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**Remarks at the Annual Meeting of
The New Jersey State Bar Association**

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By:
Honorable Jerome B. Simandle
Chief Judge
U.S. District Court for the District of New Jersey

INTRODUCTION

Chief Justice Rabner, Honorable Justices and Judges of New Jersey, outgoing President Miles S. Winder, III, and incoming President Thomas H. Prol, officers and members of the New Jersey State Bar Association, and Friends:

Thank you for the privilege of speaking with you this morning. It is an honor to speak on behalf of the United States District Court for the District of New Jersey, and to share this podium with my dear friend Chief Justice Stuart Rabner.

I join you in celebrating the first day of the Thomas Prol New Year, and in thanking Miles Winder for his fostering of continued understanding and respect between bench and bar.

In these few minutes, I would like to summarize some of the challenges, milestones, and new programs of the District Court.

Challenges in 2016

First, the Court's challenges. In the past year, the District of New Jersey received over 10,000 filings for the first time in our 226 year history. The number of civil filings has grown a total of 20% over the past five years. This is a departure from the national trend, which has been essentially constant over the same period.

Among the nation's ten largest federal courts, New Jersey is second in weighted filings per District Judgeship. That figure assumes each of our 17 authorized judgeships is filled. In fact, we have three vacancies. If the workload

is divided among the 14 active District Judges, the weighted caseload per judge approaches 700; this figure of 700 compares with the national average of 430 weighted cases per judgeship.

As a consequence of the number and density of the cases, as well as the three vacancies, our ability to promptly resolve cases has been impaired. If you look at the fraction of our docket comprised of three-year-old cases, that figure has risen in two years from about 4.5% to about 6.2%. In other words, about 6% of our court's docket is comprised of cases pending for at least three years. While this is still better than the national standard of 8% for three-year-old cases, it is not what we want for New Jersey.

New Jersey is, surprisingly, still among the quickest courts. Many federal cases are promptly terminated, with one half of our filed cases being terminated in eight months or less. Early resolution is probably due to two factors: The intensive attention by Magistrate Judges in the early phases of the case, often leading to early settlements; and the judge's early screening of filings by pro se litigants to eliminate cases that are frivolous or otherwise fail to state a claim, while identifying those cases that should proceed. My prediction, if the vacancies remain unfilled, is that this queue will lengthen. The judges are the pinch-point in the judicial system. Talented court staff and the able trial bar are necessary ingredients of our court's success. But having sufficient judges is indispensable.

Vacancies. The District of New Jersey has had 17 authorized district judgeships for 25 years. A vacancy is created when a district judge takes senior status or leaves the bench. It is a “judicial emergency” when a busy district court has an unfilled vacancy for more than one year. At the beginning of this year, we had four vacancies out of the 17. Happily, one new judge was confirmed by the Senate in January -- Judge John Michael Vazquez. Two other nominees were approved for confirmation last year by the Senate Judiciary Committee and await a confirmation vote by the full Senate, while the third vacancy does not yet have a nominee. New Jersey, with three unfilled vacancies each at least one year old, and with the enormous docket pressures I described a moment ago, is thus a “judicial emergency” district three times over. Let us hope for Senate action soon.

Patent Filings. The District of New Jersey became the nation’s third busiest court for filing patent cases last year. This may be attributable to having an experienced patent bar and bench, in a state that is noted for technological and pharmaceutical research and innovation. Indeed, in the type of patent cases involving pharmaceutical patents in which generic drug manufacturers challenge a patent underlying a branded drug, called a Hatch-Waxman Act case, New Jersey is the most frequent place of filing. We attempt to meet these challenges through continued education of our judges and law clerks, as well as through the periodic review and amendment of our Local Patent Rules. I would like to thank

the attorneys and judges who are members of our distinguished Local Patent Rules Advisory Committee, under its Chair, Judge Stanley Chesler, for their hard work to offer refinements to our patent litigation processes.

Milestones

This past year sadly also marked the passing of two outstanding federal judges -- Dickinson R. Debevoise and Joseph E. Irenas. Both men were highly esteemed lawyers before becoming judges, and both made enduring contributions to serving the public, Judge Debevoise for almost 36 years and Judge Irenas for more than 23 years, right up until their final days on earth. Though different in style and approach, they shared an unmatched work ethic, a love of the courtroom, and passionate devotion to this court, to their colleagues, and to the lawyers who practiced before them. Each in his own way was an American hero.

Our Bankruptcy Court has its full complement of nine judges, with the selections of Judge Stacey L. Meisel in Newark and Judge Jerrold N. Poslusny, Jr. in Camden. We have truly seen a new generation of bankruptcy judges over the past three years. Under new Chief Bankruptcy Judge Kathryn C. Ferguson, and with the seasoned assistance of the Clerk of the Bankruptcy Court, James Waldron, we look forward to the continued excellence of this vital part of the federal court.

Although perhaps not an official milestone, each year of service by a senior judge marks another year of assistance to our court and to the public in resolving civil and criminal cases. Each senior judge elected to continue judicial service rather than to retire from the bench, handling up to half of a caseload. We are grateful and blessed to continue to list our senior judges as colleagues and friends, namely: Judge Anne E. Thompson, Judge Joseph Rodriguez, Judge Mary L. Cooper, Judge William Walls, Judge Katharine Hayden, Judge William Martini, and Judge Stanley Chesler.

New Programs

I would like to focus this year on several developments on the criminal side of our docket, including the work of our Probation Office and our Pretrial Services Office. It has been increasingly recognized that our society must do better to enhance the successful re-entry of prisoners into our communities. For many years in federal court, we depended upon parole supervision and in recent decades, supervised release to monitor felons who had served periods of imprisonment. Such supervision is often accompanied by in-person reporting to a probation officer, substance abuse testing, and sometimes specialized services such as mental health treatment. But sometimes even those efforts are not enough.

In the District of New Jersey, we have taken this effort one step further by establishing Re-Entry Courts -- two in Newark and one in Camden, so far. The

Re-Entry Court is a team approach, including judges, probation officers, prosecutors, and defense attorneys, who meet with the participating offenders under supervision every two weeks. We are aided by law school clinical faculty and other professionals, in accordance with the needs of the participant. The team and the participant formulate goals, identify needs, arrange for necessary services, and meet again, for at least 52 weeks. These sessions go into the night.

At each court session, after review of progress or, occasionally, setbacks, in the words of my favorite high school math teacher, "rewards will be given and penalties will be extracted." A special bond forms among the team and participants unlike anything I've seen before. The humanity and the internal and external obstacles faced by each participant are appreciated. Best of all, we see tangible progress and success in achieving goals of steady employment, stable family relationships, sobriety, job training, licensing, and generally clearing the path toward a better life. These are selective programs aimed at high-risk offenders. I predict and hope that this promising new model will lead one day soon to the general overhaul of the post-prison supervision and re-entry process, to the benefit of the participant, his or her family, and society. I acknowledge the achievements of all team members and especially our judges, namely, Judge Madeline Arleo and Magistrate Judge Michael Hammer in Newark and Judge

Noel Hillman and Magistrate Judge Karen Williams in Camden. Individually and collectively, these judges are making a difference.

Perhaps my opinion on Re-Entry Courts is not neutral and detached. But you should know, I'm proud to say, that no less than the President of the United States has recognized these efforts. On his visit to Newark last October, President Obama met with Judge Arleo and other participants for a full hour. The President said he was intrigued by the model, the commitment, and the fact that these reforms can be accomplished within existing structures. Later, he gave an inspiring endorsement of these concepts, which was most gratifying.

Similarly, within the past year, the District Court established a Pre-Entry Court in Newark -- that is, a court that gives intensive supervision to persons accused of federal crimes, without significant histories of major crime, but with substance abuse addictions. Perhaps more resembling the drug courts of the State system, this federal effort has the support of the U.S. Attorney's Office, the Federal Public Defender, and our court's Pretrial Services Office, led by Christine Dozier. Pre-Entry Court addresses head-on the scourge of drug and alcohol addiction in the commission of certain federal crimes, such as by an individual on the periphery of a non-violent drug distribution conspiracy. In appropriate cases, the team seeks to identify alternatives to incarceration. These biweekly court sessions are difficult and require all the wisdom, patience, and strength of our

judges. We applaud Judge Katharine Hayden and Judge Esther Salas for making this brave beginning.

Beyond the establishment of these specialized courts, our district, like those across the country, continues to see a rise in heroin addiction. This drug is cheap and plentiful and can serve as a ready substitute drug for individuals who are addicted to other opiates, such as oxycodone. Our court's treatment expenses for detox and for drug rehabilitation of criminal defendants are expensive and growing. We have had to reprogram Probation funds from salary to pay for detox and treatment. This is another area where the court seeks to expand its services in the fight for rehabilitation and the reduction of risk of recidivism, and it can only be done through prudent management and spending, for which I thank our Chief of Probation, Wilfredo Torres, and his talented leadership team.

Finally, I would like to highlight the District of New Jersey's new criminal felony case management program which is probably unique in federal courts in the nation. For years, academics and practitioners alike have voiced complaints about the rather narrow exchange of discovery and information between the prosecutor and the defense under the Federal Rules of Criminal Procedure. We have also heard that, unlike civil cases which are highly managed, the typical criminal case has little judicial intervention. Moreover, it was sometimes unavailable that some pretrial motions would be unresolved before trial, leaving

the parties at a loss about whether there would actually be a trial and what evidence would be in play.

About two years ago, an ad hoc committee was assembled to look at these problems, including U.S. Attorney Paul J. Fishman and AUSA John Fietkiewicz, Federal Public Defender Richard Coughlin, defense attorney Larry Lustberg, members of the Court's Criminal Justice Panel, and other criminal defense attorneys. After many discussions, the committee sought judicial input, and eventually a bold reform emerged. The tenets of the proposal included explicit requirements for counsel to meet and confer and to exchange information and to bring problems to the court's attention, plus the holding of frequent conferences with the District Judge. The proposal also requested that trial dates be deferred until at least 30 days after the last substantive pretrial motion was decided, in order to avoid unnecessary trial preparation and also to give a period for final plea bargaining between the attorneys (not the judge) before trial. Finally, the committee proposed that each case heading for trial have a final pretrial conference before the District Judge, similar to civil cases, discussing the whole gambit of trial topics from jury selection to final jury instructions.

I am happy to report that the Board of Judges adopted this criminal case management protocol, effective April 1, 2016, and it is published in Standing Order 15-2. Prosecutors and defenders alike have been trained in its requirements, and the reception by bench and bar has been enthusiastic.

Whether this may spread to other federal courts remains to be seen. For now, however, I am confident we are taking a big step toward felony adjudication which is fairer, more humane, and more in tune with the meet-and-confer ethic, supervised by more hands-on judicial management, that are traditional hallmarks of the District of New Jersey.

Recognition of Attorneys

On behalf of our Court, I thank all attorneys who have served on court committees, who have accepted appointments as pro bono counsel in civil cases, and who serve as criminal defense counsel on our Criminal Justice Act list. Each of these activities helps this court to meet its challenges, while the attorneys are heeding the highest challenges of professionalism. Likewise, our Court's Historical Society, which in 2014 led the celebration of our 225th anniversary, has again served this court -- and the public -- in an outstanding fashion with terrific functions, open to the public, throughout the year.

And last, I would like to recognize the Chair of our Court's Lawyers Advisory Committee, Thomas Curtin, for his leadership of this important group, and to note his receipt last October of the singular award of Professional Lawyer of the Year in the State of New Jersey. It was my pleasure, on behalf of the New Jersey Commission on Professionalism in the Law, of which I serve as Chairman, to present that accolade to Tom.

Again, thank you for the opportunity to share these thoughts, and to wish every success for the New Jersey State Bar Association.