

REMARKS BY CHIEF JUSTICE STUART RABNER
NEW JERSEY STATE BAR ASSOCIATION MEETING
ATLANTIC CITY, NEW JERSEY
May 19, 2017

Good morning, everyone. Thank you for welcoming Chief Judge Simandle and me to participate in this convention again. This is a wonderful opportunity to brush up on familiar areas of law, to learn new ones, and to interact with colleagues and friends face-to-face, which we don't do often enough. We are delighted to be here.

At the outset, I want to thank two colleagues in particular. Tom Prol is here. Tom, as I said in a very private conversation with your mother last night, with only about 350 people listening, what a terrific year we've had. We thank you for your superb advocacy on behalf of lawyers throughout the state and your warm and helpful support of the state and federal Judiciary.

I also want to congratulate our newly installed president, Bob Hille. We very much look forward to working together with you and other leaders of the Bar on a number of important projects this coming year.

This past year, we saw some important developments in the legal system, and there are others on the horizon as well. I would like to touch on a few of those items this morning.

As many of you well know, the advent of criminal justice reform on January 1 of this year marked the most substantial change in the criminal justice system that our state has seen in decades.

Last year, like the ones before, too many poor defendants, who posed a minimal risk of danger or flight, sat in jail too long before trial only because they could not post even modest amounts of bail. And there were serious consequences for a number of those defendants. Some lost their jobs; some lost access to family members; some had their cases disposed of more harshly as compared to similarly situated defendants who were able to post bail and be released.

At the same time, defendants accused of serious crimes who posed a significant risk of danger and flight were eligible for bail under the state Constitution, which at the time guaranteed the right to bail. As a result, those who had access to money were able to obtain their release by posting a bond or cash.

Since January 1, we have been able to have honest conversations about release decisions in courthouses throughout the state. If a judge finds that a person presents a serious risk of danger, flight, or obstruction, the judge can detain the person because the Constitution now permits that. And when a judge thinks that an individual poses less risk, as is most often the case, the judge can order the person released and impose appropriate conditions. A new pretrial services agency monitors those conditions and tries to ensure that defendants return to court and do not commit new crimes while awaiting trial.

We have talked about the history of the reform effort before. I am not going to repeat that at length today. In a nutshell, the changes underway reflect years of careful study, discussions among all three branches of government, a new statute that was enacted in 2014, and a popular vote to amend the Constitution later the same year.

In the two years that followed, the Judiciary spearheaded efforts to prepare for the new law's effective date. We worked closely with the Attorney General's and the Public Defender's Offices, law enforcement officials, other stakeholders throughout the criminal justice system, and local officials.

We worked with the Arnold Foundation to develop an objective risk assessment tool, known as the "PSA" or public safety assessment. Judges now use the PSA to help them make release decisions and decide what conditions, if any, to impose. The PSA relies on nine common-sense factors about the offense and the defendant's background and criminal history. The factors are all readily available; they are listed on the Judiciary's website, and counsel read them in each PSA that is prepared.

But it is important to pause to note one thing: Neither the risk assessment tool nor the PSA makes release decisions. Judges have the final say after they consider detailed, objective information that is available in every case.

The Judiciary's IT staff worked hard to develop new uses of technology to ensure that judges have access to information about a defendant within 24 to 48 hours after an arrest. As one example, IT staff members worked with law enforcement to make sure that police departments throughout the state arrange to take defendants' fingerprints electronically -- to get quick access to databases maintained in the federal system and in other states. IT also engaged other departments in state government to gather information.

We now have a professional core of pretrial services officers and staff who are part of the new pretrial services agency that operates in each vicinage. They are busy preparing thousands of PSAs and monitoring defendants' compliance with conditions of release.

Among other steps to prepare for the new law, a group of judges, attorneys, and staff combed through the criminal rules, identified areas that needed to be revised, and proposed various changes that have gone into effect.

We also held well more than 100 outreach efforts throughout the state to prepare judges, prosecutors, defense attorneys, members of the Bar, and law enforcement officers for the changes underway -- and to educate local officials, community groups, and others about the new system.

We flipped the switch four and a half months ago, on January 1, and the statistics for the first quarter of the year show a remarkable change in practice. Out of about 10,200 defendants, more than 1250, roughly 12.4%, were ordered detained; almost 7600 were released on conditions, representing more than 73%; and approximately 1100, nearly 11%, were released on their own recognizance.

Bail was ordered eight times. Bail is third in the hierarchy of release decisions: release on one's own recognizance; release on conditions; bail; and detention. Out of 10,200 defendants, bail was set in only eight cases. That did not happen by accident. It is the result of the collaborative effort within the Judiciary and with stakeholders throughout the criminal justice system.

The upshot is that today, the most dangerous defendants are behind bars awaiting trial -- a legitimate response to a very real public safety need. And no one arrested since January 1 in our state, except for perhaps eight cases, is sitting in jail because he or she is too poor to be able to make bail.

It is a bit early to say definitively, but we have noticed two other trends as well. The first is a significant drop in the number of CDR-2 warrants, which we believe reflects, in part, the involvement of prosecutors who screen cases earlier in the process. That is a good thing. We have also seen a reduction in the jail population, which was not the purpose of the new law but is a notable consequence.

There is a lot more work ahead of us. Judges will soon face additional pressure as we approach speedy trial deadlines. They apply to defendants who have been detained pretrial. We are also looking at the risk assessment tool, the PSA, with an eye toward refining it based on suggestions from judges, lawyers, public officials, and law enforcement officials. We are considering two areas of the PSA in particular: how it addresses firearms offenses and repeat offenders. I anticipate that we will address those items in the coming weeks.

To be sure, criminal justice reform has come under criticism from some quarters. That is understandable with any change, let alone a monumental one. It is also understandable when an entire industry feels threatened by change. Some concerns that have been voiced have been quite legitimate and, as I mentioned, we are reviewing them with the Arnold Foundation, the Attorney General's Office, and the Public Defender's Office.

Some of the criticisms are anecdotal: "Why wasn't this defendant been detained? Look at what happened as a result of that ruling." Those decisions often involve close calls, as to which reasonable people may disagree. Of course, there is a right of appeal built into the statute. But we should not lose sight of the fact that more than 1250 defendants were detained in the first quarter of this year, while, last year, no defendants could be detained on account of danger. And defendants released on bail in the past committed serious crimes while they were awaiting trial.

Overall, it is too early to assess the system as a whole. We need data to compare the rates of failures to appear and new criminal activity for this year and prior years under the old system. But from the preliminary data, it appears that the system-wide changes in place have moved the state in the direction of meeting the aims of the new statute: detaining high-risk defendants and releasing low- and moderate- risk defendants, instead of holding people in jail because they are poor even if they pose little risk.

In short, the reform efforts have been moving the state toward a fairer system of criminal justice.

We are pleased to have the continuing strong support of the Governor and the Legislature on this matter. One very tangible and welcome sign of support was the legislation enacted months ago to create 20 new judgeships as of July 1. Those new judges will help the Judiciary respond to the additional demands of criminal justice reform. We anticipate roughly 10,000 detention hearings this year alone. There were none last year, and the demands of the speedy trial component of the new law will also be felt soon.

In addition, the new judges will help address some of the systemic imbalances that have developed over time as the population has shifted throughout our state. We have seen an increase in filings in certain vicinages such that even when there are no vacancies, those vicinages are severely understaffed.

I also want to thank the Governor and the state Legislature for their sustained efforts to fill existing vacancies. We have witnessed the appointment of dozens of fine new judges this past year and, as a result, the vacancy level has dropped to and remained at its lowest level in years. That enables us to respond better to both the caseload and the public.

I cannot thank our judges enough. They have taken on additional responsibilities from criminal justice reform and other areas with excellence -- and without complaint. They are talented, dedicated professionals who are proud to serve the public.

I am pleased that the Governor and the Legislature began a public discussion this past year about increasing judicial salaries. They have not been increased in more than eight years. In fact, with increases in contributions for health care and pensions, judges' net pay has steadily decreased during that period. Come July 1, a judge's gross pay before taxes -- accounting for those two deductions but not factoring in inflation -- will be less than it was a decade ago. So I urge the political leaders to start the discussion again -- to address the critical issue of increasing judicial salaries, which affects the vitality and future of our state Judiciary.

There are a few other topics of note that I would like to touch on.

Last year, the ad hoc Committee on Domestic Violence issued a report with a series of recommendations to address the issue of domestic violence and its far-reaching effects. The committee was comprised of different voices: judges and staff; legislators and attorneys; members of advocacy groups; representatives of law schools; and others. The views around the table led to vibrant conversations.

The group's recommendations focused on the need for resources to help respond to particular concerns, and the need for enhanced education and training for judges, law enforcement officials, and assistant prosecutors. The recommendations also addressed the important interactions between the Municipal and Superior Courts in domestic violence cases. The report was meant as a starting point for further discussion and action. Since it was issued, seven pieces of legislation related to the committee's work have been drafted, with the Judiciary's support. Three have been enacted into law, and the others are pending. I want to thank the members of the committee -- 25 in all -- for their thoughtful work. I'd also like to thank the committee chair, Assignment Judge Georgia Curio.

As an aside, Judge Curio announced she will be stepping down from the bench in about six weeks after 22 years of distinguished service. She will be sorely missed. Anyone who has ever wrestled with a problem knows that if you want a voice of reason to weigh in, you simply need to pick up the phone and call Georgia Curio. You can count on getting a few words that are spot on and make a lot of sense -- so much so that you may wonder why you ever struggled with the issue in the first place.

Georgia, I will miss those calls. We will miss your remarkable leadership in so many ways and your steadfast support for the Judiciary and the cause of justice in our state.

We are losing other gifted judges in the coming months as well. Assignment Judge Travis Francis quickly comes to mind. This is not a retirement party. There will be ample time for extended remarks about both of them and others, but I did want to acknowledge Judges Curio, Francis, and others briefly this morning.

Another important project is underway in Atlantic County under the careful guidance of Assignment Judge Julio Mendez and Judges Susan Maven and Jeffrey Waldman. For more than a year, they have been at work developing a pilot project in response to the very real problem of human trafficking, with a focus on children who are sexually exploited. The broader problem takes hold in any number of forms: sex trafficking of young girls who run away from group homes and foster care; victims of domestic violence forced to sell themselves by abusive partners and boyfriends; and the enslavement of workers brought to the United States, among other variations.

The enormity of the problem is alarming. Human trafficking today is a multi-billion dollar industry, second only to drug trafficking in profitability. Across the world, an estimated 20 million victims of human trafficking exist. Here in the United States, 80% of victims of sex trafficking are U.S. citizens -- women and children, especially girls under age 18. The typical age of entry into prostitution is only 12 to 14 years old.

We see that in juvenile matters as children are brought before the court system. In Children in Court cases, the impact on a family can be seen in abuse and neglect matters.

The goal of the pilot project is to go beyond resolving and disposing of individual cases. It involves a number of steps: to screen and identify sexually exploited children; to flag those cases for a judge so that, as the case heads toward resolution, the judge can work with a multidisciplinary team that includes probation, prosecutors, public defenders, service organizations, and others; and to try to arrange for existing services to address underlying problems, like drug treatment, counseling, mental health programs, job training, and housing.

We plan to track and monitor cases for a period of about 12 months. At the end of that time, we hope to have given young adults tools to enable them to move away from a world of exploitation and turn toward healthy, productive lives.

We plan to implement this pilot program in Atlantic County on July 1. We will make changes based on what we learn and report back. Again, I want to thank the extended team in Atlantic County for their impressive efforts to date.

One other area that I would like to mention briefly is the eCourts framework that the Judiciary continues to build. In the past year, we expanded eCourts in the criminal, civil, and family areas. In Tax Court, there is now mandatory e-filing. We have made changes in the Appellate Division and Supreme Court as well, and this ongoing effort extends well beyond simple electronic filing. We also have a new website that I hope you have had the opportunity to explore. You will find it easier to use and better organized. We have made important strides in a number of areas and will continue that effort in the years ahead.

If you have any recommendations on that topic, please share them with us. Our goal is an efficient and effective system that is user-friendly for the public and members of the Bar. As always, we welcome comments in other areas as well, because we know that insights, suggestions, and support from our partners in the Bar make for a stronger system of justice in our state.

Before I sit down, I also want to make note of the fact that this morning was the last time we will hear Chief Judge Simandle deliver a State of the Judiciary address. It is not the end of a career, for which we are grateful, just the end of a chapter. A magnificent chapter marked by excellence and grace, by professionalism and fairness.

Chief Judge Simandle has a genteel but strong voice that he has dedicated to enhance the judicial system and serve the public. The state and the judicial system as a whole are the better for his service at the helm.

The Bar gave him a wonderful resolution, and it looks like it was very carefully drafted. I had hoped that the Court's resolution would be ready this morning. The majority draft is still circulating. There are three concurrences. The good news is there's not a single dissent. For this morning, let me simply offer our thanks and congratulations to Chief Judge Simandle.

Thank you all again for inviting us to participate in this convention. I hope that you enjoy the remaining programs on today's schedule. Thank you all very much.