

State of the Judiciary
Chief Justice Stuart J. Rabner, New Jersey Supreme Court
Address to the State Bar Association
May 20, 2022

Good morning, everyone. It's good to see you in person once again, which I hope is a sign of things to come.

Thank you, Jeralynn, for welcoming Chief Judge Wolfson and me to participate in this year's convention. And congratulations on being installed as Bar President. We look forward to working with you and other leaders on a number of important projects in the year ahead.

Thank you also to Domenick Carmagnola, who has worked tirelessly on behalf of attorneys through the State this past year on issues that needed attention. We appreciate all that you have done.

So much has changed since the last time we gathered in Atlantic City. COVID-19 has affected us all, both personally and professionally. Many in this room, no doubt, battled with the virus and its symptoms firsthand. Some may have lost a friend or a loved one, or struggled with isolation and lockdown.

Professionally, our workdays grew longer, with added urgency, while our physical world and surroundings grew ever smaller. But challenging times can bring valuable lessons and help us focus on things that truly matter. They can also force us to adapt and find new ways to connect with each other and continue our life's work.

And our work has been critical these past two years. Covid-19 underscored the essential role courts play in our lives, particularly in the lives of our most vulnerable citizens. In a time of crisis, the courts served as a place for the public to seek vital assistance and to seek justice.

We should be proud of the way we responded, together, as a justice system. From the early days of the pandemic, even when the physical doors to courthouses were closed, the courts continued to provide crucial services. We were able to do that because, almost overnight, our court system pivoted from an in-person operation to a virtual one.

Since March 2020, state courts have conducted more than 365,000 virtual events, which involved more than 5.5 million individuals who participated remotely. That's a tribute to the professionalism and dedication of judges, court staff, and the Judiciary's spectacular IT group, in particular.

The Judiciary also helped ensure access to the public with the establishment of technology rooms for individuals seeking temporary restraining orders in domestic violence matters and other emergent relief.

Today, state courthouses are open once again, and in-person court proceedings -- including jury trials and grand juries -- have resumed with necessary health protocols. Thanks to innovative

courtroom renovations, all counties can now conduct at least two criminal jury trials at once, with some counties able to conduct four or more trials at a time.

Although Covid is still very much with us and we continue to take precautions, a sense of normalcy and renewal has begun to take hold in our everyday lives and workplaces. We are fortunate to be able to sit with one another again, and to enjoy a meal together in Atlantic City.

Of course, like the rest of society, our justice system is forever changed by lessons learned from Covid and the adjustments we had to make. One of our tasks now is to find the right mix of in-person and virtual proceedings going forward.

A framework is set out in last November's order from the Supreme Court. It designates types of matters that will take place in person and others that will be conducted in a hybrid or primarily virtual format. In designing that approach, we first asked questions and then listened to judges, members of the bar, and others.

Jurors and witnesses clearly appreciate the opportunity to fulfill at least part of their obligations from home, without having to go to a courthouse. Attorneys, by and large, seem to favor handling routine matters remotely. It makes little sense to require lawyers and parties to travel to court and then wait to appear for a straightforward motion or conference that will last 15 minutes or less.

That said, we know that certain matters must be conducted in-person. Criminal defendants have the right to face their accusers and the jurors who will decide their fate in an open courtroom. The same is true for DWI cases in municipal court, termination of parental rights cases, and hearings to adjudicate incapacity, among other matters.

Striking the right balance between in-person and virtual proceedings is key, and we will revisit that issue over time with your input.

Other aspects of the pandemic and its effects have proven to be more challenging.

Judges and lawyers know that to resolve cases, our system depends heavily on a number of things. One is the ability to set realistic trial dates. That causes the parties to reevaluate their case, to reexamine its strengths and weaknesses with care, and to make hard calls about whether to settle a civil lawsuit, plead guilty to criminal charges, or press forward to trial.

When we reopened the courts for in-person trials for a brief period last September, before Omicron hit, we conducted only about 10 trials statewide but resolved more than 300 cases. That comes as no surprise because the pressure of an actual trial date is palpable.

We are on the road back to normalcy now and summoned more jurors this month than any time since March 2020. But we still have a way to go.

The result of not being able to bring jurors to the courthouse for far too long; of not being able to conduct in-person criminal trials; and of having fewer civil trials overall was not hard to foresee:

a tremendous growth in pending cases of all types. In Civil, Chancery, Family, and Criminal, the number of cases waiting to be resolved, and the number of parties waiting for their day in court has increased dramatically in the past 24 months.

To address that backlog and give people their day in court requires more than just scheduling trial dates. We need judges who can credibly say to the parties, “have your case ready next Monday. We’ll start picking a jury then.”

In too many areas today, we are simply unable to do that because of the sustained and growing number of judicial vacancies in the Superior Court.

Today, there are 75 vacancies on the trial court bench -- 75 out of 433 trial court positions. That’s the highest level of vacancies in the history of the State Judiciary. Although there are 23 pending nominations, nearly half of which went through Committee yesterday, more than 20 Superior Court Judges are slated to retire by the end of this calendar year. In addition, for the past 2 1/2 years, we have averaged 50 or more vacancies each month. That number should be no higher than 25 or 30 for the Judiciary to be able to best serve the public.

What’s the real-life impact of those vacancy numbers for people who come to court to address serious problems in their lives?

Let’s start with the Civil Division. I canvassed the Assignment Judges across the vicinages and asked how long it takes to get cases before a jury. Consider someone with a personal injury case who suffered a serious injury and whose case is complex. For the most part, it is not possible for trial judges to devote time to try that case today because of pressures elsewhere in the system. That plaintiff can’t expect to go to trial for 3 to 4 years from the date the case is filed. And that has an enormous impact on the individual and the person’s family.

The same is true for medical malpractice cases in parts of the state. In one vicinage, the amount of time from the date of filing to the date of trial has doubled because of Covid and judicial vacancies.

We face a similar situation for other serious, complicated Track 3 and 4 cases. Trials for civil rights matters, whistleblower cases, products liability, environmental, and other matters have been postponed indefinitely in many places.

Why aren’t we able to conduct more trials in Civil? Because judges are needed to handle pressing matters in Family and Criminal.

In Family, courts must address time-sensitive matters promptly -- such as juvenile delinquency hearings, because juveniles cannot be held in custody longer than is appropriate, and domestic violence cases, because of the possible risk to a person’s safety. We must dedicate judges to those types of matters without exception.

Even then, however, courts are not always able to reach the merits as rapidly as we should. When a serious allegation of domestic violence is raised, for example, it is common for a court to enter

a temporary restraining order. In some cases, parenting time is limited or barred, and the accused is ordered to live outside of the home.

That person should have a final hearing on the restraining order within 10 days. But that doesn't always happen. One supervisory judge explained that because of the current shortage of judges, it can sometimes take up to several months to conduct the hearing. That means a parent is sometimes displaced from their home and cannot see their child for months before they have a chance to testify before a judge. That should not happen in a system of justice.

Let's take another example from the Family docket -- a married couple that has children and is looking to get divorced. They may need to sort out a number of critical issues relating to custody, parenting time, cohabitation, and parental support. All of that takes time to work through in the best of circumstances. It takes far longer when there are not enough judges.

Courts have a robust system to try to resolve those sensitive issues. They use early settlement panels, custody and parenting time mediation, economic mediation, and case management conferences. But what happens if none of that works and the parties need to go to trial?

In one vicinage, no divorce trials at all are being scheduled because there are not enough judges. Another projects that at the current vacancy rate, it will take 5 years from the date of filing to get to trial. For too many people who are unable to resolve their differences, their lives are on indefinite hold.

Why can't we dedicate more judges to try those cases? Because criminal matters are the court system's first priority for an obvious reason: a person's liberty is at stake.

With the implementation of criminal justice reforms in recent years, the pretrial jail population dropped by several 1000 individuals to about 5000 defendants in custody pretrial in early 2020. That happened largely because only high-risk Ds are being detained now, and poor defendants who pose a minimal level of risk are no longer being held simply because they cannot afford to post bail.

Today, because we could not schedule in-person trials for more than a year into the pandemic, there are nearly 6800 defendants held in detention who await trial. Even though we have resumed conducting trials in those cases with social distancing, the list of pending cases is long.

On top of that, 1000s more defendants have been released pretrial and are also waiting for their day in court. Their lives remain on hold, just as countless victims also await justice year after year. Meanwhile, Superior Court Judges are working tirelessly across the justice system to address the large number of pending matters before them.

The problem is simple to grasp. We need more judges to provide the level of service the public is entitled to receive. And we need help from the other branches to fix that problem. The Judiciary is ready and willing to assist in any way that might be helpful.

Notwithstanding those challenges, in the past year, the Judiciary has worked collaboratively with

the other branches of government and key stakeholders in the justice system to find solutions for serious problems facing our society. Let's talk a bit about a few of those initiatives.

First, the report of the Judicial Conference on Jury Selection was released for public comment last month. It includes proposals designed to broaden the representativeness of juries, to reduce bias in the jury selection process, and to gather and release relevant data to attorneys and the public.

The report followed a two-day conference last fall, as well as months of hard work by a committee comprised of judges, practitioners, community groups, and members of the other two branches of government.

If you haven't already done so, have a look at the recommendations in the report and share your thoughts. The Court will consider the report and public comments in the coming weeks and then act on a number of recommendations. Others will be referred to the Legislature and the Governor.

The second initiative is a pilot program to better identify individuals with mental health issues and connect them to community-based services. The program involves the cooperation of county jail officials, the prosecutor and public defender, and supervision by a Judiciary diversion officer. Essex and Morris counties are in the early stages of the project, and we expect that their efforts will provide data and information to identify productive achievements as well as areas in need of improvement.

Another initiative underway is the JOBS program, which stands for Judiciary Opportunities for Building Success. So far, it has helped hundreds of probationers and Recovery Court participants and graduates to get jobs and job training. The program recognizes that stable, quality employment offers the best chance for individuals to turn their lives around and remain free from addiction.

At a time when employers are struggling to find skilled and reliable workers, the JOBS program has helped people find work in the food service industry, the casino industry, local hospitals, and other areas.

Yet another initiative seeks to confront the spread of gun violence in our communities. The program began in the Passaic Vicinage as a collaborative effort among the Judiciary and community leaders, third-party agencies, and service providers. They participate on an advisory board that recommends resources and services for individuals placed on probation for gun-related offenses. The services are incorporated into a person's probation case plan, which is reviewed periodically by a judge. The program has already expanded to seven other vicinages.

There is more work to be done on each of those projects. Together, we will strive to make progress in those and other areas.

One final thought. We opened this morning's program with a tribute to three members of the Court who recently retired: Justices LaVecchia, Fernandez-Vina, and Timpone. I couldn't agree

more with the accolades used to describe them, which were richly deserved. Although it's a bit premature, let me add one more name to the list -- Justice Albin. He belongs in the same category of exceptional public servants and is approaching retirement in just 7 weeks.

Under any circumstances, their seats would be hard to fill given their knowledge, insights, and breadth of experience. Today, of course, we await their replacements, which means the Supreme Court, like the trial court, is operating with multiple vacancies.

I am so pleased that Judge Fuentes is a full participant in the Court's work. Since February, we have had the benefit of his expertise and judgment every day.

Yet we need to step back and remember that the Constitution calls for a Court comprised of 7 members nominated by the Governor and confirmed by the Senate. Unless there is movement in the weeks ahead, we will soon reach a day when only 4 members have gone through that process.

Ask any students of the Constitutional Convention of 1947, and they will tell you that is not what the Framers of the modern Constitution envisioned. Nowhere in the debates about the Judicial Branch did they contemplate a vacancy level of more than 40 percent on the State's highest court.

The New Jersey Supreme Court regularly grapples with some of the most challenging and significant issues that our State faces. I urge the Legislative and Executive branches to come together to resolve the problem before it gets even more challenging.

In closing, I'd like to thank the Bar for hosting this annual convention. We appreciate the collaborative spirit between the bench and the bar for the past two years in particular. That always makes for a better system of justice in our State.

I hope you enjoy the rest of the conference. Thank you very much.