

## The Defender

*Benjamin F. Wilson, Beveridge & Diamond's new managing principal, sees representing business and governmental clients not only as a mandate to achieve their goals but as an opportunity to benefit the environment and civil rights*

**B**enjamin F. Wilson played cornerback on the Dartmouth football team's defense. A cornerback responds to a receiver's every move with a move of his own. Any failure can result in a touchdown. If the role is played perfectly he can force the other team to respond to his moves or even score himself.

This is the way litigator Ben Wilson has been playing for his whole professional life, where he has been primarily on defense or counseling clients to avoid being on the defensive. Just as on the field, in law success means preparation and skill. Wilson's life story is based on his commitment to constantly upgrading both. More recently he has realized that, even with the most meticulous preparation and skill, and with the law as a rulebook, sometimes the game can be unfair — in this case to minorities and the poor, who can shoulder the brunt of damage to the environment. But environmental litigation also offers an opportunity to rectify environmental injustices.

After 30 years serving both in government and the private bar, Wilson earlier this year in effect became coach of his team — he was named managing principal of Beveridge & Diamond PC. He took the position with some reluctance, he says, because in addition to his practice he serves on the boards of several civic and educational organizations, and he teaches two courses at Howard University Law School. He collects inspirational speeches, and one from 45 years ago made the decision for him — President Kennedy's avowal that the United States would go to the moon and meet other challenges “not because they are easy, but because they are hard, because that goal will serve to organize and measure the best of our energies and skills.” He recognized in that admonition his lifelong credo.

Wilson grew up in the segregated South, where both his parents were professors at Jackson State College (now University) in Mississippi. Fate smiled on him when a student forfeited a scholarship to a small prep school in Massachusetts and Wilson was able to go despite his parents' small salary. But he was a lackluster student at first, he admits. Then he overheard some students whom he admired discussing their goal of being accepted at Dartmouth. “What would it take to make it in?” one of them asked. “At least making the honor roll and it would help to have high board scores.” Suddenly, he wanted to go to Dartmouth too, he knew what he had to do, and he committed himself to the effort it would take. He made it, then won honors in college and graduated from Harvard Law School.

After receiving his J.D. he wanted to live in the



South with his wife, whom he met the first day of law school, and turned down several jobs to take an offer from King & Spalding in Atlanta. It soon proved to be the right move. The practice consisted mostly of motions but he constantly was on the lookout for opportunities to try cases. "Litigation appealed to me because I'm competitive," he says today. "Litigation was a way of testing myself against others, as had football been before." He sought other ways to organize and measure his energies and skills, to paraphrase Kennedy. His next avenue was writing articles. "I wanted to improve my writing to organize my thinking. And I wanted to write about something I cared about, something that would make a difference." He worked in the tax department, where he became aware of the "segregation academies" set up by southern whites to avoid integration. The private schools were granted 501(c)3 tax-exempt status by the Internal Revenue Service. "I questioned whether they should be able to maintain that status. They were exclusively created to avoid and thwart federal law." He published several articles in the *Georgia State Bar Journal* and *Taxes the Tax Magazine* tracking developments as rulings came down. The segregation academies were seriously weakened by the threat of losing their 501(c)3 status.

Seeking trial experience, he took a job as a litigator in the Civil Division of the U.S. Department of Justice, primarily defending the government but from time to time playing on offense as well. "I learned to litigate there, how to track cases, how to defend cases,

handling oral arguments," he says. Self improvement remained his mantra. "I wanted to make sure that I really knew how to try a case, that I could write a brief that was persuasive," he says. "I never wanted to be in a position where I felt like I was compromising my client because I was not confident about how to properly defend or prosecute his case."

It was not until he left government in 1983 that he tried his first environmental cases, at the firm of Rose, Schmidt, Chapman, Duff and Hasley in Washington, D.C. He at first found himself working as a gopher on a case for the Puerto Rico Aqueduct and Sewer Authority, which was cited with several violations of its facilities' National Pollutant Discharge Elimination System permits. "We wanted to bring our client into compliance while at the same time defending the claims," he says. He sought greater responsibility, so he took it upon himself to visit the facilities and meet with the engineers, then help develop the defenses. That case served as a model of sorts. A significant part of his practice today involves representing municipal agencies and municipalities

across the country, primarily in the Clean Water Act and Clean Air Act area. And he still visits the sites and meets with the engineers — only recently he was down below the streets of Chicago in the huge tunnels built to manage the city's stormwater, helping to defend the city against federal charges under the CWA's combined sewer overflow regulations.

**W**ilson was named partner two years later but the firm lost its most significant client. In 1986, he accepted an offer from Beveridge & Diamond PC, which needed someone who had experience defending municipalities and agencies against claims under the water and air statutes. "I turned down an offer from a firm that would pay more money and did not require me to develop clients — they had all the work already." Perversely, the easy path did not appeal to him. "I never wanted to be without my own clients again. I didn't know how to develop them but I wanted the opportunity. I wanted to be self reliant."

He started out representing the city of New Haven, which not only had a Clean Water Act case on its hands from the state but also had a case against the manufacturer of wastewater equipment whose failure to work as advertised led in part to the alleged violations. "My opposing counsel in the state action decided he was going to take the deposition of the mayor. He wanted to take the deposition during Christmas week — he wanted to embarrass the mayor. But he made one mistake — he underestimated me."

Wilson says somewhat waggishly that he knew his way around New Haven, having played in the Yale Bowl, but more importantly he argued that the precedent was that unless a high official like a governor or a mayor has information peculiar to him or her that cannot be obtained elsewhere, the official cannot be deposed. "The whole tenor of the case changed. The judge understood what our opponents were trying to do and we started to build credibility. And we were able to develop theories and arguments that were very helpful to our client." The city won a favorable settlement from the state and Wilson helped to secure a settlement against the equipment manufacturer too. With the firm's assistance, the city ultimately came into compliance and operated under a consent decree.

About that time the Port of Oakland, California, came to B&D seeking representation in its effort to expand its airport by building a huge terminal. The port wanted the airport to be the West Coast hub of UPS and FedEx, which would mean 12,000–15,000 jobs. The state challenged the plan because it would

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require filling wetlands — it was at the time when the “no net loss” policy was going into effect, and the wetlands were an important stop on the Pacific flyway. “It was a difficult case,” Wilson says, “an example of jobs versus the environment.” Not only was Clean Water Act policy at issue, so was the Endangered Species Act. The Audubon Society chimed in as did local citizens — “the case presented a classic law school final exam question,” he says. Wilson helped to broker a compromise whereby the port was granted permission to build the terminal while it constructed mitigating wetlands. The case was a springboard for him. “I began to speak on environmental topics, to develop contacts with corporate America and municipal governments, building a reputation by winning and settling cases in a favorable manner on behalf of my clients.”

The New Haven and Oakland cases, plus others representing business clients, helped him to understand his role in working for an environmental law firm. “I found that environmental litigation and counseling touched upon a lot more than just the physical world. The practice of environmental law is more than a technical specialty, but indeed an opportunity to have a beneficial impact on people and their communities. The fact that our clients are often businesses or government agencies doesn’t change that fact. Businesses and government often want to do the right thing, but the world is a complicated place. They need expertise in order to navigate between the imperative to compete and the desire to function as good citizens.” In the end, Wilson says, “the environment must be protected.”

**D**uring the course of his practice, Wilson began to notice “a dearth of attorneys of color in environmental law. For instance, I would be handling a Superfund matter and there would be hundreds of people in a room and I might be the only person of color, or one of two. Oftentimes when I would try cases no one else present was black. And not only was there a dearth of persons of color in the private bar, it was true of state government, the federal government, and environmental groups.” Wilson excepts the judiciary, where he lauds President Clinton for seeding the bench with African Americans in the trial and appeals courts.

Wilson joined a group of lawyers who asked him to approach Kurt L. Schmoke, dean of the Howard University Law School, a law school classmate — “and, incidentally a very aggressive football player at Yale,” he adds — about establishing an environmental law program. The only professor teaching in the area had become ill. So along with two other attorneys, he began

to teach a survey course in environmental law in the fall and a course in environmental justice in the spring, and prevailed upon others to teach a course on international environmental law. The goal is a full program, including a law clinic, taught by full-time faculty. Last year the instructors held an environmental justice conference at Howard that attracted 400 lawyers and activists and they expect to repeat the conference this May. The initial conference “was as diverse as any conference I’ve ever attended. Quite frankly when I’ve attended conferences on EJ I don’t always see a diverse audience. It’s important that the people who are directly affected also be involved. I had a student who said to me she thought environmental justice pertained to other people, meaning whites. Katrina helped us realize that environmental issues affect everyone.”

New Orleans is also the site of an environmental justice success story that Wilson helped bring about five years ago that he sees as a textbook case for his students. “Historically, New Orleans had two beaches, Pontchartrain Beach, which had a small amusement park, and Lincoln Beach, which was the black beach. Like so many things in the deep South after integration Lincoln Beach was abandoned.” That has been changed. When the city of New Orleans was charged by the federal government with spilling raw sewage into waterways, Wilson saw an environmental justice opportunity. He helped to broker a consent decree with the Department of Justice in which the city agreed to fix its aging sewer system, paid a fine, and agreed to a \$2 million supplementary environmental project. The SEP would restore wetlands adjacent to Lincoln Beach and restore the beach itself, plus it included a recreational facility. “The fundamental issue of the case was the Clean Water Act, so restoring wetlands provided us a nexus between the original claim and what our SEP would be.”

Wilson believes other lawyers in the private bar can address environmental justice issues in the course of defending clients. “There is no question in my mind that whether we’re talking about Clean Water, Clean Air, the National Environmental Policy Act, wherever we are evaluating cumulative impacts on a community from a project, there is an opportunity to address environmental justice issues. There is an opportunity to come up with mitigation through existing law.

“Environmental justice is the civil rights of the 21st century — that’s our mantra at Howard. Environmental law may initially seem remote or technical. But with time, I hope that the students and my colleagues, as I did, will come to see the interplay of law, business, and environmental sustainability as having its place in the social justice continuum.” — **S.R.D.**

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