

State of the Judiciary
Chief Justice Stuart J. Rabner, New Jersey Supreme Court
Address to the State Bar Association
May 16, 2014

Good morning, everyone. Thank you especially to my colleagues on the bench for the work you do each day, with dedication and skill, to enhance the state's system of justice.

Thank you to Ralph Lamparello, who just completed a term as bar president, for his remarkable dedication to the bar, the judiciary, and the public. We are all deeply grateful for Ralph's efforts and leadership.

Congratulations to Paris Eliades on his installation as president last evening. We know that the hand-off will be a smooth one and very much look forward to working together in the year ahead.

It's an honor to appear again with Chief Judge Simandle, and to report to colleagues in the judiciary and the bar on the state of our judiciary.

I'd like to speak about a number of projects that are important to the public and the courts. Several of them are underway; others are under consideration for the coming year. All of them reflect the important work that goes on in the State Judiciary each and every day.

A few months ago, we marked the five-year anniversary of the Veterans Assistance Initiative. In anticipation of the large number of veterans and members of the New Jersey National Guard set to return from tours of duty in Iraq and Afghanistan, we set up a pilot project in Atlantic and Union counties. It was designed to identify veterans entering the criminal justice system as defendants, in Municipal and Superior Court, and to refer them to outside agencies for available services.

In the years before the initiative started, more than 4,000 members of the National Guard were called overseas for duty. That included the largest call-up since World War II. We knew from past experience that veterans returning from combat might have difficulty adjusting to civilian life and might end up in trouble with the law. Underlying a criminal offense, we understood, there could be substance abuse problems, mental health issues or other concerns. So we created steering committees of existing service providers who could help.

Over time, the project spread from two counties to every vicinage in the state. In the past five years, court staff and judges have referred more than 2,400 veterans for assistance.

Our hope throughout has been to help improve the lives of veterans who appear in criminal matters so that we do not see them a second time in the criminal justice system. Today, thousands who sacrificed for and served our nation have benefitted from that approach.

At the same time that we began the veterans initiative, the state was in the midst of a crisis involving mortgage foreclosures- a crisis that is not yet over. With a large and growing number

of foreclosure filings per year, we took steps to respond to pressing needs tied to the work of the court system.

We announced a statewide program and required mediation as part of all contested foreclosure actions. We encouraged mediation in uncontested cases as well, which amount to 94 percent of filings. The effort had a simple purpose: to get the parties, lenders and borrowers to meet at the table and try to work out agreements to avoid foreclosures.

By early 2009, 700 lawyers had offered to serve as mediators. They participated in training sessions that the AOC conducted and got to work quickly. The Office of Dispute Settlement now handles that aspect of the project.

In the five years since the program began, more than 11,000 cases have completed mediation, and more than 5,000 cases have been settled-before, during and after actual mediation sessions. That represents more than 5,000 instances in which underperforming loans on a bank's balance sheet have been turned around, and more than 5,000 families whose homes were not foreclosed.

Regrettably, we've seen growth in the number of foreclosure filings this past year: they've gone from nearly 64,000 filings in 2010, to 19,000 in 2012, and back up to 42,000 in 2013. We anticipate even more filings this year. We will continue to devote resources to this crisis and hope to make continued use of this successful mediation program, which has made a difference.

Last year, the Judiciary announced the Guardianship Monitoring Program, an initiative designed to monitor the work of thousands of court-appointed guardians. Recent news reports underscore the importance of that effort-of reviewing annual reports that monitors are required to file with the Surrogate's Office.

Guardians, of course, are appointed to help the elderly, people who suffer from mental illness and other disabilities, and, in general, those who cannot manage their own affairs. Guardians have full control of an individual's assets and make a variety of important personal decisions on behalf of those they promise to help.

As I've said before, the overwhelming majority of guardians are loving family members and honest professionals, who carry out their duties as we hope they would, and beyond. But that's not true in all cases. That's why the Judiciary reached out to volunteers to enlist their help in researching case files and reviewing reports generated each year. Volunteers have been trained to use a web-based computer program, which the Judiciary created inhouse, to report any potential problems they find. Judiciary staff, in turn, relay that information to judges, who can follow up in a particular case by bringing the guardian to court for an explanation, replacing him or her, or referring a matter to the prosecutor's office if necessary.

The program has unfolded county by county and is now live in 17 counties. We expect it will be operational statewide within two months. To date, volunteers have entered data in more than 1,200 cases, reviewed hundreds of annual reports, and relayed one urgent report to the court, which is being pursued.

In the end, we expect not only to uncover problems but also to deter people from committing fraud. In doing so, we hope to help people who can't protect themselves—a meaningful and important endeavor.

Another critical focus of the Judiciary in recent years has been to use technology to make the courts more efficient, accessible and user-friendly. I can't overstate how vital that is to our future.

Courts have become more accessible in a number of ways. Today, tax court opinions are available online, attorney discipline decisions are as well, and there is an online attorney index of more than 70,000 names. All of that has been done in the last five years.

Courts have also become more efficient. We now have mandatory e-filing for large filers in Special Civil Part. Last year, 208,000 cases were filed electronically, which amount to 88 percent of filings for that part. That resulted in savings in processing time and ease of use for judges and staff.

Judges and lawyers are now able to access hundreds of model jury charges in criminal cases, which has made it much easier to prepare jury instructions and provide hard copies to juries for their use in deliberations. And instead of making trips to county courthouses to search for liens, people can now do so online through a recently created online index of civil judgments.

Courts have become more user-friendly as well. We summon 200,000 jurors to court each year. Fifty-seven percent of them now respond to jury questionnaires online. In the past half year, we have begun sending those jurors text messages to remind them of their service days in advance and to tell them, the night before and each night during their service, whether they have to show up in court the next morning. More than 112,000 jurors have received those texts in the last six months. We are the first state in the nation to have done so, which prompted the National Center for State Courts to highlight the practice to state courts nationwide.

Following up on that development, just months ago the Judiciary created a commercial app, "NJ Juror," which can be downloaded at no cost. It tells jurors how to get to the courthouse, where to park, where they can eat, and provides links to the Judiciary's website and details about jury service.

Six weeks ago, a thoughtful assignment judge asked if we could do that for lawyers to help them navigate their way through courthouses around the state as well as the court system. Today, I'm pleased to announce the "NJ Attorney" app, which can also be downloaded for free to mobile devices. It was designed for practicing lawyers. It has features similar to the juror app and a host of other useful information as well. For example, an attorney can use the app to get contact information for judges and staff to file an emergency request for an adjournment; to pick CLE courses from an approved course catalogue; to get updates about court closings; to look up an adversary in the attorney index; and even to access the Rules of Court and Rules of Evidence in a pinch.

There's a display table in the large hall where you can watch a demonstration, or you can download it right now and see for yourself. I won't be offended. Our hope is that this new, free tool will make sometimes hectic days a bit more convenient for all members of the Bar.

Talented staff members in the Judiciary developed those useful items at minimal cost. But they don't address the core challenges the Judiciary faces in this area. We need to develop a comprehensive e-courts system of electronic filing and case management to handle the broad array of case filings, and the more than one million filings per year.

We're taking an important step forward in that regard right now. I'm also delighted to announce today that the Judiciary has developed a system to accept motions and accompanying documents online in criminal cases. The system will give lawyers, judges and court staff the ability to access those filings remotely, at any hour.

We began working with prosecutors, public defenders, judges and court staff in the Burlington, Essex and Camden vicinages, where the project has been underway for more than one month. We have since moved on to a half dozen other vicinages, where this effort is also up and running. In the coming months, we hope to extend the project statewide and to private counsel as well.

This is an important step, but only a step. To design, construct and maintain new systems for other case types and filings-as we must-we cannot proceed with our existing budget alone. That will require a sustained, additional funding source. We look forward to working with you on that challenge so that, together, we can better meet the needs of lawyers and the public.

Let's talk about some other important ideas with an eye toward the future. At last year's conference, we discussed some overriding concerns about the justice system: how to resolve outstanding criminal charges more quickly; how to address the problem of having too many defendants held in custody pretrial; and how to resolve disputes in civil cases more promptly and at a lower cost to litigants.

Those access-to-justice issues involve the Judiciary as well as our partners in the private bar. So we set up two committees to review those questions. They were comprised of judges and experienced practitioners; members of the executive and legislative branches also served on the criminal committee.

The Joint Committee on Criminal Justice issued a comprehensive report in March. It contains a series of recommendations that call for bail reform and the enactment of a speedy trial act. The principal recommendations were unanimous; they had the support of the Attorney General, the Public Defender, judges, representatives of the executive and legislative branches and the ACLU, and prosecutors and defense counsel-all of whom spoke with a single voice.

As to bail, the report proposed, in short, the use of an objective, risk-assessment tool to assess the level of risk of flight and danger an individual defendant poses; less reliance on the current system of monetary bail, under which poor defendants who pose little risk of either flight or danger sit in jail for long periods; pretrial release of defendants under appropriate conditions that will be monitored by pretrial services officers; and an amendment to the State Constitution to

allow for pretrial detention as a last resort, for defendants who present a great risk of flight or danger to witnesses or the community.

As to speedy trial, the report recommends the enactment of a new law that would require defendants to be indicted within 90 or 180 days of arrest, and to be brought to trial within six months or one year. The earlier dates would apply to defendants held in custody, with appropriate exclusions of time to extend those periods, similar to what exists under federal law. The report also recommends other, more minor proposals to be adopted internally.

The response to the report has been encouraging. We have been working with the governor's office and the legislature to assist as they evaluate parts of the report that require legislative action. We are pleased to continue to work through those thoughtful ideas for the criminal justice system in the coming weeks and months.

The Committee on Expedited Civil Actions, chaired by Justice Fernandez-Vina and former Bar President Tom Curtin, also issued a report last month. It had a dual focus: to look at the pretrial process, in particular, how to bring civil cases to trial more quickly and make litigation more affordable; and also to look at ways we might conduct civil trials more efficiently and at a lower cost.

The committee examined efforts by many other states that have wrestled with these same issues. The group recommended a pilot project in two or three vicinages with certain limits on pretrial discovery, allowing greater discovery for more complex cases; more proactive case management early on; date-certain trial dates for participating cases; more effective ways to exchange information days before trial, to cut down on delays and objections midtrial; fewer peremptory challenges to save time selecting a jury; and limits on opening and closing arguments.

It's important to have a few things in mind as we assess the report's recommendations. First, let's stay calm. The proposed pilot is intended for Track I and II cases with generous opt-out provisions. Presumptive grounds to opt out include a request by both sides, without more; if a case involves complex or multiple theories of liability; if there is a need for extended discovery; or any factor that would demonstrate that assignment to the pilot project would substantially affect a party's right to a fair and just resolution of a case.

Second, the report was intended to jump-start a conversation, and I am pleased that it has. Examine the report; criticize it; and suggest ways to improve it. The attorneys on the committee who came up with the proposals—from the plaintiff and defense sides, and from the business community— all realize that there is no single, perfect way to approach the topic. But the conversation must be had as litigation costs rise, as more and more people are priced out of the civil justice system and can't afford lawyers, and as new attorneys have fewer opportunities to try cases. We have seen steady growth in the number of self-represented litigants. We also know that clients—even those with substantial means—prefer streamlined, more affordable proceedings in the right cases.

So let's work together on this timely issue. One of the sessions later today is dedicated to the proposal. I hope you will attend and offer comments to the court during the comment period,

which will be examined with care. Let's proceed in the spirit the project has followed from the start: to try to develop a program that will benefit lawyers, clients and the overall civil justice system.

Let's touch briefly on one other report that was issued last month by the Working Group on Business Litigation. The group was chaired by Assignment Judge Peter Doyne and comprised of judges, attorneys whose practices are dedicated to business disputes, Senator Barnes and Assemblyman Russo, a representative of the New Jersey Business and Industry Association and others.

They examined the particular needs of the business community regarding complex commercial disputes, and reviewed the way the Judiciary handles those cases: with General Equity judges in each vicinage; a multicounty litigation program in three parts of the state; and a number of pilot projects over the years.

The working group published a series of recommendations: to assign one judge in every vicinage with a background or level of expertise in complex business issues to oversee those cases; not to rotate that judge frequently, to allow for greater stability; to develop a way to readily identify cases that would qualify as complex commercial matters so that the bar and litigants can react accordingly; to set a substantial \$200,000 threshold amount for cases to be included in the program; to encourage designated judges to publish more opinions to provide greater guidance to the bar and industry; and to publicize the program with the help of the bar and the business community.

The group's focus was not on creating a business court. Historically, New Jersey has not been served well by different courts with overlapping jurisdictions. Before the 1947 Constitution, that was a recipe for confusion and delay. Instead, the working group focused on identifying and meeting the reasonable needs of lawyers and litigants who present complex commercial cases. We invite comments on this set of proposals as well, before the court considers the recommendations.

To be sure, all three reports-covering bail reform and speedy trials in the criminal context, expedited civil actions and complex commercial cases-propose significant changes to how the court system operates. And all are intended to improve the Judiciary.

Why focus on these issues today? Because whenever I speak to lawyers, students, civic groups and even judges, my goal is to try to advance the cause of justice.

How do judges do that? There are many ways. We develop new initiatives to improve the justice system and our ability to serve the public fairly-not only poor defendants who cannot post \$500 toward bail but also Fortune 500 companies and all those in between. We make decisions and strive to draft opinions that are faithful to the rule of law. We try to treat people who come to court with respect and humility-and recognize that each matter, large and small, can have a profound effect on people's lives. And we strive for excellence and integrity every day.

Those are some of the responsibilities that judges who are privileged to serve the public must live up to. They aren't novel concepts. Jethro had them in mind when he advised Moses to set up a system of judges thousands of years ago; and years from now, we hope that judges will continue to try to live up to those same ideals of public service.

Judges aren't alone on this journey. Just this week, I had the chance to serve on jury duty in my home county of Essex. I saw the extraordinary efforts of jury managers and staff who represent us so well. I also watched scores of fellow jurors. It was apparent that a good number of people felt inconvenienced at the outset. But, over time, I watched judges and staff earn jurors' trust by carrying out tasks we may consider routine. And by the end of the day, I saw the healthy respect our friends and neighbors have for a system based on justice, fairness and equal treatment.

Your contributions-as judges and lawyers-enable that system to flourish every day. I thank you for your help and support as we strive together to enhance our state's system of justice. And I thank you for making time in your busy schedules to attend this annual gathering of the state bar, which works with the courts in so many areas.

I hope that you enjoy the balance of today's programs and thank you for the opportunity to speak with you this morning.