CHIEF JUSTICE RICHARD J. HUGHES: LEADERSHIP AND LIBERAL ACTIVISM

by
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When Richard J. Hughes retired as Chief Justice of the New Jersey Supreme Court in 1979, Governor Brendan T. Byrne remarked that he was leaving behind "a legacy by which succeeding generations will be judged."[1] Hughes's colleague, Justice Morris Pashman, observed that the retiring chief justice had "admirably" filled the shoes of his renowned predecessors Arthur T. Vanderbilt and Joseph Weintraub.[2] Similar praise also came from William J. Brennan, Jr., a one time member of the New Jersey Supreme Court, and now senior Associate Justice of the United States Supreme Court.[3]

Retirement brought both praise and retrospective articles analyzing Richard J. Hughes's judicial service and his contributions to various areas of the law.[4] As these articles explained, although best known as a popular Democratic Governor of New Jersey, Hughes also had been an outstanding judge. He was an outstanding judicial administrator, who labored and lobbied effectively to improve the efficiency of the courts. Hughes also displayed a notable activism on the bench, using the powers of the Supreme Court of New Jersey to promote his liberal ideals.

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[1] Letter from Governor Brendan Byrne (undated), 11 RUT.-CAM. L.J. 2 (1979).

[2] Pashman, *A Tribute to Richard J. Hughes: Judge and Administrator*, 10 SETON HALL L. REV. 86, 86 (1979).

[3] Brennan, *Introduction: Chief Justice Hughes and Justice Mountain*, 10 SETON HALL L. REV. xii (1979).

[4] *See, e.g.*, Clapp, *Chief Justice Hughes and the Unification of the Courts*, 10 SETON HALL L. REV. 15 (1979); Milmed, *Chief Justice Richard J. Hughes—Architect of a Responsive Administrative Process*, 10 SETON HALL L. REV. 78 (1979); Pashman, *supra* note 2, at 86; Schreiber, *Statutory Interpretation: Some Comments on Two Judicial Viewpoints*, 10 SETON HALL L. REV. 94 (1979); Sullivan, *A Legacy for New Jersey*, 10 SETON HALL L. REV. 107 (1979); Editor's Note, 11 RUT.-CAM. L.J. 7 (1979).

I. PREPARATION

A. *Background and Education*

Richard J. Hughes came to the chief justiceship well prepared to lead the New Jersey judiciary. He brought to the supreme court a unique blend of judicial and executive experience, which equipped him not only to adjudicate but also to improve the administration of justice. Hughes had acquired valuable leadership, training, and experience in the political arena. That he devoted a substantial part of his career to politics is hardly surprising, for it was practically in his blood. The governor's father, Richard P. Hughes, had served as Burlington County Democratic Chairman and for thirty-four years was a member of the Democratic State Committee. In addition, the elder Hughes held positions as postmaster, Mayor of Florence, New Jersey, and member of the state's civil service commission.[5] While serving as warden of the Trenton State Prison, Hughes introduced his son to the legal system.[6]

The younger Hughes acquired his more formal education at St. Joseph's College in Philadelphia[7] and at the New Jersey Law School (Rutgers) from which he received his L.L.B. in 1931.[8] His New Jersey Law School degree distinguished Hughes from other New Jersey Supreme Court justices, who typically obtained their legal education at private institutions in other states.[9] Firmly rooted in the soil of New Jersey, Hughes entered private practice in Trenton after passing the bar exam. He simultaneously became active in Democratic politics, winning the presidency of the New Jersey Young Democrats in 1937 and running unsuccessfully for Congress as a "Roosevelt Democrat" in 1938. Political activism later led the future chief justice into federal legal service. In 1939, Hughes was appointed an assistant United States Attorney, a position he held until 1945.[10]

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[5] Sederis, *Mr. Hughes Remembers*, 14 N.J. REP. 13, 13 (1985).

[6] *See id.* Years later Hughes recalled that as warden his father ordered psychotic prisoners transferred to the New Jersey Hospital for the Insane. N.Y. Times, June 20, 1976, § XI, at 19, col. 1. For this he was branded a "bleeding heart" and a "liberal." *Id.*

[7] J. PRESS, WHO'S WHO IN AMERICAN POLITICS 732 (7th ed. 1979-80).

[8] Sederis, *supra* note 5, at 13.

[9] A 1972 study found that of the seven justices who sat on the New Jersey Supreme Court during the period 1961-1968, five had attended well-known private law schools (Yale, Stanford, Northwestern, Duke) located outside New Jersey. Canon, *Characteristics and Career Patterns of: State Supreme Court Justices*, 45 ST. GOV'T 34, 34-35 (1972).

[10] PRESS, *supra* note 7, at 732.

B. Lower Court Judge

After leaving the United States Attorney's office, Hughes embarked upon a decade of service in New Jersey's lower courts. From 1948 until 1952, he sat on the Mercer County Court.[11] In 1952, Governor Alfred E. Driscoll elevated him to the Superior Court of New Jersey and, in 1957, Chief Justice Weintraub named Hughes to the Appellate Division of the Superior Court. Hughes served less than a year before leaving the bench to return to the practice of law because he was running out of money.[12]

By preparing for his service on the New Jersey Supreme Court through an extended apprenticeship on lower tribunals, Hughes emulated about half of the jurists who have served on the highest state courts during the twentieth century.[13] He also followed the example of William Howard Taft, another former chief executive (He was president from 1909-1913) turned chief justice, who headed the United States Supreme Court from 1921 until 1930.[14]

While sitting on the Mercer County and superior court benches, Hughes familiarized himself with problems of criminal law and procedure, sentencing, and parole. A majority of the opinions written by Hughes during his four years as a county court judge disposed of petitions for writs of habeas corpus filed by prisoners confined at the state penitentiary in Trenton.[15]

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[11] Lynch, *The Hughes Legacy: Activism in Court*, N.Y. Times, August 6, 1978, § XI, at 15, col. 1; *see also* N.Y. Times, Nov. 8, 1973, at 99, col. 2; Sederis, *supra* note 5, at 13-14.

[12] In 1959, Hughes, then a widower with three sons and a daughter, married Betty Sullivan Murphy, a widow with three children of her own. Sederis, *supra* note 5, at 14. The couple had three more children. Hughes was not making enough money as a judge to support his large family so he "reluctantly quit the bench and went into private practice and was instantly quite successful." *Id.*

[13] A study based on a 16 state sample determined that almost half of the American state supreme court justices who served during the period 1900-1970 had spent five years or more on lower court benches before appointment or election to their states' supreme court. Kagan, Infelise & Detlefsen, *American State Supreme Court Justices, 1900-1970*, 1984 AM. B. FOUND. RES. J. 371, 375 (1984).

[14] Before becoming Chief Justice, Taft, like Hughes, served on a lower court within the same judicial system, sitting for eight years on the United States Court of Appeals for the Sixth Circuit. He had also been a state superior court judge in Ohio for three years. 1 H. PRINGLE, THE LIFE AND TIMES OF WILLIAM HOWARD TAFT 94-107, 121-47 (1939).

[15] *See Ex Parte* Sabongy, 18 N.J. Super. 334, 87 A.2d 59 (Mercer Cty. Ct. 1952); *In re* Hodge, 17 N.J. Super. 198, 85 A.2d 327 (Mercer Cty. Ct. 1951), *aff'd*, 24 N.J. Super. 564, 95 A.2d 156 (App. Div. 1953); *In re* Mahoney, 17 N.J. Super. 99, 85 A.2d 338 (Mercer Cty. Ct. 1951); *In re* Carter, 14 N.J. Super. 591, 82 A.2d 652

While on the lower court bench, Hughes achieved a reputation as an authority on probation systems.[16] Not surprisingly, he wrote fewer opinions dealing with crime and criminals after moving up from the Mercer County bench to the superior court.[17] During his tenure on the appellate division, however, Hughes authored opinions dealing with the presumption of innocence,[18] the right to counsel,[19] extradition,[20] and wiretapping.[21]

Although much of his experience on New Jersey's lower courts involved criminal law and procedure, Hughes also established a reputation as an authority on juvenile problems. Cognizant of that reputation, Chief Justice Vanderbilt appointed him chairman of the New Jersey Supreme Court's Committee on Juvenile and Domestic Relations Courts.[22] Strangely, though, Hughes wrote few opinions in family law cases.[23] On the other hand, he authored a substantial number dealing with various as-

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(Mercer Cty. Ct. 1951); *In re* Legdon, 13 N.J. Super. 405, 80 A.2d 490 (Mercer Cty. Ct. 1951); *In re* Zee, 13 N.J. Super. 312, 80 A.2d 480 (Mercer Cty. Ct.), *aff'd sub nom.* State v. Zee, 16 N.J. Super. 171, 84 A.2d 29 (App. Div. 1951), *cert. denied*, 343 U.S. 931 (1952); *In re* Trignani, 13 N.J. Super. 306, 80 A.2d 371 (Mercer Cty. Ct. 1951); *In re* Zienowicz, 12 N.J. Super. 563, 79 A.2d 912 (Mercer Cty. Ct. 1951); *In re* McBride, 12 N.J. Super. 402, 79 A.2d 737 (Mercer Cty. Ct.), *aff'd sub nom.* State v. McBride, 15 N.J. Super. 436, 83 A.2d 627 (App. Div.), *cert. denied*, 342 U.S. 894 (1951); *In re* Damato, 11 N.J. Super. 576, 78 A.2d 734 (Mercer Cty. Ct. 1951); *In re* Benton, 10 N.J. Super. 595, 77 A.2d 517 (Mercer Cty. Ct. 1950); *In re* De Luccia, 10 N.J. Super. 374, 76 A.2d 304 (Mercer Cty. Ct. 1950); *In re* Macejka, 10 N.J. Super. 393, 76 A.2d 843 (Mercer Cty. Ct. 1950); *In re* Fitzpatrick, 9 N.J. Super. 511, 75 A.2d 636 (Mercer Cty. Ct. 1950), *aff'd*, 14 N.J. Super. 213, 82 A.2d 8 (App. Div. 1951).

16 *See* N.Y. Times, Nov. 8, 1973, at 99, col. 2.

17 *But see* State v. Winne, 21 N.J. Super. 180, 91 A.2d 65 (Law Div. 1952) (prosecutor's failure to perform discretionary duty not indictable offense absent corruption).

18 *See* State v. Corby, 47 N.J. Super. 493, 497, 136 A.2d 271, 274 (App. Div. 1957) (concurring opinion).

19 *See* Worbetz v. Goodman, 47 N.J. Super. 391, 136 A.2d 1 (App. Div. 1957).

20 *See* Passalaqua v. Biehler, 46 N.J. Super. 63, 133 A.2d 667 (App. Div. 1957).

21 *See* State v. Vanderhave, 47 N.J. Super. 483, 136 A.2d 296 (App. Div. 1957), *aff'd*, 27 N.J. 313, 142 A.2d 609 (1958).

22 N.Y. Times, Nov. 8, 1973, at 99, col. 2.

23 *But see* Cahen v. Cahen, 47 N.J. Super. 141, 135 A.2d 535 (App. Div. 1957) (husband's support action of wife and child); *In re* Rollins, 65 A.2d 667 (Mercer Cty. Ct. 1949) (guardianship). Hughes also wrote two opinions dealing with decedents' estates. *See* Vezzetti v. Shields, 22 N.J. Super. 397, 92 A.2d 28 (App. Div. 1952); *In re* Fisher, 17 N.J. Super. 207, 85 A.2d 562 (Mercer Cty. Ct. 1952).

pects of tort law,[24] in addition to contract,[25] suretyship,[26] workers compensation,[27] and landlord-tenant cases.[28] Hughes's years on the lower courts also gave him experience in deciding evidence[29] and civil procedure questions.[30]

Particularly significant in Hughes's judicial education was what he learned about the possibilities for and limitations upon judicial policing of the other branches of government. Twice, Judge Hughes decided cases challenging the actions of local officials on constitutional grounds,[31] and three times he resolved disputes over whether officials had acted in compliance with applicable state statutes.[32] Probably his most spectacular local gov-

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[24] *See* Fenning v. S.G. Holding Corp., 47 N.J. Super. 110, 135 A.2d 346 (App. Div. 1957) (libel); Fidelis Factors Corp. v. DuLane Hatchery, Ltd., 47 N.J. Super. 132, 135 A.2d 550 (App. Div. 1957) (conversion); Nierman v. Casino Arena Attractions, Inc., 46 N.J. Super. 566, 135 A.2d 210 (App. Div. 1957) (negligence); State v. South Amboy Trust Co., 46 N.J. Super. 497, 135 A.2d 38 (Law Div. 1957) (conversion); Atwood v. Board of Trustees, 26 N.J. Super. 607, 98 A.2d 348 (Essex Cty. Ct. 1953) (negligence); Clement v. Atlantic Casualty Ins. Co., 25 N.J. Super. 96, 95 A.2d 494 (Essex Cty. Ct. 1953), *aff'd*, 13 N.J. 439, 100 A.2d 273 (1953) (interspousal immunity); Kelly v. Hoffman, 9 N.J. Super. 422, 74 A.2d 922 (Law Div. 1950) (defamation).

[25] *See* Union County U-Drive It v. Blomeley, 46 N.J. Super. 92, 133 A.2d 714 (Law Div. 1957), *aff'd*, 48 N.J. Super. 252, 137 A.2d 428 (App. Div. 1958); City of East Orange v. Gilchrist, 41 N.J. Super. 362, 125 A.2d 225 (App. Div. 1956).

[26] *See* Standard Accident Ins. Co. v. Pellecchia, 27 N.J. Super. 189, 98 A.2d 706 (Law Div. 1953), *rev'd*, 15 N.J. 162, 104 A.2d 288 (1954); U.S. Fidelity and Guaranty Co. v. Davis, 21 N.J. Super. 405, 91 A.2d 351 (App. Div. 1952), *aff'd*, 12 N.J. 365, 97 A.2d 161 (1953).

[27] *See* Furda v. Scammell China Co., 17 N.J. Super. 339, 86 A.2d 39 (Mercer Cty. Ct. 1952); Todd v. Northeastern Poultry Producers Council, 9 N.J. Super. 348, 73 A.2d 863 (Mercer Cty. Ct. 1950).

[28] *See* Farber v. Shell Oil Co., 47 N.J. Super. 48, 135 A.2d 243 (App. Div. 1957); Donmart Motors, Inc. v. Public Service Electric and Gas Co., 27 N.J. Super. 427, 99 A.2d 534 (App. Div. 1953).

[29] *See* State v. Campisi, 47 N.J. Super. 455, 136 A.2d 292 (App. Div. 1957); State v. Micci, 46 N.J. Super. 454, 134 A.2d 805 (App. Div. 1957).

[30] *See* Balady v. Casciglio, 36 N.J. Super. 475, 116 A.2d 521 (App. Div. 1955) (jurisdiction over the person); Whiteman Food Products Co. v. Prodotti Alimentari, 27 N.J. Super. 359, 99 A.2d 434 (App. Div. 1953), *rev'd*, 31 N.J. Super. 277, 106 A.2d 321 (App. Div. 1954) (attachment); White v. Shaw, 6 N.J. Super. 508, 69 A.2d 611 (Monmouth Cty. Ct. 1949) (compromise verdict).

[31] *See* Township of Berkeley Heights v. Board of Educ., 40 N.J. Super. 549, 123 A.2d 810 (Law Div. 1956), *aff'd*, 23 N.J 276, 128 A.2d 857 (1957) (upholding constitutionality of challenged procedural and tax statutes and holding that plaintiff's sole remedy lies in appeal to State Division of Tax Appeals); Baldwin Constr. Co. v. Essex County Bd. of Taxation, 24 N.J. Super. 252, 93 A.2d 800 (Law Div.), *aff'd*, 27 N.J. Super. 240, 99 A.2d 214 (App. Div. 1953) (holding taxpayers who allege violation of rights under equal protection clause do not have to exhaust administrative remedies).

[32] *See* Perry v. Giuliano, 46 N.J. Super. 550, 135 A.2d 24 (App. Div. 1957) (refusing to issue writ of mandamus ordering county clerk to change position of Con-

ernmental ruling was *In re Union County Grand Jury*.[33] There, Hughes upheld the right of the grand jury to return a presentment criticizing political interference in the operation of the Elizabeth Police Department and called upon the Elizabeth City Council to fund a thorough study of the department's operations.[34] In disputes between citizens and state agencies, Hughes ruled in favor of both the New Jersey Highway Authority[35] and the Board of Utility Commissioners.[36] In *Trinka Services, Inc. v. State Board of Mortuary Science*,[37] however, he held unconstitutional, as an improper exercise of the police power, a statute under which another administrative body had prohibited corporations from engaging in the mortuary business.

The *Trinka* opinion and others written during his years on the Mercer County and superior courts disclose much about the sort of judge Richard J. Hughes was becoming. These opinions reveal a jurist whose study of the law had not robbed him of his common sense. An example is *Baldwin Construction Co. v. Essex County Board of Taxation*,[38] a case brought by a group of taxpayers who claimed that the evaluation of their property violated the equal protection clause of the fourteenth amendment. The defendant moved for dismissal on the ground that the plaintiffs had failed to exhaust their administrative remedies.[39] Its contention was that in failing to appeal to the county board and the Division of Tax Appeal, the plaintiffs had not acted as the "legislative scheme" required.[40] In denying the defendant's motion to dismiss, Judge Hughes recognized that, given the thrust of recent appellate division decisions, the plaintiffs were ultimately likely to prevail on the constitutional issue. He further recognized that

servative Party candidate on ballot); Phillips v. Board of Adjustment, 41 N.J. Super. 549, 125 A.2d 562 (Law Div. 1956), *rev'd*, 44 N.J. Super. 491, 130 A.2d 866 (App. Div. 1957) (overturning zoning exemption granted by municipal board of adjustment); Gerber v. Township of Springfield, 38 N.J. Super. 556, 120 A.2d 63 (Law Div. 1956) (upholding as authorized by statute restrictive covenant in deed to riverfront land sold by city).

33 44 N.J. Super. 443, 130 A.2d 903 (Law Div. 1957).

34 *Id.* at 446-47, 130 A.2d at 905.

35 *See* New Jersey Highway Authority v. Rue, 41 N.J. Super. 385, 125 A.2d 305 (App. Div. 1956) (condemnation).

36 *See In re* West Jersey & Seashore R.R. Co., 46 N.J. Super. 543, 135 A.2d 35 (App. Div. 1957) (challenge to board's refusal to approve railroad's sale of unused real estate to particular buyer).

37 40 N.J. Super. 238, 122 A.2d 668 (Law Div. 1956).

38 24 N.J. Super. 252, 93 A.2d 800 (Law Div. 1952), *aff'd*, 27 N.J. Super. 240, 99 A.2d 214 (App. Div. 1953).

39 *Id.* at 260, 93 A.2d at 803.

40 *Id.*

administrative bodies could not consider the constitutional issue and must follow the statute, which mandated appraisals be based on "true value," even if this produced discriminatory results.[41] He also noted that, if the plaintiffs pursued an administrative appeal, they would be asking the county board to act in a quasi-judicial capacity on the propriety of its own actions in its administrative role.[42] "[T]he administrative remedy," Hughes concluded, "is at best uncertain, if it is not, indeed, nonexistent in the practical sense."[43]

Hughes also displayed a capacity to cut through the legal complexities of a case and arrive at a common sense solution in handling habeas corpus proceedings. In one of these proceedings, for example, the petitioner sought release from prison on the grounds that he had been denied his right to counsel under both the state and Federal constitutions.[44] The prisoner, described as "uneducated" and "of practically moron-grade intelligence," failed to raise this issue during his trial.[45] Hughes realized "our courts have held that the right to counsel is not abridged by the mere failure to assign counsel, and that failure to request such assignment justifies a presumption of waiver of the privilege."[46] He opined, however, that the "presumption of waiver is clearly overcome in the instant circumstances, in which common justice must deny its validity in any realistic sense."[47] In contrast, when an intelligent prisoner, who had violated parole by committing another offense, contended that he should not have to complete the balance of his first sentence because the judge who imposed the second (and longer) sentence had not specified that the two penalties were to be served consecutively, Hughes rejected his sophistic argument.[48] The common sense reason which he gave was that if a parole violator is not "required to serve some time in prison in addition to that imposed for an offense committed while on parole, he not only escapes punishment by being required to serve the unexpired portion of his original sentence, but the disciplinary power of the paroling au-

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41 *Id.* at 266-73, 93 A.2d at 806-10.

42 *Id.* at 273-74, 93 A.2d at 810.

43 *Id.* at 276, 93 A.2d at 811.

44 *See Ex Parte* Carter, 14 N.J. Super. 591, 82 A.2d 652 (Mercer Cty. Ct. 1951).

45 *Id.* at 594, 82 A.2d at 654.

46 *Id.* at 598, 82 A.2d at 656.

47 *Id.*

48 *Ex Parte* Macejka, 10 N.J. Super. 393, 397-400, 76 A.2d 843, 845-47 (Mercer Cty. Ct. 1950).

thority would be practically nullified."[49]

The fact that Judge Hughes tended to decide cases on the basis of common sense does not mean that he lacked legal knowledge. The future chief justice included in his very first opinion on the Mercer County court a lengthy discussion of the development of the law governing guardianship of incompetents, which exhibited considerable familiarity with both British and American legal history.[50] In addition, his opinion in *State v. Winne*[51] stands as a heavily documented essay on prosecutorial discretion and criminal nonfeasance by a quasi-judicial officer.

Even when displaying the fruits of his legal scholarship, the opinions of the young Judge Hughes often made lively reading. In the *Winne* case, for example, he wrote that if the indictment of the prosecutor-defendant for nonfeasance was upheld

> the course of justice in our State would be polluted in its administration by a body of cringing and faceless prosecutors, who would no longer fulfill their ancient mission as ministers of justice, but would prostitute justice in their own self-interest and turn their backs on what is right in favor of what is expedient and popular. Such prosecutors, understandably enough, would resolve every doubt in favor of prosecution, and there would be such a surfeit of petty and baseless prosecutions as to sicken the mind of one who had belief in the grandeur and the probity of the administration of public justice.[52]

The lower court opinions of the future chief justice revealed more about his writing style than about his judicial philosophy; they did no more than suggest that this son of a prison warden was a strong proponent of "law and order." The young Judge Hughes showed compassion for a habeas petitioner of "moron-grade intelli-

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[49] *Id.* at 399-400, 76 A.2d at 847; *cf. In re* Damato, 11 N.J. Super. 576, 78 A.2d 734 (Mercer Cty. Ct. 1951) (rejecting contention of prisoner released early due to clerical error that state could not reincarcerate him).

[50] *See In re* Rollins, 65 A.2d 667, 679-82 (Mercer Cty. Ct. 1949).

[51] 21 N.J. Super. 180, 91 A.2d 65 (Law Div. 1952), *rev'd*, 12 N.J. 152, 96 A.2d 63 (1953). In reversing Hughes, Chief Justice Vanderbilt emphasized that by failing to take affirmative action, the prosecutor-defendant violated a duty imposed on him by a New Jersey statute. *Winne*, 12 N.J. at 165-69, 96 A.2d at 69-72.

[52] *Winne*, 21 N.J. Super. at 224, 91 A.2d at 87. In one appellate division opinion, reversing a conviction for bookmaking, Hughes wrote of the defendants' confectionary store:

> This establishment was the *situs* of the offenses alleged, the State contending that he there had interrupted the blameless tenor of his ordinary business pursuits with forays into the forbidden commerce of accepting and recording wagers, made by the incurably sanguine, upon the running of horses, mares and geldings, in violation of law.

State v. Micci, 46 N.J. Super. 454, 457, 134 A.2d 805, 807 (App. Div. 1957).

gence,"[53] worried about possible erosion of the presumption of innocence,[54] and once alerted a prisoner's attorney to the fact that his client's sentence had been improperly computed and the prisoner was entitled to be released earlier.[55] Generally, however, Judge Hughes displayed little sympathy for criminal offenders. In a memorandum prepared for the Committee on Juvenile and Domestic Relations Courts, he urged judges not to show excessive leniency toward juvenile repeat offenders who posed a threat to the community.[56] His judicial opinions reflected the same attitude. For example, in *Worbetz v. Goodman*,[57] Hughes rejected the contention of one frequent patron of the criminal justice system that his rights had been violated because he was allowed, without being represented by an attorney, to enter a plea of guilty to an armed robbery charge, thereby subjecting himself to life imprisonment as a habitual offender. Hughes declared that the defendant not only "was not constitutionally aggrieved in the basic proceedings, but richly deserved the sentences imposed under legislation by which the modern state has attempted to rid itself of the scourge of habitual criminality. . . ."[58] In *In re Hodge*,[59] although conceding that the rights of the prisoner before him might have been violated when he was kept away while the jury returned its verdict against him, Judge Hughes denied the petitioner's request for a writ of habeas corpus.[60] It was his belief that "discretion to withhold the writ, even in the face of claimed jurisdictional defect in the proceedings attacked, must be exercised where warranted, in order to prevent the virtual collapse of this important phase of the administration of criminal justice."[61] In sum, Hughes was a judge who was deeply concerned with the effect of crime on society. He once observed that "the strength and

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53 *See Ex Parte* Carter, 14 N.J. Super. 591, 593, 82 A.2d 652, 653 (Mercer Cty. Ct. 1951); *see also supra* notes 44-47 and accompanying text.

54 *See* State v. Corby, 47 N.J. Super. 493, 505-08, 136 A.2d 271, 278-80 (App. Div. 1957) (Hughes, J., concurring).

55 *See* Sims v. Read, 28 N.J. Super. 557, 564-65, 101 A.2d 112, 115 (Law Div. 1953).

56 *Lynch*, *supra* note 11, at 15, col. 1.

57 47 N.J. Super. 391, 136 A.2d 1 (App. Div. 1957).

58 *Id.* at 408, 136 A.2d at 10.

59 17 N.J. Super. 198, 85 A.2d 327 (Mercer Cty. Ct. 1951), *aff'd*, 24 N.J. Super. 564, 95 A.2d 156 (App. Div. 1953).

60 *Hodge*, 17 N.J. Super. at 204-06, 85 A.2d at 330-31.

61 *Id.* at 206, 85 A.2d at 331. In *Hodge*, Hughes was particularly concerned because another of the petitioner's claims was, in his opinion, "false and probably intentionally perjurious." *Id.* at 204, 85 A.2d at 329.

integrity of the police department"[62] was crucial to a city's welfare. The reason was that "[n]o community desires to live a hairbreadth above the criminal level, or without the protection of an efficient guardian of the public order and safety."[63]

While disclosing a commitment to preserving law and order and a belief that "courts should not be influenced by political considerations lest the true course of the impartial administration of justice be polluted,"[64] Hughes's opinions contained few other hints of the judicial philosophy that would characterize his chief justiceship. They suggested that he viewed the power of the judiciary as limited and largely derivative, requiring clear legislative sanction before it could be exercised.[65] Hughes tolerated what appeared to be a systemic injustice because of what he regarded as a lack of clear legal authority for reform.[66] The closest the future chief justice came to "judicial activism,"[67] which would later animate his work on the New Jersey Supreme Court, was pointing out to the legislature "an unfortunate gap" in the statutes, which could "be repaired quite simply by legislative action. . . ."[68]

C. *Governor*

Before this practitioner of judicial restraint assumed the center seat on the state supreme court, he spent two terms "wrestling" with that legislature as New Jersey's governor. From 1962 to 1970, Hughes acquired a unique and valuable perspective on the body to which, as a lower court judge, he had so readily and consistently deferred. Several members of other supreme

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62 *In re* Union County Grand Jury, 44 N.J. Super. 443, 447, 130 A.2d 903, 905 (Law Div. 1957).

63 *Id.* at 448, 130 A.2d at 905.

64 *Id.*, 130 A.2d at 906.

65 *See, e.g.*, Perry v. Giuliano, 46 N.J. Super. 550, 556, 135 A.2d 24, 27 (App. Div. 1957) ("where, as here, the Legislature has ordained no clearly stated course of duty, the court may not interfere"); *In re* Fitzpatrick, 9 N.J. Super. 511, 519, 75 A.2d 636, 639 (Mercer Cty. Ct. 1950), *aff'd*, 14 N.J. Super. 213, 82 A.2d 8 (App. Div. 1951) ("this is beyond the power of this court to do").

66 *See, e.g., In re* Mahoney, 17 N.J. Super. 99, 108, 85 A.2d 338, 343 (Mercer Cty. Ct. 1951); *In re* Fitzpatrick, 9 N.J. Super. 511, 521, 75 A.2d 636, 640-41 (Mercer Cty. Ct. 1950), *aff'd*, 14 N.J. Super. 213, 82 A.2d 8 (App. Div. 1951).

67 As Wallace Mendelson has observed, "[t]here is no official definition" of judicial activism. In his words, "professing no explicit overall philosophy, activism is what activism does." W. MENDELSON, THE SUPREME COURT: LAW AND DISCRETION 14-15 (1967). Generally, though, it denotes the "philosophy which motivates judges to depart from strict adherence to judicial precedent in favor or [sic] progressive and new social policies. . . ." BLACK'S LAW DICTIONARY 760 (5th ed. 1979).

68 State v. South Amboy Trust Co., 46 N.J. Super. 497, 516, 135 A.2d 38, 49 (Law Div. 1957).

courts brought similar backgrounds to the bench,[69] but prior service as a chief executive was rare among chief justices. Hughes shared this distinction with William Howard Taft, who had served as President of the United States from 1909-1913 prior to leading the United States Supreme Court in the 1920's.[70]

In heading both the executive and judicial branches of the same government, Hughes joined a very select group. It seemed unlikely, however, that he would ever be in a position to do so. In 1961, when a divided Democratic Party selected him as a compromise candidate for governor, the nomination did not look like much of a prize. Practically everyone expected the Republican nominee, James P. Mitchell, a former Secretary of Labor in the Eisenhower administration, to win the election. Hughes himself stated that his fellow Democrats "were casting around for a lamb to lead to the slaughter."[71] The underdog, however, campaigned eighteen hours a day and surprisingly emerged victorious in an extremely close election, defeating Mitchell "by about 34,000 votes of about 3 million cast."[72] Hughes later acknowledged that "[i]t was a pretty tight fit."[73] During his inauguration, Secretary of State Edward J. Patten handed the ceremonial seal of the state to the new governor and announced facetiously, "I confer upon you the great *steal* of the State of New Jersey."[74]

Once Hughes obtained executive power, he exercised it very effectively.[75] His administration championed liberal policies such as tax reform, pollution control, urban aid, gun control, and increased state funding for higher education. Hughes enjoyed considerable success in persuading both Democratic legislators and their Republican counterparts to support these programs.[76] He easily won a second four year term in 1965. His opponent was Republican State Senator Wayne Dumont. Governor Hughes recalled, "I knocked Dumont's brains out."[77] His victory margin of

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69 During the period 1961-1968, seven former governors served on American state supreme courts. Canon, *supra* note 9, at 41.

70 *See* A. MASON, WILLIAM HOWARD TAFT, CHIEF JUSTICE 55-58 (1965).

71 Sederis, *supra* note 5, at 14.

72 *Id.*

73 *Id.*

74 N.Y. Times, Jan. 18, 1978, § II, at 19, col. 5 (emphasis added).

75 One author has stated "[w]hen Richard J. Hughes left the New Jersey Governor's office in 1970, he was widely regarded as one of the best chief executives in the state's history." Sullivan, *Hughes in Retrospect: A Public Life*, N.Y. Times, Aug. 5, 1979, § XI, at 1, col. 3.

76 *Id.* at 11, col. 1.

77 Sederis, *supra* note 5, at 15.

350,000 votes was, at the time, "the largest plurality in New Jersey's history."[78]

Although studded with such successes as his 1965 re-election victory, Hughes's governorship also included frustrations and failures. During his first term, he often found himself at odds with a Republican-controlled legislature. In November 1963, the voters rejected the governor's proposed $750 million capital construction bond referendum. In addition, fourteen of Hughes's Democratic supporters were voted out of the legislature.[79] During his second term, Newark exploded in one of the worst urban ghetto riots of the 1960's.[80] There were also scandals. Some of the Democratic leaders who had hand-picked Hughes for the governorship, together with several of his closest cabinet aides, were convicted on corruption charges.[81] As *New York Times* writer Ronald Sullivan reported in 1979, "[t]he political scandal [gave] New Jersey a bad name and undermine[d] Mr. Hughes's accomplishments."[82]

Undoubtedly, however, Hughes's accomplishments as governor were substantial. Many of his achievements involved the New Jersey courts. Even while heading the executive branch, Hughes continued to exhibit great interest in the judiciary. Concerned about the backlog of cases developing in the courts, the Governor pressed the legislature to increase the number of superior court judges. The legislature complied, although it authorized fewer new positions than the governor thought necessary.[83]

Hughes also built and shaped the judicial branch through the use of his appointment power. In March 1964, he reappointed both Chief Justice Joseph Weintraub and Associate Justice John J. Francis to the New Jersey Supreme Court, thus conferring life tenure on those two distinguished jurists.[84] On September 12, 1966, Hughes nominated twenty judges to the superior court and twenty-two more to other benches across the state. One writer noted that these appointments constituted "the

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78 *Id.*

79 *Id.* at 14.

80 *See* Sullivan, *supra* note 75, at 11, col. 1. Twenty-six people were killed in the Newark riot, and another 1200 were injured. M. VIORST, FIRE IN THE STREETS 412 (1979). The Detroit riot, which occurred during the summer of 1967, left 43 people dead and 7200 arrested. *Id.* The August 1965 Watts riot in the Los Angeles area resulted in 34 deaths. *Id.* at 311.

81 Sullivan, *supra* note 75, at 11, col. 1.

82 *Id.*

83 *See* N.Y. Times, May 19, 1964, at 31, col. 4.

84 *Id.*, March 20, 1964, at 23, col. 5.

largest package of judicial nominations in New Jersey's history."[85] Perhaps the best indication of how important this chief executive considered judicial appointments is the fact that, in August 1964, he called the state senate into special session, for the first time in his administration, because it had adjourned without acting on thirteen nominations that he considered urgent.[86]

II. New Jersey Supreme Court Appointment

While governor, Hughes strived to improve a judicial branch which he would eventually head. At the completion of his second term though, he returned to the private practice of law.[87] Hughes noted of his decision "[t]here were still children to educate, bank loans to be paid and a great deal of money to be made as a lawyer."[88] His wife, Betty, and numerous friends urged him to be content with his past governmental achievements. In 1973, however, the former governor returned to public life as chief justice of the New Jersey Supreme Court.[89]

Hughes's chief justiceship descended on him like a lightening bolt from the sky. In April 1973, Governor William T. Cahill named fellow Republican, Pierre Garven, to succeed Joseph Weintraub as chief justice. In October of the same year, Garven, who took office in August, died suddenly of a stroke. At the time of his death, New Jersey was in the midst of an election campaign. Cahill wanted to replace Garven with another Republican, Associate Justice Morris Pashman, but abandoned the idea because a Pashman nomination threatened to touch off a bitter confirmation fight. On election day, New Jersey voters handed control of the state senate to the Democrats, and also elected a Democratic governor, Brendan T. Byrne. If Cahill had named a Republican as chief justice of the supreme court, the GOP could

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85 *Id.*, Sept. 13, 1966, at 34, col. 2.

86 *Id.*, Aug. 19, 1964, at 26, col. 8. When he called the senate into special session, Hughes denounced Republican Minority Leader William E. Ozzard, who was also chairman of the Judiciary Committee, for failing to act on the appointments. *Id.* On September 6, the Senate assembled for two and one-half minutes, then adjourned until November 16, without confirming the judicial nominations. *Id.*, Sept. 2, 1964, at 27, col. 6. There was also a constitutional dimension to the conflict between Hughes and the senate. As one author noted, "[t]he Senators say Gov. Richard J. Hughes wants their consent without seeking their advice and Mr. Hughes contends that the power of appointment rests solely with him, subject to confirmation by the Senate." *Id.*

87 Sederis, *supra* note 5, at 16. Hughes was succeeded by Republican William T. Cahill. *Id.*

88 Sullivan, *supra* note 75, at 1, col. 3.

89 *Id.*

have been charged with stealing the position. The chief justice would have been nominated by a lame duck Republican governor and confirmed by a lame duck Republican senate. Departing from a New Jersey tradition, under which governors always used their appointment power to keep the seven member court balanced four to three in favor of their party, Cahill, after consulting with Byrne, gave the Democrats a majority by nominating his close and personal friend, former Governor Hughes.[90] Hughes noted later, "[w]hen Cahill dropped the bombshell, nobody would believe it."[91] The former governor further noted, "[i]t was amazing. The Governor had never appointed a member of the opposite party to be chief justice—never in history."[92] Nor had any former New Jersey governor ever been nominated to head the state supreme court.[93]

Although unexpected, Cahill's choice met with widespread approval.[94] Besides the obvious political reasons, Hughes's background was also important. Traditionally, those selected for service on the New Jersey Supreme Court were experienced public servants, who had held two or more other offices before their appointment.[95] Hughes fit that mold. Praising the nomination, the *New York Times* noted that Cahill was returning to government a man whose broad background included not only the governorship but prior service as a jurist.[96] Cahill expected his predecessor to be a "cohesive force" who could provide the supreme court with the sort of leadership it needed. Furthermore, while Hughes possessed the sense of social awareness Cahill wanted in

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90 N.Y. Times, Nov. 8, 1973, at 97, cols. 6-8, at 99, cols. 1-3. Cahill's appointment of Hughes supports the contention of Professor Henry Robert Glick that in New Jersey the channels for recruitment of supreme court justices are open largely to those with extensive political backgrounds and links to other political actors. H. GLICK, SUPREME COURTS IN STATE POLITICS 138 (1971).

For Hughes, the appointment rectified a wrong which had been done to him in the late 1950's. While he was serving on the appellate division, Democratic Governor Robert B. Meyner had passed over him in filling supreme court vacancies. N.Y. Times, Nov. 8, 1973, at 99, col. 3.

91 Sederis, *supra* note 5, at 16.

92 *Id.*

93 Editor's Note, *supra* note 4, at 7. It should be noted, though, that New Jersey judges interviewed by Robert Glick several years before the Hughes appointment reported that New Jersey had an informal bipartisan tradition under which Democrats and Republicans were appointed alternately to the supreme court, regardless of which party controlled the governorship at the time. H. GLICK, *supra* note 90, at 95.

94 *See* N.Y. Times, Nov. 9, 1973, at 40, cols. 1-2.

95 *See* H. GLICK, *supra* note 90, at 138.

96 N.Y. Times, Nov. 9, 1973, at 40, cols. 1-2.

a chief justice, "Cahill was said to feel that Mr. Hughes's eight years as Governor would bring to the court the practical experiences gained from enforcing laws interpreted by a branch of the state government many critics believe is too removed from the reality that must be faced by Governors and Legislatures."[97]

III. JUDICIAL ADMINISTRATOR

The fact that Hughes was a seasoned administrator certainly contributed immensely to his success on the supreme court bench. Like his fellow former chief executive, William Howard Taft,[98] Richard J. Hughes recorded his most impressive achievements as a judicial manager and as a reformer of the administration of justice. He worked diligently to increase the unity, efficiency, and output of the New Jersey judiciary.

A. Hughes and the Administration of Justice

Hughes considered the administration of the judicial system to be one of his most important duties.[99] His colleague, Morris Pashman, who himself nearly became chief justice, rated Hughes "a great administrator."[100] Generally, Hughes did not attempt to mass his court, which seldom spoke with one voice. Loath to offend anyone, he preserved excellent personal relations with his associates. During his days in Mercer County politics, his tolerance of incompatible views and his ability to mediate disputes had earned Hughes a reputation as a man who could carry water on both shoulders without spilling a drop, and hence the nickname "Two Buckets."[101] Some of Hughes's judicial associates, however, believed that this trait was an unfortunate quality for a chief justice. In their opinion, "Two Buckets" was often less decisive and forthright than his role as chief justice required.[102]

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97 *Id.*, Nov. 8, 1973, at 99, cols. 1-2.

98 With the objective of improving the efficiency of the federal judiciary, Chief Justice Taft labored relentlessly to secure congressional enactment of legislation that would enable the United States Supreme Court to reduce its burdensome caseload and the congestion of its docket by making its jurisdiction discretionary. A. MASON, *supra* note 70, at 107-14. On February 13, 1925, Congress enacted legislation accommodating Taft's pleas by greatly expanding use of writ of certiorari. *Id.*

99 Editor's Note, *supra* note 4, at 8.

100 Sullivan, *supra* note 75, at 1, col. 5.

101 *Id.*, at 1, col. 6.

102 *Id.*, at 1, cols. 5-6 ("One criticism of Justice Hughes . . . involved his reluctance to be judgmental, a trait that often saved him from making political enemies when he was Governor.").

Conversely, other officials and commentators praised Hughes's ability to move his court toward compromise and resolution.[103]

His efforts to improve the efficiency and effectiveness of the judicial system earned him more praise. As Chief Justice, Hughes proved to be a worthy successor to Arthur T. Vanderbilt. Prior to becoming the state's chief justice in the late 1940's, Vanderbilt had campaigned relentlessly to improve the efficiency of New Jersey's courts and had played a major role in shaping the judicial provisions of the 1947 New Jersey Constitution.[104] The judicial article designated the chief justice as the administrative head of all New Jersey courts, and empowered him to appoint an administrative director to assist in managing the unified system.[105] The judicial article also empowered the chief justice to assign judges to the various divisions and parts of the superior court.[106] As the first chief justice under the new constitution, Vanderbilt exploited its potential to the fullest, introducing businesslike organization and methods into the New Jersey judiciary. He required lower court judges to file reports detailing the number of hours devoted to various activities and spelling out how rapidly they were disposing of cases. Vanderbilt then rearranged judicial personnel, assigning each jurist to the duties for which he seemed best suited. He also sought to eliminate weak cases and to ease docket congestion by stressing the use of pretrial conferences. Although resented by some judges, Vanderbilt's methods proved extremely effective, giving New Jersey a streamlined and efficient court system.[107]

Hughes both adopted and extended the methods initiated by

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[103] *Id.*; *see also* N.Y. Times, Aug. 5, 1979, § IV, at 6, col. 3.

[104] In the early 1930's Vanderbilt served on the New Jersey Judicial Council. A. VANDERBILT, II, CHANGING LAW 84 (1976). The Council developed a plan for fundamental court reform, but implementation of its ideas would have required amending the state constitution, which could not be accomplished. *Id.* at 85-86. For almost 18 years, Vanderbilt continued to work for a streamlined and businesslike court system. *Id.* at 88. In 1947, New Jersey held a convention to revise its constitution, and adopted a judicial article which embodied all of the major proposals that the New Jersey Judicial Council had advanced between 1930 and 1940. *Id.* at 162. Having greatly influenced the design of the state's new judicial system, Vanderbilt then played the crucial role in putting it into operation, serving as the first chief justice of the new New Jersey Supreme Court and successfully implementing the many innovative features of the judicial article. *See id.* at 169-227; *see generally* Kagan, Cartwright, Friedman & Wheeler, *The Evolution of State Supreme Courts*, 76 MICH. L. REV. 961, 981-82 (1978) (discussing Vanderbilt's leadership in making New Jersey's court system distinguished and innovative).

[105] N.J. CONST., art. 6, § 7, ¶ 1.

[106] *Id.* at ¶ 2.

[107] *See* A. VANDERBILT, *supra* note 104, at 175-87.

Vanderbilt. He sought to monopolize and to make more stringent the supervision of the New Jersey judiciary by the chief justice and the supreme court. For example, when a state senate committee questioned jurists who had been reappointed about their official actions, Hughes complained vigorously.[108] He objected that matters of judicial conduct should be addressed only to the court system, which had its own mechanism for disciplining judges.[109] In 1974, Hughes created the Advisory Committee on Judicial Conduct, under the leadership of retired Justice John J. Francis, and charged it with monitoring judicial integrity and investigating reports of judicial misconduct.[110] In February 1977, acting on the committee's recommendation, the New Jersey Supreme Court removed from office a Jersey City municipal judge, who repeatedly had engaged in bizarre behavior and been abusive of the rights of criminal defendants and their attorneys.[111] Writing for the court in this expulsion case, Chief Justice Hughes declared, "[a]n intoxication with judicial power which would ignore basic constitutional precepts is a wholly unacceptable syndrome that cannot be tolerated in New Jersey courts."[112] Hughes and his colleagues found the Jersey City judge guilty of incompetence, unfitness, and misconduct in office. They expelled him from the bench.[113]

Chief Justice Hughes labored not only to keep standards of judicial behavior high but also to keep the courts out of politics and politics out of the courts. This effort involved more than just combatting attempts by the state senate to subject judges to political inquisitions. In 1961, the New Jersey Supreme Court had adopted a rule prohibiting all lower court personnel from engaging in partisan political activity.[114] In 1962, the Administrative Director extended this prohibition to include judicial spouses.[115] When, in 1973, the wife of a Weehawken Superior Court judge announced she planned to run for a seat on the local school board, Hughes reaffirmed the rule. It was, he declared, necessary to safeguard the courts from even the slightest appear-

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108 N.Y. Times, Apr. 18, 1978, at 84, col. 3-4; N.Y. Times, Apr. 30, 1978, § XI, at 3, col. 2-3.

109 *Id.*, Apr. 18, 1978, at 84, col. 3.

110 Hughes, *State of the Judiciary Address*, N.J.L.J., Dec. 8, 1977, at 15, col. 3.

111 *See In re* Yengo, 72 N.J. 425, 371 A.2d 41 (1977).

112 *Id.* at 450, 371 A.2d at 57.

113 *Id.* at 451, 371 A.2d at 57.

114 H. GLICK, *supra* note 90, at 62-63.

115 *See generally In re* Gaulkin, 69 N.J. 185, 190 n.1, 351 A.2d 740, 742 n.1 (1976).

ance of partiality.[116] Later, however, the supreme court ruled unanimously that the prohibition on political activity did not extend to judges' spouses.[117] Apparently persuaded that the increasing social and legal autonomy of married women rendered the old rule unrealistic, Hughes joined, and even spoke for, the majority. He announced, though, that the court would remain alert for even the slightest hint of political activity by judges themselves.[118] It was, Hughes wrote, "determined that every protection shall be taken to assure that the judiciary itself shall continue its careful separation from direct or indirect involvement in politics."[119]

Under Hughes's leadership, the supreme court kept a careful eye not only on the conduct of judges but on lawyers as well. In December 1971, the court adopted a rule establishing a graduated schedule of maximum contingent fees that plaintiff's attorneys might charge in tort cases.[120] When the American Trial Lawyers Association challenged this rule, the court, speaking through Hughes, reaffirmed it.[121] The chief justice was also determined to assure the public that improper and unethical conduct by New Jersey attorneys would be exposed and punished. Both Hughes and the court sought to promote reforms in ethics

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116 N.Y. Times, Jan. 5, 1974, at 60, col. 5; N.Y. Times, Nov. 4, 1975, at 33, col. 2.

117 *See Gaulkin*, 69 N.J. at 197, 351 A.2d at 746 (1976).

118 *See id.* at 191-92, 351 A.2d at 743-44.

119 *Id.* at 199, 351 A.2d at 747.

120 N.J. Ct. R. 1:21-7(c) provided as follows:

> (c) In any matter where a client's claim for damages is based upon the alleged tortious conduct of another, including products liability claims, and the client is not a subrogee, an attorney shall not contract for, charge, or collect a contingent fee in excess of the following limits:
>
> (1) 50% on the first $1000 recovered;
>
> (2) 40% on the next $2000 recovered;
>
> (3) 33-1/3% on the next $47,000 recovered;
>
> (4) 20% on the next $50,000 recovered;
>
> (5) 10% on any amount recovered over $100,000; and
>
> (6) where the amount recovered is for the benefit of an infant or incompetent and the matter is settled without trial the foregoing limits shall apply, except that the fee on any amount recovered up to $50,000 shall not exceed 25%.

RULES GOVERNING THE COURTS OF THE STATE OF NEW JERSEY 57-58 (1972).

121 American Trial Lawyers Ass'n. v. N.J. Supreme Court, 66 N.J. 258, 330 A.2d 350 (1974). In his opinion, Hughes stated:

> Since 1948 . . . the Supreme Court has not hesitated to meet its responsibility for the use of the judicial and administrative power reposed in it by Article VI. Thus, it has "legislatively" adopted Rules of general application regulating the professional conduct of attorneys and their relationships to their clients and to the courts.

Id. at 263, 330 A.2d at 353.

proceedings that would eliminate even the appearance that lawyers were not being critical enough in policing themselves.[122]

B. Crusading for More and Better-Paid Judges

Besides endeavoring to protect the image and integrity of the bench and bar, Chief Justice Hughes, like Vanderbilt before him, labored to increase judicial efficiency and productivity. Hughes recognized that, with the volume of litigation increasing rapidly, the key to achieving swift disposition of cases was having a sufficient number of high-quality judges. In February 1975, with the support of the chief justice, the legislature enacted, and Governor Byrne signed,[123] legislation allowing retired judges to fill judicial vacancies temporarily by serving beyond the mandatory retirement age of seventy.[124] This was only a temporary solution to the problem. When, in the following year, Governor Byrne called for speedier trials, Hughes responded that two measures were needed to eliminate the 140,897 case backlog then clogging New Jersey's courts. The first step was for the governor to fill judicial vacancies promptly. The second proposal Hughes urged was the creation of additional judgeships. The chief justice asserted that speedier trials in criminal cases might be possible without expanding the judiciary, but launching a successful assault on the civil backlog would be impossible without more judges. The cost of what he was urging, Hughes said, would be $18 million. Pointing out that the governor had cut $4 million from the previous year's judicial budget, the chief justice informed Byrne bluntly that he could not have an improved judiciary while continuing to insist on tightfisted economizing.[125] Hughes realized that "budget support is indispensable to the administration of justice."[126]

The chief justice continued to lobby for the filling of judicial vacancies and for adequate funding to properly staff the courts.

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[122] Sullivan, *Hughes Rides Herd on Lawyer Ethics*, N.Y. Times, Jan. 16, 1977, § 11, at 11, col. 1. The reforms which Chief Justice Hughes sought included regionalization of the existing county ethics committees; requiring at least one member of the reconstituted ethics committees to be appointed from outside the legal profession; and creation of a new ethics review panel to serve as a "court of appeal" between the regional committees and the supreme court. *Id.*

[123] N.Y. Times, Feb. 17, 1975, at 48, col. 7-8.

[124] Act approved Feb. 14, 1975, 1975 N.J. Laws ch. 14.

[125] In a letter to Governor Byrne, Hughes emphasized the need to fill judicial vacancies and provide the courts with increased funding. *See* N.Y. Times, Jan. 25, 1976, § XI, at 30, col. 7; N.Y. Times, Apr. 20, 1976, at 73, col. 2.

[126] Hughes, *supra* note 110, at 19, col. 2.

In December 1976, he publicly endorsed a bill to give New Jersey judges across-the-board pay raises of $6000 per year.[127] Hughes urged passage of the bill "[t]o preserve the finest judiciary in the nation and . . . to serve the public interest in the swift and efficient administration of criminal and civil justice. . . ."[128] Despite his insistence that the courts were confronting an "attrition crisis," with talented jurists leaving the bench because their pay was not keeping pace with inflation, Democratic legislative leaders shelved the salary increase measure until after the November 1977 elections.[129]

Hughes continued to press for higher pay for judges in an address on the "State of the Judiciary" which he delivered orally to the legislature less than a month after the election.[130] At that point, the chief justice was seeking raises of $12,500.[131] A number of legislators raised their eyebrows when they heard this request.

> But when he warned them to act before the new Legislature convened on Jan. 10 because existing laws precluded a member of the Legislature from being appointed to a judicial post for which the salary had been increased during his term of office, there were smiles and elbow jabs in the ribs. They had

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127 In January 1977, both Hughes and Arthur J. Simpson, Jr., the Administrative Director of the New Jersey Courts, urged filling a number of then existing vacancies on the bench as one step toward reducing the caseload backlog. N.Y. Times, Jan. 6, 1977, at 63, col. 2.

128 *Id.*, Dec. 7, 1976, at 87, col. 2.

129 Sullivan, *Raise for Judges Stalls in Legislature*, N.Y. Times, June 12, 1977, § XI, at 1, col. 5. Hughes subsequently pointed out that, besides making it difficult to retain judges already on the bench, low judicial salaries made it increasingly difficult to find suitable candidates for vacant judgeships. N.Y. Times, Nov. 5, 1977, at 49, col. 1.

130 Hughes, *supra* note 110, at 15. The speech that was delivered on November 21, 1977 has been described by Justice Mark A. Sullivan as "a bench mark in establishing that vital link between the Judicial branch and the Executive and Legislative branches of our state government." Sullivan, *supra* note 4, at 107-08. This was the first "State of the Judiciary" message to be personally delivered to a joint session of the legislature. N.Y. Times, Nov. 20, 1977, § XI, at 6, col. 4. Hughes had been invited a year and one-half earlier, however, by the president of the state senate, Matthew Feldman, to address a joint session of the legislature on the state of the judiciary. *Id.*, Apr. 13, 1976, at 71, col. 8. At the time Hughes spoke, New Jersey ranked eleventh in the nation in level of judicial salaries, although it was second in per capita income. Hughes, *supra* note 110, at 19, col. 2. Before his address, Hughes's wife complained publically about the inadequacy of her husband's salary, which had not kept pace with the inflation of living costs, such as food and college tuition. "I'm not alone," she said. "We're all in the same boat." Narvaez, *Byrne Receives Ovation from Legislators*, N.Y. Times, Nov. 22, 1977, at 79, col. 2.

131 Hughes, *supra* note 110, at 19, col. 4.

got the message.[132]

A week later Democratic and Republican legislative leaders agreed in a meeting with Governor Byrne to seek $8000 raises for each of the state's 312 judges.[133]

In his address to the legislature, Hughes requested more personnel as well as higher salaries. He asked the legislature to authorize 202 new positions in the court system. Such action was necessary, the chief justice insisted, in order to eliminate the backlog of cases.[134] Hughes pointed out that, while the number of judges had increased five times since the state's new court system began operation in 1948, the judiciary's "responsibilities are almost fourteen times greater."[135] Since 1973, the per capita work product of New Jersey jurists had increased from 1700 to 2000 cases per year.[136] The chief justice told the legislature, "I have seen the health of judges fail by the intensity of their devotion to duty."[137]

C. *Improving Judicial Efficiency*

While lobbying for more judges, Hughes also endeavored to improve the performance of those already on the bench. In his 1977 address to the legislature, the chief justice pointed with pride to the recent establishment of the New Jersey Judicial College.[138] He told legislators, "[f]or several days prior to the commencement of each new court year all judges in the state system participate in very intensive courses, lectures and discussion on every judicial problem from equity to criminal sentencing."[139] Furthermore, Hughes reported, the Administrative Office of the Courts was arranging mini-seminars to educate judges on timely subjects.[140] In addition to going to school, New Jersey jurists received report cards. In December 1978, Hughes announced that the performance of all judges would be reviewed and rated by the court system itself.[141]

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132 Narvaez, *supra* note 130, at 79, col. 3.

133 N.Y. Times, Nov. 29, 1977, at 77, col. 4.

134 Hughes, *supra*, note 110, at 19, col. 1. Hughes did not specify how many of the requested positions would be judgeships. *See id.* He did indicate that 23 of them were judicial posts in the chancery division whose creation was mandated by statute. *Id.*

135 *Id.* at 15, col. 2.

136 *Id.* at col. 3.

137 *Id.*

138 *Id.* at 16, col. 2.

139 *Id.*

140 *Id.*

141 N.Y. Times, Dec. 15, 1978, at 1, col. 3.

His initiative to improve judicial efficiency included a campaign to expedite the flow of appeals through the appellate division and the supreme court. He endeavored to reduce the volume of litigation in those courts by limiting opportunities for appeal. For example, Hughes announced that jury damage awards might not be overturned unless they were so disproportionate as to shock the conscience.[142] The chief justice also admonished other appellate judges to uphold trial courts' damage awards unless they were clearly insupportable.[143] Hughes further indicated his desire to reduce the number of appeals through a decision restricting the power of appellate courts to overrule the determinations of legislatively created commissions[144] and through an opinion emphasizing that criminal sentences might be modified on appeal only where there was a clear showing of abuse of discretion.[145] In September 1978, the chief justice set up the New Jersey Supreme Court Committee on Appellate Practice, which was charged with devising solutions to the problem of crowded calendars in the appellate division.[146] After the creation of this committee, the backlog of cases awaiting appellate review declined drastically. Its success inspired Hughes to create a similar body to eliminate delays in the adjudication of matrimonial matters.[147]

The chief justice also attempted to accelerate the disposition of criminal cases in the trial courts. After Governor Byrne's January 1976 call for speedy processing of serious offenders by the judicial system, Hughes ordered a statewide survey to determine what additional resources would be required to achieve that objective. This study, completed on April 14, 1976, proposed a four year phase-in program to accomplish "speedy trial goals."[148] "Unfortunately," in November 1977, the chief justice explained that "due to various financial hardships facing the State in the interim, the resources for this ambitious program

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142 *See* Carrino v. Novotny, 78 N.J. 355, 366, 396 A.2d 561, 566 (1979); Rova Farms Resort, Inc. v. Investors Ins. Co., 65 N.J. 474, 483-84, 323 A.2d 495, 500 (1974).

143 *See* Leimgruber v. Claridge Assoc., Ltd., 73 N.J. 450, 455-56, 375 A.2d 652, 655 (1977).

144 Editor's Note, *supra* note 4, at 9 (citing Nicoletta v. North Jersey Dist. Water Supply Comm'n, 77 N.J. 145, 166, 390 A.2d 90, 101 (1978)).

145 *Id.* (citing State v. Velazquez, 54 N.J. 493, 495, 257 A.2d 97, 98 (1969)).

146 Pashman, *supra* note 2, at 89.

147 *Id.*

148 Hughes, *supra* note 110, at 15, col. 2.

were never provided."[149] Even without the necessary financial support, Hughes continued to pursue the speedy trial goal.[150] In several vicinages, prosecutors, public defenders, and judges embarked on cooperative efforts to ensure that those charged with violent crimes would be indicted within forty-five days of their arrest and brought to trial within sixty days.[151]

While supporting these undertakings, Hughes also promoted greater use of pre-trial intervention for first time offenders charged with nonviolent crimes. These defendants were placed in training programs, afforded access to drug and alcohol detoxification programs, and given professional counseling. If these rehabilitative measures proved successful, prosecution was dropped, thus enabling the offenders to avoid acquiring criminal records. This innovation was part of a "wave of reform," whose primary purpose was rehabilitation.[152] In addition, Hughes explained, "[b]y removing such marginal offenders from further prosecution, pressures on the criminal calendars are relieved."[153]

Thus, pre-trial intervention was part of Hughes's ongoing campaign to eliminate the backlog of cases clogging New Jersey's courts and to provide the state with speedy and efficient justice. His crusade produced positive results. In August 1979, Chief Justice Hughes reported "that for the first time in five years, the state court system disposed of more cases than were initiated."[154]

D. Unifying New Jersey's Courts

Chief Justice Vanderbilt would have applauded this achievement, but probably would have appreciated even more another of Hughes's accomplishments: the merging of New Jersey's county courts into the superior court. Vanderbilt and Governor Alfred E. Driscoll had tried to get the 1947 New Jersey Constitutional Convention to create a fully integrated court system, only to be thwarted by the Hudson County delegation, which persuaded representatives of small counties to back a plan to carve a separate county court system out of the proposed superior court.[155] The resultant judicial article allowed a non-unified

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149 *Id.*
150 *Id.*
151 *Id.*
152 *See id.* at 17, col. 2.
153 *Id.*
154 N.Y. Times, Aug. 10, 1979, § II, at 2, col. 2.
155 Clapp, *supra* note 4, at 18; A. VANDERBILT, *supra* note 104, at 160-61.

court system to persist from 1948 to 1978.[156]

On March 25, 1977, Chief Justice Hughes appeared before the Assembly Judiciary Committee to urge that New Jersey complete the job of creating a fully unified court system.[157] Hughes testified that "[t]he 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. . . ."[158] The chief justice contended that increasing case loads mandated the county courts be combined with the superior court. A resolution to amend the constitution to bring about that objective passed the assembly in 1977, only to die in the senate.[159] Hughes, however, refused to abandon his fight.[160] In March 1978, he appeared before the New Jersey Assembly Judiciary Committee to again advocate the merger of the county courts into the superior court. In addition, Hughes enlisted the League of Women Voters in the fight for the required constitutional amendment, and spoke in support of his proposal before the General Council of the New Jersey Bar Association, several county bar groups, the New Jersey Press Association, and other organizations.[161] Finally, his labors were rewarded. Both the legislature and the voters adopted the constitutional amendment, and on December 12, 1978, New Jersey at last acquired a fully unified court system.[162] This long delayed realization of Vanderbilt's dream was "perhaps the greatest accomplishment" gracing the impressive record which Chief Justice Hughes compiled as a judicial administrator and administrative reformer.[163]

IV. Judicial Activism

In that respect, his career on the supreme court resembled that of William Howard Taft, who also earned a reputation as an outstanding chief justice primarily because of his accomplish-

156 Clapp, *supra* note 4, at 18.

157 *See* Sullivan, *supra* note 4, at 109.

158 N.Y. Times, Mar. 26, 1977, at 51, col. 3.

159 *See* Clapp, *supra* note 4, at 16.

160 *Id.*

161 *Id.*

162 *Id.* at 18. Having merged the county courts into the superior court, Hughes immediately set out to create a family part of the superior court. *Id.* As he conceived it, "[s]uch a part would handle not only the matrimonial business of the superior court, but the business of the juvenile and domestic relations courts established in twenty-one counties." *Id.*

163 Sullivan, *supra* note 4, at 109.

ments as an administrative reformer.[164] Taft, however, was a conservative, animated by a strong desire to protect private property from political majorities.[165] Hughes, on the other hand, was deeply committed to New Deal-Great Society liberalism.[166] Although poles apart politically, the ex-governor and the former President had one thing in common as judges: judicial activism.[167] What Hughes shared with his famous federal counterpart was not a political philosophy but a willingness to use judicial power to promote his own vision of a good society.

A. Hughes's Activism and Other Elements of Hughes's Judicial Philosophy

Activism was not the only distinguishing characteristic of Hughes's supreme court opinions; they revealed that he remained a proponent of law and order. Five of the twelve opinions Hughes authored in criminal law or procedure cases supported rulings in favor of the defendant,[168] and another was a pro-defense dissent.[169] In two of these cases, however, Hughes took pro-law enforcement positions on major issues before the court.[170] In a third, he wrote a separate opinion to emphasize his

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164 1 W. SWINDLER, COURT AND CONSTITUTION IN THE TWENTIETH CENTURY 273-76 (1969).

165 *See* A. MASON, *supra* note 70, at 15, 60-61, 63-64, 240-42.

166 *See*, Editor's Note, *supra* note 4, at 7.

167 *See* A. MASON, *supra* note 70, at 59 (discussing Taft's activism).

168 *See*, State v. Cohen, 73 N.J. 331, 375 A.2d 259 (1977); State v. Christener, 71 N.J. 55, 74, 362 A.2d 1153, 1163 (1976) (concurring opinion); State v. Harris, 70 N.J. 586, 362 A.2d 32 (1976); *In re* D.G.W., 70 N.J. 488, 361 A.2d 513 (1976); State v. Deatore, 70 N.J. 100, 358 A.2d 163 (1976).

169 *See* State v. Vinegra, 73 N.J. 484, 494, 376 A.2d 150, 155 (1977) (dissenting opinion).

170 In State v. Cohen, 73 N.J. 331, 375 A.2d 259 (1977), the court, while affirming a trial court's motion to suppress evidence which Port Authority police officers had seized in a warrentless search of the defendant's automobile, reversed an appellate division ruling that the Port Authority police lacked jurisdiction anywhere but on or in bridges, tunnels, plazas, and the approaches thereto. According to the chief justice, the court certified the case because "we were concerned with the basis on which the Appellate Division had affirmed." *Id.* at 333, 375 A.2d at 260. Speaking through him, the court held that the jurisdiction of the Port Authority police extended to "the whole territorial area of the Port District itself." *Id.* at 342-43, 375 A.2d at 264.

In *In re* D.G.W., 70 N.J. 488, 361 A.2d 513 (1976), a juvenile who had been found guilty of breaking and entering and theft, adjudged a juvenile delinquent after entering a plea of guilty, and sentenced to probation, objected to the fact that the Middlesex County Juvenile and Domestic Relations Court had conditioned its grant of probation on his making restitution to the victim. The supreme court, not satisfied with the way the case had been handled procedurally, remanded it "for re-establishment of the restitution amount upon which appellant's probation was con-

belief that a man should have a right to defend himself in his own home.[171] A fourth case posed a conflict between rehabilitation and the particular punishment imposed by the trial court in a criminal case, and Hughes opted for the former.[172] There was far less ambiguity in the opinions he wrote to endorse the upholding of convictions. These were forceful expressions of the attitudes he had revealed on the Mercer County and superior court benches.[173] Speaking for the supreme court in overruling an appellate division decision reducing the sentence of a man convicted of rape and robbery, Hughes observed rather critically,

> As bearing upon its ultimate conclusion that the sentence was unduly harsh and punitive and that "justice will be best accomplished by some modification," we discern no reference by the Appellate Division to the protection of the community from violence, to concern for the unfortunate victims, to the purpose of deterrence of others, to the dim prospect of rehabilitation of the defendant. . . .[174]

Concern about violent crime in urban areas and "the surfeit of hand guns which is its primary co-efficient"[175] caused Hughes to effectuate what a student commentator called "[a]n unfortunate extension

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ditioned. . . ." *Id.* at 509, 361 A.2d at 524. Hughes pointed out, however, that the supreme court granted certification mainly to determine whether the Middlesex County Juvenile and Domestic Court had authority to attach a condition of restitution to a probationary term granted to a juvenile offender. *Id.* at 493, 361 A.2d at 515. On that issue, the court, with the chief justice as its spokesman, ruled for the state. *Id.* at 498, 361 A.2d at 518.

171 *See* State v. Christener, 71 N.J. 55, 74, 362 A.2d 1153, 1163 (1976) (concurring opinion).

172 State v. Harris, 70 N.J. 586, 594-96, 362 A.2d 32, 36-38 (1976). In *Harris*, the defendant had been convicted of welfare fraud and was granted probation, conditional upon her making restitution to the welfare board. *Id.* at 590, 362 A.2d at 33. The supreme court affirmed the appellate division's reversal of the restitution requirement. *Id.* at 599, 362 A.2d at 37. Commenting on this attempt to employ restitution to deter welfare fraud, Hughes said that "considering the offender and her worth to society in struggling to sustain her five children, the human cost of such deterrence in this instance is too great." *Id.* at 596, 362 A.2d at 37; *cf.*, Pascucci v. Vagott, 71 N.J. 40, 362 A.2d 566 (1976) (invalidating Division of Public Welfare regulation setting lower level of financial assistance for recipients classified as "employable" than for those classified as "unemployable").

173 *See* State v. McCombs, 81 N.J. 373, 408 A.2d 425 (1979); State v. Whitaker, 79 N.J. 503, 401 A.2d 509 (1979); *In re* H.B., 75 N.J. 243, 381 A.2d 759 (1977); State v. Canola, 73 N.J. 206, 227, 374 A.2d 20, 30 (1977) (dissenting opinion); State v. Alston, 70 N.J. 95, 358 A.2d 161 (1976).

174 State v. Whitaker, 79 N.J. 503, 511, 401 A.2d 509, 513 (1979). Whitaker's sentence of 43-50 years was reduced by the appellate division to 26-27 years. *Id.* at 507, 401 A.2d at 511.

175 *In re* H.B., 75 N.J. 243, 246, 381 A.2d 759, 760 (1977).

of the power to stop and frisk."[176] In two cases in which the supreme court held that an armed robber could not be prosecuted for the murder of a confederate who was killed in a gun battle with the victim, the chief justice recorded solitary dissents.[177] Appropriately, Hughes's tenure on the supreme court ended with an opinion opposing reversal of a criminal conviction.[178]

Off the bench as well as on it, the chief justice adopted a decidedly tough posture toward crime and criminals. In April 1976, he declared publicly that violence could no longer be tolerated. Hughes promised that "[i]f there is one thing I intend to accomplish as Chief Justice of New Jersey, it is to devote every resource of the courts to halt this reign of terror in our streets."[179] In furtherance of this goal, Hughes sought to curtail "excessive judicial leniency."[180] He persistently urged a toughening of the procedures for granting bail, so that dangerous criminals would not be returned to the streets.[181] As far as the chief justice was concerned, "foremost in the mind of judges [must be] protection of the community

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176 *See* Comment, *In re* H.B.: *An Unfortunate Expansion of the Power to Stop and Frisk*, 32 RUT. L. REV. 118 (1979). In *In re* H.B., 75 N.J. 243, 381 A.2d 759 (1977), Hughes upheld, over fourth amendment objections, the frisking of a suspect (who proved to be carrying a gun), based upon an anonymous tip, which was corroborated only as to the suspect's dress, under circumstances where the safety of the officers and members of the public allegedly required it. *See id.* at 256-57, 381 A.2d at 763-64.

177 *See* State v. Canola, 73 N.J. 206, 227, 374 A.2d 20, 30 (1977) (dissenting opinion); State v. Alston, 73 N.J. 228, 374 A.2d 161 (1977) (dissenting opinion). In seeking to justify his opposition to the *Canola* decision, Hughes declared: "[r]esistance whether by victim or police, and even unintended or accidental deaths which occur in the confused *res gestae* of violent felony, can hardly be deemed outside the contemplation of the initiator of such criminal violence." *Canola*, 73 N.J. at 227, 374 A.2d at 31. In *Alston*, the chief justice simply announced he was dissenting for the reasons set forth in his dissent in *Canola*. *Alston*, 73 N.J. at 229, 374 A.2d at 32 (Hughes, C.J., dissenting).

178 *See* State v. McCombs, 81 N.J. 373, 389, 408 A.2d 425, 433 (1979) (dissenting opinion). In this case, the New Jersey Supreme Court held that the trial court committed reversible error when it allowed jury selection to proceed while the defendant was unrepresented. The defendant both rejected his assigned counsel and expressly refused to represent himself. *Id.* at 374-79, 408 A.2d at 425-28. Hughes responded, "[w]ith all respect to the views of the majority, the result leaves me with the uneasy feeling that an adroit and courtwise defendant, in a serious case of alleged criminal violence, has been successful in hoodwinking both trial and appellate courts, to the disadvantage of the true administration of justice." *Id.* at 390, 408 A.2d at 434 (Hughes, C.J., dissenting).

179 N.Y. Times, Apr. 15, 1976, at 71, col. 1.

180 *Id.*

181 *See id.*, May 5, 1978, § II, at 17, col. 1; N.Y. Times, Sept. 6, 1975, at 52, col. 3; N.Y. Times, Sept. 4, 1975, at 76, col. 7. Chief Justice Hughes became particularly agitated about excessive leniency in the bail granting process in May 1978, after a female legislative aide, Susan Small, was mugged outside the State House in Tren-

from the clear and present danger of violence."[182] He insisted that stiffer sentences ought to be meted out to those convicted of violent crimes. Hughes further insisted prison terms should be used to prevent harm to the public.[183] He pushed for revision of the plea bargaining process to make it more difficult for recidivists to obtain light sentences.[184] In addition, the chief justice advocated that juvenile defendants be stripped of the cloak of anonymity, and that the courts and criminal authorities be permitted to identify those accused of vandalism.[185]

Although he was a law and order hard-liner, Hughes was, nevertheless, an advocate of prison reform. This warden's son persuaded trial judges to visit the state's correctional facilities to see first hand the sort of places to which they were sentencing people and to gain some understanding of the problems faced by the officials who ran them.[186] He also sought to improve parole procedures[187] and to eliminate the disparities in sentences that were a major grievance of prisoners in the penitentiaries.[188] Hughes firmly opposed committing young adults to those institutions.[189] Indeed, he insisted that the Trenton facility his father had headed ought to be closed down entirely and that greater reliance should be placed on programs that offered an alternative to "the corrupting influence of prisons."[190] Hughes did stress that these "programs must be carefully supervised so they do not become a haven for 'the violent predators who walk our streets.' "[191] But he was, despite his outspoken commitment to the eradication of street crime, a genuine reformer with respect to matters involving the corrections system.[192]

Hughes was also a champion of due process for prisoners. As Judge Milton B. Conford once observed, "[i]f one were called upon to identify the single most characteristic aspect of the Chief Justice's

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ton, and a Trenton man was accused of three separate shootings while free on bail. N.Y. Times, May 5, 1978, § II, at 17, col. 1.

182 *Id.*, Sept. 4, 1975, at 76, col. 7.

183 *See id.* Apr. 15, 1976, at 71, col. 3; N.Y. Times, Nov. 30, 1975, at 86, col. 1.

184 *Id.*, Nov. 18, 1975, at 77, col. 6.

185 *Id.*, Sept. 11, 1976, at 51, col. 5; N.Y. Times, Nov. 18, 1975, at 77, col. 6.

186 *See id.*, Aug. 11, 1979, at 18, col. 1; N.Y. Times, Oct. 25, 1975, at 63, col. 2; N.Y. Times, Sept. 29, 1975, at 67, col. 2.

187 *See id.*, Oct. 25, 1975, at 63, col. 2.

188 *See id.*, Apr. 5, 1974, at 79, col. 1.

189 *See id.*

190 *Id.*, Feb. 24, 1976, at 75, col. 1.

191 *Id.*

192 While in private practice, Hughes was the chairman of an American Bar Association Committee on Penal Reform. *Id.*, June 24, 1975, at 71, col. 6.

legal philosophy, I believe most would name his penchant for due process."[193] In *Avant v. Clifford*,[194] a case in which the supreme court passed on a challenge to prison disciplinary standards promulgated by the Commissioner of the Department of Institutions and Agencies, Hughes "demonstrated not only his deep understanding and appreciation of due process requirements, but at the same time his insistence that agency action be grounded on fair treatment, both of the individual and of the public interests."[195] Hughes also sought to protect the procedural rights of mental patients[196] and of public employees threatened with discharge.[197] Only debtors failed to elicit his sympathy; he saw no violation of either state or Federal constitutional rights in the Uniform Commercial Code provision[198] authorizing a secured creditor to take possession of the collateral without judicial process.[199]

Hughes's position on this issue suggests a pro-business bias, as does his opinion in *In re Board's Investigation of Telephone Companies*.[200] In that case, the supreme court ruled that New Jersey Bell could include in its tariffs a comprehensive adjustment clause (CAC), which would allow the company to raise telephone rates in response to increases in certain categories of expenses, without obtaining prior approval from the Board of Public Utility Commissioners.[201] The Department of the Public Advocate argued against acceptance of the CAC, and in a vigorous dissent, Justice Pashman accused the majority, for which Hughes spoke, of abandoning sound principles of utility regulation.[202] A careful reading of the chief justice's opin-

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193 Conford, *To Chief Justice Richard J. Hughes*, 11 RUT.-CAM. L.J. 4, 4-5 (1979).

194 67 N.J. 496, 341 A.2d 629 (1975). *See generally*, 1974-75 N.J. Supreme Court Term, *Prisoners' Rights—New Jersey Fairness and Rightness Standard—Procedural Requirements Delineated for Prison Disciplinary Hearings*, 29 RUTGERS L. REV. 729 (1976) (discussing *Avant* and related prison disciplinary cases).

195 Milmed, *supra* note 4, at 81.

196 *See* N.Y. Times, Dec. 15, 1976, § II, at 33, col. 1.

197 *See* Nicoletta v. North Jersey Dist. Water Supply Comm'n, 77 N.J. 145, 390 A.2d 90 (1978).

198 N.J. STAT. ANN. § 12A:9-503 (West 1962).

199 King v. South Jersey Nat'l Bank, 66 N.J. 161, 330 A.2d 1 (1974). Hughes took the position that the fourteenth amendment had not been violated because it "erects no shield . . . against private action however wrongful. . . ." *Id.* at 174, 330 A.2d at 8. The United States Supreme Court arrived at a similar conclusion with respect to another creditor self-help remedy in Flagg Bros. Inc. v. Brooks, 436 U.S. 149 (1978) (warehouseman's lien). *See generally*, Note, *Self-Help Repossession Does Not Constitute State Action for Purposes of the Fourteenth Amendment, It Is Not Per Se Unconscionable, Nor Does It Violate the New Jersey Constitution*, 7 SETON HALL L. REV. 147 (1975).

200 66 N.J. 476, 333 A.2d 4 (1975).

201 *Id.* at 496, 333 A.2d at 15.

202 *Id.* at 509, 333 A.2d at 22 (Pashman, J., dissenting).

ion reveals, however, that *In re Board's Investigation* hardly represented judicial capitulation to big business.[203] In another regulatory case, Hughes set aside an increase in the rate for hauling sand which the Public Utility Commission had granted to the New Jersey Central Railroad.[204] He also adopted what could be characterized as a pro-consumer position in a case posing the issue of whether an insurance company that refused to settle a suit against the insured within the policy limits was liable for the amount of any excess judgment that might be rendered against him.[205]

The immediate beneficiaries of the foregoing decisions were business enterprises, but the opinions which Chief Justice Hughes wrote in tort cases clearly show that his sympathies lay with people rather than with corporations. When a trial court required a motorcyclist injured in a collision with a food company's truck to accept a $150,000 remittitur, Hughes restored the $300,000 jury verdict.[206] Similarly, when the appellate division overturned a judgment won by a motorist injured when her car struck a corporation's illegally parked truck, Hughes reinstated the award.[207] In another case, he restored an award of $16,500 assessed against the owners of a giant apartment complex, whose workmen had crossed plaintiffs' readily identifiable property line and cut thirty feet off the tops of eleven

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[203] Hughes wrote in part:

> In a rate proceeding, utility expenses, to be allowable, must be justified. Good company management is required; honest stewardship is demanded; diligence is expected; careful, even hard, bargaining in the marketplace and at the negotiation table is prerequisite. And so it must be with regard to expenses recaptured by 'flow through' to consumers by dint of a comprehensive adjustment clause. Tested in the scrutiny of final rate determination and only in that way (despite the impressive monitoring devices built into the instant clause) can such expenses be validated and become demonstrably honest components in the ascertainment of 'just and reasonable' rates. Lacking that validation, certainly and justification, the rates would have been unjustly charged and to the extent of that injustice must be refunded to the customers. That protection being provided in unmistakable terms, however, we would see no reason for this Court to disagree with the PUC adoption and the continued operation of the comprehensive adjustment clause, pending, as we say, scrutiny of such expenses in final hearing.

Id. at 495-96, 333 A.2d 14-15. *See* Note, 6 SETON HALL L. REV 551, 564 (1974) ("This innovative approach to the problem of interim relief adds flexibility to such devises as CAC and can be an important administrative tool when used to offset such regulatory problems as 'lag' and 'attrition.' ").

[204] *In re* Intrastate Indus. Sand Rates, 66 N.J. 12, 327 A.2d 427 (1974).

[205] Rova Farms Resort v. Investors Ins. Co., 65 N.J. 474, 323 A.2d 495 (1974).

[206] Baxter v. Fairmont Food Co., 74 N.J. 588, 379 A.2d 225 (1977).

[207] Carrino v. Novotny, 78 N.J. 355, 396 A.2d 561 (1979). Hughes took the position that the violation of the parking ordinance could be considered as evidence of negligence. *Id.* at 362-64, 396 A.2d at 564-66.

trees in order to create a flight path for helicopters.[208]

B. Activist in Action

Although a determination to eradicate street crime, a commitment to due process, and a concern for those injured by corporate activity were all prominent features of Chief Justice Hughes's jurisprudence, it was judicial activism that produced the opinions which earned him a national reputation. The supreme court which Hughes joined in 1973 had a tradition that contrasted sharply with the judicial deference and restraint he had displayed earlier as a Mercer County and superior court judge. Vanderbilt, Hughes's predecessor, believed that the supreme court should play a significant role in state policy making.[209] Influenced by his views, it did so throughout the 1950's and 1960's.[210] Members of the New Jersey Supreme Court adopted a posture characteristic of legal realist judges,[211] taking the position that they should be innovative, make recommendations to the legislature, and even formulate public policy themselves.[212] The New Jersey Supreme Court achieved a national

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208 Leimgruber v. Claridge Assocs., Ltd., 73 N.J. 450, 375 A.2d 652 (1977).

209 Glick & Vines, *Law Making in the State Judiciary: A Comparative Study of the Judicial Role in Four States*, 2 POLITY 142, 148 (1969).

210 *See id.* at 148-49; Friedman, Kagan, Cartwright & Wheeler, *State Supreme Courts: A Century of Style and Citation*, 33 STAN. L. REV. 773, 805-06 (1981) [hereinafter *Style and Citation*].

211 *Style and Citation*, *supra* note 210, at 785. According to Professor Lawrence Friedman:

> Legal realism is the name of a school of legal thought which flourished most notably in the 1930s. The realists argued that judges were much more independent than they admitted; they sneered at the idea that the way to decide cases was by logical deduction from pre-existing cases and rules. Judges in our system make law; they create new policy. In fact, they cannot help doing so, in certain cases. A realist judge would be a judge who is aware of outside and inside pressures—aware of the way they affect his work. He would be sensitive to the impact of his decisions, that is, their social consequences; and he would be willing to take these into account.

L. FRIEDMAN, AMERICAN LAW 85-86 (1984).

212 H. GLICK, *supra* note 90, at 47. After making in-depth studies of the supreme courts of four states, Kenneth Vines concluded: "[i]n New Jersey . . . a majority of the judges held to the policymaking purpose." Vines, *The Judicial Role in the American States* in FRONTIERS OF JUDICIAL RESEARCH 469 (J. Grossman & J. Tanenhaus eds. 1969). He found their attachment to the policy maker role to be quite distinctive. Fifty-seven percent took the position that what distinguished their jobs from those of lower court judges was that supreme court justices were supposed to have greater law making power. *Id.* at 476. A negligible number of judges on the other state supreme courts Vines studied (Massachusetts, Pennsylvania, and Louisiana) took that position. *Id.* at 477. The "law makers" on the New Jersey Supreme Court

reputation as a modern legal realist tribunal, committed to innovative law reform and policy making.[213]

Despite the restrained tendencies which Hughes had displayed earlier, he accepted completely the activist values and traditions of his new court. Inspired by the examples of his predecessors, Vanderbilt and Weintraub, he decided that what New Jersey needed was "an activist Chief Justice who will set a tone of progressive change, a man restless for the doing of right, untiring in the elusive search for justice. . . ."[214] Hughes still thought that the judiciary should act carefully and deliberately and that it should avoid interference in the legislative process whenever possible. Yet, the chief justice believed that, "where a vacuum exists which is offensive to the Constitution, the courts are constrained to act in faithfulness to the oath of office [because] . . . the judiciary is, in the last resort, guarantor of the constitutional promise. . . ."[215] "[W]hile we don't intend to infringe on the other branches of government or abrogate their roles," Hughes declared at the time of his appointment, "there is no way the court can turn its back on controversial and constitutional issues."[216]

In certain instances, he exhibited a willingness to cooperate with the legislature. "It goes without saying," Hughes wrote in *White v. Township of North Bergen*,[217] "that the wisdom, good sense, policy and prudence (or otherwise) of a statute are matters within the province of the Legislature and not of the Court."[218] The chief justice went considerably beyond such rhetorical deference. When a group opposed to building more prisons challenged a bond issue which would provide facilities for the mentally re-

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"did not think it possible for courts to follow a formalistic version of the separation of powers doctrine; they perceived the courts as inevitably making policies in all circumstances." *Id.* at 477. *Cf.*, Glick & Vines, *supra* note 209, at 147 ("New Jersey judges are alone in their majority adoption of the law-making orientation.").

213 *See Style and Citation*, *supra* note 210, at 792, 801, 805-06. During the 1950's and 1960's, the New Jersey and California Supreme Courts were the ones most widely regarded as champions of modern legal realism. *See id.* at 801.

214 Hughes, *The Impact of Judicial Transitions in Administration*, 10 SETON HALL L. REV. 1, 5 (1979).

215 *Id.* at 3.

216 Sullivan, *Hughes 'Prep's For His Job By Attending Court Session*, N.Y. Times, Dec. 10, 1973, at 79, col. 1.

217 77 N.J. 538, 391 A.2d 911 (1978).

218 *Id.* at 554, 391 A.2d at 919. *See also* Berke & Sinkin, *Developing a "Thorough and Efficient" School Finance System: Alternatives for Implementing Robinson v. Cahill*, 3 J. L. EDUC. 337 (1974); Trachtenberg, *Robinson v. Cahill: The "Thorough and Efficient" Clause*, 38 L. & CONTEMP. PROB. 312 (1974).

tarded and mentally ill, a forensic laboratory for the state medical examiner, and libraries, as well as additional correctional facilities, contending it violated a provision of the New Jersey Constitution requiring that debt be treated only "by a law for some single object,"[219] Hughes held that the legislature had a right to send the questioned bond issue to the voters.[220] In *Vreeland v. Byrne*,[221] the majority held that the legislature could not satisfy a constitutional prohibition against appointing a legislator to any office for which the emolument had been increased during his term, by withholding temporarily from one of its own members, who had been named to the state supreme court, a raise it was giving to the rest of the judiciary. Chief Justice Hughes dissented.[222] He wrote, "I believe . . . that the statute is entitled to the highest judicial respect as a bona fide legislative attempt to comply with the [New Jersey] Constitution."[223] Occasionally, Hughes abused even the accepted principles of statutory construction in order to implement policies favored by the legislature.[224] There were, however, limits to the willingness of this former politician to defer to the political branches of government. This was because of his view that the judiciary is "in the last resort, guarantor of the constitutional promise."[225]

1. Robinson v. Cahill

Chief Justice Hughes's court exhibited its activist stance in

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219 N.J. CONST. art. 4, § 7, para. 4.

220 New Jersey Ass'n on Corrections v. Lan, 80 N.J. 199, 403 A.2d 437 (1979).

221 72 N.J. 292, 370 A.2d 825 (1977).

222 *Id.* at 308, 370 A.2d at 834 (Hughes, C.J., dissenting).

223 *Id.* at 319, 370 A.2d at 839 (Hughes, C.J., dissenting); *cf.*, Schreiber, *supra* note 4, at 105 ("The Chief Justice's opinion in *Vreeland* emphasized the importance of due respect to the principle of separation of powers. . . .").

224 *See, e.g.*, *In re* Heller, 73 N.J. 292, 374 A.2d 1191 (1977). In this case, Hughes held that the State Board of Pharmacy had statutory authority to revoke the certificate of a registered pharmacist for dispensing a controlled substance. The statute under which the board operated authorized revocation only for "grossly unprofessional conduct," a term whose definition apparently did not include the conduct in question. *See id.* at 298-307, 374 A.2d at 1194-99. After the sale in question, the legislature amended the statute to authorize the Board to revoke the certificates of those engaging in the sort of conduct involved in *Heller*. *Id.* at 307-08, 374 A. 2d at 1199. Relaxing the rules of statutory construction, Hughes "had no difficulty in holding that the subsequent amendment only amounted to a clarification and restatement of the existing law rather than a change in its substance." Schreiber, *supra* note 4, at 103.

225 Hughes, *supra* note 214, at 3; *see also* Glick & Vines, *supra* note 209, at 253 ("[s]hould the legislature fail to implement court recommendations . . . the judges may finally change policy themselves").

the series of cases known as *Robinson v. Cahill*.[226] In the first of these, decided in April 1973, the supreme court ruled that New Jersey's system of school finance violated a constitutional mandate[227] that the legislature provide the state with a "thorough and efficient" system of free public education.[228] The court left to the legislature the task of instituting a new system.[229] It was an unpleasant job which senators and assemblymen preferred to avoid, and strong political forces opposed any change in the status quo, particularly any involving a tax increase[230] Although the court had announced that the statutory scheme would not be disturbed if the legislature enacted legislation which it considered constitutional by December 31, 1974,[231] no legislation was enacted by the deadline[232] nor had any been enacted by May 23, 1975. Nevertheless, on the latter date, the court announced, through Hughes, that "upon thorough deliberation," it had "concluded that our present disposition should not extend beyond the delineation of a provisional remedy for the school year 1976-1977 should the other Branches of government fail to devise and enact a constitutional system of education in time for its effectuation for that school year."[233] Chief Justice Hughes wrote that "[t]he Court's function is to appraise compliance with the Constitution, not to legislate an educational system, at least if that can in any way be avoided."[234]

Unfortunately, judicial involvement could not be forestalled.

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226 *See infra* notes 228, 231, 232, 235, 238 and 243 for full citations to *Robinson I*, *Robinson II*, *Robinson III*, *Robinson IV*, *Robinson V*, and *Robinson VI*, respectively.

227 The New Jersey Constitution provides: "The Legislature shall provide for the maintenance and support of a thorough and efficient system of free public schools for the instruction of all the children in the State between the ages of five and eighteen years." N.J. CONST. art. 8, § 4, ¶ 1.

228 Robinson v. Cahill, 62 N.J. 473, 303 A.2d 273 (1973) (*Robinson I*). As a student commentator later explained:

> The court reached this conclusion by interpreting the thorough and efficient clause as requiring that the educational opportunity for children in the state be equal. It then decided that this equality could not be achieved by a system of taxation that relied heavily on the local tax base for its revenues because dollar discrepancies between school districts are inevitable, given the varying size of each district's tax base. The court therefore invalidated the locally based financing system. . . .

Note, Robinson v. Cahill: *A Case Study in Judicial Self-Legitimization*, 8 RUT.-CAM. L.J. 508, 513-14 (1977).

229 *See Robinson*, 62 N.J. at 515, 303 A.2d at 295.

230 *See* Note, *supra* note 228, at 514.

231 Robinson v. Cahill, 63 N.J. 196, 306 A.2d 65 (1973) (*Robinson II*).

232 Robinson v. Cahill, 67 N.J. 333, 343, 339 A.2d 193, 198 (1975) (*Robinson III*).

233 *Id.* at 344, 339 A.2d at 198.

234 *Id.* at 345, 339 A.2d at 199.

In order to effectuate compliance with the state constitution, the court ordered that minimum funds be dispersed in a manner different from that provided by existing statutes.[235] The judges declined, however, to intrude any further into the legislative process.[236] Hughes considered it "premature and inappropriate for the Court at the present posture of this complex matter to undertake, *a priori*, a comprehensive blueprint for 'thorough and efficient' education, and seek to impose it upon the other Branches of government."[237]

The legislature accepted a "judicial invitation to legislative action,"[238] which the chief justice issued in his opinion; however, it failed to approve the $300 million in new taxes needed to finance the revised system of school aid[239] provided for by the Public School Education Act of 1975.[240] In a per curium opinion, the court ruled that the new law was constitutional on its face—provided it was fully funded.[241] In a concurring opinion, Hughes warned that if effective steps toward equalizing school funding were not taken soon, "I would feel constrained to then determine the unconstitutionality in application of the 1975 Act. . . ."[242]

Hughes and his colleagues soon took that next step. On May 13, 1976, the New Jersey Supreme Court issued an injunction which froze spending on all of the state's public schools.[243] Seven days later, Hughes defended this startling ruling in a speech before the annual meeting of the New Jersey Conference of Mayors. The chief justice told the mayors, "[i]f you could read the English language, you could see this had to be the result."[244] With a judicial gun at its head, the legislature finally acted. On July 9, a triumphant Chief Justice Hughes announced that "[i]n view of the enactment of legislation which will permit full funding of the Public School Education Act of 1975, the injunction issued by this court on May 13, 1976 is dissolved."[245] The court had successfully fulfilled what he viewed as its proper role, serv-

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235 Robinson v. Cahill, 69 N.J. 133, 351 A.2d 713 (1975) (*Robinson II*).

236 *Id.* at 144, 351 A.2d at 718-19.

237 *Id.* at 145, 351 A.2d at 718-19.

238 Robinson v. Cahill, 69 N.J. 449, 514, 355 A.2d 129, 163 (1976) (Pashman, J., dissenting) (*Robinson V*).

239 *See* N.Y. Times, Dec. 7, 1975, at 97, col. 1.

240 N.J. STAT. ANN. § 18A:7A-7 to -33 (West Supp. 1986).

241 *Robinson*, 69 N.J. at 449, 355 A.2d at 129.

242 *Id.* at 475, 355 A.2d at 143 (Hughes, C.J., concurring).

243 Robinson v. Cahill, 70 N.J. 155, 358 A.2d 457 (1976) (*Robinson VI*).

244 N.Y. Times, May 20, 1976, at 79, col. 2.

245 *Id.*, July 10, 1976, at 52, col. 3.

ing as a last resort guarantor that the promises of the state constitution would be fulfilled.

2. *In re* Quinlan

While *Robinson v. Cahill* forced legislators to make new law, Hughes made new law in *In re Quinlan*,[246] one of his most widely cited opinions.[247] In *Quinlan*, Hughes declared that the father of a twenty-one year old woman, who had suffered severe brain damage and was existing in a vegetative state, might withdraw the mechanical life support system which was keeping her alive.[248] The New Jersey Supreme Court seemed to be sentencing the young woman, Karen Ann Quinlan, to immediate death.[249] The decision was a difficult one for the chief justice to make, and he reached it only after a period of intensive soul searching.[250] Hughes was probably helped toward his ruling by the Roman Catholic faith that he shared with the Quinlan's. This religion permits its followers to elect not to continue extraordinary life-sustaining care in certain situations. Hughes may have been influenced by statements made by Karen while she was healthy, which indicated she would have chosen this Church-approved course of action and discontinued the use of the artificial

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246 70 N.J. 10, 355 A.2d 647 (1976).

247 A LEXIS search conducted on Feb. 5, 1987 revealed that *In re* Quinlan has been cited in 138 opinions, including the courts of 25 states and the District of Columbia.

248 The Quinlan family concluded that Karen had no chance for recovery and that the devices keeping her alive should be removed. The hospital and treating physicians refused to terminate Karen's respirator. Mr. Quinlan then filed suit in superior court. Hyland & Baime, *In re Quinlan: A Synthesis of Law and Medical Technology*, 8 RUT.-CAM. L.J. 37, 38-39 (1976). The chancery division rejected his petition to be named guardian of her person with power to discontinue life support measures. *In re* Quinlan, 137 N.J. Super. 227, 348 A.2d 801 (Ch. Div. 1975), *rev'd*, 70 N.J. 10, 355 A.2d 647 (1976). The supreme court reversed the chancery division on two points, holding: 1) that Karen's father should be appointed as the guardian of her person; and 2) that with the concurrence of other members of the family, should her attending physicians conclude that there was no reasonable possibility that she could ever emerge from her comatose condition to a cognitive state and that the use of the life support apparatus ought to be discontinued and should the hospital ethics committee agree that there was no reasonable possibility of recovery, Mr. Quinlan might have the life support system withdrawn, without thereby subjecting anyone involved to either civil or criminal liability. *Quinlan*, 70 N.J. at 55, 355 A.2d at 671-72.

249 Interestingly, Karen remained alive after the life support system was ultimately withdrawn. Karen Ann Quinlan did not die until June 1985. *See A Long Twilight Comes to an End*, NEWSWEEK, June 24, 1985, at 81.

250 *See* Sederis, *supra* note 5, at 17.

life support system.[251] The chief justice said four years later that he had experienced no moral afterthoughts about the decision.[252] Hughes's Catholicism cannot provide a complete explanation for his position in the *Quinlan* case, however, because on other issues, such as abortion, he declined to follow the dictates of the Church.[253]

Quinlan is most properly viewed as an effort to reform the law through judicial activism. At issue in that case was the right to die with dignity. Such a right could be predicated on the basic common law conception of self-determination. Other courts, however, had been reluctant to extend that concept to allow an individual to choose whether or not to prolong life by extraordinary means.[254] As an activist, Hughes took that bold step, holding that the interest of the state weakens and the right of individuals to make their own decisions grows "as the degree of bodily invasion increases and the prognosis dims."[255] Ultimately, he argued, a point is reached where the individual's rights overcome the state's interest, giving the individual the right to choose which the law should vindicate.[256] Such broad questions of public policy are generally resolved by the legislative branch, and right-to-die legislation had been considered by the legislatures of several states.[257] Hughes and his colleagues, however, were unwilling to wait for the New Jersey Legislature to act. As the state's attorney general, William F. Hyland, and one of its assistant attorneys general, David S. Baime, have written, "[t]he *Quinlan* decision . . . represents a major departure from a normative aspect of society's moral self-conception without legislative

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251 Hyland & Baime, *supra* note 248, at 38-39.

252 N.Y. Times, Mar. 31, 1980, § 2, at 4, col. 3.

253 In June 1973, Hughes reaffirmed that women in New Jersey had a constitutional right to undergo abortions during the first two months of pregnancy. He also declined to set aside a superior court judge's order that the state had to pay for an abortion for a 24 year-old Newark woman, who was on welfare and claimed she would suffer physical and psychological damage from giving birth to a baby she feared would be deformed. *Id.*, June 20, 1978, § 2, at 21, col. 2.

254 *See* Comment, *The Right to Die a Natural Death: A Discussion of* In re *Quinlan and the California Natural Death Act*, 46 U. CIN. L. REV. 192, 197 (1971).

255 *Quinlan*, 70 N.J. at 41, 355 A.2d at 664.

256 *Id.*

257 In 1937, legislation was proposed in Nebraska which would have established an extensive and detailed scheme for the administration of euthanasia to consenting adults at their own request and to incompetents at the behest of their guardians. Hyland & Baime, *supra* note 248, at 53-54. A similar bill was defeated in New York in 1947. Two right-to-die measures were introduced in Wisconsin in 1971. *Id.* Florida had also considered a euthanasia bill. *Id.*

consultation."[258] In other words, the opinion represents the antithesis of the way proponents of judicial restraint insist public policy should be formulated. *Quinlan* is a striking example of activist judges making public policy and striving to reshape the law.

V. CONCLUSION

In re Quinlan epitomizes the sort of bold use of judicial power that appealed to Richard J. Hughes. Hughes was an activist because he believed that courts existed to serve the needs of the people. He repeatedly demonstrated his conviction that the judiciary should use its powers to keep criminals from terrorizing the public. Similarly, his actions were proof of his belief that the New Jersey Supreme Court should not stand by while the inaction of other agencies of the government deprived citizens of their rights.

Even the most activist judiciary could not serve the needs of the people unless it was efficiently organized and effectively administered. Accordingly, Chief Justice Hughes focused his attention on improving the administration of justice. By utilizing executive and lobbying skills acquired as governor, he further improved the court system created by the 1947 constitution. It is no wonder, then, that so many applauded his efforts so vigorously when Richard J. Hughes retired as the leader of the judicial branch of New Jersey government.

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[258] *Id.* at 59.