

**REMARKS BY CHIEF JUSTICE STUART RABNER
STATE BAR ASSOCIATION ANNUAL CONVENTION
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Good morning everyone. Thank you, Tom, for welcoming Chief Judge Simandle and me. It is an honor to participate in this convention with the gracious and esteemed leader of our federal courts, and I'm grateful to be here with him.

This annual convention hosts an impressive array of programs and gives us a chance to learn about new topics and brush up on familiar ones. In an era of cell phones, emails, and text messages that we are expected to respond to 24/7, the convention is also a welcome chance to gather with colleagues and friends and interact with one another face-to-face.

I want to thank two colleagues in particular who deserve our praise. Miles Winder, who just completed his term as president, has done a marvelous job as a thoughtful advocate on behalf of attorneys throughout the state and as a steadfast friend and champion of the Judiciary. We thank you for all that you have done, Miles.

Congratulations to Tom Prol, the newly installed Bar president. We very much look forward to working with Tom and other leaders this coming year on a variety of projects.

We witnessed a number of important and positive changes in the practice of law this past year, with more in store for the year ahead. I'd like to talk to you about several of those changes this morning, which affect both practitioners and the public.

Last month, the Court issued administrative determinations in three areas, which grew out of the work of three committees: the Ad Hoc Committee on the Uniform Bar Examination, chaired by Justice Jaynee LaVecchia with retired Justice John Wallace as vice chair; the Special Committee on Attorney Ethics and Admissions, chaired by retired Chief Justice James Zazzali with vice chair Professor Paula Franzese; and the Working Group on Ethical Issues Involving Metadata in Electronic Documents, chaired by Justice Anne Patterson with vice chair Tom Scrivo, Chief Counsel to the Governor.

If you peek at the back of the three committee reports, you will see an impressive roster of members for each group: representatives of the court system, the Bar, and academia, who volunteered their time in a most admirable way to address thorny issues that need attention. I'd like to thank each of the dozens of members of those committees for the thoughtful contributions they made, and invite each of you to let us know if you have an interest in serving in a similar capacity in the future.

Let's start with the announcement about the UBE, the Uniform Bar Examination. As everyone in this room knows from personal experience, the New Jersey bar exam, for years, has consisted of two parts: the multiple choice exam known as the Multistate, which tests basic areas of law

and is prepared by the National Conference of Bar Examiners; and a series of essay questions prepared by the New Jersey Board of Bar Examiners, which also tests laws of general application -- not laws specific to New Jersey.

Last October, the Supreme Court formed a committee that carefully examined the UBE and surveyed its use on the national scene. The UBE has several parts: the Multistate; an essay component, which like our current exam tests only laws of general application; and a performance test made up of two writing tasks designed to assess practical lawyering skills. Forty-nine states use some or all of the UBE, and before New Jersey's decision last month, 21 states used the UBE in its entirety.

After careful study, the committee found that the UBE was a reliable, accurate, and fair way to measure competence to practice law, and that it covers content similar to what the New Jersey exam has historically addressed. The committee concluded there was no reason to think that the UBE would affect the pass rate in our state and no reason to expect a disparate impact on any group of test takers.

For those and other reasons, the committee overwhelmingly recommended that New Jersey adopt the UBE. The Supreme Court agreed, after considering comments from the public and the Bar. What are some of the reasons for that, in addition to the quality of the exam? The simple fact is that we live in a world today that is quite different from decades past. Millennials who pass the bar in 2016 are likely to change jobs more frequently, move about the country at a greater rate as they begin their careers, and, unfortunately, graduate with increasingly higher levels of debt.

The UBE attempts to respond to a number of those concerns by allowing young lawyers the benefit of portable exams they can transfer among a number of states for a period of time. It also reduces the financial strain on applicants who seek to sit for multiple exams in different states, which test similar materials. That's especially true here in New Jersey because we know that three-quarters of applicants for the New Jersey bar sit for more than one exam. Fifty percent seek concurrent admission with New York; 25 percent with Pennsylvania. That led to a practical problem once the New York Court of Appeals announced that it would move to the UBE this July. We understood that we could not expect New York to continue to transfer Multistate scores to New Jersey after this July's exam. That meant that if we had done nothing, half of the aspiring lawyers who historically applied to both the New Jersey and New York bars would have faced a hard choice: do they sit for the New Jersey exam alone or the New York exam alone -- a choice that doesn't serve recent graduates well, or the communities in which they hope to practice.

The interest in better serving the public, of course, extends beyond the metropolitan area. With portable scores that the UBE offers, lawyers are better able to move to underserved areas and provide needed legal services there as well.

I have been in touch with Chief Justice Saylor of the Pennsylvania Supreme Court throughout the process to keep him apprised of the steps New Jersey has taken. For the sake of the many applicants who would like to sit for both exams simultaneously, I hope that there will be a way to

accommodate them in the future.

The New Jersey Supreme Court's adoption of the UBE last month means, of course, that the exam format will change, but it doesn't mean that we will cede control of the bar admissions process in our state. We're not changing the passing score, which is set to the mathematical equivalent of what we have been using for years. And we're not changing the educational requirements or the character and fitness certification requirement, which will all continue to be governed locally.

So if someone sits for the UBE in another state and wishes to become a member of the New Jersey bar, they must meet the same high standards for admission that New Jersey has set and go through the same rigorous certification process that exists today. It's also worth noting that the Court will monitor the pass rate and admissions data for the next three years to ensure that we're on the right track. We welcome your comments and thoughts all throughout that period.

Increasing mobility in the modern practice of law is part of another discussion the Court addressed last month. The Special Ethics Committee reviewed a series of amendments the ABA had made to the Model Rules of Professional Conduct. The committee touched upon a number of ethics issues, questions prompted by new technology, admission standards, and perhaps most challenging of all, the longstanding debate about admission by motion, which has been studied on and off for more than three decades – since the 1983 Committee on Bar Admissions, which recommended a change in the rule at that time.

New Jersey aside, 40 states throughout the nation plus the District of Columbia offer admission by motion. The thoughtful work of the committee illustrated the deep divide that has existed in our state on this issue. But what has become clear is that in the 21st century, more and more New Jersey lawyers need to follow their clients and cases out of state; in the same way, out-of-state lawyers need to follow them here. The Court recognized that legitimate economic concerns could be raised for some New Jersey lawyers, but we could not identify a reasonable basis grounded in the public interest to continue to decline to adopt admission by motion.

As a result, the Court last month adopted the practice subject to a number of restrictions. First, the out-of-state lawyer must have passed the bar exam in another state and have practiced in another jurisdiction for five of the last seven years; second, the lawyer must be admitted in a state that allows for reciprocity with New Jersey lawyers; and third, the out-of-state lawyer must demonstrate fitness and character to practice law here and must complete a course on New Jersey ethics and professionalism.

Once again, those changes do not cede control of the admissions or disciplinary process. Instead, they reflect the realities of the practice of law today in our state and nation.

I want to thank the committee for its thorough review of this challenging question and for its guidance in a number of other important areas as well.

The third committee, headed by Justice Patterson, immersed itself in the issue of metadata and related ethical questions. If you don't know what metadata is, this report is meant for you. Read

it. Take a course on it. Learn what's at stake before you discover that you have shared details or strategy about your case by inadvertently including that information in electronic documents you sent out.

As you can glean, and as so many in this room already know, metadata is information embedded in electronic documents that is not visible when you look at a printed copy of the document. It can include track changes, comments, details about when those changes were made and by whom; it can reveal privileged, work product, and proprietary information. You can find it in documents sent to adversaries and in judicial opinions sent to parties.

We all need to take steps to scrub written materials and remove metadata from them and, more generally, to understand the issue before it becomes a problem. If you haven't looked at the changes to the rules in this area -- which are designed to help protect sensitive client information and clarify the obligations of attorneys when they receive documents with metadata -- I encourage you to do so as soon as practicable.

Another area of change that will soon be upon us relates to the criminal justice reforms underway, particularly in the areas of bail reform and speedy trial. I discussed both topics at length last year at this time, so I will try to summarize just a few points this morning.

There are two primary changes to the law that will go into effect on January 1, 2017. First, our current bail practice relies heavily on defendants posting money or a bond in order to be released. That disadvantages poor defendants who cannot afford to make bail and sit in jail even if they pose a minimal risk of flight or danger.

Under the new law, we will shift to a risk-based system in which defendants who pose little risk will be released on conditions pretrial, and monitored by pretrial services officers, without having to post bail. High-risk defendants, on the other hand, who pose a great risk of danger to the community or a serious risk of flight, can be detained pretrial and held without bail.

The second major change is a new speedy trial law that will try to ensure that criminal matters are resolved on a timely basis and do not linger for many years. That approach is better for defendants who await trial, for witnesses whose memories dim with time, for the state, which has the burden of proof, and for victims who seek closure.

The new statute requires defendants to be indicted within 90 days of arrest and tried within six months of indictment, with appropriate exclusions of time for motions, plea negotiations, consent, and other reasons.

Those changes result from the cooperative efforts of all three branches of government. They comprise the most substantial changes to the criminal justice system that the state has seen in decades. And I believe they will make for a better and a fairer system of criminal justice in our state.

Since the law was signed, the Judiciary has been hard at work in a number of ways to prepare to implement it. We have been working with the Arnold Foundation, a criminal justice foundation,

to develop an objective risk-assessment tool that has been validated with data from tens of thousands of actual New Jersey cases. That tool will help judges assess the level of risk each defendant presents based on a series of factors.

We are preparing for the start of a new pretrial services agency that will operate in each vicinage. We estimate the agency will prepare 70,000 evaluations a year to assist judges making decisions about release pretrial.

We are trying to use technology in a smart way -- to get data about a defendant's past rapidly, to check fingerprint databases electronically -- in order to present as full a picture as possible about a defendant's past, to a judge, within 24 to 48 hours of an arrest.

We're at work on a variety of changes to the court rules. We have also engaged in extensive outreach with the Attorney General's Office and the Public Defender's Office to try to train the many stakeholders whose participation is essential to the success of the new law.

Much more work needs to be done, both leading up to January 1 and after, and we know that significant challenges lie ahead. Change, as a general rule, is hard, and the changes we've been discussing are substantial. Beyond that, these changes will place a number of practical demands on our criminal justice system.

Here are just two examples. In thousands of cases per year beginning next January, judges will rule on motions the state files to detain defendants pretrial. Each motion will require a hearing, and some may last hours. There is also a potential appeal of each decision.

As to the merits of the charges, tens of thousands of cases will need to be resolved within the time frame of the Speedy Trial Act. That means that prosecutors, public defenders, and private counsel will need to prepare their cases on a more timely basis, and that judges will need to schedule meaningful trial dates and be able to actually start trial on those dates.

We are very fortunate to have a superb group of judges and staff who are ready and willing to take on these challenges. Many of them are here this morning. I can't thank you enough for your dedication, skill, and the level of excellence that you bring to work each day.

But make no mistake, to meet this enormous challenge going forward, we need enough judges on the bench to handle additional responsibilities in criminal cases at the same time that we strive to continue to meet the needs of the public in other areas -- overseeing motions and trials in the civil, family, and general equity parts as well.

That is not an easy task, which is why recent developments have been wonderful. I want to thank the Governor, the Senate President, the Senate Judiciary Committee and its Chair, and the entire Senate for a number of important actions taken in recent weeks: the nomination and confirmation of an associate justice to the Supreme Court; the nomination and confirmation of five new Superior Court judges; the reappointment of 12 sitting judges who have had hearings and have been voted out of the Senate Judiciary Committee; NOIs and nominations by the Governor to reappoint 11 more sitting judges, with hearings for many scheduled for this coming

Monday; and the very impressive list of notices of intent to nominate 17 new judges that the Governor filed just Wednesday, less than 48 hours ago -- judges who will be able to hit the ground running in Mercer, Essex, and Middlesex, where the need has been so great.

This is very positive news, and very welcome news indeed. If the 17 nominees are confirmed, as we hope they will be, that will reduce the Judiciary's overall vacancy level to 27. I know that the Governor's Office and the Senate are at work on some additional nominations in the near future as well. All of that, too, is very good news because, as the Governor, Senate President, and others appreciate, we need to see to it that the overall level of vacancies is at a low number. And it is important to sustain that low level going forward to meet the needs of the justice system and the public as a whole – again, not just for criminal matters but in all areas.

With any group as large as 400-plus judges, there is a natural amount of turnover each year. Most of the time, we can anticipate retirements in advance because we usually know when and where those vacancies will arise. The challenge is to fill those vacancies on a timely basis, which requires early cooperation among individual State Senators and the Governor's Office because the process typically begins with a local Senator making a recommendation to the Governor to start the vetting process.

In some parts of the state, that transition has been seamless as vacancies arise; in others, we have seen delays last years. That would be very problematic if it were to happen in the years ahead. With criminal justice reforms just around the corner, the consequences going forward would be quite real. If we do not fill vacancies rapidly and have enough judges on the bench, we will not be able to succeed with bail reform; we will not be able to meet the deadlines of the new speedy trial law. That's why we are so pleased with the attention the Governor and the Governor's Office, the Senate President, the Senate Judiciary Committee and its Chair, and the entire Senate has paid to this problem for the past two months. And we offer our help in any way that might assist in the future.

In the past year, a number of individuals have written and spoken about advances in New Jersey's criminal justice system in a very positive light. Our collective task is to make sure that we live up to that promise, and the Judiciary looks forward to continuing to work closely with the Executive and Legislative branches in that regard.

As always, we welcome your help, your insights, suggestions, and support as partners in the Bar. Your comments only make our system of justice stronger.

With that in mind, I want to thank you again for inviting Chief Judge Simandle and me to participate and speak with you this morning. I hope that you enjoy the remaining programs on today's schedule. Thank you very much.