

# **GARDEN STATE CLE LESSON PLAN**

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## **THE LANDMARK DECISIONS OF CHIEF JUSTICE ROBERT WILENTZ**

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**With**

**Hon. Robert Rivera-Soto**  
*Former Associate Justice,  
New Jersey Supreme Court*

*And*

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*Certified Criminal Trial Attorney*

### **Program description**

Although the late Chief Justice Robert Wilentz was often characterized as being autocratic and controversial, there can be no doubt that he will go down in history as one of the giants of the NJ judiciary. This CLE tracks the impact of his major decisions on the development New Jersey law.

## **I. Introduction**

- **Served as the Chief Justice of NJ Supreme Court from 1979-1996**
- **Written decisions have impacted people across the state**
- **Large number of opinions became national in scope and touched people across the country**
- **He was known to be autocratic and controversial**
- **Leadership and published opinions will insure that he will go down as one of the giants of the New Jersey Judiciary**
- **Strong leader of the court**

## **II. “By the slimmest majorities”**

- **Lifelong NJ resident – born in Perth Amboy**
- **Father was David T. Wilentz, Attorney General of NJ – prosecuted State v. Bruno R. Hauptmann (Lindberg kidnapping case)**
- **Graduated as valedictorian from Perth Amboy High School**
- **Enlisted in the Navy after 1 year at Princeton University; served in the Navy in 1946-46**
- **Completed his undergraduate at Harvard in 1949**
- **Columbia Law School graduate in 1952**
- **Elected to NJ Assembly – 1965; Re-elected in 1967**
- **1979 Gov. Brendan Byrne appointed as Chief Justice – replaced Chief Justice Hughes**
- **1986 Gov. Kean reappointed Wilentz**
- **Wilentz did not live in NJ – lived in Manhattan in an apartment near hospital where his wife was being treated for cancer**
- **Gov. Kean supported Wilentz’ confirmation (21-19 vote for confirmation)**
- **1996 retired from the bench with cancer diagnosis – died 23 days after retiring**

## **III. “Essex County was not Mollified”**

- **Refused to allow producers of “Bonfire of the Vanities” to film courtroom scenes at Essex Courthouse**
- **Courthouses are owned by the counties even though unified state judiciary**

- **Question whether Wilentz had the power not to allow Essex County to “rent out” their courthouse**
- **Producers of the movie decided to take the production to the Bronx, which is where the scene occurs in the book**
- **Essex county was not mollified – sued in Federal Court – federal judge ruled that Wilentz had violated 1<sup>st</sup> Amendment Freedom of Expression – Amato v. Wilentz, 753 F.Supp. 543 (D-NJ 1990), affm’d 952 F.2d 742 (3<sup>rd</sup> Cir. 1991)**
- **Served as Chief Justice for 17 years**
- **Chief Justice is separately appointed and separately confirmed – longest serving Chief Justice (current Chief Justice Rabner will surpass Wilentz if he remains on the bench until mandatory retirement – he will be serving for 22 years at that time)**

#### **IV. “Almost invariable”**

- **Ethics cases**
- **In re Wilson, 81 NJ 451 (1979) – attorneys who mishandle client funds**
  - **For attorneys who use trust account as an additional source of income**
  - **8 complaints filed against Wilson – 2 for misappropriation of client funds – those are the only two that were in the opinion**
    - **1) \$23000 left from a closing, for 2 years did not turn funds over to clients, clients filed ethics complaint and then he turned over money**
    - **2) check made out to clients for \$4300, instead of giving check to clients, he forged client signature, deposited into trust account and refused to return money to clients**
  - **Other misconduct: lied to clients, advised clients to commit fraud, disregarded client interests in proceedings, while proceedings underway refused to participate in proceedings and acted in angry way with members of the ethics committee**
  - **What is appropriate discipline for attorney who misappropriates client funds – violates ethics rules and a crime**

- **“this one has its roots in the confidence and trust which clients place in their attorneys...the client entrusts the lawyer with the transaction – including the handling of the client’s funds...”**
- **“Principal reason for discipline is to preserve the confidence of the public in the integrity and trustworthiness of lawyers in general.”**
- **As the bar we all have an interest at stake when one attorney misappropriates a client’s funds**
- **“The public is entitled, not as a matter of satisfying unjustifiable expectations, but as a simple matter of maintaining confidence, to know that never again will that person be a lawyer.”**
- **Until this case, the Court’s handling of this type of case has varied. Sometimes people were suspended instead of disbarred.**
- **Restitution for attorneys who misuse client funds is “an honesty of compulsion” – not penitence**
- **These types of ethics cases will “almost invariably” result in disbarment.**
- **This holding has become a principal of the Court and the bar.**
- **In the Matter of Stephen Tsai, 203 NJ 581 (2010)**
  - **Client admits misappropriated money out of trust account and did so knowingly**
- **Matter of Coruzzi, 95 NJ 557 (1984) – corrupt judge acting has a racketeer**
- **Matter of hearing on Immunity for Ethics, 96 NJ 669 (1984) – immunize complainants in ethics matters from suits for liable or malicious prosecution for comments made to and during ethics proceedings**
  - **Until 1984 there was a statute since 1956 (NJSA 2A:47A-1)**
  - **Attorneys had the right to sue clients who filed false or malicious ethics complaints against them**
  - **Supreme Court wanted to change this statute and wanted to prohibit lawyers from suing clients for filing ethics complaints**
  - **Commission in 1981 to review all rule changes including this one**

- **Commission equally divided on rule change – half agreed with change and other half disagreed**
- **The court had oral argument and invited the bar and Attorney General and Attorney Ethics Commission and then going to make a decision**
- **Open argument in 1984**
- **Majority of court held that NJ would adopt immunity for client grievance**
- **“Strong public policy in favor of maintaining strict adherence to the rules of discipline required the removal of any impediment to the effective functioning of the disciplinary system; allowing complainants to be potentially vulnerable to lawsuits brought by attorneys against whom they complained was deemed to be such an impediment.”**
- **Possible that legitimate complainants would be deterred – unacceptable result**
- **Immunity for communications with and to the ethics committee; comments in hearing are protected; if comments are made to the public or in media then not protected**
- **Toft v. Ketchum, 18 NJ 280 (1955) –**
- **Made lawyers “second class citizens” – treating lawyers unfairly**
- **Ethics complaint results in anxiety and insult**
- **Insult of ethics complaint is not sufficient basis for suing clients**
- **Chilling effects of lawsuits against clients who would bring ethics complaints**
- **Other jurisdictions have adopted this rule**
- **Regarding the NJ Constitution – gives the courts the only entity to maintain confidence of the public in the bench and the bar; even in conflict with existing legislation**
- **Exclusive power of Supreme Court over disciplining of attorneys**
- **Jeopardize public trust in the bench and bar if one citizen can be sued for filing an ethics complaint**
- **Dissent: 4-3 decision – negatives of immunity outweigh the affirmatives**
- **Matter of Coruzzi, 95 NJ 557 (1984)**

- **Judge was arrested with \$12K bribe money in his pocket**
- **Only 1 other judge charged with a formal offense before this**
- **Judge Coruzzi sentenced someone to prison then contacted defense counsel and said for a price the sentence could be reconsidered**
- **In another case, defendant indicted for theft and judge addressed defense counsel to make a deal for a lesser sentence for \$25K**
- **In another case – jury conviction for arson; judge reached out to defense counsel to negotiate suspended sentence for a price**
- **Defense counsel cooperated with ethics investigation – recorded discussion and judge arrested with cash in pocket**
- **Jury’s verdict was that in 3 cases the judge accepted bribes and solicited bribes**
- **Could a disbarment be based on a criminal conviction? Is this collateral estoppel?**
- **Difference between judges and attorneys in ethics guidelines – attorney standard is clear and convincing evidence; judge standard is beyond a reasonable doubt**
- **Don’t need to re-try the case for the ethics violations – jury already ruled beyond a reasonable doubt**
- **If re-trial with beyond a reasonable doubt standard for ethics violations, public trust in the system would be eroded**
- **“integrity of the judicial system is at stake”**
- **Quantum of punishment??**
- **“No power is greater, nor its responsibilities more awesome, than that given a judge.”**
- **Respondent sold his power and trust**
- **A judge who accepts a bribe must be removed from office – no exceptions**

**V. “They deserved it. They provoked it.”**

- **State v. Kelly, 97 NJ 178 (1984) – Defendant stabbed boyfriend to death with scissors and justification was acting in self defense; altercation on the street between Kelly and boyfriend; he choked her; in the past Kelly beaten and threatened; that**

**day on the street – he walked away and then came back to her – she reached into her purse and stabbed him with scissors that were in her purse**

- **Different set of facts came out during trial from the State**
- **Trial court prevented her from bringing out psychological evaluation that she suffered from battered women’s syndrome**
- **The majority of society did not understand the issues confronting a domestic violence victim**
- **Societal issues relating to domestic violence victims**
- **Supreme Court said that trial court has to allow psychological testimony**
- **NJ had recently (1981) passed the Prevention of Domestic Violence Act, NJSA 2C:25-1, et seq.**
- **Society was changing but majority of jurors did not understand why someone would have to kill the abuser in order to escape the relationship**
- **Court ruled that because reasoning was contrary to human reason and experience therefore need expert to testify and educate the jury – this concept is “beyond the ken of the average juror”**
- **Battered women’s syndrome was realized as a valid defense with expert testimony – means were there to give jury ability to present information to the jury**

**VI. “You can’t punish me can’t punish me again.”**

- **Megan’s Law, NJSA 2C:7-1 through 7-11**
- **Society was changing**
- **Megan’s law was retroactive to those who were convicted prior to the date when the statute was passed**
- **Megan’s law says sexual offenders are more likely to reoffend than any other type of criminal actor – need to protect future victims from sexual offenders – 3 tiers of least to most dangerous or likely to reoffend and to keep track of those offenders; community notification**
- **Objections to Megan’s law from those who were convicted before the law was passed – ex post facto – punishment did not exist at time that crime was committed**
- **Court said that this is system to rehabilitate people and not punishment**

- **Remedial goal may have restrictions but it is not punishment – need to deter recidivism**
- **What is primary purpose of legislation? To punish? To deter?**
- **Remedial legislation is not intended to punish**
- **Doe v. Poritz, 142 NJ 1 (1995)**

## **VII. “Stand down.”**

- **State v. Gonzalez, 114 NJ 592 (1989)**
  - **Court below held that probable cause hearing was necessary before issuing a motor vehicle summons – imposed Chapter 3 of the Court Rules onto Chapter 7**
  - **Justice Wilentz said there is not enough punishment at stake in motor vehicle offenses to require a probable cause hearing before one can issue – system must be practical**
  - **Burden on society to have a probable cause hearing for motor vehicle offenses would be too great as compared to possible penalties at stake in a motor vehicle case.**
  - **Wilentz suggested that references to Part 3 Rules in Part 7 Rules was too confusing and needs to be removed**
  - **As a result Part 7 rules only apply to non-indictable offenses which are in municipal courts**
- **State v. Heitzman, 107 NJ 603 (1987)**
  - **Justice Wilentz was the sole dissent**
  - **In Supreme Court there is no discussion of the case before argument or after argument until the following conference with all justices – so that each justice can make a decision on his/her own accord and not colored by views of others – during argument you can tell which way each justice is leaning or what is causing concern but actual discussion is not held until a week after the arguments in conference – Chief Justice will pick an Associate Justice to set forth factual and procedural history and then state how that justice would decide on the case – then discussion goes around the table – Chief Justice speaks last – only authority Chief Justice has is that he/she assigns the writing of the opinion if he/she is in the majority if not then the most Senior Justice decides who writes the majority – if Chief Justice is in the dissent, then he/she chooses who writes the dissent –**



**no one justice should have surplus of opinions while others have none – try to even out the work – dynamic in the room to try to achieve unanimity – court looks for unanimity – the court speaks best when it speaks with one voice**