FOREWORD

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This book and each of its chapters tell a fascinating and important story, a story about the origins of New Jersey's modern judiciary, about the framework within which the state's highest court functions, and about the cases that stand as examples of the court's finest work. It is a story of an independent court system and the search for justice as the peculiar and specific charge of the judicial branch within a framework of three powerful, coequal branches of government.

In "New Jersey's 1947 Constitution and the Creation of a Modern State Supreme Court," the concluding chapter by John B. Wefing, we learn about the unique history of this court system, born in the constitution of 1947 and lauded as a model for efficient court administration by those who study courts and those who run them. In 1947, the year the judicial article of the constitution became effective, New Jersey moved from an antiquated complex of overlapping courts mired in jurisdictional disputes, possibly the worst system in the country, to a unified and streamlined judiciary administered by an independent chief justice acting in partnership with the other members of the state's supreme court through the exercise of the court's rule-making authority.

The new system was revolutionary when it was approved; it has remained independent and strong into the twenty-first century. And that independence and strength have provided the basis for the New Jersey Supreme Court's pre-eminence among its peers over these past sixty-five years. During the period encompassed by the cases discussed in this book (from 1960 to 2011), the court was known for its careful and scholarly exploration of the issues before it and for its willingness to adapt traditional legal principles to reflect changing social attitudes and the complexities of modern life, including the enormous technological revolution that so altered the world the justices once knew. I have previously characterized the court's approach in such cases, "[W]hen the law is not clear or the facts do not fit the legal paradigm or recent legislative enactments reflect changed attitudes or norms, then the court must mine deeply and creatively for the principles that sustain its work. That experience affects

the members of the court profoundly; it alters their understanding of the world around them and forces them to consider anew the values that shape the law.”¹

As is well known, courts are constrained in respect to the issues they can or must, or cannot, entertain. A legislature may require convicted sex offenders to register with the police on release from prison, or a legislature may duck a politically difficult issue, but a court cannot decline to decide a case properly before it, or take the initiative in any matter it chooses. Only when litigants bring such questions to the courts and, in New Jersey, only when those issues arise out of a genuine case or controversy, can the court issue an opinion. Yet, in New Jersey and elsewhere, controversial and unpopular issues do come to the states’ highest courts and, when they do, the courts decide them.

Often, then, the New Jersey Supreme Court is asked to decide issues that are controversial, that sit at the outer edge of what we know, and that do not fit the legal paradigm so useful in other cases. Then, the court will look for analogies in existing law, for precedents and legal rules that may shed some light on the difficult questions before it, for indications of social attitudes and new understandings—and will answer those questions as best it can. On occasion, the court’s critics will claim that “activist” justices have intruded on the prerogatives of the other branches of government. Those who object to particular decisions of the court will raise concerns about the court’s role in our tripartite form of government and question the legitimacy of those rulings.

This book allows us to examine a series of seminal cases decided by the court so that we can determine for ourselves whether the court has overstepped its bounds. Each of the cases discussed here tells a story about the people before the court and about the problems that brought them there, but each case also tells us something about how the court works, how it comes to grips with seemingly intractable problems, and how it advances the argument for the policy decisions it makes in support of constitutional and common law values. So, for example, we learn in chapter 4 that Chief Justice Richard J. Hughes, writing the court’s groundbreaking decision in *In re Karen Ann Quinlan*, determined that “the right of privacy under the New Jersey state constitution encompasses the right to refuse life sustaining treatment” in circumstances where technological advances permit machines to keep patients alive who, on their own, would not survive.² We also learn that courts across the country followed the chief justice’s reasoning and “embraced the core principles of *Quinlan* to establish rights, processes and boundaries for decisions near the end of life.”³ This was a modern problem and the court, using principles derived from earlier cases, balanced the state’s interest in preserving life against principles of personal autonomy and the “voice” of the patient to develop processes that would protect the patient and respect her wishes whenever possible.

In chapter 6 on *State v. Hunt*, we come to understand the concerns that are raised when a state court of last resort relies on its state constitution to provide more expansive rights than those provided under the federal Constitution, even when the language of the two constitutions is similar. We observe various members of the court grappling with the standards that should be applied to guide judges when they are deciding whether the state constitution should be interpreted differently from its federal counterpart and we understand that a dialogue on the principles for state constitutional decision making has begun.

Or we read in chapter 1 about the court's decision in *Henningsen v. Bloomfield Motors* and we see how the justices reshape the common law to meet changing circumstances in the marketplace to protect consumers who have little bargaining power. We discover that a wave of consumer protection legislation followed *Henningsen*, placing the responsibility for the harms caused by manufacturers' products on the manufacturers themselves.

Each chapter provides insights into the court's approach and into how the court reached its decision. When the court holds that the state's funding for urban school districts does not comply with the state constitutional mandate, we observe in chapter 10 the tension between the court and the legislature as, in case after case over a period of nearly forty years, the court first accepts legislative action and later rejects the state's implementation as inadequate. It is a tension that may be inevitable when the court requires legislative action to implement constitutional values.

Each chapter deals with a seminal decision of the court. Whether or not readers agree with the results in each case, they will develop an understanding not only of how the court does its work but also about the law, and about how, in a variety of contexts and when the system is at its best, the law expands and develops to meet new challenges.

NOTES

1. Deborah T. Poritz, "The New Jersey Supreme Court: A Leadership Court in Individual Rights," *Rutgers Law Review* 60 (2008): 708.
2. See chapter 4, "*In Re Karen Ann Quinlan* (1976): Establishing a Patient's Right to Die in Dignity," xx.
3. *Ibid.*

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