

State of the Judiciary
Chief Justice Stuart J. Rabner, New Jersey Supreme Court
Message to the New Jersey State Bar Meeting
May 19, 2023

Good morning, everyone. Thank you, Tim, for welcoming Chief Judge Bumb and me to participate in this year's convention. A few words of congratulation to start.

To Chief Judge Wolfson and Justice Albin, for your extraordinary contributions to the cause of justice throughout your careers. To Chief Judge Bumb, a gifted lawyer, judge, former colleague, and dear friend. I am delighted that you have taken on the responsibilities of Chief Judge for the United States District Court. And congratulations again to Tim, our newly installed Bar President. We look forward to continuing to work with you and other leaders of the Bar on a number of important projects in the year ahead.

Thank you also to Jeralyn Lawrence. You've been a most able advocate for attorneys throughout the state and a very strong supporter and friend of the Judiciary this past year. Thank you for your exemplary accomplishments throughout your tenure.

There are a number of topics I'd like to discuss with you this morning. We should begin with the subject of judicial vacancies because of the effect they have on all aspects of the work of the Judiciary.

At this time last year, out of 433 positions on the trial court bench, we had a record high 75 vacancies. Today there are 64. The Senate Judiciary Committee advanced three nominees yesterday, but by the end of the year, there will be 20 more vacancies -- six of them in just the next two weeks.

The number of vacancies alone doesn't tell the story. If a seat is left vacant for just a few months, the impact can be relatively modest. It's quite another thing if a judgeship remains unfilled for two, three, sometimes four years, as is the case in a number of parts in the state. In those situations, a single vacancy can lead to delays not just in hundreds of cases, but well more than a thousand.

For three and a half straight years now, vacancy levels throughout the Judiciary have averaged well more than 50 judges, month after month. In fact, for the past two and a half years, we've averaged 60 or more vacancies nearly every month. Coupled with the Judiciary's inability to conduct in-person trials in the early stages of the pandemic, the court system's backlog has grown across the board. Also, because we have to respond in a timely way to cases in which an individual's liberty is at stake and to emergency situations, other case types are not getting the coverage that they need.

I hesitate to talk about statistics and backlog alone, though, because there's always a risk that we will miss the larger point. Every case has its own story. And every case matters. Someone has been harmed, aggrieved. A parent in a contentious divorce is waiting to hear the schedule for

when they will be able to spend time with their child. Someone else is battling to protect their constitutional rights. The future of a business is uncertain because it depends on resolving a longstanding dispute between partners.

In those and many other areas, people come to the court system to seek justice, and we must do better as a state to give them the attention that they deserve. Make no mistake about it, this problem will not simply go away. For the Judiciary as a whole, we need to see the number of vacancies reduced to a more manageable level of no more than 25 to 30 positions. And for individual vicinages, particularly ones with high numbers of vacancies, the problem unfortunately may get worse before it gets better.

Months ago, we shut down civil and matrimonial trials, except for limited circumstances, in two vicinages, because we simply don't have enough judges there to conduct those trials. We intend to lift the moratorium when the high percentage of vacancies is reversed. That means we need to have new judges on board not only to make up for past vacancies, but also for new ones that occur.

The same applies to yet other vicinages with a high percentage of vacancies. We may soon be left with no choice other than to halt civil and matrimonial trials in other counties in our state, something we very much hope to avoid. So at the same time I want to thank the other branches for reducing the total number of vacancies since last May, I once again implore them to address the very real problem that remains. We stand ready to help in any way that is appropriate.

I also want to thank our judges for their dedication and sustained hard work throughout this challenging time -- taking on additional cases to make up for the unfilled positions and, at the same time, stepping forward to work on important initiatives to improve our justice system.

Let's briefly touch on a few of those initiatives starting with ongoing efforts about how courts respond to individuals who suffer from mental health issues and come into contact with the justice system. Across the nation, countless people who suffer from mental illness are arrested each year. Their cases are typically processed with little attention paid to the underlying problem. So the cycle repeats itself again and again.

If you scour the literature, you'll learn about a few proven techniques that can lead to dramatic improvements. Crisis intervention programs that train law enforcement officers how to de-escalate situations they encounter in the field. Developing ways to screen and assess individuals for the likelihood of mental illness soon after they are arrested -- while in jail or at an early pretrial stage of the process. Hiring people to help defendants navigate the system by developing individual case plans and making referrals to existing community-based treatment and support services. And monitoring an individual's progress through periodic court appearances and conferences, along with opportunities for charges to be diverted.

If you scour the literature a bit more, you'll discover that Miami-Dade County is the gold standard in this area. That's thanks in large measure to a judge by the name of Steven Leifman. The results they've achieved are remarkable: a substantial drop in the arrest rate, in the recidivism rate, and in the number of police shootings each year.

The New Jersey Judiciary began to focus on this issue in 2019. We first identified the key partners essential for a coordinated statewide effort, and then we visited Miami together in order to learn more. Our delegation consisted of the Commissioner of the Department of Human Services, the Attorney General, senior attorneys at the Public Defender's office, Judge Grant, and me. To make things as enticing as possible, I invited them to travel to Miami in August -- during a break in the Court's term -- and they agreed.

When we returned, we set up a committee of some 45 individuals. It includes representatives of all three branches of government, experts in the mental health community, providers, academics, and others. Our initial focus has been on defendants with criminal charges on pretrial release. Although the pandemic slowed our progress, today four pilot counties -- Essex, Morris, Camden, and Middlesex -- are in the early stages of working to implement the key elements we discussed. At the same time, the Attorney General's office has embraced training and de-escalation. Prosecutors' offices are working on diversionary programs. And thanks to Commissioner Sarah Adelman of the Department of Human Services, who co-chairs our committee along with Assignment Judge Stuart Minkowitz, \$2 million has been dedicated to fund behavioral health teams for the four pilot counties.

Judge Leifman visited with us last fall. He spoke to all judges at our annual Judicial College and motivated us to continue our efforts. We will do so. As we monitor the progress of the pilots, and gather and analyze data, we'll make adjustments with an eye toward expanding the project to other communities, working with our partners.

On a related topic, earlier this month the Court announced the creation of the Special Committee on Wellness in the Law. I want to recognize and thank the State Bar for its work in this area in the past year under Jeralyn's leadership. The Bar pointed to a series of challenges and risks the legal profession faces today relating to mental health issues, substance use disorders, and other serious problems among professionals in the law.

The committee's task is as challenging as it is important: to examine risks professionals in the law face, and obstacles that practitioners of color and marginalized groups confront; to look at resources that currently exist to help support legal professionals develop and sustain their wellness; and to focus in particular on gaps and strategies to address unmet needs. All of that is part of an overall effort to help people who are struggling and to assist individuals worried about colleagues and friends.

The makeup of the committee includes attorneys in public service and private practice as well as judges, representatives of the law schools, and designees of more than a dozen legal groups from throughout the state, including the State Bar. I'm delighted that Associate Justice Lee Solomon has agreed to chair the committee, and we look forward to its progress in the year ahead and afterward.

Let's turn to the subject of criminal justice reform. As we know, on January 1, 2017, New Jersey changed to a risk-based system for pretrial release in which cash bail is hardly used at all now -- roughly once in a thousand cases. In its place, judges have the authority to release low-risk

defendants on conditions that pretrial services officers monitor, and the power to detain high-risk defendants pending trial.

We've gathered data since 2017 which reveals a number of important things. First, defendants released on conditions are showing up for court more than 95% of the time, a higher rate than before the reforms took effect. Second, they are not committing new serious crimes while on release at a rate higher than before. Third, the jail population dropped substantially from the beginning of 2017 until the start of COVID, when we were no longer able to conduct trials in person. Plus the jail population today is comprised of a higher percentage of individuals charged with more serious offenses, first- and second-degree crimes. It no longer includes poor people who pose a minimal risk of danger or flight but can't afford to post bail, which had been the case in the past.

The data, in short, shows the new system is working as intended and is working well. At the same time, we recognize there's always room for improvement, and the body of existing data that has accumulated over the years can help point us all in the right direction.

So a few months ago, the Judiciary reassembled a committee of stakeholders from across the criminal justice arena -- the committee that recommended reforms in 2014. We asked them to examine the data and try to identify areas in need of reform. In doing so, they may also dispel some mistaken beliefs about criminal justice reform that have been voiced. We expect the committee will issue its report in the coming weeks, and we will share its recommendations with the Legislative and Executive branches.

I'd like to thank all of the individuals and groups that have been involved in this project once again, including the Attorney General, the Public Defender, private counsel, the Prosecutors, Sheriffs, Chiefs of Police, and Wardens Associations, the ACLU, the Institute for Social Justice, senior legislative staffers, judges, and others. I hope that their important work will be helpful in the ongoing discussion about criminal justice reform in our state.

Let me give you a brief update as well on the attorney-led voir dire project that is underway. The Judicial Conference on Jury Selection 18 months ago recommended a number of steps to select more representative juries that are free from bias. One important recommendation the Court approved called for the greater use of attorney-led voir dire.

Since last July, three vicinages, Bergen, Camden, and Middlesex, have served as pilot projects for this effort. As part of a voluntary project that is now in place, lawyers who agree to participate ask questions directly of jurors; they're not bound by the bench model and can pose questions and follow-up questions as they see fit; the Judiciary makes demographic information about jurors available to counsel; participants agree to a reduced number of peremptory challenges, eight for defendants, and six for the state, in cases that involve more serious charges; and for-cause and peremptory challenges are subject to the standards in the new court rule.

So far, we've completed 11 trials in the original three pilot vicinages. More attorneys agreed to participate but, not surprisingly, their cases were resolved before jury selection. The feedback from lawyers has been very positive. In general, they feel they've been better able to assess the

views of prospective jurors. They used fewer peremptory challenges, fewer even than the reduced number allotted. And the oral voir dire process has taken less time.

The Court authorized the expansion of the project to the Monmouth Vicinage earlier this month. So if you or a colleague are interested in participating in any of the four pilots, please tell the judge assigned to the case, and we will do our best to accommodate the request.

Finally, we continue to make impressive strides with the Judiciary's JOBS program. The acronym stands for Judicial Opportunities for Building Success. It's an initiative designed to find stable employment for participants and graduates of Recovery Court and individuals on probation. The approach makes sense because we know that by helping individuals get a fresh start, our society stands a better chance of breaking the cycle of incarceration.

Among other things, the initiative requires building relationships with public and private employers like Goya and Wakefern, Amazon and Audible, Jingoli Construction and PSE&G, as well as Stockton University, Robert Wood Johnson, AtlantiCare, and others. If you know other employers that might be willing to participate in the program, please contact me, Judge Grant, or Judge Sandson. I applaud the work that Judge Grant and retired Judge Sandson have done leading the JOBS committee, along with the support of other judges.

The State Bar has been a partner in all of those endeavors and others. I'd like to close by thanking the Bar again for hosting this convention and for inviting judges to participate, many of whom are here today. The ongoing dialogue between the bench and the bar makes for a stronger system of justice in our state.

I hope that you enjoy the rest of the convention. Thank you all very much.