

ROBERT N. WILENTZ: DEFENDER OF JUDICIAL INDEPENDENCE

*The Honorable Stewart G. Pollock**

Chief Justice Robert N. Wilentz was like a stained-glass window. His life, although divided into separate segments, was an integrated work of art. One piece for his beloved wife, Jackie; three pieces for his children, James, Amy, and Thomas. Other pieces for the remaining members of the family. A piece for his judicial duties; one for his administrative responsibilities. Scattered throughout were fragments for music, tennis, colleagues, former law partners, and friends. Some of the pieces were opaque, representing the unrevealed facets of an essentially private man in a highly public office. To some, Chief Justice Wilentz, like a darkened stained-glass window, could appear austere and controlled. When seen in the proper light, however, he was warm and inspiring.

Others will write about his opinions and administrative accomplishments. This tribute focuses on one small, but shining segment of his judicial career, the defense of judicial independence.

A more scholarly exploration of the rationale for judicial independence is for another day. Three reasons to support the doctrine, however, readily come to mind. First, in a governmental system based on the separation of powers, judicial independence is essential for judicial review of the action of the other two branches. Second, to assure judicial impartiality, judges must remain free from undue influence from the legislative and executive branches. Third, an independent judiciary is essential to protect the constitutional rights of the minority from the majority.

Chief Justice Wilentz did not have time to write on these subjects. He was too busy running the judicial branch of government. While discharging his duties as the chief executive of the judiciary, however, he was alert to attacks on judicial independence. He understood that the American people, although they may disagree with judicial opinions, want judges who are fair, impartial, and free from political influence.

While Robert Wilentz was Chief Justice, the exercise of senatorial courtesy on the reappointment of two Superior Court judges threatened the independ-

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ence of the state judiciary. Senatorial courtesy is the practice by which the home-country senator of a gubernatorial nominee may prevent the senate or its judiciary committee from considering a nomination simply by refusing to initial the paper evidencing the nomination.¹ The senator's refusal to initial the "approval form" deprives the nominee, the Senate, and the public of a hearing on the nominee's qualifications.²

The first incident involved Appellate Division Judge Sylvia Pressler. In 1983, Governor Thomas H. Kean nominated Judge Pressler for reappointment. Senator Gerald Cardinale refused to initial the approval form for Judge Pressler's nomination. Chief Justice Wilentz perceived the exercise of senatorial courtesy on a sitting judge as a threat to the independence of the New Jersey judiciary. Believing that Judge Pressler was entitled to a hearing on her qualifications, the Chief Justice went to the extraordinary length of holding a press conference in Governor Kean's office on September 15, 1983. At that conference, he requested "[Senate President Carmen] Orecchio to hold a Special Session of the Senate as soon as possible for the purpose of acting on the Governor's nomination of Judge Pressler for reappointment."³

Chief Justice Wilentz explained that another reason for the press conference was "to let the citizens of this State know that much, much more than Judge Pressler is involved in this issue. To let citizens know that this incident poses the most serious threat to the honesty of their judges. Certainly, the greatest threat since the adoption of the 1947 Constitution."⁴

Two weeks later, the Senate, notwithstanding Senator Cardinale's objection, considered Judge Pressler's nomination.⁵ The Senate Judiciary Committee approved the nomination, and the full Senate confirmed.

The second incident involved Superior Judge Marianne Espinosa Murphy. In 1993, Governor Jim Florio nominated Judge Murphy for reappointment. Through the exercise of senatorial courtesy, Senator John Dorsey prevented the Senate from considering the nomination.

Chief Justice Wilentz wrote to Senator Dorsey urging him to permit Judge Murphy's nomination to proceed:

¹De Vesa v. Dorsey, 134 N.J. 420, 423, 634 A.2d 493, 495 (1993) (per curiam).

²*Id.* at 427, 634 A.2d at 497.

³Transcript of press conference of Chief Justice Robert N. Wilentz, September 15, 1983, on file at Administrative Office of the Courts, Trenton, New Jersey, at 2.

⁴*Id.*

⁵Herb Jaffe, *Senators Decide Cardinale Conflict Voids "Courtesy,"* NEWARK STAR-LEDGER, September 27, 1983, at 1.

“[a]fter your exercise of courtesy, or your threat to exercise it, every untenured judge in this state will think very hard when one of the parties or lawyers before him or her is a friend of the senator, or an important constituent of the senator, or when the senator’s law firm itself is handling the case.”⁶

Charging that the exercise of senatorial courtesy prevented consideration of Judge Murphy’s competence and demeanor, the Chief Justice stated, “[y]ou may be confident that your sole judgment continuing or ending her career is right and fair on the merits, but she will never know, she will never be sure, it was even decided on the merits, nor will any one else.”⁷

When the Senator rejected the Chief Justice’s plea, the Acting Attorney General brought an action challenging the exercise of senatorial courtesy on the reappointment of judges. The Chancery Division dismissed the complaint as raising a non-justiciable political question. The Supreme Court granted the Attorney General’s motion for direct certification. Because of his involvement on behalf of Judge Murphy, Chief Justice Wilentz recused himself. An evenly-divided Supreme Court left the Chancery Division judgment undisturbed.⁸ Without Senate action on her nomination, Judge Murphy’s term—and her judicial career—ended.

Senator Dorsey’s exercise of senatorial courtesy became a major issue in his unsuccessful bid for reelection. Following the election, Senate President Donald DiFrancesco stated in his address to the first session of the 206th Legislature that in the future the Senate would not permit the exercise of senatorial courtesy on the reappointment of judges.⁹

Chief Justice Wilentz also defended the independence of municipal court judges. In 1994, he came to the defense of Metuchen municipal court Judge James B. Smith. The municipality’s proffered reason for refusing to reappoint the judge was that he was not generating sufficient revenue. Chief Justice Wilentz issued a statement recognizing the municipality’s authority not to reappoint the judge, but condemning its stated reason:

⁶Brian T. Murray, *Wilentz Warns of Serious Conflict in Using “Courtesy” to Derail Judges*, NEWARK STAR-LEDGER, May 12, 1993, at 25. The facts of the incidents are summarized in *De Vesa*, 134 N.J. at 423, 634 A.2d at 495.

⁷Murray, *supra* note 6, at 25.

⁸*De Vesa*, 134 N.J. at 423, 634 A.2d at 495.

⁹Tom Hester & Ron Marsico, *DiFrancesco Whittles “Courtesy” Powers*, NEWARK STAR-LEDGER, Jan. 12, 1994.

Metuchen has refused to reappoint its municipal court judge. That is its unquestioned power. The stated reason, given by the President of the Borough Council as reported in the press, was the judge's failure to generate sufficient revenue. That reason is intolerable. It puts cash on the scales of justice. It encourages what amounts to judicial misconduct. It threatens judicial independence and undermines the public's confidence in municipal courts.¹⁰

The Chief Justice's defense of judicial independence echoed advice he gave to municipal court judges. In several addresses to the annual Judicial Conference of Municipal Court judges, he spoke of the need for judicial independence. His remarks in 1991, for example, emphasized the need for municipal court judges to maintain their independence:

If judges aren't independent then they're nothing. They're worthless. It's just silly to even think of being proud of being a judge. . . . In New Jersey we've had a great tradition of judicial independence. Nowhere is it tougher than in your court. . . . The problem obviously is that . . . the week before you were appointed you and the mayor or you and whoever else . . . were close, close socially perhaps, close politically . . . and when you got named you must have been very, very thankful. You may have been one of the more important political people in your municipality. . . . You had to be grateful. If you weren't grateful I'd think much less of you. Human nature says when someone does something like that for you, you do something back. And so five days after you're a judge the telephone rings. The answer is no. . . . It's a must. It's the most important aspect of keeping the municipal court professional.¹¹

The twin pillars that support the judiciary are judicial integrity and judicial independence. Of the two, judicial independence is the more vulnerable. Ultimately, all that sustains the independence of the judiciary is public opinion. Chief Justice Wilentz understood all this. His defense of judicial independence illuminates the stained-glass window of his life.

¹⁰Statement by Chief Justice Robert N. Wilentz, April 22, 1994, on file in the Administrative Office of the Courts, Trenton, New Jersey.

¹¹Comments of Robert N. Wilentz at Orientation Seminar for Newly Appointed Municipal Court Judges, March 18, 1991.