60th Anniversary of the Modern Judiciary under the 1947 Constitution

By James H. Coleman, Jr., September 8, 2008

Mr. Chief Justice, Associate Justices, Governors Present and Past, and all other dignitaries and friends, it is an honor to appear before this honorable court to celebrate the 60th anniversary of a pioneering new court system. I have been asking myself why did the Chief Justice ask me to speak today on behalf of the retired Justices. My initial reaction was that the other eight retired Associate Justices had declined his invitation. When I looked at the make-up of the Supreme Court in 1948, it occurred to me that the Chief had asked me because of my pioneering experiences in the judicial system established in the 1947 Constitution.

I am a little unique in that I sat as a Judge in all of the Courts authorized by, and established pursuant to, the 1947 Constitution. That includes those created by the Legislature. While this celebration is not about me, some of my pioneering experiences are highly relevant.

Consistent with the standard of excellence expected of N.J. Judges, I attended judicial continuing education courses held in states from Nevada and Colorado to Maine as well as at Oxford University, Edinburgh and Rome. At each such gathering, Judges always expressed their very high regards for the New Jersey

Judicial System. Invariably, I would be asked how would a hypothetical problem be handled in N.J. In my brief remarks today, I will share with you why I, and so many other people, believe N.J. has the, or one of the top three, judicial systems in this country.

It is plain that the court system created by the Constitution of 1844, consisting of 17 different Courts, was a hodge-podge of English courts that prevailed in pre-colonial days that were established in New Jersey during its colonial and early statehood era. In contrast, a modern court system was established in the 1947 Constitution. That modern system is made up of (1) Supreme Court, (2) The Superior Court that consisted of the App. Div., the Law Div. and the Chancery Division: each Division is permitted to have as many parts as may be provided by Rules of the Supreme Court; (3) County Courts and (4) inferior courts of limited jurisdiction. Art. 6, §1 and §3, para 3. The "inferior" courts consisted of the County District Courts, the County Juvenile and Domestic Relations Court and the municipal courts. But even that modern court system was less than perfect because Counties operated fairly differently. Hence, Court unification was needed. Also, the system was not diverse.

The first step toward unification occurred in the 1947 Constitution when that newly created Court structure combined law and equity jurisdiction in one court, the Superior Court. Next, it granted to the Supreme Court rule-making powers for

all the courts. Third, it allocated to the Legislature certain powers over the lesser courts, including the power to abolish the nonconstitutional courts.

The fourth giant constitutional step toward unification occurred in November 1978 when a constitutional amendment was passed by the voters to merge the county courts with the Superior Court. That amendment also changed the identification of legislatively created courts from "inferior courts" to "other courts." Finally, constitutionalization of the unification process occurred in November 1983 when the Juvenile and Domestic Relations Courts and the County District Courts were merged into the Superior Court.

But Court unification would not work well without centralized management to make the judiciary stronger than its separate 21-county parts.

To make a unified (statewide) court system effective, establishment and implementation of sound business management for the courts were essential. Hence, the establishment of centralized administration in the Administrative Director of the Courts. That office today is much more diverse than it was during earlier times.

Judicial Independence.

An independent judiciary is critical to the judiciary's ability to deliver justice. Indeed, an independent judiciary is the heart and soul of the American Legal System. This Court has recognized that since the formation of the Republic

"[t]he complete independence of the courts of justice is peculiarly essential in a limited Constitution," *The Federalist No. 78*, at 484 (A. Hamilton) (H. Lodge ed. 1888); that any "lessening [of] the independence of the judiciary [attacks] not only the judicial power, but the democratic republic itself," A. de Tocqueville, *Democracy in America* 289 (Vintage Books 1945); that "we would rather have an independent Court, a fearless Court, a Court that will dare to announce its honest opinions in what it believes to be the defense of liberties of the people, than a Court that, out of fear or sense of obligation to the appointing power, or factional passion, approves any measure we may enact," S.Rep. No. 711.

75th Cong. 1st Sess. 14 (1937) (rejecting the 1937 Court-Packing Plan). In re Randolph, 101, N.J. 425, 435-36 (1986).

The judicial selection process has a profound impact on a judge's independence. Currently, 10 states select their Supreme Justices in partisan elections; non-partisan, contested elections are held in 13 states; and yes-no retention elections are held in 15 states. In New Jersey, judges have not been elected since the Constitution of 1947 became effective. Our appointment process

and tenure upon reappointment help to make our judicial system independent. Despite what some from one of the other two branches of government say about our judicial independence, our judges and justices do not use their independence to legislate.

Conclusion:

Has the judicial system always been perfect since the 1947 Constitution? The Task Force on Minorities Concerns in the Judiciary said no. I agree that we have become a more "perfect union." I say that because during the Supreme Court's first 35 years of operation under the 1947 Constitution, only white males were appointed as justices. That changed incrementally in 1983, 1994, 1996 and in 2004[1]. Similar changes began occurring in the Superior Court in the 1970s. Did those changes make our court system better? I respectfully suggest that they did, both in terms of appearance and reality.

I have served with or under six of the eight Chief Justices appointed under the 1947 Constitution, the exception being the first, C.J. Vanderbilt and the present, C.J. Rabner. Each one has been, to paraphrase Justice Handler, "unwavering in his [or her] commitment to preserving the integrity and independence of the judiciary. [They] have sought to project a judiciary that would be regarded as 'fearless' and 'honest.' [They] believed that the Courts

[1] In 1983 Justice Garibaldi was appointed Associate Justice. In 1994 James Coleman was appointed Associate Justice. In 1996 Deborah Poritz was appointed Chief Justice. In 2004 Roberto Rivera-/Soto was appointed Associate Justice.

existed only to serve the people, and to do so with independence and integrity." *Tribute to the Hon. Robert N. Wilentz*, Vol. 7, #2 winter 1997 Set. Hall Const. L.J. at 317, 319.

Chief Justice Wilentz best summarized my feelings about our system in his last written statement announcing his retirement on June 13, 1996. He said:

> We have a fine court system, still supported by the people of New Jersey in these somewhat difficult times. That support is one of our most important sources of strength. The ultimate source of our strength and integrity remains our own commitment to judicial independence, total and uncompromising.

See Ronald J. Fleury, *His Battles Behind Him*, NJLJ, (June 17, 1996).

During my tenure as a judge and an associate justice, the courts used the law creatively to heal the wounds of New Jersey and to protect the disadvantaged. I was part of a court system that molded the law to make it what it ought to be, and in the process maintained stability without stagnation.

The Justices over the years have used their independence when deciding such cases as Abbott School funding, Mt. Laurel open housing, NJ Coalition Against the War, leaflateering in shopping malls, In re Baby M, surrogate motherhood, In re Byrn, right to an abortion, Gilmore, nondiscriminatory jury selection process, State v. Maryland and Carty outlawing racial profiling when

stopping people to question them, and the death penalty jurisprudence that paved the way for abolishing the death penalty by the New Jersey legislature. Those are but a few among a much longer list of cutting edge cases that helped to make the New Jersey Supreme Court the premiere Court of last resort in the nation.

My former colleagues and I are proud to have been a part of this institution's evolving greatness. When I became a judge in 1964, I saw the Statue of Justice in much the same way as did the Poet Langston Hughes, namely, as "bandages hiding two festering sores that once perhaps were eyes." When I retired in 2003, because of the delivery of evenhanded justice by the judges and justices, I saw the Statue of Justice as an optimist, as the Goddess of Equal Justice. That speaks volumes for our judicial system. Just look at the Supreme Court today.

The challenge to you, Mr. Chief Justice Rabner, is that during your anticipated long term as Chief Justice is to find ways to make our near perfect system better. That is a daunting task, but I am confident that you will succeed. Gold Bless this Honorable Court.