

CHIEF JUSTICE ROBERT N. WILENTZ: A RETROSPECTIVE

*The Honorable Alan B. Handler**

Robert N. Wilentz, as the Chief Justice of the Supreme Court of the State of New Jersey, revealed a profound understanding and a clear vision of both the enormous responsibilities and the far-reaching authority of that constitutional office. Chief Justice Wilentz's sense of his constitutional role and purpose unfolded over the years of his tenure, the longest of any Chief Justice in the half-century since the establishment of our current court system. Our retrospective of the significance of his time in office is unfortunately compressed by the recentness of his death. The years to come will lend greater objectivity to our assessment of his service as Chief Justice and bring a deeper appreciation of his distinctive contributions to the State's judiciary and its people.

Chief Justice Wilentz exercised the mandate of his constitutional office to the fullest, in his administration of the judiciary as a separate branch of government, in his involvement in the Supreme Court's supervision of the legal profession, and in his leadership of and participation in the work of the Supreme Court. The principle overarching his role as Chief Justice, in all of these capacities, was that the constitutional end always to be served was the cause of justice in the public interest.

Chief Justice Wilentz perceived the judiciary as an independent branch of government, but still interdependent and in balance with the executive and legislative branches. The proper exercise of the judicial powers in fulfillment of the constitutional scheme for the separation and balance of governmental authority among the three branches was, for him, the most important concern of any Chief Justice. He spent almost all of his time overseeing the state court system, and involving himself completely in the supervision, administration, and workings of the judiciary at all of its levels. Ronald Chen, an associate dean at Rutgers Law School in Newark, has observed that the most lasting contribution of Chief Justice Wilentz might well be his administration of the court system.

The Chief Justice committed himself to improving the administration of the New Jersey court system. He appointed as the Administrative Director of the

*Associate Justice, New Jersey Supreme Court.

Courts, Robert D. Lipscher, an individual with a well-deserved reputation in the field of court administration, who worked closely with the Chief Justice for nearly seventeen years. The Chief Justice sought constantly to improve the efficiency of the courts and at the same time to make them as accessible as possible. The reforms that he encouraged, initiated, and implemented touched every facet of judicial administration. Toward the end of his tenure, he oversaw the statewide unification of the entire court system and succeeded in centralizing the administration and control of the budgets of the different vicinages in an effort to erase distinctions and disparities in the rendering of judicial services and the quality of justice throughout the State. He had an abiding concern for the quality of justice, both perceived and actual, and for the fairness and justness of the work of the courts. Those concerns strongly motivated the establishment of a family division of the Superior Court, making New Jersey one of a few states where all matrimonial, juvenile, and other family-related causes are brought before a court with singular jurisdiction and experience to resolve such matters comprehensively, sensitively, and soundly.

The Chief Justice was firmly committed to equality in its fullest human and constitutional sense—equality for the poor, disadvantaged minorities, and all classes of persons who were victims of discrimination. He established a number of committees to study ways to achieve full and equal access to the courts, including the the Task Force on Women in the Courts and the Minority Concerns Task Force, which made far-reaching recommendations to confront and remediate situations and conditions of gender, racial, and ethnic bias. Many of those recommendations have been implemented to improve the status and opportunities of those who, because of their race or gender, were not receiving equal treatment by the court system. Many states have since followed these initiatives. In the same spirit, he authorized committees to develop a statewide policy to address within the judiciary itself the concerns over sexual harassment and its demoralizing influence in the workplace. It was this sincerity and zeal for equality that prompted the Chief Justice initially to ban the use of courthouses as the site for the making of films (in the actual situation, “Bonfire of the Vanities”) that, in his view, deprecated minorities.

The Chief Justice was committed to opening the legal system and the courts as widely as possible to the disadvantaged. He required courts to have translators and interpreters, and he mandated bilingual content for important legal process and documents to maximize the opportunities of Spanish-speaking persons involved in the court system. He was vigilant in his support of The Legal Service Corporation and encouraged legal assistance for the poor.

The Chief Justice believed that the judiciary should do as much as possible to resolve disputes. He presided over the development of a comprehensive alternative dispute resolution program for New Jersey courts, as a complement to traditional court adjudication.

Chief Justice Wilentz was deeply concerned for the judges themselves be-

cause he understood that a judiciary was only as good as its judges. Those concerns focused on judicial independence and integrity, on competence, education, and improvement, and on morale and basic well-being. The Chief Justice supported and authorized the establishment of an innovative program for the improvement of judicial performance on both an institutional and individual basis predicated on performance evaluation and education. The resulting judicial-performance program that the Court adopted became a model throughout the country. Further, to the limits of his personal capacity, the Chief Justice did everything he could to familiarize himself with the court system in every vicinage and to meet personally with as many judges as possible to get to know them.

The Chief Justice was unwavering in his commitment to preserving the integrity and independence of the judiciary. He himself sought to project a judiciary that would be regarded as "fearless" and "honest."¹ The Chief Justice believed that the courts existed only to serve the people, and to do so with independence and integrity. He felt that if that mission were generally understood, it would be appreciated, and that the judiciary would earn and keep the support of the people. His last written words announcing his retirement, on June 13, 1996, expressed that wish. He wrote:

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.²

The Chief Justice brought to the Supreme Court's constitutional supervisory responsibilities over the conduct of the legal profession the same clear perception of the goals to be achieved and the public interest to be served. In *Madden v. Township of Delran*,³ the Chief Justice stressed the public obligations of the practicing bar, and he recognized the continuing need for members of the legal profession to contribute their legal services to indigent persons charged with violations of the law.

Chief Justice Wilentz understood that a license to practice law was im-

¹*In re Randolph*, 101 N.J. 425, 435, 502 A.2d 533, 538, cert. denied, 476 U.S. 1163 (1986).

²Ronald J. Fleury, *His Battles Behind Him*, NEW JERSEY LAW JOURNAL, June 17, 1996, at 19.

³126 N.J. 591, 601 A.2d 211 (1992).

pressed with a public trust. In one of his earliest opinions, *In re Wilson*,⁴ he ruled that a lawyer who could not be trusted with a client's money and who had misappropriated those funds could not be allowed to practice law. That breach of professional trust was irreparable. He stated that "[t]here is nothing clearer to the public . . . than stealing a client's money and nothing worse,"⁵ and that "[n]o clearer wrong suffered by a client at the hands of one he had every reason to trust can be imagined."⁶ Disbarment, he concluded, was required, not to punish, but as "a simple matter of maintaining confidence."⁷

For Chief Justice Wilentz, service to the public was the paramount responsibility of the legal profession, and sustaining the public's confidence in the legal system, he felt, was the prime responsibility of the Supreme Court in its regulation of the bar. That responsibility, however, was not limited to the substantive standards defining ethical conduct. The Chief Justice also initiated significant administrative and procedural reforms in the disciplinary field. He constituted a Committee chaired by the Honorable Herman Michels, Presiding Judge for Administration of the Appellate Division, whose report and recommendations resulted in the adoption of procedures whereby attorney disciplinary proceedings would be opened to the public. During the Chief Justice's tenure, the disciplinary system was augmented to include fee arbitration committees with jurisdiction to resolve expeditiously and simply disputes over fees between attorneys and clients. He perceived that the interests of clients and the public's confidence in the legal profession demanded great protection and that clients should be able to lodge complaints against attorneys without fear of reprisal. That tenet was adopted by the Court in the Chief Justice's opinion in *In re Hearing of Immunity for Ethics Complaints*.⁸

The Chief Justice's concern about public confidence in the Supreme Court's supervision of the legal profession was not one-sided. He felt that lawyers should be assisted by the courts in their representation of clients. Lawyers, he firmly believed, should be given a full opportunity to present their client's cause. He insisted, for example, that in oral arguments of cases before the Supreme Court, lawyers be permitted to argue for at least five minutes without interruption. He felt the Court should lend its support to lawyers in their associational activities and in their organized efforts to improve the legal profes-

⁴81 N.J. 451, 409 A.2d 1153 (1979).

⁵*Id.* at 457, 409 A.2d at 1155.

⁶*Id.* at 456, 409 A.2d at 1155.

⁷*Id.*

⁸96 N.J. 669, 447 A.2d 339 (1984).

sion generally. He therefore had the Supreme Court meet periodically with the leaders of the State Bar Association to discuss matters of common interest. Further, he endorsed the Supreme Court's authorization of judges to participate in the activities of county bar associations and to attend meetings of the organized bar.

Chief Justice Wilentz's leadership and participation in the work of the Supreme Court reflected his view of the Court's constitutional role and its responsibilities in the adjudication of cases and controversies. The Chief Justice authored a number of significant opinions. His constitutional jurisprudence was marked by a healthy respect for both the United States Constitution and the United States Supreme Court as the expounder of that Constitution, which, he believed, should serve as a model or exemplar in construing the State constitution. Yet, he fully appreciated that the State constitution was an independent source of authority and that it separately guaranteed the rights of its citizens. This balance is reflected in *State v. Ramseur*,⁹ in which the Chief Justice, writing for the Court, upheld the constitutionality of the State's capital-punishment statute. The opinion followed the broad guidelines of the United States Supreme Court, as laid down in *Furman v. Georgia*¹⁰ and *Gregg v. Georgia*,¹¹ but found that certain provisions of the state law demanded specific interpretations on state grounds. His opinion stands as a shining example of the depths of his intellect, and, indeed, marks the thoughtfulness of the Court as a whole in dealing with this profoundly difficult subject over the years.

Chief Justice Wilentz held the view that special and distinctive state interests must be considered and weighed in state constitutional interpretation. An example of that philosophy was *New Jersey Coalition Against War v. J.M.B. Realty*.¹² The Court, through the Chief Justice, focused on the special characteristics and functions of shopping malls in this State as the critical basis for accommodating the exercise of free speech under the State constitution. He found:

[t]he operators of regional and community malls, have intentionally transformed their property into a public square or market, a public gathering place, a downtown business district, a community; they have told this public in every way possible that the property is theirs, to come to,

⁹106 N.J. 123, 524 A.2d 188 (1987).

¹⁰408 U.S. 823 (1972).

¹¹428 U.S. 153 (1976).

¹²138 N.J. 326, 650 A.2d 757 (1994), *cert. denied*, 116 S. Ct. 62 (1995).

to visit, to do what they please, and hopefully to shop and spend; they have done so in many ways, but mostly through the practically unlimited permitted public uses found and encouraged on their property.¹³

In interpreting the State constitution, the Chief Justice identified and distinguished those interests that were unique to the State. In *Abbott v. Burke*,¹⁴ the Court considered the meaning of the “Thorough and Efficient Education” Clause of the New Jersey Constitution.¹⁵ Writing for the Court, the Chief Justice explained that,

[t]horough and efficient means more than teaching the skills needed to compete in the labor market, as critically important as that may be. It means being able to fulfill one’s role as a citizen, a role that encompasses far more than merely registering to vote. It means the ability to participate fully in society, in the life of one’s community, the ability to appreciate music, art, and literature, and the ability to share all of that with friends.¹⁶

Chief Justice Wilentz believed that constitutional rights imported constitutional remedies. The understanding of what constituted a “thorough and efficient education” prompted the Court in *Abbott* to require, as a constitutional remedy, greater parity among school districts in the State’s funding of public education. In addressing the constitutional basis for affordable housing, the Chief Justice stated: “[T]here being a constitutional obligation, we are not willing to allow it to be disregarded and rendered meaningless by declaring that we are powerless to apply any remedies other than those conventionally used.”¹⁷

Chief Justice Wilentz felt that it was not sufficient for the Court in any of its decisions simply to express its holding. In the Court’s exercise of its decisional authority, the Chief Justice recognized the need to explain and to persuade. He was concerned that the legal principles expressed and the rulings applied in the decisions of the Supreme Court should be fully explained and

¹³*Id.* at 363, 650 A.2d at 776.

¹⁴119 N.J. 287, 575 A.2d 359 (1990).

¹⁵N.J. CONST. art. VIII, § 4, ¶ 1.

¹⁶*Abbott*, 119 N.J. at 636-64, 575 A.2d at 397.

¹⁷*South Burlington Cty. N.A.A.C.P. v. Township of Mount Laurel*, 92 N.J. 158, 287, 456 A.2d 390, 456 (1983) (*Mount Laurel II*).

the underlying reasons completely laid out, so that they would be understood, accepted, and followed. Recognizing the Court's burden to explain itself, he wrote in *Mount Laurel II* that without a remedy, "poor people [would be] forever zoned out of substantial areas of the state, not because housing could not be built for them but because they are not wanted."¹⁸ Therefore, he stated, "until the Legislature acts," the Court would do its "best to uphold the constitutional obligation that underlies the *Mount Laurel* doctrine. That is our duty. We may not build houses, but we do enforce the Constitution."¹⁹

The Chief Justice never lost sight of the place of the judiciary and its assigned role in the structure of our government. He felt that the courts were not the initiators of government policies. Rather, courts should strive to understand, explain, and effectuate public policy, as reflected in legislation, in long-standing and accepted practices, and in articulable and shared values. When those policies were expressed in legislation, the Chief Justice acknowledged, in many of his written opinions, the paramount governmental responsibility of the legislative branch and that the strongest deference was owed the Legislature. In *State v. Des Marets*,²⁰ for example, the Court considered the Graves Act, which requires three-year mandatory imprisonment for those who commit gun-related crimes. The Chief Justice found that "[t]he legislative purpose was to stop gun-related crimes, not just half of gun-related crimes The law's all-encompassing intention is apparent: it covered every crime where experience indicated guns were most likely to be used."²¹ Even though the legislation led to "the unprecedented severity and certainty of punishment," the Chief Justice stated that "[w]e do not pass on the wisdom of this legislation. . . . That is a matter solely for the Legislature to decide. Once the Legislature has made that decision, and has made it within constitutional bounds, our sole function is to carry it out. . . . Our clear obligation is to give full effect of the legislative intent, whether we agree or not."²²

The Chief Justice perceived that the Tort Claims Act expressed a strong legislative preference for governmental immunity from tort liability. In two cases, *Felder v. Stonack*,²³ and *Tice v. Cramer*,²⁴ he reasoned that the public

¹⁸*Id.* at 209, 456 A.2d at 415.

¹⁹*Id.* at 212-13, 456 A.2d at 417.

²⁰92 N.J. 62, 64-66, 455 A.2d 1074, 1075-76 (1983).

²¹*Id.* at 85, 455 A.2d at 1086.

²²*Id.* at 65-66, 455 A.2d at 1076.

²³141 N.J. 101, 661 A.2d 231 (1995).

policy implicit in that legislative expression required the Court to hold that a municipality could not be found liable for injuries attributable to the negligence of police officers engaged in high-speed chases in the performance of their law enforcement duties.

In upholding Megan's Law, the sex offender community notification act, the Chief Justice recognized that the constitutional concerns raised by the law were grave and troubling, and that that issue was novel: "[w]e sail on truly uncharted waters."²⁵ His reasoning ultimately was dominated by a perception of the public policy that the Legislature had adopted and that he felt was virtually irrefutable: "[T]he statute is constitutional. To rule otherwise is to find that society is unable to protect itself from sexual predators by adopting the simple remedy of informing the public of their presence."²⁶

In the *Mount Laurel II* decision, the Chief Justice acknowledged the need and appropriateness for legislative action: "[W]e have always preferred legislative to judicial action in this field."²⁷ When the Legislature, following that decision, passed the Fair Housing Act, the Chief Justice wrote the Court's unanimous decision sustaining the Act, although it did not mirror the Court's decision.²⁸ He was satisfied that the ultimate constitutional goal had been addressed: "By virtue of the [Fair Housing] Act, the three branches of government in New Jersey are now committed to a common goal: the provision of a realistic opportunity for the construction of needed lower income housing."²⁹

In 1984, New Jersey became the first state to recognize the battered women's syndrome as a defense in a homicide case. In *State v. Kelly*,³⁰ Chief Justice Wilentz recognized the significance of women suffering from domestic violence and ruled that reaction to such violence could constitute self defense in a murder prosecution. The perception expressed in that decision was supported and confirmed as a matter of public policy through the enactment of statutes dealing with the pernicious effects of domestic violence. This consci-

²⁴133 N.J. 347, 627 A.2d 1090 (1993).

²⁵*Doe v. Poritz*, 142 N.J. 1, 109, 662 A.2d 367, 422 (1995).

²⁶*Id.*

²⁷*South Burlington Cty. N.A.A.C.P. v. Mount Laurel*, 92 N.J. 158, 212, 456 A.2d 390, 417 (1983).

²⁸*Hills Dev. Co. v. Bernards Twp.*, 103 N.J. 1, 510 A.2d 621 (1986).

²⁹*Id.* at 63, 510 A.2d at 654.

³⁰97 N.J. 178, 478 A.2d 364 (1984).

entious examination of sound public policy as a touchstone of judicial decisions was also reflected in *Kelly v. Gwinnell*,³¹ the decision in which the Court, through the Chief Justice, imposed liability on social hosts for serving alcohol to obviously intoxicated guests who then foreseeably caused injuries to others by driving. The congruity of the Court's holding with public policy was indirectly confirmed when the Legislature itself later passed a statute recognizing such liability.

In April 1995, Chief Justice Wilentz met with some volunteers who worked as liaisons between the courts and their communities. According to a telling comment appearing in *The New York Times*, on June 30, 1996, the Chief Justice, in expressing his appreciation for their work, acknowledged that people can "get the wrong idea about the judiciary," that they might get the impression "we're too good" or "not good at all."³² What should be explained, he said, is that "we're just human beings trying to do our best, trying to do justice, trying to help people with the resources we have."³³

Robert Wilentz was just a human being. But he was an intense, dedicated, honest, and compassionate human being. He did his best, he achieved justice, and he helped people to the utmost of his abilities. He was truly a wonderful person, a cherished friend, and a great Chief Justice.

³¹96 N.J. 538, 476 A.2d 1219 (1984).

³²Jan Hoffman, *His Court, His Legacy*, NEW YORK TIMES, June 30, 1996, §13NJ, at 1, col. 1.

³³*Id.*

