

A Profile of Robert Wilentz



THE NEXT CHIEF JUSTICE

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There was an air of astonishment around the State House late one Friday last month. Brendan Byrne had announced his two choices for the state Supreme Court. One nominee for associate justice had long been expected: Stuart Pollock, a Republican, a former PUC Commissioner, Byrne's official legal advisor, and generally the Elliot Richardson of the Byrne administration.

The other choice caught reporters, high-ranking state officials and State House gossips by surprise. Robert Nathan Wilentz, a partner in one of the biggest law firms in the state, a former legislator, was named to replace soon-to-retire Chief Justice Richard J. Hughes.

The Wilentz name alone was enough to spark interest. It has been synonymous with power and influence in New Jersey for nearly 40 years, since Wilentz's father David prosecuted Bruno Hauptman for the Lindbergh kidnapping. David Wilentz, then the state attorney general, went on to rule Middlesex County as undisputed leader of the Democratic party there. The elder Wilentz picked governors and judges in his heyday, saw his older son Warren run for U. S. Senate in 1966, and watched younger son Robert win easy victories in his 1965 and 1967

runs for state Assembly.

Byrne's announcement at the March 16 press conference, that "I was looking for someone with the depth of a Weintraub, the authority of a Vanderbilt, and the compassion of a Hughes," all references to recent Chief Justices, was big billing.

But efforts to discover skeletons in Robert Wilentz's closet turned up choir boys' robes and white knights' armor instead. True, father David had ruled Middlesex as an old-time boss, and had nurtured a number of run-of-the-mill, or worse, officeholders in his time. And brother Warren was convicted of failing to file an income tax return on \$324,000 received in 1971, and the federal government dropped charges Warren failed to declare \$560,000 income on three previous returns.

But Robert, it seemed, was different. Valedictorian of Perth Amboy High School in 1944, a year at Princeton, a year in the Navy, and a degree from Harvard in 1949. Three years at Columbia Law School, where he twice won the Robert Noxon Toppan prize for turning in the best examination on constitutional law. One of a handful of Columbia law students to win a Harlan Fisk Stone Scholar award for excellence. He graduated 40th out of 178



Robert Wilentz, nominated to become Chief Justice of the New Jersey Supreme Court, beams expansively after his unanimous recommendation by the Senate Judiciary Committee.

law students in 1952. From Columbia he went directly into the law firm of Wilentz, Goldman and Spitzer, founded by his father and extremely well connected.

There, he seems to have plunged into local quasi-public, quasi-political organizations almost with compulsion. His resume lists no fewer than 42 separate organizations, campaigns, presidencies, championships, or positions he has held in the 27 years since he graduated from law school. (Not least, he was counsel to Brendan Byrne's campaign committee in 1973, and at the time of his nomination was counsel to the New Jersey State Democratic Committee.)

Some entries, such as the presidency of the Chamber of Commerce in Perth Amboy, simply indicate he played an active role in his time and place. Several entries note his involvement in his temple or Jewish community organizations. His resume has only one jarring note: he won the Perth Amboy Tennis Tournament in 1953. That entry smacks of an excessive desire for recognition, but it may have paid off. When a reporter asked Byrne why the Governor had not appointed himself to the Supreme Court, Byrne, a noted enthusiast of

the sport, quipped that Wilentz was a better tennis player than himself.

Wilentz has a long commitment to traditional liberal causes. In the early 1960's, he was a member of the Congress of Racial Equality, and is now a member of the Perth Amboy NAACP. There is another side, too. His membership on the Perth Amboy Non-Profit Housing Coalition can be contrasted with his seat as director of the New Jersey National Bank.

Wilentz won near-unanimous praise for his four years in the legislature. Reporters and former colleagues still marvel at the ability and commitment he demonstrated as an Assemblyman; He was almost too good to be true. There is a real possibility that he will disappoint many observers with his performance on the court simply because their expectations are so high.

Wilentz began his Assembly campaign with a speech against air pollution, an issue that was not a bandwagon in 1965, and not particularly popular in highly-industrialized Middlesex County.

"Industrial pollution pouring into our air and our lungs is not the symbol of a prosperous economy but of a sick society," he said and then went on to attack the "appalling apathy" of the legislature on the subject. In 1965, he also urged creation of an income tax, noting that existing methods of revenue collection were not based on one's ability to pay. Income tax, then as now, was not a popular campaign issue. Wilentz, a Democrat in a Democratic district, won handily.

When Wilentz was sworn in as an Assemblyman in January 1966, his father hovered near him all day. At one point, a reporter near Wilentz's desk in the Assembly was looking for a place to sit down. The father instructed his son to fetch a chair for the lady. "Now, Pop," Robert replied with a smile, "don't start telling me who to take care of." His legislative career began with a declaration of independence from his father's political advice. And he continued in that vein. Soon Middlesex County politicians would be asking David Wilentz, "How come your kid turned into a Communist?"

(Wilentz's independence from much of Middlesex County machine politics appears to have remained long after he left the legislature. In early 1977, when much of the county Democratic organization was leaning to gubernatorial candidate Joseph Hoffman, Wilentz was supporting Byrne.)

When Eugene Genovese, a professor at Rutgers, suggested that North Vietnam should win the war there, the legislature was outraged. There was a move to have the professor ousted. Richard Nixon

even called for Genovese's dismissal. Wilentz argued against it. "A university that on every occasion, when a voice of this type speaks up, finds itself threatened by possible legislative investigation, soon becomes a rather quiet conformist institution," he declared.

The Legislative Correspondent's Club, made up of the State House press corps, voted him the outstanding freshman legislator of the year. Even when the legislature became heavily Republican in 1968, Wilentz retained his effectiveness.

Wilentz was about the only legislator who could change votes on the floor just by the persuasiveness of his arguments. "People would stop talking when Wilentz began to speak," said one observer. "That was very rare." When they listened, they heard Wilentz calling for divorce reform, stiffer pollution laws, improved higher education, tax reform, abortion legislation, and a unicameral legislature.

In 1969, then-Assistant Attorney General William Brennan accused several legislators of being "a little too close to organized crime." In a brief spasm of self-righteousness, the legislature passed a conflict of interest bill that would have made it difficult for a law firm with a member in the legislature to conduct business before state agencies. Wilentz supported the bill.

Wilentz and his law firm were due to suffer the most. Of the 120 legislators in Trenton in 1969, 21 had filled out conflict of interest statements explaining, for instance, that a business partner was conducting business with a state agency. Of the 180 reports filed, Robert Wilentz had filed 74, nearly half. On April 21, 1969, the Senate voted to approve the conflicts bill. Two hours later Wilentz announced he was retiring from the legislature and would not seek reelection although he had strongly supported the bill himself. No other legislator offered to step down. Instead, enough weakening

A Familiar Place



When Robert Wilentz assumes the high center chair reserved for the Chief Justice he will be looking out over a courtroom he has seen several times before. Wilentz has argued before the New Jersey Supreme Court 11 times, the first time on October 10, 1955. He won five times, lost three cases, lost one case that was merged with others, argued successfully for a motion but saw it reversed later, and won a slap on the wrist for a lawyer who expected to have his arm sawed off.

State vs. Browning (1955) Wilentz argued that a municipal employee's indictment for embezzlement should be invalidated because she hadn't been told of her right against self-incrimination before a grand jury. By a 6-1 vote the justices upheld the indictment. Wilentz lost.

Auto-Rite Supply Co. vs. Woodbridge Township (1957) Wilentz tried to defend Woodbridge's ordinance closing certain stores on Sundays, but the court agreed in a 4-1 decision with Auto-Rite that the law discriminated. Wilentz lost.

Garafine vs. Monmouth Park Jockey Club (1959) The court agreed unanimously with Wilentz that the state's civil rights law did not apply to a bookmaker evicted from a racetrack. Wilentz was defending a racetrack owned in part

by his family. Wilentz won.

Falcone vs. Middlesex County Medical Society (1961) Wilentz won a unanimous opinion on behalf of Dr. Falcone that he was improperly prohibited from practicing medicine in the county by the society's unwritten laws concerning osteopathic training.

Kline vs. N. J. Racing Commission (1962) On behalf of three racetracks, Wilentz defended a special act of the legislature that extended the racing season, an act opposed by residents living near the tracks. Unanimous. Wilentz won.

Capaldo vs. Reimer (1963) Wilentz lost an argument against an auto accident appeal. The court ruled 5-2 that a lower court judge's charge to the jury was improper.

Bron vs. Harry Weintraub (1964) Wilentz's client Bron and nine other homeowners faced paying \$23,000 to Weintraub, who had discovered an obscure defect in the title to their property, and had purchased certain rights to the property. The court ruled unanimously that the defect was a technicality, and dismissed the \$23,000 claim. Wilentz won.

Ehalo vs. Constructive Services Corp. of America (1965) Wilentz's first famous case. He argued that a wife was entitled to damages for loss of consortium when her husband was

injured in a construction accident. The court agreed unanimously, ending a long-standing rule that wives were mere chattel of their husbands. Wilentz won.

N. J. Sports and Exposition Authority vs. McCrane (1971) A muddled case, with Wilentz and several environmental groups arguing against construction of the Meadowlands racetrack. A 4-3 decision remanded some aspects, upheld others and modified parts.

Zygmaniac vs. Kawasaki (1975) The paralyzed victim of a motorcycle accident successfully implored his brother to shoot him; the victim's wife sued the motorcycle maker for wrongful death. Wilentz represented the wife when the manufacturer sought a motion to block the suit but Wilentz lost.

In re Sears (1976) Wilentz's biggest case, when he defended Harry Sears, the former Majority Leader of the state Senate, who faced disbarment for having a role in a bribe made to Maurice Stans (Richard Nixon's campaign finance chairman) on behalf of financier Robert Vesco. A \$250,000 campaign contribution by Vesco paved the way for Sears to appeal privately with Attorney General John Mitchell about a SEC investigation into Vesco's affairs. Sears, permanently disbarred by the federal court, was suspended for only three years by the state Supreme Court.

Wilentz was due to argue in April for the New Jersey Chamber of Commerce against laws on financial disclosure for lobbyists, but withdrew after his nomination.

amendments were tacked on to the bill that Governor Hughes refused to sign it. Wilentz, ironically, would not have had to resign.

Wilentz, despite the respect he had won from his colleagues, was not "one of the boys." On the last day of that legislative session, while numerous farewell speeches were made by legislators on behalf of an outgoing colleague, none were made for Wilentz. The hangers-on who had fawned over him in 1966 were hanging on to someone else in 1970. Wilentz left the statehouse early, before the new session began. He did not hear Richard Hughes in his last annual message call Wilentz "the best legislator in the country." Then Hughes urged the legislature to pass the 23 consumer protection bills Wilentz had introduced in the previous session.

Wilentz, in announcing his retirement from the legislature, explained his reasons. "The question which I have been forced to answer is whether to pursue an active legal career or to continue as a legislator. I cannot do both. Regardless of my preferences, my own personal responsibilities demand that I resume the practice of law." He had been a partner in Wilentz, Goldman and Spitzer for 16 years, he told a local newspaper, and "would not and could not consider leaving that firm." He wouldn't, however, give up his interest in politics. "I don't see how you could lose interest in this kind of thing, once you got into it." Ten years later, almost to the month, he was nominated Chief Justice, to replace the man who once called him the best legislator in the country.

Wilentz will inherit a court lead for six-and-a-half years by Richard Hughes, the first person to serve both as governor and Chief Justice. During Hughes's tenure, the Court has been noted more for its social sensitivity and compassion than for its consistency. Hughes's predecessor, Joseph Weintraub, reigned for sixteen years. Under Weintraub the Court was noted for the unanimity of its decisions and the depth and scholarliness of its opinion.

The tenor of the Weintraub Court was set in part by the associate justices themselves, but in large part by Weintraub himself, generally regarded as reserved and brilliant.

All the justices are equal, one lawyer noted, but the Chief Justice is more equal than the others. It is he who runs the court hearings, leads the conference discussions, assigns opinions to be written, presses for consensus or allows each justice to go his own way, schedules when cases will be heard, steers the court into studying the administrative machinery of the court system or setting ethics guidelines for lawyers. If a municipal analogy can be permitted, he is the mayor. The personality and philoso-

phy of the Chief Justice, far more than any other, will set the tone of the court.

The Hughes court has been surprising and unpredictable. Instead of producing a unanimous decision, the seven justices may provide a decision, a concurrence, and a dissent or two. If there is a theme to the court's decisions, it reflects the "goodheartedness of the Chief Justice." "What emerges out of the (Hughes court) decisions is a kind of ad hocing, a looking for justice in the moral, ethical, churchy way," commented one constitutional law professor recently. "With Weintraub, the philosophy was logic. With Hughes, you'd have to say the philosophy was humanism."

The Hughes court took on social and political issues, such as the income tax and low income housing for suburbs issues. It was viewed by many as treading on the policy-making role of the legislature, rather than the usual policy-interpreting or policy-fleshing-out the courts have limited themselves to. In recent years, the Hughes court has retreated from the quasi-legislative role sensing, perhaps, that it had almost gone too far.

Hughes himself has written few opinions. Of the 120 or so opinions rendered each year, Hughes has consistently written no more than a dozen. Hughes concedes he is more immersed in caring with the administrative aspects of the court system. "I'm called an activist Chief Justice rather than a scholarly Chief Justice," he commented.

Predicting the philosophy, activism and capability of Supreme Court Justices before they arrive on the bench is notoriously unsuccessful. It will be especially difficult with Wilentz, since he is the first state Chief Justice in recent history with no prior judicial experience. Wilentz himself indicated he doesn't know how he will turn out. At his April 5 hearing before the Senate Judiciary Committee, he would not comment on whether he would become an activist, calmly explaining that one of the reasons he wouldn't predict his activism was that he might "guess wrong."

Wilentz spent much of his hour-long session with the Judiciary Committee deflecting the senators' attempts to determine how he might rule on various topics.

He indicated he will strive for unanimous decisions, however, since his will be the court of last resort and looked to for guidance and consistency. He was careful to state he would not lead the court into policy making, and would leave that to the legislature. And though he would change common law if the social context which produced that law had changed, he would look to the legislature for an

indication of what the new context should be, he said.

For the most part, he refused to speculate on how he will conduct the court. The consensus of those who know him personally and politically is, however, that he will bring a strong dose of liberalism onto the court, that he is instinctively inclined toward human and civil rights. He is described repeatedly as a brilliant lawyer, with not only a superb courtroom style but the intellectual wherewithal to combine flair with substance. One long time observer of New Jersey affairs who knows him well said he believed Wilentz would eventually run the court with a firm grip, not unlike the "towering" Weintraub, but that it would take several years before the associate justices adjust to the new leader. (His opinions are likely to be well written; he had a flair for phrases that stick in listeners' minds. Wilentz once told a jury his client who mercy-killed his brother paralyzed from the neck down in a motorcycle accident was snuffing out a "screaming head," recalled a lawyer who still shudders at the image. The client was acquitted.)

Wilentz's immersion in New Jersey affairs, as a politician, lawyer, and member of numerous committees, has provided him an excellent stepping stone to being what might become 18 years as Chief Justice. Some of that experience may be troublesome, however.

As a former partner in one of the biggest law firms in the state, he will have to excuse himself from any cases appealed to the high court by attorneys with Wilentz, Goldman and Spitzer.

In addition, he has represented Mobil Oil, the New Jersey Pharmaceutical Association, Caesar's World's casino application, the New Jersey Turnpike Authority, the New Jersey State Democratic Committee and the New Jersey Chamber of Commerce. It is difficult to predict how frequently he will have to absent himself from discussion as these clients or their ramifications come before him. If he must do it too frequently too early in his tenure, the court will be leaderless and he will be off to a shaky start.

There is also a disturbing pattern of bigness in his clients, which seems to clash with his liberal political philosophy.

His fight on behalf of the Chamber of Commerce to oppose laws on disclosure of lobbyists' financing, or for the liquor industry opposing the loss of self-serving state regulations, smacks of keeping the vests on the vested interests. He commented recently that he had taken on few *pro bono* cases on behalf of a client who needed his expertise but was unable to pay. That failure bothered him a good deal, he said, but admitted it didn't bother him as much as it should or he would have gone out and done more *pro bono* work.



Stuart Pollock, counsel to Governor Byrne, a former commissioner of the PUC and the SCI, fields a question from the Senate Judiciary Committee on his nomination to the Supreme Court. Pollock, a Republican, will maintain the traditional political balance on the court.

Another criticism of the Wilentz and Pollock choices is directed at Byrne, not the nominees, and concerns what they are not. Neither are female or black, two segments of society which have never been represented on the high court. (There was also a burst of complaint from Italian-American organizations and from officials in southern New Jersey, that neither that ethnic group nor that geographical region are represented on the proposed court.) Byrne will be able to replace one more retiring justice before his own term expires, and perhaps he will heed the requests for at least some of these kinds of representation at that time.

But with the caveat to liberals that Robert Wilentz's liberalism can perceive and fight for the interests of the well-ensconced, and a similar but reverse caveat to the well-ensconced, it can only be said that he has impressed virtually everyone who has met him, ally and foe alike, as bright; capable, fairminded and sensitive. Whether he will prove to be all that as Chief Justice remains to be seen.

"You know," he said, a few hours after that Senate Judiciary Committee had unanimously approved him, "when Brendan announced he had chosen me, he said he was *looking* for someone with the 'depth of a Weintraub, the authority of a Vanderbilt, and the compassion of a Hughes.'" He leaned forward and laughed. "There's no guarantee that he *found* all that!"