HOW WILENTZ CHANGED THE COURTS*

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In what will be a more lasting legacy than any of his landmark rulings, Robert Wilentz indelibly etched on the New Jersey court system his personal vision of how justice should be delivered. At his swearing-in as Chief Justice on August 2, 1979, Robert Wilentz promised that his goal would be to preserve the traditional quality of New Jersey's judicial system. "We will also try to improve it, of course," he said, "but if we succeed in preserving that tradition and that quality, we will be satisfied."[1]

He went on: "The powers of the Court go far beyond deciding what the law of New Jersey is. The Supreme Court commands the entire resources of the judicial system, from business machines to courthouses, from study committees to judicial conferences; it has command over the practice of law, over lawyers, over the delivery of legal services; it has command and complete control over the practice and procedure in every court in this state; it commands a very substantial administrative organization; and finally, it commands, to an extent greater than any other state, all judicial personnel."[2]

Those statements proved to be nothing short of ominous. As New Jersey's fifth chief justice since the state constitution of 1947 consolidated total administrative power in that office, Wilentz used his authority—to a greater extent than any of his predecessors—to foster wide, systemic changes in the courts and in the legal profession.

More than that, they were the changes that Wilentz wanted. A review of his 17 years as the administrative head of the court system shows that Wilentz, who died on July 23, 1996 at age 69, always got his way—not always immediately, but always eventually.

On his watch, the court system was unified and reorganized; the Adminis-

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[1]*Remarks by Chief Justice Wilentz at His Swearing-In*, NEW JERSEY LAW JOURNAL, Aug. 30, 1979, at 1.

[2]*Id.* at 1,3.

trative Office of the Courts expanded and diversified its functions; a new attorney discipline system was adopted; controls were established to fight racial and gender bias; case management procedures and goals were put in place to clear backlogs and reduce delays; cameras were allowed in the courts; judicial performance programs were created; and the family courts were consolidated and given broad jurisdiction.

To be sure, Wilentz could not have accomplished these changes alone. His genius was in mobilizing groups of people with often-conflicting views and interests to see things his way. Where necessary, he placated the bar and lobbied the Legislature. He gave new meaning to the phrase "rule by committee." The pattern was repeated time and time again: a Wilentz initiative followed by the formation of a study committee, then findings and recommendations, then reaction from lawyers and judges, then a second committee to resolve points of contest and other secondary issues.

Sometimes it took more than two committees. Sometimes it took several years. But the final product was always the same: adoption of rules that embodied what Wilentz thought was best for the court system. Indeed, it is no exaggeration to say that the judiciary of today is in precisely the shape that Wilentz set out to mold it.

What follows is a retrospective—in loose chronological order—on Wilentz's initiatives as Chief Justice and how they were brought into effect.

I. THE COMMITTEE ON EFFICIENCY

Although the 1948 constitution made the chief justice the head of the judiciary, the court system in 1979 was fractured. Wilentz would say at one of the state's annual judicial colleges, the fact that "the courts presently function as they do is a miracle," considering that they were never created as one system but simply evolved.

In February 1980, Wilentz appointed a Supreme Court Committee on Efficiency and charged it with reviewing the operations of the trial courts. After a 16-month study by its seven subcommittees, the panel arrived at the unanimous conclusion that "the system, as currently constituted, is not manageable. The present structure presents almost insurmountable barriers to effective leadership."

Speaking at a state judicial conference in July 1981, Wilentz stressed two of the committee's key conclusions: that the courts be state-funded instead of dependent on the county freeholder boards and that the courts be consolidated into one system accountable to the chief justice himself.

The Committee on Efficiency also recommended strengthening the supervisory powers of the vicinage assignment judge, delegating significant managerial authority to trial court administrators in nonadjudicative matters and appointing management committees to assist assignment judges in the discharge

of administrative responsibilities.

In response to the May 1981 report, Wilentz formed the Management Structure Implementation Committee in the fall of 1982 and charged it with designing an improved structure to remedy the deficiencies noted by the committee. Specifically, he told the new panel, chaired by Mercer County Assignment Judge Samuel Lenox Jr., to develop a vicinage management structure that would "combine organization theory and case processing needs."

On Aug. 4, 1983, the management structure committee issued its report, proposing a vicinage court system in which one assignment judge would report directly to the chief justice. Assisted by a trial court administrator, the assignment judge would supervise presiding judges of the civil, criminal, chancery and family divisions. Each presiding judge would supervise a case manager—a newly created position. The Court adopted the Lenox committee's recommendations by court rule effective Oct. 26, 1983.

II. LAY MEMBERS ON COURT COMMITTEES

In March 1980, Wilentz asked the State Bar Association to consider the feasibility of adding lay members to the Supreme Court's Advisory Committee on Professional Ethics, the Clients' Security Fund, the Board of Bar Examiners, the Committee on the Unauthorized Practice of Law, and the Committee on Relations with the Media. Wilentz gave two reasons for the proposed action: to increase public confidence in the bar and the bench and to add other points of view to the committees' deliberations. Moreover, he added, it was part of a larger set of issues: the extent to which court rules, regulations and practices, as well as the formal structure of the bar and of court committees, are responsive to the public interest and—especially—the need for adequate legal representation at affordable rates.

Wilentz asked the Bar to give its careful deliberation and advice, but to do so quickly because the Court wanted to resolve the matter in the near future.

III. ATTORNEY DISCIPLINE REFORM

In September 1981, Wilentz established the Supreme Court Committee on Attorney Disciplinary Structure, chaired by retired Supreme Court Justice Mark Sullivan. Wilentz told the committee to study the operations and efficiency of the attorney disciplinary and fee arbitration systems and to make recommendations for improvements.

"[O]ne of the most important Court functions is the supervision of the State's practicing lawyers," Wilentz charged the committee. "This task has become more complex and difficult with the recent increase in the number of lawyers admitted to the Bar. Therefore, we have determined that now is the time for both the Court and the organized Bar to reassess the functioning of the

ethics and fee dispute process."[3]

Wilentz also invited an American Bar Association audit of New Jersey's disciplinary system. The ABA "Evaluation of the Lawyer Disciplinary System in New Jersey" was issued in March 1982. After extensive consultation with the organized bar—which was often of a differing collective mind—the Sullivan committee adopted many of the ABA recommendations, including: (1) establishing a professionally staffed Office of Attorney Ethics to be placed under the auspices of the Disciplinary Review Board and given primary responsibility for administrative oversight and record-keeping, (2) making the DRB accountable directly to the Supreme Court and separate from the AOC, (3) assessing attorneys annually to fund the disciplinary and fee arbitration system, (4) establishing stringent reporting requirements and standards to ensure that disciplinary cases are investigated and disposed of in a timely fashion, and (5) redistricting the ethics and fee arbitration committees to divide the attorney population more evenly.

The recommendations of the Sullivan committee were published on Oct. 21, 1982. In December, the Court adopted the recommendation to assess attorneys for the costs of operating the disciplinary system. The Court also decided to increase the number of district ethics and fee arbitration committees to 16 from 12.

On July 23, 1983, Wilentz announced the formation of the Office of Attorney Ethics,[4] another of the Sullivan committee's recommendations. The Court granted the OAE director broad powers and charged the new body with eliminating the backlog of ethics cases, which Wilentz called "unreasonable, sometimes outrageous." The Court also decided that the OAE would report directly to the Court and not to the Disciplinary Review Board.

Although the Court deferred the question of whether district ethics committees or professional staff at the OAE should investigate and prosecute ethics matters, it provided that where the DRB determines it appropriate, the OAE could take over a prosecution started by a district ethics committee.

Finally, on Jan. 31, 1984, the Court adopted the rest of the Sullivan committee's recommendations. Among the new ethics rules were provisions for the immediate suspension of any attorney convicted of a serious crime; immunity from suit for ethics complainants and for all members of the OAE, the DRB, and the district ethics and fee arbitration committees; and establishment of time goals for the processing of ethics matters. "New Jersey's ethics rules are among the toughest in the country," Wilentz said in announcing the

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[3]*Supreme Court Committee To Studey N.J. Disciplinary System for Lawyers*, NEW JERSEY LAW JOURNAL, Sept. 10, 1981, at 16.

[4]Under N.J. CT. R. 1:20-2, this office has investigative and prosecutorial powers.

new rules, "and we are determined to have the most effective system for enforcing them."

Almost a decade later, ABA recommendations for public lawyer discipline prompted Wilentz to undertake another review of the attorney ethics system. In March 1993, the Wilentz-appointed New Jersey Ethics Commission found that major reforms were needed to bolster public confidence in the system. The panel recommended opening the disciplinary process to the public after a finding of probable cause that an ethics violation has occurred and having ethics complaints investigated by professionals rather than local volunteers.

Despite strong and vocal opposition from the Bar, the Court in July 1994 adopted the commission's recommendations for open discipline.

The Court acknowledged the Bar's concerns that an open system could harm the reputations of innocent lawyers but said that the benefits outweighed the risk of harm.

However, the Court refused to adopt the commission's recommendations that disciplinary proceedings be centralized in Trenton and that complaints be handled by quasi-professional prosecutors. District ethics committees composed of volunteers would continue to handle the investigation of ethics complaints.

The changes took effect Aug. 15, 1994. Attorneys would be henceforth subject to a disciplinary system functioning under the auspices of a court-appointed oversight committee made up of lay people, judges and attorneys. The Court also abolished the private reprimand as a way to scold wayward lawyers. Instead, respondents would be subject to a public admonition.

In July 1995, over the recommendations of a majority of its Civil Practice Committee, the Court adopted a rule allowing trial judges to impose monetary sanctions on attorneys who file frivolous claims, motions or papers. New Jersey thus joined 23 other states and the federal courts; the new rule was patterned after Rule 11 of the Federal Rules of Civil Procedure.

The Civil Practice Committee had concluded that instead of levying monetary sanctions against attorneys who file frivolous claims and motions, such cases should be referred to the District Ethics Committee or the Office of Attorney Ethics. But the Court found monetary sanctions would be a more effective deterrent.

IV. MATRIMONIAL LITIGATION REFORM

In early 1981, Wilentz received the report and recommendations of a 20-member committee appointed the previous year to study matrimonial litigation in the state. It followed on the heels of an earlier committee, formed by Chief Justice Richard Hughes, which identified problem areas of matrimonial practice.

The new committee, chaired by Justice Morris Pashman, was charged with

developing ways to improve enforcement procedures for alimony and child support, to streamline court procedures in general and to reduce the time periods for matrimonial cases at the trial and appellate levels. It also was to develop guidelines for the award of counsel fees.

Most of the Pashman committee's recommendations dealt with enhanced enforcement provisions for matrimonial orders, and the Court immediately endorsed them. In a July 2, 1981 statement, Wilentz also said that "the assignment of adequate numbers of top quality judges is essential for the success of any attempts at matrimonial reform,"[5] paving the way for the judicial rotation program started years later.

On November 11, 1982, with the passage of a constitutional amendment merging all state trial courts into the Superior Court, Wilentz established a 41-member Family Court Committee to review and implement Pashman's recommendations and to develop procedures for applying new juvenile justice laws (including the abolition of the Juvenile and Domestic Relations Court) that would go into effect in the fall of 1983. "We hope this legislation . . . will have a significant impact on the ability of the courts to deal with troubled families and children,"[6] Wilentz said in announcing the committee's creation.

At the end of the decade, Wilentz formed a "Pathfinders Committee" to study the family courts. The December 1989 Pathfinders' report detailed systemic problems and called for extensive reforms, among them the appointment of a statewide presiding judge to oversee the system.

In August 1990, Wilentz took up the recommendations of the Pathfinders Committee by ordering an overhaul of the state's family court system. Wilentz promised to upgrade facilities, training, staffing and technical assistance programs. He never adopted the idea of a statewide presiding family part judge, however.

Three years later, in its February 1993 report, the New Jersey Ethics Commission found that some matrimonial attorneys regularly overcharged and engaged in questionable fee practices, such as forcing clients to execute mortgages on their homes. The commission based its findings largely on testimony from about 50 clients during four public hearings and concluded that an overhaul of the practice of matrimonial law was overdue and that the practice should be studied by a panel, to include a significant percentage of nonattorney members.

In April 1996, the Court announced the formation of the Special Committee

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[5]*Supreme Court Committee Issues Final Matrimonial Report*, NEW JERSEY LAW JOURNAL, July 2, 1981, at 1.

[6]*Supreme Court Names Family Court Committees*, NEW JERSEY LAW JOURNAL, Nov. 11, 1982, at 3.

on Matrimonial Litigation, which included a number of lawyers and lay people who worked in the lawyer-discipline system.

V. FAMILY COURT REORGANIZATION

In March 1982, in expectation of passage of a constitutional amendment merging the Juvenile and Domestic Relations Courts and District Courts into the Superior Court, Wilentz created a committee to explore policy issues related to the creation of a Family Part within the Chancery Division. These issues included jurisdiction, judicial assignments, administrative structure and supporting services.

The Preliminary Family Part Planning Committee, also chaired by Justice Pashman, reported its findings and recommendations in October 1982, setting the framework for a unified court with exclusive jurisdiction over divorce, annulment, custody, support, child abuse and neglect, domestic violence, juvenile delinquency and juvenile offenses, adoptions, parental rights, emancipation, change of name and other family law issues. The Supreme Court would also be empowered to assign to the Family Part whichever Superior Court judges it deemed appropriate.

The amendment passed in November 1983, and although legislation was needed to implement the court system changes, Wilentz was not one to wait. The same month, the Court published proposed rules for adopting the Pashman committee's recommendations. The rules were adopted by order published on Dec. 22, subject to the passage of conforming legislation.

VI. CAMERAS IN THE COURTS

In October 1980, after a recommendation by the Committee on Relations with the Media, Wilentz signed an order permitting cameras in the appellate courts. Cameras had been permitted on an experimental basis since May 1979, and the ruling made New Jersey one of the first states to permit such coverage on a permanent basis.

Under guidelines adopted by the Court, permission to film would have to be applied for in advance but would be routinely granted. In June 1981, cameras were permitted at the trial court level on a permanent basis under the same guidelines.

In December 1982, the Court allowed camera and audio coverage of municipal court proceedings in Bergen, Camden and Mercer counties on an experimental basis. Municipal courts had been excluded from the 1981 guidelines for cameras in the courts, but Wilentz agreed with the committee that the experience had proven positive and should be extended.

"Municipal court is known as 'the people's court' because it is located in the community and is the court with which a citizen is most likely to have

contact," Wilentz said. "The goal of this experiment and of the cameras-in-the-courts program is to increase public knowledge about the operation of the courts."[7]

In April 1985, Wilentz announced new guidelines on media relations for the judiciary. The major changes loosened the rules on cameras in the courts and were designed to encourage such coverage of court proceedings at all levels. The statement accompanying the announcement also included exhortations to judges, lawyers and journalists to keep lines of communications open.

VII. ELECTRONIC COURT REPORTING

One of Wilentz's most controversial initiatives was bringing electronic recording technology to New Jersey's courtrooms. Three committees were formed to study the issue. The most recent committee to study the issue, the Committee on Record Technologies, recommended in May 1995 that courts pare their reporting staff and expand the use of videotape and "computer integrated courtrooms."

But the use of electronic recording began as a budgetary stopgap measure.

On March 26, 1981, Administrative Director of the Courts Robert Lipscher published a report to the bar on the use of electronic recording in the courts. He explained that funding problems made it impossible to provide court reporters to every courtroom. At the time, there were 215 Superior Court trial judges but only 199 official court reporters. Sound recording equipment, which had been used in the municipal courts, county district courts and Juvenile and Domestic Relations Court since 1969, provided the most feasible solution, Lipscher explained.

The report prompted such negative commentary that Lipscher felt it necessary to respond. On April 21, 1983, he wrote in the *Law Journal* that electronic sound recording devices were installed only on an experimental basis and only in a few courtrooms. While the tests would continue, Lipscher said, he reassured the Bar that "sound recording is not a substitute for court reporters in all circumstances."[8]

But in December 1989, Wilentz began phasing out court reporters and replacing them with audio tape recorders.

In June 1991, the Court's Committee on Court Reporting (Stenographic and Electronic) recommended videotaping trials and gradually eliminating court

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[7]*Guidelines Revised for Cameras in Court*, NEW JERSEY LAW JOURNAL, Dec. 16, 1982, at 1,8.

[8]*Electronic Recording in the Courts of New Jersey*, NEW JERSEY LAW JOURNAL, Apr. 21, 1983, at 1, 10.

reporters. Tape transcribers cheered, while reporters began a long fight to preserve their jobs. Attorneys complained that tape transcripts were incomplete and inaccurate.

In reaction to the criticism, Wilentz appointed a second committee, headed by Morris County Assignment Judge Reginald Stanton. In December 1994, it recommended retaining a staff of 150 reporters and installing video recording technology in 65 courtrooms.

Meanwhile, attrition in the numbers of stenographic court reporters had been constant. In 1990, 215 of them were employed. By July 1996, 131 remained. The reporters had been unsuccessfully lobbying the Legislature this year for more funds for court reporting services. And the AOC plans to install video recording equipment in 20 Superior Court courtrooms across the state, bringing the number to 40.

VIII. CRIMINAL SENTENCING

Addressing the State Bar Association's Long-Range Planning Conference on April 9, 1981, Wilentz urged the Bar to help him "destroy once and for all the myth that New Jersey judges are soft on crime," saying that there is "nothing more destructive today of confidence in the judiciary."[9] His remarks were pegged to the passage of the state's three-year mandatory jail term for serious offenses, which he predicted would add 600 to 2,000 prisoners to the penal system.

The next month, on May 7, 1981, Wilentz issued a directive limiting the use of plea bargaining. The directive prohibited judges from accepting recommendations for dismissal of charges except in narrow circumstances, such as where the defendant's cooperation was sought to incriminate others. Notice of any deviation from the guidelines would have to be given to Wilentz personally.

In March 1990, Wilentz established the Sentencing Pathfinders, a committee charged with studying sentencing procedures throughout the state. The Chief Justice said he wanted to make sense out of a disjointed system that often produced disparate sentences for similar crimes.

In a July 1994 letter to prosecutors, public defenders and private criminal defense attorneys, Wilentz alerted the Bar that the Court decided to implement a statewide plea-cutoff policy. The change came despite opposition from prosecutors and many criminal defense attorneys. Criminal defendants would have to choose whether to accept a plea offer weeks before trial, or reject the offer, go to trial and risk a stiffer sentence if convicted. The result would mean no last-minute plea bargaining, but Wilentz pledged that there would be

[9] *Wilentz Address to State Bar,* NEW JERSEY LAW JOURNAL, Apr. 23, 1981, at 1, 8.

enough room for legitimate waiver requests.

Wilentz's letter was unusual because it announced the policy change before publication of a notice to the bar. At the same time, the tone of Wilentz's letter was conciliatory, showing that he was going out of his way to let the lawyers know change was coming and that he had appreciated their cooperation in the past. "We respect the independence and role of both prosecutors and defense counsel," Wilentz wrote. "We do not intend to intrude on either."[10] The plea cut-off rules took effect January 1, 1995.

IX. JURY PROCESS REFORM

In April 1981, Wilentz appointed a Jury Utilization and Management Task Force to evaluate the state's petit jury system and to make recommendations for improvement. The task force, chaired by Supreme Court Justice Robert Clifford, was to work closely with a federally funded project studying the same thing.

In a report published on January 13, 1983, the task force recommended that the pool of eligible jurors be expanded by eliminating the two-year state residency requirement, the age limit of 75 years, the English literacy requirement, occupation exemptions, exemptions for people "directly or indirectly connected with the administration of justice" and all reasons for excusal from service except "extreme hardship."

Other recommendations included limiting jury service to a one day/one trial or two days/one trial term wherever possible or to one week at most; increasing juror compensation to $10 per day and introducing legislation that would protect jurors from being laid off or penalized by their employers.

X. RULES OF PROFESSIONAL CONDUCT ADOPTED

In October 1982, Wilentz appointed an 18-member committee, chaired by U.S. District Judge Dickinson Debevoise, to study the Model Rules of Professional Conduct and to review rule changes proposed by the American Bar Association. The State Bar Association had gone on record opposing the proposed rules in May 1980, saying they "threaten[ed] and unwarranted erosion of the traditional lawyer-client relationship."

The committee reported its findings on July 28, 1983. Overall, it said, the rules were an improvement over New Jersey's existing disciplinary rules and should be adopted with minor modifications. After a public comment period, the Court adopted the Rules of Professional Conduct on July 12, 1984, to be-

[10]Richard Pliskin, *Over Opposition, Court to Require Plea Cutoffs,* NEW JERSEY LAW JOURNAL, July 4, 1994, at 3.

come effective Sept. 10 of that year.

XI. GENDER BIAS IN THE COURTS

In October 1982, Wilentz appointed the first Supreme Court Task Force on Women in the Courts, chaired by Superior Court Judge Marilyn Loftus. He told the panel "to determine the extent of prejudice against women in the justice system . . . whether they are jurors, witnesses, judges, lawyers, law clerks or litigants." On February 10, 1983, Wilentz published a questionnaire in the *Law Journal*, asking New Jersey attorneys to provide specific instances of bias against women. With that survey, the state set a national example of trying to clear gender bias from its court system.

The task force issued its report on November 21, 1983 at a state Judicial College meeting. It found that "stereotyped myths, beliefs and biases appear to sometimes affect decision making in certain subject areas, e.g. damages, domestic violence, juvenile justice, matrimonial and sentencing. Additionally, it appears that there may be inequality of treatment of men and women in the legal and judicial environment (courtroom, chambers and professional gatherings)."[11]

The task force made specific recommendations to fight bias in such areas as the award of damages, domestic violence cases, juvenile justice, matrimonial law and criminal sentencing. Wilentz implemented many of the proposals. He ordered the AOC to use gender-neutral language on forms, and he encouraged education and training programs for court personnel, showing a videotape on the issue to judges.

In 1990, the Court included "discrimination in a professional capacity because of sex" in its definition of professional misconduct in Rule of Professional Conduct 8.4(g).

The Court also established a standing Women in the Courts Committee.

In July 1996, the committee embarked on a follow-up survey of New Jersey lawyers to determine whether the court system still treated female litigants, attorneys or witnesses differently from men, how a judge's gender might affect treatment of females before him or her, and how gender bias might affect the outcome of a case.

XII. JUDICIAL PERFORMANCE REVIEWS

The Supreme Court's Committee on Judicial Performance was established by Court order in March 1980, based on the recommendations of a study committee chaired by Justice Alan Handler in 1979. In August 1983, it began

[11] *Women in the Courts*, NEW JERSEY LAW JOURNAL, Dec. 8, 1983, at 1, 8.

a judicial-performance survey of practicing lawyers by publishing a questionnaire in the *Law Journal*. The survey was a pilot project for what would become a statewide judicial performance program. It invited attorneys to rate trial judges in Camden, Middlesex and Monmouth counties, before whom they recently had appeared, in such categories as "comportment" (temperament, attitude and manner), management skills and legal ability. Attorneys were also asked to rate appellate judges statewide in the same categories. Responses were to be anonymous.

The results of the survey were announced on March 29, 1984 in an "Interim Report on Judicial Performance." The committee's chairman, Justice Handler, wrote that the survey project "suggests that reliable information concerning judicial performance can be generated by carefully crafted survey instruments and other techniques." He urged the Court to continue to expand the judicial performance program for trial judges statewide.

In February 1986, the Handler committee endorsed the use of a permanent statewide judicial performance program. Handler said it could take several years of fine-tuning until the results were reliable enough to be disseminated. Wilentz never approved the release of the results, though he often trumpeted the evaluation program as the judiciary's way of policing the conduct of judges.

The program's existence also provided a reason for Wilentz to oppose later attempts to evaluate judges, including the *Law Journal*'s surveys, the first of which was published in 1989.

In June 1994, the Court adopted rule amendments that called for the appointment by the Court of a judicial performance committee to develop and administer a program, under the Court's supervision, for the continuing improvement of judicial performance. At least six of the members were to be judges, at least two were to be attorneys and at least two were to be members of the public. The amendments also called for the Court to appoint a Judicial Evaluation Commission of at least three retired judges to assist the committee in the review of evaluation information and the development of programs.

XIII. CASE MANAGEMENT REFORM

From the outset, Wilentz embarked on a seemingly eternal quest to clear court calendars and end delays in case processing. He set calendar clearance goals in late 1979, and on October 22, 1981, he announced that for the second straight year since he took office and established calendar clearance goals, the courts had met them, cutting pending cases by 13 percent. "The accomplishment is significant," Wilentz said, "because it has stemmed for two successive years the seemingly endless accumulations of cases that congest court calendars and cause unwanted delays. While we still have a long way to go to totally eliminate backlogs and delays in New Jersey, we now have reason for

some confidence that we can conquer the problem of overcrowded court calendars."

Other methods of case volume control followed. In January 1985, at the behest of the Legislature, rules implementing the Mandatory Automobile Arbitration Program took effect. All cases involving noneconomic losses of $15,000 or less and medical expenses of $2,500 or less had to be arbitrated. The rules established a rebuttable presumption that all auto cases were arbitrable. The program disposed of 14,000 cases by settlement in its first year of operation.

Then, in March 1985, the Supreme Court Committee on Civil Case Management and Procedures—chaired by Justice Sidney Schreiber—published a report calling for a three-track system of case management. Cases would be treated differently depending on whether they were classified as expedited, standard or complex—a scheme that became known as differentiated case management (DCM).

Although the idea of processing cases according to their complexity drew wide support, certain aspects of the proposal had been generating opposition for months before it was published, especially from a special State Bar Association task force that had received the report before it became public. There was considerable concern, for example, about a proposal to eliminate jury trials in certain complicated cases. Alan Medvin, the president of ATLA-NJ, wrote to Wilentz in January 1985 calling many of the recommendations "too intrusive on the way in which attorneys choose to prepare individual cases, particularly with respect to proposals to unreasonably limit pre-trial discovery."

Nonetheless, the Court endorsed most of the recommendations and announced that DCM would be put into effect in a pilot program in Bergen County. In June 1988, the Court announced that Bergen County's two-year experiment with differentiated case management had been a success and that the program would be expanded to the rest of the state. Camden was the next step.

In November 1986, Wilentz appointed a 20-member committee to study how the judiciary might better respond to a huge influx of drug cases caused by Gov. Thomas Kean's massive anti-drug crusade. Wilentz said he wanted to know how the burgeoning caseload was affecting speedy trial requirements and the trial calendar.

Medical malpractice cases were the next major backlog target. In November 1987, Wilentz stated in a notice to the bar: "I have determined that immediate action must be taken to break the logjam now existing in the movement of medical malpractice cases." Wilentz then executed his trademark move: creating a committee to study the problem and recommend solutions.

Five months later, in March 1988, the committee reported that the problem stemmed mainly from the caseload of two defense lawyers—Richard Amdur of

Eatontown and Richard Grossman of Toms River. The AOC set up a special procedure to schedule Amdur and Grossman's cases for trials almost continuously.

In November 1991, the Court directed each county to form its own "complementary dispute resolution" program starting February 1992, according to the Court's Task Force on Dispute Resolution. The program, designed to reduce court backlogs, was to institutionalize fragmented projects across the state. Each county was to submit its plan to the Court. The program allowed for flexibility at the local level, but each local plan was required to meet certain criteria, such as a coordinated intake process that provided for early assessment of whether a case was appropriate for CDR.

XIV. ROTATING JUDGES AND FILLING VACANCIES

In an April 1988 letter to Michael Cole, Gov. Kean's chief counsel, Wilentz struck again at what he called the "twin demons" of trial delays and case backlogs. He called on Kean to fill 21 vacancies—amounting to 8 percent of the state's judgeships—and to push for the creation of 16 new judgeships during the next five years, including five by the end of 1988. Cole responded that he agreed on the need to fill vacancies, but added that the process of creating new judgeships could be complicated by the nascent movement for a state takeover all court costs.

Later in the month, Wilentz embarked on a controversial new policy of rotating judges through criminal, civil and family courts. All judges appointed after January 1, 1987 were required to move from their current assignments and all other judges were encouraged to move periodically.

In July 1990, in order to battle a growing backlog of criminal cases, Wilentz transferred 17 civil part judges to the criminal part. Five of the judges were to concentrate solely on new filings while the other 12 started working on the backlog. At the time of the transfer, the system had more than 6,300 indictments that were more than a year old.

Prosecutors were ecstatic, but civil practitioners grumbled. The judge shuffle caused ever-lengthening trial delays in the civil part. County government leaders also groused that county taxpayers would end up paying for Wilentz's backlog reduction program and his plans, announced later in the year, to upgrade the family part.

XV. MUNICIPAL COURT REFORM

In July 1985, the Supreme Court Task Force on Municipal Courts released a voluminous report at the annual judicial conference. Wilentz promised to use the report as a blueprint for improving the municipal court system, which the Chief Justice noted had been treated as a "stepchild" of the judiciary. By the

end of the year, the AOC had a new Municipal Courts Division and a director. Early in 1986, Wilentz appointed the state's first four municipal presiding judges. Many of the other recommendations—notably, that the courts become more automated—were implemented during the succeeding years.

In June 1988, the Court finally gave in to entreaties from practitioners and endorsed a one-year test program of allowing plea bargains in municipal courts. Lawyers said the practice had existed for years, despite the Court's official ban. Plea bargains in non-DWI cases were sanctioned permanently in 1990.

To provide indigent municipal court defendants with counsel, the Court ordered that all New Jersey lawyers be subject to pro bono assignments. In February 1992, in response to a challenge by a Burlington County firm, the Court ruled in *Madden v. Township of Delran* that the new pro bono system did not violate equal protection, due process or property rights of attorneys. However, the Court did order municipalities that run pro bono systems to spread the work among lawyers more evenly.

XVI. ASSERTING HIS AUTHORITY OVER JUDGES

In December 1986, Wilentz took the extraordinary step of issuing a memorandum to all judges criticizing a decision by Burlington County Superior Court Judge Martin Haines. In the ruling, Haines had written that judges should ignore a recent AOC directive instructing judges not to dismiss municipal court cases simply because the arresting officer failed to appear. Haines said the directive "trespassed upon judicial territory."

In the memo, Wilentz acknowledged that responding to another judge's ruling outside the normal judicial process was unusual but noted that Haines's decision involved the practices and procedures of the judiciary. "Our responsibility in that area is plenary and our power exclusive. That responsibility sometimes requires . . . comment." He had to write because "[w]e are concerned that unless clarified by this Court, [Haines's ruling] may interfere with the orderly administration of justice."

In September 1988, Wilentz again moved to counter the effects of what he considered a judicial mistake. After Morris County Superior Court Judge Paul Bangiola released on $500 bail a man accused of threatening to kill his wife, the man tracked down his wife and mother-in-law, killing them both and then himself. Bangiola did not know at the time that the man was a paroled murderer.

Wilentz sent a memo to assignment judges setting out stricter procedures to be followed in domestic violence cases. Among other things, assignment judges were told to make sure that bail was not reduced without first notifying the county prosecutor.

In August 1989, Wilentz issued a public statement criticizing Essex County

Superior Court Judge Paul Thompson's handling of the Hub Recycling & Scrap Co. case. State regulators had been trying to close down the dump and Thompson had, in fact, ordered it closed. But Thompson stayed his order pending an appeal. While the lawyers litigated, the dump burned and melted a section of Interstate 78. Wilentz's critique of Thompson drew the opprobrium of retired judges, individual lawyers and the State Bar Association.

Wilentz, though, stuck to his guns and said he acted to answer the attacks targeting the judiciary as a whole that erupted after the fire. The incident crystallized Wilentz's reputation as an activist administrator and a fierce defender of the judiciary's reputation.

XVII. ATTORNEY ADVERTISING REFORM

In December 1986, Wilentz authored *In re Petition of Felmeister & Isaacs*,[12] in which a divided Court relaxed the standard for attorney advertisements, requiring ads to be "predominantly informational" rather than "dignified." In the opinion, Wilentz announced the Court's intention to create a standing committee to administer the new rule and write new regulations, an idea first proposed by another Supreme Court committee in 1983.[13]

The Committee on Attorney Advertising was formed the next month, in January 1987.

XVIII. JUDICIAL HOUSEKEEPING

In a March 1989 letter to the state attorney general and a notice to the bar, the Court notified prosecutors that public displays of seized drugs, weapons or other evidence was prohibited under the Rules of Professional Conduct. Specifically, the Court cited RPC 3.6(b)(3), which bars extrajudicial statements relating to evidence that might be present at trial.

Responding to the complaints of three young lawyers, the Court in April 1989 announced that the phrase "in the year of our Lord" would be deleted from New Jersey law licenses. The three lawyers complained that the religious reference was inappropriate on an official document. The decision unleashed a storm of commentary, mostly negative, that continued for several weeks.

XIX. BAR RELATIONS

In March 1986, the State Bar Association began its own study of the AOC.

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[12]104 N.J. 515, 518 A.2d 188 (1986).

[13]*Id.* at 548-49, 518 A.2d at 205-06.

The Bar cited complaints from judges and attorneys that AOC officials treated them arrogantly and issued rules and practice changes without seeking input from those affected. The study apparently was not what Wilentz had in mind when, in a speech to the Bar convention the previous spring, he invited the association to become a "partner" with the judiciary. Despite his initial hesitancy, Wilentz later endorsed the study and promised to cooperate.

In February 1988, Wilentz acceded to a request from the State Bar and the Court to allow the Interest on Lawyers Trust Accounts Fund to distribute money to the cash-strapped Legal Services of New Jersey and the New Jersey State Bar Foundation. Most of the money—75 percent—was earmarked for Legal Services. New Jersey became the 48th jurisdiction in the country to set up such an IOLTA program.

In May 1990, the AOC and the State Bar agreed to exchange press releases and policy statements before issuing them to the public. No one really knew what would happen if one side objected to something the other side planned to release. The main goal of the pact, though, was to avoid situations in which the judiciary or AOC learned of some action by reading about it in the newspaper.

In 1992, based on the findings and recommendations of a State Bar task force that examined the structure and operation of the civil justice system, Wilentz formed a Civil Task Force Implementation Review Committee made up of assignment judges, civil presiding judges and senior court managers. In April 1993, the committee approved establishing a formal structure for channeling State Bar suggestions during the judiciary's budget process. The committee said the Bar's views on budget issues would be formally solicited through a special advisory group. But the committee balked at giving the Bar more than an advisory role, especially in budget matters.

XX. RACIAL BIAS IN THE COURTS

At the end of 1989, a Supreme Court task force had reported that the state court system was racially biased. After receiving the report, Wilentz said that racial prejudice is "especially intolerable in a system of justice" and promised that it would be eradicated.

In August 1990, the Court adopted a rule making it professional misconduct for lawyers to discriminate against anyone on the basis of race, color, religion, age, sex, sexual orientation, national origin, marital status, socioeconomic status or handicap "where the conduct is intended or likely to cause harm." The rule went beyond those adopted anywhere else in the country.

Soon after the rule was adopted, Wilentz ordered a review of the state's random audit program, which was designed to ferret out lawyers who misappropriate client funds. Minority lawyers had long complained that the program disproportionately targeted their accounts, a point Wilentz conceded might be

valid.

Wilentz appointed a Task Force on Minority Concerns to study discrimination in the New Jersey judicial system. The task force produced a 1,213-page report in August 1992, which made 62 recommendations for reform.

A year later, Wilentz, observing that "discrimination against minorities affects so many aspects of the justice system," announced the creation of a Standing Supreme Court Committee on Minority Concerns, the centerpiece of an "action plan" dealing with a range of issues, from questions on bar exams to the access of minorities to the courts. The plan adopted all but one of the task force's 62 recommendations, including proposals for sensitivity training programs, cross-cultural training programs, a procedure for handling discrimination complaints against judiciary employees and increased hiring of minorities in senior management and law clerk positions.

XXI. REGULATING THE PRACTICE OF LAW

In May 1992, the Court ruled in *Cynthia Jacob et al. v. Norris, McLaughlin & Marcus* [14] that law firms' no-compete clauses were unenforceable restrictive covenants that inhibited the right of lawyers to practice. The Court found that such clauses violated Rule of Professional Conduct 5.6 by impinging on a client's right to counsel by choice and improperly injecting commercial considerations into ethical matters.[15]

In October 1992, after years of debate, the Court decided to allow solo practitioners to sell law practices when they retired, moved to another state or died. Under Rule of Professional Conduct 1.17, lawyers were permitted to buy and sell law firms, including the goodwill built over the years, provided that the clients' interests were protected.

In March 1995, the Court upheld the so-called South Jersey practice of conducting real estate closings without lawyers, finding that it did not harm the public interest. The justices unanimously ruled that as long as adequate warnings and disclosures exist, title companies and real estate brokers can perform most of the functions typically carried out by lawyers at closings.

The decision, *In re Opinion 26 of the Committee on the Unauthorized Practice of Law*,[16] was a defeat for the State Bar Association, which had complained for years about South Jersey practice and hired outside counsel to bring the legal challenge. In *Opinion 26*, issued in March 1992, the unauthorized

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[14]128 N.J. 10, 607 A.2d 142 (1992).

[15]*Id.* at 18, 607 A.2d at 146.

[16]139 N.J. 323, 654 A.2d 1344 (1992).

practice committee said that some actions of real estate brokers in southern New Jersey counties—namely the ordering of title searches and drafting of deeds—amounted to practicing law. The Court rejected the findings but did set conditions on lawyerless closings, requiring that a disclosure notice be presented to buyers and sellers before they signed a contract of sale.[26]

XXII. CODES OF CONDUCT FOR JUDICIAL WORKERS

In August 1993, the Court adopted a code of conduct for the judiciary's employees, easing some restrictions but refusing to budge on others. Overall, the code loosened constraints on judicial employees' outside activities. Some professional employees who did not work with judges were permitted to participate in some community and nonpartisan political activities, and no restrictions were placed on nonprofessional employees participating in such activities. But the Court continued the ban on partisan activities, the one important issue on which it disagreed with the recommendations of the Committee on Professional and Outside Activities of Judiciary Personnel.

XXIII. COMPLAINTS AGAINST JUDGES

In the wake of criticism over the judiciary's handling of an internal complaint against Middlesex County Superior Court Judge Edward Seaman, the Court appointed a Committee on Sexual Harassment. In April 1994, the committee recommended that sexual harassment complaints against judges be completed within 160 days of the grievance.

Seaman resigned after the Court found he had committed judicial misconduct and suspended him for 60 days without pay. One of Seaman's clerks, Barbara Denny, filed a harassment complaint against Seaman in August 1989; the justices issued their decision in July 1993.

Other proposals called for clarification of confidentiality issues, the establishment of training programs and an expansive definition of sexual harassment. The committee's report set out a timetable under which the case should proceed. By the end of the 160-day period, the Advisory Committee on Judicial Conduct will have wrapped up the case.

In November 1993, the committee drafted a proposal to deal with similar cases. The plan recommended that "to the fullest extent practicable, inquiries and complaints will be kept confidential." The committee said that complainants may request to remain anonymous but that complete confidentiality "restricts options and may make it difficult to resolve the problem." The committee also said that disclosure may be necessary in certain cases and rec-

[17] *Id.* at 354, 654 A.2d at 1359.

ommended that assignment judges be given sensitivity training on sexual harassment issues.

XXIV. OPEN JUDICIAL DISCIPLINE

In February 1996, the Court's Committee on ACJC Confidentiality handed Wilentz a setback by recommending against the public discipline of judges. The AOC had announced in February 1995 that it was looking into whether it should make disciplinary proceedings against judges public. Wilentz thereafter appointed the committee, composed of judges, lay people, lawyers and Advisory Committee on Judicial Conduct members.

The committee urged continued confidentiality of the judicial discipline system, saying that "litigants' action groups" posed a real danger of interfering with the independence of the judiciary.

Some judges and attorneys familiar with the committee's report said privately that fear of reprisals from fathers'-rights groups was the primary motivation for retaining confidentiality. At present, proceedings against judges remain secret unless the ACJC finds that a judge should be removed, suspended or otherwise publicly disciplined.

One of the committee's three dissenters criticized the majority for using disgruntled litigants as an excuse to preclude public scrutiny of the system. He called the majority's recommendation "representative of protectionism of the worst kind."

The Court still has not acted on the committee's recommendations.

XXV. CHILD SUPPORT REFORM

In November 1994, Wilentz announced the appointment of a committee to examine New Jersey's child support enforcement system and to recommend ways to improve it. The Advisory Committee on Child Support Enforcement was to address improving customer service, eliminating delays in the process by linking probation division and family court computer systems, developing materials for litigants so they can represent themselves, and expanding the probation division's authority to access information, issue subpoenas to locate assets, and execute liens on liquid assets to collect back money.

The committee laid the groundwork for the rule amendments adopted by the Court earlier this month.

In March 1996, the Court's Family Practice Committee urged major changes in how judges should determine child support payments. Under one of the recommendations, judges would determine alimony before awarding child support and would include that alimony when determining the custodial parent's income.

The committee also recommended that judges take into account a noncus-

todial parent's visitation time when calculating alimony. A subcommittee of that committee has taken up a more divisive issue, recommending against jury trials for Family Division plaintiffs seeking monetary damages for domestic violence. The majority said permitting such trials would overtax the system.

XXVI. STATE TAKEOVER OF THE COURTS

Wilentz finally achieved his goal of a financially unified court system last year. As the result of a 1992 constitutional amendment, nearly 8,000 Superior Court employees were moved onto the state payroll in January 1995 as the state assumed the cost of running the court system.

For years, county governments had been required by law to pay for the costs of running the courts, but had complained about not having the authority over how the money was spent. Wilentz, a strong advocate of the takeover, complained just as hard about the courts having to beg the counties for sufficient funds. Wealthier counties had better court systems because they were able to raise more money through property taxes and therefore were able to hire more staff, he said.

Wilentz said that the change would result in equal justice across the state. "State funding will finally achieve the goal of our 1947 constitution: it will give us for the first time a truly statewide judiciary." He also said the change would result in equal pay in all counties.

XXVII. THE WORK UNDONE

Wilentz resigned from office early due to illness, but had he served out the remaining months of his term, he could not have achieved all of his plans for improvement of the court system and, hence, the quality of justice in the state.

On May 1, shortly before his resignation, a second Committee on Efficiency had recommended more organizational changes to the courts, such as consolidating the trial courts into only seven vicinages; creating a new level of chief presiding judge for the civil, criminal and family divisions; and standardizing court practices throughout the state.

The committee cited "widespread disparities in human, physical and technological resources " in the existing 15 vicinages. It found that "an adequate range of meaningful judicial performance standards and measures does not exist." And it called the existing personnel system, which is fragmented into counties, prone to producing "inconsistent levels of performance from vicinage to vicinage."

Wilentz welcomed the report, calling it "a blueprint for the future." There is no doubt that had he been able to stay in office longer, he would have relished the opportunity to implement the committee's proposals. They were, after all, designed to do that which Wilentz had tried to do all along: create a

uniformly high standard of justice in the state, one that court systems elsewhere would strive to emulate. And as much as he accomplished toward that end, he clearly thought there was much more to be done.

His remarks at an April 9, 1981 address to the State Bar Association's Long-Range Planning Conference offer a good synthesis of how he saw his mission: "In going about your work, I urge you to be visionary," he said. "The progress we have made to date, while modest when compared to public expectations, goes far beyond what anyone dreamed of 20 years ago: peer review, judicial improvement programs, a clients' security fund, public interest law firms, an Advisory Committee on Judicial Conduct, public involvement on significant committees, legal services corporations, public defenders, prepaid legal services, a public advocate and much more.

"Anyone who proposed that 20 years ago would have been called a dreamer. Yet had we all dreamed, how much farther along would we be in meeting public expectations which have far outdistanced our capabilities? So, be visionaries. After all, the purpose of a long-range planning conference is not to predict the future, but to shape it."