only came back, as I said, by a political miracle, which shows you what trouble you could get into when you begin to monkey with home rule and, as I recall, questions about privilege. All the churches and everybody else were excited in 1944. It was pretty badly handled.

ASSEMBLYMAN PERKINS: Especially if the concept of municipal jurisdiction on issues of pornography raises its ugly head again.

ASSEMBLYMAN BATE: I wanted to ask a final question. My understanding from what you say is that what you are seeking with respect to tenure is uniformity; isn't that a fact?

JUDGE SIMPSON: I think equity too.

ASSEMBLYMAN BATE: A ten-year service on the bench would involve equity, would it not, because a man appointed to the Superior Court who was reappointed, would when he finished ten years ---

JUDGE SIMPSON: Yes, but he gets his tenure at seven.

ASSEMBLYMAN BATE: I appreciate that. But you gave an example of Justice Francis who was promoted from bench to bench until he reached the high court. And there is a provision in the law now that a County Court Judge, I believe, on his third appointment, after ten years, gets tenure. Most of the County Court Judges reach the Superior Court before they finish the ten years.

JUDGE SIMPSON: I know personally of one County Court Judge who turned down a Superior Court judgeship because he didn't want to take a chance on losing his tenure. I think that is improper.

ASSEMBLYMAN BATE: I can see a value in saying, when a person serves ten years as a Judge of the Superior Court, he or she gets tenure. That would be only crucial in the early years when you have someone, I suppose, appointed to the County Court and would be part of the unified court and then would become a Superior Court Judge.

JUDGE SIMPSON: Juvenile Judges get tenure after their third reappointment; District Court Judges never get tenure. So I say a District Court Judge who has already

served ten or twelve years shouldn't have to wait seven more years. But this is not crucial. I just think it is a matter of equity. That's all.

ASSEMBLYMAN BATE: May I ask you one more question, just for my information? Let's assume that a judge who had tenure in the County Court accepted an appointment in the Superior Court, but was not reappointed. There is no vested interest to revert to that position?

JUDGE SIMPSON: No vested interest at all.

ASSEMBLYMAN BATE: Does he have to sign something, or what?

JUDGE SIMPSON: If he is on the County Court and he doesn't have tenure - say he had nine years - now he gets appointed ---

ASSEMBLYMAN BATE: I thought you said he had tenure on the County Court.

JUDGE SIMPSON: I said that there was a case I know of - the man is dead now so I won't mention his name - a County Court Judge who had more than ten years, so he had tenure. And he did not want to go on the Superior Court because theoretically he could serve seven years and not be reappointed, and he would be out.

ASSEMBLYMAN BATE: Has that ever been challenged - I mean that a person would lose the job? If you have tenure, by accepting the appointment, ipso facto, you lose the tenure? Do you have to resign?

JUDGE SIMPSON: Yes, you resign. If your term is still going on, you resign to take the higher job.

ASSEMBLYMAN SPIZZIRI: What Mr. Bate is saying, Judge, is that if a judge has tenure in the County Court and he is appointed to the Superior Court, does he have to resign his County Court judgeship?

JUDGE SIMPSON: Yes, he does.

ASSEMBLYMAN SPIZZIRI: So there is an official resignation. Is there an official resignation, as such?

JUDGE SIMPSON: Yes.

ASSEMBLYMAN SPIZZIRI: So that is why he would not then be able to fall back if he doesn't get reappointed?

JUDGE SIMPSON: His office ends as a County Court Judge and he starts as a Superior Court Judge. Or, if he moves to the Supreme Court, the same thing would happen.

ASSEMBLYMAN BATE: Just so I am clear on this, when we read, for example, that people are elevated to a court, is there actually a procedure where a person who is a County Court Judge when he is promoted to the Superior Court has to deliver a letter to the Secretary of State or someone else that he resigns that lesser judgeship?

JUDGE SIMPSON: He doesn't deliver a letter. It is a self-executing, automatic termination of his previous office and all the emoluments that go with it, including tenure. He is now a Superior Court Judge. It could happen and did happen in the case of Justice Francis, who had tenure as a Superior Court Judge and lost it when he went on the Supreme Court. As I say, it is not crucial. It is just a matter of equity.

ASSEMBLYMAN SPIZZIRI: I just have two short questions. What would be the savings, Judge Simpson, to the counties on the integration of the County Courts into the Superior Court? Do you have any figures on that in your office?

JUDGE SIMPSON: If the present ACR were implemented, it would simply be the County Judges' salaries of which they are now paying 60 percent or $2,472,000 - that is ACR 41. It would be split among the counties, depending upon how many County Court Judges they have. In the case of Salem County, it would be 60 percent of

$40,000 or $24,000. They have only one judge.

ASSEMBLYMAN PERKINS: I just happen to have those figures you were asking for broken down by counties. The last figures compiled envision a savings to the counties of $2.4 million - $2.472, to be exact.

ASSEMBLYMAN SPIZZIRI: Contrary to some opinion, I am a great advocate of the Municipal Court system and I just question your suggestion of amendment to Paragraph 1, of proposed Article VI of the Constitution, by omitting the last sentence of 1, the inferior or courts of limited jurisdiction, etc. If that language were eliminated, would that give rise to the possibility of an ipso facto elimination of the Municipal Court system?

JUDGE SIMPSON: Well, yes. I didn't mean to suggest it be done that way. I meant to suggest that if you retain the Juvenile and District Courts, all you would have to do would eliminate the word "inferior." If you want to merge in District and Juvenile, you would have to eliminate the present language as to limited jurisdiction. You could provide simply for such Municipal Courts as may from time to time be provided by the Legislature.

ASSEMBLYMAN SPIZZIRI: One final question: I am glad you alluded to the integration of the Juvenile and the District Courts. I just asked Mr. Tumulty whether or not we would have to have another public hearing and he indicated he didn't feel that we would. I think that is a good suggestion that the Committee should seriously consider because it makes sense.

ASSEMBLYMAN PERKINS: We can proceed with this resolution as it presently stands. As a matter of fact, no further constitutional amendments would be required for the incorporation of those respective jurisdictions. Just by legislation, we could do that.

ASSEMBLYMAN SPIZZIRI: That is all the questions I have. Thank you very much.

ASSEMBLYMAN PERKINS: Are there any other questions from anyone in the audience? (No response.)

Thank you.

ASSEMBLYMAN BATE: Our next witness will be a distinguished former member of the Supreme Court, the Honorable Nathan L. Jacobs.

N A T H A N L. J A C O B S: My name is Nathan L. Jacobs. I didn't come here to testify on the current issues. I assume that I was asked to come because I was a Delegate to the Constitutional Convention and, as time goes on, there are fewer and fewer of us. And, before it is too late, I take it you might want to ask some questions and I will be delighted to answer them if I can.

A young lawyer was arguing when I was still on the Supreme Court - and, as lawyers do, they were arguing on interpretation of the Constitution - and he was arguing that if you were to interpret the New Jersey Constitution in that fashion, the framers would turn over in their graves. And I said, there are two of us here who won't.

Well, time marches on and most of this material is in the record, but some of it may be a bit obscure, and I will be glad to answer any questions that you may ask about the original proceedings, which occurred in 1947. At that point, there was no question in our minds, those of us who were the motivating forces behind the reform movement, that there should be complete unification. I, myself, happen to believe that the Constitution should not have contained any language relating to divisions or parts,

etc., but create one single unified court, in addition to the Supreme Court. Then, by rule, the Supreme Court would have power to create such divisions as might be necessary from time to time, as the needs required.

The thinking that I expressed represented the thinking of most students of the subject throughout the country. We invited many of them to come, and many of them came: Dean Pound and Judge Lerned Hand, the Deans of all the various law schools around. And there was unanimity as far as the philosophy was concerned. There wasn't any question that a unified system serves society better than any alternatives that have been developed throughout the English-speaking world. We aimed at that goal.

In discussions, I advanced all of the arguments. But there were, as has been suggested, practical considerations. We immediately eliminated the Municipal Courts, not because of any philosophic questions in our mind, because frankly I firmly believe that Municipal Courts should be part of the unified system. But we understood that there would be opposition from all of the municipalities and we were told that we were going to have enough trouble getting a new Constitution, without inviting the political opposition of all the municipal officials.

We had many goals. Some of you may recall the fact that we had maybe 17 different courts which involved all kinds of jurisdictional conflicts. Many of the lawyers who practiced in those days, looking back, would realize that the time and the wastage was unbelievable. Still, even though looking back, it was so clear that there should have been a change, it was also difficult to get the bench and bar to accept the change. And that is because you had one hundred years of a system. Once you have a hundred years of a system, people are reluctant to move into some new system. They are fearful. If you look back at the testimony, you will find many distinguished lawyers who testified that there were going to be horrendous consequences if we unified, if we abandoned the old Court of Chancery and if we gave rule-making power to the Supreme Court and if we created an Administrative Director, etc. All of those were changes that all students of the subject recognized were essential. But nonetheless, even though the recognition was there, it was a difficult task to bring the bench and bar to accept the needed changes.

So, in the course of our deliberations, we made many compromises. We salvaged as much as we could. Frankly, we were fortunate in salvaging enough so that we ultimately created a system which was an outstanding system, and still is as a matter of fact. People forget that there were certain incidental provisions which didn't play a prominent part in the Convention, but they were there and they enabled us to accomplish most of our original goals. For example, we now accept the free transferability of judges, something which was perfectly obvious. I remember one member of the Judicial Committee who was President of Johnson and Johnson. He said, you mean you can't transfer a man when you need him to a different county or you can't transfer a judge from one courtroom to another? I said, you can't do that. He said, it is inconceivable. He said, we couldn't run our company that way. We want to use our talent where we need them. Of course, the same was true for a judicial system, but that wasn't the system and frankly isn't the system in many states.

In any event, there is a clause in the article relating to the schedule which allows this transfer. It isn't even part of the main body of the Constitution. It is in the schedule, which allows free transferability on a temporary basis. Frankly, that is what has been happening over all the years,these judges have been transferred on this so-called temporary basis. If it weren't for that, we would have been frozen by

virtue of the fact you still had this County Court which remained in the Constitution, notwithstanding the fact that many of us believed that it didn't belong there.

You might ask: How did it get there? Frankly, I think there was a misconception. Judge Drewen, who was a County Court Judge, led the opposition to those of us who wanted to merge the County Courts with the other courts. They were fearful that they were going to be displaced as judges. And, frankly, we couldn't convince them that that wasn't at all in our minds. None of us had in mind displacing any judges. We were trying to change the institution; we weren't trying to chance any personnel. That wasn't the function of the Convention. We were trying to create a new system. I remember telling Judge Drewen, of course, he would be placed in the new Superior Court if the County Courts were merged. He said, could I give him the assurance. Of course, I couldn't give it to him - I wasn't the Governor. But I had spoken to the Governor and there wasn't in anybody's mind a thought of eliminating the County Judges. They were all going to be brought into the Superior Court. In later years, Drewen acknowledged that he had made a mistake. Of course, he had. He remained as County Judge, but ultimately he was taken into the system as was intended originally.

The Convention, as you would know from the Minutes, retained the County Court. Here it is thirty years later and you still have it. It still has very unfortunate consequences, even though the system has been enabled to eliminate most of the difficulties by virtue of the free transferability. I notice within the last few years, there are still cases coming down in which they are holding that the County Court didn't have jurisdiction and it should have been in the Superior Court. Frankly, it is shameful that at this day and age we still have those decisions. I remember there was one in 1972, in which our Appellate Division held that the proceeding which was instituted in the County Court between husband and wife didn't belong in the County Court; it belonged in the Superior Court. It was a case which had already been terminated. In other words, it had gone through a complete trial in the County Court, but was reversed and sent back and started anew, which harkened back to the old days which we thought we had eliminated completely.

I, myself, had to write an opinion several years ago in which a problem came up involving a criminal proceeding in which the issue was whether a conviction could be rendered in a case on an issue which was a lesser offense than the indictment. The difficult problem there was because the papers were entitled in the County Court rather than in the Superior Court and the opinion came out in a result which satisfied us, but it was unfortunate that at this stage we still have the conflicts of jurisdiction which we thought we had wiped out ever so many years ago.

I heard Judge Simpson say there aren't any arguments against it. Frankly, I don't know of any arguments against it. There weren't any arguments to begin with against it. I know the issue has been raised time after time in thirty years, but when you tell a layman that it takes thirty years or more to accomplish some of these things, they are bewildered. But that is true. The Chief Justice mentioned the fact that Mr. Vanderbilt had been working for 17 years. Actually he had been working longer than that. When I came to his office in 1928, we were working on it. We worked from 1928 to 1947. That was 20 years' work before we had our Convention. That was something that we understood because the nature of the bar is such that it takes a long time and it is very difficult to accomplish change.

Judge Simpson seems unduly sensitive about the word "inferior." I refer to the fact that the United States Constitution describes the lower federal courts as the inferior courts. That is a traditional word which you will find throughout our

legal system.

ASSEMBLYMAN PERKINS: I believe he looked at it with reference to its popular connotation rather than its classical.

JUSTICE JACOBS: I used it originally in our Convention in the sense of the United States Constitution. We used the term "inferior" to mean the lower federal courts and I take it, when we talk about inferior State courts, we are talking about lower State courts, without any reflection on the capacity of any particular judge.

There are some suggestions which Judge Simpson mentioned about including provisions in the Constitution, which, frankly, would not represent my philosophy or the philosophy of our original Convention. We were all opposed to including the details, just as I would oppose your including any references to the number of judges that have to come from a particular county. Why would you want to freeze these things in the Constitution? The only regrets I have about the Constitution were the few that did freeze things. If it were up to me, I would not freeze hardly anything, because the Constitution is designed to have the broad principles and allow the development, as times goes on, in accordance with whatever your needs may be.

One of these proposals would freeze the number of residents in, let's say, Essex. Now why? You don't know what is going to happen as far as Essex is concerned, whether the population is going to change. Plus this: Why should a Governor at a particular time have to pick a man who was a resident of a particular area? Suppose he has one vacancy and he has a top-notch man from some other county. Why shouldn't he be free to get the best he can get?

ASSEMBLYMAN PERKINS: Do you want a "nutshell"on that?

JUSTICE JACOBS: Yes.

ASSEMBLYMAN PERKINS: The "nutshell" is, you are dealing with politicians.

JUSTICE JACOBS: I am not here as a politician and I am not speaking as a politician.

ASSEMBLYMAN PERKINS: The reality of the situation is that ---

JUSTICE JACOBS: I didn't come here for that purpose and in the Convention we didn't speak on a political level at all. The amazing thing about the Convention was, even though it contained some politicians, they all spoke at a higher level because there are certain times in life when you deal at a higher level. I am not here talking as to the political realities. I am talking to you about the best constitutional provision you can evolve and the best system you can evolve.

ASSEMBLYMAN PERKINS: I think the amendment provides for a minimum of two.

JUSTICE JACOBS: That you can live with,as a practical matter, but the other one you may not.

ASSEMBLYMAN PERKINS: I understand that. But, unfortunately, we who are seated here are not going to be the individuals who will have the final say.

JUSTICE JACOBS: I understand. If you have to compromise, all well and good. But for purposes of what I am discussing with you, I say that the Constitution should contain none of the restrictions. There should be as much flexibility as you can put in the Constitution, leaving to the Legislature from time to time to handle matters that come up. Take, for example, the item about bipartisan selections. We opposed that in the original Constitution and we had no provision in our original Constitution about that.

Now it has happened - and I think it is fine. There is an unwritten rule that the governors have abided by historically, by which the Supreme Court is divided between the parties. Well and good! I would not want to see that in the Constitution. It has worked very well. Frankly, I don't think these things belong in the Constitution. You may change your mind; and, if you do, you should have the right as legislators to deal with it as the situation requires from time to time.

There are certain basic principles which the Constitution does require: the Bill of Rights, the due process provision, the equal protection clause. Those general principles belong in the Constitution. The basic structure belongs in the Constitution, but none of the specifics belongs in the Constitution because that may require change from time to time as the situation demands.

ASSEMBLYMAN PERKINS: What we are really proposing is a contract between makers of the law and the general populous. Unfortunately, there are members who will be beneficiaries of that contract, who will try to assure that they are not left out, with reference to individuals living within their respective counties being a part of the system. Again, that is a reality. The altruism of the situation is all well and good. But, unfortunately, that doesn't fly as easily as the interest of the individuals. We will have to consider that.

JUSTICE JACOBS: For instance, take the provision which says that you appoint a man who is a resident of a particular county, but then he can be transferred. So he can be taken out immediately and sent to some other county - and that is what was done and very often should be done, because you are trying to get impartial justice. That is your higher goal and that higher goal may require that you take a nonresident and bring him into a particular county. So while it is in terms that may satisfiy some political desires, as you suggest, it doesn't really accomplish that.

ASSEMBLYMAN PERKINS: It won't "bastardize" anything, I don't think.

JUSTICE JACOBS: In any event, I tell you what my philosophies were then and still are now, as a matter of fact. I now have the support of 30 years of experience, which has shown how baseless the horrendous fears were that the opponents presented to us at the time. They were so baseless that from the day the change took place, there was never any problem. It was just a question of getting accustomed to a new system. And as soon as the bench and the bar became accustomed to it, it worked beautifully.

Do you have any questions?

ASSEMBLYMAN PERKINS: I think your comments are good. Again, looking at the ultimate goals of justice, if we retain those goals as being the only critique with reference to the appointments from county to county, that is fine. But we will need the support of people who are interested in the concept of having at least one or two individuals from that county appointed. And if we are going to be successful - I don't envision our doing another 30-year junket on this change because of the fact that we are inflexible with respect to this.

JUSTICE JACOBS: To indicate we understood about compromise, we tendered that originally. Not that I believed in it, but at one point when they were fearful they would never have a resident, we said, well, if you want a provision for one resident, that might be considered. You will find that in the Minutes as well. That was one of the possible suggestions - not that you could justify it philosophically, but to enable the thing to go through. I understand that that may be your ultimate action. But you will have a difficult time convincing me that that is philosophically desirable.

ASSEMBLYMAN PERKINS: I won't attempt to convince you if you can get us the rest of the votes on this issue.

ASSEMBLYMAN BATE: Thank you very much.

MR. HALPIN: Am I allowed to ask Judge Simpson a question through the Chair?

ASSEMBLYMAN PERKINS: You can do it directly if you wish.

MR. WALTER HALPIN: I am Walter Halpin, the County Clerk of Union County. My question is: Now that I have learned that the Supreme Court looks upon the federal courts as inferior courts, can you give me a definition in New Jersey just what are the inferior courts?

JUDGE SIMPSON: I don't think Justice Jacobs said exactly that. He said that the language was borrowed from the U. S. Constitution, which utilizes the language to distinguish those which are so called from the Superior Court.

JUSTICE JACOBS: -- the Supreme Court. The United States Constitution talks about the United States Supreme Court and such inferior courts as Congress may from time to time establish.

JUDGE SIMPSON: The present Constitution in New Jersey provides for the Supreme Court, Superior Court, County Court, and inferior courts of limited jurisdiction, which are the District Court, the Juvenile and Domestic Relations Court and the Municipal Courts, the latter three of which have all been created by statute by the Legislature.

MR. HALPIN: Am I correct in assuming then that the Surrogate's Court is not part of the inferior courts; but as part of the Probate Court of the Law Division of the County Court, it is not an inferior court?

JUDGE SIMPSON: There is a special constitutional provision, I believe ---

ASSEMBLYMAN SPIZZIRI: That is a constitutional court, isn't it, Judge Simpson?

JUDGE SIMPSON: Yes, it is. It is quasi-judicial, as you know.

MR. HALPIN: So it is not an inferior court?

ASSEMBLYMAN PERKINS: Well, I don't know in which sense you are using the term "inferior." Again, you have to use the term advisedly. If you use it in its popular sense, then, of course, I can understand a jaundiced view of using that terminology. But, if you use it in its classical sense, it merely means that the court is not a constitutional court, but is born out of the power given to that constitutional court, the Supreme Court. "Inferior," again is a term, about which Judge Simpson suggested using different terminology so you would not be confused with its true meaning.

MR. HALPIN: Thank you, Mr. Perkins. Thank you, Judge.

ASSEMBLYMAN BATE: I want to acknowledge someone in the audience, who is a distinguished member of the Supreme Court - that is, the Honorable Morris Pashman. Would you like to say anything, Justice?

JUSTICE MORRIS PASHMAN: Thank you very much, Mr. Chairman and members of the Committee. Chief Justice Hughes, as always, together with the able assistance of Judge Simpson, speaks for the entire Supreme Court.

ASSEMBLYMAN SPIZZIRI: I am glad to see Justice Pashman here, having been associated with him when I first started as a young lawyer in Passaic County - and then I don't know who followed whom over to Bergen County - but it is good to have you here, Justice Pashman.

I also, Mr. Chairman, would like to acknowledge in the audience - and perhaps she may wish to address us later - Freeholder Joanne Steinacker of Bergen County, who is vitally interested in this because part of her responsibilities on

the Board of Freeholders is the County Court system. It is nice to see you,Joanne.

ASSEMBLYMAN PERKINS: I suppose part of her responsibilities is giving notice to the public of the moneys that they are paying for their contribution to the County Court system.

MS. JOANNE STEINACKER: I just happen to have a copy of my very first resolution as a Freeholder and it was just in that context, asking you to take away our problems.

ASSEMBLYMAN SPIZZIRI: Mr. Perkins and Mr. Bate, I would like to now introduce to the Committee and to the public another Bergen County lawyer, another Bergen County resident, who is a contemporary of mine, now President of the New Jersey State Bar Association, Donald R. Conway.

D O N A L D R. C O N W A Y: Thank you, Mr. Chairman. I will be brief. Good morning. I appreciate this opportunity to appear before you on behalf of the New Jersey State Bar Association. I am here today to express our unqualified support for the concept of merging the Superior Court and the County Court. I am sure that Justice Jacobs will be delighted to know that on this occasion the bench and the bar are unified.

With the adoption of the Judicial Article of the 1947 Constitution, the New Jersey Court System became one of the most progressive in the Nation. In the intervening years the court has continued in the forefront of judicial reform. Now, however, the court is constrained by the provisions of that 1947 Judicial Article. Our judicial structure and judicial selection procedures have not kept pace, and the leadership role of the state is being challenged. Judicial structure is the subject of this public hearing.

The case for merging the trial level courts has been clearly and forcefully stated by the previous speakers. There is no need for me to repeat their persuasive arguments. The benefits of merger are clear.

The history of the 1947 Constitutional Convention, and the compromises made at that time are also part of the record.

The Committee on Court Modernization of the New Jersey State Bar Association was created in 1974 to conduct a review of the New Jersey courts and to make recommendations for changes which would upgrade and modernize the court system. The Committee was directed to solicit the views of the bench, the bar, and the public on various proposed changes. The goals of that Committee were to assure an efficient, just,and more easily understood court system. In its interim report of January 20, 1975, the Committee recommended, among other things, that there should be a single trial-level court throughout the state.

The American Bar Association standards for court organization include the recommendation that there be one unified court of original jurisdiction. Virtually every other standard setting organization has agreed in that concept.

The New Jersey State Bar Association is genuinely concerned that the New Jersey court system is both respected and understood by the public. Concurrent jurisdiction is a subject which is difficult to understand. Duplicity of record-keeping, the administrative function and budgeting is difficult to justify to the tax-paying public. Eventually the court system must be fully funded, controlled and administered by the state. This will ease not only caseloads and calendar problems, but also the burden on county budgets.

These proposed amendments adequately provide the necessary assurances that counties will continue to be represented. Judges are to be assigned partially on the basis of their familiarity with, and sensitivity to, the special needs of their local areas. Existing county personnel should be used for staff support. The need to provide a strong, streamlined and fair judicial system clearly outweighsthe political considerations and section interests.

The Judicial and Executive Branches of government have been working on this concept for several years and every logical argument favors its adoption. Personally, and on behalf of the New Jersey State Bar Association, I would like to commend Assemblyman Bate and Assemblyman Spizziri for introducing these proposals in the legislature, and also Assemblyman Perkins.

I also want to thank this Committeee for its consideration of these proposals. I urge quick action on this matter in order to permit these needed

changes to be implemented at the earliest opportunity. And as did Judge Simpson in speaking on behalf of the Administrative Office of the Courts, as spokesman for the State Bar Association, I too want to offer whatever technical aid or assistance we can give to this committee. Thank you very, very much.

ASSEMBLYMAN SPIZZIRI: Mr. Conway, just one question, in your opinion, would the report of January, 1975, of your Committee also include or did it consider the integration of the juvenile and the district courts as a unification?

MR. CONWAY: Yes, sir.

ASSEMBLYMAN SPIZZIRI: That proposition does have support there?

MR. CONWAY: Yes, sir, the State Bar Association has recognized that concept as well.

ASSEMBLYMAN SPIZZIRI: Thank you.

MR. CONWAY: But please don't as me about the municipal courts. We will talk about that some other time.

ASSEMBLYMAN SPIZZIRI: At this time, I would like to introduce a man who is very, very familiar with the problems of the court system here in Bergen County. He has been our Surrogate for a number of years. He is very active in the Surrogate's Association, a good friend and an old friend, Surrogate Gill Job.

G I L L J O B: Mr. Chairman, if I may, I would like to request that we appear as a unit, if that meets with the approval of the Chair.

ASSEMBLYMAN SPIZZIRI: And that would include Ann Rieker as Surrogate of Sussex County and Walter Halpin from Union County.

MR. JOB: Thank you. I think we have been properly identified. At the outset, Mr. Chairman, I would like to thank you for the privilege of appearing here today. I think we feel, too, and I think it should be said that we are in the big leagues today, and as a Representative of Bergen County, I would like to welcome Chief Justice Hughes here and former Justice Jacobs, and of course our own Morris Pashman needs no introduction to Bergen County.

Let me say at the very beginning that we are here in an inquiry. I have no prepared statement. I would just like to speak off the cuff. We are here primarily in an inquiring frame of mind, rather than in a critical frame of mind. We have been through this many times in the past. I think that Justice Jacobs alluded to the fact that this has been in progress for so many years that we have had the opportunity and privilege to be part of it at times. The main thing that concerns us is that we are always part of it when it seems as though the rules are just about ready to be written, and it is a peculiar attribute, I suppose you might say, that sometimes we get excited, and sometimes rightfully so, and sometimes unduly so, but we are in a little bit different position since we are political creatures, as you know.

The allusions that were made to the practical end of it, as far as our political status is concerned, I think also bear looking into. That is why at this time I would like to request that when any future meetings are held relative to merging these present resolutions that some input might be asked of our association representing us, because we do have a somewhat different concept.

Now, we are certainly not here today to oppose this court merger, but rather we agree in great part with it. However, we are concerned, and I am going to speak, if I may, about the Surrogates themselves. I think down through

the past twenty years that I have been Surrogate in this county, I can recall a similar meeting concerning our particular status with Chief Justice Weintraub at that time, 1957 I believe it was, in Atlantic City. Subsequent meetings with Chief Justice Hughes relative to this have occurred. There have also been meetings with the Supreme Court Committee, and it all seems to boil down to an endeavor to find out just what are surrogates.

I was amused by the play on words on the inferior courts of limited jurisdiction, because that is what we have always been held out to be. The Surrogate's Court is an inferior court of limited jurisdiction, and I would like to, of course, go along with Justice Jacobs' interpretation of inferior court; taken together, the two words meaning a lower court. However, I must say in all reality in the political field, sometimes my opponents conveniently drop that second word, and it causes problems.

But, at any rate, we have in the past suggested certain changes. With regard to the resolutions, I call your attention particularly to the differences that Assemblyman Bate pointed out between his Resolution 66 and Resolution 41. In Resolution 41, the particular point that concerns us is that the county clerks and the surrogates are not included, and, of course, for that reason, we lean toward Assemblyman Bate's Resolution, and we hope that when the merger comes and the final resolution is drafted, that that particular paragraph would be included.

Incidentally, this is not a new request. Back in 1973, we had numerous conferences with the then Administrative Director of the Courts, Ed Mc Connell, and incidentally, I should say conferences at which former Judge Clapp sat in, and a representative group of our particular committee, on a bill similar to Assemblyman Spizziri's, where we were omitted-- The present wording of the Resolution 66, paragraph c, under article 6: "Until otherwise provided by law, all county clerks shall become clerks of the Law Division of the Superior Court and all surrogates shall become clerks of the Chancery Division (Probate Part) of the Superior Court for their respective counties and shall perform such duties and maintain such files and records on behalf of the Clerk of the Superior Court as may be required by law and rule of court; and all fees payable to the county clerks and surrogates prior to the effective date of this amendment shall continue to be so payable and be received for the use of their respective counties until otherwise provided by law."

Now, we think that is the germane part of what we are after, and we would, if granted the opportunity, hopefully insist that that be made a portion of the new amendment in its final form. Now, there may be some other problems which Surrogate Rieker would perhaps like to address herself to, or County Clerk Halpin from Union County may wish to address himself to. But in that respect, that is all I have to offer. I would be desirous of being given an opportunity for a representative committee of our group to meet with you in the future. Thank you very much.

ASSEMBLYMAN PERKINS: I think we would implore you to be at whatever future meetings we have, so that the public gets a broad spectrum of positions on this issue.

ASSEMBLYMAN SPIZZIRI: I have no questions.

A N N E R I E K E R: I am Surrogate Anne Rieker from Sussex County. I feel that Mr. Job has very well expressed the feelings of all of us who have discussed

this in depth. I think one advantage of Resolution 66 is that if it becomes a part of the Constitutional Amendment, the change will give the surrogates and clerks some delineation as to their responsibilities within the court system. Up until this time, we have not had this. For that main reason, I am in favor of supporting Resolution 66.

ASSEMBLYMAN SPIZZIRI: At this time, Walter Halpin, the Union County Clerk, has the floor.

W A L T E R H A L P I N: Thank you. Gill Job, I think, has accurately summed up the feelings of the Constitutional officers, but not in totality. Although the county clerks are in accord with the language that was built into the previous court merger bill, that never came out of committee. I just want to put that on the record, because we have now been invited to sit with you in any future preparations. We would just like to eliminate those first few words, "until otherwise provided by law." And we will go into reasons why hopefully when you invite us to sit with you again.

Judge Simpson made a statement here today, and it is the first time I ever heard him say it publicly. When the late Chief Justice Weintraub was alive and functioning as Chief Justice, I don't think he would have said it, but I am glad he said it today, and it is on the record, that they do not object to the clerks, surrogates and sheriffs being part of the court system, and it is no secret that the late Chief Justice Weintraub, through the Administrative Director of the Courts, Ed Mc Connell, at a Judicial Seminar in Newark, and I forget the year, went on record as asking that we be eliminated from the court system.

So, I am glad to hear that there is a change. We have a Chief Justice that we think likes us; we like him, but he is approaching the twilight of his public life---

ASSEMBLYMAN SPIZZIRI: As we all are.

MR. HALPIN: When that comes, we hope he has many more years of good health and happiness, but we never know who is going to succeed him. He might be succeeded by a Chief Justice that may pick up the views of the former Justice Weintraub, and we don't know who is going to succeed Judge Simpson. He may be succeeded by another Ed Mc Connell.

Now, the County Officers Association, I am sure - if this bill comes out of your Committee - will not only support it if that language is put in, Assemblyman Spizziri, but we will lobby for it. If you have any recollection of the past court merger bill that reached the floor of the Senate - and at that time, Assemblyman Bate, you were a Senator - through the county officers' lobbying we defeated that merger by one vote. It was introduced by former state Senator Thomas who is now a Superior Court Judge, and as a result of that defeat, the bill was re-drafted, and that language was put in, and then the bill got lost in the next session, I suppose, because of the income tax problem.

But, I am sure that if you give us some input and provide that citation that starts with line 97 in Mr. Bate's bill, not only will we support it, but we will help you lobby for it, because the word politics came up here, Assemblyman Perkins, and you know a lot of these county chairmen are not going to want to give up that little power they have of playing a part in the appointment of county judges. I subscribe in totality as a loyal officer of the court with Justice Jacobs that politics should be kept out of the courts in the appointment of judges. Assemblyman Perkins, and other members of the panel, you know this is going to be rather tough,

but maybe this could be the beginning of three good substantial members of the legislature convincing their colleagues that if this merger bill does come to pass and is enacted through a referendum, that the quality of the judges appointed in this State will be as they are now, and it is no secret that New Jersey has one of the best court structures in the United States.

I made a few other notes, Mr. Chairman, but I think they are redundant, and I will pass over them. Thank you for the invitation on the record to make us apart of the input into the merger of these two concurrent resolutions, so that satisfactory language will come out for county clerks, surrogates and sheriffs, and I am sure we can pledge to you our support.

ASSEMBLYMAN PERKINS: With the political clout that you have, I---

MR. HALPIN: Well, let me also put on the record, if it isn't in there, we are going to kill it.

ASSEMBLYMAN PERKINS: Thank you.

ASSEMBLYMAN SPIZZIRI: Mr. Perkins, might I suggest that those persons who have spoken before us today not wait until we next consider these measures but if they have any input or any comments or criticisms to make to please do so, and direct them to Mr. Tumulty, so that he may prepare for us those comments for examination the next time we consider these two measures.

MS. RIEKER: Mr. Chairman, I would like to make one further statement, that inasmuch as we have expressed our support of Resolution 66, I don't think that any of us intend to make you believe, though, that we have no questions or no doubts about this. We have many questions that we would like to have answered too. For that reason, we have requested that we have a part in any future meetings. I would like you to realize this.

ASSEMBLYMAN PERKINS: Let me reiterate my prior comments. We have to allay the fears of the people and we have to reach some accord between us as to what the final bill will be with reference to the amendments. We are looking for input, and for that reason we conduct these public hearings, strictly for that purpose, to get a broad spectrum of ideas and come up with a workable solution to the problem. You will be invited in the future.

MR. JOB: Thank you very much.

ASSEMBLYMAN PERKINS: Is there anyone else who would like to comment on these resolutions?

MS. STEINACKER: I really don't want to comment on the bills, Assemblyman, but I feel as though I had to get up because of the words politics and politicians.

ASSEMBLYMAN PERKINS: We are using those words in their positive sense.

MS. STEINACKER: I hope so, because it sounds here--- Politics is not a dirty word. I am a politician and I am proud of it. I would like to tell you that I am not well versed enough in the structure of the courts to say whether I particularly approve or the Board of Freeholders approves or disapproves of your bill. But I would suggest to you gentlemen that the resolution - my very first, incidentally - that I passed was one in which we did ask for relief as far as our county budget was concerned.

We have a particular problem with this in that we do not have control over our monies. I would just like to give you gentlemen of the Committee another copy of that resolution. So in that context, if you are going to take away some of the problems the Board of Freeholders have in allocating their monies for the budget,

we would be in favor of that part of it.

ASSEMBLYMAN PERKINS: As long as you are well versed in that part of it, we would like your comments in the future also.

MS. STEINACKER: May I leave you this just to remind you.

ASSEMBLYMAN PERKINS: Thank you. If anyone wants a copy of this transcript, they can write to John Tumulty, and he will supply you with copies of that. If there are no other persons wishing to testify, the hearing is adjourned.

(Hearing concluded)

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