

State of the New Jersey Judiciary
Chief Justice Deborah T. Poritz, New Jersey Supreme Court
Message to the State Bar
May 19, 2006

Report to the annual meeting of the New Jersey State Bar Association at Atlantic City, New Jersey, May 19, 2006, given by Chief Justice Deborah T. Poritz.

Today I speak to you for the last time as chief justice of the New Jersey Supreme Court. In just five months I will leave office and, next year, a new chief justice will no doubt address you at this, your annual spring meeting. I am pleased that we have engaged in a conversation between the bench and the bar, and I hope that it will continue in this forum and in others.

When we work together, when we seek to understand one another, when our dialogue is civil and thoughtful, we do well, and the public is well-served. Although we have not always achieved the understanding I might have hoped for, we have accomplished a great deal over the past 10 years. Most often, we have engaged in a collegial and deliberate consideration of issues important to both of us, acting only after fact-gathering and reflection, and most often, our dialogue has been productive.

That is when we are at our best.

A 'BEST PRACTICES' CODA

In the spirit of that observation, and to recapture some part of the story of the past 10 years, I want to talk to you one last time about best practices. At the judicial college in November, I tried, perhaps prematurely, to say a few things about what the courts had accomplished during those years. I will be brief today.

So much that happens to us is fortuitous -- I think Woody Allen made that point in his last movie, both in the plot line and when one of his characters said something like, it's all luck. When I came to the Court in 1996, the legislation that provided for state funding of the court system was finally in place, and the judiciary was faced with the task of unification on the ground. As you well know, practices and procedures in our courts varied throughout the state, resources varied throughout the state. No one had a manual of instruction on how to do what had to be done.

Today, that process of unification is essentially complete. Indeed, last year I reported that we had concluded our work on the administrative reorganization necessary to run the new statewide system, and that we had in the eight years between 1996 and 2004, redesigned and refocused our governance structures and established new rules of practice. The blueprint for New Jersey's unified courts had become a reality.

It was in 1996 that we began, in earnest, to establish the framework for a justice system that operates the same

way, whether a case is filed in Parsippany, Pemberton, or Penn's Grove. We believed then -- and now -- that the way the system dispenses justice should not depend on where one lives in New Jersey. Today, it does not.

Today, we have formal standards in respect of case processing, vicinage organization, and administration; we have vicinage visits by division leaders to ensure that the statewide model is followed, and to improve our practices so that we can learn from one another; we have unprecedented backlog reduction; and we have moved closer to our goal of trial date certainty, a goal long sought.

And that is only a part of what has been accomplished.

But it does, I think, put best practices in perspective.

For the New Jersey courts, those words -- best practices -- have a special context. As we tried to establish uniform practices we, naturally, tried to build on best practices. Put another way, when you have a chance to redesign a system, the challenge is to find out what works best and to incorporate those practices into the new framework.

Many of you will remember that we sought input from the bar at various stages of the process, and many of you know that we continue to meet and discuss issues of concern. Change always requires adjustment, even good change. We get used to doing things a certain way and find it easy to keep on doing them that way, even when there are better ways.

My message to you today is simple. We are past that now. No longer are we involved with the development of best practices. We are, today, talking about the New Jersey court rules, the rules that govern the conduct of litigation in our courts.

It is time to move on.

That admonition, notwithstanding, you know that there are avenues for continued adjustment to the court rules. We have, for longer than I can remember, had rules committees -- the Civil Practice Committee and the Family Practice Committee are two that come to mind. They are appropriate venues for lively debate about the rules and there are prominent members of the bar on all of our practice committees.

Moreover, we have separate statewide bench-bar committees on standardization issues (the Family Division Statewide Committee, at the request of the bar, was put in place at the beginning of this court year), and bench-bar committees in every vicinage that serve as specialized venues for discussions about problems with rule implementation and ideas for improving the system.

The mechanisms are there to make adjustments when they are warranted.

It is time to put the term best practices in the trash bin with other outmoded terms like bench time and calendar clearance.

It is time, now, to move on. And so I will.

BRINGING BACK IDEALISM

Actually, in this last speech to you, I want to engage in a different discussion, not about the judiciary, but about the New Jersey State Bar Association, on a subject that I have long considered and never discussed with you.

Last year Michael Greco, president of the American Bar Association, started a campaign. His call during his tenure has been to bring idealism back to the profession. State and local bars around the country have echoed his call.

The need to bring idealism back to the profession is, I believe, critical. The concept of giving back to the community seems somehow to have been lost in the rush to succeed and the focus on activities directly related to lawyers' professional needs.

And yet it was not always so. When Thomas Jefferson and George Wythe laid out the principles for the law school they founded in 1779, William and Mary, they turned from the apprentice-based system used in England, with its emphasis on creating skilled practitioners, to the concept of the citizen-lawyer, the skilled practitioner who was in, and of, the community. The idea was that lawyers should be servants of the public interest, entrusted with the responsibility to protect and defend the rights of their neighbors and friends, and of the community.

Many state bar associations have incorporated the concept of public service into their mission statements, including among others, Alaska, Arkansas, Georgia, Hawaii, Maine, Maryland, Massachusetts, Mississippi and Montana. Examples of some of those mission statements illustrate the point: the Nebraska bar, helping lawyers help people; the Nevada bar, striv[ing] to make sure the law works for everyone and the Pennsylvania bar, see[ing] that no one, on account of poverty, is denied his or her legal rights.

It is with this sense of social justice that many of our young men and women enter law school. They want to do good. They want to help. They want to make their neighborhood, their country, their world a better place. But over the last 25 or 30 years, it has been difficult to maintain that idealism.

Tuition costs at law schools have soared; starting salaries at not-for-profits have not. The expectation for billable hours has expanded; the number of hours in a day has not. Work and family obligations consume every waking hour.

And yet in New Jersey, tens of thousands of income-eligible people needing attorneys are turned away each year by Legal Services of New Jersey because there are no resources to help them. The most any family of three can earn to be income-eligible is \$33,200, well under half the median income of the average New Jersey family of the same size.

There are 1.9 million such people in New Jersey. Legal Services of New Jersey is the biggest of the not-for-profits

providing free or low-cost legal services, and L.S.N.J. has fewer than 250 staff attorneys to help those people when they need help.

A 2002 study showed that one in three people living in poverty needs the help of a lawyer, but only one in six gets one.

L.S.N.J. reports that for 2005, its attorneys were able to accept only about 50,000 of 200,000 requests for help. Some of those people were served by other not-for-profit entities; most were not. Many people do not even seek help because they do not know where to go, or believe (accurately, I'm afraid) that they will not find what they need.

Did you know that there are between 62,000 and 63,000 active attorneys in New Jersey? Some are restricted in their ability to provide legal assistance on a pro bono basis -- judges, prosecutors, law clerks, among others. But remove every attorney who gets a Madden exemption, and roughly 43,000 attorneys remain.

In the 12-month period between April of last year and March of this year, 456 lawyers actually volunteered their services to L.S.N.J. -- 456 lawyers took some 1,100 cases among them, 456 lawyers out of roughly 43,000 lawyers. The New York City Bar Association, which has a 136 year-long tradition of public service, has a participation rate in pro bono programs of between 14 and 20 percent. Our participation rate is barely over 1 percent. If I include Madden assignments (I have numbers for 2003), the percentage jumps to a little over 5 percent, not 20 percent.

I realize that those numbers are an oversimplification. Other attorneys have donated their services to other organizations -- the Community Health Law Project, the Essex County Volunteer Lawyers for Justice, the Pro Bono Partnership, the ACLU, the judiciary's mediation program and other equally worthwhile, equally necessary programs.

Last night I heard your new Bar president, Wayne Positan, outline initiatives he plans to implement this coming year. His concerns for diversity in the legal profession and in disaster planning are public service initiatives and I applaud him for them. I know that he is very active in the American Bar Association and hope that he too will take up President Greco's call, even as President Greco steps down.

In a recent letter to the Assembly Budget Committee on April 4, Wayne outlined other pro bono efforts of the bar. He wrote about the volunteer lawyers who have already provided legal assistance after a disaster. (I remember visiting some of those attorneys at Liberty State Park after 9/11.) And he wrote about the program the State Bar is currently developing for Iraq War veterans and the expectation that from 2,000 to 3,000 armed services personnel will use the program. Those are important efforts and I applaud the bar for them.

I urge you to continue to do what you are doing to help, and I urge you to do more, for L.S.N.J. and for other public service providers. We care as much as New York City lawyers do, don't we?

In closing, I would repeat the words of Justice Ruth Bader Ginsburg: Lawyers who regard themselves as professionals and not as mere journeymen have done something beyond the

practice that gives them their income. The true professional works not simply for his or her own good but to make his community, his nation, her world, a little better because she or he lived.

And, with those words, and with a good day and good luck, and goodbye, I will close.