

The Seventh Wilentz Lecture, March 28, 2011

Robert N. Wilentz: The Godfather and Rabbi to Legal Services and to An Associate Justice.

Presented by James H. Coleman, Jr.

Thank you De for that warm and unbalanced introduction.

I also thank the Board, De, and all of Legal Services Staff for choosing me to present the Wilentz Lecture. I extend many thanks to the Board, De, pro bono attorneys, volunteers and Legal Services Staff for working timelessly on behalf of the poor people in New Jersey. Your dedication to achieving for some poor man or woman, what the law says he or she is entitled to receive is appreciated.

I was the 10th and last appointed Justice who served on the Court with Chief Justice Wilentz. I will always remember the last time I saw the Chief alive; it was at our last formal Court

Conference on May 23, 1996, at his home in Deal. He acknowledged, what was obvious, that he was not well. He told us that he would be traveling to New York later that day, or the next day, to address his health issues. On the way to New York he became ill and stopped at the home of a childhood friend in Perth Amboy. Years later, while dining in a restaurant in Maplewood, I met a member of that family who is present this evening. Jane, would you and your husband Charles please stand. Also, would family members and close friends of the Wilentz Family please stand.

Some of you may have attended the Weintraub Lecture that I delivered in 1995. That lecture consumed a brief, two hours. Today, I promise you that the Wilentz Lecture will not be nearly as long. Indeed, it will not be as long as any one of Chief Justice Wilentz's shortest opinions. I will, however, keep

you a tad bit longer than King Henry VIII used to keep his wives or Elizabeth Taylor kept her many husbands.

Friends, fellow Legal Services Supporters, and fellow New Jerseyans, lend me your ears for a few minutes. In my remarks today, I shall tell a story praising C.J.W., not so much about how Robert N. Wilentz performed his constitutional role as the Chief Administrative head of the Judicial branch of government, or his involvement in the Supreme Court's supervision over the legal profession, or his superb leadership and participation in the work of the Court. The two-part story that I will speak about will instead focus on two of the many ways C.J. Wilentz tried to fill the justice gap. First, through his Support for Legal Services. Second, why and how he became my Godfather-Rabbi in his pursuit of judicial diversity. Just to be clear, I am not using the term "Godfather" to indentify a man who assists

in the Jewish rite with a circumcision. No, No. I instead use the term to identify the Chief as the person who took responsibility for my judicial growth and development.

I.

LEGAL SERVICES

Let me begin my remarks about Legal Services by painting a word picture of the clients it serves. In 1966, N.J. enacted its first minimum wage law of \$1.25 per hour. A full time job paying that minimum wage was deemed sufficient to lift a family of three out of poverty. Although the minimum wage rate increased over the years, presently to \$7.15 per hour, many people were still left in poverty. For example, an employee at a carwash that I use told me not too long ago that he earns only enough money for his family to eat only one meal a day. By 2009, Legal Services was able to assist about 20% of

that increasing population in poverty. Today, Legal Services can assist only about 14.3% of the steadily increasing population in need of its services. That was the daunting picture of poverty that the Chief Justice faced during his tenure, and that New Jersey still faces today.

Despite the fact that Chief Justice Wilentz was born into wealth and power, he was an ardent supporter of Legal Services of New Jersey while he was Chief between 1979 and 1996. He understood the needs of the working poor and what justice meant to them. His identity was largely shaped by humanism. He truly believed that no matter how poor or destitute a person may be, he or she remained a human being and should be treated with compassion.

C.J. Wilentz believed the mission of Legal Services of New Jersey was to provide access to equal justice for the poor by

ensuring that the court doors are just as open for the poor as for the rich. 49 Rut.L.Rev. 1185 (1997). He firmly believed that a “judiciary that doesn’t support that mission has forgotten its own mission.” *Ibid.*

Those virtues were incorporated in his first speech to a County Bar Association during his first three months as Chief Justice. He spoke to the Middlesex County Bar Association about the inadequacies of legal services for the poor. He stated that the “public expectations have far outstripped our performance.” That is even truer today. On another occasion he acknowledged the need for systemic improvements in “areas of judicial administration of special importance to the poor” The Chief knew that words and ideas, no matter how noble, would not become reality without sufficient funding. So in 1987, the Chief persuaded the Supreme Court to

adopt IOLTA funding for Legal Services. By the time of the Chief's death in 1996, IOLTA was generating more money for Legal Services than in any other state.

Similarly, he believed that the legal profession has an obligation to contribute to the betterment of society in many ways. Despite the numerous large corporations that he and his former law firm represented, he maintained that lawyers had an obligation to use their skills to help and protect the common meal: To use law as an instrument of social policy. It was his moral fiber that motivated him rather than the dollar.

He understood that the solemn purpose of law is justice. Toward that end, he became a fountain of creativity in furtherance of the nearly solemn obligation to nudge the law forward in a manner that was consistent with the twin pillows of stability without stagnation. At times, he was willing to

change the common law when he viewed it as inconsistent with the evolving 20th Century notions of justice and fair play.

Throughout his life he exemplified the true meaning of the old expression that to whom much is given, much is expected. He agreed with President Kennedy, that a society that cannot, or is unwilling, to “help the many who are poor, cannot save the few who are rich.”

While the New Jersey Assembly was his first public works project, becoming Chief Justice of the New Jersey Supreme Court became his first crusade – a crusader for Justice for the people born without wealth or social status. He had a refined sense of morality that did not allow him to ignore the humanity of others.

The Chief was the engine for momentous changes in our judiciary and in Our Society at large. He understood that the

Judiciary is where the disadvantaged flies seeking relief from inequalities. He was an ardent defender of the Courts independence to dispense equal justice to all. He used his speeches, power of persuasion in the Court's conferences, opinions, and as Chief Judicial Administrator, to accomplice social justice. The Chief strongly supported the view expressed by Justice Hugo Black, that Courts should be "havens of refuge for those who might otherwise suffer because they are helpless, weak, or outnumbered."¹

Unlike the eight justices in the majority in Plessy v. Furgeson in 1896, who shared a value system that poisoned the well of justice for over 75 years, Chief Justice Wilentz was guided by sound and enduring values and commitment to justice for all. He has indeed "left his footprints on the sands of

¹ Chamber v. Florida, 309 U.S. 227, 241 (1940)

time” by defending and supporting justice for the poor, the weak, and the powerless.

II.

DIVERSITY IN THE JUDICIARY

The second part of my remarks today focuses on the C.J.'s Commitment to creating a diverse judiciary. When Robert N. Wilentz became Chief Justice on August 10, 1979, he became the head of a judiciary whose Supreme Court had always been made up of all white men, whose Appellate Division had had only two females; An Appellate Division that had never had any racial or ethnic minority, and whose Assignment Judges had been only white males. That monochromatic Judiciary some 31 years after our Modern Judiciary had been established, displeased the Chief very much. The new Chief Justice made changing the face of the judiciary a top priority.

He believed that the appearance of justice is as important as the reality of justice. Toward that end, he was determined

to change the face of some of the judges who serve as gatekeepers to justice. He knew that changing the “face” of the gatekeepers to Justice would not be easy. He knew that human progress never rolls in on the wheels of inevitability. He knew that People, rather than time, must bring about change. But he, like Winston Churchill, preferred to fail while trying rather than being satisfied with the judiciary that he inherited. Having been born into a royal and powerful family, he could have been part of the silent majority. But he chose to become a crusader for diversity.

So, why and how did he become my Rabbi, my Godfather? There are two answers to the “why.” First, because he had a deep, heartfelt, warm concern for people who are disadvantaged. He equated being disadvantaged with life circumstances rather than being a bad person. He knew that I

fell within a disadvantaged group because I was born into a working class family, with a permanent suntan. He knew that I migrated to New Jersey, not by plane, train, or car, but that I had come by riding in a Plessy v. Ferguson seat located in the back of a Greyhound Bus while wearing these shoes. Because the Chief was a good student of history and cultural anthropology, he understood that it is not where one comes from, or the mode of transportation one has used, that determines what one can become with a little help from others.

Second, the Chief was an optimist who saw an opportunity in my disadvantages. He believed that some time people who are not born with privilege and power may have hidden benefits derived from cultural legacies that stimulate them to learn and work hard. So rather than focusing on the disadvantages in my background, as a pessimist would have,

the Chief saw the time, place and circumstances of my birth and education as the foundation upon which to build a bridge to the N.J. Supreme Court.

There is an old saying that law, like houses, should be built on a firm foundation. Similarly, the Chief believed that a Judicial Career should be built on a firm foundation in the law and in life experiences. So block, by block, he helped to build my judicial foundation, a foundation upon which a Supreme Court appointment was made possible. Here is how he became my Chief Architect, my Godfather, and my Rabbi by laying one building block at a time to establish a firm foundation.

My initial introduction to the Wilentz family was in 1964. I was a 31 year-old Judge of W.C. assigned to preside over trials in Middlesex County. Unlike any other county in the State, trials were conducted in both Perth Amboy and in New

Brunswick. The Wilentz Law Firm was located in Perth Amboy at the time. The firm had a sizable number of cases on my Calendar.

1. Warren Wilentz, the Chief's handsome brother, was the first member of the family that I met. He was one of the founding members of Legal Services in Middlesex County. Warren was a great person who, like me, talked a lot. After we completed his cases, we would invariably have a friendly chat that extended into the parking lot in New Brunswick. While standing in the lot, one day, a man tried to sell each of us a "hot T.V." I introduced Warren to the man as the "Prosecutor" and myself as the "Judge." Then I asked the would-be salesman, to repeat his offer because I was not sure if we understood what he was selling. The salesman responded by walking away and

saying he was not that crazy. Thereafter, Warren became my P.R. person at the firm.

2. The second member of the family that I met was David T. Wilentz, the former Attorney General for N.J. He called my Chambers in Perth Amboy and asked if he could come over to see me. I paused, thinking whether I should say yes or no. But then my commonsense prevailed and I said OK to Uncle David, as he was affectionally known.

3. The third member of the family that I met was Robert N. Wilentz, then a partner at the firm who handled important cases. The Firm had a dependency case on my calendar. Although a Junior Associate from the firm who routinely appeared was present also, the presence of the future Chief Justice raised the level of importance of the case. It involved the death of an important person and a confidential disposition

of the case was essential. While all the other lawyers in the courtroom went on a bathroom or coffee break, the case was settled and the record was sealed.

Even though I was only 31 or 32 at the time, it did not escape me that I was being observed, but for what I did not know. I was not too young to realize that if Uncle Dave and his two sons wanted to check on me, it would be in my best interest to cooperate.

My days as a W.C. Judge ended in 1973 when I was promoted to the upper court system, as it was called at the time. It was not very diverse. There were only 3 white women judges and 6 black male judges.

Wilentz became Chief Justice less than one month before The New Jersey New Code of Criminal Justice became effective. The prior decade and a half of observations of me now began

to bear fruit. Within two months after becoming Chief Justice, Wilentz called me to ask if, or maybe direct that, I meet with him in Trenton to discuss how best to conduct resentencing of some criminal defendants pursuant to the New Code. As a result of that meeting, he appointed me to a Three Judge Resentencing Panel to conduct resentencing on a state-wide basis. Because the Code was new, we had to operate in unchartered territory. On one occasion, I went along with an opinion of my two colleagues only to have the Appellate Division remanded for reconsideration. On the remand, I wrote separately, acknowledging that I had made a mistake the first time around. When the Supreme Court agreed with my dissent, the Chief Justice called to compliment me for having the courage and good sense to correct my mistake. A few months later, he called again to compliment me in a murder

resentencing case when the Court reversed based on my dissent.

The next phone call from the Chief was on December 24, 1980, at 4:15 p.m. He called me on Christmas Eve at my Chambers asking if I would accept a temporary assignment to the Appellate Division, effective in January 1981. Although I was annoyed with a plaintiff's attorney dragging out a simple case that delayed jury deliberations that caused me to still be in Chambers when the Call came in, I later forgave the lawyer. The Chief made my assignment to the Appellate Division permanent in September 1981.

After I was assigned to the Appellate Division, the Chief called me from time to time to discuss various social Justice issues with respect to the Judiciary. I would generally preface my remarks by asking the Chief if he was sure he wanted to

hear what I had to say. His simple response would be: that is why I called. He did not always follow my suggestion; but his willingness to listen was indicative of the person he was. When he learned that I was writing Gilmore, use of Prem. Challenges case, he called to get a copy of the opinion as soon as it was filed.

The Chief appointed me to various Task Forces and Committees while I was serving in the Appellate Division. Here are some examples:

Sentencing Disparity Committee – Chair

The committee of Minorities Concerns in the Judiciary

(The First in the Country) – Chair

The Five Judge Criminal Part in the Appellate Division

The Task Force on Minority Concerns, that was an outgrowth of the Coleman Committee

The purpose of those Committees, Task Force and Special Panels was to study ways to level the playing field for the disadvantaged, just another expression of the Chief Justice's sincerity and zeal for equality.

My uncorroborated information is that C.J. Wilentz called Governor Whitman on my behalf shortly after her election. As soon as Governor Whitman notified me that she would be scheduling a press conference for October 3, 1994, to nominate me to be an Associate Justice of the Supreme Court, I called Chief Justice Wilentz. For the first time, I heard, and felt how extremely emotional he could be. He showed that emotion again when he swore me in on December 16, 1994. In explaining the importance of that appointment. He said:

This is a momentous day in the history of our judiciary. For the first time ever, we will have an African-American on our highest court.

Young children on our playgrounds, little kids starting school, adolescents just growing up, will see a bright ray of hope that they didn't see before. And so will their older brothers and sisters. And grown-ups, black, Hispanic, Asian-American, and others, all of them, will feel better about our justice system, will have some more confidence in it. Everyone should celebrate this day, for it is a good day for all of us, a good day for society.

(There was not a dry eye in the House when the Chief concluded.)

What he was too modest to say, however, was how proud he was to have played such a significant role in making the appointment possible. He in no way acknowledged that he had been my Godfather. That appointment had a ripple effect throughout the Judiciary.

Chief Justice Wilentz knew that although the arc of the moral universe is long, that it nonetheless bends toward justice. When he became Chief Justice, the Supreme Court had had only white men among its membership. When he died, the Supreme Court had a female Chief Justice, a Female Associate Justice and an African American Associate Justice. The Appellate Division had 2 African Americans, one Latino, and 7 females. There was one Assignment Judge who was not a white male. That, in my view, represents the kind of positive change that the C.J. worked hard to achieve.

Although all of the Justices were gubernatorial appointments, the various Governors had been the Godfather to eight of the nine Justices who served with Chief Justice Wilentz. For me, however, Chief Justice Wilentz was my Godfather—my Rabbi. That speaks volumes for the person – for the Chief.

TO SUMMARIZE

There is a strong, yet simple, correlation between the Chief's efforts on behalf of Legal Services and Diversity in the Judiciary: In both areas, he worked hard to close the justice gap between the disadvantaged and those who were privileged. Although, Chief Justice Wilentz made a lot of progress in creating more judicial diversity, the Justice gap with respect to Legal Services seems to be widening. Nonetheless, the legacy that Chief Justice Wilentz has left us is his commitment to the

principle that Justice is justice, plain and unqualified. If it is limited to a class, it ceases to be justice.

Recent attacks on judicial independence and the decline in funding for Legal Services suggest that there may be difficult times ahead. “It is for us, the living”² to find opportunities in those difficulties in order to finish the work Chief Justice Wilentz so nobly advanced. “Fondly do we hope, fervently do we pray,”³ that the ever-expanding justice gap will be closed so that one day we can see justice “rolling down like waters, and righteousness like a mighty stream.”

² Lincoln’s Gettysburg Address, November 19, 1863

³ Lincoln’s Second Inaugural Address, March 4, 1865